Child Soldiers and Peace Agreements

Rose Mukhar
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CHAPTER ONE INTRODUCTION

Children suffer disproportionately in war, and they benefit disproportionality less in peace.¹

For hundreds of years, children have suffered many hardships during armed conflicts, and they have been especially vulnerable to being recruited, abducted or coerced into joining armed groups for the sake of child soldiering.² As child soldiers,³ there is the inherent danger they will be killed, maimed, or traumatized during combat or while fulfilling such other “duties” as laying mines and building explosives, spying, or acting

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3. Recently, the broader terminology of “children associated with armed forces or armed groups” or “children associated with armed conflict,” has been referenced in academia rather than “child soldier” so as to more clearly include both the boys and girls who are used as domestic servants or who have any other indirect involvement with, or provide support for, the hostilities. However, this paper will use the term “child soldier.” See, Professor Cecile Aptel, “Lubanga Decision Roundtable: The Participation of Children in Hostilities,” posted on Opinio Juris, 18 March 2012, available at: http://opiniojuris.org/2012/03/18/lubanga-decision-roundtable-the-participation-of-children-in-hostilities/.
as decoys. Additionally, children suffer serious mental, physical, and emotional injuries from direct and indirect participation in armed conflict, including witnessing, and perhaps perpetrating, horrendous atrocities, as well as from sexual slavery, which girl child soldiers are so often subjected to. If a child soldier is captured or surrenders, the child is then often subjected to prolonged administrative detention and/or prosecution. Thus, due to their age, child soldiers are extremely vulnerable because they remain dependent on adult care.

When an armed conflict is resolved with a treaty, the needs of children in general and child soldiers specifically are rarely addressed in the peace agreement. Once an armed conflict subsides and child soldiers are able to return to civilian life, many of them no longer have anyone to turn to because their family may have been displaced or even killed during the conflict. There are even times when a family will reject a former child soldier due to crimes they may have committed or because of “perceived alliances with enemies, or social consequences arising from disability, psycho-social difficulties, pregnancy, HIV/AIDS and other possible effects” of the armed conflict. Sadly, there is little community or government structures designed to support children or former child soldiers exposed to armed conflicts. This is the case despite the creation of demobilization, disarmament, and reintegration (DDR) programs because these programs are primarily designed for adult combatants. The result is that many child soldiers remain under the control and command of the armed forces or rebel groups that abducted or conscripted them in the first place, fueling the vicious cycle of armed conflict.

There are numerous human rights treaties and international humanitarian laws that focus on the rights of the child and how they are owed special protections, especially in times of conflict. Indeed, as articulated in the

5. Id.
7. Disarmament, Demobilization and Reintegration (DDR) aims at a comprehensive reversal of war conditions to peace amongst belligerents, and it attempts to bring about peaceful conditions, enhance human security, stability, and development by transforming the role and posture of armed combatants. Disarmament refers to the collection of arms in or outside the conflict zone. Demobilization involves disbanding military structures and leads to the transformation of former combatants to civilian life. Reintegration is the reinsertion into civilian life of former combatants, together with their families, in order that they resume economic, social, and political life. This generally entails the provision of packages including cash, in-kind compensation, training on the job and encouragement to embark upon self-help, income-generating projects. See, UN Office of Special Adviser on Africa, “Second International Conference on DDR and Stability in Africa Kinshasa, Democratic Republic of Congo,” 12-14 June 2007. Page 3.

http://digitalcommons.law.ggu.edu/annlsurvey/vol20/iss1/8
Preamble to the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care... mankind owes the child the best it has to give.” Why then are child soldiers’ needs and rights rarely included in peace agreements? Even if children are referenced, it is in regard to establishing DDR programs. Even then, because those programs often do not provide guidelines for specific implementation for children nor is there specific funding to implement a program just for children, the programs tend to come to an end soon after the ink dries on the peace agreement. As such, former child soldiers are often not provided with adequate support for coping with and recovering from the trauma they have witnessed and experienced, and they are not provided with the appropriate training to learn new skills to support themselves. It is not surprising then that former child soldiers often return to fighting (either voluntarily or through forced conscription), as it is a means for their survival, and it is a familiar lifestyle for them.

Despite that the forcible recruitment and use of child soldiers under the age of eighteen years is prohibited in international law and that the use of child soldiers under the age of fifteen is a war crime, in practice the forced conscription and use of under age child soldiers continues with impunity at the local level. Justice for child soldiers as victims and the accountability of those leaders who unlawfully used the children in the hostilities are not usually addressed in the peace accords. As a deterrent to the use of child soldiering and in order to ensure a sustainable end to armed conflicts, justice and impunity concerns must be included in peace agreements. Additionally, the presence of these provisions “makes it more likely that there will at least be attempts to comply with the legal requirements.” Lastly, even though addressing accountability during peace talks could potentially derail prospects for peace, the needs and rights of child soldiers must be addressed and impunity must cease when the armed conflict ends.

This paper will explore and analyze the relationship between child soldiers and peace processes. It will address the protections offered—or lack thereof—by human rights and international humanitarian law to child soldiers in armed conflicts. In particular, the conflict in the Democratic Republic of the Congo (“DRC”) is specifically addressed because the DRC conflict from 1996 to 2002 can most likely be classified as a non-

international armed conflict—which is what most of today’s conflicts are deemed; also because the numerous peace treaties from this timeframe primarily failed to provide a lasting peace in the DRC region. The paper argues that in order to achieve sustainable peace in the DRC conflict or any conflict that uses child soldiers, that child soldiers’ needs and rights must be addressed in the peace agreement. Furthermore, it is proposed that the peace process must address and ensure there is a structure for accountability and justice of those local leaders who abducted or recruited children under the age of eighteen years as child soldiers.

Chapter 2 addresses who a child soldier is and reviews the legal definitions as well as the various international treaties, laws, and conventions designed to offer children special protections and ensure that their best interests are addressed. Chapter 3 looks at Graca Machel’s groundbreaking report on the “Impact of Armed Conflict on Children,” and the recognition of child soldiers. Chapter 4 specifically looks at the DRC as a case study. Chapter 5 sets out the paper’s conclusions that DDR child-specific programs and justice provisions should be included in peace agreements for there to be sustainable peace.

CHAPTER TWO WHO IS A CHILD SOLDIER?

Everyone talks about ‘the impact of war on children.’ But how do you measure the impact of war? Who suffers the greater horror, the child who is violated, or the child who is forced to become a perpetrator? We are the victim, the perpetrator and the witness, all at once. ¹¹

As the quote above demonstrates, children used as soldiers in armed conflicts are not only the victims; they can also be the perpetrators and the witnesses to atrocities. This makes a child’s role in an armed conflict unique, but also confusing as it is difficult to determine when or if ever a child should be held accountable for violations of war crimes. Additionally, there is no international minimum threshold age of criminal responsibility for war crimes. This adds to the dilemma of whether a

¹⁰ “The most widely prevalent type of armed conflict today is non-international in nature. It involves hostilities between government armed forces and organized non-State armed groups or is carried on among members of such groups themselves.” International Committee of the Red Cross, “Increasing respect for international humanitarian law in non-international armed conflicts,” 22-04-2008, Publication Ref. 0923. Available at: http://www.icrc.org/eng/resources/documents/publication/p0923.htm.

child should be treated as a victim and thus be entitled to support and assistance for reintegration into society, or instead whether the child should be prosecuted for any International Humanitarian Law (IHL) violations that may have been committed during the conflict.\textsuperscript{12}

Therefore, before discussing how peace processes should include child soldiers’ needs and rights, it is helpful to review the prevalence of child soldiers, the international law concerning who is a “child” and who is a “child soldier,” as well as the rights those children have. It is important to understand how old a “child” is in order to better comprehend how young a child soldier can be.

A. \textbf{PREVALENCE OF CHILD SOLDIERS}

There are approximately thirty armed conflicts\textsuperscript{13} in the world today, and it is estimated that there are over one billion children affected by those armed conflicts.\textsuperscript{14}

While it is difficult to assess how many\textsuperscript{15} of those one billion children are actively involved in armed conflicts, there is no doubt that the number of child soldiers in the world is significant.\textsuperscript{16} There are some 33 countries

\begin{thebibliography}{16}
\bibitem{12} While some child soldiers have been prosecuted for war crimes, this paper does not specifically address the prosecution of child soldiers.
\bibitem{15} There are numerous challenges involved in determining how many child soldiers there are, including, “[i]naccurate estimates of overall populations, as well as refugees and internally displaced persons, may arise due to ongoing movements of people, deliberate attempts to overestimate or underestimate numbers, or the fact that available population data may vary in quality. The data are influenced by lack of access to people or communities affected by armed conflict, absence of functioning birth and death registration systems, and populations in hiding.” See, United Nations Children’s Fund (UNICEF), “Machel Study 10-year strategic Review, Children and Conflict in a Changing World,” Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UN (April 2009), page 19. Available at: http://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf.
\bibitem{16} Most armies and militias do not track the number of child soldiers they use, so only estimates are available. Since 2008, the United Nations has estimated there are more than 250,000 child soldiers. See, UN News Centre, “UN advocate for children in armed conflict hails United States legislative steps,” 17 September 2008, available at, http://www.un.org/apps/news/story.asp?NewsID=28094&Crl=children&Crl=armed+conflict quoting the Secretary-General’s Special
and territories affected by the conflicts, sixteen of which are in the continent of Africa; nine conflicts are in Asia, and the remaining eight conflicts are in the Middle East, Central and Eastern Europe, and Latin America. Although the exact figures are unknown, at least 40% of the world’s child soldiers are in Africa, however, given that almost half of the global armed conflicts occur in Africa it would not be surprising if the percentage is higher.

Most child soldiers are between the ages of fourteen and eighteen years old, although children as young as seven have been used as child soldiers. Indeed, despite a trend by State Parties to the Child Soldiers Protocol to adopt a “Straight 18” or a “Zero under 18” policy thereby prohibiting both compulsory and voluntary recruitment, and prohibiting participation of children under eighteen years in hostilities, most child soldiers under eighteen years have been recruited into State armed forces (army, navy, air force). While many children “volunteer” to join the

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military or rebel forces, it can be argued that some of “these children are more likely responding to a variety of pressures – economic, cultural, social and political.” Children are also abducted and forced into conscription.

Both girls and boys are child soldiers; however boy soldiers “commit acts of atrocity” more than girls do. Additionally, while both boys and girls are victimized by sexual violence as child soldiers, “adolescent girls tend to be the first to be victimized during armed conflict.”

B. DEFINITION OF “CHILD”

The Convention on the Rights of the Child (CRC) came into force in 1990, and is a binding international treaty that recognizes the human rights of all children during peacetime and armed conflict. It is the most widely ratified human rights treaty in history, with ratification by all participating nations except two. It took over ten years of collaboration and negotiation by governments, non-governmental organizations, professionals, children’s rights activists, and child
development experts to establish the standards set forth in the CRC.\(^2^9\) Although the creation of this international treaty was significant, there are inconsistencies in the CRC’s provisions relating to children in armed conflicts.

For instance, the CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”\(^3^0\) (emphasis added). This definition of a “child” appears to be straightforward. However, the definition expressly permits variations among State Parties as to the determination of how old a child can be. While the standards and obligations are supposed to be “non-negotiable” and State Parties are “obliged to be consistent in defining benchmark ages,” nations can declare and reserve a different age of majority than eighteen.\(^3^1\) If a State Party sets the age of majority below eighteen years, the earlier age of majority must be in conformity with “the spirit” and the guiding principles of the CRC and should not be used to undermine the rights of any child.\(^3^2\) This flexibility has resulted in “the unequal treatment of children based on their national domicile.”\(^3^3\) However, the freedom for States to set their own age of majority may have been one of the reasons why so many States have become parties to the CRC.

C. DEFINITION OF “CHILD SOLDIER”

The term “child soldier” might initially conjure up images of children carrying machetes or AK-47s in such war-torn countries as Rwanda, Somalia, or the Sudan. One may not think of teenage Afghan children making (and throwing) grenades or Rwandan girls being used as porters for ammunitions, cooks and sexual slaves in the Democratic Republic of the Congo (DRC).\(^3^4\) However, all these children have been considered as


\(^{3^4}\) Rwandan girls from refugee camps in Rwanda have been abducted, trafficked and used as sexual slaves by militia armed groups in North Kivu, of the DRC. See, Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008, London, 2008, Page 106.
child soldiers so that the definition of a child soldier is quite broad. In fact, there is not one specific treaty that defines who a “child soldier” is.

1. The 1977 Additional Protocols to the Geneva Conventions

The four 1949 Geneva Conventions and their Additional Protocols are at the core of IHL, the body of international law that regulates the conduct of armed conflict and seeks to limit its effects.35 The significance of these IHL Conventions to the present paper is that they were the first to address children in times of armed conflict. In particular, the 1977 Additional Protocols to the Geneva Conventions specifically address children as combatants.

Article 77 of the Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts (hereinafter, “Additional Protocol I”), among other things, establishes that the parties to a conflict “shall take all feasible measures” not to recruit children under fifteen years, and to ensure that children do not take part directly in hostilities.36 Additional Protocol II, Relating to the Protection of Victims of Non-International Armed Conflicts (hereinafter, “Additional Protocol II”), provides that “[c]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”37

While there are discrepancies between the Additional Protocols as to the protections offered to children under age fifteen years in international

35. 194 States have ratified the Four Conventions, and they are binding on all State Parties as a matter of treaty law. Additionally, the “great majority of the provisions of the Geneva Conventions, including Common Article 3, are considered to be part of customary international law.” See respectively: “International Humanitarian Law – State Parties/Signatories. Geneva Conventions of 12 August 1949,” International Committee of the Red Cross, 2005. http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P.


See also, International Court of Justice, Legality of the Threat or Use of Nuclear Weapons, op. cit. (note 8), pp. 257–258, §§ 79 and 82 (with respect to the Geneva Conventions) and Case concerning Military and Paramilitary Activities in and against Nicaragua, op. cit. (note12), p. 114, § 218 (with respect to Common Article 3).


versus non-international conflicts, both Additional Protocols are noteworthy since they are the first treaties that recognize children’s special protection status and specifically address the recruitment of children into armed conflict. These instruments also place an obligation on both State parties and non-state actors to protect children under the age of fifteen years from armed conflict. That said, neither of the Additional Protocols address reintegration of children into civil society once they have participated in an armed conflict.

2. The Convention on the Rights of the Child

Regardless of whether there is an armed conflict or not, international human rights laws, (especially the CRC), have long recognized the special need to protect children based on their age, maturity, and dependence on adult caretakers. The CRC introduces the concept of child soldiering in Article 38, which references the young age of fifteen as the minimum age for recruitment and participation in hostilities. Even though the age of fifteen years may seem too young for children to be entering combat, this instrument is significant because it binds the state parties to uphold the minimum age limits in armed conflicts.

The CRC requires that States “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of . . . armed conflicts,” including child soldiers. Thus, States Parties have an obligation to ensure that former child soldiers be allowed safety and protection so they can recover and reintegrate into society.


40. Id., Article 39.
3. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

In May 2000, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldiers Protocol) was established. It entered into force by 2002, and it now has been ratified by 143 states, including the United States in 2002. The result was a ban on the participation in hostilities by children under the age of eighteen as well as a ban on compulsory recruitment below the age of eighteen. While the Child Soldiers Protocol reminds member states that children under the age of eighteen are entitled to special protection, it does not require a minimum age of eighteen for voluntary recruitment into the armed forces. In fact, the preamble notes that the Rome Statute establishing the International Criminal Court (discussed below) has criminalized as a war crime the conscripting or enlisting of “children under the age of 15 years.” Additionally, using children under 15 years old in either international or non-international armed conflicts is deemed a war crime, but the Child Soldiers Protocol itself fails to articulate the same. Nonetheless, the Child Soldiers Protocol obligates States to provide support and assistance for recovery, rehabilitation and reintegration for those children used as soldiers.

4. The Rome Statute of the International Criminal Court

The Rome Statute establishing the International Criminal Court (ICC) entered into force on July 1, 2002. It is reviewed here because it made child soldiering a war crime, and it is an indicator that children under the

44. Id., Article 3.
45. Id., Preamble.
46. Id., Preamble, Articles 6 and 7.
age of eighteen years should be safeguarded and protected, regardless of whether they themselves have committed war crimes.\textsuperscript{48}

The ICC is a permanent tribunal that has “the power to exercise its jurisdiction over persons for the most serious crimes of international concern,” including prosecuting individuals for genocide, crimes against humanity, war crimes and the crime of aggression.\textsuperscript{49} The Rome Statute was the first treaty to make the recruitment of child soldiers under the age of fifteen years a war crime under international law.\textsuperscript{50} Indeed, the Rome Statute actually criminalizes the conscription, enlistment, or use in active hostilities of child soldiers under the age of fifteen years, both in international and non-international armed conflicts.\textsuperscript{51} That said the ICC was never designed to prosecute every person suspected of committing international crimes and instead, only brings to justice those who “bear the greatest responsibility for such crimes.”\textsuperscript{52} This means that most of the military and rebel leaders that abducted and forcibly conscripted child soldiers in the conflict zone will need to be brought to justice at a local level rather than in an international tribunal.

Additionally, Article 26 of the Rome Statute prevents the ICC from prosecuting anyone under the age of eighteen years.\textsuperscript{53} This is relevant because it shows that the international community is attempting to

\textsuperscript{48} An additional indicator that children under the age of eighteen years should be protected and not prosecuted for war crimes is that the Rome State of the ICC has no jurisdiction over persons under the age of eighteen years. See, Article 26 of the UN General Assembly, \textit{Rome Statute of the International Criminal Court (last amended January 2002)}, 17 July 1998, A/CONF. 183/9, available at: http://www.unhcr.org/refworld/docid/3ae6b5a84.html.

\textsuperscript{49} \textit{Id.}, Article 5.


\textsuperscript{51} UN General Assembly, \textit{supra} note 35, Article 8(2)(b)(xxvi), (e)(vii).


And see, ICC, “Frequently Asked Questions, Will the ICC prosecute all persons suspected of committing the most serious crimes?” Available at: http://www2.icc-cpi.int/Menus/ICC/ About+the+Court/Frequently+asked+questions/.

criminalize child soldiering and thus, is recognizing that children exposed to and/or involved in hostilities must be given special protections.

5. Soft Law and the 2007 Paris Principles

Despite the numerous and varying age ranges and descriptions of child soldiers addressed above in binding treaties and conventions, there are also nonbinding principles and recommendations that help identify who child soldiers are and what their rights are.54

For instance, in 2007, in order to review and strengthen the 1997 Cape Town Principles,55 a major international conference was held in Paris entitled “Free Children From War,” organized by UNICEF and the French government.56 A total of fifty-eight countries, including dozens of government ministers, heads of UN agencies and many non-governmental organizations participated and slightly changed the Cape Town Principles definition of a “child soldier” as follows:

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.57

Currently, 100 countries have endorsed the Paris Commitments, that the Paris Principles accompany, which indicates that there is strong support


for a uniform, yet broad, definition of "child soldier." However, as previously noted above, these Principles are not legally binding because they have not been incorporated into any conventions or protocols; this definition is purposefully broad to include auxiliary as well as combative roles that children are used for in armed conflicts.

D. SUMMARY OF WHO A CHILD SOLDIER IS

Despite the lack of uniformity of children’s ages referenced in the CRC and the Optional Protocol, it appears that generally: (1) a child is anyone under the age of eighteen (assuming a State Party has not lowered their age of majority); (2) that a child under the age of fifteen cannot be recruited (forcibly or voluntarily) into an armed group (State military or militia/rebel forces); and (3) a child under the age of eighteen is not permitted to “take a direct part in hostilities,” although how “direct” or indirect a child soldier’s “part” can be has never been articulated, and State parties are free to interpret those terms.

Thus, the definition of a child soldier is purposefully broad so that the examples identified at the beginning of this section such as Afghan children constructing (as well as throwing) grenades and Rwandan children being forced to be porters, cooks, and sex slaves in the DRC, can all be defined as “child soldiers.” Having reviewed who a “child soldier” is, the remainder of this paper addresses how peace processes must incorporate and integrate child soldiers’ needs and protections into peace agreements in order to promote lasting peace.

59. While the phrase “direct part” has not been defined, neither has an “indirect part.” Additionally, note that children under the age of eighteen are banned only from participating in “hostilities;” their participation is not restricted to the broader term of “armed conflicts,” which is also not defined within the CRC or the Optional Protocol. See CRC, supra note 13, Article 38. And see Optional Protocol, supra note 22, Articles 1 and 4. For a discussion on these terms and why no universal definitions have been provided see generally, Tiny Vandewiele, A Commentary on the United Nations Convention on the Rights of the Child, Optional Protocol The Involvement of Children in Armed Conflict, The Netherlands (2006), pages 21-22.
60. The Committee on the Rights of the Child, an internationally elected body of independent experts monitors the implementation of the CRC and its two optional protocols. While the Committee on the Rights of the Child requires governments that have ratified the CRC to submit regular reports on the status of children’s rights in their countries, State Parties are merely asked to specify their own interpretation, meaning, and use of “direct participation” for children. See, Office of the United Nations High Commissioner for Human Rights (OHCHR), “Committee on the Rights of the Child: Monitoring children’s rights,” December 2011, available at, http://www2.ohchr.org/english/bodies/crcf. See also, Vandewiele, supra note 27, page 23.
These statistics are shocking enough, but more chilling is the conclusion to be drawn from them: more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.61

Despite increased international awareness and attention to children’s rights since the 1990’s, child soldiers are still being largely overlooked in peacemaking and peacekeeping processes. Quite often child soldiers’ roles in a conflict and the subsequent peace agreement are not even acknowledged, let alone addressed, when the disarmament, demobilization, and reintegration (DDR) programs are created during the peace negotiations. The effect is twofold: child soldiers become invisible in the aftermath of the conflict because their role in the conflict is overlooked, and their interests in reintegrating back into society after the conflict has ceased are disregarded. This in turn can perpetuate the conflict and contribute to instability in the region simply because the children know no other lifestyle or skill than that of a combatant.

In this Chapter, a historical review of peace agreements and the extent to which they deal with child soldiers is reviewed. First, the 1996 Graca Machel report recommending that child soldiers’ interests be addressed in peace agreements is discussed, followed by a review of the Security Council Resolutions encouraging States to incorporate the interests of child soldiers into peace agreements. Then the 1999 Sierra Leone Lome Peace Agreement is discussed in light of the non-binding Security Council Resolutions, and is followed by discussion of further peace agreements.

A. 1996 GRATAC MACHEL REPORT

In 1996, Graca Machel, as the United Nations Secretary – General’s Expert on the Impact of Armed Conflict on Children, issued her

groundbreaking report on the impact of armed conflict on children.\textsuperscript{62} As her quote in the beginning of this Chapter indicates, Machel’s report recognized the existence of child soldiers that the military and rebel groups had been trying to quell, and the report stressed that the role of child combatants had yet to be included into any peace agreement.\textsuperscript{63} The report articulated that for demobilization to succeed and for there to be a lasting peace there had to be “[o]fficial acknowledgement” of the children’s role in the conflict.\textsuperscript{64}

One of the reasons that child soldiers had not been included in any peace agreements up to that point was because none of the military or rebel leaders from either side of a conflict wanted to acknowledge the role child soldiers had played. As Machel’s report articulated, this meant that child soldiers’ needs to recover and reintegrate into society after a conflict were deliberately ignored. The report outlined in detail that reintegration programs that “help children to establish new foundations in life based on their individual capacities” were essential.\textsuperscript{65} And the report stressed that peace agreements going forward must incorporate programs specifically for children:

Peace agreements and related documents should incorporate provisions for the demobilization of children; without this recognition, there can be no effective planning or programming on a national scale.\textsuperscript{66}

This landmark report cannot be understated; it led to an international turning point in the recognition of the role that child soldiers play in conflicts.

B. SECURITY COUNCIL PASSES NON-BINDING RESOLUTIONS

The United Nations Security Council responded by adopting the provisions contained in the Machel Report, as well as by passing a series of Resolutions “on children in armed conflicts” that, for instance, “[u]rges all parties to armed conflicts to ensure that the protection, welfare and rights of children are taken into account during peace

\textsuperscript{63} Id. Para 49.
\textsuperscript{64} Id. Para 49.
\textsuperscript{65} Id. Para 50.
\textsuperscript{66} Id. Para 49.
negotiations and throughout the process of consolidating peace in the aftermath of conflict."\(^{67}\)

The Resolutions similarly stressed that parties to a conflict should specifically integrate child soldiers' needs into all the peace making and processes.\(^{68}\) Additionally, the Resolutions called:

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\text{Upon all parties concerned to comply strictly with their obligations under international law, in particular the Geneva Conventions of 12 August 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 and the United Nations Convention on the Rights of the Child of 1989, and stresses the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949.}^{69}\]

The fact that the Security Council addressed ending impunity for child soldiering is significant, but it is important to remember that these Resolutions are non-binding. While the UN has a significant role in peace processes as a sponsor of most peace agreements, and it took leadership as only the Security Council could to ensure that child soldiers' interests be addressed in peace agreements while also promoting justice and accountability for those that use child soldiers, these Resolutions are merely recommendations for State Parties. Perhaps if the Security Council had made the Resolutions binding under Chapter VII of the UN Charter, in response to specific acts of aggression or threats to international peace and security by a State or States, more success would have come from them.\(^{70}\)

Indeed, the "inclusion of children’s rights and protection in some peace agreements subsequent to the Machel report did not always translate into
a major coup for child soldiers.”

This occurred for several reasons; one being that Security Council Resolutions were broad and did not touch on the specifics of how to address child soldiers’ needs. Another reason was that the protections were only recommendations and not binding on State Parties. The following section reviews the subsequent peace agreements reached following the Machel Report that failed to incorporate child soldiers’ interests.

C. PEACE AGREEMENTS FAILING CHILD SOLDIERS

Ideally, the peace agreements reached following the 1996 Machel Report and the Security Council Resolutions would have incorporated the best interests of child soldiers and ensured that their needs were met through specific DDR programs, as well as articulated justice mechanisms to end impunity for those local leaders who recruited and used child soldiers. However, that was not the case.

For instance, from 1999 to 2003 there were five peace agreements that the United Nations helped broker or facilitate after the Machel Report was issued, but only one of the five, the Sierra Leone Lome Peace Agreement, actually addressed the issue of child soldiers. However, except for stating that the “Government shall accord particular attention to the issue of ‘child soldiers,”’ there were no specific provisions for child soldiers established or implemented in the Sierra Leone Lome Peace Agreement. Even so, when the Statute for the Special Court of Sierra Leone was established in 2000, it followed the Rome Statute’s lead and established that the forcible recruitment and use of child soldiers under the age of fifteen were war crimes. This in and of itself was remarkable, and right in line with what the Machel Report and Security Council Resolutions had stressed the accountability and justice for those military and rebel leaders who forcibly recruited and used child soldiers. However, like the ICC, the Special Court of Sierra Leone was designed to prosecute only those “who bear the greatest responsibility for serious violations” of IHL, not those at the local level making the


72. The other peace agreements the UN facilitated but failed to address the interests of child soldiers included: the Sudan/Uganda 1999 agreement, the Democratic Republic of Congo 1999 Lusaka ceasefire agreement, the 2000 Arusha peace and reconciliation agreement for Burundi, and the 2003 Liberian peace agreement. See, Professor Matthew Happold, Child soldiers in international law, (Manchester: Manchester University, 2005). Pages 111 to 118.

73. Id.

decisions about which children should be forced to become child soldiers.\textsuperscript{75} So while the Special Court of Sierra Leone successfully prosecuted Charles Taylor, former President of Liberia, and found him guilty for the war crimes “of aiding and abetting the conscripting or enlisting children under the age of 15 years into armed forces or groups, and using them to participate actively in hostilities, as well as aiding and abetting murder, rape” as well as other crimes, impunity occurred at the local level based on the failure of the peace agreement.\textsuperscript{76} In other words, those responsible at the local level for recruiting and using child soldiers were not prosecuted.

As for other peace agreements, while the use of child soldiers was notorious in Liberia, the 2003 Liberian peace agreement did not mention child soldiers at all.\textsuperscript{77} However, out of an estimated 9,000 child soldiers used in the conflict only 4,326 child soldiers were “rehabilitated and reintegrated back into Liberian society,” albeit through a program designed for adults so it did not address issues unique to children.\textsuperscript{78} And, even though as previously mentioned there was the formation of the Special Court of Sierra Leone that prosecuted leaders like Charles Taylor for the use of child soldiers because there was no accountability in the peace agreement, local leaders that forcibly conscripted child soldiers were never brought to justice.

It is unfortunate that the breakthrough Machel Report did not have an immediate impact in practice after it was released. However, in 2004 significant progress occurred with the Sudan Comprehensive Peace Agreement of 2004.

D. SUDAN’S “COMPREHENSIVE” PEACE AGREEMENT OF 2004

In 2004, the Sudan Comprehensive Peace Agreement actually referenced child soldiers in a meaningful way. For instance, it provided for the following:

\textsuperscript{75} Id. Article 1.

\textsuperscript{76} Taylor was convicted of aiding and abetting the rebels by providing them with arms and ammunition, military personnel, operational support and, moral support, making him individually responsible for their crimes. He was also convicted on all counts of an 11-count indictment, which alleged that he was responsible for crimes committed by rebel forces during Sierra Leone’s decade-long civil war. See, Prosecutor v. Charles Ghankay Taylor, SCSL-03-1-T, Trial Chamber, Special Court for Sierra Leone, Summary Judgment, 26 April 2012. Available at: http://www.scsrl.org/LinkClick.aspx?fileticket=by3HPDDiFTM%3D&tabid=53.

\textsuperscript{77} Professor Matthew Happold, Child soldiers in international law, Manchester University, (2005). Page 112.

\textsuperscript{78} Id. 112.
Demobilization of all child soldiers within six months of the signature of the Comprehensive Peace Agreement.

Identification and registration, within six months from the signature of the Comprehensive Peace Agreement, of all children separated from their families for family tracing and ultimate reunification.

A call to UNICEF, ICRC and other international organizations to assist in the child component of the DDR in the Sudan.

Mobilization of adequate financial and logistical support from the international community including governments, governmental organizations (NGOs).

While it was unfortunate that this DDR program had a time limitation of six months (although this was later extended), notably, it was the first peace agreement to specifically target the needs of child soldiers. However, this “comprehensive” peace agreement failed to address accountability for the perpetrators recruiting and using child soldiers, thereby still allowing for impunity at the local level.

E. A PEACE AGREEMENT WITH JUSTICE?

By 2007, the Government of the Republic of Uganda signed a peace agreement with the Lord’s Resistance Army/Movement (LRA/M), and while there is no specific mention of child soldiers, the agreement does take the interest of children into consideration. The parties agreed that “reconciliation and accountability should be pursued locally, through both formal and informal measures.” This agreement that there should be accountability at the local level is a breakthrough in peace agreements because up to that point previous agreements had failed to provide for any justice at the local level. This accountability aspect most likely came to fruition because back in 2005, the ICC had issued indictments for Joseph Kony, warlord of the LRA/M, and other senior leaders for the...
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LRA/M. This fact most likely compelled the parties to make efforts to end impunity at the local level for those leaders using child soldiers. 83

F. SUMMARY OF PEACE AGREEMENTS

This Chapter discussed the significance of recognizing child soldiers in peace agreements, as first addressed in the landmark Machel Report. It is possible that if the Security Council Resolutions supporting and promoting the provisions in the Machel Report had been binding, they may have made more of an impact on State Parties who were negotiating peace agreements to include specifics on behalf of child soldiers’ interest. Nonetheless, eight years later in the Sudan 2004 Agreement, child soldiers were addressed in a meaningful way, and then in 2007, with the peace agreement between Uganda and the LRA/M, there became an agreement of accountability at the local level. That said it did not address DDR specifically for child soldiers. To date there has yet to be a peace agreement that addresses DDR specifically for child soldiers, along with a justice component. These both are required for a sustainable peace to be achieved, as addressed in the following Chapter.

CHAPTER FOUR CONFLICT, PEACE AGREEMENTS AND CHILD SOLDIERS IN THE DRC

I feel sorry . . . Why do I feel sorry? Because by the time I could go to school, I am already too old for the beginner’s class. I can’t dream of going to school anymore because it is too late. I will stay in the army until I die. 84

This Chapter looks at the continuous conflicts in the DRC and attempts to assess why so many of the previous peace agreements have been unsuccessful. It is possible that one factor contributing to the absence of a sustainable peace in the DRC is that the peace agreements have failed

83. Despite that Joseph Kony is still at-large in 2013, in 2005, Kony was indicted under Articles 25(3)(a) and 25(3) (b) of the Rome Statute, including: twelve counts of crimes against humanity of murder; enslavement; sexual enslavement; rape; inhumane acts of inflicting serious bodily injury and suffering; and, twenty-one counts of war crimes of murder; cruel treatment of civilians; intentionally directing an attack against a civilian population; pillaging; inducing rape; and, forced enlistment of children into armed hostilities. See, The Prosecutor v. Joseph Kony, Case No. ICC-02/04-01/05-53, International Criminal Court, Warrant of Arrest issued under seal by the Pre-Trial Chamber on July 8, 2005 and amended on September 27, 2005, available at: http://www.iccprp.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0204/Related+Cases/ICC+0204+0105/Uganda.htm.

to include both DDR programs specific to child soldiers’ needs as well as incorporate justice and accountability for perpetrators that forcibly recruit and use child soldiers. However, although there are likely to be more complex reasons why the conflict has been ongoing, the focus of this chapter is on child soldiers and peace agreements in the DRC.

A. ARMED CONFLICT IN THE DRC

The DRC conflict from the 1996 to 2003 has been referred to as one of the deadliest wars in modern African history. Indeed, this conflict had eight intervening African nations, as well as about 25 armed groups and by 2008, nearly 5.5 million people had died and approximately 1.4 million persons were internally displaced because of the prolonged armed conflict in the DRC.

By late 1994, Mobuto Sese Seko had been the President of Zaire for almost 30 years, and Zaire had been plagued with ethnic strife and civil war for years for most of it. Additionally, the war and genocide in neighboring Rwanda had spilled over to Zaire and created massive inflow of refugees into Zaire. By October 1996, Tutsi and other anti-Mobutu rebels, primarily supported by Rwanda, had entered Zaire,
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simultaneously with an armed coalition known as the Alliance of Democratic Forces for the Liberation of Congo-Zaire (ADFL), led by Laurent-Desire Kabila. The ADFL, financially supported primarily by Rwanda and Uganda, began a military campaign that led to Mobutu fleeing the country and Kabila declaring himself the President in May 1997.

Kabila subsequently renamed the country the Democratic Republic of the Congo (DRC) and, by August 1997, the Kabila regime was challenged by a second insurrection of rebels, again backed by Rwanda and Uganda. Then, troops from Angola, Chad, Namibia, Sudan, and Zimbabwe intervened to support Kabila’s regime, but Kabila was nonetheless assassinated in January 2001.

It was not until October 2002 when Kabila’s son Joseph (who succeeded his father) was successful in negotiating the withdrawal of Rwandan forces occupying the eastern Congo, and two months later with the Pretoria Accord Rwanda established a government of national unity. However, civil internal strife did not completely stop and many neighboring States still intervened for various reasons, including access to such resources as diamonds, gold, and coltan. Since 1999, the DRC has been a party to six separate peace agreements; however the most recent peace agreements are from the 2002-2003 timeframe.

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89. Id.
91. Id.
93. Id.
B. CHILD SOLDIERS IN THE DRC

Under the leadership of Laurent Kabila, the Alliance of Democratic Forces for Liberation (ADFL) forcibly recruited and conscripted an estimated 30,000 child soldiers during its internal armed conflict against DRC President Mobutu in 1996-97.96

Child soldiers for the ADFL were “prosecuted” by the DRC, with shocking consequences such as summary executions. The first ever reported summary execution of a child soldier anywhere in the world took place in January 2000 when a fourteen-year-old child was tried, convicted, and executed within 30 minutes of his trial.97 In October 2000, after becoming President, Kabila ordered the execution of several military leaders, including “at least 10” child soldiers after he became suspicious of a possible coup attempt against his presidency.98 Later in 2000, President Kabila, stated that the government’s armed forces would demobilize all child soldiers. However, a year later, four child soldiers ranging from fourteen to sixteen years were sentenced to death by a military tribunal for treason.99

When Kabila was assassinated in 2001, suspicion fell on Kabila’s bodyguards amongst whom were several child soldiers. Subsequently many of the child soldiers were arrested, tried and sentenced to death for collaborating to assassinate Kabila.100 Today, some 12 years later, there

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are an estimated 8,000 active child soldiers in the eastern part of the DRC.\textsuperscript{101}

It is evident from the above that child soldiers in the DRC have suffered gross violations of children’s rights. This cycle of violence is very concerning. Based on this level of violence, it is not surprising that the conflict continues because those fighting have not had an opportunity to “disengage,” a phrase that the 1996 Machel Report addressed as an inherent danger for child soldiers:

Child soldiers may find it difficult to disengage from the idea that violence is a legitimate means of achieving one’s aims. Even where the experience of participating in “the cause” has been positive, as was often the case for youth who identified with and drew meaning from their part in the struggle against apartheid, the transition to a non-violent lifestyle will be difficult. This is particularly true where the frustrations of poverty and injustice remain. The challenge for Governments and civil society is to channel the energy, ideas and experience of youth into contributing in positive ways to the creation of their new, post-conflict society.\textsuperscript{102}

C. WHY NO SUSTAINABLE PEACE?

The latest formal peace agreements were from 2002 to 2003, and they were for the restructuring and integration of the Congolese army, as well as for the removal of troops of the Governments of Rwanda and Uganda.\textsuperscript{103} Those agreements have received much criticism.\textsuperscript{104} For instance, there was a DDR program established; however “[t]oo much emphasis was placed on child soldier reintegration into communities that were potentially highly threatening, ignoring the danger of re-recruitment into militant organizations.”\textsuperscript{105} In fact, re-recruitment has been a serious


\textsuperscript{105} Child Soldiers International, Id. Page 35.
issue for child soldiers and accounts for numerous child soldiers completing a DDR program and then returning to the military or rebel unit he or she was once forcibly or voluntarily recruited to. As indicated in the quote in the beginning of the Chapter by a DRC child soldier, the cycle continues because there are no other alternatives or even hopes for an alternative lifestyle.

Additionally, no other child-soldier-specific programs have been provided for and this was problematic between 2004 and 2006 when the release of tens of thousands of children from the national army and non-state armed groups took place. Their release was part of a larger project to create “a reformed and professional Congolese army, drawn from all factions of the badly fractured state, respectful of human rights and capable of protecting the civilian population;” however, despite these goals fighting still continues today.

Lastly, because the 2002-2003 peace agreements failed to address accountability for those who forcibly recruited and used child soldiers, there has been impunity at the local level throughout the DRC’s history by those perpetrators forcibly recruiting and using child soldiers. This is true, despite the March 2012 guilty verdict by the ICC in the Prosecutor v. Thomas Lubanga Dyilo case. The guilty verdict is celebrated because Lubanga (who commanded the Union of Congolese Patriots (UPC), a militia which was active in Ituri in the DRC in 1999) was found guilty of the war crimes of recruiting and forcibly conscripting children under the age of 15 years and using them actively in the hostilities of the DRC.

However, what does it mean for peace in the DRC? Because the ICC can only prosecute those “persons for the most serious crimes of international concern,” this means that local military and rebel leaders that abducted and forcibly conscripted child soldiers will not be brought to justice until a peace agreement specifically stipulates that is the case.

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106. *Id.*
107. *Id.* at 111.
109. Lubanga was found “guilty of crimes of conscripting and enlisting children under the age of fifteen years into the FPLC and using them to participate actively in hostilities within the meaning of Articles 8(2)(e)(vii) and 25(3)(a) of the Statute from early September 2001 to 13 August 2003.” International Criminal Court, Situation in the Democratic Republic of the Congo, In the Case of the Prosecutor v. Thomas Lubanga Dyilo, Trial Chamber I, No. ICC-01/04-01/06, 14 March 2012.
Based on the failures of the previous peace agreements of the DRC, such as the failure to address the specific needs of child soldiers and the lack of "justice" provisions, coupled with the many other issues such as civil internal strife over access to such resources as diamonds, gold, and coltan, not to mention the fighting due to the integration of the military, this conflict appears likely to continue for some time.

CHAPTER FIVE CONCLUSIONS

It is important for you to know that the journey I have made so far has been less difficult because I entered the DDR programme. I did bad things in the bush and I saw very bad things done to both children and adults. Removing the gun from me was a vital step for me. The programme helped me feel natural and normal again. It helped me develop ways to fit into society again.¹¹⁰

As the above quote from Alhaji Baba Sawaneh, a former child soldier from Sierra Leone, indicates, DDR programs can be beneficial, even if the program itself is not specifically designed for a child — that is, having sometime type of DDR program may be better than having none at all. However, conflict affects children differently than adults, and because children are still growing physically, maturing emotionally, and developing psychologically, they should have programs specifically catered to their needs.

Additionally, it appears that the only way to stop the use of child soldiers is to stop impunity at all levels. When peace agreements fail to address impunity, peace itself appears to fail, as has been seen with the DRC. While the guilty verdicts of Charles Taylor and Thomas Lubanga for the forcible conscription and use of child soldiers under the age of fifteen are welcomed, they are only two perpetrators. Clearly, there has been impunity for many local leaders given that in the DRC alone, there were an estimated 30,000 child soldiers involved in the conflict during the 1996-1997 timeframe. In fact, the number of actual perpetrators at-large who are currently abducting, forcibly conscripting and recruiting children that make up the estimated 250,000 child soldiers in the world today is likely significant.

If child soldiers’ interests are not addressed and justice provisions are not established in peace agreements, then child soldiers become invisible, and the cycle of conflict perpetuates. As Graca Machel put it when describing the atrocities faced by children in armed conflicts, “Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.” By including appropriate provisions in peace agreements, perhaps these children will have an opportunity to hope for their future.