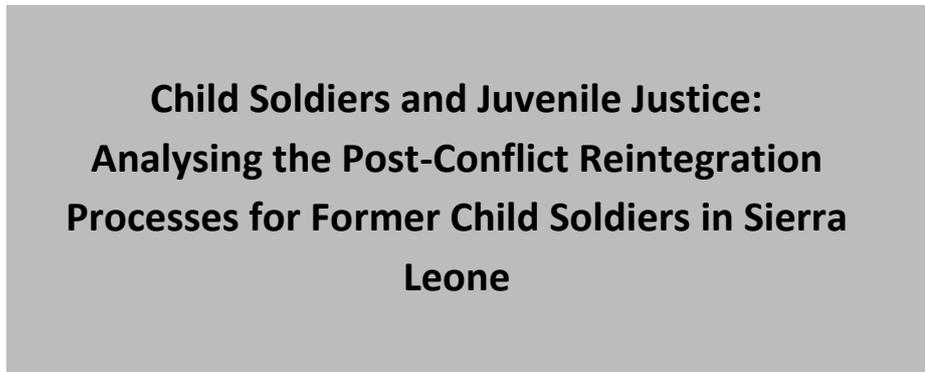
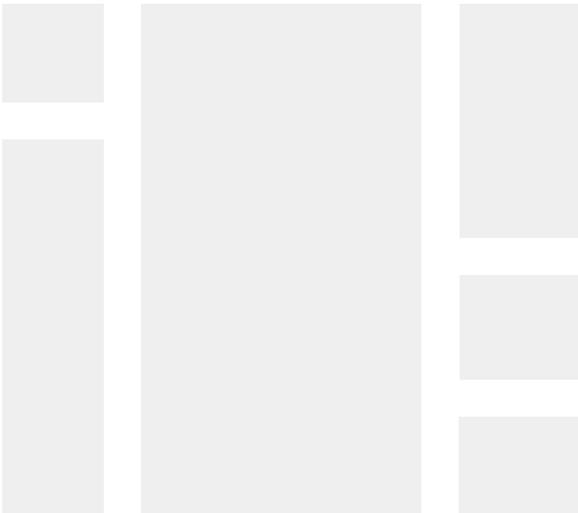


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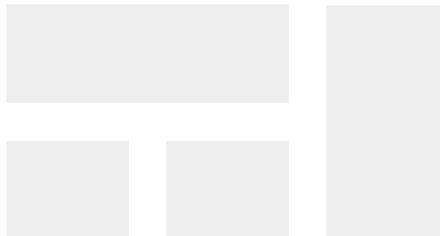
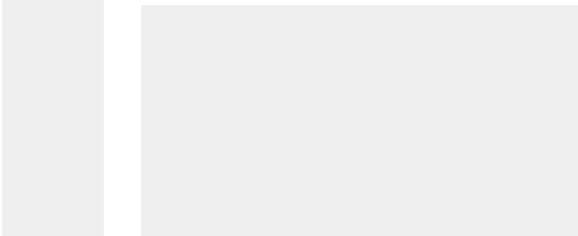
Child Soldiers and Juvenile Justice: Analysing the Post-Conflict Reintegration Processes for Former Child Soldiers in Sierra Leone



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CHILD SOLDIERS AND JUVENILE JUSTICE: ANALYSING THE POST-CONFLICT REINTEGRATION PROCESS FOR FORMER CHILD SOLDIERS IN SIERRA LEONE

*Estelle-Marie Casadesús Switzer**

Abstract:

The recruitment and utilisation of child soldiers in armed conflict is prohibited in international law, however the scourge of child soldiering remains an endemic problem in hostilities worldwide. This working paper analyses the international standards for children in conflict with the law, placing the utmost importance on the UN Convention on the Rights of the Child. Examining this topic from a juvenile justice perspective entails viewing child soldiers as children first, therefore, throughout this piece the experiences of child soldiers are at the forefront. This child-centred approach is in accordance with the 'views of the child' doctrine, signifying that the voice of the child must be heard and respected in all matters concerning children's rights. Hence, understanding the experiences of child soldiers during conflict is crucial, particularly when analysing the post-conflict reintegration mechanisms available thereafter.

In this working paper I have utilised a rights-based framework to analyse three post-conflict reintegration processes for former child combatants, namely the Truth and Reconciliation Commission, the Disarmament, Demobilisation and Reintegration programmes and educational processes. This research has led me to find that these post-conflict processes successfully diverted child soldiers away from the punitive criminal justice system in line with the diversion principle of restorative juvenile justice and served as an alternative to custody for former child soldiers. However, the post-conflict mechanisms did not sufficiently reintegrate former child soldiers as per their mandate, and had abject failures, such as their insufficient focus on reconciliation, their protracted pace and a severe lack of resources. Furthermore, female child soldiers were overlooked throughout, evidenced by the fact that a negligible number of girl soldiers were admitted into the post-conflict reintegration processes themselves.

Subsequently, I believe that by implementing the 'views of the child' principle of juvenile justice both female and male child soldiers could have had vastly improved experiences within justice-seeking, demobilisation and educational programmes, facilitating their successful reintegration into post-conflict society.

Keywords: *Child soldiers, juvenile justice, restorative justice, Truth and Reconciliation Commission, disarmament, demobilisation and reintegration programmes.*

A. INTRODUCTION

Of the many horrors of war, the phenomenon of children associated with armed forces and armed groups is of increasing concern for the international legal community.² Currently it is estimated that there are over

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² Sandesh Sivakumaran, 'War Crimes Before the Special Court of Sierra Leone' (2010) 8 *Journal of International Criminal Justice*, 1009-1034.

300,000 children serving in armed conflicts worldwide, a number which is still believed to be increasing.³ In Sierra Leone the long-term reintegration of former child soldiers is of particular concern as during its eleven-year long Civil War thousands of children of all ages were recruited to serve in government and rebel armed forces, whereby child combatants played an unprecedented, violent and tragic role in the conflict, of which the lasting effects are still being felt over twenty years later.⁴ Therefore, due to the widespread use of child soldiers in the country over this period, throughout this paper I have focused on child soldiering in Sierra Leone.

It is crucial to remember that what we are talking about here is vast numbers of individuals involved in the conflict in Sierra Leone being *children*. Consequently I have conducted this research in the context of a rights-based framework, placing utmost importance on the principles of juvenile justice and the UN Convention on the Rights of the Child (UNCRC).⁵ My primary goal in this paper is to analyse the post-conflict mechanisms which were implemented to reintegrate former child soldiers, therefore I will be examining the Sierra Leonean Truth and Reconciliation Commission, Disarmament, Demobilisation and Reintegration programmes and educational programmes, in a bid to answer the question: Are the post-conflict reintegration processes for child soldiers in Sierra Leone in line with international restorative juvenile justice principles?

In an effort to answer this research question I will carry out the following: I will begin in Section B by introducing the juvenile justice system along with the principles of juvenile justice and restorative justice, and go on to explore the issue of child soldiery, the recruitment of child soldiers and their experiences post-conflict. Section C is dedicated to analysing the international standards for children in conflict with the law, wherein I will examine whether these standards are in line with restorative juvenile justice principles. In doing so I will explore the UNCRC, examine the international standards for children from a juvenile justice perspective and investigate the international standards for the reintegration and rehabilitation of former child soldiers. In Section D I will conduct a case study of child soldiers in Sierra Leone, beginning with a brief history of Sierra Leone. I will then explore three significant post-conflict reintegration mechanisms for former child soldiers, namely, the Truth and Reconciliation Commission, Disarmament, Demobilisation and Reintegration programmes and education processes, and discover if they are in line with international restorative juvenile justice principles. Finally I will analyse the post-conflict reintegration processes for female child soldiers in Sierra Leone, and also investigate whether they are in line with international restorative juvenile justice principles.

I found that these mechanisms successfully diverted child soldiers away from the punitive criminal justice system in line with the diversion principle of restorative juvenile justice and served as an alternative to custody for former child soldiers. The post-conflict processes were created expressly as a child-friendly mechanism for former child soldiers, created with juvenile justice principles and the best interests of the child in mind to facilitate their successful reintegration. However, I also uncovered abject failures of the post-conflict processes, such as the Truth and Reconciliation Commission (TRC) not concentrating sufficiently on reconciliation, the Disarmament, Demobilisation and Reintegration (DDR) programme's subjectivity and slow-moving pace and the educational programme's lack of resources. Furthermore, throughout these post-

³ Coalition to Stop the Use of Child Soldiers, *Child Soldiers: Global Report 2008*, p.412 <<https://reliefweb.int/report/world/child-soldiers-global-report-2008>> accessed 24 July 2023.

⁴ Theresa S. Betancourt, Jessica Agnew-Blais, Stephen E. Gilman, David R. Williams & Heidi Ellis, 'Past horrors, present struggles: The role of stigma in the association between war experiences and psychosocial adjustment among former child soldiers in Sierra Leone' (2010) *70 Social Science and Medicine*, 17-26.

⁵ UN General Assembly, *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 ('UNCRC').

conflict processes girl soldiers were completely overlooked and were ‘largely and dangerously invisible,’⁶ evidenced by the fact that a negligible number of girl soldiers were admitted into the reintegration processes. Subsequently, I believe that by implementing the ‘views of the child’ principle of juvenile justice both female and male child soldiers could have had vastly improved experiences within justice-seeking, demobilisation and educational programmes and this restorative juvenile justice principle would have facilitated their successful reintegration into post-conflict society.

B. AN INTRODUCTION TO THE JUVENILE JUSTICE SYSTEM AND CHILD SOLDIERS

In this section I will introduce the concept of juvenile justice, a system of laws, policies, and procedures implemented to regulate the treatment of juvenile offenders for violations of the law. I will do so by setting out the principles of juvenile justice and examine the system through a restorative juvenile justice lens. Throughout this paper I will be focusing on former child soldiers and their interactions with the juvenile justice system, therefore it is also necessary to paint a comprehensive picture of child soldiers.

1. Juvenile Justice

The juvenile justice system is a specialised system of justice that applies to children in conflict with the law, in this case, child soldiers. The system upholds and protects the rights of these children in accordance with international standards, primarily the UNCRC. The word ‘juvenile’ signifies ‘child,’ and the Convention defines a child in its Article 1 as “every human being below the age of eighteen years.” The word ‘justice’ signifies the enforcing of rights; indeed, the juvenile justice system enforces the UNCRC, but it also means restoration, which is why I will be focusing on restorative juvenile justice mechanisms in this paper.

When exploring the treatment of young people in conflict with the law, it is necessary to recognise their unique status in line with their distinct developmental characteristics and vulnerabilities.⁷ In the US Supreme Court case *Miller v Alabama* it was held that children were “constitutionally different” to adults,⁸ and in the *Roper v Simmons* case children were held to have a “lack of maturity and an underdeveloped sense of responsibility,” increasing their susceptibility to be influenced by outside pressures.⁹ Indeed, due to children’s young age they often lack the necessary mental and moral development to make informed decisions.¹⁰ Much of the reasoning behind juvenile justice is developed from this fact, namely that children are vulnerable and are therefore more easily coerced or influenced into committing atrocities when placed in certain situations.¹¹ Therefore, the juvenile justice system accommodates the fact that a child is forming capacity and understanding, and uses the specialised knowledge of their vulnerabilities to apply child-friendly juvenile justice principles to children in conflict with the law.

⁶ Rachel Brett, ‘Girl Soldiers: Denial Of Rights and Responsibilities’ (2004) 23 *Refugee Survey Quarterly* 30-37.

⁷ Ursula Kilkelly, ‘Advancing The Rights Of Young People In Juvenile Justice: The Impact Of Juvenile Law Center’ (2016) 88 *Temple Law Review* 629.

⁸ *Miller v Alabama*, 567 U.S. 460 (2012).

⁹ *Roper v Simmons*, 543 U.S. 551, 569 (2005).

¹⁰ Similarly, according to Happold, children are less socialised, more malleable, and more docile than adults. Matthew Happold, *Child Prisoners in War* (Oxford University Press, 2010) 237-250.

¹¹ Erin Lafayette, ‘The Prosecution of Child Soldiers: Balancing Accountability with Justice’ (2013) 63 *Syracuse Law Review* 297-327, 305.

(a) *Principles of juvenile justice*

The principles of juvenile justice are a dominant theme in this paper. To begin, diversion from court is considered the cornerstone of juvenile justice. It provides an opportunity for young people to accept responsibility for their behaviour, understand the harm caused by their actions and avoid jail, providing that human rights and legal safeguards are fully respected. 'Alternatives to custody' signifies keeping children out of custody and ensuring they are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence that has taken place.

A crucial aspect of the juvenile justice system is the requirement of a children first approach, viewing the child as a child first and offender second, if at all.¹² After the Sierra Leonean Civil War, the Krio proverb, 'bad bush nor dae for troway bad pekin' was used when attempting to reintegrate former child soldiers back into their communities.¹³ The proverb is translated as, 'there's no bad bush to throw away a bad child,' meaning that there is no place for a 'bad' child.¹⁴ No matter what a child has done, they will always be a child, put simply, 'a child is a child.' This is the perfect illustration of the children's first approach to juvenile justice, whereby child soldiers are simply viewed as children, where their abject vulnerabilities and distressing circumstances are taken into account and where the rights outlined in the UNCRC are upheld to encourage and facilitate reintegration. The two principles of 'best interests of the child' and 'views of the child,' taken from the UNCRC, are also crucial aspects of juvenile justice.¹⁵ Therefore, throughout this paper I will be analysing whether the post-conflict reintegration processes in Sierra Leone are in line with these restorative juvenile justice principles.

(b) *Restorative juvenile justice*

Restorative justice is a system of criminal justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.¹⁶ This justice system is particularly suited for children who are seen as having committed offences against their families and communities, such as child soldiers. Restorative justice is seen as a solution which allows for victims and offenders to reconcile and reconnect in what they have been left with, essentially a war-torn society, as, without such reconciliation, the reintegration of former child soldiers in their communities would hardly be possible. As diversion is a crucial principle of juvenile justice, restorative processes are a perfect way to divert children away from the judicial system. Furthermore, the principles of restorative justice not only divert young people away from the criminal justice system, but also assist in the reintegration of young people by focusing on re-establishing a child into their community, rather than relying upon punishment or public shaming.

The Lima Declaration on Restorative Juvenile Justice recalls the aims of juvenile justice set out in the UNCRC and states that "restorative juvenile justice is a way of treating children in conflict with the law with the aim of repairing the individual, relational and social harm caused by the committed offence," along with

¹² Stephen Case & Ann Browning, *Child First Justice: The Research Evidence-base* (Loughborough University, 2021).

¹³ Laura Stovel, "There's No Bad Bush to Throw Away a Bad Child': 'Tradition'-Inspired Reintegration in Post-War Sierra Leone' (2008) 46 *The Journal of Modern African Studies*, 305-324.

¹⁴ This proverb illustrates the African culture of acceptance, forgiveness and reconciliation, and this 'treasure trove of custom' was used to find conciliatory rituals to facilitate the reintegration of these children.

¹⁵ The principle of the best interests of the child is implemented in Article 3(1) of the UNCRC, and the voice of the child set out in Article 12 establishes the right of a child to freely express her or his views.

¹⁶ Ursula Kilkelly, 'Youth Justice and Children's Rights: Measuring Compliance with International Standards' (2008) 8 *Youth Justice* 187-192.

illustrating that restorative justice is applicable to conflict situations,¹⁷ such as in Sierra Leone. Additionally, the UNCRC places an obligation on states to safeguard the rights of children in conflict with the law (also known as juvenile justice),¹⁸ and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) stipulates that States should support former child soldiers to reintegrate them back into their communities.¹⁹ This can be best achieved through the use of restorative justice mechanisms which seek to recognise acts which had been perpetrated under the command of adults, but also support the child in reintegrating back into the community.

To conclude, the juvenile justice system is a child-friendly judicial system which aims to treat children as children, despite the fact that they have committed offences, and strives to do so with the best interests of those children as the primary consideration at all times. Restorative juvenile justice is also vital as it facilitates the reintegration of child soldiers into society.

2. Child Soldiers

The recruitment and utilisation of child soldiers in armed conflict is prohibited in international law, however the scourge of child soldiering remains an endemic problem in almost every armed conflict around the world.²⁰ Thousands of children are exploited in global conflicts and there is currently an estimated 250,000 child soldiers worldwide.²¹ International law does not define the term ‘child soldier’ and, due to the lack of a specific instrument exclusively concerned with the issue, no international consensus exists as to who exactly falls within that category, however, multiple definitions have been composed.²²

Article 1 of the OPAC defines child soldiers as children who take a “direct part in hostilities” and raises the minimum age of lawful participation in armed conflict to eighteen years old, while the Cape Town Principles define child soldiers as “children associated with armed forces or armed groups.”²³ However, according to the International Committee of the Red Cross (ICRC), due to the fact that children can be used for multiple purposes and can still be considered ‘child soldiers,’ this definition is too restrictive.²⁴ The Paris Principles are a set of political commitments implemented to prevent the recruitment and use of children in armed conflict and to support the release, reintegration and recovery of children used by armed forces. The Principles provide a longer, more comprehensive definition of a child soldier as follows:

¹⁷ *Lima Declaration on Restorative Juvenile Justice*, Peru 2009. The Lima Declaration was the result of the First World Congress on Restorative Juvenile Justice held in Lima, Peru in 2009. The Congress was attended by 1,000 participants from over 60 countries, and while not legally binding recalls the aims of juvenile justice as set out in the CRC and emphasises that restorative justice should be an integral part of the juvenile justice system. The Declaration also suggests that restorative justice should build upon “existing traditional and non-harmful practices of treating children in conflict with the law.”

¹⁸ UNCRC (n.5) Article 40. Child’s Rights International Network, ‘Article 40: Administration of Juvenile Justice’ <<https://archive.crin.org/en/home/rights/convention/articles/article-40-administration-juvenile-justice.html>> accessed 24 July 2023.

¹⁹ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict* (adopted 25 May 2000, entered into force 12 February 2002) (‘OPAC’).

²⁰ Alice S. Debarre, ‘Rehabilitation & Reintegration of Juvenile War Criminals: A De Facto Ban on Their Criminal Prosecution’ (2015) 44 *Denver Journal of International Law and Policy*, 1-21, 20.

²¹ Office of the Special Representative of the Secretary General for Children and Armed Conflict, *Ex-Child Soldiers: From Victims Of War To Protagonists Of Peace* (2009).

²² Mark A. Drumbl, *Reimagining Child Soldiers In International Law And Policy* (Oxford University Press 2012) 102.

²³ UNICEF, *Cape Town Principles and Best Practices, Article 32* (30 April 1997)

²⁴ International Committee of the Red Cross, *Child Soldiers and Other Children Associated with Armed Forces and Armed Groups* (2012).

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.²⁵

Since the 1990's, the 'child soldier crisis' has become a major humanitarian and human rights project.²⁶ The seminal and ground-breaking 1996 UN Graca Machel Report entitled 'The Impact of Armed Conflict on Children,' highlighted the disproportionate impact of war on children, identifying them as the primary victims of armed conflict and emphasising the adverse effects that conflicts had on children around the globe.²⁷ This report led to the adoption of General Assembly Resolution 51/77, which recommended that the Secretary-General appoint a Special Representative on the impact of armed conflict on children for a period of three years.²⁸ The Resolution also requested that the Special Representative prepare reports on the situation of children affected by armed conflict to be presented to the UN General Assembly and the Human Rights Council.²⁹ Similarly, the issue of child soldiering has gained global awareness and has been brought to the fore of mainstream media by the Kony 2012 phenomenon³⁰ and the #BringBackOurGirls outcry over the 2014 kidnapping of 276 schoolgirls by Boko Haram in Nigeria.³¹

The utilisation of child soldiers by armed forces in contemporary armed conflicts has been the focus of much legal analysis in recent decades. The international consensus is that hundreds of thousands of children have been conscripted and recruited by armed groups worldwide, although precise statistics are difficult to verify.³² At the turn of the century, academics estimated that around 300,000 children served as members of belligerent parties in conflicts around the world.³³ More recently, in 2019 more than 8,500 children, some as young as six, were found to have been recruited and used as soldiers around the world according to the UN Secretary General.³⁴ In the last seventeen years over 93,000 children were verified as being recruited and used by armed forces, however the true number is thought to be far higher.³⁵ Similarly, the UN Country Task Forces on Monitoring and Reporting has proven that over 1,000 children have been recruited in at least 15 different countries over this period.³⁶

²⁵ UNICEF, *The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups* (February 2007).

²⁶ Stacey Hynd, 'Trauma, Violence and Memory in African Child Soldier Memoirs' (2021) *Cult Med Psychiatry* 45:74-96, 1

²⁷ UN General Assembly, *Impact of armed conflict on children: note / by the Secretary-General* (26 August 1996) UN Doc. A/51/306 (Hereafter 'Machel Report').

²⁸ UN General Assembly, *Resolution* (20 February 1997) UN Doc. A/RES/51/77, para.35. The Assembly has since extended this mandate four times and most recently by its resolution A/RES/63/241 of 13 March 2009.

²⁹ *Ibid*, para.37.

³⁰ The Kony 2012 phenomenon refers to the success of a short documentary film called 'Kony 2012' which describes Joseph Kony's actions within the rebel militia group the Lord's Resistance Army.

³¹ The #BringBackOurGirls campaign refers to the global outcry after Boko Haram, an Islamic militant group, abducted 274 girls from their secondary school in Chibok, Nigeria.

³² International Labour Office, *Wounded Childhood, The Use of Children in Armed Conflict in Central Africa* (Vanguard Communications 2003).

³³ Anaise Muzima, 'Reimagining the Scope of Children's Legal Protection During Armed Conflicts Under International Humanitarian Law and International Criminal Law' (2018) 8 *Western Journal of Legal Studies*, 2.

³⁴ United Nations, '20 years of OPAC: a battle to keep children out of conflicts – UN experts' <www.ohchr.org/en/press-releases/2022/02/20-years-opac-battle-keep-children-out-conflicts-un-experts> accessed 24 July 2023.

³⁵ UNICEF, 'Children recruited by armed forces or armed groups' <www.unicef.org/protection/children-recruited-by-armed-forces> accessed 24 July 2023.

³⁶ UNICEF, 'Six grave violations against children in times of war' <www.unicef.org/stories/children-under-attack-six-grave-violations-against-children-times-war> accessed 24 July 2023.

Child soldiers have been extensively involved in contemporary African warfare, and Sierra Leone has been no exception.³⁷ During the eleven-year-long Sierra Leonean Civil War, a campaign of forcibly conscripting children to fight was carried out by government, militia and rebel forces.³⁸ Though the exact figure has been heavily debated, in the course of that time between 5,000³⁹ and 22,000⁴⁰ children of all ages were taken from their families and forced to serve in armed forces, culminating in the widespread use of child soldiering in the country. In this dissertation I will be exploring the experiences of child soldiers during the Sierra Leonean Civil War in depth, while also analysing the post-conflict processes that these former child soldiers underwent.

(a) *The recruitment of child soldiers*

The recruitment of child soldiers into armed forces is expressly forbidden in both international human rights law (IHRL) and international humanitarian law (IHL) and in this section I will outline the extent of this prohibition. IHRL lays down obligations which States are bound to respect and, by becoming parties to international treaties such as the UNCRC, States assume obligations and duties under binding international law to respect, to protect and to fulfil human rights.⁴¹ In parallel, IHL is a set of rules which seek to limit the effects of armed conflict on people and objects for humanitarian reasons and protect certain categories of people in times of war, such as child soldiers.⁴²

In terms of IHL, the ICRC's impressive Customary International Humanitarian Law Study contains 161 rules of customary international humanitarian law and aims to protect victims of war.⁴³ Rule 136 of the study refers to the recruitment of child soldiers, and explicitly states that children should not be recruited into armed forces or armed groups.⁴⁴ This rule of customary IHL has been established by state practice and is applicable in both international armed conflicts and non-international armed conflicts, however, the law is effective only if complied with.

States that are party to the Geneva Conventions are required to respect and ensure respect for both human rights law and humanitarian law. Additional Protocols I and II (AP I and AP II), the amendment treaties that supplement the Geneva Convention, entirely prohibit the recruitment of children into armed forces.⁴⁵ The ban on the recruitment of child soldiers is also found in the UNCRC,⁴⁶ the African Charter on the Rights and Welfare of the Child⁴⁷ (OAU Charter) and the Convention on the Worst Forms of Child Labour (ILO

³⁷ Hynd (n 26).

³⁸ Krijn Peters & Paul Richards, 'Why We Fight': Voices of Youth Combatants in Sierra Leone' (1998) 68 *Africa: Journal of the International African Institute* 183-210.

³⁹ Michael A. Corriero, 'The Involvement and Protection of Children in Truth and Justice-Seeking Processes: The Special Court for Sierra Leone' (2002) 18 *New York Law School Journal for Human Rights* 337-360, 337.

⁴⁰ Theresa S. Betancourt, Stephanie Simmons, Ivelina Borisova, Stephanie E. Brewer, Uzo Iweala & Marie de la Soudière, 'High Hopes, Grim Reality: Reintegration and the Education of Former Child Soldiers in Sierra Leone' (2008) 52 *Comparative Education Review* 565-587, 565.

⁴¹ United Nations, Office of the High Commissioner for Human Rights, 'International Human Rights Law' <www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law> accessed 24 July 2023.

⁴² Irish Red Cross Society, 'International Humanitarian Law' <www.redcross.ie/international-humanitarian-law/> accessed 24 July 2023.

⁴³ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law, Volume I: Rules* (2005).

⁴⁴ Ibid 482.

⁴⁵ UN, *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, Article 77(2), and UN, *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 Article 4(3)(c).

⁴⁶ UNCRC (n.5), Article 38(3).

⁴⁷ Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child* (11 July 1990) CAB/LEG/24.9/49 (1990) Article 22(2).

Convention).⁴⁸ In addition, under the Rome Statute, the treaty that established the International Criminal Court, “conscripting or enlisting children” into armed forces is a war crime in both international and non-international armed conflicts.⁴⁹ This war crime has also been addressed in the Statute of the Special Court for Sierra Leone⁵⁰ (Statute of the SCSL) and the UN Secretary-General’s report on the establishment of the Special Court stated that the provisions of Article 4 of Additional Protocol II have long been regarded as part of customary international law.⁵¹

The UN Security Council has resolutely condemned the recruitment of children in violation of international law in their resolution on children in armed conflicts,⁵² and similarly the OAU Council of Ministers has strongly encouraged African countries, especially those involved in civil wars, “to refrain from recruiting children.”⁵³ The International Conferences of the Red Cross have also implemented resolutions prohibiting the recruitment of children⁵⁴ and have created a Plan of Action providing that all parties to an armed conflict ensure that all measures be taken to stop the recruitment of children into armed forces.⁵⁵

i. The minimum age for the recruitment of child soldiers

There has been much deliberation on the international legal stage as to the minimum age that soldiers can be *legally* recruited into armed forces, with some international instruments placing the age limit at 15 and others at 18. On the one hand, APs I and II,⁵⁶ the UNCRC,⁵⁷ the Statute of the International Criminal Court⁵⁸ and the Statute of the SCSL set the minimum age for children to be recruited into armed forces or armed groups at 15.⁵⁹ However, on the other hand, certain states have expressed their discontent with this age-limit⁶⁰ and at the ICRC’s international conference in 1999, multiple countries advocated to increase the age-limit for recruitment to 18 years.⁶¹ This led to a Plan of Action being implemented for Children Affected by Armed Conflict, which aimed to prevent the recruitment of children into armed forces and maintained the age limit at 18.⁶² Interestingly, 18 is also the age limit set by the Convention on the Worst Forms of Child

⁴⁸ International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, C182 (17 June 1999), C182 Articles 1 and 3 (Hereafter ILO Convention).

⁴⁹ UN General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, Articles 8(2)(b)(xxvi) and (e)(vii).

⁵⁰ UN Security Council, *Statute of the Special Court for Sierra Leone*, 16 January 2002, Article 4 (‘SCSL’).

⁵¹ UN Security Council, *Report of the Secretary-General on the establishment of a Special Court for Sierra Leone*, 4 October 2000, S/2000/915.

⁵² UN Security Council, *Security Council Resolution 1261* [on children in armed conflicts] (25 August 1999), UN Doc. S/RES/1261 (1999).

⁵³ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (10 September 1969) 1001 UNTS 45 (‘OAU Convention’).

⁵⁴ 25th International Conference of the Red Cross, *Res. IX* and 26th International Conference of the Red Cross and Red Crescent, *Res. II*.

⁵⁵ 27th International Conference of the Red Cross and Red Crescent, *Res. I* (adopted by consensus).

⁵⁶ API (n.46), Article 77(2) and APII Article 4(3)(c).

⁵⁷ UNCRC (n.5), Article 38(3).

⁵⁸ UNGA, *Rome Statute* (n.50), Article 8(2)(b)(xxvi) and (e)(vii).

⁵⁹ UNSC, *Statute of the SCSL* (n.51), Article 4.

⁶⁰ Colombia, the Netherlands, Spain and Uruguay expressed their discontent with the age-limit being set to 15 and expressed their preference for it to be set at 18 upon their ratification of the UNCRC.

⁶¹ 27th International Conference of the Red Cross and Red Crescent, 26 November 1999. These countries were Canada, Denmark and Finland, among others.

⁶² 27th International Conference of the Red Cross and Red Crescent, *Res. I* (adopted by consensus).

Labour,⁶³ the African Charter on the Rights and Welfare of the Child⁶⁴ and was supported by the OAU Council of Ministers in a resolution adopted in 1996.⁶⁵

According to the OPAC, states must make sure that persons under 18 are not *compulsorily* recruited into their armed forces, and that armed groups that are separate from the armed forces of a State should never recruit persons under the age of 18.⁶⁶ Furthermore, Additional Protocol I⁶⁷ and the Convention on the Rights of the Child⁶⁸ state that when armed forces are recruiting for child soldiers between 15 and 18 years of age, the older children should be prioritised and recruited first.

Therefore, although there is not yet a consistent global practice relating to the minimum age for the recruitment of child soldiers, IHRL declares 18 as the minimum legal age for the recruitment and use of children in hostilities.⁶⁹ Similarly, the practice of recruiting and using children under the age of 15 as soldiers is also prohibited under international humanitarian law, both treaty⁷⁰ and custom,⁷¹ and is defined as a war crime by the International Criminal Court.⁷²

This has been addressed in the jurisprudence of the Special Court for Sierra Leone in which the accused were found guilty of serious violations of international humanitarian law such as the recruitment and use of child soldiers,⁷³ and in the first judgment of the ICC, whereby militia leader Thomas Lubanga was convicted of the war crimes of enlisting and conscripting children under the age of 15 years and using them to participate actively in hostilities.⁷⁴

It is overwhelmingly clear that the recruitment of children has been condemned by international organisations,⁷⁵ tribunals⁷⁶ and states,⁷⁷ and, while many scholars attest that significant progress is being made in the international effort to halt the use of children in hostilities, I would disagree with this assessment. For example, the 2012 UN Secretary-General report on 'Children in Armed Conflict'⁷⁸ makes for a bleak reading, and hundreds of thousands of children of all ages are still serving as soldiers around the world. More recently, the 2022 UN Secretary-General Report explored trends regarding the impact of armed conflict on

⁶³ ILO Convention (n.49), Articles 2 and 3.

⁶⁴ OAU Charter (n.48), Article 2.

⁶⁵ Council of Ministers of the Organization of African Unity, *Resolution Of The Plight Of African Children In Situation Of Armed Conflicts*, Res. 1659 (LXIV).

⁶⁶ OPAC (n.19), Articles 2 and 4. Interestingly, the UN Secretary-General has also imposed a minimum age requirement for UN peacekeepers and has requested that soldiers not be younger than 21 and in no case less than 18. See: UN Security Council, *Report of the Secretary-General on the protection of civilians in armed conflict* (30 May 2016).

⁶⁷ API (n.46), Article 77(2).

⁶⁸ UNCRC (n.5), Article 38(3).

⁶⁹ However, according to Drumbl this is still ambiguous. See Drumbl (n.22).

⁷⁰ Examples of the recruitment of child soldiers being forbidden under treaty law include: API Article 77(2), APII Article 4(c), the UNCRC Article 38, Optional Protocol to the UNCRC Articles 1-4, ILO Convention Number 102 Art 3.

⁷¹ Customary humanitarian law also provides that children must not be recruited into armed forces or armed groups and must not be allowed to take part in hostilities. ICRC, *Customary International Law*, Rules 136 and 137 (n.43).

⁷² UNGA, *Rome Statute* (n.50), Article 8.

⁷³ *The Prosecutor vs. Alex Tamba Brima, Brima Bazzy Kamara & Santigie Borbor Kanu* (the AFRC Accused), SCSL-04-16-T, Special Court for Sierra Leone, 20 June 2007.

⁷⁴ *Situation in the Democratic Republic of the Congo, in the case of the Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, International Criminal Court (ICC), 14 March 2012.

⁷⁵ The recruitment of children has been condemned by international organisations such as the UN Security Council, in its Resolutions 1071 and 1083, and the UN Commission on Human Rights in its Resolutions 1998/63, 1998/75 and 1998/82.

⁷⁶ Tribunals such as the International Criminal Court.

⁷⁷ The recruitment of children is forbidden in Australia, the Netherlands and Burundi, among others.

⁷⁸ Machel Report (n.27).

children, and found that in 2021 children in armed conflict suffered 24,000 grave violations, and discovered that over 6,000 children were recruited that year.⁷⁹ Therefore, while I have illustrated the extent of the prohibition on the recruitment of child soldiers in depth, the reality is that child soldiers are still being illegally recruited, and I will now explore the reasons for their recruitment.

ii. Factors leading to the recruitment of child soldiers

When investigating the factors leading to the recruitment of child soldiers, a range of socioeconomic, political and demographic issues contribute to the use of children in conflicts all over the world.⁸⁰ Similarly, globalisation, the sheer abundance of young people, and the development of small weapons⁸¹ have also influenced child soldier rates.⁸²

Many children 'voluntarily' join armed forces, however, according to Machel, when young people present themselves for service this should not be construed as 'voluntary' enlistment given the pressures that often play a role in such decisions.⁸³ Some children enlist in fighting forces as a source of protection for themselves or their families from harassment,⁸⁴ while others join because these were the safest places for them to be in situations of generalised chaos, such as Sierra Leone during its Civil War.⁸⁵ Some children joined to avenge wrongs perpetrated against their communities or family members,⁸⁶ others enlisted due to existing masculinist cultures that valorised militarism, while others were enticed with money, drugs and power.⁸⁷

In a number of armed conflicts it is also common for children to be pushed or forced to join an armed force or group out of fear or when left with little choice. Due to factors such as starvation, displacement, a lack of educational and employment opportunities and a lack of familial relationships, these children often feel that joining armed forces is their only means of survival.⁸⁸ Interestingly, academics have found that in the context of situations of extreme social disruption "armed children may actually be safer than unarmed civilians."⁸⁹

Children are highly valued by armed groups as they can be turned into fearless (yet illegal) child soldiers. Child soldiers are regarded as extremely compliant and easy to manipulate, therefore they can be influenced, controlled and forced into conflict.⁹⁰ According to Dallaire, child soldiers are often used as "they are viewed

⁷⁹ UN General Assembly Security Council, *Children In Armed Conflict*, Report of the Secretary-General (23 June 2022).

⁸⁰ Robert Tynes & Bryan R. Early, 'Governments, Rebels, and the use of Child Soldiers in Internal Armed Conflicts: A Global Analysis, 1987-2007' (2015) 21 *Peace Economics and Peace Science* 79-110.

⁸¹ Historically, child soldiers were not a major force in armed conflicts as any available armaments were large, cumbersome and too heavy for children to carry. However, the increase of inexpensive, light, small arms has led to children as young as 10 being trained to use them, and this therefore led to a significant increase in the use of child soldiers in armed conflicts.

⁸² Alcinda Honwana, *Child Soldiers in Africa* (University of Pennsylvania Press, 2006).

⁸³ Machel Report (n.27).

⁸⁴ Staying in their communities could be dangerous for young people, and therefore joining armed groups was often the only way to gain protection as civilians.

⁸⁵ Mariane C. Ferme, 'Archetypes of Humanitarian Discourse: Child Soldiers, Forced Marriage, and the Framing of Communities in Post-Conflict Sierra Leone' (2013) 4 *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 49-71.

⁸⁶ Augustine S.J. Park, 'Other Inhumane Acts: Forced Marriage, Girl Soldiers and the Special Court for Sierra Leone' (2006) 15 *Social & Legal Studies* 315-338.

⁸⁷ Patrick Bracken & Celia Petty, *Rethinking the Trauma of War* (Free Association Books, London, 1998).

⁸⁸ World Vision, 'Child Soldiers' <www.wvi.org/stories/child-protection/child-soldiers-facts-and-foundations> accessed 24 July 2023.

⁸⁹ David Rosen, 'Child Soldiers, International Humanitarian Law, and the Globalization of Childhood' (2007) 109 *American Anthropologist* 296-306, 299.

⁹⁰ Accord, 'Understanding the Recruitment of Child Soldiers in Africa' <www.accord.org.za/conflict-trends/understanding-recruitment-child-soldiers-africa/> accessed 24 July 2023.

as expendable, replaceable” and they are cheap to maintain.⁹¹ Having a large number of child soldiers is invaluable as they can inflate the ranks of soldiers in armed groups if there is an inadequate number of adults⁹² and they consist of a coerced and obedient workforce⁹³ which is often required to perform onerous and dangerous duties, such as carrying heavy loads and sweeping for mines.⁹⁴ Additionally, commanders often lower child soldiers’ inhibitions further by pushing child soldiers to take alcohol and even hard drugs such as marijuana and cocaine⁹⁵ to make them fearless in battle.⁹⁶ This is in contravention of Article 33 of the UNCRC which protects children from “the illicit use of narcotic drugs and psychotropic substances.”

iii. Girl soldiers

Girls in particular are invaluable to armed groups and are considered ‘fundamental to the war machine’ due to their extensive contributions to a conflict.⁹⁷ This is in spite of the fact that girl soldiers see themselves as invisible and are extremely marginalised within these armed groups.⁹⁸ It is imperative to contemplate the gendered aspect of war, predominantly when sexual and gender-based violence play a crucial role in the conflict. It is also overwhelmingly clear that women and girls who are involved in armed conflict require specific gendered post-conflict processes to enable them to reintegrate into their post-conflict communities.⁹⁹

Girls had a very distinct and gendered experience of the Civil War in Sierra Leone. The Revolutionary United Front’s (RUF) culture of violence and intimidation was one that very few were voluntarily drawn to, as girls were abducted from their homes, beaten, raped and forced to join the rebels.¹⁰⁰ Female child soldiers were under a constant threat of sexual violence, risking being raped and killed if they did not follow the orders of their superiors, and were often forced to ‘marry’ their captors.¹⁰¹ According to Cullen, “sexual violence was used on a large scale as a tool of war and, on a smaller scale, to control abducted women and girls.”¹⁰² Importantly, it appears that most of the ‘wives’ in Sierra Leone’s war were girls, not women, as most commanders ‘wives’ ranged in age from 9 to 19 years of age.¹⁰³ It is clear that these abducted girls were victims of numerous human rights abuses.

⁹¹ Roméo Dallaire, *They Fight like Soldiers, They Die like Children* (Arrow Books, 2011) 3.

⁹² Michael Wessels, *Child Soldiers: From Violence to Protection* (Harvard University Press, 2006).

⁹³ Child soldiers do not require wages, making them a cheap alternative to traditional soldiers.

⁹⁴ United Nations, ‘The Impact of War on Children: A Review of the Progress Since the 1996 United Nations Report on the Impact of Armed Conflict on Children’ (2001) <<https://digitallibrary.un.org/record/463507?ln=en>> accessed 24 July 2023.

⁹⁵ Child soldiers were forced to take hard drugs along with other drugs that they were “injected with to make them strong and brave”. Laura C. Cullen, ‘Female Combatants and the Post-Conflict Process in Sierra Leone’ (2020) 21 *Journal of International Women’s Studies* 114-125.

⁹⁶ Debarre (n.20).

⁹⁷ Myriam Denov, “‘Girl soldiers and human rights’: Lessons from Angola, Mozambique, Northern Uganda and Sierra Leone’ (2008) 12 *International Journal of Human Rights* 811-833.

⁹⁸ Myriam Denov & Alexandra Ricard-Guay, ‘Girl soldiers: Towards a Gendered Understanding of Wartime Recruitment, Participation, and Demobilisation’ (2013) 12 *The International Journal of Human Rights* 473-488.

⁹⁹ Cullen (n.96).

¹⁰⁰ Myriam Denov & Richard MacLure, ‘Engaging the Voices of Girls in the Aftermath of Sierra Leone’s Conflict: Experiences and Perspectives in a Culture of Violence’ (2006) 48 *Anthropologica* 73-85.

¹⁰¹ According to McKay and Mazurana, between 1990 and 2003, girls in 20 different conflicts in different regions of the world were forced to provide sexual services within their armed force. See: Susan McKay & Dyan E. Mazurana, *Where Are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (Quebec: Rights & Democracy 2004).

¹⁰² Cullen (n.96).

¹⁰³ McKay & Mazurana (n.102).

Due to the many roles that girls played during the war, such as combatants, child soldiers, sexual slaves and 'bush wives', they are frequently said to have double identities as both perpetrators and victims of violence. This duality has made it difficult to both aid these girls in reintegrating into society while at the same time addressing the crimes which they are alleged to have committed during the war.¹⁰⁴ Denov and Maclure are instructive in drawing attention to the agency of girls in fighting forces, who carried out acts of resistance such as purposefully failing to kill targets in combat, developing bonds of solidarity with one another, planning escapes, and resisting sexual violence.¹⁰⁵

(b) *Child soldiers post-conflict*

While the physical effects of being a child soldier are diverse, the terrors of armed conflict often leave long-lasting psychological, sociological and emotional effects on children.¹⁰⁶ The Civil War in Sierra Leone and the regional conflict within which it occurred lasted for over ten years, a timespan that, according to Ferme, "brings dramatic changes in the moral, physical, and psychological development of any child."¹⁰⁷ Child soldiers are forced to take actions and experience things that lead to psychological trauma, and after a conflict they often suffer from particular acute forms of structural violence, including depression, violent behaviour and disturbing memories of violence, anxiety and fear.¹⁰⁸

Although child soldiering is a global problem, its challenges are inherently local.¹⁰⁹ According to Betancourt, "not only were child soldiers exposed to horrors during the war, but when they returned to their families and communities, stigma was one of the biggest barriers to overcome."¹¹⁰ It is common for former child soldiers to experience extreme forms of stigma preventing them from reintegrating back into society and girls almost always experience some form of sexual or gender-based violence, leading to them to face a 'double' stigma as a child soldier and survivor.¹¹¹

Some authors have suggested that girls soldiers are at greater risk of developing post-traumatic and depressive symptoms after traumatic events, including war trauma.¹¹² They may not be welcomed back into their communities, be rejected by their families, seen as 'damaged goods' due to the sexual abuse they faced, they may be suffering from severe symptoms of withdrawal from drugs they had been forced to take and often experience a high level of marginalisation due to these factors. Consequently, although stigma is also experienced by boys returning home, girls are often seen to have 'violated' gender norms regarding role behaviours and sexuality more than boys, and therefore the stigma they face is far more pronounced for them.¹¹³

¹⁰⁴ Denov & Ricard-Guay (n.99).

¹⁰⁵ Denov & Maclure (n.101).

¹⁰⁶ World Vision (n.89).

¹⁰⁷ Ferme (n.86).

¹⁰⁸ Theresa Betancourt & Kashif Khan, 'The Mental Health Of Children Affected By Armed Conflict: Protective Processes And Pathways To Resilience' (2008) 20 *International Review of Psychiatry* 317-328.

¹⁰⁹ Nienke Grossman, 'Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations' (2007) 38 *Georgetown Journal of International Law* 323-361.

¹¹⁰ Boston College, 'Child Soldiers, Adult Lives' <www.bc.edu/bc-web/bcnews/nation-world-society/social-work/first-study-to-follow-male-and-female-child-soldiers-into-adulthood.html> accessed 24 July 2023.

¹¹¹ World Vision (n.89).

¹¹² David F. Tolin & Edna B. Foa, 'Sex Differences in Trauma and Posttraumatic Stress Disorder: A Quantitative Review of 25 years of Research' (2006) 132 *Psychological Bulletin* 959-992.

¹¹³ M.E. Burman & S. McKay, 'Marginalization of girl mothers during reintegration from armed groups in Sierra Leone' (2007) 54 *International Nursing Review* 316-323.

Considering the above, to combat high levels of stigma and trauma following armed conflict, a high priority is to rehabilitate and reintegrate former child soldiers into civilian life, enabling them to find meaning and positive roles as civilians rather than fighters. The reintegration of child soldiers in Sierra Leone was carried out through the restorative processes of the TRC, DDR and education, which worked to reduce the stigma which child soldiers would otherwise face and allow them to reintegrate back into their pre-conflict communities.

Having outlined the vital restorative juvenile justice principles, it is necessary to apply these principles to the post-conflict reintegration processes. However, first I will explore the international standards for children in conflict with the law in an effort to apply a concrete legal foundation to my analysis.

C. THE INTERNATIONAL STANDARDS FOR CHILDREN IN CONFLICT WITH THE LAW

This section will explore the international standards for children in conflict with the law and analyse whether they are in line with restorative juvenile justice principles. This is important as the international standards provide a legal basis for the post-conflict reintegration processes in Sierra Leone, along with setting out the crucial rights that must invariably be respected in the course of these processes. Therefore, this section will examine the *corpus juris* (body of law) which guarantees the human rights of children in conflict with the law, revealing the importance of juvenile justice and portraying the global interdependence of the various international instruments that protect children's rights.

To begin, I will firstly conduct a thorough analysis of the UNCRC and then set out other international standards for children in conflict with the law. I will analyse these international standards from a juvenile justice perspective by drawing from significant juvenile justice instruments, such as the Riyadh Guidelines,¹¹⁴ the Beijing Rules¹¹⁵ and the Havana Rules.¹¹⁶ Finally, as the goal for child soldiers is to successfully facilitate their rehabilitation and reintegration into their post-conflict communities, I will uncover what the international standards are for these rehabilitative processes.

1. The UN Convention on the Rights of the Child

The principal instrument concerning children's rights is the 1989 UNCRC, a legally-binding international instrument which sets out the basic human rights to which each child is entitled. The UNCRC is the most complete statement of children's rights ever produced and it sets out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities.¹¹⁷ The Convention is also the most widely-ratified international human rights treaty in international law.¹¹⁸ According to Kilkelly, "the Convention represents the most comprehensive, legally binding international agreement on the treatment of children."¹¹⁹

¹¹⁴ UN General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency* ("The Riyadh Guidelines"): resolution / adopted by the General Assembly (14 December 1990).

¹¹⁵ UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("The Beijing Rules"): resolution / adopted by the General Assembly (29 November 1985) UN Doc. A/RES/40/33.

¹¹⁶ UN General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*: resolution / adopted by the General Assembly (2 April 1991) UN Doc. A/RES/45/113.

¹¹⁷ Save the Children, 'The Convention on the Rights of the Child' <www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child> accessed 24 July 2023.

¹¹⁸ The UNCRC has been ratified by 193 states but has not been ratified by the United States or Somalia.

¹¹⁹ Ursula Kilkelly, 'The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child' (2001) *Human Rights Quarterly* 308-326.

As the UNCRC is the leading international children's rights instrument it applies to all children, including child soldiers. Crucially, Article 38 of the Convention aims to prevent the active participation of children as soldiers in armed conflict by declaring that "States Parties should take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities." This explicit declaration contained in a binding document obliges states to ensure that children do not take part in armed conflict. However, with the hundreds of thousands of children under the age of 15 currently involved in armed conflict worldwide I wholeheartedly agree with de Berry's statement that there is a "large gulf between the lives of thousands of children who take part in armed conflict and the standard set for their protection by the UNCRC."¹²⁰

The UNCRC contains four fundamental principles which guide its implementation and reflect the vision of respect and autonomy which the drafters of the Convention sought to create for all children, including those in conflict with the law, and hence, including child soldiers.¹²¹ These are the principle of non-discrimination,¹²² the principle of the best interests of the child,¹²³ the principle of life, survival and development,¹²⁴ and the principle of respect for the views of the child.¹²⁵ However, in this paper I will be focusing on just two of these principles: the best interests of the child and the views of the child¹²⁶ as I believe that they are of most importance when contemplating the issue of child soldiering.

Firstly, the principle of the best interests of the child is fundamental in children's rights law, and is drawn from Article 3 of the Convention which states that "in all actions concerning children, the best interests of the child shall be a primary consideration." However, where the best interests of a child are most at stake is in a situation of a state conflict with military brutality, and it is in these conflicts that children become child soldiers in contravention to Article 38. Many child soldiers fight for a cause that they believe will be in their political and economic best interests, where they are convinced that they will be protected and have a higher chance of survival.¹²⁷ For example, when Sierra Leone went through its 'crisis of state' this led to hundreds of thousands of children believing it was in their best interests to join armed forces and become child soldiers.¹²⁸

Secondly, Article 12 of the UNCRC sets out the importance of the views of the child. This is significant due to the fact that only children themselves are in a position to indicate whether their rights are being fully recognised or not, and therefore it is imperative to take their views into account in all situations concerning them.¹²⁹ It also allows us to measure the impact of child soldiering on each individual child. These principles are both fundamental in the context of child soldiering, as the best interests and the views of the child need

¹²⁰ Jo de Berry, 'Child Soldiers and the Convention on the Rights of the Child' (2001) 575 *The Annals of the American Academy of Political and Social Science* 92-105.

¹²¹ Kilkelly (n.120).

¹²² UNCRC (n.5), Article 2.

¹²³ *Ibid*, Article 3.

¹²⁴ *Ibid*, Article 6.

¹²⁵ *Ibid*, Article 12.

¹²⁶ Interestingly, Lundy has noted the inadequacy of the UNCRC in the fact that the phrase 'views of child' is not defined, and it is left to domestic courts and organisations to do so. See: Laura Lundy, "'Voice' Is Not Enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33 *British Educational Research Journal* 927-942.

¹²⁷ This was explored by de Berry, who observed children joining armed forces truly believing that this was in their best interests and for their own protection, however only regretting this decision if they joined a cause that lost. This occurred in the Teso region of Uganda where the child soldiers saw that it was in their best interests to join the UPA as fighters for their own protection. De Berry (n.121).

¹²⁸ *Ibid* 99.

¹²⁹ Ursula Kilkelly, 'Operationalising Children's Rights: Lessons From Research' (2006) 1 *Journal of Children's Services* 35-46.

to be considered in developing all post-conflict processes that will be affecting them personally, from a juvenile justice perspective.

Furthermore, Article 40 of the UNCRC is also significant as it sets out the rights of children who are in conflict with the law¹³⁰ such as general human rights guarantees as well as more specific provisions.¹³¹ The Article provides that children in conflict with the law have the right to be treated “in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age.”¹³² This Article fundamentally sets the requirement of age-appropriate treatment towards children who break the law, a crucial principle of juvenile justice. Additionally, it also states the “desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society,” recognising the importance of reintegration.¹³³ As Morris explains, this Article can be used to justify the adoption of restorative approaches, but additionally it also sets out a method of treating these children in a manner which respects children’s rights and prioritises their reintegration.¹³⁴ Therefore, it is evident that the UNCRC, particularly Articles 3, 12 and 40, is in line with restorative juvenile justice principles.

The OPAC is a multilateral treaty which aims to protect children from recruitment and use in hostilities and entered into force in 2002.¹³⁵ The most contemporary UN authority regarding children is General Comment No.10 from the Committee on the Rights of the Child, a specialist body made up of independent human rights experts which examines the realisation of the UNCRC.¹³⁶ Although not legally binding, the General Comment is an expertly detailed and expansive declaration which fleshes out the important principles and provisions of the UNCRC, while also offering guidance on the fundamental measures that are necessary to guarantee that juvenile justice is administered in line with a children’s rights approach.

2. Other International Standards for Children in Conflict with the Law

The UN and other international bodies have enacted several binding and non-binding international instruments which specifically reference children in conflict with the law. These instruments intersect all elements of the juvenile justice system as this comprehensive body of international law sets out the fundamental rights to which children in conflict with the law are entitled. According to Kilkelly, “the principal value of these instruments lies in their articulation and application of fundamental children’s rights principles to the very specific context of the criminal law.”¹³⁷

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty which considers matters of juvenile justice and requires that juveniles receive treatment that is appropriate to their age and legal status.¹³⁸ The significance of applying juvenile justice standards to children accused of atrocities has

¹³⁰ The phrase ‘children in conflict with the law’ is also known as juvenile justice.

¹³¹ General human rights guarantees include the right to be presumed innocent until proven guilty under UNCRC Article 40(2)(b)(i) (n.5).

¹³² *Ibid.* Other Convention rights that are linked to the fulfilment of Article 40 include Article 37, which also relates to juvenile justice.

¹³³ UNCRC (n.5), Article 40(1).

¹³⁴ Claire Morris, ‘Developing a Juvenile Justice System in Bosnia and Herzegovina: Rights, Diversion and Alternatives’ (2008) 8 *Youth Justice* 197-213.

¹³⁵ OPAC (n.19).

¹³⁶ UN Committee on the Rights of the Child (CRC), *General Comment No.10: Children’s Rights in Juvenile Justice* (25 April 2007) CRC/C/GC/10.

¹³⁷ Kilkelly (n.16).

¹³⁸ *International Covenant on Civil and Political Rights* (16 December 1966) 999 UNTS 171 (‘ICCPR’).

been affirmed by the UN, most notably through the groundbreaking Machel report¹³⁹ as well as through the endorsement of the Paris Commitments and Principles.¹⁴⁰ Significantly, the Human Rights Commission of Sierra Leone is fully compliant with the Paris Principles and has been since 2011.¹⁴¹

The UN Security Council has identified and condemned six grave violations against children in times of war.¹⁴² These are: i) the killing and maiming of children; ii) the recruitment or use of children in armed forces and armed groups; iii) attacks on schools or hospitals; iv) rape or other grave sexual violence; v) abduction of children; and vi) denial of humanitarian access for children. It is therefore unmistakable that the recruitment and use of children in armed forces is a grave violation of children's rights according to international law, as the practice is seen as an affront to the safety, dignity and healthy development of children.

Despite this, in many instances, children continue to fall victim to multiple grave rights violations. For example in 2020, the UN verified that 37 percent of children that were abducted were then recruited into armed forces and used in war.¹⁴³ Furthermore, the vast majority of girls that are abducted are subsequently forcibly recruited into armed forces where they are systematically raped and subjected to grave sexual violence.¹⁴⁴ This triple grave violation against a child during a time of war is in contravention to both international human rights law and international humanitarian law.

These Conventions, Covenants and Principles are helpful in filling in gaps left by the UNCRC and other international instruments for two reasons. Firstly, they take into account the social context in which the juvenile justice process is located, and secondly, they appreciate the complicated and challenging nature of putting human rights-compliant juvenile justice principles in practice internationally.

3. An Analysis of the International Standards from a Juvenile Justice Perspective

The international standards relating to children in conflict with the law have a lot in common with the standards of juvenile justice. In fact, it could be said that juvenile justice and children's rights go hand-in-hand. For example, the UNCRC contains juvenile justice standards,¹⁴⁵ such as the obligation to act in the best interests of the child.¹⁴⁶ Three non-binding juvenile justice instruments have been adopted by the UN to supplement the UNCRC: the Riyadh Guidelines on the Prevention of Delinquency,¹⁴⁷ the Beijing Rules on the administration of juvenile justice¹⁴⁸ and the Havana Rules concerning the rights of children in detention,¹⁴⁹ and these instruments provide further guidance on the implementation of children's rights in the administration of juvenile justice.

¹³⁹ *Machel Report* (n.27).

¹⁴⁰ *Paris Commitments and Principles* (n.25).

¹⁴¹ Commonwealth Forum of National Human Rights Institutions, 'Sierra Leone government must respect the independence of National Human Rights Institutions and the rule of law' <<https://cfnhri.org/updates/sierra-leone-government-must-respect-the-independence-of-national-human-rights-institutions-and-the-rule-of-law/>> accessed 24 July 2023.

¹⁴² UN Security Council, *Resolution 1612 [on children in armed conflict]*, 26 July 2005, S/RES/1612.

¹⁴³ UNICEF, *Six Grave Violations* (n.36). These instances surpassed 50 percent in Somalia, the Democratic Republic of the Congo and the Central African Republic.

¹⁴⁴ Between the years of 2005 and 2020, parties to conflict raped, forcibly married, sexually exploited, and committed other grave forms of sexual violence against at least 14,000 children.

¹⁴⁵ The CRC requires states to establish a minimum age of criminal responsibility and to put in place juvenile-specific laws, procedures and institutions according to the juvenile justice principle of specialism. See: Kilkelly (n.16).

¹⁴⁶ *UNCRC* (n.5), Article 3.

¹⁴⁷ *Riyadh Guidelines* (n.115).

¹⁴⁸ *Beijing Rules* (n.116).

¹⁴⁹ *Havana Rules* (n.117).

Academics have noted that the UNCRC faces two opposing factors, on the one hand it has an impressive substantive content, while on the other its enforcement mechanism is quite weak.¹⁵⁰ Subsequently, the juvenile justice system has become an alternative method to maximise the UNCRC's potential for vindicating the rights of children. What the juvenile justice system does is it identifies children's rights from the UNCRC and applies its specialised system of justice for children in conflict with the law to these rights. Significantly, Kilkelly has observed that international children's rights instruments and the juvenile justice system enjoy a 'symbiotic relationship,' as the instruments are created for the system to enforce, and the system could not enforce the instruments if they were not ratified.¹⁵¹

The identification of the complex set of issues relating to juvenile justice and child soldiers received a boost at the UN Commission on Human Rights in 2002, with the subsequent report stating that "persons under 18 years of age enjoy the full range of rights provided in the UNCRC,"¹⁵² and highlights the relevance of the Beijing Rules.¹⁵³ This international declaration highlighting the significance of the Beijing Rules on juvenile justice in relation to children in conflict with the law is vital. The Commission resolution 2002/47 on 'Human rights in the administration of justice, in particular juvenile justice,' was adopted without a vote and included multiple comprehensive provisions regarding juvenile justice.¹⁵⁴ The resolution emphasised the necessity of ensuring the successful implementation of relevant international standards relating to juvenile justice.¹⁵⁵

Although the recognition given to these issues is welcome, in my opinion the universal adoption of the recommendations and global standards relating to the rights of the child and juvenile justice on which they are based would be even better. Similarly, recognising why children need special protection when they come into conflict with the law should not be forgotten because these children are members of the armed forces or because exceptional legal powers apply.¹⁵⁶ This goes back to the 'children's first' approach to juvenile justice, and it is crucial that the rationale behind why juveniles need and deserve different treatment (due to their special vulnerabilities and circumstances) is still applicable and as are the necessary standards.

Therefore, it is evident that the international standards for children in conflict with the law are in line with restorative juvenile justice principles as the necessity of having juvenile justice standards has been universally accepted by intergovernmental organisations, states and NGO's. For example the UN has reaffirmed and expanded its mandate to strengthen juvenile justice through the adoption of multiple reports, guidelines and rules, the human rights NGO Amnesty International has asserted that the best interests, special needs and vulnerabilities of children must be prioritised,¹⁵⁷ and numerous states have acknowledged that juveniles

¹⁵⁰ Kilkelly (n.16).

¹⁵¹ Ibid.

¹⁵² Commission on Human Rights, *Report of the United Nations High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights* (27 February 2002) UN Doc. E/CN.4/2002/18. The report also confirmed that the CRC is non-derogable, that it is applicable in emergency situations, it recognises that right to life is particularly significant and, crucially outlines the relevance of the Beijing Rules.

¹⁵³ *Beijing Rules* (n.116).

¹⁵⁴ UN Commission on Human Rights, *Resolution 2002/47 on 'Human rights in the administration of justice, in particular juvenile justice'* (2002) UN Doc. E/CN.4/RES/2002/47.

¹⁵⁵ The provisions regarding juvenile justice built upon the Committee on the Rights of the Child's recommendation that "States parties review security legislation to ensure that it provides appropriate safeguards to protect the rights of children and prevent violence against them, and that it is not used inappropriately to target children. It also declared that states should review their national legislation to ensure that any such laws under which children or juveniles could be tried are compatible with the provisions of international law. UN Committee on the Rights of the Child, *Report on the twenty-fifth session* (14 November 2000) UN Doc. CRC/C/100, para.10, p.131.

¹⁵⁶ Rachel Brett, 'Juvenile Justice, Counter-Terrorism And Children' (2002) *Children and Security*.

¹⁵⁷ Amnesty International, 'Child Soldiers: Criminals or Victims' <www.amnesty.org/en/documents/ior50/002/2000/en/> accessed 24 July 2023.

should be treated differently than adults in the criminal process.¹⁵⁸ Consequently, it is clear that the international standards must be complied with at all times when dealing with former child soldiers, including those who have been accused of war crimes.¹⁵⁹

4. The International Standards for the Rehabilitation & Reintegration of Former Child Soldiers

In this paper I am examining whether the post-conflict reintegration processes for child soldiers are in line with international restorative juvenile justice principles, subsequently, the reintegration of child soldiers is central to this research. It has been asserted that a customary international norm requiring child soldiers to be reintegrated exists, and that it is enshrined in multiple children's rights and juvenile justice instruments.¹⁶⁰ Therefore, the international standards for children in conflict with the law which emphasise the importance of reintegration are in line with restorative juvenile justice principles.

While examining relevant international law, extensive state practice, and *opinio juris*, Debarre has declared that customary international law requires that all child soldiers, including those that have committed war crimes, be both rehabilitated and reintegrated into their communities.¹⁶¹ Similarly, Grossman has asserted that states have an affirmative obligation to rehabilitate and reintegrate former child soldiers into society.¹⁶² I agree with these scholars as many of the international instruments containing standards for the protection of juveniles also mention rehabilitation and reintegration. While the Rome Statute excludes child soldiers from its jurisdiction¹⁶³ and neither the ICTR nor ICTY addressed the issue of child soldiers,¹⁶⁴ the Statute of the SCSL did include provisions relating to child soldiers.¹⁶⁵ Article 15 of the Statute requires the prosecutor to seek, where appropriate, alternatives to criminal prosecution in accordance with the alternatives to custody principle of juvenile justice, and Article 7 references the importance of promoting the child soldiers rehabilitation and reintegration.¹⁶⁶ Correspondingly, the ICCPR states the significance of "promoting [juvenile] rehabilitation,"¹⁶⁷ while the UNCRC declares the importance of "promoting the child's reintegration and the child's assuming a constructive role in society."¹⁶⁸ Therefore, it is clear in my view that rehabilitation is a principle objective for former child soldiers in these international instruments.

Furthermore, when surveying the relevant soft law juvenile justice instruments concerning child soldiers, Debarre found the language to be similar to that used in hard law instruments and noticed that it focused on the restorative processes of rehabilitation and reintegration rather than the punitive processes of justice and accountability, which again illustrates the importance of the reintegration process for child soldiers.¹⁶⁹

The Cape Town Principles on the Prevention of Recruitment of Children in the Armed Forces and Demobilisation and Social Reintegration of Child Soldiers in Africa emphasised the demobilisation of child

¹⁵⁸ Paola Konge, 'International Crimes and Child Soldiers' (2010) 16 *Southwest Journal of International Law* 55.

¹⁵⁹ A well-known example of a child soldier who was accused of committing a war crime was Omar Khadr. See: Daniel Ryan, 'International Law and Laws of War and International Criminal Law – Prosecution of Child Soldiers – United States v. Omar Khadr' (2010) 33 *Suffolk Transnational Law Review*; *Canada (Prime Minister) v. Khadr* [2010] 1 SCR 44.

¹⁶⁰ Debarre (n.20).

¹⁶¹ *Ibid.*

¹⁶² Grossman (n.110).

¹⁶³ UNGA, *Rome Statute* (n.50).

¹⁶⁴ UN Security Council, *Statute of the International Criminal Tribunal for Rwanda* (as last amended on 13 October 2006), 8 November 1994; UN Security Council, *Statute of the International Criminal Tribunal for the Former Yugoslavia* (as amended on 17 May 2002), 25 May 1993.

¹⁶⁵ UNSC, *Statute of the SCSL* (n.51).

¹⁶⁶ *Ibid.*, Articles 15 & 7(1).

¹⁶⁷ ICCPR (n.139), Article 14(4).

¹⁶⁸ UNCRC (n.5), Article 40(1).

¹⁶⁹ Debarre (n.20).

soldiers and the implementation of social reintegration programmes, with no mention of criminal prosecution.¹⁷⁰ Similarly, the Paris Commitments outline the importance of refraining from using judicial proceedings for child soldiers, in line with the alternatives to custody approach to juvenile justice, along with stating that child soldiers accused of crimes against international law should be treated “in accordance with international standards of juvenile justice, such as in a framework of restorative justice and social rehabilitation.”¹⁷¹ Consequently, the Paris Principles also state that these children should be “considered primarily as victims of offences against international law,”¹⁷² in line with the children first approach to juvenile justice, that they should not be prosecuted by an international court,¹⁷³ and that alternatives to the judicial prosecution of children should be sought at the national level,¹⁷⁴ again in line with the alternatives to custody principle. The Paris Principles also contain very detailed provisions concerning the release and reintegration of child soldiers.¹⁷⁵

It is beyond doubt that the international standards for children in conflict with the law are in line with restorative juvenile justice principles. These juvenile justice instruments highlight the importance of reintegration programmes for child soldiers, apply the alternatives to custody and children first principles of juvenile justice and advocate for a restorative approach.

The juvenile justice instruments discussed in this section are extremely significant as they led to the implementation of provisions regarding the disarmament and reintegration of child soldiers in many peace agreements,¹⁷⁶ such as the Lomé Peace Agreement in Sierra Leone.¹⁷⁷ This agreement culminated in the establishment of the Sierra Leonean TRC and DDR programmes, and subsequently its education programmes. Therefore, I am of the view that as the international standards for children in conflict with the law are in line with juvenile justice standards, consequently the creation and functioning of the post-conflict reintegration processes were also informed by juvenile justice principles.

5. Conclusion

To conclude, the framework of international law recognises that children should benefit from a particular treatment which is different from that of adults. It is clear that this child-friendly treatment of children in conflict with the law is in line with restorative juvenile justice principles, such as alternatives from custody and diversion. The close association between juvenile justice and children’s rights law, specifically the UNCRC, is obvious, such as with Article 3 of the UNCRC requiring that in all dealings with children, the “best interests of the child shall be a primary consideration” and, correspondingly, the Beijing Rules prescribing that the juvenile justice system must prioritise the “well-being of the juvenile.”¹⁷⁸ Therefore, I believe that the international standards for children in conflict with the law are in line with restorative juvenile justice principles.

¹⁷⁰ *Cape Town Principles* (n.23), Article 32. The Cape Town Principles were agreed in 1997 and almost a decade later an extensive review process was carried out by UNICEF and other partners. This led to the implementation of two more documents, firstly the short and concise Paris Commitments, and secondly the Paris Principles, which provide more detailed guidance for those who were implementing the programmes.

¹⁷¹ *Paris Commitments and Principles* (n.25).

¹⁷² *Ibid*, para.3.6.

¹⁷³ *Ibid*, para.8.6.

¹⁷⁴ *Ibid*, para.8.9.

¹⁷⁵ *Ibid*, Section 7.

¹⁷⁶ Happold (n.10).

¹⁷⁷ National Legislative Bodies / National Authorities, *Sierra Leone: The Lomé Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone* (7 July 1999).

¹⁷⁸ *Beijing Rules* (n.116).

Additionally, this review of relevant legal materials, international literature and the views of commentators is imperative for understanding the legal basis of children's rights law, such as the UNCRC, and highlights the many restorative juvenile justice principles scattered throughout these international instruments. Building on this, in the next section I will address the question: Are the post-conflict reintegration processes for child soldiers in Sierra Leone in line with international restorative juvenile justice principles? To do this I will conduct a case study of child soldiering in Sierra Leone, whereby I will analyse the post-conflict reintegration processes, namely, the TRC, DDR programmes and education programmes and discover whether they were in line with restorative juvenile justice principles for both male and female child soldiers.

D. A CASE STUDY OF CHILD SOLDIERS IN SIERRA LEONE

This section examines whether the post-conflict reintegration processes for former child soldiers in Sierra Leone are in line with restorative juvenile justice principles. To begin, I will set out a brief history of Sierra Leone, followed by a study of the post-conflict reintegration mechanisms available for former child soldiers, both male and female, namely the TRC, DDR programmes and education programmes. For each, I will analyse whether these processes are in line with the restorative justice principles.

1. A Brief History of Sierra Leone (1991-2002)

Sierra Leone is a country on the west coast of Africa, bordered only by the Atlantic Ocean to the west, Guinea to the northeast and Liberia to the southeast. With an area of just under 72,000km² the country is slightly larger than the Republic of Ireland, and has a population of just under 8 million. Sierra Leone has held the status of a republic since 1971¹⁷⁹ and Freetown is its largest city, chief port and capital, situated in the north-west of the country.

Civil War broke out in Sierra Leone in 1991 between two competing military factions and lasted until 2002 when a ceasefire and disarmament plan was reached.¹⁸⁰ The war was the result of a combination of factors, including economic factors, the spill-over of the conflict in neighbouring Liberia and a struggle over the political leadership of the country.¹⁸¹ On the 23rd of March 1991 the rebel forces, the Revolutionary United Front (RUF) led by Foday Sankoh rose up against President Major General Momoh's government, igniting an internal armed conflict that would last eleven years. In 1999, world leaders diplomatically intervened to promote negotiations between the RUF and the government of Sierra Leone, resulting in the signature of the Lomé Peace Accord on the 7th of July 1990.¹⁸² The Accord was reached in the hope of ending the Civil War, however rebel activity continued.

On the 18th of January 2002, President Ahmad Tejan Kabbah finally declared the Sierra Leonean Civil War over and the UN mission announced the disarmament of 45,000 fighters.¹⁸³ Kabbah was re-elected that May and his administration pledged to bring about reconciliation,¹⁸⁴ leading to a UN-sponsored war-crimes

¹⁷⁹ John R. Morss, 'The Status of Child Offenders under International Criminal Justice: Lessons From Sierra Leone' (2004) 9 *Deakin Law Review* 213-225, 215.

¹⁸⁰ Mark Iacono, 'Child Soldiers of Sierra Leone: Are They Accountable for Their Actions in War?' (2003) 26 *Suffolk Transnational Law Review* 445-468.

¹⁸¹ Zainab Olaitan & Christopher Isike, 'The Role of the African Union in Fostering Women's Representation in Formal Peacebuilding: A Case Study of Sierra Leone' (2019) 8 *Journal of African Union Studies* 135-154.

¹⁸² *Lomé Accord* (n.178).

¹⁸³ BBC News 'Sierra Leone Profile' <www.bbc.com/news/world-africa-14094419> accessed 24 July 2023.

¹⁸⁴ Cullen (n.96).

tribunal, the Special Court of Sierra Leone, the Truth and Reconciliation Committee, Demobilisation, Disarmament and Reintegration programmes, and subsequently, education programmes.¹⁸⁵

Over the course of the eleven-year long Civil War, the civilian population of Sierra Leone was subjected to some of the most shocking atrocities ever seen in an internal armed conflict.¹⁸⁶ During the war a campaign of forcibly conscripting children to fight was carried out by government, militia and rebel forces. An estimated 20,000 children of all ages were taken from their families and forced to serve the military groups in a number of ways, from performing domestic chores and other military support roles to committing acts of violence.¹⁸⁷ It is difficult to know the exact number of child soldiers involved in the Civil War in Sierra Leone, however UNICEF has estimated that 4,000 child soldiers had been used,¹⁸⁸ while Schuler believed that 6,000 had been used.¹⁸⁹

Some of these children joined armed groups ‘voluntarily,’ however most were forcefully recruited by being abducted or coerced into joining armed forces with threats of violence, or did so due to the dire economic straits they faced during wartime. Child soldiers were seen by their commanders as malleable and impressionable,¹⁹⁰ and in order to further increase their vulnerability, child soldiers were often drugged to increase their aggressiveness and make them more lethal warriors.¹⁹¹ They were given the most brutal and treacherous missions in the war, required to go on the most dangerous reconnaissance assignments (despite being the least trained) and were forced to commit rape, arson and even made to mutilate civilians.¹⁹²

Understanding the experiences of child soldiers during the civil war is crucial when analysing the post-conflict reintegration processes that were subsequently available to them. When looking at this topic from a juvenile justice perspective, we need to see these child soldiers as children first, and consider what we believe to be in their best interests. Therefore, in the next section I will investigate whether the post-conflict processes of TRC, DDR programmes and educational programmes were in line with restorative juvenile justice principles, and how they facilitated the reintegration of former child soldiers in Sierra Leone.

2. The Post-Conflict Reintegration Process for Former Child Soldiers

The situation in Sierra Leone highlighted the need for more serious consideration of how child participants in armed conflict were treated by the justice system.¹⁹³ Under international law and according to juvenile justice instruments, states have an obligation both to rehabilitate and reintegrate child soldiers, and, in both hard and soft law sources regarding children and armed conflict, the priority is always on the best interests of the child, a juvenile justice principle enshrined in the UNCRC.¹⁹⁴ Therefore, according to Debarre, the

¹⁸⁵ Encyclopedia Britannica, ‘Sierra Leone, Civil War’ <www.britannica.com/place/Sierra-Leone/Civil-war> accessed 24 July 2023.

¹⁸⁶ Iacono reported that the RUF rebels gained notoriety by murdering, mutilating, and raping victims. See: Iacono (n.181).

¹⁸⁷ Betancourt et al (n.40).

¹⁸⁸ Corriero (n.39).

¹⁸⁹ Corinna Schuler, ‘Helping Children Warriors Regain Their Humanity’ (1999) *Christian Science Monitor* 1.

¹⁹⁰ Ibid.

¹⁹¹ For example, Zavis interviewed a former child combatant who was told to attack, burn houses, rape women, and take what he liked. See: Alexandra Zavis, ‘Soldiers in Sierra Leone Grow Up to Be Children,’ 14 July 2002, *Washington Post*.

¹⁹² Diane Marie Amann, ‘Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone’ (2001) 29 *Pepperdine Law Review* 167-185.

¹⁹³ Brett (n.157).

¹⁹⁴ UNCRC (n.5), Article 3.

efforts of both the international community and individual states needed to be focused towards these children's rehabilitation and reintegration, as that is what has been proven to be in their best interests.¹⁹⁵

Reintegration has been defined as a "long-term process which aims to give children a viable alternative to their involvement in armed conflict and help them resume life in the community."¹⁹⁶ The measures of rehabilitation I will be examining are Truth and Reconciliation Commissions and Disarmament, Demobilisation and Reintegration programmes. The particular context and circumstances of a child will determine which approach is the most appropriate for them, but the effectiveness and success of a programme often depends on how suitable the chosen mechanism is for the situation at hand. This is in line with the juvenile justice principle of the best interests of the child, as General Comment No.14 on the best interests of the child requires there to be an assessment appropriate to the specific context of the children in question.¹⁹⁷ Furthermore, it is evident that education is also a key aspect of the objective of rehabilitation and reintegration for former child soldiers.¹⁹⁸

The international restorative juvenile justice principles that I will apply to the restorative post-conflict processes are the principles of the best interests of the child, voice of the child, diversion from court and alternatives to custody. The latter two principles entirely apply to the TRC and DDR programmes, as both post-conflict processes served to divert the child away from being prosecuted by the SCSL, whereby a system of punitive justice instead of restorative justice would have been implemented.

(a) *The Truth and Reconciliation Commission*

The Sierra Leonean TRC is an example of a judicially-oriented post-conflict mechanism which allowed children to be held responsible for the crimes they had committed as child soldiers while simultaneously enabling them to reintegrate into society.

According to the Truth and Reconciliation Commission Act 2000 (TRC Act), the Sierra Leonean TRC was established 'to create an impartial historical record of violations and abuses of human rights and international law' and 'to address impunity, to respond to the needs of victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered.'¹⁹⁹ The TRC had two components, the truth component which allowed for the investigation of details and facts, and the reconciliation component which allowed for healing, making amends and for victims and perpetrators to come together, ultimately facilitating reintegration.²⁰⁰ Therefore, I argue that the TRC was a restorative justice mechanism which paved the way for former child soldiers to be reintegrated back into society.

The Sierra Leonean TRC was created to be a major source of adjudication of cases involving child soldiers and was to be used as an alternative to prosecution, in particular the prosecution of juveniles.²⁰¹ Article 15 of the Draft Statute of the SCSL provided that when prosecuting juvenile offenders, the Prosecutor could decide that certain cases would be more appropriately dealt with by the TRC.²⁰² The Security Council affirmed the

¹⁹⁵ Debarre (n.20).

¹⁹⁶ Coalition to Stop the Use of Child Soldiers (n.3)

¹⁹⁷ UN Committee on the Rights of the Child (CRC), *General Comment No.14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, UN Doc. CRC /C/GC/14.

¹⁹⁸ Happold (n.10).

¹⁹⁹ Sierra Leone, *Truth and Reconciliation Commission Act (2 March 2000)* ('TRC Act').

²⁰⁰ James L. Gibson, 'The Contributions of Truth to Reconciliation: Lessons from South Africa' (2006) 50 *The Journal of Conflict Resolution* 409-432.

²⁰¹ Michael Custer, 'Punishing Child Soldiers: The Special Court for Sierra Leone and the Lessons to be Learned from the United States' Juvenile Justice System' (2005) 19 *Temple International and Comparative Journal* 449-476.

²⁰² *Draft Statute of the Special Court of Sierra Leone*, Article 15.

central role of the TRC in the adjudication of child soldiers, and Article 15 was included in the final statute without revision. Therefore, the juvenile justice principle of alternatives to custody allowed for child soldiers to be diverted away from the SCSL and into the more child-friendly TRC.

Sierra Leone's TRC Act sought to implement multiple restorative juvenile justice principles throughout the TRC's treatment of former child soldiers.²⁰³ Firstly, it pledged to treat young people "with dignity and a sense of worth," and "implement special procedures in working with child perpetrators of abuses or violations," in line with the children first principle of juvenile justice. Secondly, it utilised personnel with specific expertise in dealing with children in conflict with the law, which is in line with another principle of juvenile justice named 'specialism.' This provides that laws, procedures and institutions are specifically applicable to children in conflict with the law and that staff are trained and monitored accordingly.

Thirdly and most importantly, the TRC implemented the alternatives to custody principle of juvenile justice, in that it was seen as "an effective alternative to the prosecution of juvenile offenders whose criminal responsibility is minimal or difficult to assess." Under this system, juveniles were required to describe their crimes to create an accurate historical record, but would not face prosecution, and instead be subjected to restorative justice mechanisms. Finally, the TRC affirmed that it would subject former child soldiers to alternative options of correctional or educational nature, outlining the importance of educational programmes to facilitate the reintegration of former child soldiers into their communities. Therefore, it is clear that the TRC Act was in line with international restorative juvenile justice principles, however, I will now examine if this was the case in practice.

The TRC operated from 2002 to 2004, and over the course of that time it collected over 900 statements, followed by multiple public hearings involving over 450 witnesses.²⁰⁴ These public proceedings were broadcast on television and radio stations around the country, and closed hearings were also put in place for the most vulnerable people to be able to give their testimony in a safer manner, among these former child soldiers.²⁰⁵ This is in line with the best interests of the child principle of juvenile justice and international and national NGO's would then administer rehabilitation and reintegration programmes for the former child soldiers. Interestingly, these NGO's had expressed their unanimous objection to any judicial process that would risk those programmes, preferring restorative justice mechanisms such as the TRC, DDR and educational programmes.²⁰⁶

A great strength of the TRC, according to Dougherty, was its explicit focus on the experiences of children, girls and ex-combatants, and the fact that it paid special attention to child soldiery.²⁰⁷ Indeed, the TRC in Sierra Leone was the first to involve children, although their participation was voluntary, and their individual conduct was not subjected to assessment, evaluation, or critique. The TRC worked to be accessible for children by producing a child-friendly version of its final report and by making a report for secondary school students widely available, which is significant as it complies with the children first principle of juvenile justice.²⁰⁸

²⁰³ TRC Act (n.200).

²⁰⁴ Tim Kelsall, 'Truth, Lies, Ritual: Reflections on the Truth and Reconciliation Commission in Sierra Leone' (2005) 27 *Human Rights Quarterly* 361-391.

²⁰⁵ *Ibid*, 364.

²⁰⁶ UN, *The Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone, delivered to the Security Council* (4 October 2000) UN Doc. S/2000/915.

²⁰⁷ Beth K. Dougherty, 'Searching for Answers: Sierra Leone's Truth & Reconciliation Commission' (2004) 8 *African Studies Quarterly* 39-56.

²⁰⁸ Mohamed Sheriff & Elvira M.J. Bobson-Kamara, *TRC Report, A Secondary School Version* (2005)

However, according to Park, a controversy that has remained unexamined in academic literature is the perception that the TRC did not adequately focus on reconciliation.²⁰⁹ Due to this, reconciliation efforts “were largely left to the localities because the TRC had neither the time nor the money to do them” according to Dougherty.²¹⁰ Park agrees that there was a greater focus on the truth component than the reconciliation component in the TRC,²¹¹ however others, such as Schabas²¹² have argued that the mandates of truth and reconciliation were balanced. Nevertheless, national commissioner Sylvanus Torto insisted in a personal communication that the TRC should not have been dissolved but instead “maintained to undertake the work of reconciliation at local levels.”²¹³ Similarly T. Koroma, one of the writers of the TRC’s final report, expressed frustration that local-level reconciliation was not pursued.²¹⁴ This implies that the TRC did not fully accomplish its goals of reconciliation, and subsequently, reintegration. If this is the case, although the TRC was in line with other principles of juvenile justice, the customary international law norm outlined in multiple juvenile justice instruments stating that states were bound to rehabilitate and reintegrate children was not complied with.

To conclude, the Sierra Leonean TRC was implemented to find forgiveness, reconciliation, and justice,²¹⁵ and consisted of a restorative post-conflict mechanism which implemented multiple principles of juvenile justice, such as the children first principle, alternatives to custody, diversion and the little-known specialism principle. However, according to some scholars it did not complete its mandate of reconciliation. While it is true that the establishment of the TRC has generated an important international debate about the potential of such post-conflict processes to facilitate the reconciliation and reintegration of former child soldiers,²¹⁶ and the fact that it was instrumental in the peace-building process in Sierra Leone, I believe that it should have lived up to its name, providing both truth *and* reconciliation, which is what would be in the best interests of former child soldiers and ultimately facilitated their reintegration.

(b) *Demobilisation, Disarmament and Reintegration (DDR) Programmes*

DDR is a restorative post-conflict process which was implemented to facilitate the reintegration of former child soldiers who have been associated with armed forces or armed groups. The objective of DDR was to “contribute to security and stability in post-conflict environments so that recovery and development can begin.”²¹⁷ It is regarded as a more child-friendly mechanism for addressing children’s participation in hostilities than prosecution, with a focus on the reintegration of children into society rather than on accountability. The legal basis for DDR is set out in multiple legal instruments, such as the OPAC, which gives states a positive duty to demobilise child soldiers and ensure their reintegration along with preventing any activity contrary to child soldiers’ rehabilitation and reintegration in their country.

DDR has three distinct yet overlapping components. First of all, disarmament signifies the collection and disposal of weapons from combatants. Secondly, demobilisation is the formal and controlled discharge of

²⁰⁹ Park (n.87)

²¹⁰ Dougherty (n.208) 44.

²¹¹ Park (n.87).

²¹² W. Schabas, personal communication, 10 April 2007, cited in Park (ibid).

²¹³ S. Torto, personal communication, 30 March 2007, cited in Park (ibid).

²¹⁴ T. Koroma, personal communication, 18 March 2007, cited in Park (ibid).

²¹⁵ Ryan (n.160).

²¹⁶ Ilene Cohen, ‘The Protection of Children and the Quest for Truth and Justice in Sierra Leone’ (2001) 55 *Journal of International Affairs* 1-34.

²¹⁷ UN Cyprus Talks, *Disarmament, Demobilization and Reintegration (DDR)* <<https://uncyprustalks.unmissions.org/disarmament-demobilization-and-reintegration-ddr#:~:text=The%20objective%20of%20the%20DDR,recovery%20and%20development%20can%20begin>> accessed 24 July 2023.

active combatants from armed forces and groups, including a 'reinsertion' phase which provides short-term assistance to ex-combatants.²¹⁸ The encampment process often involves a stay in interim care centres or DDR camps for up to several months.²¹⁹ Thirdly, reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income.²²⁰ To be eligible, child soldiers had to prove they could load and discharge a weapon and verify they had been in an armed group for at least six months. The first two steps involve physically removing the child soldiers from a military environment, while the final and most complex step, reintegration, is an ongoing process "involving the return to civil life in families and communities, and reinsertion into sustainable employment."²²¹

I believe that the DDR programmes in Sierra Leone have implemented the principles of juvenile justice, as the programmes were created specifically for former child soldiers and therefore took their best interests into account. According to the UN Secretary General, a couple of 'overreaching considerations' that should inform DDR programmes were the need for separate child-specific programmes, according to the juvenile justice principle of the best interests of the child, and an emphasis on an integrated community approach in order to ensure long-term reintegration.²²² Importantly, in Singers' words, the DDR programmes "turn a child soldier back into a child."²²³ This is evidence that the mechanism is in accordance with the children first principle of juvenile justice, whereby a child soldier is seen as a child first. These considerations are an indication that DDR programmes were in line with the principles of restorative juvenile justice, and consisted of a child-friendly reintegration process for former child soldiers.

DDR programmes often form part of the formal procedure following a peace agreement, in this case, the Lomé Peace Accord included explicit provisions for the inclusion of child soldiers in the DDR process.²²⁴ This was slow however, as five months after the Accords were signed, less than forty percent of child soldiers had been demobilised, and the RUF even recaptured some of the demobilised children.²²⁵ Finally, in 2001 the RUF and CDF forces brokered a new peace deal requiring child soldiers to be turned over to the UN, and within months roughly 1,000 child soldiers were released to UNICEF and Save the Children.²²⁶ It has been estimated that almost 7,000 children went through the DDR processes in Sierra Leone, of which 92 percent were boys and just 8 percent were girls.²²⁷

Although it is clear that DDR was a child-friendly mechanism for addressing children's participation in hostilities which focused on reintegrating children back into their communities, not all children went through the DDR process. Many former child soldiers feared prosecution by the government, decided to disarm informally or escape and return to their communities.²²⁸ According to Seymour, "children's DDR programmes

²¹⁸ UN Inter-Agency Working Group On Disarmament, Demobilization and Reintegration, *Operational Guide To The Integrated Disarmament, Demobilization and Reintegration Standards* (2010) <<https://peacekeeping.un.org/sites/default/files/operational-guide-rev-2010-web.pdf>> accessed 24 July 2023.

²¹⁹ Christopher B. Dyck, 'Football and Post-War Reintegration: exploring the role of sport in DDR processes in Sierra Leone' (2011) 32 *Third World Quarterly* 395-415.

²²⁰ UN Cyprus Talks (n.218).

²²¹ Debarre (n.20).

²²² UN Secretary-General, *Children and Armed Conflict* (10 November 2003) 1165, UN Doc. A/58/546-S/2003/1053.

²²³ Debarre (n.20).

²²⁴ *Lomé Accord* (n.178).

²²⁵ Ismene Zarifis, 'Sierra Leone's Search for Justice and Accountability of Child Soldiers' (2002) 9 *Human Rights Brief* 18-21.

²²⁶ Greg Campbell, 'Peace at Last in Sierra Leone?' (2001) *The Christian Science Monitor* 6.

²²⁷ UNICEF, 'The Disarmament and demobilization and reintegration of children associated with the fighting forces, Lessons Learned in Sierra Leone, 1998-2002' <<https://ihl-in-action.icrc.org/case-study/sierra-leone-demobilization-child-soldiers>> accessed 24 July 2023.

²²⁸ Kirsten Gislesen, *A Childhood Lost? The Challenges of Successful Disarmament, Demobilization and Reintegration of Child Soldiers: The Case of West Africa* (Norwegian Institute of International Affairs, 2006).

have often been little more than expensive logistical exercises, which ignore the conditions of entrenched poverty and extremely limited choices that lay the foundations of the child recruitment phenomenon.”²²⁹ Hence, in my opinion, the application of the juvenile justice principle of the voice of the child would have been successful here.

According to the UNCRC, a document that resonates deeply in post-conflict Sierra Leone, the voice and views of the child need to be heard and included in the decisions and actions that personally affect them. According to Denov and MacLure, it is crucial for former child soldiers to engage in dialogue regarding their wartime experiences, their current needs, and their long-term prospects.²³⁰ Policies geared towards improving children’s welfare should take into consideration that young people are uniquely aware of their own situations. Therefore, they should allow children to participate to some extent in the conceptualisation and execution of these programmes that ultimately, children will be the participants of. Consequently, if former child soldiers have no say in the programmes that are supposedly created to meet their needs, and their best interests are not being looked out for. Therefore, the non-compliance of some former child soldiers with established, traditional practices that allow for reintegration, such as DDR, lead to them not returning to or reintegrating into their post-conflict communities, such as in Sierra Leone. However, if the views of the child were taken into consideration, more children would have had an input in and perhaps gone through the DDR programmes.

To conclude, the DDR programmes served as an effective post-conflict process for former child soldiers in Sierra Leone, and functioned in line with international restorative juvenile justice principles, such as the best interests of the child and children first principles. Additionally, the availability of the DDR programmes as an option for former child soldiers is a direct alternative to custody, diverting children away from the punitive justice system. Furthermore, DDR focused on reintegration, allowing thousands of former child soldiers to reintegrate back into their communities. However, some scholars argue that this reintegration phase was insufficient, which is also true as it would have been in the best interests of the child for rehabilitation to have been prioritised for all child soldiers, and respecting the juvenile justice principle of the views of the child would have facilitated this. However, while the DDR programmes in Sierra Leone were in line with international restorative juvenile justice principles, they could have done more to better reintegrate former child soldiers back into their communities.

The TRC and DDR programmes also implemented educational programmes alongside their own post-conflict processes to further facilitate the reintegration of former child soldiers into their post-conflict communities. Hence, I will now explore educational programmes as a post-conflict process and analyse whether it was in line with international restorative juvenile justice principles.

(c) *Educational Programmes*

Educational programmes have a significant role in the reintegration process for former child soldiers as they are often implemented within larger post-conflict reintegration programmes. In my opinion, post-conflict educational programmes are in line with international restorative juvenile justice principles as it is in the best interests of a child to receive an education, and it is an indication of the importance of education that its significance is outlined in the international standards for children in conflict with the law and in juvenile justice instruments.

²²⁹ Claudia Seymour, ‘Selective outrage: the dangers of children’s DDR in eastern DRC’ in Kerstin Vignard & Ross McRae (eds.), *Children and Conflict: Disarmament Forum* (Geneva: UN Institute for Disarmament Research, 2011) p.59.

²³⁰ Denov & MacLure (n.101).

The right of a child to education is an enduring feature of international human rights law. The right to education was inserted into the UDHR,²³¹ considerably expanded in the International Covenant on Economic, Social and Cultural Rights (ICESCR),²³² and inserted in the 1959 UN Declaration on the Rights of the Child.²³³ Similarly, the UNCRC, “the most comprehensive, widely known and generally accepted articulation of school children’s rights across the world,”²³⁴ unequivocally recognises the right of a child to education in its Article 28.²³⁵ Furthermore, the seminal juvenile justice instrument, the Riyadh Guidelines, state that governments are bound to provide education,²³⁶ and its continuous and ready endorsement by state parties is indicative of the fact that education is one of the most widely recognised rights of children.²³⁷

I argue that as these international instruments outline the importance of education and keeping children in school, this implies that educational processes are in line with the alternatives to custody principle of juvenile justice. This is due to the fact that they divert child soldiers away from punitive justice and towards restorative justice and education, which has been shown to be in the best interests of the child.

According to the Riyadh Guidelines, “educational systems should extend particular care and attention to young persons who are at social risk”²³⁸ and I argue that a former child soldier is the epitome of a young person who is at social risk, due to their vulnerabilities and the circumstances they find themselves in, which is the basis of the juvenile justice school of thought, as explained in Section B. Consequently, this establishes the overarching importance of the provision of an adequate education system as a post-conflict reintegration process for former child soldiers, and I will now analyse whether it was in line with international restorative juvenile justice principles.

Before the Civil War, the Sierra Leonean education system was failing. In 1990, only 55 percent of children were enrolled in primary school, and almost all schools collected fees from parents, a system which implicitly barred millions of the most impoverished children from receiving an education. Then, during the Civil War, over 1,200 primary schools were destroyed, leaving just a third of school-age children in school.²³⁹ At the end of the Sierra Leonean Civil War an increased demand for education led to the implementation of a number of programmes to strengthen the education system, such as the training of new teachers, rebuilding of schools and efforts to close the gender gap in primary school enrolment.²⁴⁰

In the post-conflict period in Sierra Leone, a number of short-term education and training programmes were funded and operated by NGO’s and donor governments, and functioned according to the juvenile justice principle of the best interests of the child. These schemes focused on increasing children’s literacy skills, teaching life skills and providing vocational training, in line with the Riyadh Guidelines for juvenile justice.

²³¹ UN General Assembly, *Universal Declaration of Human Rights* (10 December 1948) Res.217 A (III).

²³² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, UN Doc. E/C.12/1999/10.

²³³ UN General Assembly, *Declaration of the Rights of the Child* (20 November 1959) UN Doc. A/RES/1386(XIV).

²³⁴ Laura Lundy, ‘Children’s Rights and Educational Policy in Europe: The Implementation of the United Nations Convention on the Rights of the Child’ (2012) 38 *Oxford Review of Education* 393-411.

²³⁵ UNCRC (n.5), Article 28.

²³⁶ *Riyadh Guidelines* (n.115).

²³⁷ Laura Lundy & Patricia O’Lynn, ‘The Education Rights of Children’ in Ursula Kilkelly & Ton Liefaard (eds), *International Human Rights of Children* (Springer 2019) 259-276.

²³⁸ The Riyadh guidelines also state that specialised prevention programmes should be developed for these young people, *Riyadh Guidelines* (n.115).

²³⁹ Figures on this issue can vary, as according to Maxted, 1,736 schools destroyed were during the Sierra Leonean Civil War. See: Julia Maxted, ‘Children and Armed Conflict in Africa’ (2003) 9 *Social Identities* 51-69.

²⁴⁰ Grace Pai, ‘Reconstructing education in post-conflict Sierra Leone’ in M. Raymond Izarali et al (eds), *Security, Education and Development in Contemporary Africa* (Taylor and Francis, 2016).

One such programme was the Youth Reintegration Training and Education for Peace programme,²⁴¹ and another was the Community Education Investment Programme which waived school fees, uniforms, books, and supplies for former child soldiers and kept many former child soldiers in school. However, some studies have shown that NGO aid was at times ineffectively dispersed and became a source of stress for children who would be sent home by teachers if their fees were not paid on time. Unfortunately, many former child soldiers dropped out of school altogether when the programmes ended, which was not in their best interests.

Multiple international children's rights and juvenile justice instruments have highlighted the significance of, first of all, keeping children in school and secondly, facilitating the return to school of those who have left. General Comment No.24 on children's rights in the child justice system states that "support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education."²⁴² Similarly, the Riyadh Guidelines on juvenile justice state that special assistance should be given to 'drop-outs.'²⁴³ This is in line with the children first approach to juvenile justice, as former child soldiers were considered as children first, and their return to school was accordingly facilitated. Consequently, in the Sierra Leonean education system, incentives were offered for over-age students to return to school, although this often depended on their age, the level of schooling they had completed prior to the disruption in their education, and the duration of this disruption. These initiatives worked on a reduced school curriculum to allow children to swiftly catch up to their peers in the regular schooling system.²⁴⁴

Although educational programmes would not traditionally be considered a post-conflict reintegration process, literature has shown that education supports the reintegration of former child soldiers in a number of ways.²⁴⁵ Crucially, the Machel report emphasised the significant link between literacy skills and learning and economic security for returning child soldiers, and stated that these were determinative factors allowing for returning children to be reintegrated successfully in their communities and hinder their re-recruitment.²⁴⁶ Returning to school and taking part in reintegration and training programmes can allow former child soldiers to regain an element of normality and safety in their daily lives,²⁴⁷ as school often becomes a 'security base' where children can finally feel that they are out of harm's way.²⁴⁸

According to Betancourt, education can motivate former child soldiers to have hope for the future²⁴⁹ as taking classes, following instructions, completing homework and passing exams are attainable goals that provide

²⁴¹ YRTEP was financed by USAID to serve both former child soldiers and non-former child soldiers, setting the programme apart as most were only available for former combatants. Taking in students from six months to a year, the programme had over a thousand branches across the country and boasted over 45,000 participants during 2001. YRTEP was a renowned success with vast improvements reported in conflict management skills, reading and writing competencies and numeracy skills, with multiple respondents communicating that they felt more equipped to provide for themselves and their families on completion of the programme.

²⁴² UN Committee on the Rights of the Child, *General Comment No.24 on children's rights in the child justice system* (18 September 2019) UN Doc. CRC/C/GC/24.

²⁴³ *Riyadh Guidelines* (n.115).

²⁴⁴ Similarly, two governmental programmes were implemented to allow over-age youth to complete their education, the Complementary Rapid Education for Primary Schools and Rapid Response Education Programme.

²⁴⁵ Betancourt et al (n.40).

²⁴⁶ Machel Report (n.27).

²⁴⁷ Marc Sommers, 'Education Amidst Conflict: The Youth Challenge' (2009) 24 *The Fletcher Journal of Human Security* 29-39.

²⁴⁸ S. Elbedour, R. Bensef & D.T. Bastien, 'Ecological integrated model of children of war: individual and social psychology' (1993) 17 *Child Abuse and Neglect* 805-819.

²⁴⁹ Theresa S. Betancourt, 'Stressors, Supports and the Social Ecology of Displacement: Psychosocial Dimensions of an Emergency Education Program for Chechen Adolescents Displaced in Ingushetia, Russia' (2005) 29 *Culture, Medicine and Psychiatry* 309-340.

forward momentum in the reintegration process²⁵⁰ and a similar result was also found in other studies of Sierra Leonean children who had gone through educational programmes.²⁵¹ Therefore, due to the fact that educational programmes facilitate the reintegration of former child soldiers, I have included them as a post-conflict reintegration process, as educational programmes allow children to overcome the 'lost time' due to war, help to normalise life for returning child soldiers and assist them in reintegrating back into their communities. It is clear therefore that throughout this post-conflict reintegration process the juvenile justice principle of the best interests of the child are applied throughout.

3. Conclusion

To conclude, I have analysed the post-conflict reintegration processes for child soldiers in Sierra Leone in order to determine whether they were in line with international restorative juvenile justice principles. I found that the TRC and DDR programmes implemented the juvenile justice principles of alternatives to custody and diversion, along with child-friendly justice and best interests of the child. However, they could have better implemented the principle of the voice of the child to ensure the participation of more former child soldiers. I believe that educational opportunities are a vital aspect of the reintegration process for former child soldiers, and agree with Tomaševski's observation that "the importance of the right to education reaches far beyond education itself."²⁵² Therefore, it is clear that educational programmes as post-conflict reintegration programmes are in line with the juvenile justice principles of the best interests of the child, alternatives to custody and diversion. I will now examine the same post-conflict processes but my focus will be on female child soldiers, and I will analyse whether the reintegration processes were in line with restorative juvenile justice principles.

E. THE POST-CONFLICT REINTEGRATION PROCESSES FOR FEMALE CHILD SOLDIERS

Despite the multiple protections provided to children in international law, it is clear that the issue of child soldiers has become a global concern. However, until recently child soldiers have typically been thought of as boys,²⁵³ with literature portraying child soldiery as a "uniquely male phenomenon."²⁵⁴ Nonetheless, thousands of girls have participated in fighting forces all over the world,²⁵⁵ including in Sierra Leone, where 30 percent of child soldiers involved in the Civil War were girls.²⁵⁶ Therefore, in this section I will discover whether the post-conflict reintegration processes for female child soldiers in Sierra Leone are in line with international restorative juvenile justice principles.

²⁵⁰ Susan Nicolai & Carl Triplehorn, 'The Role of Education in Protecting Children in Conflict,' *Humanitarian Practice Network Paper 42* (Overseas Development Institute, London, 2003).

²⁵¹ They "recognized the central importance of a strong belief in the value and purpose of life." Paul M. Kline & Erin Mone, 'Coping with War: Three Strategies Employed by Adolescent Citizens of Sierra Leone' (2003) 20 *Child and Adolescent Social Work Journal* 321-333.

²⁵² Katarina Tomasevski, 'Has the Right to Education a Future within the United Nations: A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998-2004' (2005) 5 *Human Rights Law Review* 205-237.

²⁵³ Burman & McKay (n.114).

²⁵⁴ Denov & Ricard-Guay (n.99).

²⁵⁵ Girls have played an important role worldwide in historical conflicts although this has been largely undocumented. For example, in 1429 Joan of Arc led an army to victory defeating the English, girls were known to accompany French revolutionary soldiers and stories survive of girls fighting in World War One and in the Mexican Revolution.

²⁵⁶ Dylan E. Mazurana, Susan A. McKay, Christopher C. Carlson & Janel C. Kasper, 'Girls in Fighting Forces and Groups: Their Recruitment, Participation, Demobilization and Reintegration' (2002) 8 *Peace and Conflict: Journal of Peace Psychology* 97-123.

Notably, the international definition of child soldiers from the Cape Town Principles includes girls and accounts for girls serving many roles. It explicitly states that a child soldier is “any person under 18 years of age who is part of any kind of regular or irregular armed force in any capacity. It also includes girls recruited for sexual purposes and forced marriage. It does not therefore only refer to a child who is carrying or has carried arms.”²⁵⁷ In the 2022 UN Secretary-General’s Report it was found that the number of girls who were casualties of war or subject to violence had increased in 2022, whereas the number of violations affecting boy soldiers decreased that year.²⁵⁸

Article 2 of the UNCRC expressly prohibits discrimination of any kind, irrespective of the child’s sex,²⁵⁹ however, in contradiction to the Convention, the difficulties experienced by girls throughout and after the conflict in Sierra Leone was an aspect that was not prioritised by post-conflict justice initiatives. Female child soldiers as a group did not obtain adequate aid in justice-seeking, demobilisation or educational programmes as the post-conflict process was highly gendered, leading to inadequate reintegration of these girls into their communities. Therefore, a crucial flaw of the post-conflict process in Sierra Leone was its treatment of girl soldiers, as the best interests of these children were not the primary consideration, but the secondary consideration, coming after the best interests of boy soldiers.

1. The Truth and Reconciliation Commission

The Sierra Leonean TRC recognised that during the conflict, female child soldiers were the victims of the most brutal violations and abuses. Therefore, the TRC gave girls a voice to speak about their wartime experiences and outlined the necessity for girls to participate in the activities of the Commission to ensure that their voices were heard.²⁶⁰ This is in line with the views of the child principle of juvenile justice, which is set out in the UNCRC. If female child soldiers have a say in the post-conflict programmes that are created to meet their needs this implies that their best interests are looked out for, another principle of juvenile justice.

The recommendations of the Sierra Leonean TRC also aimed to remedy the marginalisation of girl soldiers by addressing the gender-based violence that occurred during the conflict.²⁶¹ The TRC entered into a Project Coordination Agreement with the UN Fund for Women which ensured that gender-based violence was properly accounted for during the Commission’s work and encouraged participation from women’s groups in Sierra Leone. The Commission also recommended that the government make changes to laws pertaining to sexual violence,²⁶² to launch a campaign against customary practices regarding sex with or rape of a minor²⁶³ and that all laws should be repealed that discriminate against women and girls.²⁶⁴ This is evident in section 6(2) of the TRC Act, which stipulated that the Commission should give special attention to the subject

²⁵⁷ *Cape Town Principles* (n.23).

²⁵⁸ United Nations Report of the Secretary-General on the Work of the Organisation 2022

²⁵⁹ UNCRC (n.5), Article 2.

²⁶⁰ Although there was no single body or group representing victims’ interests in Sierra Leone, there are instead various institutions and agencies, both local and international, providing services to women and children victims of the war, and the Commission worked closely with many such organisations. Many of these agencies existed long before the TRC was established and have been documenting violations and abuses, providing psychosocial support services and carrying out school enrolment and training programmes for women and children.

²⁶¹ The Statute of the Sierra Leone TRC was distinctive as it required that the government to “faithfully and timeously implement the recommendations of the report.” See: *Sierra Leone Truth and Reconciliation Commission Report*, Volume 2, Chapter 3 <https://sierraleonetr.com/index.php/view-report-text-vol-1/item/vol-one-chapter-five?category_id=19> accessed 24 July 2023.

²⁶² It also states that “the current laws and procedures discriminate against women and girls,” and lead to a “culture of impunity.” Ibid, paras.330-4.

²⁶³ Ibid, paras.335-8.

²⁶⁴ Ibid, paras.341-6.

of sexual abuse and to the experiences of children in the armed conflict.²⁶⁵ Therefore, the Sierra Leonean TRC respected the 'views of the child' principle of restorative juvenile justice.

2. Demobilisation, Disarmament and Reintegration (DDR) Programmes

The post-conflict reintegration process of DDR for female child soldiers in Sierra Leone was not in line with international restorative juvenile justice principles. Indeed, the inadequate provision of resources for female child soldiers in the Sierra Leonean DDR programme conveys how this post-conflict process failed these girls, as it never took their best interests into consideration. Female child soldiers did not reintegrate into their post-conflict communities as, despite their direct involvement in war, girls have tended to be regarded as 'afterthoughts' during the phases of demobilisation and reconstruction.²⁶⁶ According to UNICEF, DDR programmes routinely underestimated the number of girls involved in armed forces, often not considering women and girls as 'real soldiers,' preferring to focus instead on male soldiers.²⁶⁷ Shockingly, figures from the Women's Commission have shown that in 2002, a year after the end of the Sierra Leonean Civil War, out of a total of 6,900 demobilised children only 529 were girls.²⁶⁸

The DDR programmes were highly gendered as their aim was mostly to reintegrate male adult members of a fighting force who could present their weapons and ammunition. The 'cash for weapons' approach to disarmament whereby soldiers were required to exchange their weapons for financial benefits left girls ineligible for DDR, as many girl soldiers had been forced to hand over their heavy weapons to their male commanders.²⁶⁹ This left girl soldiers with no weapons to give up, no means to be admitted into the programme, and no way to defend themselves.²⁷⁰

Even if girl soldiers were eligible, many girls avoided the DDR programmes to protect themselves and evade further violence. For example, the demobilisation phase which dismantled command structures also reformed accommodation arrangements, and often re-housed girls with their perpetrators as the gendered nature of war was again disregarded. Lahai conducted an interview with a former female combatant who had been abducted by the RUF and stated that she had "fought alongside the top rebels but when the war came to an end, because some of the men who had forced me to have sex with them were in the disarmament camp, I did not go for the DDR process."²⁷¹ This conveys the vast disparity between the programme for male versus female child soldiers.

The reintegration phase aimed to find employment and educational opportunities for former child soldiers, however this was also problematic as opportunities for male combatants were prioritised and the few opportunities provided for girls were highly gendered. For example, women were taught sewing instead of agriculture, causing them to be paid less, to receive fewer opportunities and perpetrating their reliance on others for financial stability.²⁷² The Convention on the Elimination of Discrimination against Women (CEDAW)

²⁶⁵ Ibid, Section 6(2).

²⁶⁶ Denov & MacLure (n.101).

²⁶⁷ UNICEF, 'State of the World's Children Report 2005' <www.unicef.org/media/84801/file/SOWC-2005.pdf> accessed 24 July 2023.

²⁶⁸ Women's Commission for Refugee Women and Children, 'Precious Resources: Adolescents in the Reconstruction of Sierra Leone' (2002) <<https://reliefweb.int/report/sierra-leone/precious-resources-adolescents-reconstruction-sierra-leone>> accessed 24 July 2023.

²⁶⁹ Denov & MacLure (n.101).

²⁷⁰ McKay & Mazurana (n.102).

²⁷¹ John Idriss Lahai, 'Gendering Conflict and Peacebuilding in Sierra Leone' in Seema Shekhawat (ed), *Female Combatants in Conflict and Peace: Challenging Gender in Violence and Post-Conflict Reintegration* (Palgrave Macmillan, 2015), 132-148.

²⁷² Alternatively, women should have been taught to become self-sufficient as their male counterparts were.

is an international legal instrument that requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girl's equal rights.²⁷³ It is apparent that the discrimination faced by female child soldiers during the reintegration processes in Sierra Leone was in contravention of Article 11 of CEDAW, which declares that State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment, such as by providing equal employment opportunities and equal remuneration.²⁷⁴

To conclude, it is overwhelmingly clear that DDR programmes for female child soldiers in Sierra Leone were not in line with international restorative juvenile justice principles and often served to alienate, stigmatise and marginalise girls even further, along with hindering reintegration into their communities. Furthermore, the lack of access of girl soldiers into DDR programmes subsequently prevented their participation in educational programmes that would have vastly improved their circumstances and assisted in reintegration.

3. Educational Programmes

Finally, I will analyse whether educational programmes for female child soldiers in Sierra Leone were in line with international restorative juvenile justice principles. It is clear that education has a vital role in reintegrating former child soldiers back into society, however girls have persistently been the subject of disparities in the engagement of educational programmes in Sierra Leone.

Education programmes for child soldiers invariably form a part of the post-conflict reintegration programmes that comprehensively address diverse needs and issues of the children. However, in Sierra Leone, educational aid was only available to children who had gone through a post-conflict reintegration programme such as the TRC or DDR, thus discriminating against female child soldiers as they were more unlikely to participate in them due to the fact that the programmes were not implemented with the intention of reintegrating girls.²⁷⁵ Therefore, girls who did not attend post-conflict reintegration programmes subsequently also missed out on educational programmes, which would have provided them with essential psychosocial treatment, medical care and facilitated their reintegration.²⁷⁶

An additional aspect of the gendered experience of war which post-conflict processes did not recognise was the fact that girls often had children with their captors as a result of their systematic rape in the bush. If a girl soldier came back pregnant or had already given birth to a so-called 'war baby' or 'rebel baby',²⁷⁷ this would exacerbate her already precarious situation, and prohibit them from participating in post-conflict processes. For example, girls who were pregnant were at a high risk of dropping out of school or, at the very least, falling even further behind their peers. One female former child soldier from Pu-jehun was forced to leave school when she became pregnant and the NGO that had been supporting her would no longer pay her school fees.²⁷⁸

Therefore, the post-conflict education processes for female child soldiers in Sierra Leone were not in line with international restorative juvenile justice principles and were almost non-existent, hindering the reintegration of these girls into their communities. It is clear that gendered cultural norms and practices can

²⁷³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979) 1249 UNTS 13, Article 11(d) ('CEDAW').

²⁷⁴ *Ibid*, Article 11(b).

²⁷⁵ McKay & Mazurana (n.102).

²⁷⁶ This is in contravention of Article 12(1) of the CEDAW, which provides that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care."

²⁷⁷ Ferme (n.86).

²⁷⁸ Betancourt et al (n.40).

prevent girls from attending school, and statistics show that girls in developing countries are far less likely to attend school than boys.²⁷⁹ This is clear from the 2022 UN Secretary-General's Report which stated that "girls education has been undermined by targeted attacks on schools and the denial of schooling."²⁸⁰ This is in contravention to Article 14 of CEDAW which declares that State Parties shall ensure that on a basis of equality between men and women, women have the right to "obtain all types of training and education."²⁸¹

4. Conclusion

To conclude, in Sierra Leone the pursuit of reintegration for girl soldiers was enormously challenging, as gender inequality underpinned the lack of access to post-conflict reintegration processes for them.²⁸² Therefore, the failure of the TRC, DDR programmes and educational programmes to reintegrate girl soldiers in Sierra Leone served to exacerbate the gender inequality between boy soldiers and girl soldiers, as the former were given the tools to reintegrate back into their communities, while the latter were barely given a chance.

Article 12 of the UNCRC sets out the right of a child to express their views, and in my opinion this principle of juvenile justice would have greatly improved the reintegration processes for female child soldiers. Post-conflict processes should take into account the views of former child soldiers and allow children to participate in the creation of the processes that ultimately they will be the participants of. If children do not have a say in the programmes that are supposedly created to meet their needs, their best interests are not being looked out for. This is an indication of the prevailing view of children as individuals who are not fully formed and are therefore not capable of completing rational, far-sighted actions, the absolute opposite of the juvenile justice school of thought. The experiences, opinions and actions of child soldiers are seldom researched and reported, and therefore children are never given a voice nor allowed to explain what it is to be a child under such conditions. This means, according to Downe, that in effect children are seen, but not heard.²⁸³ Conversely, if former child soldiers were to be given the opportunity to speak about their experiences and reasons for participating or not participating in post-conflict processes, this would both give these children their voices back, and greatly improve the post-conflict reintegration processes. Therefore, the post-conflict reintegration processes for female soldiers in Sierra Leone were not in line with international restorative juvenile justice principles, and without programmes that actually contemplate how girls can reintegrate into a post-conflict community after being both victims of atrocity and at times perpetrators of violence, female child soldiers are unwittingly placed in positions of precarity.

F. FINAL CONCLUSION

The use of children in armed conflict is unconditionally prohibited in multiple globally ratified conventions, legal frameworks and international tribunals which forbid the utilisation of child soldiers in hostilities, highlight the significance of rehabilitation for these children and support the role of education in children's

²⁷⁹ UK Department for International Education (DFID), *Girls' Education: Towards a Better Future For All* <www2.ohchr.org/english/issues/development/docs/girlseducation.pdf> accessed 24 July 2023. Years after the Sierra Leonean Civil War, girls are still the least educated sector of the population. Figures show that before the war, only 14 percent of women were literate as opposed to 40 percent of men, and after the war the ratio of literate women to men has barely improved. After the war the literacy rate is 23 percent of women to 51 percent of men literate. See: Park (n.87).

²⁸⁰ UN Secretary-General Report 2022 (n.258)

²⁸¹ CEDAW (n.274), Article 14.

²⁸² Ferme (n.86).

²⁸³ Pamela J. Downe, 'Playing with Names: How Children Create Identities of Self in Anthropological Research' (2001) 43 *Anthropologica* 165-177.

lives. However, the scourge of child soldiery still remains and the participation of children within armed combat is a widespread modern phenomenon.

Throughout this paper I have carried out a comprehensive analysis of juvenile justice and child soldiering in Sierra Leone in a bid to answer my research question: Are the post-conflict reintegration processes for child soldiers in Sierra Leone in line with international restorative juvenile justice principles?

I have analysed the international standards for children in conflict with the law to provide a legal basis for the post-conflict reintegration processes in Sierra Leone, and found that they were in line with restorative juvenile justice principles, particularly the seminal children's rights instrument, the UNCRC. I discovered that many crucial international instruments outlined the vital significance of "promoting the child's reintegration"²⁸⁴ and this led me to analyse three principal post-conflict processes which were implemented to facilitate the reintegration of former child soldiers. The TRC, DDR programmes and educational processes were restorative post-conflict programmes which aimed to reintegrate former child soldiers back into their pre-conflict communities. I investigated whether these reintegration processes were in line with international restorative juvenile justice principles, such as the best interests of the child, the views of the child, child-friendly justice, alternatives to custody and diversion and discovered that each mechanism upheld differing juvenile justice principles. I then explored the processes in regards to both male and female soldiers, whereby the disparities in their treatment by the post-conflict processes are exceedingly evident.

Therefore, to answer the question as to whether the post-conflict reintegration processes for child soldiers in Sierra Leone are in line with international restorative juvenile justice principles, in one sense they were, as all three processes took a restorative juvenile justice approach to reintegrating former child soldiers. The mechanisms successfully diverted the children away from the punitive criminal justice system in line with the diversion principle of restorative juvenile justice and served as an alternative to custody for former child soldiers. Furthermore, the post-conflict processes were created expressly as a child-friendly mechanism for former child soldiers, and were created with juvenile justice principles and the best interests of the child in mind to facilitate their successful reintegration.

However, it is also necessary to consider instances where the post-conflict reintegration processes for child soldiers in Sierra Leone were not in line with international restorative juvenile justice principles. This can be carried out by examining some of the failures of the post-conflict processes, such as the TRC not concentrating sufficiently on reconciliation, the DDR programme's slow-moving pace and the educational programmes lack of resources. When considering these complications from a juvenile justice perspective, it seems that perhaps these processes were not established with the children's best interests as a primary consideration.

Additionally, it is my opinion that throughout all three post-conflict processes girl soldiers were completely overlooked and were "largely and dangerously invisible."²⁸⁵ When analysing the reintegration processes for girls, few juvenile justice standards are applicable due to the unwelcome truth that a negligible number of former girl soldiers were admitted into the programmes. This is in contravention of Article 2 of the UNCRC which protects against discrimination. Subsequently, I believe that by implementing the 'views of the child' principle of juvenile justice both female and male child soldiers could have had vastly improved experiences within justice-seeking, demobilisation and educational programmes and this restorative juvenile justice principle would have facilitated their successful reintegration into post-conflict society.

²⁸⁴ UNCRC (n.5), Article 40(1).

²⁸⁵ Brett (n.6).