

CHILD SOLDIERS AND PEACE AGREEMENTS

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Abstract For societies transitioning from conflict to peace, the phenomenon of child soldiers poses significant challenges. These include quandaries associated with assisting in the reintegration of serving child soldiers, determining how to prevent future recruitment of child soldiers, and pursuing accountability of those who utilize child soldiers. In addition, questions are also raised as to whether and how child soldiers responsible for crimes committed during conflict are to be held to account. While no one mechanism or response can adequately and sufficiently address the multifaceted issues that arise, peace agreements, as foundational documents that serve as the blueprint for peacebuilding and the post-conflict State, can make a useful contribution to some or all of them. Drawing on all references to child soldiers in 77 peace agreements signed between 1990 and 2022, this article examines the ways in which peace agreements address the issue of child soldiers.

Keywords: public international law, human rights, child soldiers, peace agreements, children's rights, peace processes.

I. INTRODUCTION

The precise origins of the use of child soldiers in armed conflict are uncertain. Some accounts document the involvement of children in hostilities as far back as the ancient Greeks.¹ Children certainly featured in conflict during medieval times and both world wars saw children recruited into the ranks of armies.² Nevertheless, it is the increase in civil wars—those typically fought within a country's borders—that has led to a significant expansion in the use and recruitment of child soldiers. Child soldiers pose a particular set of challenges for societies attempting to transition from conflict to peace. Most basically, the recruitment and use of child soldiers must be halted. Estimates suggest that there

¹ SJ Diaz, 'An Elusive Mandate: Enforcing the Prohibition on the Use of Child Soldiers' (2020) 39 *ChildLegalRtsJ* 263.

² AJ Vautravers, 'Why Child Soldiers are Such a Complex Issue' (2008) 27 *RefugeeSurvQ* 96.

are approximately 250,000 child soldiers currently active.³ In all, 55 parties to conflict are identified and listed by the United Nations (UN) Secretary-General as being involved in patterns of recruitment and use of child soldiers,⁴ and, in 2021 alone, the UN verified the recruitment and use of some 6,310 child soldiers.⁵

In many cases, recruitment is forced using violence or the threat of violence to conscript children. In other cases, recruitment is voluntary. Both routes raise dilemmas regarding how to cease the practice; whereas ending forced recruitment necessitates orienting attention to those who compel children to enlist, voluntary recruitment requires understanding and addressing the range of factors that converge to frame recruitment as desirable or plausible. Child soldiers must also be reintegrated back into society. This reintegration process entails, amongst other things, identifying children in armed groups, disarming these children, separating them from adults and the unconditional and immediate release of children associated with armed forces and groups.⁶ Reintegration might also require efforts to rehabilitate children, which owing to the impacts of conflict, can include providing physical, social and psychological support. There are also issues relating to accountability. Most obviously, that the use and recruitment of children can constitute a violation of international human rights, international criminal law, the laws of war and often domestic law requires accountability for those who recruit and use children in conflict.⁷ In addition, while the tendency has been to treat child soldiers primarily as victims, there is an emerging corpus of literature that advocates the need to understand better the nuances and complexities associated with the concept of a child soldier, arguing, as part of this, that prosecution of children for their crimes may sometimes be appropriate.⁸

While no one mechanism or response can adequately and sufficiently address or resolve these matters, peace agreements, in theory, can make a useful contribution. As documents created to end violence, address the past, and pave the way for a more peaceful and inclusive society, peace agreements are

³ Joel, 'Child Soldiers Returned to Families' (PeaceDirect, 26 February 2009) <<https://www.peacedirect.org/child-soldiers/>>.

⁴ Office of the Special Representative of the Secretary-General for Children and Armed Conflict (OSRSG CAAC), 'Questions and Answers on the Recruitment and Use of Child Soldiers' (6 February 2023) <<https://childrenandarmedconflict.un.org/2023/02/questions-and-answers-on-the-recruitment-and-use-of-child-soldiers2/>>.

⁵ UN General Assembly and UN Security Council, 'Children and Armed Conflict: Report of the Secretary-General' (23 June 2022) UN Doc A/76/871-S/2022/493 (Report of the Secretary General).

⁶ UN Disarmament, Demobilization and Reintegration Centre, 'DDR: Integrated Disarmament, Demobilization and Reintegration Standards. Module 5.20: Children and DDR' (2019) <<https://www.unddr.org/wp-content/uploads/2023/03/IDDRS-5.20-Children-and-DDR.pdf>>.

⁷ See, eg, K Chapman and H Stevenson Doombos, *Child Soldiers: A Global Recruitment Index* (World Vision, 2019) <https://www.wvi.org/sites/default/files/Child%20Soldiers%20v4_0_0.pdf>.

⁸ See Section III.C.

abundant with opportunities to respond to the various facets of child soldiers in times of transition. This potential is recognized and reflected in numerous policy documents, guidelines, civil society reports and UN Security Council Resolutions.⁹ Yet, existing literature on child soldiers in peace agreements is relatively scant. Where it exists at all, the preoccupation is often on the relative omission of provisions addressing child soldiers, with no systematic and wide-ranging effort to document how child soldiers have been addressed in peace agreements, and the lessons that might be gleaned for how best to include provisions on child soldiers in the future.¹⁰ In all, 252 peace agreements signed between 1990 and 2022 address children specifically. Of these, 77 refer directly to child soldiers, constituting a total of 189 provisions on child soldiers. Drawing on this dataset and using the lessons from existing provisions, this article begins to contemplate what that inclusion ought to look like.

The article is set out as follows. Section II unpacks what is meant by peace agreements, demonstrating their relationship with the wider peace process and post-conflict State more generally. Section III then sketches the ways in which peace agreements have addressed the issue of child soldiers. The categories discussed include: halting recruitment and use of child soldiers; disarmament, demobilization and reintegration (DDR); and accountability. As these provisions are uncovered, reference is made to the relevant literature to help situate the potential relevance of peace agreement provisions to each respective topic. Section IV then considers some of the challenges and limitations associated with how child soldiers are currently addressed in peace agreements, before a number of conclusions are offered in Section V.

II. PEACE AGREEMENTS: MOMENTS OF OPPORTUNITY FOR CHILD SOLDIERS?

Peace agreements, broadly stated, refer to the ‘codification of the terms of settlement between some or all conflict parties for the purpose of ending conflict between them’.¹¹ While there are different types of agreement,¹² collectively they can be understood to pursue three distinct but necessarily interrelated objectives—one immediate, one retrospective and one future-

⁹ See Section II.

¹⁰ One notable exception is the Checklist for Drafting Children and Armed Conflict Provisions in Ceasefire and Peace Agreements developed by the non-governmental organization Watchlist on Children and Armed Conflict. The Checklist was launched during the 71st UN General Assembly’s Rights of the Child Days, with the Permanent Missions of Canada and Finland to the UN as co-hosts: Watchlist on Children and Armed Conflict, ‘Checklist for Drafting Children and Armed Conflict Provisions in Ceasefire and Peace Agreements’ (2016) <https://peacemaker.un.org/sites/peacemaker.un.org/files/Watchlist_ProvisionsChildrenArmedConflict-PeaceAgreements_2016.pdf>.

¹¹ R Forster, ‘Peace Agreements’ in S Romaniuk, M Thapa and P Marton (eds), *The Palgrave Encyclopedia of Global Security Studies* (Palgrave MacMillan 2019).

¹² See C Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP 2008).

oriented. In the immediate term, peace agreements are used to stop conflict and with it the human rights violations that inevitably accompany war. Peace agreements are also backwards looking in that they attempt to address the underlying causes of conflict that led or contributed to the onset of violence in the first place. In addressing the past, peace agreements ‘outline the multifaceted policy reforms to be implemented in the post-conflict years, such as the resolution of grievances, power and resource sharing, autonomy, disarmament, security sector reform, and other issues’.¹³ This retrospective engagement is also a future-oriented one; in looking backwards and seeking to understand the underlying bases of a conflict, the objective is to build a sustainable peace for the future. For this reason, Chinkin contends that ‘[t]he notion of a peace agreement or settlement as a pivotal moment for determining the future constitutional and legal framework of a post-conflict zone has become dominant’.¹⁴ Chinkin’s characterization of peace agreements as ‘pivotal moments’ reflects other descriptions such as ‘windows of opportunity’, ‘critical junctures’ or ‘constitutional moments’.¹⁵

It is this potential of peace agreements to balance a series of aims that are immediate, backward, and forward looking that renders them so important and the hope that they bring for an end to violence and a prosperous and peaceful future so appealing. It is perhaps unsurprising then that peace agreements have been earmarked as salient components in the wider efforts to respond to the issue of child soldiers as part of war-to-peace transitions. Brett and McCallin argue that the participation of children in conflict must be recognized in peace agreements and related documents, and, conversely, that their needs are not neglected and are incorporated as a matter of principle in plans for demobilization, rehabilitation and social reintegration.¹⁶ The Child Soldier Coalition assesses that peace accords themselves may further compound the situation of child soldiers when they do not contain provisions acknowledging their existence.¹⁷ Reflecting the importance attached to peace agreements, the 1996 Machel Report by an expert of the UN Secretary-General on the ‘Impact of armed conflict on children’ recommended that:

¹³ J Karreth et al, ‘International Third Parties and the Implementation of Comprehensive Peace Agreements After Civil War’ (2023) 67(2–3) *JConflictResol* 494, 495–6.

¹⁴ C Chinkin, ‘Lecture: Gender, Human Rights, and Peace Agreements’, Schwartz Lecture on Dispute Resolution at The Ohio State University Moritz College of Law (delivered 19 September 2002) 867 <<https://core.ac.uk/download/pdf/159559967.pdf>>.

¹⁵ See, eg, C Bell and K Zulueta-Fülscher, *Sequencing Peace Agreements and Constitutions in the Political Settlement Process*, Policy Paper No 13 (International Institute for Democracy and Electoral Assistance 2016); A Ozelik and T Olcay, ‘(Un)constitutional Change Rooted in Peace Agreements’ (2020) 18 *ICON* 1373; L Nathan, ‘The Real Deal? The Post-Conflict Constitution as a Peace Agreement’ (2020) 41 *TWQ* 1556.

¹⁶ R Brett and M McCallin, *Children: The Invisible Soldiers* (RäddaBarnen 1996).

¹⁷ Child Soldiers Coalition, ‘The Rights of Children Used as Soldiers: Good on Paper, Denied in Practice’ (ReliefWeb, 20 November 2003) <<https://reliefweb.int/report/world/rights-children-used-soldiers-good-paper-denied-practice>>.

All peace agreements should include specific measures to demobilize and reintegrate child soldiers into society. There is an urgent need for the international community to support programmes, including advocacy and social services programmes, for the demobilization and re-integration into the community of child soldiers.¹⁸

In response, the UN Security Council, in its resolutions on children involved in armed conflicts, adopted the provisions contained in the report and directed all the parties involved to ensure that the protection, rights and well-being of children affected by armed conflict are specifically integrated into all peace processes, peace agreements and post-conflict recovery and reconstruction planning and programmes. For example, UN Security Council Resolution 1314 (2000) '[r]equests parties to armed conflict to include, where appropriate, provisions for the protection of children, including the disarmament, demobilization and reintegration of child combatants, in peace negotiations and in peace agreements ...'.¹⁹ Similarly, UN Security Council Resolution 1379 (2001) calls upon all parties to armed conflict to '[p]rovide protection of children in peace agreements, including, where appropriate, provisions relating to the disarmament, demobilization, reintegration and rehabilitation of child soldiers and the reunification of families'.²⁰ Similar provisions can be found in UN Security Council Resolution 1612 (2005),²¹ UN Security Council Resolution 2143 (2014),²² UN Security Council Resolution 2225 (2015)²³ and UN Security Council Resolution 2427 (2018), as examples.²⁴

Peace agreements are, in other words, recognized as critical components in the wider efforts required to address the child soldier phenomenon during war-to-peace transitions. Despite this, existing scholarship on the relationship between the two is relatively scant, demonstrating a disconnect between the normative claims for inclusion and the available evidence on how the materialization or lack of that ambition is realized. Much of the literature that does exist identifies and laments exclusion. Happold, for instance, identifies that agreements predating the Machel Report did not acknowledge child soldiers and their needs at all.²⁵ Mukhar concurs that '[w]hen an armed conflict is resolved with a treaty, the needs of children in general and child soldiers

¹⁸ UN General Assembly, 'Impact of Armed Conflict on Children: Report of the Expert of the Secretary-General, Ms. Graça Machel, Submitted Pursuant to General Assembly Resolution 48/157' (26 August 1996) UN Doc A/51/306 (Machel Report) para 62.

¹⁹ UN Security Council Res 1314 (2000) (11 August 2000) UN Doc S/RES/1314 (2000), para 11.

²⁰ UN Security Council Res 1379 (2001) (20 November 2001) UN Doc S/RES/1379 (2001), para 8(e).

²¹ UN Security Council Res 1612 (2005) (26 July 2005) UN Doc S/RES/1612 (2005), para 14.

²² UN Security Council Res 2143 (2014) (7 March 2014) UN Doc S/RES/2143 (2014), para 9.

²³ UN Security Council Res 2225 (2015) (18 June 2015) UN Doc S/RES/2225 (2015), para 9.

²⁴ UN Security Council Res 2427 (2018) (9 July 2018) UN Doc S/RES/2427 (2018), paras 3, 22, 23.

²⁵ M Happold, *Child Soldiers in International Law* (Manchester University Press 2005) 111–12.

specifically are rarely addressed in the peace agreement'.²⁶ She also concludes that '[d]espite increased international awareness and attention to children's rights since the 1990's, child soldiers are still being largely overlooked in peacemaking and peacekeeping processes'.²⁷ Others focus on the barriers to inclusion. For instance, one reason offered for the relative omission of child soldiers in peace agreements is that inclusion depends on 'the political will and resources to include child soldiers in peace agreements and demobilization programs and to support their reintegration into family and community'.²⁸ In other words, parties to a conflict are often reluctant to admit formally that they have recruited and used child soldiers, leading to what Karanja terms 'a conspiracy of silence'.²⁹

To this end, scholars contemplate how to overcome these challenges. Advocating for early inclusion is promoted so that the 'the problem, which is otherwise hidden, can be made visible'.³⁰ This early advocacy, Verhey notes, is essential to generate political attention and commitment to child soldiers.³¹ Others focus on constituents that can influence negotiations in order to advocate for the inclusion of provisions on child soldiers. As an example, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict (OSRSG CAAC) in partnership with the Department of Political and Peacebuilding Affairs, the Department of Peace Operations, the UN International Children's Emergency Fund (UNICEF) and other stakeholders have produced a guidance document for mediators.³² This guidance exists 'to assist mediators in their consideration of child protection issues' including child soldiers.³³ The UN's operational guide to integrated DDR standards (IDDRS) as it relates to children³⁴ and Integrated Disarmament, Demobilization and Reintegration Standards on Children and DDR also include detailed guidelines for the inclusion of child soldiers in peace agreements to assist those negotiating war's end.³⁵ Some focus on strategies. For instance, the tactic of naming and shaming countries where child soldiers are being used is often promoted, sending an 'unequivocal message to the parties concerned that they will be held accountable for their

²⁶ R Mukhar, 'Child Soldiers and Peace Agreements' (2014) 20(1) *AnnSurvIntl&CompL* 73, 74. ²⁷ *ibid* 87.

²⁸ B Verhey, 'Child Soldiers: Preventing, Demobilizing and Reintegrating' (2001) World Bank Africa Region Working Paper Series No 23 <<https://people.umass.edu/~educ870/PostConflict/resources/ChildSoldiers-BVerhey.pdf>>.

²⁹ SK Karanja, 'Child Soldiers in Peace Agreements: The Peace and Justice Dilemma!' (2008) 8 (3) *GlobJurist*, article 9. ³⁰ *ibid*. ³¹ Verhey (n 28) 6.

³² See OSRSG CAAC, *Practical Guidance for Mediators to Protect Children in Situations of Armed Conflict* (UN, February 2020) <<https://childrenandarmedconflict.un.org/wp-content/uploads/2020/02/REVISED-19.02.2020-Practical-guidance-for-mediators-to-protect-children-in-situations-of-armed-conflict.pdf>>. ³³ *ibid* 17.

³⁴ UN, *Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards* (UN 2014) <<https://www.unddr.org/wp-content/uploads/2020/06/Operational-Guide-to-the-IDDRS-2014.pdf>>.

³⁵ UN Disarmament, Demobilization and Reintegration Centre (n 6).

actions'.³⁶ The discussion around who should be involved in championing the inclusion of child soldiers in peace agreements opens a swathe of potential interlocutors. As examples, different treaty bodies like the Human Rights Committee³⁷ or the Committee on the Rights of the Child³⁸ can and have issued recommendations to State parties to address child soldiers, as have countries participating in the Universal Periodic Review Process of the Human Rights Council.³⁹

These contributions are all critically important. Yet, much of the existing corpus of literature paints, at best, only a partial picture of how peace agreements have included provisions on child soldiers. Mukhar's work examines only a limited number of peace agreements, focusing primarily on the Democratic Republic of Congo (DRC) as a case study. Indeed, the empirical aspects of this work—namely how peace agreements have addressed child soldiers—span only six pages. Happold's study is confined to five agreements, namely the 1999 Lomé Peace Agreement in Sierra Leone, the Sudan/Uganda 1999 Agreement, the DRC 1999 Lusaka Ceasefire Agreement, the Burundi 2000 Arusha Peace and Reconciliation Agreement and the Liberia 2003 Peace Agreement. Verhey's research uses Angola and El Salvador as case studies while Karanja's work relies on existing studies—namely those of Happold and Verhey. In any event, these studies do not reflect more recent developments. Verhey's contribution dates from 2001. Brett and McCallan's is from 1998. Cohn's contribution was published in 1999.⁴⁰ Happold's is from 2005, while Mukhar's—the most recent contribution to the discussion—was published in 2014.

It is argued here that not only have studies to date not fully examined the totality of child soldier provisions in peace agreements, but also that focusing only on the deficit of provisions addressing child soldiers, while effective in demonstrating the need for subsequent inclusion, says little about what that inclusion might look like, the issues to address, the language used and the ways and means by which these provisions might be implemented. The next

³⁶ Karanja (n 29) 8.

³⁷ See, eg, recommendations issued by the Committee to the Central African Republic: Human Rights Committee, 'Concluding observations on the third periodic report of the Central African Republic' (30 April 2020) UN Doc CCPR/C/CAF/CO/3, para 29.

³⁸ See, eg, recommendations issued by the Committee to Sri Lanka and Myanmar: Committee on the Rights of the Child, 'Concluding observations on the combined fifth and sixth periodic reports of Sri Lanka' (2 March 2018) UN Doc CRC/C/LKA/CO/5-6, para 47; Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention' (14 March 2012) UN Doc CRC/C/MMR/CO/3-4, para 81.

³⁹ See, eg, recommendations issued to Colombia by Uruguay, Austria and Slovenia: Human Rights Council, 'Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Colombia' (9 January 2009) UN Doc A/HRC/10/82, para 19. Also see recommendations issued to South Sudan by the Maldives: Human Rights Council, 'Report of the Working Group on the Universal Periodic Review' (28 December 2016) UN Doc A/HRC/34/13, para 128.57.

⁴⁰ I Cohn, 'The Protection of Children in Peacemaking and Peacekeeping Processes' (1999) 12 *HarvHumRtsJ* 129.

section unpacks how peace agreements address child soldiers before critically analysing the potential drawbacks associated with current constructions of provisions on child soldiers.

III. PEACE AGREEMENT REFERENCES TO CHILD SOLDIERS

The discussion below maps peace agreement provisions on child soldiers before considering some of the reasons for the relative omission of consideration of child soldiers in peace agreements. The topics addressed are: recruitment and use; DDR; and accountability. This overview will serve as the basis for considering the limitations of how peace agreements have addressed child soldiers.

A. Halting Recruitment and Use of Child Soldiers

Children are targeted for recruitment into both State- and non-State-based armed groups for a variety of reasons. Some suggest that children are considered particularly desirable recruits because they are more easily intimidated and physically vulnerable than adult soldiers.⁴¹ There are those who see children as ‘expendable, replaceable – and ... cheap to maintain’.⁴² Others claim that armed groups recruit children because they are more militarily effective, or because the use of children as soldiers produces psychological complexities that can potentially slow down opposing troops.⁴³ Achieving an organization’s immediate and long-term transgenerational goals is another reason offered for the recruitment of child soldiers.⁴⁴ As noted in the Machel Report, child soldiers are recruited in many ways.⁴⁵ In some instances, children are forced to join both State and non-State armed groups. Coercion can take the form of threats against the child’s life or physical safety. For instance, children are often beaten into submission, or the lives of family members are used as leverage.⁴⁶ Sometimes, recruitment takes place in situations where the same group seeking to enlist children has also been responsible for the murder of their family. Indeed, such is the brutality that child soldiers endure that other groups require that the children themselves kill their family members as a rite of passage.⁴⁷

⁴¹ N Grossman, ‘Rehabilitation or Revenge: Prosecuting Child Soldiers for Human Rights Violations’ (2006–2007) 38 *GeoIntnlL* 323, 327.

⁴² ACCORD, ‘Conflict Trends 2016/2: Understanding the Recruitment of Child Soldiers in Africa’ (16 August 2016) <<https://www.accord.org.za/conflict-trends/understanding-recruitment-child-soldiers-africa/>>.

⁴³ R Haer and T Böhmelt, ‘The Impact of Child Soldiers on Rebel Groups’ *Fighting Capacities*’ (2016) 33 *ConflictMgmtPeaceSci* 153.

⁴⁴ C Nyamutata, ‘Young Terrorists or Child Soldiers? ISIS Children: International Law and Victimhood’ (2020) 25 *JC&SL* 237.

⁴⁶ Report of the Secretary General (n 5).

⁴⁷ M Wessells, *Child Soldiers: From Violence to Protection* (Harvard University Press 2006) 144. Also see J Briggs, *Innocents Lost: When Child Soldiers go to War* (Basic Books 2005) 4.

Preventing future recruitment is an issue that should be addressed in peace agreements. To this end, there are 43 references to the recruitment of child soldiers in peace agreements with varying levels of detail and commitment. Most basically, peace agreements can make general and generic references to recruitment, often expressed in terms of concern over 'the recruitment and use of child soldiers in armed conflicts'.⁴⁸ Peace agreements can also constitute commitments between the parties to abstain from further recruitment. An agreement in Burundi between the Government of Burundi and the National Forces of Liberation (PALIPEHUTU-FNL) mutually obliged the parties to '[a]bstain from all actions that might be perceived as fresh recruitment drives, particularly among children'.⁴⁹ Similarly, an agreement in the DRC commits 'belligerent parties' to '... abstain from ... recruiting children as soldiers'.⁵⁰

Often, recruitment is included as a term in ceasefire agreements, with recruitment in turn constituting a ceasefire violation.⁵¹ On a number of occasions, peace agreements are used to reassert prior commitments to refrain from recruiting child soldiers. As an example, an agreement in Colombia reiterates the prior commitment of the Revolutionary Armed Forces of Colombia (FARC-EP) 'to comply with their decision to end the recruitment of minors under 18 years old'.⁵² Similarly, a peace agreement in the Central African Republic (CAR) opens with the following:

Bearing in mind the pledge of 5 May 2015, signed by the politico-military groups that participated in the Bangui Forum, to end the recruitment and use of children and other serious violations of the rights of the child.⁵³

Beyond recruitment, peace agreements can also attempt to prohibit the use of child soldiers, which is particularly important for child soldiers already existing in the ranks of armed groups. In most examples, the use of child soldiers is included alongside commitments on recruitment. For instance, the Accord de Cessez-le-Feu in Cote d'Ivoire commits parties to the agreement

⁴⁸ Angola/Burundi/Central African Republic/Democratic Republic of Congo/Kenya/Republic of Congo/Rwanda/Sudan/Tanzania/Uganda/Zambia (African Great Lakes), Dar-Es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region (20 November 2004) preamble.

⁴⁹ Burundi, Magaliesburg Declaration on the Burundi Peace Process (10 June 2008) 2.

⁵⁰ DRC, Déclaration de principe des parties aux négociations de Libreville sur la crise Centrafricaine (11 January 2013) art 1.

⁵¹ See, eg, Central African Republic, Accord de cessation des hostilités en République Centrafricaine (Brazzaville Agreement on Cessation of Hostilities) (23 July 2014) art 2; Democratic Republic of Congo, Ceasefire Agreement (Lusaka Agreement) (10 July 1999) art 1; South Sudan, Agreement on the Cessation of Hostilities, Protection of Civilians and Humanitarian Access, Republic of South Sudan (21 December 2017) art 3.

⁵² Colombia, Joint Communiqué #70 (15 May 2016) para 3.

⁵³ Central African Republic, Agreement between the Transitional Government and the armed groups on the principles of disarmament, demobilization, reintegration and repatriation and of integration into the uniformed State forces of the Central African Republic (DDRR Agreement) (10 May 2015) Preamble.

to refrain from the recruitment and deployment of child soldiers.⁵⁴ Prohibitions on the use of child soldiers are also often included as a ceasefire violation,⁵⁵ while other peace agreements include a specific right on the part of children to be protected from use in armed conflict. As an example, the 2000 Arusha Peace and Reconciliation Agreement in Burundi states under its Charter of Fundamental Rights section that '[n]o child shall be used directly in armed conflict, and children shall be protected in times of armed conflict'.⁵⁶

In the examples above, attention is primarily directed at those recruiting or using child soldiers. Implicit here is an assumption that children are coerced or forced to join an armed group. Yet, although forced recruitment is recognized as a primary reason for children joining armed groups, it is not the only one. Children in armed groups also enter armed forces for reasons that cannot be explained by, at least directly, coercion or force.⁵⁷ Often, the reasons are multifaceted. For instance, Grétry's research found that 'in most cases, forced enlistment is not the way a child soldier joins the army'.⁵⁸ Her study compared the representations of adults involved in the arena of 'children in difficult situations' with that of former child soldiers. She assessed that while the former group holds the view that children tend to be forced into armed groups, former child soldiers highlighted escaping poverty within the family, gaining military protection against other rebel groups by joining up, and being proud to wear a military uniform as some of the reasons for joining.⁵⁹ In a similar vein, Somasundaram cites the brutality of war and desire for retribution, institutionalized violence that children suffer, and deprivation.⁶⁰ Lysyuk differentiates between the socio-economic and individual reasons motivating children to join armed groups. Socio-economic pulls include repressive conditions of the State, duration of armed conflict and level of the State's economic development.⁶¹ At the individual level, Lysyuk points to, amongst other things, variations in the relevance of the

⁵⁴ Cote d'Ivoire, Accord de Cessez-le-Feu (3 May 2003) para 5.

⁵⁵ Burundi, Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu – FNL (7 September 2006) art 2.

⁵⁶ Burundi, Arusha Peace and Reconciliation Agreement for Burundi (28 August 2000) 26–8, Protocol II: Democracy and Good Governance provides, Ch I: Constitutional Principles on the Post-Transitional Constitution, art 3.

⁵⁷ R Brett, 'Girl Soldiers: Challenging the Assumptions' (Quaker United Nations Office 2002) <<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=30b7d6a22daa407421773b47dd485ebf89038561>>; R Brett and I Specht, *Young Soldiers: Why They Choose to Fight* (Lynne Rienner Publishers 2004); S Reich and S Gates, *Child Soldiers in the Age of Fractured States* (University of Pittsburgh Press 2010); C Downing, 'Child Recruitment to Illegal Armed Groups in Colombia: Peacebuilding and Development Challenges' (2014) 9 *JPeacebuildingDev* 33.

⁵⁸ L Grétry, 'Child Soldiers: Our Representation Challenged by Their Reality' (2011) 31 *IntlJSociolSocPol* 583, 588.

⁵⁹ *ibid* 588.

⁶⁰ D Somasundaram, 'Child Soldiers: Understanding the Context' (2002) 324(7348) *BMJ* 1268.

⁶¹ M Lysyuk, 'The Responsibility of Child Soldiers for War Crimes' in *Teisinės minties šventė* (Mykolo Romerio universitetas 2022) 39 <<https://cris.mruni.eu/cris/entities/publication/c5c08b43-b181-499b-b602-decb9844f494/details>>.

family—in some cases, children might be encouraged to join armed groups as a form of rebellion against parents or because of encouragement from family members.⁶² Relatedly, peer pressure from friends can be a motivating factor.⁶³

Two points are important here. The first is that factors, such as peer and family pressure, poverty, hunger and a deficit of alternatives, highlight that while a child's view might be 'voluntary', it need not necessarily be free.⁶⁴ That is to say, the wider environment and relational webs within which a child exists might shape the inevitability of joining armed groups. Such insights have been made regarding a child's agency and the important bearing that the wider set of circumstances and relationships have on it.⁶⁵ Second, and most relevant for present purposes, when the existence of child soldiers is understood not only to be a consequence of forced recruitment but rather issues that relate to that wider environment, ending or reducing recruitment of children also necessitates tackling those matters that are much broader than the issue of child soldiers.

To this end, peace agreement provisions beyond those that directly target child soldiers might also be indirectly relevant. For one, the primary objective of a peace agreement is to end armed conflict. If the incidence of child soldiers is driven, in part, by the need to maintain numbers then removing conflict can have the effect of limiting the need for child soldiers. Second, and as previously noted, peace agreements also attempt to address the underlying causes that led to conflict in the first place. Although each conflict is different with the specific issues addressed varying from context to context, peace agreements can include provisions targeting such issues as economic reform, education, health, security sector reform and rule-of-law reform. If, as some suggest, the wider socio-economic environment is often a contributing factor, in attempting to address inequality, marginalization and economic opportunity, the wider package of reforms might also have a bearing on the decision of children to join armed groups.

B. Disarmament, Demobilization and Reintegration

Alongside preventing the recruitment and use of child soldiers, transitioning from conflict to peace also requires reintegrating child soldiers back into society. DDR entails, amongst other things, identifying children in armed groups, disarming these children, separating them from adults and the unconditional and immediate release of children associated with armed forces and groups.⁶⁶ Moreover, conflict can also have a devastating impact on child

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ G Maio et al, 'What Are the Drivers of Children's Decision to Enlist in Armed Groups? A Case Study from Antioquia, Colombia' in J Muraszkievicz, T Fenton and H Watson (eds), *Human Trafficking in Conflict Context, Causes and the Military* (Palgrave Macmillan 2020) 102.

⁶⁵ See T Abeb, 'Reconceptualising Children's Agency as Continuum and Interdependence' (2019) 8 SocSci 81.

⁶⁶ UN Disarmament, Demobilization and Reintegration Centre (n 6).

soldiers. Indeed, for Lysyuk, “[v]ictimization” embraces the scope of violence faced by children while being in armed forces and groups. This could include sexual assault, the loss of close ones or hometown, physical injuries, or psychological harm caused by the surrounding military environment.⁶⁷ Research demonstrates that children often go through processes of indoctrination and severe abuse intended to maintain control over them.⁶⁸ Similarly, their participation, apart from putting their lives at risk, ‘deprives them of the warmth of family life, disintegrates them from their home communities, compromises their personal and professional future, and creates serious distortions on a psychological and moral level’.⁶⁹ The Global Coalition for Reintegration of Child Soldiers states that:

The recruitment and use of children exposes them to serious harm that can cause life-long damage to their physical and psychological health. There are also challenges for children upon their release—reforming identities and social roles within a civilian rather than military framework and adjusting to life in communities that are also likely to have been affected by the armed conflict and may also have experienced change.⁷⁰

Peace agreements can and many argue should address DDR of children. Indeed, comparing Salvadoran and Angolan peace agreements, Verhey assesses that ‘the exclusion of child soldiers in the Salvadoran peace process hindered their reintegration, engendered resentment, and left them socially and economically marginalised’. By contrast, in ‘Angola, a formal resolution prioritising child soldiers proved essential to achieving their demobilisation’.⁷¹ Similarly, Cohn assesses that ‘[p]eace processes are the only opportunity to ensure that the distinctive situation of child soldiers is addressed during demobilization and reintegration’.⁷² For Karanja, it follows that the inclusion of child soldiers and their needs in peace agreements evidently contributes to successful demobilization and reintegration.⁷³

Against this backdrop, 41 peace agreements touch upon, to varying degrees, the issue of child-focused DDR. Some examples demonstrate tertiary efforts to begin a process of discussing the issue. For instance, an agreement in Comoros establishes a Tripartite Committee for National Reconciliation and tasks it with initiating ‘a sub-committee in charge of the collection of arms and of the

⁶⁷ Lysyuk (n 61).

⁶⁸ A Almohammad, ‘ISIS Child Soldiers in Syria: The Structural and Predatory Recruitment, Enlistment, Pre-Training Indoctrination, Training, and Deployment’ (International Centre for Counter-Terrorism, 19 February 2018) <<https://www.icct.nl/publication/isis-child-soldiers-syria-structural-and-predatory-recruitment-enlistment-pre-training>>.

⁶⁹ L Banholzer and Haer, ‘Attaching and Detaching: The Successful Reintegration of Child Soldiers’ (2014) 6 JDevEff 111.

⁷⁰ Global Coalition for Reintegration of Child Soldiers, *Reframing Child Reintegration From Humanitarian Action to Development, Prevention, Peacebuilding and Beyond* (2021) 3 <<https://childrenandarmedconflict.un.org/wp-content/uploads/2021/07/Reframing-Child-Reintegration.pdf>>.

⁷¹ Verhey (n 28).

⁷² Cohn (n 40) 135.

⁷³ Karanja (n 29).

reintegration of young people'.⁷⁴ In Mali, parties to an accord agreed only to '[e]nter into dialogue with armed groups in order to agree on a negotiated outcome for young people who have laid down arms'.⁷⁵ Similarly, an agreement in the DRC merely reflects upon the need to account for the specific needs of women, young persons and children in each phase of the DDR process.⁷⁶ Other agreements isolate specific aspects of the DDR process. For instance, some address the issue of identifying child soldiers in the ranks of non-State armed groups,⁷⁷ separating child soldiers from adult soldiers,⁷⁸ releasing child soldiers⁷⁹ and protecting children during the DDR process.⁸⁰ Peace agreements can stipulate specific time frames. For instance, an agreement in South Sudan/Sudan commits parties to the demobilization of all child soldiers within six months of the signature of the Comprehensive Peace Agreement and '[t]he identification and registration within six months from the signature of the Comprehensive Peace Agreement of all children separated from their families for family tracing and ultimate reunification'.⁸¹

In most cases, children are included in pre-existing DDR programmes, often those that deal primarily with adults under peace agreements. In Liberia, for instance, the 2003 Accra Agreement stipulates that the National Transitional Government of Liberia shall 'accord special attention to the issue of child combatants'.⁸² This includes efforts to 'mobilize resources with the assistance of the International Community ... to address their special demobilization and re-integration needs'.⁸³ In the CAR, an agreement states '[t]he eligibility criteria for participation in the disarmament, demobilization, reintegration and repatriation programme' include '[c]hildren associated with armed forces and

⁷⁴ Comoros/Anjouan, General Agreement on National Reconciliation (Fomboni Agreement) (17 February 2001) 3.

⁷⁵ Mali, Agreement between the Dogon, Dafing and Fulani communities in the communes of Diarrassagou, Koulogon Habe, Lassagou Habe, Segue, Soubala, Sokoura and Tori (7 February 2021) 4.

⁷⁶ Democratic Republic of Congo, Accord Cadre pour la Paix en Ituri entre le Gouvernement de la République Démocratique du Congo et les Groupes Armés de l'Ituri (MRC, FNI, et FRPI) (29 November 2006) 2.

⁷⁷ Democratic Republic of Congo, Outcome Documents from the Conclusion of the Kampala Dialogue between the Government of the Democratic Republic of the Congo and the M23 (12 December 2013) para 17.

⁷⁸ Burundi, Déclaration du Directoire Politique du processus de paix au Burundi sur le processus de mise en oeuvre des décisions conjointes prises à Pretoria (8 April 2009) 1.

⁷⁹ South Sudan, Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) (17 August 2015).

⁸⁰ Central African Republic, Pacte Républicain pour la paix, la réconciliation nationale et la reconstruction en la République Centrafricaine (11 May 2015); Democratic Republic of Congo, Accord Cadre pour la Paix en Ituri entre le Gouvernement de la République Démocratique du Congo et les Groupes Armés de l'Ituri (MRC, FNI, et FRPI) (29 November 2006).

⁸¹ South Sudan/Sudan, Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Army/Sudan People's Liberation Movement (Naivasha Agreement) (9 January 2005) 130.

⁸² Liberia, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties (Accra Agreement) (18 August 2003) art XXXI.

⁸³ *ibid.*

groups ... whether or not they have weapons'.⁸⁴ Sometimes peace agreements are used as the mechanism to expand the scope of a programme. For instance, an agreement in Mali includes a request to expand the existing DDR programme to 'include local armed youth'.⁸⁵

Peace agreements can also task specific actors with supporting the implementation of provisions on child-focused DDR. For instance, an agreement in the DRC commits parties to '[a]ccept to the immediate and unconditional presence of child protection agencies at the regroupment points in order to identify and take into care any children so identified'.⁸⁶ The Lomé Accord in Sierra Leone commits to inviting the Office of the UN Special Representative for Children in Armed Conflict, UNICEF and other agencies to address the special needs of these children in the existing disarmament, demobilization and reintegration processes.⁸⁷ The International Committee of the Red Cross (ICRC) is also mentioned in a number of agreements,⁸⁸ as are regional organizations like the African Union.⁸⁹ Local-level agreements can draw on local-level actors to support DDR. For instance, an agreement in Kenya, for instance, notes '[t]hat the Council of Elders shall, among others, lead the disarmaments, demobilization and rehabilitation initiatives of the young men in militia groups occupied by the three communities'.⁹⁰ In other cases, mechanisms tasked with overseeing the implementation of an agreement or aspects of the agreement are engaged. This can be the national government as is the case in Liberia,⁹¹ or some specific mechanism established as part of the agreement. In the DRC, for example, the Transitional Security Arrangements Implementation Mechanism (TSAIM) was a temporary structure 'responsible for coordinating the implementation of all Transitional Security Arrangements activities until the M23 combatants are

⁸⁴ Central African Republic, Agreement between the Transitional Government and the armed groups on the principles of disarmament, demobilization, reintegration and repatriation and of integration into the uniformed State forces of the Central African Republic (DDRR Agreement) (10 May 2015) art 3.

⁸⁵ Mali, Agreement between the Dafing, Samogo, Fulani, Dogon and Bozo communities of the Baye municipality, located in the area ('circle') of Bankass and the region of Mopti (Baye Agreement) (25 July 2019) 3.

⁸⁶ Democratic Republic of Congo, Accord Cadre pour la Paix en Ituri entre le Gouvernement de la République Démocratique du Congo et les Groupes Armés de l'Ituri (MRC, FNI, et FRPI) (29 November 2006).

⁸⁷ Sierra Leone, Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) (Lomé Agreement) (7 July 1999) Pt 5(1).

⁸⁸ South Sudan, Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) (17 August 2015).

⁸⁹ Burundi, Déclaration du Directoire Politique du processus de paix au Burundi sur le processus de mise en oeuvre des décisions conjointes prises à Pretoria (8 April 2009).

⁹⁰ Kenya, Mabanga Peace Accord (21 October 2011) 4, para 12.

⁹¹ Liberia, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties (Accra Agreement) (18 August 2003).

transferred to the Secondary Cantonment Sites'.⁹² Amongst other things, it was tasked with verifying 'the strength of their forces including the presence of any children among their ranks and other information that the TSAIM may request'.⁹³ Similarly, in Burundi, the Joint Verification and Monitoring Mechanism, which involved the Parties to the agreement—the Government of Burundi and the PALIPEHUTU-FNL—rendered the UN and African Union responsible for the verification and implementation of the ceasefire.⁹⁴

C. Accountability

The forced recruitment and use of child soldiers also raise questions regarding accountability, an issue that can be approached from two different standpoints—accountability for those who recruit child soldiers and accountability of child soldiers.

1. Accountability for those who recruit child soldiers

The first approach, preferred by most organizations, international law and international policy, perceives child soldiers as victims and posits that accountability-based mechanisms should target those who have recruited and used children as combatants. As Grossman asserts, 'hundreds of thousands of children under age eighteen participating in armed conflicts around the globe should be treated primarily as victims, not perpetrators, of human rights violations'.⁹⁵ Aptel concurs that 'children have not been and should not be tried for serious international crimes ...'.⁹⁶ The pervasiveness of this position has led scholars like Cataleta to argue that there is an emerging customary law prohibiting the prosecution of child soldiers.⁹⁷ Others claim that there are customary obligations to rehabilitate and reintegrate children who have been recruited and used in armed conflicts.⁹⁸ This, it is suggested, constitutes a bar to the criminal prosecution of juveniles accused of having committed war crimes.⁹⁹ The reasons offered for opposing the prosecution of child soldiers are diverse. Some point to the vulnerability of children. For instance, Abidi highlights the power differential between adults and children, which often results in an increased risk for exploitation and abuse in conflict

⁹² Democratic Republic of Congo, Outcome Documents from the Conclusion of the Kampala Dialogue between the Government of the Democratic Republic of the Congo and the M23 (12 December 2013) 18. ⁹³ *ibid.*

⁹⁴ Burundi, Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu – FNL (7 September 2006). ⁹⁵ Grossman (n 41) 323.

⁹⁶ C Aptel, *Children and Accountability for International Crimes: The Contribution of International Criminal Courts* (UNICEF Innocenti Research Centre 2010) 21.

⁹⁷ MS Cataleta, 'The Prohibition of Prosecution of Child Soldiers: A Desirable Emerging Rule of Customary International Law' (2022) 21 Chinese JIL 805, 807.

⁹⁸ Report of the Secretary General (n 5).

⁹⁹ Cataleta (n 97) 807.

contexts.¹⁰⁰ Notably, armed groups are understood to prey on the vulnerability of children. In reference to child soldiers in Mozambique, Schafer assesses that both government and non-State forces took advantage of the recruits' psychological need for a substitute family.¹⁰¹ Others contend that the immaturity of children 'does not allow them to distinguish right from wrong',¹⁰² that children 'cannot fully comprehend the consequences of their acts',¹⁰³ and that as children they do not possess 'sufficient psychological maturity either to make an informed choice whether to participate in hostilities or to stand the peculiar stresses of combat'.¹⁰⁴

Nevertheless, and notwithstanding the fact that peace agreements increasingly include some transitional justice measures,¹⁰⁵ provisions dealing with accountability for those who recruit and use child soldiers are relatively sparse. One positive example is the 2016 Colombia Peace Agreement. The Special Jurisdiction for Peace (JEP) was established by the 2016 Peace Agreement and subsequent legislation.¹⁰⁶ The JEP is tasked with, amongst other things, investigating crimes committed by reason, occasion or directly or indirectly related to the armed conflict. This includes political and related crimes, serious human rights violations, crimes against humanity and war crimes. The JEP is authorized to investigate crimes committed by three main groups: (i) members of the FARC-EP; (ii) members of the State's military forces; and (iii) State officials who are not members of the military forces and third parties (civilians). The JEP has jurisdiction over crimes committed during the armed conflict prior to 1 December 2016. The Final Peace Agreement, 499 Legislative Act 01 of 2017, and Law 1820 of 2016,¹⁰⁷ established provisions on

¹⁰⁰ C Baillie Abidi, 'Prevention, Protection and Participation: Children Affected by Armed Conflict' (2021) 3 *FrontHumDyn*, article 624133, 4.

¹⁰¹ J Schafer, 'The Use of Patriarchal Imagery in the Civil War in Mozambique and its Implications for the Reintegration of Child Soldiers' in J Boyden and J de Berry (eds), *Children and Youth on the Front Line: Ethnography, Armed Conflict and Displacement* (Berghahn Books 2004).

¹⁰² C Reis, 'Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participation in Internal Armed Conflict' (1997) 28 *ColumHumRtsLRev* 629, 644; M Happold, 'Child Soldiers: Victims or Perpetrators?' (2008) 29 *ULaVerneLRev* 56, 62.

¹⁰³ Amnesty International, 'Child Soldiers: Criminals or Victims?' (22 December 2000) 6–7 <[¹⁰⁴ M Happold, 'Child Soldiers in International Law: The Legal Regulation of Children's Participation in Hostilities' \(2000\) 47\(1\) *NILR* 27, 28.](https://www.amnesty.org/en/documents/ior50/002/2000/en/#:~:text=This%20report%20examines%20the%20complex,recruiting%20and%20controlling%20child%20soldiers.></p>
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¹⁰⁵ See E Katz, *Negotiating Justice: Peace Processes as Vehicles for Transitional Justice* (Global Initiative for Justice & Reconciliation 2021) 12; S Vandeginste and C Lekha Sriram, 'Power Sharing and Transitional Justice: A Clash of Paradigms?' (2011) 17 *GlobGovern* 489. See also J Leib, 'How Justice Becomes Part of the Deal: Pre-Conditions for the Inclusion of Transitional Justice Provisions in Peace Agreements' (2022) 16 *IJTJ* 439; A Jamar, 'The Exclusivity of Inclusion: Global Construction of Vulnerable and Apolitical Victimhood in Peace Agreements' (2021) 15 *IJTJ* 284.

¹⁰⁶ Colombia, Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace (24 November 2016).

¹⁰⁷ *ibid*, Ch 5 and Congress of the Republic of Colombia, ACT 1820, Law 1820 of 30 December 2016.

amnesty and pardon for FARC-EP's members and civilians. It provided that amnesty could be granted for: political crimes (rebellion, sedition and attempted coups); crimes related to political crimes committed in pursuit of the rebellion; and peaceful protests, the defence of human rights, and leading civil society groups. However, it also held, reaffirming previous agreements,¹⁰⁸ that the recruitment of minors will be ineligible for an amnesty or pardon in every case, as established in the Rome Statute.¹⁰⁹ Similarly, in the DRC, the Outcome Documents from the Conclusion of the Kampala Dialogue between the Government of the DRC and the M23 agreed that:

Given the atrocities and other massive violations of human rights perpetrated in the eastern Democratic Republic of Congo, and with a view to putting an end to impunity, [the Government and M23] shall ensure that prosecutions for war crimes, genocide, crimes against humanity, sexual violence and recruitment of child soldiers are initiated against any presumed author thereof.¹¹⁰

In the same agreement and on the subject of amnesty, the accord stipulates that 'in accordance with national and international law, the Amnesty does not cover crimes of genocide and crimes against humanity, including sexual violence, recruitment of child soldiers and other massive violations of human rights'.¹¹¹ In Mali, the Accord Pour la Paix et la Reconciliation au Mali—Issu du Processus d'Alger provides, less conclusively as it relates to child soldiers, that there will be 'no amnesty for the authors of war crimes, crimes against humanity and serious violations of Human Rights, including violence against women, girls and infants, related to the conflict'.¹¹² Similarly ambiguous, the Ceasefire Agreement between the Government of Sudan and the Liberation and Justice Movement (LJM) provides that the police shall investigate all crimes, including those committed against women and children, and ensure the prosecution of the perpetrators and the protection of the victims.¹¹³ With these limited exceptions, accountability for the use of child soldiers is not a primary feature of peace agreements.

¹⁰⁸ Colombia, Agreement on the Victims of Conflict, 'Comprehensive System for Truth, Justice, Reparation and Non-repetition', including the Special Jurisdiction for Peace; and Commitment on Human Rights (15 December 2015).

¹⁰⁹ See also Law 1820 of 2016 (n 107); and Congress of the Republic of Colombia, ACT 1957, Law 1957 of 6 June 2019.

¹¹⁰ Democratic Republic of Congo, Outcome Documents from the Conclusion of the Kampala Dialogue between the Government of the Democratic Republic of the Congo and the M23 (12 December 2013) 9, 14.

¹¹¹ *ibid.*, Annex 1, 6.
¹¹² Mali/Azawad, Accord Pour la Paix et la Reconciliation au Mali—Issu du Processus d'Alger (20 June 2015) 11, Section V: Reconciliation, Justice and Humanitarian Questions, Ch 14: Reconciliation and Justice, art 47.

¹¹³ Sudan/Darfur, Ceasefire Agreement between the Government of Sudan and the LJM (18 March 2010) 4, para 8.

2. *Accountability of child soldiers*

Conversely and controversially, the issue of accountability can also be examined through a different lens when discussing child soldiers. Despite the dominant view of child soldiers solely as victims, others have argued that child soldiers might also be held to account for the crimes they commit. For instance, there are those who approach the matter by contemplating the rights of victims who suffer at the hands of children involved in armed conflict. Seyfarth highlights that notwithstanding the fact that children can face ‘incomprehensible trauma’, they are also ‘perpetrators of some of the most violent crimes’ in conflicts around the world.¹¹⁴ Lafayette emphasizes too that ‘children are undoubtedly responsible for numerous deaths, rapes, mutilations, and other crimes’.¹¹⁵ She continues that ‘[v]ictims of these atrocities must also receive proper consideration’ and that ‘their quest for justice cannot be secondary to the rehabilitation and forgiveness of a child soldier’.¹¹⁶ Others rely on deterrence-based arguments. Clark notes, for example, that impunity permits and even encourages the continued recruitment of child soldiers.¹¹⁷ Mawson also argues that if child or adult perpetrators believe that they can get away with atrocities, there is little incentive not to commit further violence, particularly if there are gains to be made, thus leading to a spiral of violence.¹¹⁸ Fisher promotes the position that accountability of child soldiers is a prerequisite for a smooth transition and the attainment of positive peace,¹¹⁹ while Nobert assesses that without legal ramifications, there is no incentive for the child-soldier recruiters to stop their actions.¹²⁰

A notable aspect of the arguments advanced by those willing to contemplate prosecution is that the reality of child soldiers is often more nuanced than the prototypical child soldier presented by the media and by international organizations. This child soldier is, often, a young African boy, forced to join a non-State armed group, wielding weaponry and being forced to commit brutal acts, sometimes under the influence of some form of narcotics. Drumbl argues that the predominant image of the child soldier is highly Africanized, despite the

¹¹⁴ LH Seyfarth, ‘Child Soldiers to War Criminals: Trauma and the Case for Personal Mitigation’ (2013) 14 *Chi-Kent/JntL&CompL* 117.

¹¹⁵ E Lafayette, *The Prosecution of Child Soldiers: Balancing Accountability with Justice* (2013) 63 *SyracuseLRev* 297, 298. ¹¹⁶ *ibid* 298.

¹¹⁷ C Clark, ‘Discussion Paper: Juvenile Justice and Child Soldiering (Coalition to Stop the Use of Child Soldiers, 4 June 2015)’ cited in A Veale, ‘The Criminal Responsibility of Former Child Soldiers: Contributions from Psychology’ in K Arts and V Popovski (eds), *International Criminal Accountability and the Rights of the Child* (Hague Academic Press 2006).

¹¹⁸ A Mawson, ‘Children, Impunity and Justice: Some Dilemmas from Northern Uganda’ (Conference on ‘Children in Extreme Circumstances, London School of Economics, 27 November 1998).

¹¹⁹ KJ Fisher, *Transitional Justice for Child Soldiers: Accountability and Social Reconstruction in Post Conflict Contexts* (Palgrave Macmillan 2013).

¹²⁰ M Nobert, *Children at War: The Criminal Responsibility of Child Soldiers* (2011) 3 *PaceIntlLRev Online Companion* 1.

fact only about 40 per cent of child soldiers worldwide are in Africa.¹²¹ Similarly, Drumbl has found that most child soldiers are not young children but adolescents, with many aged 15, 16 or 17 years. He also holds that nearly 40 per cent of child soldiers are girls and that regardless of their gender, child soldiers often do not carry weapons.¹²² Moreover, others demonstrate that concepts like child and childhood are not universally accepted, such that it is impossible to reduce child soldiers to a prototypical or conflated type. Johnson notes, for example, that:

This construction of children's agencylessness is challenged by research with child soldiers. Rather than a binary understanding of children having complete or no agency, children navigate the threats, opportunities, and lack of information in the environment as best they can, experiencing 'shifting realities of victimisation, participation and resistance'. While viewing children as agencyless in a binary understanding of agency might on balance produce better policy, drawing on this more nuanced view of agency provides a basis closer to children's lived experiences of both agency and victimization.¹²³

Thus, there is a shifting landscape of opinion that does not accept as given the innocence of child soldiers. Yet, despite these ongoing debates, the few peace agreements that address this issue treat child soldiers solely as victims. For example, the Doha Document for Peace in Darfur/Sudan stipulates that:

[A]ll children, boys and girls, who are accused of crimes against international law after being unlawfully recruited by armed forces or armed groups are considered primarily as victims of violations against international law and not as alleged perpetrators.¹²⁴

A later ceasefire agreement adopts this exact language in reiterating no prosecution of children.¹²⁵ The 2016 Colombia Peace Agreement tasks the Judicial Panel for Determination of Legal Situations with the decision whether to waive 'criminal prosecution against persons who, having directly or indirectly participated in the armed conflict as minors'.¹²⁶ However, a strong indication that minors would not be prosecuted can be gleaned from earlier agreements. Joint Communiqué #70, for instance, states that:

Under no circumstances may minors under 14 years old be declared criminally responsible. Minors between 14 and 18 years old that leave the camps of the FARC – EP in compliance with these trust-building measures will be granted

¹²¹ M Drumbl, 'Child Soldiers and Clicktivism: Justice, Myths, and Prevention' (2012) 4 *JHumRtsPrac* 481, 482. ¹²² *ibid.*

¹²³ D Johnson, 'Women as the Essential Protectors of Children?: Gender and Child Protection in UN Peacekeeping' (2022) 29 *IntlPeacekeeping* 282, 289.

¹²⁴ Sudan/Darfur, Doha Document for Peace in Darfur (DDPD) (31 May 2011) art 63.

¹²⁵ Sudan/Darfur, Ceasefire Agreement between the Government of Sudan and the Justice and Equality Movement-Sudan (JEM) (10 February 2013).

¹²⁶ Final Agreement to End the Armed Conflict (n 106) 310, para 10.

the benefit of pardon for rebellion and related crimes, whenever there are no impediments in Colombian laws.¹²⁷

Moreover, the 2016 Agreement itself stipulates that child soldiers should be treated the same as other victims of the conflict.¹²⁸

IV. CHALLENGES AND LIMITATIONS

As the above discussion demonstrates, peace agreements can address child soldiers in a range of ways. There are, undoubtedly, important reasons to do so. As noted, existing studies suggest that including child soldiers can have an important bearing on, for example, successfully reintegrating child soldiers back into society. As foundational documents, which serve as roadmaps for the post-conflict State, ensuring the early inclusion of child soldiers in peace agreements can facilitate wider peacebuilding efforts. Moreover, engaging third-party actors, such as those tasked with supporting the implementation of an agreement, can also help to ensure that commitments on child soldiers contained in peace agreements materialize. With ongoing debates as to the culpability of child soldiers, peace agreements can also serve a useful purpose in clarifying the position of how child soldiers are to be treated, primarily as victims of conflict rather than perpetrators. Nevertheless, inclusion on its own cannot be assumed to be a positive. As others have argued elsewhere, inclusion can be problematic when it is merely symbolic, when it lacks robust practical measures to accompany the paper references and when inclusion itself is disempowering.¹²⁹ The discussion below highlights a number of limitations associated with how child soldiers are often addressed in peace agreements.

A. The Problem of Exclusionary Language

A useful point of departure is contemplating the use of the term ‘child soldiers’ in peace agreements. There is some variation in the terminology. As an example, an agreement in Liberia refers to ‘child combatants’,¹³⁰ while in Burundi the term ‘children associated with combat’ is adopted.¹³¹ In the main, however, as in the current article, the term ‘child soldier’ is used. Yet,

¹²⁷ Joint Communiqué #70 (n 52) para 2.

¹²⁸ International Bureau for Children’s Rights (IBCR), *Children and Armed Conflict: A Guide to International Humanitarian and Human Rights Law* (IBCR 2010) 131 <<https://resourcecentre.savethechildren.net/pdf/3392.pdf>>.

¹²⁹ See Jamar (n 105); T Madlingozi ‘On Transitional Justice Entrepreneurs and the Production of Victims’ (2010) 2 *JHumRtsPrac* 208.

¹³⁰ Liberia, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement of Democracy in Liberia (MODEL) and the Political Parties (Accra Agreement) (18 August 2003) art XXXI.

¹³¹ Burundi, Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu – FNL (7 September 2006) 16, Annexure III.

'child soldiers' are often referred to by child protection agencies as 'children associated with armed forces and groups' (CAAFG), to emphasize the need for inclusive programmes that provide support to all child soldiers, not only those carrying weapons. The definition of a CAAF is, according to the International Bureau for Children's Rights, intentionally broad because it seeks to extend the protection to as many children as possible in recovery programmes.¹³² The rationale for the broad definition is that, 'within armed groups and forces, roles can be fluid and whether a child is used as a cook, a porter, a soldier's "wife" or for any other purpose, he or she is often exposed to the same dangers as combatants and all are forced to witness atrocities'.¹³³ The Paris Principles also emphasize that the expression 'children associated with armed forces and groups' is more appropriate than 'child soldiers'.¹³⁴ While provisions that address child soldiers can be interpreted as progressive, particularly when the alternative is complete omission, it nevertheless remains the case that the term itself has exclusionary qualities to it. When peace agreements are understood to lay foundations for the post-conflict State, this implicit exclusion can mean that some children that require help and support are marginalized. A useful starting point, therefore, would be to consider how children engaged in armed conflict are referred to in peace agreements, recognizing the multiplicity of forms that this involvement can take.

Peace agreements also lack a gender dimension, excluding and overlooking the needs of female child soldiers. According to some estimates, as many as 40 per cent of all child soldiers are girls.¹³⁵ It is well demonstrated that female child soldiers face the same challenges as their male counterparts and, in addition, 'have unique needs and vulnerabilities that must be prioritized in any efforts to prevent, release and reintegrate child soldiers'.¹³⁶ For instance, the Paris Principles state that: '[g]irls in particular, and any children they may have, are likely to be stigmatized or rejected by their community if it is known that they have been used by armed forces or armed groups'.¹³⁷ Scholars have also documented the increased likelihood of abuse,¹³⁸ particularly that girl child soldiers will be treated as sexual property and distributed as rewards for good soldiering.¹³⁹ Despite this, girls are often marginalized in efforts to address the issue of child soldiers. For instance, Haer draws attention to a study conducted in five eastern provinces of the DRC, where 23 girls were demobilized in comparison to 1718 boys—despite girls being recruited or abducted just as

¹³² IBCR (n 128) 131.

¹³³ *ibid.*

¹³⁴ UNICEF, 'The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups' (February 2017) <<https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>>.

¹³⁵ OSRSG CAAC (n 4).

¹³⁶ H Fore, 'Opinion: Female Child Soldiers Often Go Unseen but Must Not Be Forgotten' (Thomson Reuters Foundations News, 12 February 2021) <<https://news.trust.org/item/20210211143359-cpm3z>>.

¹³⁷ Paris Principles (n 134) para 1.1.

¹³⁸ A Leibig, 'Girl Child Soldiers in Northern Uganda: Do Current Legal Frameworks Offer Sufficient Protection?' (2005) 3 *NwJIntlHumRts* 1.

¹³⁹ D Mazurana and S McKay, 'Child Soldiers; What About the Girls?' (2001) 57 *BullAtSci* 30.

extensively as boys.¹⁴⁰ Peace agreements appear to perpetuate this exclusion. No peace agreement contains an express provision recognizing and reflecting the circumstances of female child soldiers. Instead, where girls are mentioned at all it is simply in reference to ‘boys and girls’.¹⁴¹ This is contrary to the Watchlist checklist which suggests that ‘[w]hen referring to “children”, alternate with the use of “boys and girls” to put emphasis on gender consideration’.¹⁴² Future peace agreements should not only include provisions that specifically target female child soldiers. They could also ensure that the experiences of female child soldiers as distinct from their male counterparts are acknowledged, and that, for instance, DDR processes respond to these challenges.

Finally, peace agreements, while perpetuating the long-held view that children are to be treated as victims of conflict, can also accentuate tendencies to overlook the agency and potential of children. In treating child soldiers solely as vulnerable and as victims, peace agreements can present a wholly unnuanced and generalized view of child soldiers, which does not adequately reflect the realities on the ground. Moreover, and more generally, this presentation can undermine efforts to utilize peace agreements as the basis to redefine the perception of children in society, particularly one that better reflects the agency of children and their potential to be active participants in both peacebuilding and the post-conflict State more generally.

Thus, while peace agreements often reflect the view that child soldiers are victims and vulnerable, those negotiating war’s end should also utilize peace agreements to reflect and harness the agency of children, recognizing the wider impacts of relational, social and material factors on the ability of children to reintegrate into and participate actively in the post-conflict State. As one example of a more positive approach, the 2007 Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement explicitly requires that in the implementation of the agreement, the contracting parties ‘[r]ecognise and consider the experiences, views and concerns of children’ and ‘[e]ncourage and facilitate the participation of children in the processes for implementing this Agreement’.¹⁴³ Although this is but one example, and peace agreements generally treat children as adults, provisions such as these demonstrate what is possible.

¹⁴⁰ R Haer, ‘The Study of Child Soldiering: Issues and Consequences for DDR Implementation’ (2017) 38 *TWQ* 450, 459 citing MW Wessells, ‘Girls in Armed Forces and Groups in Angola: Implications for Ethical Research and Reintegration’ in Gates and Reich (eds) (n 57) 183–99.

¹⁴¹ Sudan/Darfur, Doha Document for Peace in Darfur (DDPD) (31 May 2011).

¹⁴² Watchlist on Children and Armed Conflict (n 10) 1.

¹⁴³ Uganda, Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement (29 June 2007) art 12.

B. Weak Responses to Recruitment

The provisions on child recruitment, as noted, vary. While in some cases, prohibitions against recruitment are stated in terms of rights and obligations, provisions are often broad and ambiguous. Compared with provisions on DDR, there is relatively little attention directed to those actors responsible for monitoring or overseeing compliance. Few agreements task, for instance, organizations like UNICEF or the ICRC to play a role in terms of ensuring that parties do not breach the terms of an agreement. Given the subject matter and the importance attached to preventing recruitment, this is surprising.

Indeed, more generally, the challenges facing the implementation of peace agreements have been well documented. They include, by way of example, the scope and depth of issues addressed in a peace agreement,¹⁴⁴ the presence of spoilers¹⁴⁵ and the ambiguousness of peace agreement provisions.¹⁴⁶ For these reasons and others, the presence of third-party actors to oversee, monitor and verify implementation is crucial. Moreover, there is often little in the way of sanctions for non-compliance. In other areas, peace agreements do provide for a range of measures in the event of non-implementation. For example, in Cote d'Ivoire, the 2003 Linas-Marcoussis Agreement tasks a committee to report to 'national, regional and international authorities all cases of obstruction of the Agreements and failure to apply them, to ensure that appropriate remedies are implemented'.¹⁴⁷

To this end, the lack of explicit language setting out specific measures to adopt can undermine implementation. Indeed, Watchlist's checklist is emphatic about the salience of the language used. It encourages parties to 'include determinative rather than aspirational language in child-related clauses (eg "will", "must", "shall", rather than "should") to ensure specific action during the implementation phase, where possible'.¹⁴⁸ Without robust language, oversight and consequences, peace agreement provisions might be easily ignored. Thus, agreements negotiated in the future ought to embrace Watchlist's checklist, paying due regard to the impacts of language and the need to match provisions on recruitment with binding commitments, alongside monitoring and enforcement to ensure that provisions prohibiting the recruitment of children are honoured.

¹⁴⁴ A Bramble and T Paffenholz, *Implementing Peace Agreements: From Inclusive Processes to Inclusive Outcomes?* (Inclusive Peace & Transition Initiative, Graduate Institute of International and Development Studies 2021).

¹⁴⁵ Spoilers are those individuals or groups that attempt to impede, frustrate or prevent a peace process. See SJ Stedman, DS Rothchild and EM Cousens (eds), *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Rienner Publishers 2002).

¹⁴⁶ M Byers, 'Still Agreeing to Disagree: International Security and Constructive Ambiguity' (2021) 8 *JUseForceIntlL* 91.

¹⁴⁷ Cote d'Ivoire, Linas-Marcoussis Agreement (23 January 2003) art 4.

¹⁴⁸ Watchlist on Children and Armed Conflict (n 10) 1.

In addition, despite the widely accepted definition of a child soldier as being under the age of 18 years, cultural and social variations mean that precisely what constitutes a child is often uncertain and there are examples of peace agreements perpetuating this uncertainty. An agreement in Uganda, for example, states only that ‘[t]he Parties recognize that the recruitment and use of children by armed forces and armed groups is a violation of children’s rights’ without specifying what is meant by children.¹⁴⁹ This leaves uncertain which young people are child soldiers and, it follows, which individuals would benefit from child-focused DDR or fall within the jurisdiction of punitive transitional justice mechanisms. To this end, the Watchlist checklist asks parties to an agreement, ‘When referring to child for the first time, pair it with the definition “anyone under 18”’.¹⁵⁰ There are some examples where this is achieved, removing uncertainties as to those who qualify for, for instance, DDR programmes or those not subject to criminal legal procedures. For instance, the Ceasefire Agreement between the Government of Sudan and the LJM commits both parties to refrain immediately from the recruitment or use of boys and girls under age 18 years.¹⁵¹ The Darfur Peace Agreement prohibits ‘[a]ny recruitment or use of boys and girls under age 18 years by Parties’.¹⁵² In Yemen, the National Dialogue Conference Outcomes Document provides that:

The Government shall be responsible for providing protection and comprehensive monitoring of children below eighteen years of age. Recruitment of children or involving them in armed conflicts shall be criminalized. They shall enjoy full protection during military conflicts, natural disasters and emergencies.¹⁵³

Sometimes, peace agreements signal intentions to raise the age limit in the future. As an illustration, an agreement in Colombia between the Government and the National Liberation Army (ELN) commits the parties to:

Reaffirm the commitment of civil society and ELN to respect and ensure full respect for the rights of children. The organization will not employ children under 16 in its permanent military force, with this age raised to 18 in the future.¹⁵⁴

In Nepal, both parties to the Agreement on the Monitoring of Arms and Armies fully agree to not include or use children who are 18 years old and under in the armed forces. Children thus affected should be immediately rescued and necessary and appropriate assistance should be provided for their rehabilitation.¹⁵⁵ The contested concept of childhood ensures that what and

¹⁴⁹ Uganda, Agreement on Disarmament, Demobilization and Reintegration, Juba, Sudan (29 July 2008) art 2.

¹⁵⁰ Watchlist on Children and Armed Conflict (n 10) 1.

¹⁵¹ Sudan/Darfur, Ceasefire Agreement between the Government of Sudan and the LJM (18 March 2010) 3.

¹⁵² Sudan/Darfur, Darfur Peace Agreement (5 May 2006) art 24.

¹⁵³ Yemen, National Dialogue Conference Outcomes Document (25 January 2014) 97, Ch two, Section one, Working Group on Building the Foundations for the Security and Military Institutions, First: Decisions on Constitutional Principles, para 19.

¹⁵⁴ Colombia, Acuerdo de la Puerta del Cielo (15 July 1998).

¹⁵⁵ Nepal, Agreement on the Monitoring of Arms and Armies (8 December 2006) 1.

who constitutes a child and, it follows, the protection of the law, varies from setting to setting. These ambivalences create opportunities for peace agreements to state categorically who is to be regarded as a child. Despite cultural differences, reference to the Convention on the Rights of the Child (CRC) and its definition of a child under Article 1 could help to ensure that the widest number of young people are included.¹⁵⁶

C. *The Need for Comprehensive DDR Programmes*

Most references to DDR in existing peace agreements are vague. In many cases, only fleeting references are included, while in other cases some aspect or discrete part of child-focused DDR is included. It is frequent that children are included as an afterthought or merely assimilated into existing, adult-centred DDR programmes. The latter approach means that peace agreements lack the comprehensive consideration and detail necessary to support child soldiers adequately. Reintegration alone, for instance, often requires programmes that address psychological and physical aspects of conflict. For this reason, reintegration support can range from the necessity of the reunification with family (family tracing), promoting social acceptance (community sensitization), educational training and addressing the psychosocial impact of conflict on the child soldiers (for example, trauma therapy).¹⁵⁷ As the UN Guidance to Mediators notes, parties to an agreement should:

Design and implement child-specific DDR procedures that ensure the full and successful identification, separation and reintegration of children associated with parties to the conflict. It is important that DDR procedures for children be actively carried out at all times.¹⁵⁸

It continues that parties to the conflict should have a common understanding of a child-sensitive DDR process, including tools relevant to that process.¹⁵⁹ This is compounded by a lack of funding for these programmes.

Often, one of the greatest barriers to implementation is a lack of finance to support the range and depth of programmes required.¹⁶⁰ There is also little discussion on sequencing. Practitioners debate the appropriate timing of DDR programmes, the sequencing of the measures and whether local ownership should be established or not.¹⁶¹ These aspects, which are all central to successful reintegration programmes, are not covered in peace agreements.

¹⁵⁶ UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) <<https://www.refworld.org/docid/3ae6b38f0.html>>. ¹⁵⁷ Banholzer and Haer (n 69). ¹⁵⁸ OSRSG CAAC (n 32) 36.

¹⁵⁹ *ibid.*

¹⁶⁰ S Molloy, *Assessing and Influencing Progress in Peace Processes Workshop Report* (Global Justice Academy, University of Edinburgh, 2018) <<https://peacerep.org/wp-content/uploads/2020/02/Barcelona-Report-DIGITAL.pdf>>. ¹⁶¹ Banholzer and Haer (n 69) 112.

Moreover, it is often the case that child soldiers are not consulted in the design of DDR programmes. As Akello et al note:

Ex-combatant children are usually not asked about their own perception of their past and their wishes regarding reintegration. Their answers could also refer to the necessity of a complete redesigning of the ‘rehabilitation and reintegration project’, which thus far has mainly been implemented in a top-down manner.¹⁶²

Yet, there is scope for peace agreements to be more expansive and child centred. For instance, in a limited number of cases, the DDR programmes envisioned in peace agreements are relatively well defined. Examples can be found in Colombia,¹⁶³ Sudan¹⁶⁴ and Uganda.¹⁶⁵ To demonstrate, the 2016 Peace Agreement in Colombia states that child soldiers are to be ‘subject of special care and protection measures’.¹⁶⁶ These are to be determined by the National Reincorporation Council within the framework of the Commission for Monitoring, Promoting and Verifying the Implementation of the Final Agreement (CMPVI). The approach to reintegrating child soldiers is to be informed by ‘guiding principles that will apply to minors ... prioritising their access to healthcare and education’.¹⁶⁷ The agreement continues that ‘[t]hese minors will be accorded all the rights, benefits and allowances established for the victims of the conflict’ and stipulates that ‘priority will be given to family reunification wherever possible, and to final placement in homes in their original communities or others of a similar nature, whilst at all times taking into account the best interests of the child’.¹⁶⁸ There is also provision for a timescale stating that ‘[t]he Special Reincorporation Programme for minors must be prepared by the National Reincorporation Council within a maximum of 15 days from when the Final Agreement is signed’.¹⁶⁹

Future peace agreements, therefore, should include specific programmes and measures for DDR of children, differentiating them from adult-focused DDR programmes. Those negotiating peace agreements could also better engage child soldiers in order to identify best the types of measures that ought to be taken. For child-centred DDR programmes to be effective, they must be appropriately and sufficiently funded and resourced with dedicated mechanisms tasked with monitoring compliance. Peace agreements could, in theory, document such commitments and oversight bodies.

¹⁶² G Akello, JMH Richters and R Reis, ‘Reintegration of Former Child Soldiers in Northern Uganda: Coming to Terms with Children’s Agency and Accountability’ (2006) 4 *Intervention: International Journal of Mental Health, Psychosocial Work and Counselling in Areas of Armed Conflict* 229, 240. ¹⁶³ Final Agreement to End the Armed Conflict (n 106).

¹⁶⁴ Sudan, Sudan Peace Agreement (Juba Agreement) (3 October 2020).

¹⁶⁵ Uganda, Agreement on Disarmament, Demobilization and Reintegration, Juba, Sudan (29 July 2008). ¹⁶⁶ Final Agreement to End the Armed Conflict (n 106) 75–6, para 3.2.2.5.

¹⁶⁷ *ibid* 75–6, para 3.2.2.5.

¹⁶⁸ *ibid* 75, para 3.2.2.5.

¹⁶⁹ *ibid*.

D. *The Perpetuation of Uncertainty by Peace Agreements*

As noted, there are relatively few references to accountability for the recruitment and use of child soldiers.¹⁷⁰ This means that the recruitment of child soldiers, despite the salience attached to preventing and punishing child recruitment at the highest levels of policy, is not prioritized in peace agreements. One response to this could be that references to international law in peace agreements mean that the rules and criteria as laid down in international agreements can be inferred.

Indeed, peace agreements frequently refer to international law, albeit with varying levels of deference. In the 252 peace agreements that refer to children, there are 27 references to the CRC, five to the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC), five referring to the African Charter for the Rights and Welfare of the Child, two references to international criminal law and 18 references to international humanitarian law. However, in referring to international law, peace agreements obfuscate, rather than clarify, the potential culpability of child soldiers. This can be attributed, in part, to the lack of clarity within and between existing legal standards. For example, the CRC—the primary international treaty on children’s rights—requires States parties to ‘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’¹⁷¹ and ‘refrain from recruiting any person who has not attained the age of fifteen years into their armed forces’.¹⁷² In recruiting among those persons who have attained the age of fifteen years but have not attained the age of eighteen years, according to the CRC, ‘... States Parties shall also endeavour to give priority to those who are oldest’.¹⁷³

Other international and regional law instruments also address child soldiers. Pursuant to OPAC all child recruitment or use by armed groups is illegal under international law,¹⁷⁴ as is all use of children in hostilities,¹⁷⁵ conscription by State armed forces,¹⁷⁶ or enlistment of children without appropriate safeguards.¹⁷⁷ The recruitment and use of children under 15 years by armed forces and groups may also amount to a war crime.¹⁷⁸ The African Charter on the Rights and Welfare of the Child is the only regional treaty which addresses the issue of child soldiers. It defines a child as anyone below 18

¹⁷⁰ See, for discussion, R Jeffery, ‘Amnesties and Peace Agreements: The Asia-Pacific in Global Comparative Perspective, 1980–2015’ in R Jeffery (ed), *Negotiating Peace: Amnesties, Justice and Human Rights* (CUP 2021).
¹⁷¹ CRC (n 156) art 38(2).
¹⁷² *ibid.*
¹⁷³ *ibid.*

¹⁷⁴ 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) <<https://www.refworld.org/docid/47fdfb180.html>>.
¹⁷⁵ *ibid.*, art 1.
¹⁷⁶ *ibid.*, art 2.
¹⁷⁷ *ibid.*, art 3.

¹⁷⁸ S Whitman and C Baillie Abidi, ‘Preventing Recruitment to Improve Protection of Children’ (2020) 4 *Allons-Y* 24.

years of age without exception and charges States to ensure that no child takes direct part in hostilities and to refrain from recruiting any child.¹⁷⁹

Under international criminal law, Articles 8(2)(b)(xxvi) and 8(2)(e)(vii) of the Rome Statute of the International Criminal Court make it a war crime, leading to individual criminal prosecution, to conscript or enlist children under the age of 15 years into armed forces or groups or to use them to participate actively in hostilities, in both international and non-international armed conflicts.¹⁸⁰ Protocol I of 8 June 1977 additional to the Geneva Conventions, which governs international armed conflict, provides that:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.¹⁸¹

Protocol II of 8 June 1977 additional to the Geneva Conventions, which governs non-international armed conflict, provides that: '[c]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities'.¹⁸² On fundamental issues, therefore, international law is far from uniform and peace agreements can perpetuate this uncertainty, particularly when these standards are included alongside each other in the same agreement. This ties in, to some extent, with uncertainties regarding what constitutes a child or childhood more generally. While much of international law appears to reflect the CRC in holding a child soldier to be any person under the age of 18 years, others demonstrate that the concept of childhood, as a sociological construct, is not universal. Rather, it varies from context to context and culture to culture as is reflected in the criminal law concept of minimum age of criminal responsibility.

A more concerted and dedicated focus on child soldiers by those negotiating war's end could lead to a clearer position on accountability, that is explicit on defining the threshold age of criminal responsibility.

¹⁷⁹ African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49, art 22(2).

¹⁸⁰ UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010) (adopted 17 July 1998) ISBN No 92-9227-227-6 <<https://www.refworld.org/docid/3ae6b3a84.html>>.

¹⁸¹ ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 77, para 2 <<https://www.refworld.org/docid/3ae6b36b4.html>>.

¹⁸² ICRC, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, art 4, para 3(c) <<https://www.refworld.org/docid/3ae6b37f40.html>>.

E. Failure to Engage with the Accountability of Child Soldiers

In failing to address issues related to the accountability of child soldiers, peace agreements perhaps overlook opportunities for supporting their reintegration into society.¹⁸³ While the issue of addressing the past was once viewed as being a stumbling block for those negotiating war's end, increasingly transitional justice measures are viewed as essential to moving forward. As Katz articulates, 'peace processes have come to play a leading role in serving as a site for negotiating and crafting transitional justice'.¹⁸⁴ In recent years, she continues, it has 'become very rare to have a peace process that does not include the issue of transitional justice as one of the subjects of negotiations between the parties to the peace process'.¹⁸⁵

Those who contest the tendency to exclude child soldiers from accountability draw attention to the often overlooked benefits of holding them accountable.¹⁸⁶ Drumbl argues, for instance, that transitional justice initiatives other than criminal trials—in particular, truth commissions, restorative modalities and endogenous mechanisms—can help facilitate reintegration and reconciliation in cases of child soldiers implicated in acts of atrocity.¹⁸⁷ Drumbl stresses that while the international community and transnational actors frequently portray all child soldiers as victims in need of protection, this unnuanced view can overlook the opportunities for, amongst other things, reconciliation and healing on the part of child soldiers. This protectionism, Drumbl continues, 'needlessly cocoons child soldiers from the tough questions that societies must reckon with in order to come to terms with mass violence'. He further adds that '[t]ransitional justice measures may enable the child soldier to tell what happened to him or her—and to identify or learn who in the community may have abetted unscrupulous warlords' and that '[t]ransitional justice processes create a venue to discuss much more than accountability and responsibility. They also may authenticate stories of resistance to atrocity and contestation to cruel orders.'¹⁸⁸

Indeed, those who articulate the view that child soldiers could be held accountable for crimes committed during conflict frequently propose restorative justice methods as an alternative. Restorative justice aims to unite the offender, victim and community. It attempts to address the offender's criminal responsibility for his wrongdoing and to recognize the victim's pain from those actions.¹⁸⁹ Importantly, when the existence of child soldiers in a

¹⁸³ See Wessells (n 47); DA Harris, 'When Child Soldiers Reconcile: Accountability, Restorative Justice, and the Renewal of Empathy' (2010) 2 *JHumRtsPrac* 334. ¹⁸⁴ Katz (n 105) 12.

¹⁸⁵ *ibid.*

¹⁸⁶ See JCK Kiyala, 'Combining Restorative Justice and Social Justice: Prospects of Child Soldiering Transitional Justice' (2018) 27(3–4) *AfrSecRev* 193.

¹⁸⁷ MA Drumbl, 'Transcending Victimhood: Child Soldiers and Restorative Justice' in C Safferling and T Bonacker (eds), *Victims of International Crimes: An Interdisciplinary Discourse* (TMC Asser Press 2013) 139. ¹⁸⁸ *ibid.* 142.

¹⁸⁹ P Robinson, 'The Virtues of Restorative Processes. The Vices of "Restorative Justice"' in M Tonry (ed), *Why Punish? How Much?* (OUP 2011).

given context is recognized as highly complex and the result of a number of interrelated societal, family-based and socio-economic factors, a restorative justice perspective can ‘recognize the importance of context and the need to address context if it is part of the problem’.¹⁹⁰ Peace agreements, as both backward and forward looking, could play an important role in bridging the chasm between those who view child soldiers only as victims and those who advocate for a more nuanced position. In particular, by proposing restorative justice mechanisms as potentially suitable for child soldiers involved in conflict, peace agreements could help to support both victims of child soldiers and child soldiers as victims.

The issue of restorative justice also illuminates two separate issues—children’s participation and local approaches to dealing with the past. First, as noted above, the preoccupation with treating child soldiers only as victims overlooks their agency and their ability and right to be involved in their own process of reconciling with the past. When accountability is opened beyond the confines of criminal prosecution, opportunities emerge for child soldiers to be engaged in transitional justice processes rather than being passive and uninterested.

Second, alongside issues relating to how childhood is defined, a related matter in children’s rights is how rights are implemented. In particular, anthropological insights help to shift discussions away from the transplantation of international laws, often viewed through a colonial lens, to the relationship between international and local ideas, customs and regulatory approaches.¹⁹¹ Rejecting the binary universalism and cultural relativism stalemate, many point instead to the opportunities associated with the implementation of children’s rights in ways that are context sensitive, locally owned and bottom-up.¹⁹² The concept of living rights, as articulated by Hanson and Nieuwenhuys, for instance, suggests that the meaning, interpretation and practice of children’s rights constitute a living, dynamic process. They suggest that translation involves a mutual exchange of ideas which ‘sustains reflexivity and can make the active reproduction of meaning more explicit and open to debate’.¹⁹³ In other words, implementation that is bottom-up entails a dialogue between the local and the global where a set of compromises is reached that preserves the essence of children’s rights in context-specific and relevant ways.

¹⁹⁰ L. Stovel and M. Valiñas, ‘Restorative Justice After Mass Violence: Opportunities and Risks for Children and Youth’ (2010) UNICEF Innocenti Research Centre Working Paper No 2010-15, 2.

¹⁹¹ See D. Reynaert, M. Bouverne-De-Bie and S. Vandeveld, ‘A Review of Children’s Rights Literature Since the Adoption of the United Nations Convention on the Rights of the Child’ (2009) 16 *Childhood* 518.

¹⁹² K. Hanson and N. Peleg, ‘Waiting for Children’s Rights Theory’ (2020) 28 *Int’l Child Rts* 15.

¹⁹³ K. Hanson and O. Nieuwenhuys, ‘A Child-Centered Approach to Children’s Rights Law: Living Rights and Translations’ in J. Todres and S. M. King (eds), *The Oxford Handbook of Children’s Rights Law* (OUP 2020) 111; K. Hanson and O. Nieuwenhuys, *Reconceptualizing Children’s Rights: Living Rights, Social Justice, Translations* (CUP 2013).

Importantly, children's views and participation in this process are essential. Applied to the issue of restorative justice, child soldiers could and arguably should be involved, alongside victims, in not only participating in transitional justice processes but being actively involved in their creation and operation. This would help to construct a locally owned, context-specific and child-centred approach to dealing with the past. Given the nature of peace agreements as moments of transition, omitting child soldiers from transitional justice mechanisms and plans could undermine their ability to reintegrate back into society. Conversely, important opportunities might exist for peace agreements to help craft approaches to accountability of child soldiers in ways that empower local communities, engage victims and perpetrators and which transcend the tendency of transitional justice machineries to be imposed from above in ways that, amongst other things, perpetuate universalized ideas about children, childhood, child soldiers and justice.

F. Failure to Address Child Soldiers Holistically

Finally, the distinction between forced and voluntary recruitment, as discussed above, does not adequately capture the range of circumstances which have a bearing on a young person's decision to join an armed struggle, whether on the part of the State or non-State actors. In theory, while the reasons vary depending on the context and the individual, peace agreements could attempt to address the socio-economic conditions that may form part of the underlying reasons for recruitment. In a limited number of circumstances, such connections are drawn. For instance, in the CAR, the Political Agreement for Peace and Reconciliation in the Central African Republic (Khartoum Accord) proclaims that '[o]ne of the reasons outlined as a factor contributing to recruitment into armed groups is the lack of economic opportunities for job creation and income generation'.¹⁹⁴ To this end, some peace agreements seek to connect socio-economic reforms to child soldiers. As an example, an agreement in the CAR commits parties to set up 'a microcredit fund intended to finance the initiatives of young people and women associated with armed groups'.¹⁹⁵

Yet, to date, peace agreements have generally failed to associate wider reforms in, for example, education, healthcare, adequate standard of living, economic opportunities, and children's rights, with those relating to child soldiers. In other words, these areas are often treated as separate without drawing connections between provisions for child soldiers and other reforms.

¹⁹⁴ Central African Republic, Political Agreement for Peace and Reconciliation in the Central African Republic (Khartoum Accord) (5 February 2019) Annex 2.

¹⁹⁵ Central African Republic, Synthesis of the Harmonised Claims of the Armed Groups of the RCO Bouar, of 30 August 2018 (30 August 2018).

Viewing the agreement holistically and drawing together seemingly disparate strands could better support child soldiers in their reintegration process.

V. CONCLUSION

The existing literature on child soldiers and peace agreements is both outdated and, to a large extent, limited. So too are the peace agreements that form the basis of existing analyses. Nevertheless, a commonality of existing contributions is the overarching and quite correct contention that child soldiers should be considered in peace agreements, yet they are not, and that agreements in the future ought to include them. Underpinning these assertions is a recognition of the salience attached to peace agreements, a connection that has been drawn at the highest levels of UN policy. Nevertheless, this is but the start of the conversation and attention should be immediately directed to what this inclusion ought to look like, what matters could and should be addressed, and how to do so.

This article has sought to draw attention to the ways in which peace agreements address child soldiers. This helps to contemplate what is possible, where opportunities lie for contributing to the multifaceted issues presented by child soldiers and the areas that peace agreements can, at least partially, play a role in supporting. Given the scale of the task, the impact of peace agreements is likely limited. However, in drawing attention to such issues as child soldier DDR, preventing future recruitment, and accountability, peace agreements can help to put child soldiers on the peacebuilding roadmap. As existing guidelines and checklists have helped to articulate, how an issue is addressed is as important as inclusion itself.¹⁹⁶ Those provisions on issues like DDR and recruitment must be robust, detailed, backed up financially and with corresponding sanctions for non-compliance. Third-party actors must also be involved in overseeing implementation, and peace agreements should be viewed holistically, understanding how reforms and measures in other areas can and should have a bearing on child soldiers.

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¹⁹⁶ See S Molloy, 'Exclusionary Inclusion? Peace Agreements and Provisions on Child Protection' (2023) NordJHumRts <<https://doi.org/10.1080/18918131.2023.2268997>>.