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## PROSECUTION OF SIERRA LEONE'S CHILD SOLDIERS: WHAT MESSAGE IS THE UN TRYING TO SEND?

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In August 2000, the United Nations approved the creation of a Special Court for Sierra Leone to prosecute those who committed war crimes during the decade-long civil war. This paper addresses and criticizes the provision in the draft statute of this Special Court that sanctions the prosecution of child soldiers, some as young as 15. The paper offers recommendations to the international community for dealing with this contentious and salient issue.

### INTRODUCTION

*"The international community can no longer accept that children,  
innocent children, should be cynically used and exploited as child soldiers"*

—Olara Otunnu

The 1990s saw high levels of violence in civil conflicts and ethnic strife. In response, the United Nations (UN) created three ad hoc criminal tribunals in the decade. The International Criminal Tribunals for the Former Yugoslavia and Rwanda are both controlled by the UN and derive their power and jurisdiction from international law. The most recent, the Special Court for Sierra Leone, differs from the other tribunals in that it is a domestic-international hybrid that encompasses aspects of both international and domestic law, and utilizes both Sierra Leonean and foreign prosecutors and judges.

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The mixed nature of the court has decreased the UN's ability to set its terms and created the need for negotiations between the UN Secretary General and the government of Sierra Leone. Discussions were held and resulted in a Draft Statute for the Special Court of Sierra Leone. One of most contentious issues surrounding the statute is the provision that allows the court to have jurisdiction over child combatants who took part in hostilities during the civil war. In an October 2000 report, Secretary General Kofi Annan suggested that children who were 15 or older when they allegedly committed war crimes shall be under the jurisdiction of the court, although they will be granted special treatment and excluded from punishment. The UN Security Council has yet to confirm the draft statute.

While child soldiers have been used for centuries, Sierra Leone raised the practice to an unprecedented scale. Children, often as young as seven, committed some of the most violent acts during the civil war. A 1999 Human Rights Watch report notes: "Child combatants armed with pistols, rifles and machetes actively participated in killings and massacres... [O]ften under the influence of drugs, they were known for their impetuosity, lack of control and brutality" (Farah 2000). Most of these child soldiers were abducted and forced to take part in the hostilities, not voluntary combatants. The international community of non-governmental organizations (NGOs), therefore, sees the prosecution of children of totally unacceptable; however, the government of Sierra Leone feels that children should be held accountable for their actions. The debate concerning the decision to prosecute children is a difficult, albeit important, one.

This paper seeks to explain the importance of keeping child soldiers out of the Special Court's jurisdiction. It will cite international humanitarian law standards, the need for consistency within the UN, the priority of reintegrating child soldiers into society, and the physical limitations of the Special Court as grounds for excluding child soldiers from its jurisdiction. Furthermore, the paper will offer recommendations to the UN and other organizations relating to issue of child soldiers in Sierra Leone.

## **BACKGROUND**

The civil war in Sierra Leone began on March 23, 1991, when Revolutionary United Front (RUF) forces, led by Foday Sankoh, attempted to overthrow the military rule of the All People's Congress. The war has since evolved into a violent campaign against President Ahmad Tejan Kabbah by an alliance between the Armed Forces Revolutionary Council (AFRC) and the RUF.

During the last decade, the RUF and the later RUF-AFRC alliance have

waged vicious and brutal attacks on the military forces and civilians of Sierra Leone. These attacks included campaigns such as "Operation No Living Thing" and "Operation Pay Yourself," in which the apparent goal was to destroy or loot anything in combatants' path. Unlike in conventional wars, civilians have often been the targets of the violence and have been subject to killing, amputation, burns, rape, and sexual mutilation. In January 1999, the RUF captured Freetown, the capital city. In the two weeks of RUF occupation, Sierra Leonean civilians faced the most severe human rights violations in the history of the civil war. Much of the city was destroyed. Six thousand civilians, including cabinet ministers, journalists, and civil servants, were killed.

A cease-fire began in March 1999, and in July 1999, the government of Sierra Leone and the RUF struck a peace agreement. The 1999 Lomé Peace Accord gave the RUF shared political power and granted a general amnesty to all warring parties. At this time, the negotiating parties chose to create a Truth and Reconciliation Commission, which would operate, in place of criminal prosecutions, as a mechanism to document the human rights violations that occurred during the war.

The RUF has since violated the terms of the peace settlement. On May 1, 2000, RUF fighters killed four UN peacekeepers and captured several others. Foday Sankoh was captured on May 12, 2000. The peace process has continued to deteriorate, and there are reports of continued RUF attacks in remote areas of the country.

The war has displaced over half of Sierra Leone's 4.5 million population, including many children. Furthermore, the war separated thousands of children from their families. An estimated 20,000-75,000 are dead, and thousands were mutilated. Furthermore, many aspects of society have collapsed, ranging from the breakdown of families to the physical destruction of villages.

### **Child Soldiers**

Child combatants played an unprecedented, large, and violent role in the Sierra Leone civil war, as part of both government and rebel forces. Precise estimates are difficult to obtain. The children's rights organization UNICEF estimates there are 5,000 child soldiers in Sierra Leone (UNICEF 2000). The office of the United Nations Special Representative for Children puts the number at 10,000 (United Nations 1999). According to the Women's Commission for Refugee Women and Children, up to 80 percent of RUF soldiers were between the ages of 7 and 14 (Radda Barnen 2000). Another estimate states that child soldiers composed 40-50 percent of the RUF's

15,000 forces and 20 percent of the Sierra Leonean government's 25,000-member civil defense forces (Crossette 1999). This is in contrast to a 1997 estimate that the government sent 1,000 children into battle (Mac-Johnson 1997).

RUF rebels intentionally targeted children during their raids. Young boys and girls were forcefully recruited into the ranks. Young girls were often raped and forced to become "wives" or sexual slaves, while boys were forced to commit violent acts. The RUF forcibly used thousands of children since the mid-1990s to attack Sierra Leone's population, committing acts such as killing, raping, decapitating and amputating the limbs of the general population. Children were also used to burn homes, destroy villages, and carry military equipment and looted goods. After the RUF invasion of Freetown in January 1999, 3,000 children were reported missing (Amnesty International 2000). A year later, over 2,000 remained lost. As recently as May 2000, RUF forces were abducting children, including demobilized child soldiers, and forcing them to enter their ranks and join in the fighting (AFROL 2000).

RUF rebels used child soldiers for the same reasons that child soldiering has become an increasing trend in armed conflict worldwide. Children are obedient, easily manipulated, and less likely to desert, and they do not demand compensation (United Nations 1996; UNICEF 1996). A Sierra Leonean who works with former child soldiers explains that child combatants "are very scary, more erratic and more violent than most fighters. They obey any order, no matter how brutal... Unlike adults, children don't negotiate with the enemy or take bribes... They don't form factions or take up arms against you, and they're more easily controlled. Kids just want to be loved, if not by a parent, then a rebel commander" (Crossette 1999).

The use of child soldiers has been facilitated by improvements in military technology. Guns, such as the Soviet-made AK-47 or the American M-16, are increasingly simple to use and can be stripped and reassembled by children as young as 10. These rifles are inexpensive and easily available, obtained in some parts of Africa for less than \$6 each (UNICEF 1996).

Child soldiers in Sierra Leone faced grave difficulties during the war. Abductees were often forced to kill their own parents. They were continually threatened with death unless they killed others. They were often underfed, maltreated, and given drugs to cause more violent behavior. Many children have scars on their temples where commanders made cuts to rub cocaine into before attacks (Farah 2000).

One fourth grader, abducted by the RUF on his way to school, recounted his experience:

The commander brought 10 people from my village, men, women and children. He assembled everyone and told the prisoners they were going to die... [The commander] told me: 'Kill them. If you don't, I will kill you.' He put his gun to my head. My body began to shake. I fired, and kept firing. I watched them fall. Their limbs were twitching. It took them a long time to die – about three minutes. Then I vomited. It was the first time I killed... I wanted to be somebody when I grow up [and] now I am nobody. I belong nowhere. All the people in my community know I was a rebel. Everyone knows what atrocities I have done. I didn't want to do any of it. I was forced. It isn't fair. I'm just a child. I'm very afraid. I have very bad dreams. The rebels stole my name, my good name. They stole my future (Crossette 1999).

Child soldiers face a loss of childhood. Many have spent more than half their lives engaged in war and have lost contact with their families. Many do not know their real names and even have forgotten the structure of family relations, such as the relation to one's aunt or uncle (Farah 2000). These children face great psychological scars as they often lose the understanding of family and their sense of normalcy. When forcibly constricted, children often undergo a process of de-institutionalization, where rebels force them to commit acts of violence against family members or friends, therefore becoming traumatized. Rebel forces then take the children in, explaining that the armed group is now their family. Many children then bond with their commanders who become their new family (Pratt 1999).

Psychosocial trauma occurs during and after their violent actions. Often the experiences of child soldiers have a profound negative impact on their emotional and social development. These children have chronic fear and anxiety, especially fear of retribution and feelings of guilt. Many child soldiers face moral breakdown, where they lose all connection to their community (Goodwin-Gil and Cohn 1994). Child soldiers also face post-traumatic stress, which includes symptoms of apathy, nightmares, difficulty concentrating, and eating disorders (Shuler 1999).

### **THE UN SPECIAL COURT FOR SIERRA LEONE**

On August 14, 2000, in response to requests from the Sierra Leonean government, the Security Council passed resolution 1315, which establishes the creation of a joint UN-Sierra Leone court to prosecute war

criminals. The resolution requested “the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court which would have jurisdiction over “persons bearing the greatest responsibility” for “crimes against humanity, war crimes and other serious violations of international humanitarian law” (United Nations 2000a).

In response to this request, Kofi Annan met with the Sierra Leonean government and presented a report in October 2000 on the establishment of a Special Court for Sierra Leone. Under the draft provisions of the court, its jurisdiction includes crimes against international law and Sierra Leone domestic law. International crimes covered by the tribunal include attacks against civilian populations and peacekeeping personnel, and the “abduction and forced recruitment of children under the age of 15 years into armed forces or groups for the purpose of using them to participate actively in hostilities.” These crimes incorporate violations of Common Article 3 of the Geneva Conventions and Article 4 of Additional Protocol II. Domestic law that will be applied to the Special Court includes the 1926 Prevention of Cruelty to Children Act, which will address the issue of cruelty to girls, and the 1861 Malicious Damage Act, which covers offense related to the destruction of property, particularly arson.

The court will address crimes that occurred after November 30, 1996, the date of the Abidjan Peace Agreement, which was the first comprehensive peace treaty between the Sierra Leonean government and the RUF. The peace agreement was quickly ignored and fighting resumed shortly after its signature. Although the 1999 Lomé Peace Agreement granted a general amnesty, the amnesty only includes protection from domestic prosecution. It does not protect against the prosecution by an international-domestic hybrid court.

The jurisdiction of the Special Court will extend to a group of people described by the Secretary General as “persons most responsible.” This term is meant to include political and military leadership, as well as people selected due to “a sense of the gravity, seriousness or massive scale of the crime[s]” committed (United Nations 2000b, 7). Annan makes clear that the term “most responsible” need not exclude children between 15 and 18 years old, noting that the severity of the crimes they may have committed qualifies them to be under the jurisdiction of the court.

The question of jurisdiction over this age group is the most contentious aspect of this report. The Secretary General recognizes that “the possible prosecution of children for crimes against humanity and war crimes presents a difficult moral dilemma” (United Nations 2000b, 7). In the

report, the Secretary General recognizes:

More than any conflict where children have been used as combatants, in Sierra Leone, child combatants were initially abducted, forcibly recruited, sexually abused, reduced to slavery of all kinds, and trained often under the influence of drugs, to kill, maim and burn. Though feared by many for their brutality, most if not all of these children have been subjected to a process of psychological and physical abuse and duress which has transformed them from victims into perpetrators (United Nations 2000b, 7).

According to the Secretary General's report, both the government of Sierra Leone and much of the Sierra Leone public feel that crimes committed by child soldiers should fall under the jurisdiction of the court. Supporters of this position stated that the Sierra Leone public would not look favorably on the court if it did not include children among the accountable. However, the NGO community, particularly those who oversee the rehabilitation programs, stated that any judicial accountability for this group would endanger these programs.

The Secretary General offered three options for dealing with the issue of child soldiers: (1) Determine 18 as a minimum age of responsibility, (2) have victims and perpetrators between 15 and 18 years old describe their stories before an assembly similar to the Truth and Reconciliation Commission, or (3) have the child soldiers go before the court without punishment and with the guarantees granted under international standards of juvenile justice.

Article 7 of the draft statute details the jurisdiction "over persons of 15 years of age." According to this article, the Special Court would have jurisdiction over persons who were at least 15 years old at the time of the alleged commission of a crime. Those between the ages of 15 and 18 will be treated as a juvenile offender, and the Special Court will take "into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society" (United Nations 2000b, 23). The Special Court will offer a series of protective measures for the juvenile offenders, and the process will result in one or more options of follow up care, including community service, foster care and participation in disarmament, demobilization and reintegration programs.

The draft statute awaits discussion and final approval by the Security Council.

## CRITIQUE OF THE DECISION TO PROSECUTE CHILD SOLDIERS

The decision to include children between the ages of 15 and 18 for jurisdiction under the Special Court was a grave error that deserves scrutiny. Many factors suggest that child soldiers should be protected, and that the decision to prosecute children, even without punishment, is not the best use of the resources of the Special Court. It is also not the best means for the people of Sierra Leone, especially the children, to get beyond the atrocities of the war. This section looks at four reasons to exclude children from the Special Court's jurisdiction.

### International Standards

Most of the debate regarding the prosecution of child soldiers has centered on the appropriate minimum age of recruitment and prosecution. Recent international children's rights agreements have moved toward setting the age at 18. A minimum age for lawful recruitment of children was first established at the 1977 Additional Protocol II to the Geneva Conventions, which states: "Children 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" (Art. 4, Par. 3c). Other international documents and declarations provide further protection for children, including those in armed conflict. They detail a variety of issues related to child soldiers, including the minimum age of legal participation and the minimum age for prosecution of child soldiers.

The Convention on the Rights of the Child (CRC), adopted in 1989, has been ratified by every UN member except the United States and Somalia. The convention addresses many issues of child protection and defines a child as "every human being below the age of 18 unless, under the law applicable to the child, majority is attained earlier" (United Nations 1989). Article 34 protects children from sexual exploitation and sexual abuse. Article 37 protects children from "torture, inhumane or degrading treatment or punishment." It also states that "no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort..." Article 38 designates 15 as the minimum age that persons must be to participate in hostilities. Article 39 states that countries must take the appropriate measures to ensure physical and psychological and social reintegration of a child victim of many abuses, including armed conflict. (United Nations 1989). While these articles have created some rights for child soldiers, later statutes have



broadened the sense of protection.

In 1998, delegates from 160 countries voted by majority to create a permanent International Criminal Court (ICC), as outlined by the Rome Statute. This court would diminish the need to create ad hoc international tribunals and would try those charged with committing war crimes, crimes against humanity, and genocide. Protection of children was enmeshed in the creation of the ICC. Recruiting or conscripting those under the age of 15 is considered a war crime. (The use of the age of 15 reflects the standard also expressed by the CRC). Furthermore, the court recognizes international attacks on educational institutions as war crimes and takes into consideration the special needs of child victims and witnesses. Most relevant to the possible prosecution of child soldiers is Article 26, which states, "The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime" (United Nations 1998). The Rome Statute has broad international support, as 120 states voted for it and, as of November 2000, 155 states have signed it (Amnesty International 2000).

In May 2000, the UN General Assembly adopted The Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, which contains many provisions to further the international protection of children. This Optional Protocol is perhaps the greatest tool thus far in the international legal protection of child soldiers. Article one affirms that states must take "all feasible measures" to protect children (defined as those under the age of 18 in recognition of the CRC definition) from participating in armed conflict. Article two states that those under the age of 18 are to not to be "compulsorily recruited," either by states or non-governmental armed forces. Furthermore, according to Article 4, non-governmental armed forces are prohibited from recruiting (even voluntarily) those under the age of 18. In addition, Article 6 declares that states should assist in the demobilization, reintegration, and physical and psychological rehabilitation of all child soldiers (United Nations 2000d).

These three major UN declarations are not the only documents to address protection and possible criminality of child soldiers. In November 1999, the African Charter on the Rights and Welfare of the Child established 18 as a minimum age for recruitment and participation in armed forces. The International Labor Organization adopted a 1999 convention that states that the use of child soldiers is one of the worst forms of child labor. It further states that 18 is the minimum age for compulsory recruitment (United Nations 1999).

The declarations and statutes discussed above all view the use of child soldiers in the same light: as a crime. Together, the declarations state that children under the age of 18 should not be forcefully recruited, conscripted, or recruited into non-governmental armed forces and those under 15 should not be recruited by governmental armed forces at all. Furthermore, they state that those under 18 should not be prosecuted. In sum, the declarations recognize that child soldiers are victims in need of international protection. With each declaration and statute, children come one step closer to receiving full protection from armed conflict under international law. The statute for the Special Court, as it stands now, would retard the progress made in international legal child protection.

### *Consistency of the United Nations*

In addition to opposing the standards of international protection for those under 18, the decision to prosecute child soldiers also shows inconsistency in the priorities of the United Nations. The UN Special Representative for Children and Armed Conflict, UNICEF, the office of the Secretary General and the Security Council have all made statements and taken actions to suggest that child soldiers need to be recognized as victims, not as perpetrators.

In 1997, the UN created the position of Special Representative for Children and Armed Conflict to address the special needs of children. The representative, Olara Otunnu, has expressed concern for the situation of child soldiers in Sierra Leone and has stated that the focus must be to secure the immediate release of those still held by RUF and AFDC forces, to improve disarmament, demobilization and reintegration efforts for child ex-combatants, and to reduce the recruitment and use of child soldiers. He also asked the RUF and AFDC to “level with the children of Sierra Leone and acknowledge fully their role in the horrific atrocities committed during the war, most of them directed against children and women” (United Nations 1999a).

Otunnu explains that curbing the use of child soldiers can only be done by “putting pressure on the offending parties, addressing the political, social and economic factors that facilitate the exploitation of children as soldiers and mobilizing more resources to enlarge capacities for the rehabilitation and reintegration of ex-child soldiers” (United Nations 1999b).

UNICEF has played a large and active role in the demobilizing efforts of child soldiers. In response to the Secretary General’s suggestion to prosecute those ages 15 to 18, UNICEF’s representative in Sierra Leone

noted that the ICC exempted those under 18 from prosecution and stated that making this group of child soldiers stand trial "is potentially making these children a victim for a second time" (CNN 2000). Another spokesperson said, "These children are first and foremost victims... The real perpetrators are those adults behind this recruitment" (Lynch 2000).

In discussing the creation of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, a report by the Secretary General's office remarked that states which oppose the minimum age of 18 for recruitment into armed forces "fail to take into account the extent to which effective protection of children requires unqualified legal and moral commitment to the principle that children have no part in armed conflict" (Washington Coalition on Child Soldiers 2000).

The Security Council has also given its support to the protection of child soldiers. On August 11, 2000, the Security Council passed resolution 1314, asking all parties in armed conflict to heed international law relating to the rights of children. It further urged all member states to sign and ratify the Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict (United Nations 2000e).

Excepting the draft statute for the Special Court, the UN has spoken with one voice against the use of and for the protection of child soldiers. The Special Court statute runs counter to the actions of the UN in recent years. Even the language of the statute is conflicted. Although it states that jurisdiction need not exclude children over the age of 15, it also states that (for juveniles) "appropriate resort should be had to alternative truth and reconciliation mechanisms to the extent of their availability" (United Nations 2000b). When one considers that only those most responsible will be prosecuted, the reference to "other mechanisms" seems out of place.

### *Reintegration*

One of the most important reasons for a court of this type should be to help members of the society receive justice and gain the ability to heal and move beyond the war. An important aspect of Sierra Leone's ability to heal, however, is the reintegration of child soldiers into society. These children are Sierra Leone's future, and enormous efforts must be made for successful reintegration. As of May 2000, only 1,700 former child combatants had been demobilized (UNICEF 2000). The principle of child prosecution will hinder these efforts. While it would seem that there are many

benefits to demobilizing, there are also many deterrents. Important in reintegration is offering incentives to stop fighting. These may include job training programs or schooling (Schuler 1999). Including child soldiers as possible defendants would create uncertainty and fear of retribution; both would serve as obstacles to demobilization and future reintegration (GINIE 1999).

A report of the Security Council Mission to Sierra Leone dated October 16, 2000 related the concerns of members of Sierra Leone's NGOs and civil society that the prosecution of child soldiers could make them reluctant to disarm. The report states: "The right balance must be struck between the requirements of justice and the need to minimize any potential disincentive to entering the disarmament, demobilization and reintegration process that the threat of prosecution may represent—especially to child combatants." Many felt that the Truth and Reconciliation Commission would be a better alternative for child combatants still in the ranks of the RUF" (United Nations 2000c).

Those involved in reintegration have found a spectrum of successful techniques. Traditional healers may offer a sense of catharsis in that the children can seek forgiveness from their victims (Schuler 1999). Similar rituals performed in Mozambique helped heal both the community and the combatant – the evil force seen to be occupying the child is expelled, purging the child and the community. This option supports Goodwin-Gil and Cohn's beliefs that intervention strategies should consider integrating local practice, customs and beliefs (Goodwin-Gil and Cohn 1994). In addition, many social workers are involved in "sensitization" campaigns throughout the country (Shuler 1999).

Some observers state that reintegration cannot occur until the Sierra Leonean citizens receive justice. While the government of Sierra Leone believes that the court should prosecute those child combatants who "freely and willingly committed indictable crimes," there is "no prevailing view" in Sierra Leone regarding the prosecution of child soldiers (United Nations 2000b).

Reintegrating child soldiers in Sierra Leone will be an uphill battle. Otunnu describes the youth of Sierra Leone as feeling "used, discouraged and abandoned" (United Nations 1999b). The principle behind prosecuting child soldiers will only alienate these children more. In addition, communities will face greater difficulty in accepting child soldiers back, finding it difficult to identify child soldiers as victims when the international community treats them as criminals. Prosecution by the Special Court would create further stigmatization. The most important step in the

progress of Sierra Leone is to help victims of the war heal from their wounds – child soldiers included.

### *Physical Limitations of the Special Court*

In order to prevent overburdening the court, the Secretary General determined that it would prosecute only those “most responsible” for atrocities committed during the civil war in Sierra Leone. The UN Assistant Secretary General for Legal Affairs estimates that the Special Court will prosecute between 25-30 people (Aita 2000). The Secretary General determined that allowing jurisdiction over events as far back as 1991 would create too heavy a burden on the court. The 1996 date “would have the benefit of putting the Sierra Leone conflict in perspective without unnecessarily extending the temporal jurisdiction of the Special Court” (United Nations 2000b).

Given the limitations placed on the courts, especially the small number of people to be tried under the court, it seems unreasonable that one or more children would be considered among one of the top 25-30 “most responsible” people in the last four years of civil strife in Sierra Leone. It seems, therefore, very unlikely that children will be tried by the Special Court. The inclusion of the provision may have been a symbolic gesture to satisfy Sierra Leone government demands, but it sets a dangerous precedent and gives the incorrect perception that children had power and authority in this war.

## RECOMMENDATIONS

The decisions of the Security Council regarding the Special Court for Sierra Leone have implications not only for the current tribunal, but also for possible future tribunals. As it stands now, the statute could have immediate consequences for child soldiers in Sierra Leone and long-term indirect consequences on the protection of child soldiers worldwide. The following recommendations attempt to stem this movement away from child protection and to define a Special Court that recognizes child soldiers as victims of armed conflict.

- *The Security Council must reevaluate the provisions related to prosecution of child soldiers.* As argued above, the provisions that involve child soldiers are in contradiction of current international law. Allowing the prosecution of this group sends the statement that while the United Nations is concerned with the unlawful recruitment of child soldiers,

its victims may face punishment nonetheless. According to international doctrine, the only child soldiers who would be eligible for prosecution are those who voluntarily joined government forces after the age of 15 and gained a level of authority to become one of the “most responsible” for the atrocities. Prosecution of any other child soldier would be a mistake. Although it is unlikely that any child soldier will get prosecuted given the small number of prosecutions and the mitigating circumstances surrounding child soldiers, the mere inclusion of this group in the court’s jurisdiction deals a blow to the mission of child protection.

- *The Secretary General and the Security Council should consider different language regarding prosecution of child soldier recruiters.* The current draft statute describes the practice as the “[a]bduction and forced recruitment of children under the age of 15 years into armed forces or groups for the purpose of using them to participate actively in hostilities.” This wording implies that only those who abducted children *for fighting* will be prosecuted (Amnesty 2000). According to UNICEF, many abducted children associated with fighting forces do not actively participate in combat activities and hold positions such as porters, food growers or “wives” (Radda Barnen 2000). Furthermore, there is no language to punish those who allowed children under 15 to fight, even if they were not compulsorily recruited. The Rome Statute and the 2000 Optional Protocol criminalize all recruitment, whether forced or not, of children under the age of 15. The Special Court draft statute does not.

This provision may cast guilt on the Sierra Leone government, which also had children as part of its forces, despite the fact that Sierra Leone was one of the first countries to sign the CRC. The government has attempted to justify its decision. The Deputy Minister of Defense stated, “A lot of these kids witnessed the slaughter of their parents and were so traumatized that they were living like beasts in the bush... We had to catch them and bring them into the fold as human beings” (Crossette 1999). As Otunnu states, however, “War crimes against children must be punished; those responsible must be held accountable and brought to justice” (United Nations 1999).

- *The Security Council, Sierra Leonean Government, and international community must find alternate mechanisms of reconciliation for child soldiers.* While the Special Court is not the appropriate forum, there must be a mechanism by which children can relate their experiences

and begin the reintegration process. The Truth and Reconciliation Commission created as part of the 1999 Lomé peace accords may serve this purpose. In 2000, the Sierra Leonean President and members of parliament passed the Truth and Reconciliation Commission Act of 2000, which calls for the creation of tribunal to last one year with a possible extension for a further six months. The goal of the commission is to

help restore the human dignity of victims and promote reconciliation by providing an opportunity for victims to give an account of violations and abuses suffered and for perpetrators to relate their experiences, and by creating a climate which fosters constructive interchange between victims and perpetrators, giving special attention to the subject of sexual abuses and to the experiences of children within the armed conflict (Truth and Reconciliation Commission Act 2000 III, 6(2)b).

Alternatives such as this must be explored to allow child soldiers and Sierra Leonean society the opportunity to heal.

- *In the future, the Security Council should consider the difficulties in creating a hybrid international-domestic court.* The Sierra Leonean government approached the UN regarding the creation of a hybrid court, probably because of the 1999 general amnesty. The Security Council agreed, and the result has been that the UN must negotiate the terms of prosecution with the Government of Sierra Leone. This has forced the UN to compromise on international standards. Unlike the former ad hoc tribunal or the International Criminal Court, there is no provision in the draft statute that prevents the Special Court from violating international rules of law.
- *The UN, NGOs and academics must conduct more research in the field of child soldiers.* The current literature on child soldiers focuses on voluntary recruitment of children, which is decreasingly the form that the practice takes. The international community must have a better sense of the number of child soldiers worldwide. The lack of adequate statistics on child soldiers will prevent international organizations from knowing when all child ex-combatants have been demobilized. Lack of full understanding of the scope of the problem also prevents the allocation of adequate funding for protection of or treatment for these groups.

## CONCLUSION

Although recognizing the international declarations protecting children, negotiators creating the draft statute for the Special Court decided to criminalize children between the ages of 15 and 18. The protection of children, however, should not be a topic for negotiation. Child soldiers are victims of armed conflict. They should not be subject to prosecution for crimes committed under duress or fear of death. They should be recognized as a group in need of great physical and psychological rehabilitation. Current international sentiment is moving toward increased protection for this vulnerable age group. The draft statute does little to further their protection; in fact, it takes a step back.

The Secretary General's report states that there would be no punishment for juveniles on trial and that the goal is to establish accountability. The truth, however, is that even placing these child soldiers on trial would *be* punishment and that accountability properly lies with those who recruited them.

It seems clear from the language and tone of his report that Annan does not strongly support the prosecution of child soldiers. The report clearly states that provisions relating to child soldiers were the result of long and touchy debate, and that the results were one of compromise. It is unfortunate, however, when the United Nations has to compromise its principles. One hopes that the Security Council can rectify the mistake.

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