Protection versus reintegration of child soldiers: assistance trade-offs within the child protection regime

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Assistance Tradeoffs within the Child Rights Regime

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ABSTRACT: Policy response to the problem of child soldiering has focused on the criminalisation of recruitment and the prevention of re-recruitment of children who have already fought in war. Dominant remedial measures are rooted in legal approaches that reflect securitised strategies; namely, symbolic prosecution of child recruitment as a war crime to deter future child recruitment. Yet criminalisation has had minimal impact on conflict-affected children and has failed to prevent child soldiering. Moreover, the prioritisation of criminalisation produces tradeoffs with assistance programs for former child soldiers struggling to integrate economically, socially, and politically after war. Despite child rights recognition that children should participate in decisions affecting their well-being, child reintegration efforts after war rarely even consult children about key decisions, let alone conceptualise ways to encourage their active participation in decision-making. Consequently, policymakers continue to act as if they know what is best for children after wars in the Global South. Meanwhile, programs designed to help children after war remain short term and ill-suited to children's own post-war needs and aspirations. Designing more effective post-war reintegration assistance will likely require recognising child agency and breaking up the monopoly that criminalisation strategies currently possess.

This chapter critically assesses and analyses the assumptions and practices of the child rights regime, focusing on the relationship between the criminalisation of recruitment and re-recruitment of children into armed forces and groups on one hand and programs to provide children with post-war reintegration assistance on the other. Notwithstanding the rhetoric of child protection actors in the wake of recent investigations and convictions at the International Criminal Court (ICC), international legal triumphalism about the protection of child soldiers is premature, not least because there is little evidence that criminalisation of recruitment and use has reduced actual recruitment and use.[1] The gap between the rhetoric and reality of deterrence calls into question whether prioritising criminalisation is the best way to protect children during conflict, and whether developments at The Hague can have any real impact on the lived everyday of young people caught up in structures of war-making. Indeed, these are still boom times for the business of recruiting and using children in war. The Child Soldiers World Index, launched in 2018, reports that children were used in war in at least 18 countries since 2016 (Child Soldiers International, 2018). The participation of large numbers of child soldiers in conflict continues in almost every region of the world (Human Rights Watch, 2008; Human Rights Watch, 2012). It is also clear that the three goals of child protection and assistance – release of children from armed forces and armed groups, reintegration of former child soldiers into civilian life, and prevention of recruitment or re-recruitment into armed forces and groups – are not conceptualised or pursued with equal commitment of resources.

This chapter presents three arguments which demonstrate that prevailing legal protection strategies do not merely distract from assistance but also impede it. First, the deterrence impact of criminalisation strategies has not been demonstrated and is likely negligible. Second, protection efforts produce direct tradeoffs with the quality, duration, scope, and reach of child reintegration. The tradeoffs emanate from a paradox of international criminalisation strategies, that by penalising those who admit to using child soldiers during war, the international child rights regime creates incentives for armed forces and armed groups to disguise their recruitment and use of children, which in turn hurts efforts to identify, target, and assist children during and after war.[2] Third, the basic concepts, assumptions, and practices of child protection strategies simultaneously infantilise and pathologise young people, and especially young people in sub-Saharan African contexts. Discourses dependent on the

vulnerability and securitisation of children, combined with the criminalisation of their recruitment and use in conflict, actively inhibit more effective and just reintegration strategies from emerging.

Tradeoffs between protection and reintegration can be traced back to the child rights architecture itself, which sets up competing goals and embeds contradictions about child rights during post-war transitional processes. That architecture gives child ex-combatants, unlike their adult counterparts, an international legal right to reintegration assistance but provides little guidance about what the nature, duration, and goals of such assistance should be. Additionally, it does not give children standing or recognition to challenge key decisions made for them. And, it gives little if any guidance about how to resolve competing priorities or interpret and implement key rights (what constitutes the 'best interests of the child', who decides, and how). As a result, the child rights architecture enshrines unenforceable or difficult-to-enforce goals as rights.

At the same time, a way out of the impasse might be located within the child rights architecture, starting with greater and more meaningful consultation and participation of child soldiers themselves in decisions that affect them. Also crucial are programs that reflect understanding of how children are already engaged in efforts to reintegrate themselves that exist outside of formal disarmament, demobilisation, and reintegration (DDR) processes. At present, however, commitment to honor children's participation in decisions that affect them is rhetorical rather than actual. Ensor and Reinke (2014) identify lack of commitment to meaningful child participation as the principal reason why child rights approaches emphasise paternalistic protection over child empowerment. In other words, and as I argue throughout this chapter, the elevation of securitised protection strategies does not just distract from meaningful post-war reintegration assistance; it thwarts them.

To provide context for these arguments, the chapter first traces the emergence and development of dominant intervention and enforcement modalities. It then moves on to identify and analyse the ways in which strategies adopted to prevent recruitment and use of children in hostilities have frequently come at the expense of reintegrating children recruited into and used in hostilities. In locating tradeoffs between protection and reintegration, the chapter collates key findings from the ethnographic literature on child soldiers and draws empirically from diverse contexts across sub-Saharan Africa, including Mozambique, Sierra Leone, Liberia, Angola, and the Democratic Republic of the Congo (DRC).

The argument that protection assumptions and practices produce tradeoffs with reintegration assistance is not abstract or academic but has real impacts for youth beneficiaries. In this chapter, I hope to tip the scales from 'protection via criminalisation' towards 'reintegration' in part because the bulk of scholarly analysis and advocacy has focused on protection, to the detriment of an understanding of the assumptions and practices underpinning child reintegration. I am not arguing that protection or criminalisation should be discarded. Nor am I advocating for the allocation of resources away from one activity towards the other. Instead, I assert that new ways of 'seeing reintegration' become possible when the complex impacts of protection practices on reintegration are foregrounded. Crucially, critical opportunities for re-thinking key child rights standards (such as 'maximum development', 'best interests of the child', and 'participation') become possible only through a critical examination of prevailing protection and reintegration approaches. In contrast, pretending that observed

and persistent tradeoffs between protection and assistance do not exist will do little to protect children from future recruitment and use, and will miss opportunities to improve assistance. Ultimately, the discursive monopoly that criminalisation strategies exercise over protection and assistance policy will need to be broken up if reintegration assistance is to be more effective and correspond with the lived experiences of children caught up in conflict. But such a breakup will likely be impossible without radically enhancing the frequency and quality of child participation in key decisions that affect them.

The codification of simultaneous rights to protection and reintegration

The human rights instruments and legal institutions that are the focal point of child protection and assistance policy include the CRC, the 2000 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (Optional Protocol), the Paris Principles, the Rome Statute, and trial judgments of the ICC. Article 38 of the CRC commits states not to recruit children under 15 into their armed forces, to ensure that children under 15 'do not take a direct part in hostilities', and to ensure the 'protection and care' of all children affected by armed conflict (United Nations, 1989:3). The Optional Protocol commits signatory *states* to four enhanced obligations. Article 1 commits states not to recruit children under 18 for use in hostilities. Article 2 commits states not to *conscript* soldiers under 18 (a distinction is made between voluntary *recruitment* and coercive *conscription*, such as a military draft). Articles 3 and 6 require states to draft legislation and take all other necessary measures to prohibit and criminalise recruitment and use of children in hostilities. And, Articles 6 and 7 require that states demobilise those under 18 and provide them with physical, psychological, and social reintegration support. The Optional Protocol (United Nations, 2000) further prohibits *non-state* armed groups from recruiting or using children under 18 in hostilities (Article 4).

The CRC text itself, however, waters down the commitments of states and other actors. Article 3(2) establishes the 'best interests of the child' as the primary consideration in 'all actions concerning children' but then dilutes the standard in two ways, first by limiting interpretation of 'all actions' to those actions undertaken by state entities ('public or private social welfare institutions, courts of law, administrative authorities or legislative bodies') and second by stipulating that various parental 'rights and duties', not enumerated, ought to prevail over other actors' determinations about best interests, including children's own. Elsewhere, the CRC text frequently defers to states' own interpretations of feasibility and desirability in enforcing child rights. For example, Article 6(2) commits states to ensure child rights to survival and development but only 'to the maximum extent possible'. The same feasibility default permeates the Optional Protocol, where the responsibility of states to provide reintegration support for children is an 'obligation of means' (Vandewiele, 2005:48). According 6(3) of the Protocol, state responsibility is limited to taking 'all *feasible* measures' to ensure children's release and demobilisation and to providing 'all *appropriate* assistance' for reintegration and recovery (United Nations, 2000: emphasis added). The result? It is not possible to locate within the Convention or Protocol concrete guidance about the contours, duration, or scope of reintegration assistance. Instead, states, international child protection agencies (UNICEF), and the Committee on the Rights of the Child are given wide latitude in interpreting the feasibility, extent, and appropriateness of their own efforts to safeguard and promote children's survival and development, reintegration and recovery.

These same actors retain considerable discretion when it comes to enforcement, too. International enforcement of rights codified within the CRC and Optional Protocol has taken four principal forms: state reporting, UN monitoring, negotiation of bilateral action plans between states and the UN, and criminal investigation and prosecution at the ICC of *individuals* (not *states*) alleged to recruit or use children in hostilities. First, in terms of state reporting, the CRC mandates that States Parties submit reports to the Committee on the Rights of the Child every five years on the actions they have taken/are taking to safeguard CRC and Optional Protocol rights. The Committee's enforcement powers are limited to raising concerns or making recommendations in response to a state's report, or to making recommendations to the General Assembly.

Second, the UN Security Council monitors compliance with the CRC and Optional Protocol and authorises various enforcement measures through Security Council Resolutions (UNSCRs), including through stabilisation missions and peace enforcement operations authorised under Chapter VII of the UN Charter. Numerous UNSCRs address the issue of children and armed conflict.[3] Resolutions have urged member states and the UN system to end recruitment and use of children in hostilities and promote alternative livelihoods for children (UNSCR 1261, 1999:para.13). Resolutions have also recalled obligations under international law not to use schools for military purposes (UNSCR 2143, 2014:para.18), required certain states to complete 'action plans' with the UN to end recruitment and use of child soldiers (UNSCR 1612, 2005:para.3), and mandated protection of children as part of UN peacekeeping operations (UNSCR 1612, 2005: para.12; UNSCR 2143, 2014:para.24). Reflecting the latter enforcement option, peace operations increasingly authorise child protection and assistance under Chapter VII. And, provision for child protection and assistance, including release and demobilisation of child soldiers, child reintegration assistance, or other support for children's rights, is present in all ongoing mission mandates in sub-Saharan Africa: CAR (MINUSCA), Mali (MINUSMA), DRC (MONUSCO), Sudan-Darfur (UNAMID), Liberia (UNMIL), South Sudan (UNMISS), and Côte d'Ivoire (UNOCI).[4]

Third, UNICEF and the Special Representative to the Secretary-General on Children and Armed Conflict monitor and assist states and non-state armed groups that have signed action plans with the UN to prevent recruitment and use. As of 2016, 26 listed parties (11 state governments and 15 non-state armed groups) have signed 27 action plans with UNICEF and the SRSG (United Nations Office of the SRSG for Children and Armed Conflict, 2017a). Since 2014, UNICEF and the SRSG have de-listed nine signatories, deeming them to have completed their agreed action plan.[5] Most action plans stipulate that the signatory issue military command orders prohibiting the recruitment and use of children, release all children identified in its ranks, ensure reintegration assistance, criminalise future recruitment and use, and adopt age-verification mechanisms in recruitment procedures. Action plans might also call for the investigation and prosecution of those who recruit and use children in hostilities, the appointment of child protection specialists, and state-wide information campaigns. The SRSG credits action plans with the criminalisation of child recruitment in Afghanistan, the appointment of a presidential adviser in the DRC to address child sexual violence and child recruitment, and Somalia's ratification of the CRC in 2015 (United Nations Office of the SRSG for Children and Armed Conflict, 2017b).

These various enforcement actions are relatively toothless. States that fail to implement action plans face few if any sanctions. States largely determine the feasibility and

appropriateness of their own strategies to demobilise and reintegrate child soldiers, regardless of recommendations from the Committee on the Rights of the Child to the General Assembly. And UN monitoring efforts, even when accompanied by Security Council condemnation or action, lack enforcement heft or sustainability, particularly when broader efforts to manage or end conflict stall. Consequently, the fourth enforcement strategy – criminalization – has emerged as the dominant one.

The prioritisation of criminalisation as a child protection strategy

Enforcement of criminalisation rests with the ICC. Per the 1998 Rome Statute creating the ICC, the Office of the Prosecutor of the ICC can open and conduct investigations against individuals and can initiate prosecution by filing charges against such individuals. From there, the Trial Chamber of the ICC can convict and sentence individuals and issue reparations judgments to aid and assist victims.[6] The Rome Statute (1998: Article 8(2)(b)(xxvi) for state armed forces and Article 8(2)(e)(vii) for non-state armed groups) also made recruitment and use of children in conflict a war crime.

As it happens, the ICC's first case was for the crime of recruitment and use of child soldiers in the conflict in eastern DRC from 2002 to 2003.[7] The case resulted in a conviction, on 14 March 2012, against Thomas Lubanga Dyilo. The Trial Chamber sentenced Lubanga to 14 years of prison, and the Appeals Chamber confirmed the conviction and sentence (International Criminal Court, 2012). Human rights groups and victims' advocates have criticised the judgment as being too narrowly focused on the single crime of recruiting and using child soldiers, ignoring the other human rights abuses and war crimes they allege Lubanga to have overseen or committed and therefore limiting the scope of victims' participation in the ICC's first case (Graf 2012; Gambone, 2009; Coleman, 2007:780).

Legal scholars, meanwhile, have focused on two problems with the Lubanga judgment, and their objections are especially important in a legal context where that judgment remains the only ICC ruling regarding recruitment and use of child soldiers, and therefore the only ICC precedent to date.[8] First, the Trial Chamber in Lubanga distinguished the Rome Statute acts of conscription and enlistment, associating conscription with coercion to join an armed force or group and enlistment as voluntary recruitment into a force or group.[9] In any case, however, it also ruled that the distinction is irrelevant to adjudicating the war crime of recruitment because, it argued, the admission of a child into an armed group or force 'with or without compulsion' was a war crime under the Statute (Amann, 2013:421-422). Some legal scholars see benefits in emphasising that structural constraints make any claim of voluntary enlistment by children suspect, whilst others have decried the denial of child agency, along with the broad longstanding legal tradition of according 'each term in a statute... a separate meaning' and the more specific legal treatment of juvenile autonomy (Amann, 2013:422).[10] The ruling coincides with the view put forward in the SRSG for Children and Armed Conflict's amicus brief to the Court (the SRSG also testified as an expert witness), which argued that any distinction between voluntary and forced recruitment is 'without meaning in the context of armed conflict because even the most voluntary acts can be a desperate attempt to survive by children with a limited number of options in the context of war' (International Criminal Court, 2008). Many child rights advocates prefer a narrative of clear-cut coercion to complicated agency.

The second problem concerns use of child soldiers. Numerous international agreements (including the Cape Town and Paris Principles) disallow a narrow conceptualisation of use that is limited to arms-wielding fighters engaged in battlefront combat. They call instead for a broad interpretation recognising that children play a variety of roles on the front lines and in base camps. One of the Lubanga judges affirmed this broad view, echoing three arguments in the amicus brief and testimony of the SRSG in the case. First, it described children as fulfilling a variety of roles during war, including as spies, messengers, porters, scouts, and cooks. Second, it argued that all of these roles make children targets of violence and place them in or near violence during hostilities. Children face injury or death for dereliction of duty or attempts to escape, and face reprisal violence by rival groups and forces, regardless of their conflict roles. Third, it argued forcefully that sexual violence, abuse, and exploitation of children all constitute 'active use' of children in hostilities, again acknowledging the lived reality of girl and boy combatants under 18 who experience sexual use as use (International Criminal Court, 2008). But the majority of the Lubanga Court affirmed only the SRSG's first two points, explicitly excluding the third point about inclusion of sexual violence from any consideration of active use. The majority ruled only that use meant exposure of children 'to real danger as a potential target' even outside of 'the immediate scene of the hostilities'. In reaching this majority view, the Court drew on some evidence of maltreatment of child soldiers 'outside the immediate scene of hostilities' (e.g., corporal punishment) but excluded other evidence of maltreatment (sexual violence, abuse, and exploitation) (Amann, 2013:422-425).

Criminalisation has impacted on child protection and assistance, but not always for the better. The impacts of protection strategies on child soldiers and their post-war reintegration are analyzed next, starting with an assessment of whether criminalisation has a deterrent effect on recruitment and use.

Do protection enforcement strategies deter recruitment and use?

The deterrent impact of the ICC is in doubt, in part because of its slow pace and limited reach. It took the Court almost a decade to investigate and prosecute one defendant for the crime of recruiting and using child soldiers. The reach of the ICC, and its resources, are extremely limited and there are pressures on the Court to demonstrate that it can and will investigate and convict cases across the spectrum of Statute jurisdiction crimes and across geographical contexts. These limitations call into question the extent of any deterrent effect on recruitment and use of children in hostilities. Any potential deterrent effect is also clouded by the ongoing confusion and contestation around concepts such as enlistment, recruitment, and use. Deterrent effects rely on widespread and diffuse information campaigns that clearly demarcate proscribed activity. If, per the controversial Lubanga judgment, the above concepts continue to divide jurists and advocates, then the criminal culpability for these three crimes remains in doubt. Furthermore, there is a perception problem. Populations in states with ongoing or recently concluded hostilities arguably place recruitment and use of child soldiers low in a panoply of needs and concerns that result from long-term, devastating violence.

The selectivity of justice at the ICC also precludes deterrence. The cases successfully prosecuted at the Special Court and the ICC were against defendants of non-state armed groups. Such a focus sidesteps widespread *state* use of children under 18. For example, whilst there is little doubt that Joseph Kony's LRA formerly active in northern Uganda has recruited and used children in hostilities, the SRSG for Children and Armed Conflict has also drawn attention to the

Ugandan government's own child recruitment into pro-state militias and the army, including through abduction and coercion (IRIN, 2006). But the ICC has not been willing to investigate or prosecute state recruitment and use.

Meanwhile, recruitment and use of children continue, with no perceptible decrease since the creation of the ICC in 2002 or the issuance of the Lubanga judgment in 2012. Reports of child recruitment and use continue in all states with active action plans (Kohm, 2014:232-233). The UN Security Council has frequently condemned recruitment and use of child soldiers, but that condemnation has not deterred states and armed groups from recruiting and using them. In 1999, the Security Council, expressed 'its grave concern' at the impact of conflict on children and 'strongly condemn[ed]' recruitment and use of children in conflict (UNSCR 1261, 1999:paras.1,2). Fifteen years later, the Security Council remained 'deeply concerned over the lack of progress on the ground', and again expressed 'deep concern' about and 'strongly condemn[ed]' recruitment and re-recruitment of children (UNSCR 2143, 2014), just as it had in resolutions almost annually since 1999. The 'urges', 'reiterates', 'calls upon', and 'encourages' outnumber the 'decides'. Nor have UN peacebuilding missions proved to be an effective deterrent, with ongoing instances of abduction and recruitment of young people into armed forces and groups consistently reported in Secretary-General's reports on *current* UN missions in Mali, CAR, and South Sudan (United Nations Security Council (UNSC), 2016a:para.207; UNSC, 2016b:paras.41-42; UNSC, 2016c:paras.26, 28,34-36; UNSC, 2016d:paras.13,40; United Nations Human Rights Council, 2016:paras.67-70).

Protection tradeoffs with reintegration

More importantly for the welfare of actual young people caught up in structures of war-making, the enforcement strategies that the UN and ICC pursue end up denying many children access to reintegration assistance. In case after case, child soldiers released and 'reintegrated' from armed forces and groups during conflict have been excluded from formal reintegration assistance after conflict ends.

Because of the strong norms against recruitment and use of child soldiers, actors who have recruited and used child soldiers have incentives to disguise such use in ways that end up excluding children from protection and assistance (Vandewiele, 2005:50).[11] In Sudan, military and militia officials denied the existence of children in armed forces and groups, and such denial prevented UNICEF from designing and implementing a pilot project for children there. Furthermore, UNICEF found that armed forces and groups in Sudan released children ahead of planned disarmament and demobilisation efforts to avoid acknowledging their presence within the ranks (UNICEF Sudan, 2004:2,20). In Somalia, international pressure against the detention and prosecution of children, combined with the 'catch and release' policy for pirates captured at sea, denies children their rights to reintegration under the CRC (Kohm, 2014:334).

In Angola, the wholesale exclusion of children from the reintegration process can be traced to the very protection regime designed to include them. Absorption into the new military was a precondition for access to demobilisation and reintegration assistance under the peace agreement there. The Angolan government did not want to be seen as validating entry of underage boys and girls into its new force, even if such individuals were immediately demobilised, and so instead decided to treat all child combatants not as combatants but as dependents of combatants. The decision resulted in children's exclusion from formal

reintegration benefits. Subsequent efforts to re-locate and assist excluded children failed (McMullin, 2011:744,746-749).

In Mozambique, the post-war government awarded pensions to its own soldiers (no pensions were awarded to RENAMO fighters, unless they were disabled) but only to those who had completed ten years of military service. Again, reacting to strong international norms against recruitment and use of children in hostilities, the government would not recognise start-dates for soldiers recruited while underage because it refused to admit its recruitment and use of children during the long civil war. The UN deferred to the government, but donor states applied pressure, and the government eventually relented to approve pension applications for soldiers whose military service start date occurred before they were 18, but without recognising recruitment and use of children. But the government waits for claimants to petition it for pensions, and veterans' assistance organisations in Mozambique estimate that most child soldiers have not presented themselves for the assistance to which they are now entitled (McMullin, 2013:134).

The mandates and authorising language of Chapter VII peacebuilding missions underscore how the prioritisation of child protection comes at the expense of post-war reintegration assistance for child soldiers. Children's right to receive reintegration assistance is qualified in mission mandates: children are promised support sufficient only to guarantee that they are not at risk of re-recruitment and that they do not threaten their communities with violence. Consequently, children's rights to access DDR assistance are not about realisation of social, political, and economic integration as ends in and of themselves, but rather such rights are securitised, extending assistance to children only insofar as child beneficiaries threaten or are threatened. Their right to reintegration assistance is similarly securitised: it is circumscribed temporally as short term, to end once threats subside, and substantively, where threat estimates determine the nature and contours of the assistance offered.

The gendered practices of the child rights regime further entrench tradeoffs between protection and reintegration. The policy and academic literature on DDR has criticised the exclusion of children, and especially girls, from DDR benefits in Sierra Leone because of the way programs were designed and administered (Coulter, 2009; MacKenzie, 2009). Because cash payments hinged on combatants turning in either a weapon or ammunition at demobilisation sites, many commanders simply cut loose the children in their ranks and distributed guns and ammunition to family members or associates instead so they could benefit.[12] Only a fraction of the girls estimated to have been abducted or recruited into armed groups in Sierra Leone registered for DDR assistance (506 girls of an estimated 8,600 to 11,400) (Williamson, 2005:viii-ix). The public nature of DDR enrolment deterred girls and women, due to the stigma attached to publicly identifying as having participated in the conflict (Coulter, 2009:155). In Liberia, DDR actors worked to avoid the exclusion of girls from programs as occurred in Sierra Leone by adopting open and flexible eligibility requirements, but evidence suggests that commanders there still excluded bona fide child soldiers from formal DDR assistance, and publicly visible registration policies recurred (McMullin, 2013:203-204).

The gendered nature of DDR that chronically eludes practitioners in their reintegration programming is not just about whether elite actors pay attention to gender dynamics or not; rather, it is about whether they sufficiently understand the complex and multiple roles that girls play during conflict. The UNICEF guide to the Optional Protocol illustrates the widespread

misunderstanding of such roles. The guide's breakaway text box on DDR in Sierra Leone gives the reader the impression that all girls used in the conflict there were 'camp followers', recruited to 'provide sexual services to armed groups'. A guide intended to give a specific account of the 'special needs of children' consequently fails to note or analyze the multiple roles that girls played during the Sierra Leonean conflict, including as active combat fighters (UNICEF, 2003:19). The overall tendency and effect are to sexualise and infantilise girl soldiers during war and conflate a variety of individualised wartime experience with ultimate victimhood. If the rights regime assumes that all girl soldiers are universally and equally victimised during hostilities, then a difficult question is skirted; i.e., whether a gendered approach to DDR involves treating all girls recruited and used in hostilities the same or whether reintegration assistance should account for the *different* roles that individual girls may have played during conflict.

Integration or stigmatisation?

Gendered infantilisation of child soldiers illustrates a further tradeoff between protection and criminalisation approaches on one hand and sustainable reintegration assistance on the other. Both protection and assistance are frequently rationalised on the basis of presumed child vulnerability. International legal and policy frameworks that govern assistance for child soldiers often rest on romantic notions of childhood that do not correspond with children's own lived experiences and aspirations. Such frameworks treat war as an interruption to an otherwise secure, peaceful home life. Similarly, they treat children's return home after war as a return to a nurturing idyll that can facilitate a child's development provided the disruptive consequences of war can be managed (Pauletto and Patel, 2010). Both portrayals erase forms of violence that children encounter before and after war, including inside the home. Also typical of the literature's treatment of children is to contrast the kind, happy children encountered by international intermediaries with the disruptive violence perceived as at odds with children's natural innocence. Take the following presentation of a child soldier in Liberia found within a UNICEF report: 'With his big round eyes, toothy smile and spindly... frame Tommy looks more like a mischievous schoolboy than a cold blooded killer. Yet – at age 16 – that's exactly what Liberia's warring adults have turned him into' (Kelly, 1998:8). Because of the way in which legal frameworks position children (inherently victims and not culpable for the violence they commit in war) and the way in which policy frameworks construct them (in need of adult guidance in order to return to a pre-war status quo), their agency and motivations for participating in conflict are obscured, as are the structural violence they experience within their home and communities.

Child rights advocates frequently anchor tropes about why and how young fighters are recruited into conflict to narratives about child victimisation and immaturity. Such narratives discount children's own perceptions of war-making as a tool to promote their own security and survival in contexts where they felt dangerously insecure and unprotected pre-war. For example, a UNICEF report discusses youth involvement in the first Liberian civil war with the following:

> Although children were forcibly recruited by all of the warring factions, the participation of boys and youths in Liberia's war was characterised by a particularly high number of volunteers. Few, however, joined for ideological reasons or even understood the roots of the conflict. Instead many... initially joined for revenge. Others succumbed to peer pressure... A few others were looking for adventure and a chance to be in control... But most joined for one simple reason... security (Kelly, 1998:13).

Although underage volunteers are said to outnumber those coercively recruited, the report nevertheless presumes that 'few' of these volunteers 'understood the roots of conflict'. And yet the same report acknowledges that 'most' youth joined for security reasons, suggesting that young people did indeed 'understand the roots of conflict' as being intrinsically tied to their own pursuit of security. The report neglects to anchor the 'simple reason' of 'security' to a political context. Instead, it associates the security concerns of youth with non-political, individualised motivations such as 'revenge', 'peer pressure', power, and adventurism. Tropes about the immaturity of children, incapable of knowing what they are doing or why, also exist paradoxically alongside tropes that assert their 'innate' skills as fighters, where children are thought to be immune to the complicating factors of morality and mortality that might inhibit 'normal', but non-'innate', adult fighters (Kelly, 1998). Assumptions about child vulnerability and victimhood like the ones on display in this particular report also seem to resist sustained critique. In other words, they persist despite a large volume of ethnographically informed research that challenges such universal conceptions and that instead emphasises young people's coping skills and resistance strategies (Seymour, 2012:374).

Much of the ethnographic critique of the child rights regime has focused on the either/or bind that tends to locate children during war *either* as victims *or* as perpetrators. Ann Sagan's deconstruction of the Lubanga trial proceedings and judgment notes how the prosecution relied 'on patronising and criminalising stereotypes of African child soldiers in order to make their case', portraying children in the DRC as incapable of moral agency unless properly guided by good adults, who are assumed to be too few in number. In such scenarios, children are always 'ripe' and the global south always a 'breeding ground' for recruitment (Sagan, 2010:17-18). The ethnographic critique also calls into question portrayals of children's innocence. Verma (2012) juxtaposes what she calls 'daytime' and 'nighttime stories' of Ugandan children who were abducted into the Lord's Resistance Army and were then taken into rehabilitation camps for war returnees. She found that children's daytime stories hued closely to the expectations of NGO workers, UNICEF, donors, and international media outlets, all of whom expected a standardised narrative of children's involuntary recruitment into war and subsequent victimisation by war. Meanwhile, in children's nighttime stories, after aid workers had gone home or to sleep, '[e]vents changed like that, plots were inversed, moralities altered, and loyalties cast in doubt.' In children's nighttime stories, they complicated their own agency in war, presenting themselves 'neither as a child nor as victim' (Verman, 2012:443). She also identifies diverse strategies that the children used in the reception centres, sometimes employing standardised daytime stories to gain trust or resources, and instructing their peers how to do the same, but occasionally resisting dominant narratives, too, including in the presence of aid workers (Verma, 2012:451-452).

Narratives of child soldiering rooted in victimisation end up gatekeeping children's access to assistance after war. Utas (2005) argues that aid discourse repeatedly and consistently encourages war-affected women in Liberia to present themselves as victims. His research on young people during conflict has sought to complicate notions of youth agency and victimhood during and after war, such as portrayals of children who were not child soldiers but who claimed identity as child soldiers to escape poverty, or child soldiers who tweaked their recruitment stories so they would more closely align with aid workers' expectations (Utas 2005; Utas 2007). Utas advocates movement away from the victim/perpetrator dichotomy that characterises so much of international jurisprudence and assistance practice for youth. Instead, he

conceptualises young people's complicated 'victimcy' as a relational construct in between the lived experiences of youth, on the one hand, and the expectations, constructs, and material and social structures that define and control post-war assistance and the individuals (usually, adult internationals) who perpetuate them, on the other. He then highlights and accentuates the 'tactic agency' of youth, or the way in which young people move between worlds of war-making and post-war survival.

The ethnographic and critical literature on child soldiering has brought necessary attention to the victimisation discourse prevalent in child rights and child assistance practices. Through that literature, it becomes possible to understand how DDR discourse and practice are not consistent about where children get located along the victim-perpetrator spectrum. On one hand, the suffering of child soldiers is meticulously catalogued and detailed, and children are exempted from culpability normally associated with war-making, including the policies that prohibit prosecution of children for crimes they may have committed whilst (illegally) soldiering during hostilities. But on the other hand, practitioners often treat child soldiers in any given context as collectively capable and guilty of war crimes and take exception to targeted assistance for them, arguing that any assistance should be available instead to all war-affected children without prejudice to whether or not they soldiered. Such advocacy tends also to assert that non-combatant children and civilian communities generally suffered just as much or more. Thus, whilst child rights and child assistance discourse insists on child combatants' 'special needs' and repeatedly calls for their 'special treatment' in relation to adult combatants, it also simultaneously decries 'special treatment' of child soldiers in relation to other war-affected children. Such ambivalence signals latent hostility towards child soldiers as assistance beneficiaries and skepticism about whether child soldiers 'have earned' or 'deserve' the very specialised assistance to which they are legally entitled.

Stigmatisation and infantilisation of child soldiers work against children's post-war integration. The CRC holds that a child's assumption of a 'constructive role in society' is paramount in assessing that child's post-war integration. But consistent victimisation of children suggests that children's assumption of a constructive role is either *premature* (they are not ready for it or they are too traumatised to be able to play a visible and productive role in post-war society) or *dangerous* (they are too volatile and violent to be allowed to play it). Alison Watson argues that, in this regard, the victim label can be 'deeply othering', with portrayals dependent on the representation of marginalised groups as victims directly impacting on the ability of those groups 'to become political agents and thus claim rights' (Watson, 2015). Of course, that impact will not always be the same for all children; in fact, Watson suggests that young men and women are increasingly likely to reject the narrative of victimhood thrust onto them by outside others. Instead, they are always already engaged in modes of self-representation and action that challenge and complicate their identity as victims.[13]

Pathologisation of Southern Youth & States

Prevalent protection strategies, especially clustered around criminalisation of recruitment and use of children, also work to pathologise young people and their communities in poor states of the global south, raising questions about whose justice interests are promoted via the current child rights regime (Wells, 2016). Drumbl (2012:9) argues that the concepts and practices of the child rights regime reflect the 'international legal imagination', which tends to fixate in particular on young victims of war and tends to substitute its own 'standards and

desires... for the aspirations of victims themselves'. Others see self-congratulation and ethnocentrism behind the pathologisation of child-rearing and child protection in the south (Dillon, 2008:145, cited in Kohm, 2014:342). Such dynamics are not new or unique to the particular challenge of child soldiering. The silencing of African voices and absence of African perspectives extends to the development of international law more broadly.[14]

As of early 2018, there have been 23 cases before the ICC, all of them with defendants from African states, which ensures the continued 'reproduction of the criminal-victim dichotomy in the representation of African subjects in the discourse of international criminal law' (Sagan, 2010:4; King, 2015:130-131).[15] The ICC's prosecution thus far of perpetrators targeted exclusively from sub-Saharan African contexts risks African states' withdrawal from its jurisdiction entirely, or from associated conventions, statutes, and treaties. In February 2017, the African Union approved a non-binding resolution calling on member states to withdraw from the ICC, and South Africa and Burundi have already announced decisions to withdraw.[16] The Court's focus on Africa also has real impacts on child soldiers there. One impact, already discussed in this chapter, is the exclusion of children from assistance due to the refusal of states and groups to acknowledge their use. Another is that the Africa focus normalises the state-sponsored co-involvement of underage men and women in the militarisation of culture and the structures of war-making in northern states.

The child rights regime does not apply a universal understanding of childhood to all states in the world, but instead uses a particular standard of childhood and expends great resources in applying that standard selectively to only some states. In protecting children from recruitment and use, child rights discourse 're-conceptualises the plight of children as the fault of the adult population' (Pupavac, 2001:102). But then, during the shift from releasing children from armed groups to their post-war reintegration, the presumed innocence of children and presumed guilt of their southern adult guardians and communities are reversed. As if overnight, the community transitions from having failed to protect children from recruitment to being regarded as the font of wisdom about children's best interests, the arbiter of children's reconciliation with their communities, and the decider of the norms that will govern children's integration. Children also shift, as if overnight, from being innocents in need of saving in wartime to being deviants who are considered threats to the transition from war.

More participation by children themselves in shaping and designing the forms that social, political, and economic reintegration take could be palliative. Collins (2017) believes that children's participation could also redress the ethnocentrism that pervades child rights discourse, allowing movement away from rigid understandings of children's experiences of war and post-war integration.[17] As Watson (2015) suggests, children's work to shape their own identity and navigate their own post-war transition is always already under way. Currently, however, dogmatic narratives and practices of child reintegration fail to engage more meaningfully with children. Instead of designing avenues for more genuine consultation and participation of child beneficiaries, programs end up miming participation. They marginalise the productive, peaceful efforts of children to navigate their own reintegration, and securitise the efforts deemed unproductive or threatening. Each action consigns children's participation to a world of informal DDR, while the formal structures of DDR reflect paternalism and total control, not just over the prospects and futures available to children, but also the benefits available to them, and even the way in which they are encouraged to process and remember experiences of soldiering.

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[1] For examples of such triumphalism, see Child Soldiers International (2012) and Human Rights Watch (2012a).

[2] I examine this particular effect of the international child rights regime in relation to failures to include children in DDR programming in Angola, in McMullin (2011).

[3] See UNSCR 1261 (1999); UNSCR 1314 (2000); UNSCR 1379 (2001); UNSCR 1460 (2003); UNSCR 1539 (2004); UNSCR 1612 (2005); UNSCR 1820 (2008); UNSCR 1882 (2009); UNSCR 1998 (2011); UNSCR 2068 (2012); UNSCR 2143 (2014); UNSCR 2225 (2015).

[4] See the child protection mandate of the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), reiterated in UNSCR 2227 (2015:para.24). The original child protection mandate of MINUSMA is found in UNSCR 2100 (2013:para.16(a)(v)).

[5] Delisted parties are the ANT in Chad, the FAFN, FLGO, MILOCI, APWe, and UPGRO in Côte d'Ivoire, the UCPN-M in Nepal, the TMVP in Sri Lanka, and the UPDF in Uganda. Ongoing action plans involve state armed forces or non-state armed groups in Afghanistan, Central African Republic, Democratic Republic of the Congo, Myanmar, Philippines, Somalia, Sudan, South Sudan, and Yemen (UN Office of the SRSG for Children and Armed Conflict, 2017a; UNICEF, 2015:31).

[6] The issue of reparations stemming from ICC judgments is a potentially positive development that could redress the persistent tradeoffs between protection and reintegration. On 15 December 2017, the Trial Chamber II of the ICC ordered payment of $10 million USD in reparations to child soldiers in the DRC who had been recruited by the convicted warlord, Thomas Lubanga Dyilo. Dyilo, the Trial Chamber acknowledged, is incapable of paying the amount and so it said payment would come from a court Trust Fund for Victims, which should be funded from the government of the DRC. The ability of the ICC to enforce payment of reparations and ensure that they are put to effective and therapeutic use for young victims, remains to be seen. Also missing from the judgment is provision for child participation and consultation in administration of the funds. See International Criminal Court (2017).

[7] Prior to the Lubanga case, the Special Court for Sierra Leone also issued judgments that set important precedents for international criminalisation of child soldiering, including the conviction and sentencing of Charles Taylor (Novogrodsky, 2005).
[8] Four other major cases before the ICC have involved the charge of recruitment and use of child soldiers, but none has led, as yet, to another conviction.
[9] Throughout this chapter, I have used the shorthand term 'recruitment' for both 'conscription' and 'enlistment' for ease of reference but also to underscore the blurred lines between the two distinctive acts, a topic dealt with in greater detail in section three of this chapter.
[10] Amann herself sees merit in the approach of the Lubanga judgment. For the view in favor of agency and juvenile autonomy, see Drumbl (2012:13-17).
[11] An estimated one-third of child combatants do not enter formal DDR processes (UNSC, 2000:para.23).
[12] Author's interview (2005) UNICEF Official, Freetown, 7 July. See also Vandewiele (2005:51).
[13] Regarding this latter point, Watson cites Spalek (2006).
[14] For a critical historical treatment, see Haslam (2014).
[15] The ICC Prosecutor is investigating crimes in Georgia and undergoing preliminary examination of crimes in Afghanistan, Burundi, Colombia, Gabon, Guinea, the UK (crimes alleged in Iraq), Nigeria, Palestine, Ukraine, and registered vessels of Comoros/Greece/Cambodia.
[16] Nigeria, Senegal, and Cape Verde entered formal reservations to the resolution that the AU's heads of state adopted, many African states subsequently reaffirmed their commitment to the ICC, and the resolution includes various caveats, including a call to research further the idea of collective withdrawal from ICC and to negotiate with the Security Council for reform of the ICC (Keppler, 2017).
[17] See also Ensor and Reinke (2014).