

ALLONS-Y

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THEORY INTO ACTION

CHILD SOLDIERS

From Early Warning to
Justice and Reconciliation



THE ROMEO
DALLAIRE



CHILD
SOLDIERS
INITIATIVE



DALHOUSIE
UNIVERSITY

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The views, opinions, and analyses expressed in this volume are those of the authors, and do not necessarily reflect the official policy or position of the Roméo Dallaire Child Soldiers Initiative.

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ABOUT THE DALLAIRE INITIATIVE

The Roméo Dallaire Child Soldiers Initiative was established in 2007 by retired lieutenant-general the honourable Roméo Dallaire, former force commander of the United Nations Assistance Mission for Rwanda (UNAMIR). Our mission is to progressively eradicate the use of child soldiers through a preventative security sector approach.

To achieve this important objective, the Dallaire Initiative conducts activities on three fronts:

- It conducts world-class interdisciplinary research to build—and share—knowledge, which in turn leads to new solutions;
- It engages in high-level advocacy activities to create and promote the political will to end the use of children as soldiers;
- It delivers tactical, prevention-oriented training to security sector actors, so as to promote broader security sector reform.

In every aspect of its work, the Dallaire Initiative seeks to collaborate with concerned governments, security sector actors, academics, humanitarians and civilian communities. In particular, its unique approach working with soldiers, police, prison personnel and private security operators – many of whom are the first point of contact for child soldiers outside of their armed force or armed group – is both groundbreaking and critical to the interruption of children's recruitment.



LGen Roméo Dallaire , Rwanda 1994. Used under permission from the National Speakers Bureau.

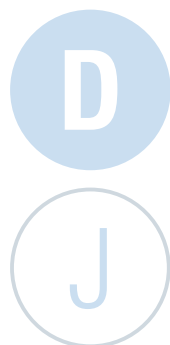


ABOUT ALLONS-Y

In January 1994, General Dallaire, then the Force Commander of the United Nations Assistance Mission for Rwanda (UNAMIR), sent a fax to UN headquarters in New York warning of the impending genocide. He signed the fax with the line “peux ce que veux. Allons-y” – “Where there’s a will, there’s a way. Let’s go.” At the time, there was not a will among the international community, with lethal results for nearly a million Rwandans.

Since then, General Dallaire has worked tirelessly to ensure that there is both a will and a way to prevent mass atrocities in the future. However, action must be informed by understanding for it to be effective. Each of us has the ability to stand up and contribute to prevention of these crimes and the involvement of children in committing them. Allons-y serves as a call to action for young people today to add their talent, perspectives, and experiences to this mission.

Allons-y is a series of peer-reviewed papers written by young academics and practitioners, complemented by expert commentary, designed to foster discussion and innovative thinking on issues relating to children in war, terrorism, and violence. This format seeks to leverage the unique viewpoints and contributions of young people working and studying in this field, and magnifies their impact by pairing each piece with the voice of leading experts. This combination firmly situates each piece in praxis, bridging the all-too-frequent gaps between academics and practitioners.



LETTER FROM THE EDITOR

Within this issue of *Allons-y*, two talented graduate students provide fascinating examinations of the present-day use of child soldiers. In the 21st Century, children are the primary victims of war, but their use as soldiers is also a primary driver of conflict, one which requires a comprehensive and holistic approach. This publication aims to promote interdisciplinary praxis to contribute to ending this scourge of modern warfare.

Michelle Legassicke, a PhD candidate in political science at Dalhousie University and a Research Fellow here at the Dallaire Initiative, examines the prevalence of children in cattle raiding in South Sudan prior to the outbreak of the civil war there in 2013, and how this correlates to the levels of violence experienced during the war, showing its utility as an early warning indicator. This war is one of the gravest on the planet, with actions amounting to genocide, which the international community has abjectly failed to prevent.

Jacqueline Salomé, a research assistant at Indigenous and Northern Affairs Canada, examines the use of restorative justice for former child soldiers, and the failure to apply it to child pirates, arguing that it is important to apply this form of justice to all militarized children and not selectively to only those who do not directly threaten Western interests, and that it can serve as a powerful preventative mechanism. Despite the commonalities among children used in war, criminal enterprise, and terrorism, the opposite responses applied to children depending on how we label them undermine the commitments that almost all nations have made to upholding the rights of children.

Each of these pieces is accompanied by an expert commentary, situating it in the broader context and commenting on its importance for practitioners. Nicholas Coghlan, Canada's ambassador to South Sudan from 2014 to 2016, comments on Michelle's piece, and Kenneth Watkin, comments on Jacqueline's piece. All too often in our work there is a gap in interaction, discussion, and learning between academics and practitioners; and a gap in time between when data is collected and when academic research on that data gets published. *Allons-y* attempts to address these gaps, and the expert commentaries are a key part of this. They both increase interaction between practitioners and academics, and situate the academic pieces in the present moment in our rapidly changing world.

As editor of *Allons-y*, I hope that these insightful pieces will stimulate further thought and debate among academics and practitioners and help to advance the importance of children to the peace and security agenda.

Dustin Johnson

Editor of Allons-y and Program Officer at the Roméo Dallaire Child Soldiers Initiative

A UN Mission in South Sudan (UNMISS) peacekeeper from Mongolia in Bentiu, South Sudan searches for early warning indicators, August 2014 (UN Photo/JC McIlwaine)



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PREFACE

War has changed – children around the world are now being pulled into war at alarming rates, creating the ever-growing threat of child soldiers on the battlefield. Using the combined perspectives of humanitarians, militaries, police, and academics, we are aiming to make a long-term impact in the fight against the recruitment and use of child soldiers.

The past few years have seen new crises erupt into large scale violence and sometimes mass atrocities in many countries, from Nigeria to the Central African Republic to Yemen, and beyond. In each of these situations, the international community was unable to muster a fully preventative response as signs of impending crisis emerged. Despite the focus on early warning mechanisms over the past decade, we still lack the ability to properly intervene to prevent these crises and the massive human suffering that they cause.

In summer 2015 the Dallaire Initiative released a report, “Understanding the Recruitment and Use of Child Soldiers as an Early Warning Indicator.” Its aim was to better equip the international community to recognize when mass atrocities are imminent but still preventable. In each of the crises that have erupted in recent years, in Syria, Iraq, Yemen, South Sudan, Central African Republic, Nigeria, and Mali, the use of child soldiers has been widespread and systematic. Monitoring of the use and recruitment of child soldiers would have contributed to warning of the impending mass atrocities, and helped generate the political will to intervene before violence spiralled.



To confront these challenges, we need new tactics. One of these is seeing child soldiers as the early warning indicator that they are. We must also recognize the breadth of this issue. Children are not just recruited into armed groups as soldiers; they are also used by adults to commit piracy and terrorist violence. Our responses must not leave some children behind.

This publication provides a valuable forum to bring together the work of young academics and practitioners, allowing theory to meet practice. They are not yet jaded about the world and are capable of providing fresh and challenging perspectives. This first issue is an important continuation of the Dallaire Initiative’s report and previous work, and will mark the beginning of fruitful future contributions to the praxis we urgently need to tackle the use of children as weapons of war.

*Retired Lieutenant General The Honourable Roméo Dallaire
Founder of the Roméo Dallaire Child Soldiers Initiative*



Cattle belonging to displaced Dinka people in Jonglei State, South Sudan, October 2008 (UN Photo/Tim McKulka)

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CYCLICAL YOUTH-LED CONFLICT AS AN EARLY WARNING INDICATOR¹

By Michelle Legassicke

PhD candidate in political science at Dalhousie University

¹Portions of this article were drawn from the authors Master's research and thesis submitted to the University of Waterloo in 2013.



UNMISS Photo/Staton Winter

INTRODUCTION

The dynamics of conflict are shifting. In the 2011 World Development Report, the World Bank stated that conflicts are now increasingly cyclical and intractable events; 90 percent of the civil wars that occurred in the 2000s were fought within countries that had experienced a domestic conflict in the past 30 years (World Bank, 2011). Countries are more likely to experience cycles of violence due to the persistence of weak state structures that cannot extend their reach into peripheral regions, leading to local instability (Kingston, 2004). Throughout the 1990s and early 2000s, the international community observed several states – in which external actors provided 50 percent of those states' overall revenues – relapse into civil war (Call, 2012). Given the significant investment by the international community in peacebuilding projects in post-conflict states – whether democratic reforms, economic reforms, capacity building, or sustainable development – there needs to be a significant increase in research focused on civil war recurrence, as the trajectory of post-conflict states cannot be guaranteed without sustainable peace.

This paper will analyse whether the agro-pastoral violence by youth from 2005-2011 (particularly in Jonglei state) could have been used as an early warning indicator of the potential outbreak of violence in South Sudan, and whether addressing the youth-based violence could have been used as an avenue to prevent conflict before the outbreak of civil war in December 2013. This paper will initially discuss the internal political tension that contributed to the instability that resulted in the outbreak of civil war in December 2013 in order to give context and background to the ongoing conflict in South Sudan. While the political tension resulted in the outbreak of conflict, the Upper Nile region in which the conflict was centred saw the mobilization of children and youth militias as the primary supplement to the formal military units in the region. However, the militias that were mobilized were not created during the conflict; rather child and youth cattle raiding groups were co-opted once the civil war broke out. By focusing on the role of children and youth in cyclical violence in the agro-pastoral regions of South Sudan, and comparing the failure to enforce law and order in Jonglei State with strong governance seen in Warrap and Lakes states, this paper concludes that the mitigation of agro-pastoral violence could have reduced the mobilization of children and youth in the conflict that started in December 2013.

REVERSION BACK INTO VIOLENCE

On December 15th, 2013, armed conflict broke out in Juba, the capital city of South Sudan. Within ten days, the conflict had spread throughout the country as forces loyal to President Salva Kiir Mayardit and former Vice-President Riek Machar fought for control of major cities in the Greater Upper Nile region, consisting of Jonglei, Unity, and Upper Nile states (Pendle, 2014). While the conflict began with defections by members of the governing party, the Sudan People's Liberation Movement/Army (SPLM/A), in the Upper Nile region, armed civilians also joined Riek Machar forming the SPLM in Opposition (SPLM-IO) (Rolandsen, 2015). While conflict was confined primarily to the three states of the Greater Upper Nile region, many analysts consider this violence the outbreak of civil war recurrence in South Sudan rather than a regional rebellion due to the all-encompassing nature of the war (for an expanded discussion see Pendle, 2014). The dominant faction of the conflict is the ruling Sudan People's Liberation Movement (SPLM) headed by President Salva Kiir, who continued to maintain control over 7 of the 10 states in South Sudan and the apparatuses of government after the outbreak of conflict in December 2013 (Rolandsen, Glomnes, Manoeli & Nicolaisen, 2015). However, the major opposition force, the SPLM-IO headed by Riek Machar, had been able to establish control within both the cities and countryside of the Upper Nile Region, presenting a significant threat within the country.

Tensions and fears that surrounded the upcoming national elections in 2015 resulted in the political tensions that plagued the SPLM throughout 2013 (Rolandsen, Glomnes, Manoeli & Nicolaisen, 2015). Salva Kiir's leadership was being contested by Riek Machar, Pagan Amum (who is the former SPLM Secretary-General), and Rebecca Byandeng (John Garang's widow), who had all announced that they would run in the upcoming presidential election (Rolandsen, Glomnes, Manoeli & Nicolaisen, 2015). The conflict that broke out in December followed a series of high-level dismissals, including of Vice-President Riek Machar, the cabinet, the Governor of Unity State, and the Secretary-General of the SPLM in July 2013. Due to the significant political backlash that followed these dismissals both within and outside the SPLM party, Kiir dissolved the SPLM's political structures in November 2013, including the Political Bureau, its highest executive organ (Podder, 2014). These actions by Kiir were argued to be unconstitutional and can be seen as clearly removing any political or constitutional guarantees given to groups that had fought in the Second Sudanese Civil War and joined the SPLM to provide a united front when negotiating an end to the civil war with Khartoum (Johnson, 2014). Charles Call argues that when changes occur in the guarantees that were made in peace agreements, such as firing or prosecuting individuals within the political system that were previously involved in the civil conflict, these moves can be seen as exclusionary behaviour by the dominant group (2012).

Naomi Pendle has argued that the outbreak of conflict in South Sudan occurred in order to re-balance the power relations within the country when the negotiated power balance was broken (2014). Given that there are no avenues for political contestations or a transition plan within the political elite, Oystein Rolandsen has argued that the current conflict was caused by the “political crisis within the SPLM” (2015, 164). By December 2013, those within South Sudan who opposed President Salva Kiir had begun to coalesce around Riek Machar and the other political leaders who had been dismissed by Kiir (Johnson, 2014). The political leaders of South Sudan were meeting in Juba in December 2013 to discuss how to reform the SPLM; they threatened open protests if their meetings with Kiir did not result in a political agreement (Rolandsen, Glomnes, Manoeli & Nicolaisen, 2015). On December 16th, 2013, Kiir broadcasted that he had defeated a coup attempt that had been orchestrated by Riek Machar, former cabinet ministers, and former members of the SPLM leadership (Johnson, 2014). Whether a coup actually occurred is still debated; however, it resulted in the arrest of 11 individuals who allegedly were involved in plotting the coup (Johnson, 2014). Riek Machar fled the capital before being arrested, finding refuge in the Greater Upper Nile region. As conflict spread, Machar was able to draw upon the political and military structures that he commanded while he was head to the Nasir faction in the Second Sudanese Civil War. However, the SPLM-IO was also able to draw upon another set of forces that had been active before the outbreak of violence: children and youth groups involved in agro-pastoral conflicts. While the political conflict among the SPLM leadership resulted in the events that allowed for civil war recurrence, the ongoing instability in the Greater Upper Nile region caused by agro-pastoral violence set the conditions that shaped the actors and scale of the conflict that allowed a civil war to be fought in the region. Rather than a civil war that involved clashes between the professional militaries of the SPLM and SPLM-IO, the recurrence of war in December 2013 was all encompassing, following the tone of individualized violence seen in the agro-pastoral conflicts being fought in the region. Therefore, given that small scale, protracted violence was already occurring, all sides were able to recruit these actors for their cause, centring the conflict in the Greater Upper Nile.

AGRO-PASTORAL CONFLICT IN JONGLEI STATE FROM 2005-2011

Of the three states that make up the Greater Upper Nile region, Jonglei State is the largest territorial unit, and was a centre for the communal-focused violence of civil war recurrence. In comparison, the Upper Nile state was the focus of more formalized military campaigns aimed at controlling its large oil fields. Jonglei state has also been the centre of many conflicts historically, including major campaigns between competing southern militaries during the Second Civil War. Both the SPLM and SPLM-IO heavily mobilized groups from Jonglei state in December 2013: the SPLM mobilized ethnic Dinka youth, while the SPLM-IO mobilized ethnic Nuer youth. Given that the agro-pastoral conflict has strong ethnic dimensions, with youth from the Dinka, Nuer, and Murle ethnic groups conducting raids and counter raids, it was not a stretch to mobilize these groups as they were already in conflict. Given the communal-based violence experienced in Jonglei state, it provides the best case to analyse the effect of youth mobilization in South Sudan.

Jonglei State has experienced a chronic lack of security and justice since the Comprehensive Peace Agreement (CPA) was signed in 2005, marking the end of the Second Sudanese Civil War. This insecurity has persisted due to three key reasons. First, the trajectory and events of the civil war resulted in the breakdown in traditional/tribal governance structures. Upon the youth's return after the conclusion of the civil war, they often challenged and resisted the forms of governance that were in place in many regions throughout South Sudan. During the civil war, children and youth were the primary source of manpower for the southern rebel groups. They were easily co-opted into the military structure, given that their positions within the tribal structure was itself militarized (Evans-Pritchard, 1960). Youth in Jonglei from the Dinka, Nuer, and Murle ethnic groups were given the primary responsibility of guarding and caring for cattle. While this generally involved insuring that cattle had access to grazing lands and water, it could also involve defending the herd against possible raids or even participating in cattle raids. In the process of caring for cattle, youth were exposed to defensive and offensive tactics that could be utilized or drawn upon for military raids (Deng, 1972). During the Second Sudanese Civil War, youth were often moved to the regions in which they were needed most, which conveniently for military commanders was often outside the control of their local governance structures and under the control of commanders. Therefore, the loyalty to the local community was shifted to the local commanders during conflict: a relationship that was exploited in the most recent outbreak of violence in South Sudan.

²There is no specific age that is given to 'youth' among the ethnic groups in Jonglei State. This classification follows from the age-set tradition, and is situated between child and warrior. For this reason, an individual considered a youth (and who participates in cattle raids) can be anywhere from 10-25 years old. For an expanded discussion see Legassick, 2013 pp 47-62.

³For a greater discussion about the tradition of cattle raiding, and the shifts in this tradition due to the Second Sudanese Civil War, please see Legassick, 2013 pp11-15



The second cause of insecurity in Jonglei State was the inability of the Government of South Sudan (GOSS) to effectively transition into the roles of governance that had been previously held by leaders within the tribal governance structure. Once youth began to challenge traditional forms of governance, the formal state government structure should have stepped into the vacuum that was created. Not only would this have resulted in legitimacy of the GOSS in the Upper Nile region, but it would have also resulted in the provision of personal security and predictability in the lives of the Dinka, Lou-Nuer, and Murle. When security and predictability are guaranteed, economic violence is significantly decreased. Collier et al. (2003) found that a causal relationship exists between low levels of economic development and the chances that war will occur. In the conflict trap thesis, areas with low levels of economic development are more likely to experience conflict; however, once conflict occurs, it disrupts any development that was occurring, thereby destroying an already weak economy and potentially plunging the country further into conflict. In Jonglei State, predictability in the day-to-day lives of citizens would have allowed for cattle herding to occur along less militarized dimensions.



The violence in Jonglei has become highly personal given the lack of governance and justice in the region, which has resulted in raiding moving well beyond the theft of cattle by youth to attempts to seek justice for past crimes.



UN Photo/JC Mollwaine

The third cause of insecurity was that the GOSS was unable to establish an effective justice system in Jonglei State that could address the major problem on the ground: conflict surrounding the practice of cattle raiding. Formally and officially, cattle raiding in South Sudan is illegal. However, since the GOSS began to administer the South according to the terms of the CPA in 2005, raiders had been rarely arrested let alone tried in court for stealing cattle or deaths related to cattle raiding. While attempts have been made to address the problem of cattle raiding by establishing stronger police forces, these forces were unable to combat the rampant insecurity within Jonglei State in the period before the outbreak of conflict in December 2013.

The conflict seen in Jonglei state from 2005 to 2013 originates from the tradition of cattle raiding. Historically, raids occurred when an individual or group stole cattle from a neighbouring tribe in order to gain prestige and expand the size of their herd (International Crisis Group, 2009). This process was historically non-violent, as the tribe whose cattle were stolen conducted counter-raids in kind. These raids and counter-raids were minor in comparison to cycles of violence seen in cattle raiding from 2005-2013, as the conflict was confined between raiders and cattle guards, who were all youth; individuals from the surrounding community were rarely affected by raiding (Leff, 2012). However, in the post-2005 violence, raiding shifted focus solely from the theft of cattle to raiders attacking and burning entire villages, and targeting women, children, and the elderly.

With a population of over 1.3 million (International Crisis Group, 2009) – and with approximately 80 percent dependent on the cattle economy – the outbreak of agro-pastoralist conflicts in Jonglei has had a major impact on the population's daily life (Heaton, 2012). In particular, the violence in Jonglei has become highly personal given the lack of governance and justice in the region, which has resulted in raiding moving well beyond the theft of cattle by youth to attempts to seek justice for past crimes. The most recent cycle of conflict in Jonglei, beginning with the January 2009 raids by the Murle on the Lou-Nuer, has escalated in intensity due to the more effective organizational structure and improved coordination through the use of new technologies such as satellite phones (Leff, 2012). The proliferation of small arms and light weapons has led to an increase in casualties when clashes occur (Rands and LeRiche, 2012). The tactics used allow raiders to steal more cattle, which leads to a reciprocally escalated response during counter-raids. Furthermore, herders are more inclined to increase the scale of violence in hopes of dissuading any additional retaliatory response, reclaiming their stolen cattle, and stealing cattle as compensation.

Due to the lack of prosecution for raids and no bloodwealth compensation, counter-raids have allowed the victimized tribes in Jonglei to seek 'justice' for previous thefts and deaths. Bloodwealth is an important tradition, as any 'wrongdoing' once resulted in compensation in the form of cattle (International Crisis Group, 2009). Due to the importance of cattle for the tribes in Jonglei, incidents of violence were reduced since cattle had to be given as bloodwealth, negating any previous gains from raids. The movement away from this system has led to a great increase in the level of destruction (Leff, 2012). While cattle remain the primary focus of the current string of conflicts from 2005-2013, all members of the tribal community are now targets for violence by raiders. Furthermore, attacks have been carried out in such a way that maximum damage is done to the community by increasing the number of cattle stolen in each counter-raid, attacking all members of the community, burning community structures, and destroying infrastructure and the source of livelihoods during raids (United Nations Mission in South Sudan, 2012).

Each of the cycles of conflict in Jonglei originated at different times and for different reasons. While it is usually difficult to determine the exact attack that started the cycle, there are fairly strong indications that major clashes fuelled the conflict (see table 1). The most recent conflict between the Dinka and the Lou-Nuer can be traced to a raid that occurred in Duk County in May 2007. The Dinka were able to raid some 20,000 cattle from the Lou-Nuer; however, there were no deaths reported. Cattle in the pastoral regions are each worth about 400-500 South Sudanese Pounds (SSP) (Richmond & Krause-Jackson, 2011). Therefore, the stolen herd was worth anywhere from 8-10 million SSP (equivalent to 1.8-2.27 million USD). Although cattle are not sold on a regular basis, they are considered savings that can be used when needed. The Lou-Nuer strongly believed that the government failed to properly investigate the raid, as they only recovered 300-800 cattle, and cite this incident as one of the key grievances fuelling future conflict with the Dinka (International Crisis Group, 2009). Small-scale raiding occurred throughout 2007 to 2009; however, the Lou-Nuer responded to the May 2007 Dinka raid two years later in August and September 2009.

TABLE 1: MAJOR TRIBAL CLASHES IN JONGLEI STATE

DATE OF ATTACK	PERPETRATING TRIBE	VICTIM OF ATTACK	LOCATION	ESTIMATED DEATHS	ESTIMATED CATTLE STOLEN
May 2007	Dinka	Lou-Nuer	Duk	N/A	20,000
January 2009	Murle	Lou-Nuer	Akobo County	300	N/A
February 18, 2009	Murle	Lou-Nuer	Akobo County	250	N/A
March 5-8, 2009	Lou-Nuer	Murle	Likuangole and Pibor County	450	600

DATE OF ATTACK	PERPETRATING TRIBE	VICTIM OF ATTACK	LOCATION	ESTIMATED DEATHS	ESTIMATED CATTLE STOLEN
August 2009	Lou-Nuer	Dinka	Wernyol and Panyangor	42	N/A
Sept 2009	Lou-Nuer	Dinka	Duk padiet	167	N/A
February 6, 2011	Murle	Lou-Nuer	Uror County	8 (3 Nuer Chiefs)	1000
April 18-24, 2011	Lou-Nuer	Murle	Likuangole and Pibor County	200	138,000
June 15-24, 2011	Lou-Nuer	Murle	Gumuruk, Likuangole, and Pibor County	400	398,000
August 18, 2011	Murle	Lou-Nuer	Pieri and Uror County	750	38,000
December 2011	Murle	Dinka	Jale	42	N/A
December 23, 2011 – January 9, 2012	Lou-Nuer	Murle	Likuangole, Pibor, and Pibor County	1000	100,000
January 2012	Murle	Dinka	Duk	47	200
December 27, 2011 – February 4 2012	Murle	Lou-Nuer and Dinka	Akobo, Nyirol, and Uror Counties	276	60,000
February 2012	Dinka	Murle	Bor	9	N/A
March 2, 2012	Murle	Lou-Nuer	Nyirol County	15	15,000
March 9-11, 2012	Murle	Lou-Nuer	Ethiopia (Wanding Payam)	225	20,000

Compiled from Sources: Jonah Leff, "My Neighbour, My Enemy: Inter-tribal violence in Jonglei," Sudan Issue Brief No.21 (October 2012): 3.; Agereb Leek Chol, "Jonglei state Conflict Analysis: Why Second Disarmament Is Not a Solution." South Sudan News Agency, March 18, 2012. www.southsudannewsagency.com/opinion/analyses/jonglei-state-conflict-analysis-why-second-disarmament-is-not-a-solution.; International Crisis Group, "Jonglei's Tribal Conflicts: Countering Insecurity in South Sudan," Africa Report no. 154 (23 December 2009).

⁴This table is draw directly from my Masters thesis dissertation. For the original and expanded analysis, see Legassicke, 2013)

While the conflict between the Dinka and Lou-Nuer peaked in 2009, the clashes between the Lou-Nuer and Murle began, bringing a new level of violence to the conflict. In January 2009, a Murle attack on the Lou-Nuer in Akabo County was seen as breaking a perceived 'pledge for peace' negotiated by Vice-President Riek Machar in early 2009 between both tribes (International Crisis Group, 2009). Part of the pledge, according to the Lou-Nuer, was the freedom to migrate into Murle territory. This is a major point of contention, as the Murle strongly objected that migration was not part of the negotiated agreement. It is difficult to determine what was guaranteed as Riek Machar acted as a shuttle negotiator between both tribes. Therefore, it is possible that the Murle and the Lou-Nuer were given different versions of the agreement. Regardless, the peace was broken, resulting in great mistrust between the Murle and the Lou-Nuer. In response, the Lou-Nuer attacked Likuangle from March 5th-8th, 2009, killing 450 Murle, mostly women and children (Leff, 2012). In addition, Lou attackers also stole 600 head of cattle during the raid.

The response by the Lou-Nuer led to a tit-for-tat strategy during the following two years (International Crisis Group, 2009). In each case, a victimized tribe would only respond to the hostile actions of another. This allowed the scale of the conflict to increase or decrease depending on the circumstances within the state. Therefore, from February 2009 until February 2011, there was a reduction in the scale of violence during raids. However, small raids were often conducted during 2009 to 2010, and daily during the 2010 to 2011 dry season, starting in November (United Nations Mission in South Sudan, 2012). The reduction in scale has been partly attributed to the response and presence of the United Nations Mission in Sudan (UNMIS), as it established temporary operating bases in the Lou-Nuer and Murle territories of Akobo and Pibor Counties respectively. However, as these bases were temporary, once the UNMIS presence was removed, conflict re-occurred.

In January and early February 2011 the Murle conducted a series of small-scale raids in Uror County. On February 6th, a Murle raid resulted in the death of eight Lou-Nuer; three were traditional chiefs. Initial attempts were made to resolve the conflict through dialogue and bloodwealth by County officials, the South Sudanese Police Force (SSPF), SPLA, and Pibor chiefs (United Nations Mission in South Sudan, 2012). All parties agreed that the raiders should be arrested and the cattle returned. Although there was widespread support to resolve the conflict, the GOSS failed to implement the agreement. The SPLA recovered only a portion of the cattle, 260 of the 1000, and failed to return the cattle to the Lou-Nuer. Furthermore, the SSPF failed to arrest the raiders responsible.

The inability of various government authorities to respond to the killing of three traditional chiefs can be viewed as the last straw for the Lou-Nuer. Subsequent retaliations increased to an unprecedented scale of violence, with each counter-raid topping the level of violence of the previous raid. The peak of the cycle of conflict between the Lou-Nuer and Murle occurred from December 2011 until February 2012. Beginning on December 23rd, 2011, a new 'white army' force of 8,000 youth composed of a Lou-Nuer majority and Dinka minority launched a series of attacks on the Murle. The youth that mobilized to form the white army were those involved in previous cattle raiding clashes. Conservative estimates suggest these attacks resulted in a total of 1,000 Murle deaths (Leff, 2012).

The white army was the largest force assembled since the signing of the CPA. It was well organized, and able to carry out large-scale attacks. The subsequent retaliations by the Murle could not match the level of violence achieved by the white army. At most, the Murle were able to mobilize a few hundred fighters for any given raid. When political disinterest in the cycles of relatively low-level cattle raiding resulted in a failure to prosecute cattle raiders, the cycles of the conflict intensified and developed a cyclical structure of raids and counter-raids escalating from the theft of cattle to massacres of local villages. Following the outbreak of conflict in December 2013, political actors repurposed the youth militias that were active in Jonglei to fight for their respective causes. The mobilization in Jonglei stands in stark contrast to Warrap state and Lake state which did not experience violence in December 2013.

ADDRESSING LOW-LEVEL YOUTH CONFLICT

It was the failure of dealing with low-level conflict of cattle raiding in Jonglei State that allowed for the rapid mobilization of the state's youth militias in the conflict that broke out in South Sudan in 2013. In comparison, two neighbouring states outside of the Greater Nile Region – Warrap and Lakes States – that had experienced similar low-level cattle raiding since the signing of the Comprehensive Peace Agreement did not experience any mobilization in December 2013. I argue that this lack of mobilization was due to the fact that political action was taken within these states to mitigate the scale of cattle raiding that occurred (see discussion in next paragraph). While low levels of cattle raiding itself was not banned, any large raids, violence, or bloodshed was quickly investigated by the respective police within Warrap and Lakes States, and charges were levied according to the severity of crime committed (Lakes & Unity MPs agree to recover stolen cattle, 2013). Even in occasions where cattle raiding crossed state borders, cross-border investigations were held, resulting in a reduction of violence around the practice of cattle raiding. Therefore, by having political, judicial, and police forces

UN Photo/Isaac Gideon



respond to the conflict as it initially occurred, leaders in Warrap and Lakes States were able to remove any culture of impunity.

From 2005 to 2013, a similar pattern of cyclical conflicts based on the tradition of cattle raiding had been occurring across the borders of Unity, Warrap, and Lakes States. Raids across these states assumed a cyclical nature, in which individuals would cross the border regions of each state, creating a triangle of conflict. While the level of violence was minor when compared to the scale of violence discussed in the previous section, cattle raiding was occurring across state borders, complicating the potential political solution to the problem. The majority of the raids were concentrated in cycles between Lakes and Warrap States, with violence also seen in raids that occurred between Unity and Warrap States. However, what differentiated the circumstances in Unity, Warrap, and Lakes from the scale of violence and level of impunity seen in Jonglei is that the political leaders representing Unity, Warrap, and Lakes States made ending the violence between their states a top political priority.

As it became clearer that the raids were taking on a tit-for-tat pattern across state borders, the Members of Parliament (MPs) for Unity, Warrap, and Lakes States began working to ensure that there was no escalation to the conflict. MPs worked at passing common laws in each of their states that would allow all stolen cattle to be returned to their original tribes and ensured that those responsible for theft were prosecuted (Lakes & Unity MPs agree to recover stolen cattle, 2013). These efforts by state officials led to accountability for actions taken during cattle raids, removing any chance of a culture of impunity developing in Unity, Warrap, and Lakes States as it had in Jonglei State. During a conference on inter-state cattle raiding held in June 2013, the Governors of Lake, Unity, and Warrap States announced that they were going to increase security measures in each of their states and along the border to prevent potential cross-border raids. Political leaders also agreed to implement standardized punishments to ensure that raiders would not receive preferential treatment if they were caught or prosecuted in their home jurisdiction regardless of age (Three South Sudan states agree to impose the death penalty on cattle raiders, 2013). In



As it became clearer that the raids were taking on a tit-for-tat pattern across state borders, the MPs for Unity, Warrap, and Lakes States began working to ensure that there was no escalation to the conflict.

⁵While Unity state was involved in the efforts to eliminate cross-border raiding, its mobilization in the 2013 conflict was due to the outbreak of violence between Nuer and Dinka oil workers located within the state. Therefore, while Unity is discussed within the context of political solutions in addressing the impunity of cattle raiding, it did experience violent conflict in 2013. See International Crisis Group, 2015.

particular, the legalization and standardization of bloodwealth – payments made to the families or communities in compensation from crimes committed – at 51 cattle for each victim harmed in cattle raiding is likely to reduce the level of violence occurring during raids as any gains made in cattle raiding would be negated in repayment. The political action that was taken by MPs in Unity, Warrap, and Lakes States ensured that cattle raiding did not become militarized as it had in Jonglei State. Therefore, when conflict broke out in South Sudan in December 2013, there were no formalized structures of children or youth cattle groups that could be co-opted and mobilized by either government or opposition in the conflict. This resulted in no involvement of children or youth from Warrap and Lakes States in the civil war. Furthermore, it might also indicate why Warrap and Lakes States remained uninvolved in the civil war.

CONCLUSION

The December 2013 civil war was caused by the internal tensions between the political elite in the SPLM. However, locating the rebellion in the Upper Nile region was no coincidence. States such as Jonglei had been experiencing instability ever since the signing of the CPA in 2005, as the GOSS was unable to establish its control in the periphery. This gap in governance allowed cyclical raids to be conducting amongst youth of ethnic groups in Jonglei State, and solidified the structures that were drawn upon by warring political leaders in 2013. However, this paper has also suggested that there is a connection between the mobilization of youth militias in civil wars in the areas that there was impunity in instances of low level violence; in the case of South Sudan, the impunity was found in the practice of cattle raiding. By comparing two sets of cases, that of Jonglei with Warrap and Lakes States, it can be seen that in those areas where political solutions to cattle raiding were established, mobilization did not occur. By removing the culture of impunity, youth in agro-pastoral regions had no reason to create cohesive groups to raid or protect cattle. These examples suggest that when violence broke out in December 2013, there were no existing group structures to mobilize in Warrap and Lakes States. This paper presents an initial discussion in the connection between existing conflict among youth groups, and the wider mobilization of these structures during civil war. More research is needed on the subject, particularly the comparative case between Jonglei and the Upper Nile region, and Lakes and Warrap States. Further research of these cases should demonstrate that political action on agro-pastoralist conflict can be translated to the low-level involvement of children in the 2013 civil war. In regions where there are no existing children or youth group structures that can be mobilized, recruiters would have to actively engage individuals rather than drawing on wider groups. This process takes more effort and time, as each fighter would have to be individually mobilized. Given the existing structures in Jonglei, these structures could be mobilized much more quickly and with less effort, allowing for the resources of military groups to be focused on conducting the war rather than on recruitment.

The cycles of conflict that were seen in cattle raids among ethnic based youth groups have now shifted to all-out war. Given that these youth groups have been fully mobilized in the civil war, their demobilization will come with a formalized end to the conflict, and a long term process of disarmament, demobilization, and reintegration. Furthermore, reconciliation will

be needed to mend the mistrust between the ethnic groups in South Sudan. While the civil war in South Sudan is on-going (though there have been intermittent cease-fires and political agreements), this paper would suggest that in order to reduce the mobilization of youth in future conflicts, stronger governance institutions must be created that extend throughout the country into relatively rural agro-pastoral regions. These institutions must have the ability to investigate and prosecute instances of violence to reduce impunity in these regions.

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UN peacekeepers at the Protection of Civilians site in Juba, South Sudan, March 2016 (UN Photo/Eric Kanalstein)



COMMENTARY:

CYCLICAL YOUTH-LED CONFLICT AS AN EARLY WARNING INDICATOR

*By Nicholas Coghlan
Canada's former ambassador to South Sudan*



The SPLA turned in on itself so dramatically in December 2013 because it had failed to transform itself from a motley assembly of warlords and militias ... into a modern, fit-for-purpose and integrated army.

South Sudan's second civil war (1983-2005) was conventionally and consistently portrayed in the western media as pitting the African, mainly Christian and animist, South against the Arab, Muslim North. And yet on any given day, fighting within the territory of what is now South Sudan was in those years typically more about cattle, women, and/or the resolution of longstanding local feuds between villages, clans, and ethnicities.

Youth were always at the heart of this violence. This was partly for the age-old reason that politicians or Big Men (whether western or African) always find it easiest to persuade young people to fight – all 17-year olds are immortal (to themselves). But it was also because the warrior culture of the two great Nilotic tribes in particular – the Nuer and the Dinka – demanded shows of manliness, and it was specifically on account of the role cows have come to play as bride-wealth in these two societies. In South Sudan, if the culture to which you belong requires that you supply the family of your bride-to-be with sixty or more cows, then unless you are exceptionally well-off, the only way you can acquire such a herd is through raiding.

The ostensibly political civil war exacerbated the scope and lethality of cattle-raiding in a number of non-intuitive ways. In more peaceful times that are now barely within living memory, the Dinka and the Nuer (like the Masai, that other great Nilotic tribe) had valued their cattle not just for their beauty, the colour of their coats (Machar denotes a particular shade of cow, as do many other common Dinka and Nuer names) and the size of their horns, but for their milk and their meat: vast herds were driven to markets, even into Uganda and Kenya for sale and slaughter. But now the fighting simultaneously inhibited the large-scale and long-distance movement of cattle, while discouraging the raising of cows on fenced ranges; it also restricted the development of markets and the movement of hard cash. Cows and Kalashnikovs became the principal currency in Southern Sudan, but with the value of the cows no longer in their meat or milk production potential, but rather in their number and random attributes such as coat colour. In that a constant was that young men still required women, so youth-led cattle raiding became endemic.

Endemic but still cyclical: for herds of cows are vulnerable when they are on the move, and in South Sudan they have to start moving in search of better grazing following the rains. In this country, the period from December to April is routinely described as the Fighting Season; this is not just because much of the country then dries sufficiently for heavy armour to be moved around and for troops to move overland, but it is also when cattle converge on scarce water points, bringing their herders in hostile contact with each other.

All this is to say youth (young men in particular) are at perpetual and extremely high risk of becoming involved in violence in South Sudan because they require cows to find a bride; and the market for cows has evolved in such a way that it is almost impossible for them to acquire such wealth except through violence.

Now the author of this most interesting paper suggests (and here we risk over-simplifying) that pre-emptive conflict resolution aimed at minimising cattle raiding, taken by political leaders in Warrap, Lakes, and Unity states, was historically in contrast to a relative lack of such governance in Jonglei, and partly explains why more Jonglei youth have been drawn into post-December-2013 fighting than in other states.



First we would note that while it was largely overlooked by the media, on any given day between, say, April 2014 and June 2016, there was more inter-clan violence in Lakes than in Jonglei; much of this fighting defied easy analysis in that it was Dinka on Dinka. As for Unity State, this has – 30 months on from December 2013 – proven to be by far the largest killing ground of all, with no need for any participation of the Jonglei-based and near mythical youth-centered White Army.

But perhaps most importantly, Jonglei and Upper Nile are the Nuer heartland; and it is the Nuer who perceive themselves (not entirely without reason) as the victims of a Juba-centered genocide in December 2013, perpetrated by the ruling Dinka elite. You would expect the home territory of the aggrieved (and more desperate) minority party to be a more fertile recruiting ground for youth than the homelands (Lakes, Bah-al-Ghazal, Warrap) of the still dominant (Dinka) party.

Where this paper hits the nail on the head is on the matter of impunity. The SPLA turned in on itself so dramatically in December 2013 because it had failed to transform itself from a motley assembly of warlords and militias – many of whose aims were quite evidently criminal rather than political – into a modern, fit-for-purpose and integrated army; far too much was papered over, in the name of expediency.

Jonglei over the years 2011 to 2013 is a particularly interesting case in point. A former junior military officer – David Yau Yau – ran for a minor political office. He was trounced. His reaction was to capitalise on decades of stigmatisation of his tribe (the Mutrle), and gross underdevelopment, to lead a rebellion – incidentally recruiting thousands of child soldiers, who joined his ranks willingly (if any 12 yr old can be said to take up arms willingly). He waged a successful, ultra-violent guerrilla war against the authorities (allegedly killing a number of UN peacekeepers en route), to a point at which embassies in Juba were petitioned by the government to indict him at the ICC. But eventually the Catholic church negotiated a settlement. Yau Yau was given his own mini-state, a very large cash grant to run it, and the title Honourable (and, later a promotion to Lt General); he agreed, also, to release all those child soldiers. The reaction of the international community? When introduced to us by the then Special Representative of the UN Secretary General, half of the diplomats present gave him a standing ovation – here, they said, was a man of peace.

Hadn't we just rewarded a war criminal? But who could naysay the release of those child soldiers?

Meanwhile, the African Union has indicated, in a blunt report known as the Commission of Inquiry, that starting in December 2013 both Salva Kiir and Riek Machar were responsible for War Crimes and Crimes Against Humanity; the UN's Panel of Experts, convened to consider sanctions, notes carefully that there appear to be grounds on which either or both could be indicted on those grounds, should members of the UNSC so desire.

Kofi Annan recently noted that if you sacrifice justice for the sake of peace, you usually get neither. South Sudan is a case in point.



CHILDREN ACCOUNTABILITY AND JUSTICE: ADVANCING RESTORATIVE JUSTICE FOR CHILD SOLDIERS AND CHILD PIRATES

*By Jacqueline Salomé
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INTRODUCTION

The variance in the international community's approach to justice for child soldiers and child pirates is curious – why is it that child pirates are faced with impunity or, alternatively, harsh criminal sentences, sometimes in adult courts and prisons, while child soldiers are offered restorative justice with a focus on rehabilitation and reintegration? There are many commonalities in the role and experience of child soldiers and child pirates, most notably in terms of their indistinct role as victim and perpetrator. Nonetheless, the international conception of these children and the legal and policy responses to their crimes are vastly different. Restorative justice is widely accepted as an appropriate response to cope with child soldiers in post-conflict settings due to its ability to uphold the accountability of the child, prioritize rehabilitation, healing, and reintegration, and act as a prevention mechanism for re-entry into conflict. It seems the same should apply to child pirates – strangely, it does not.

This paper will critically analyze the international community's divergence in the conceptualization of the militarized and criminalized child, and the divergence in justice approaches to child soldiers and child pirates. There is limited academic literature on the experience and international justice response to child piracy. As a result, this paper will explore the literature on child soldiers, focusing on the experience and conception of children involved in armed conflict, and drawing inferences. It will highlight the international community's preferred restorative justice approach to child soldiers in post-conflict settings, elaborating why this approach is most effective to cope with the child soldier's ambiguous role in the victim-perpetrator continuum, as well as how restorative justice can act as a prevention mechanism. Further, it will explain the unsuitability of retributive justice for militarized children, and discuss how the application of restorative justice to child soldiers can be usefully applied to the benefit of child pirates.

⁶The limited academic literature that exists on the subject of children involved in maritime piracy refers to children as “child pirates” or “juvenile pirates”.

THE LEGAL SPACE FOR YOUTH CRIMINAL JUSTICE

With certain stipulations, international covenants such as the Convention on the Rights of the Child (CRC), the Beijing Rules, and the African Charter on the Rights and Welfare of Children permit the prosecution of child soldiers. Retributive justice for children is theoretically justifiable as per the Kantian proposition that those who have violated social norms should, simply stated, be punished regardless of the possible benefits or drawbacks of prosecution (Leveau, 2003, p.45). Based on this theory, Leveau (2003) explains, “child soldiers should be prosecuted merely on the basis that they committed crimes” (p.45). Criminal prosecutions can challenge a culture of impunity and deter future criminal activity, and are thus theoretically favourable. Failure to prosecute adolescents may embolden them to commit further atrocities in knowledge that they will not be held accountable in a court of law (Wright, 2010, p. 321).

There have been instances in which child soldiers have been subject to retributive justice. Notable cases include the conviction of 15-year-old Omar Khadr, and the Statute of the Special Court of Sierra Leone (SCSL). The SCSL permitted the prosecution of child soldiers between the ages of 15 and 17 based on the assumption that they are capable of a minimum level of rationality. In essence, older adolescents have a greater degree of mental development and free will, and thus can control their choices and exhibit the necessary mens rea to be held criminally accountable (Cipriani, 2009, p. 5). However, child soldiers did not end up before the SCSL despite the court having authority to try children under 18, nor were children brought before the courts of the International Criminal Tribunals for Yugoslavia or Rwanda. The Rome Statute forbids criminal prosecution of children, defined as those below 18 years of age as per the CRC, before the International Criminal Court (ICC). The reality that very few child soldiers have been brought to justice criminally reflects the international humanitarian and legal community's protectionist attitude towards children, and the wide acceptance of restorative justice as an appropriate mechanism to cope with the child soldier's ambiguous role as victim and perpetrator.

The support for restorative justice as an appropriate mechanism to address child soldiers post-conflict can be linked to conceptions of childhood more broadly. It is necessary to analyze the diverging conceptualizations of the child as both victim and rational actor in order to make evident the necessity of a flexible response that can adequately address the rehabilitation and culpability of the child.

Dominant discourse and international policy has created a universal age demarcation of childhood that has sensationalized images of the child as a vulnerable, incompetent, and dependent being, ultimately incapable of exhibiting the necessary mens rea to be held criminally accountable. As a result, a protectionist view of children as rights-holders and not responsibility-bearers has achieved particular salience. The definition of a child as any individual below the age of 18 forms a parsimonious age demarcation that rests on certain assumed characteristics of childhood that many children do not necessarily exhibit (Hart, 2006, p. 220). This universalist paradigm “forecloses consideration of the possibility that children under 18 may be capable of engaging with political issues”, serving to reify the dominant perception of children as a dependent and vulnerable sector (Hart, 2006, p. 224).

In international law, these depictions reify the idea that child perpetrators are victims of adults who recruited them and thus are not legally culpable (Drumbl, 2012, p. 133). Child soldiers in particular are conceived as a “deviant product of adult abuse”, and thus they cannot be held criminally accountable, as they are assumed to have “no legally relevant agency” (Rosen, 2007, p. 297). The idea that modern warfare is essentially an “adult enterprise” is reflected in the international legal prioritization of applying criminal justice models to the recruiters of child soldiers at the ICC, rather than child soldiers themselves (Rosen, 2007, p. 298). The result is that “pressures for justice are often met with a discourse on dependency”, which serves to justify protectionism that “insulates child soldiers from accountability processes generally” (Rosen, 2007, p. 10, 22). In terms of both domestic and international policy, post-conflict truth commissions and rehabilitative approaches are seen as the most appropriate to respond to the plight of child soldiers, coupled with criminal prosecutions for child soldier recruiters (Rosen, 2007, p. 19). Because child soldiers are not “conflict entrepreneurs or political leaders”, the benefits of criminal justice and incarceration are slim (Drumbl, 2012, p. 22).

The child soldier, as a result, is portrayed as a “faultless and passive victim”, forcefully recruited, dependent and manipulated by adults (Drumbl, 2012, p. 6). While certain elements of this narrative do exhibit the truth, it is also important not to downplay the agency of the child. While numerous children are forcibly recruited into conflict, some children may in fact voluntarily enlist with armed groups as a demonstration of their political agency. Certain children may join of their own volition as influenced by local values, defense of kin, or an essential fulfillment of adult status (Hart, 2006, p. 18). Economic benefits may influence a child’s rational calculation to enlist as well (Hart, 2006, p. 218). According to ethnographic data published by Krijn Peters and Paul Richards who interviewed child combatants in Sierra Leone, children felt a sense of pride in fighting (Rosen, 2007, p. 299). The participating child

soldiers articulated that military activity provided “a chance to make their way in the world”, leading the ethnographers to the conclusion that child soldiers did exhibit levels of rationality and a “surprisingly mature understanding of their predicament” (Rosen, 2007, p. 299).

Drumbl (2012) takes issue with the common two-dimensional conception as victims and witnesses of crime, insisting that it neglects the child soldier’s third role as an agency-boasting perpetrator (p. 21). Adolescents, Drumbl notes, can grasp consequences of their conduct and make amends after the fact (p. 58). He asserts that children have been known to threaten victims to keep quiet about crimes perpetrated by the child soldiers in order to avoid accountability; this illustrates an explicit acknowledgement of their guilt and a rational decision to attempt to avoid consequences of their conduct (Drumbl, 2012, p. 86-88). Contrary to the dominant victim image, “depictions of child soldiers as innocents contrast sharply with the reality that some children, like some adults, learn to enjoy killing” (Drumbl, 2012, p. 89).

The complicated experience of child soldiers can thus be better described as occupying a position within a space that Primo Levi has coined the “gray zone” – a space between victims and perpetrators defined by varying levels of complicity and coerced behavior. Certain legal scholars have created labels for child soldiers that aptly capture their nuanced position within Primo Levi’s “gray zone” of complicity and culpability. Smeulers, for example, has classified most child soldiers as “compromised perpetrators”, implicated in international crimes yet their influence to commit these crimes is shaped by others and their environment (Drumbl, 2012, p. 90). Vaha (2009) labels child soldiers as “coerced moral agents”, suggesting that in a hierarchical armed group, it is difficult to determine individual agency (p. 7). Vaha explains that there are varying levels of responsibility that are dependent on the command structure, and varying levels of complicity and coercion. Typically, children and soldiers in lower ranks hold less responsibility for criminal activity than those in command positions (Vaha, 2009, p. 8; Aptel, 2010, p. 99). These nuanced perspectives avoid reductionism and are thus more comprehensive in their consensus that although children do display agency and are perpetrators of heinous crime, this agency has many context-specific caveats.

Primo Levi has coined the phrase the “gray zone” to refer to a space peopled with those not easily classified as victims or perpetrators, embodying various forms of complicity and ambiguous involvement in crime or systematic atrocities. Rather than viewing child soldiers, for example, as victim or perpetrator, it is more appropriate to view them as occupying a space in between. Bronwyn Leebaw has suggested that restorative justice embodies the flexibility necessary to address “the gray zone” and various levels of culpability (Leebaw, 2011, p. 3, 14, 123).



AU-UN IST Photo / Tobin Jones



For child soldiers who occupy an ambiguous middle position between perpetrator, victim, and witness, restorative justice is preferable to retributive justice that black-boxes the child into the offender category.

RETRIBUTIVE JUSTICE

For child soldiers who occupy an ambiguous middle position between perpetrator, victim, and witness, restorative justice is preferable to retributive justice that black-boxes the child into the offender category. Many legal scholars underscore the added harm that children can face under retributive justice, which is not conducive to their victimhood. Nagle (2011) argues that trials are less likely to uphold the best interests of the child or provide societal reintegration as effectively as alternative rehabilitative measures. As such, the attainment of justice should be redirected toward reintegration, rehabilitation, and reunification with family and the community (Nagle, 2011, p. 41-42). Grossman (2007) adds that trials may actually threaten a child's psychological healing by making them relive trauma, delaying a return to 'normalcy' and making societal reintegration more difficult (p. 351). As such, trials are more likely to aggravate distress rather than promote healing in accordance with the CRC (Grossman, 2007, p. 351). For these reasons, Nagle (2011) suggests measures of long-term counselling and monitoring, vocational training, restitution, and reconciliation as preferred alternatives to criminal justice (p. 42). Echoing these sentiments, Aptel (2010) writes that a "free and willing acknowledgement of the crimes committed and a full explanation of the circumstances is often in the best interests of the children concerned" (p. 109). This process, she furthers, maximizes opportunities for rehabilitation and reintegration back into families and communities, and is more in line with restorative justice (Aptel, 2010, p. 109).

Ronald Flowers (1986) contributes the view that incarcerated youth are actually likely to be victims of the institution in which they are incarcerated, which offsets any benefits of serving time and may actually spur future criminal or military activity rather than contributing to prevention. He points to five key reasons for his argument. Firstly, children in detention centres often acquire negative behavioural characteristics due to criminal surroundings. Secondly, juvenile victimization is rampant as youth are prone to attack, violations and other self-esteem limiting events. Thirdly, juvenile inmates have a tendency to associate with gangs or groups for survival; these groups are often associated with delinquent behaviour that exacerbates the child's acquisition of learned negative behavioural traits. Fourthly, Flowers notes that overcrowding

and unsavoury conditions in detention centres cause a tense atmosphere that "only contributes to the very problems for which the juvenile is incarcerated". Lastly, he points to a lack of educational programs and studies that show that being initiated into the juvenile justice system actually makes juveniles more susceptible to crime. For these reasons, Flowers suggests that retributive justice for juveniles more broadly should be a last resort, as administering justice can be done more effectively outside of the courts (Flowers, 1986, p. 179, 195).

RESTORATIVE JUSTICE: A PREFERRED APPROACH

To reconcile the child soldier's existence within "the gray zone" of the victim-perpetrator continuum, scholars have generally conceded that furthering the agenda of restorative rather than retributive justice is a more appropriate justice mechanism for juvenile ex-combatants in post-conflict settings. Restorative justice has been defined as a "process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future", or "every action that is primarily oriented toward doing justice by repairing the harm that has been caused by crime" (Daly, 2002, p. 57-58). Common features among the restorative justice literature include an emphasis on the role and experience of victims in the criminal process, involvement of all relevant parties (i.e. victims, offenders, supporters and witnesses) to discuss the offense and what should be done to repair the harm, and decision-making carried out by both lay and legal actors (Daly, 2002, p. 57-58). Although restorative justice is commonly viewed as opposite to retributive justice, criminologist Kathleen Daly (2002) points out that this is a misconception; in actuality, restorative justice seeks a middle ground between reparation, restoration and reintegration (p. 59). Ideally, restorative justice intends to uphold accountability of the offender, by allowing a space for dialogue in which the offender can explain the circumstances leading to their criminal behaviour, ask for forgiveness, and take direct responsibility for the crime by repairing damage and confronting victims.

Upholding the accountability of child soldiers is important as acknowledgement of guilt accompanied by some form of punishment is commonly accepted as a deterrent to crime. Allowing blanket immunity in accordance with the prescribed victim imagery of the child soldier that, while well intentioned, may be an extreme position to take as it insinuates that all below the age of 18 are above the law (Rosen, 2009, p. 117). As Drumbl (2012) asserts, "declaring non-responsibility may come to be seen as legitimating irresponsibility" (p. 40). Legitimizing irresponsibility is counterintuitive to the goals of upholding the accountability of the child, who exhibits rational agency, and the goal of preventing children from engaging in military activity in the future. The goal of prevention is thus inextricably linked to accountability. Juvenile ex-combatants cannot be viewed as equal rights-holders if they are not answerable to their crimes, and thus they must be held variably accountable as appropriate on a case-by-case basis. Now, one might argue that retributive justice is specifically designed to uphold accountability and punish offenders. However, unlike retributive justice, the benefit of the accountability mechanisms of restorative justice is that they do not black-box the child

into the perpetrator category. Dialogical processes allow for the realization and understanding of the child's simultaneous role as victim as well as perpetrator. Moreover, the child is able to exercise agency in the control of the process of upholding their own accountability, through dialogue with victims and having a more direct role in repairing damage. Additionally, restorative justice does not have to answer to precedents and has more flexibility to uniquely address individual cases as a result.

Restorative justice is additionally useful as it attempts to understand the broader context within which given act was committed; where criminal justice simply distinguishes right from wrong at an individual level, restorative justice seeks to respond to crime at the micro level by giving priority to victim reparation, and at the macro level by addressing the need to build safer communities and create an agenda for development (Cipriani, 2009, p. 13). The criminal scheme is individualist by nature, and does not consider external factors such as social control and economic opportunities in a context of deprivation that influence a child's choice to participate in military activity (Cipriani, 2009, p. 14). Oftentimes, the core issue is beyond the individual and stems from general societal problems "for which there is a burden of collective responsibility" that a comprehensive and inclusive dialogical process of restorative justice is better suited to address (Cipriani, 2009, p. 15). Additionally, by addressing these macro societal issues, the structure in which the child acts will be less amenable to crime, further asserting the strength of restorative justice as an adequate prevention mechanism.

Restorative justice embodies rehabilitative elements that are necessary to cope with the negative psychological effects of soldiering that are often asymmetrically experienced by juvenile ex-combatants. Common psychosocial issues include anxiety, fear, anger, stress, depression, post-

traumatic stress disorder, and isolation (Marx, 2012, p. 13). These issues must be addressed if ex- child soldiers are to successfully reintegrate into communities and experience a level of rehabilitation that will ensure their effective functionality in an alternative non-criminal lifestyle, ultimately contributing to personal development more generally. A focus on rehabilitation is thus additionally imperative for deterrence and prevention of a child's future criminal involvement. Proper treatment and provision of post-traumatic coping mechanisms should ideally contribute to a child's success in this alternative lifestyle.

RESTORATIVE JUSTICE IN PRACTICE

Restorative justice has been implemented in post-conflict Sierra Leone and Northern Uganda to successfully advance the rehabilitation and community reintegration of former child soldiers while simultaneously upholding their accountability. These case studies demonstrate the usefulness of restorative justice to address militarized children. An analysis of the strengths and drawbacks of restorative justice in practice can provide insightful lessons learned to guide future restorative justice processes for both militarized and criminalized children.

Sierra Leone

In Sierra Leone, children were heavily involved in over a decade of brutal civil war between the Revolutionary United Front and Charles Taylor's National Patriotic Front, and the Sierra Leonean government. Children were recruited, often forcibly, by both parties to commit atrocities and human rights abuses, while subject to sexual exploitation and forced labour. In the aftermath of civil conflict, local restorative justice practices were employed to assist former child soldiers to enter constructive civilian roles in their northern Sierra Leone villages and rebuild positive relations with their communities. In one local justice mechanism, parents of former child soldiers approached local chiefs to explain their children's involvement in and experience with conflict. The chief would speak to the child, having the child lie at his feet holding his ankle and explain his story. The chief would then compare the child's story to information gleaned from community members, assess his remorse, and decide if the child can return to the community. If the chief permits the child to return, the chief would assign the boy to complete a job to assist the community and connect the child to a community member as a mentor for guidance and support (Wessells, 2006, p. 222). The child's job would be determined based on the extent of the wrongdoing, and could include community service such as cleaning common areas or repairing buildings.

According to Michael Wessells (2006), this approach to restorative justice "resembles some of the best practices Western social services have devised" (p. 222). The approach collects evidence from the child and community members, which is then used to make decisions regarding remorse and the likelihood of rehabilitation. The child's position laying down



signals “complete submission to local authority and his willingness to obey local rules”, and is also a “ritual through which the child breaks from past roles as a child soldier and reformulates his position as part of the civilian community” (Wessells, 2006, p. 223). The child then engages in reparation to the village via community service. This community service develops positive relations between former child soldiers and the community, and its publicity ensures that villagers can witness the child’s desire to help the village which ideally contributes to the community’s willingness to accept the child without stigmatization or isolation. Finally, the child’s entry into the mentoring process signals his commitment to civic values and his redefinition as a civilian (Wessells, 2006, p. 223).

Northern Uganda

During two decades of internal conflict between the Lord’s Resistance Army (LRA) and the Uganda People’s Defence Forces, children were recruited or kidnapped as combatants and forced to perform atrocities and human rights abuses against civilians. Following the conflict, the Acholi of Northern Uganda employed the traditional justice mechanism of *mato oput* to reintegrate the former child soldiers and uphold their accountability, while rehabilitating both the child and community. *Mato oput* is a tool of accountability used to generate acknowledgement of atrocities and promote long-term reconciliation (Acirokop, 2010, p. 277). Core features include apology, compensation, and forgiveness. The process commences with a voluntary confession by a former child soldier. Negotiations and mediation take place between elders on the basis of the information obtained from the offender. The involvement of elders and the community at large helps to “eliminate any doubts about fair justice” and teaches rehabilitation to the village as well as the offender (Acirokop, 2010, p. 280). Acirokop (2010) suggests that “the *mato oput* mechanism deals collectively with questions of accountability through compensation and restoration and helps prevent juvenile crime” (p. 284). The negotiation process and the final ritual are open to the community, with the process itself acting as a deterrent. The final agreement recommends reconciliation, and “with the sanction of the entire community and clan, it is accepted without question and implemented to the satisfaction of both the victim’s and the offender’s communities” (Acirokop, 2010, p. 284). Acirokop argues that this process has been helpful in restoring the psychological well-being of many children and in reconciling communities. However, she also notes its limitations in that former LRA youth may avoid the ceremony, hiding their identities for fear of being identified by family members of their victims (p. 280).

Lessons Learned

The case studies of Sierra Leone and Northern Uganda demonstrate that in practice, restorative justice has successfully upheld the accountability of former child soldiers, advanced community and child rehabilitation, ensured community reparations, and facilitated the reintegration of the child into families, villages, and civilian life. Most importantly, the restorative justice mechanisms used in Sierra Leone and northern Uganda have embodied the flexibility necessary to account for the child soldier’s convoluted role along the victim-perpetrator continuum, recognizing the need to uphold accountability while furthering reconciliation,

rehabilitation, and reintegration. Despite the benefits of these restorative justice practices, these approaches have not been flawless. Barriers such as fear of retribution or security concerns prevent some children from participating in restorative justice mechanisms. There are also concerns about the capacity of villages to administer restorative justice as traditional systems may have broken down during conflict, or infrastructure may not exist to facilitate these processes (Acirokop, 2010, p. 282). In addition, restorative justice approaches may not successfully include girls or address their nuanced experience in conflict and thus their unique needs. The successes and limitations of the implementation of restorative justice mechanisms in post-conflict Sierra Leone and Northern Uganda are useful lessons learned to shape future restorative justice processes involving child soldiers as well as child pirates.

CHILD PIRATES: DRAWING PARALLELS

The role of children in piracy, most commonly off of the Somali and West African coasts, is a phenomenon that is significantly understudied in academic literature. Despite substantial attention to the plight and response toward child soldiers, there appears to be scant awareness of the existence of child pirates, let alone the creation of comprehensive, nuanced legal and policy responses to cope with their distinct experience.

Global instances of piracy have been declining since 2011 according to the International Maritime Bureau, largely due to defensive and preventative action taken by international



shippers in the region, including arming ships with private security forces, adopting internationally-recognized best management practices, and the international deployment of military protection such as EU Operation Atlanta and NATO's operations Allied Protector and Ocean Shield (Drumbl, 2013, p. 246). These measures have significantly deterred piracy off of the Somali coast in particular. However, the situation in Somalia remains tenuous and piracy is still a concern. Somali pirates have "proven adept at changing their tactics to avoid detection by using smaller boats, travelling further afield, relocat[ing] their operations inland, and launching land-based attacks" (Holland, 2013, p. 178). Pirate attacks are also spiking in areas of West Africa and Southeast Asia, meaning that global piracy remains a prominent international issue (Holland, 2013, 247-248). In addition, the costs of global piracy are steep, costing approximately \$7-12 billion dollars annually (Drumbl, 2013, p. 249). Further, the involvement of children in global piratic activity renders piracy a pressing policy issue, given international obligations relating to the rights and protection of the child.

The number of children involved in maritime piracy remains speculative. International experts on piracy estimated in 2012 that approximately one-third of Somali pirates are youth, most between the ages of 11 and 15 (Holland, 2013, p. 183). As nearly half of the Somali population is below 15, it is likely that a large number of Somali pirates are youth (Holland, 2013, p. 183). Children are both participants and directors of pirate raids, often responsible for some of the most dangerous tasks including boarding vessels, taking hostages, and negotiating ransom payments for leaders of piracy gangs (Holland, 2013, p. 185). Because their roles do not differ distinctively from the roles of adults, prosecutors often do not differentiate between adult and juvenile pirates when they are apprehended and charged, even though the role of the child may be minor (Sterio, 2013, p. 282).



AU UN IST Photo / Tobin Jones

⁸There is limited academic literature on the topic of juvenile pirates. See Drumbl, M. (2013). *Child pirates: Rehabilitation, reintegration, and accountability*. *Case Western Reserve Journal of International Law*, 46 (1), 1-37; Holland, E. (2013). *Hijacked childhood, under the radar: How the international community can help the youth associated with Somali piracy and why it must*. *UCLA Journal for International Law and Foreign Affairs*, 17; Sterio, M. (2013). *Juvenile pirates: Lost boys or violent criminals?* *Case Western Reserve Journal of International Law*, 46 (1), 279-301. Much of what is known about child piracy (in Somalia in particular) comes from newspaper articles (see for example, an advocacy piece by Romeo Dallaire at <http://www.theglobeandmail.com/opinion/child-pirates-are-everybodys-problem/article544972/>), and references in UN Security Council Resolutions (see <http://www.un.org/press/en/2015/sc12113.doc.htm>).



Child pirates have been subject to retributive justice in adult courts with little consideration of the CRC's provisions on stipulations for juvenile justice or the best interests of the child.

There exist many similarities between the experience of child soldiers and child pirates. Despite differences in the military versus criminal nature of their conduct, child soldiers and child pirates still become involved in illegal activity based on a convoluted combination of political and personal agency – pirates are often fighting for the arguably righteous cause of protecting their domestic waters from foreign overfishing or dumping of toxic waste by international ships in offshore waters – within a constrained environment of economic, social, and political deprivation (Drumbl, 2013, p. 250). The child pirate's criminal conduct is likewise marked by personal choice, coercion, indoctrination, and intoxication, making their culpability questionable. More directly, certain child pirates are former child soldiers associated with al-Shabaab, a Somali-based Islamist militant group, as well as the Nigerian rebel Movement for the Emancipation of the Niger Delta (Holland, 2013, p. 205). Drumbl (2012) has explicitly stated that his conclusions regarding child soldiers have broader implications for children involved with transnational organized crime such as sex work, trade in narcotics, dangerous child labour, piracy, and so forth (p. 213).

Despite evident commonalities, the dominant victimhood image painted for child soldiers and the international community's subsequent reluctance to respond with retributive justice models is not mirrored in international conceptualization or policy responses to child piracy. Responses to child pirates from Somalia in particular have been "invariable and ad hoc", resulting in opposing criminal prosecutions or catch-and-release policies (Holland, 2013, p. 186). The former, Drumbl (2013) states, is more in line with the criminalized 'demon and bandit' image, while the latter more reflective of a 'victim' image within the international legal imagination (p. 7). Child pirates have faced trial nationally in Somalia, Kenya, Seychelles, India, Italy, France, Yemen, Germany, Japan, Malaysia, and the USA (Drumbl, 2013, p. 254). The global average sentence of Somali pirates outside of Somalia is 14 years, which is identical to that rendered by the ICC to prosecute the most serious crimes in the world (Drumbl, 2013, p. 251). The United Nations Office of Drugs and Crime (UNODC) estimates that there are 1,000 Somalis in custody for piracy in about 20 countries globally (Drumbl, 2013, p. 249). To reiterate, given that an estimated one-third of Somali pirates are youth, it is reasonable to deduce that a significant portion of those incarcerated on piracy charges are below the age of 18.

⁹Abduwali Abdukhadir Muse of Somalia was prosecuted for his involvement in a pirate attack on the American Maersk Alabama ship. Muse lacked birth records but his lawyers alleged that he was a minor at the time of offense. Muse was originally charged with piracy

Often, child pirates have been subject to retributive justice in adult courts with little consideration of the CRC's provisions on stipulations for juvenile justice or the best interests of the child. Most children from Somalia do not possess birth documentation to prove their age. As a result, criminal prosecutions have had to rely on forensic testing. Forensic markers, however, are keyed to age determinants among Western children, and thus may not be applicable to children across the African continent (Drumbl, 2013, p. 250). Due to the difficulty in absolutely determining the age of the child, some children have been determined to be adults in Western courts and have been tried accordingly (such as the case of Abduwali Abdukhadir Muse).

When trials do not materialize, it is largely because child pirates have been subject to catch-and-release responses. Catch-and-release policies are most common when international naval forces capture juvenile pirates, confiscating their weapons and releasing them (Drumbl, 2013, p. 261). Some African and Southeast Asian states may lack the capacity or political will to conduct criminal trials and provide adequate due process provisions, making catch-and-release policies more attractive. The resulting impunity is problematic as it may embolden child pirates to continue piratic behaviour, while allowing offenders to shirk accountability and neglect a provision of justice to victims. Child pirates are easily able to resume piratic activity, contrary to the goal of prevention. Even more problematic is Shelly Whitman's assertion that such release policies return juveniles to one of the "worst forms of child labour" in discord with the International Labour Organization's 1999 Convention by the same name (Drumbl, 2013, p. 261).

Drumbl points out that the divergent attitude of protectionism for child soldiers and demonization of child pirates held by influential organizations reflects the "international community's engagement with militarized youth and its reticence toward criminalized youth" (Drumbl, 2013, p. 265). He attributes this divergence to the target of criminal activity; the passive victim image, he asserts, does not reach children in the periphery who commit atrocious acts against Westerners (Drumbl, 2013, p. 269). He elaborates that,

"Child soldiers who commit violence—for example, terrorist attacks—against Western targets are seen less like deluded children and more like menacing adults. Whereas the child perpetrator targeting Africans tends to be held as a mindless captive of purposeless violence, the child perpetrator targeting Westerners tends to be held as an intentional author of purposeful violence. Child piracy, to be clear, affects Western interests" (Drumbl, 2013, p. 269).

The attitude toward child pirates can be attributed to political agendas – children implicated in international crime outside of centers of global politics benefit more greatly than those who target interests or populations within these centers. Children involved in terrorism, for example, are often not afforded restorative justice policies, and the juvenile justice protections

¹⁰but plead guilty to lesser charges of hijacking, hostage-taking, kidnapping, and conspiracy. Part of his plea bargain was a commitment by the defense not to challenge his age. Following a hearing, however, the judge determined Muse to be an adult and sentenced him to the maximum permissible term of over 30 years imprisonment. As noted by Drumbl, "in the end, Muse's youth proved irrelevant to questions of his culpability and inconsequential to his punishment". See Drumbl, 2013, p. 256.



afforded to children under the CRC are often not upheld. Counter-terrorism legislation rarely specifically addresses children, despite their recruitment into terrorist groups such as ISIS and Boko Haram (Brett, 2002, p. 33). In many countries, there are no military courts or judges designated especially for children, nor are they detained separately from adults when detained as terrorist suspects (Brett, 2002, p. 33). Further, in 2015, former Australian Prime Minister Tony Abbott stated that terrorists of all ages will be criminally punished in Australia (McGuirk, 2015).

When Western interests are affected by international crime, as they are in maritime piracy and terrorism, there is greater pressure for justice to be served (Drumbl, 2012, p. 129). The only seemingly protectionist international policy of catch-and-release is not actually a reflection of the victim image but a more pragmatic response to the difficulties of conducting criminal trials. With inconsistent policies, child pirates are not afforded the same opportunities for reparation, reintegration, and rehabilitation.

Drumbl (2013) thus suggests that the international community prioritize a restorative and reintegrative justice model to respond to child piracy, in line with those applied to juvenile ex-combatants. Through the use of traditional reintegrative ceremonies, public inquiries, opportunities for education and occupational development (that provide alternative lifestyles to that of criminal activity), truth commissions, ceremonial and reparative rituals, and community service, a middle ground can be achieved that recognizes the child pirate's simultaneous culpability and victimhood. Holland suggests an eventual DDR program for ex-child pirates

as an appropriate procedure to uphold the child's best interests, acknowledge criminal accountability and prioritize reintegration (Holland, 2013, p. 205). Youth, Drumbl suggests, can become productive and functional community members if given the opportunity for reinsertion, reunification, and to make amends, which ultimately contributes to prevention of re-entering piracy (p. 273). Restorative justice practices are also effective to address group crimes, as piracy is a gang-related activity thus individual culpability is difficult to address (Drumbl, 2013, p. 273). Lastly, such justice mechanisms should result in recognition of macro socioeconomic factors that drive crimes such as piracy and divert attention into broader goals of development necessary to address the root causes of criminal activity. The benefits of restorative justice that are recognized in the context of child soldiers should be replicated in the context of child pirates in order to break down parsimonious constructions of the child pirate as a sole perpetrator, acknowledge their victimhood and ultimately contribute to rehabilitation, reintegration, and prevention of future criminal activity.

CONCLUSION

Both militarized and criminalized children occupy a vague position on the victim-perpetrator continuum. The role of the child soldier thus cannot be reduced to victimhood, as the dominant international narrative boasts, nor can criminalized children be cast exclusively as perpetrators. Children in both contexts act within a constrained structure of civil conflict, socioeconomic destitution, and arguably a lack of other alternatives for survival. Additionally, their choices are often characterized by adult coercion and manipulation that may lessen their guilt to an extent. Nonetheless, the child's ability and will to make rational decisions, and exhibit personal and political agency, should not be negated.

For these reasons, restorative justice is a practical and appropriate justice response to address children existing within the "gray zone" of the victim-perpetrator continuum. Restorative justice policy responses can act as an appropriate middle ground to recognize the child soldier or pirate's tripartite role as victim, witness, and perpetrator of crime. Restorative justice can simultaneously enforce accountability and responsibility on the behalf of juvenile perpetrators, without negating the expressed political agency and free will of said children. The culmination of upholding accountability alongside rehabilitation and reintegration into alternatives to criminal lifestyles ultimately sees restorative justice as a prevention mechanism as well. The successes and failures of restorative justice practices implemented with regards to former child soldiers, such as those in Sierra Leone and Northern Uganda, should provide useful lessons learned to guide the creation of successful restorative justice programs for children involved in maritime piracy.

Given the commonalities between the experience and roles of child soldiers and child pirates in conflict and crime, it is curious that restorative justice is viewed as appropriate and beneficial for one group and not the other. The international community must extend the application of restorative justice to child pirates – a group of children who are currently disadvantaged by the retributive justice process and will greatly benefit from a nuanced restorative justice approach.

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COMMENTARY:

CHILDREN,
ACCOUNTABILITY
AND JUSTICE:
ADVANCING RESTORATIVE
JUSTICE FOR CHILD SOLDIERS
AND CHILD PIRATES

By Brigadier-General (Ret'd) Ken Watkin, QC

Jacqueline Salomé's timely article arguing that the international community should apply a restorative justice approach when dealing child pirates, in the same way their child "soldier" counterparts are treated, sheds a bright light on an area that has largely remained hidden in the shadows. In doing so she presents cogent arguments questioning why the predominate use of retributive justice for dealing with such criminal activity should be privileged over the restorative approach applied to child soldiers that looks to the best interest of the child. As is outlined, the restorative justice approach fosters healing, social reintegration, and serves as a prevention mechanism for re-entry into conflict. It is difficult to argue against these outcomes, and it is not clear why the trial and punishment means applied to adults appears to remain the favoured approach. Notwithstanding the acknowledgement that some children are not faultless and passive victims, it is evident from the article, and especially in respect of its assessment of the "conceptions of childhood", that the linking of "children" with a purely "retribution" approach seems out of place in the 21st Century. It immediately forces the reader to ask why this has occurred, and what needs to be changed to avoid such a narrow limited view of how child pirates should be treated.

Canadian Forces Photo/Corporal Rick Ayer



The article provides an excellent overview of the advantages of restorative justice, and contrasts it with a compelling critique of the retributive justice model in the context of child soldiers. Examples are provided from case studies of Sierra Leone and Uganda where restorative justice approaches were successfully introduced regarding former child soldiers. What is particularly noteworthy is the reliance on traditional community based solutions. The case studies identify efforts to hold the child to account for his or her actions, but also provide reparation, as well as foster reintegration and acceptance in the local community. This approach can be contrasted with later reference to child pirates being treated as criminals on par with "terrorists" in various, largely foreign, jurisdictions where the average sentence awarded to Somali pirates is 14 years imprisonment. Sentences such as these are indicated to be identical to those rendered for some of the most serious crimes in the world.

The importance of dealing with children involved in piracy in a restorative manner should be immediately obvious. The question remains why nations with well-established justice systems do not appear to be selecting that approach for child pirates. This is a particularly important issue given the provisions of the Convention of the Rights of the Child emphasizing the importance of juvenile justice systems and alternative proceedings (Sterio, 2016). The reason for the lack of a restorative justice approach for child pirates is suggested by Ms. Salomé to be linked to the West's attitude of viewing such activity through the lens of "terrorism". It is here where the brightest light is shone on the problem, and importantly where additional inquiry and exposure needs to occur.

It is not just that pirates perpetrate menacing acts of violence, but they are seen as attacks specifically directed against the West. The victims of these crimes are international commercial interests and the unfortunate, often multinational, crews manning the ships. As Ms. Salomé notes "children implicated in international crime outside the centers of global politics benefit more greatly than those who target interests or populations within these centers." Here the article highlights a challenge that is not unique to child pirates. There is a requirement for a more nuanced assessment of the threats present in the contemporary security environment. All violence is not "terrorism". Indeed, as the American academic and international judge, Richard Baxter, noted in 1974 "[w]e have cause to regret that a legal concept of 'terrorism' was ever inflicted upon us." (Baxter, 2013, p. 211). His words continue to resonate in the 21st Century. Child piracy exists not only in the gray zone between victims and perpetrators as Ms. Salomé accurately identifies, but is also associated with the ill-defined threat category



Retributive justice cannot provide an adequate answer, or fundamentally add to the security of those plying the sea lanes.

¹Convention on the Rights of the Child, 1577 UNTS 3 (1989), art. 40.

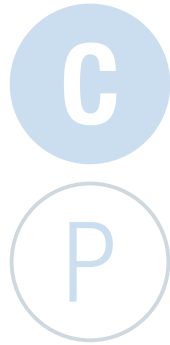
of terrorism. For example, “terrorism” includes the most horrific acts of the Salafi jihadist movement. In reality, piracy is a crime. It is neither warfare, nor terrorism. The involvement of children in piracy is fundamentally a symptom of poor, or non-existent governance.

However, it is foreignness of the pirates that potentially differentiates the restorative justice case studies of Uganda and Sierra Leone from the treatment of the children largely captured by Western naval forces. Retributive justice cannot provide an adequate answer, or fundamentally add to the security of those plying the sea lanes. General deterrence is an important aspect of retributive justice. However, trial in a foreign country is unlikely to have much of an effect on the remaining pirates operating from Somalia, or on the west coast of Africa. States trying child pirates are facing complicated moral and legal challenges since a national restorative justice approach is also unlikely, in the short term, to facilitate the return of the pirates to the territory from which they came. As Shelly Whitman has noted with respect to anti-piracy forces, their “catch and release policy potentially contravenes international conventions, with which most, if not all, the countries practising this policy have a legal responsibility to comply” (Whitman, 2014, p. 233). It also does not address the root causes of child involvement (Whitman, 2014). The same could be said of any restorative justice approach focused on a return to Somalia. However, child pirates need to be treated as what they are: “children”. This means in the same restorative manner that international law expects any country to apply to its own youth. The question is whether this is likely to happen without greater scrutiny, such as is presented in this article, or by the attention of human rights groups being focused on the treatment of these children. Although piracy appears to be going through a period of decline the potential for an increase remains (Business Wire, 2016). The need to ensure that a restorative justice approach is prioritized for child pirates presently in custody, and for those who inevitably will be dealt with in the future, remains an important human rights issue.

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CALL FOR PAPERS FOR THE NEXT EDITION: CHILDREN, YOUTH, AND EXTREME VIOLENCE

ALLONS-Y, VOLUME 2, NUMBER 1 (FEBRUARY 2017)
THEORY INTO ACTION

Since 2014, acts of violent extremism have dominated newspaper headlines as world leaders scramble to find answers and quell the fear of the public and expanding conflicts, while everyday gun, gang, and sexual violence continues around the world. Children and youth continue to bear the brunt of armed conflict of this violence. The main goal of this edition of the Dallaire Initiative's Allons-y journal is to explore how children and youth, domestically and internationally, are being affected by extreme violence. The policy and public focus has been on violent Islamist extremism, and a lack of nuanced discussion has contributed to Islamophobia and ignored the threat of violence from extremists of other ideologies, and commonalities with forms of non-political violence.

Through Allons-y, the Dallaire Initiative seeks to build a collection of work comprised of research and case studies that expands on the study of children, radicalisation, and extreme violence. The Dallaire Initiative aspires to use this body of work to stimulate debate and discussion amongst researchers and practitioners alike. The work of both graduate students and young practitioners will be included, with each piece accompanied by a short expert commentary on its importance.

The Dallaire Initiative recently collaborated with the Quilliam Foundation on their report "The Children of Islamic State". Using this report as a road map, we welcome abstracts that explore perspectives and make connections between children and violent extremism, of any ideological basis, in the following areas:

- Children and armed conflict
- Countering Violent Extremism (CVE)
- Human trafficking and children
- Children and youth in gangs
- International crime and children
- Accountability under international and national law
- Conflict prevention
- Challenging and exploring racist/Islamophobic meanings of radicalisation

The Dallaire Initiative has identified several countries where its work on extreme violence and children is of significance and is interested in collecting case studies that further examine this issue as an understudied dynamic of conflict around the globe. The particular countries of interest include, but are not limited to:

- Afghanistan
- Canada
- Central African Republic
- Democratic Republic of the Congo
- Iraq
- Libya
- Mali
- Myanmar
- Nigeria
- Pakistan
- Somalia
- South Sudan
- Syria
- United Kingdom
- United States

WHO SHOULD APPLY:

- Graduate students
- Young practitioners in related fields (under 30 years old)
- High school and undergraduate students are invited to submit a piece up to 3,000 words long, and one of each will be published

The initial application must include the following:

- Title
- Abstract (100-200 words)
- Brief author biography (less than 200 words, highlighting current place of work or study and research interests)

The final submission should use the Chicago author-date citation format (16th edition) and be at most 5,000 words inclusive of bibliography. It should include an abstract, conclusion, and relevant sections.

- **Deadline for initial application: September 16th 2016**
- **Successful applicants will be invited to submit a paper by October 1st 2016**
- **Deadline for paper submission: November 1st 2016**

Successful submissions will undergo peer review during November 2016 to January 2017 and will be published on the Dallaire Initiative website on February 12th 2017.

Submit to: allonsy@childsoldiers.org

www.childsoldiers.org/allons-y

A \$100 honorarium will be rewarded for selected papers



CALL FOR ARTWORK

In addition to academic papers, the Dallaire Initiative is also inviting submissions for art work focused on the issue of children in armed conflict to encourage broader engagement with this topic and explore alternate ways of portraying it. Young artists under 30 years old are invited to submit:

- Visual art such as photos, drawings, comics, and paintings
- Musical or spoken word recordings
- Poems not longer than 1 page
- Short stories not longer than 2,500 words
- Any other form of art that can be displayed on our website and/or on paper

Successful submissions will be included alongside academic pieces in the next issue of Allons-y. Select submissions will receive a \$100 honorarium. Should the artwork be chosen for the cover of the issue, the artist will receive a \$300 honorarium.

Please note that pieces in the print version of Allons-y will appear in greyscale in 5.5x8.5 format.

Submit to allonsy@childsoldiers.org by November 1st 2016

Please submit visual art that is at least 8x10 in size and 300 dpi in resolution.

Please do not send us physical copies or the originals of artwork!

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INITIATIVE



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