

2002

Searching for a Lost Childhood: Will the Special Court of Sierra Leone Find Justice for Its Children?

Stephanie H. Bald

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Bald, Stephanie H. "Searching for a Lost Childhood: Will the Special Court of Sierra Leone Find Justice for Its Children?" American University International Law Review 18, no. 2 (2002): 537-583.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

SEARCHING FOR A LOST CHILDHOOD: WILL THE SPECIAL COURT OF SIERRA LEONE FIND JUSTICE FOR ITS CHILDREN?

STEPHANIE H. BALD*

INTRODUCTION	538
I. BACKGROUND	542
A. PLAYING WAR: THE CHANGE FROM CHILD TO COMBATANT	545
1. <i>Recruitment of Child Soldiers</i>	548
2. <i>Treatment of Child Soldiers</i>	552
B. A DARK DECADE: THE CIVIL WAR IN SIERRA LEONE	554
C. PICKING UP THE PIECES: THE ESTABLISHMENT OF THE SPECIAL COURT OF SIERRA LEONE	558
II. ANALYSIS	561
A. TEMPORAL AND PERSONAL JURISDICTION	563
B. CHAPTER VII POWERS	565
C. AMNESTY PROVISION OF THE LOMÉ PEACE AGREEMENT ...	567
D. FUNDING THE SPECIAL COURT OF SIERRA LEONE	569
III. RECOMMENDATIONS	574
A. RECOMMENDATIONS FOR THE UNITED NATIONS AND THE ADMINISTRATION OF THE SPECIAL COURT	574
B. RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY	577

* J.D. Candidate, 2004, American University, Washington College of Law; M.A. International Affairs Candidate, 2004, American University, School of International Service; B.A. English Literature, French, 2001, Denison University. I would like to express my appreciation to the entire International Law Review staff for their help and guidance. In particular, I am grateful to my editor, Daniel Creekman, for his sense of humor and insight throughout the Comment writing process. I would also like to extend a heartfelt thank you to my parents, Marilyn and David Bald, brother, Davey, and sister, Becca, for their constant love and support. Finally, no amount of gratitude can begin to express my thanks to Jesse Tabor Eaves, whose endless love, understanding, and encouragement made this Comment possible.

C. RECOMMENDATIONS FOR THE GOVERNMENT OF SIERRA
LEONE 579
CONCLUSION 581

INTRODUCTION

On June 5, 2002, Foday Sankoh, the Sierra Leonean ex-leader of the rebel force Revolutionary United Front (“R.U.F.”), stood in front of Sierra Leone’s High Court to face charges for atrocities that he ordered and committed during the ten year civil war in Sierra Leone.¹ One of Sankoh’s three children, Mbalu Sankoh, wept openly and cried “Daddy, Daddy” as Sankoh passed her at the hearing.² Mbalu’s words and presence created an unsettling image because of the R.U.F.’s notorious use of child soldiers, some younger than Mbalu, to murder, rape, and maim innocent civilians.³

1. *See Sankoh Rejects Sierra Leone Elections*, BBC NEWS, June 5, 2002 (reporting that Sankoh will be tried with forty-nine other R.U.F. rebels for the deaths of twenty-two peace protesters in the May 8, 2000 shooting outside his home in Freetown), at http://news.bbc.co.uk/1/hi/english/world/africa/newsid_2027000/2027524.stm (last visited Nov. 2, 2002); *see also Sierra Leone News Archives*, SIERRA LEONE WEB, May 29, 2002 (explaining that at his hearing, Sankoh faced a seventy-count indictment for murder and other related charges in connection with the shooting of protestors demonstrating in front of Sankoh’s Freetown residence in May 2000), at <http://www.sierra-leone.org/slnews0502.html> (last visited Nov. 2, 2002); *Background to Sierra Leone Civil War*, FREE SPEECH [hereinafter *Background to Civil War*] (identifying Foday Sankoh as a former corporal in the national army of Sierra Leone who was jailed for seven years for planning to overthrow the government in 1971), at <http://free.freespeech.org/isierra-leone/civilwar/background.htm> (last visited Oct. 11, 2002).

2. *See* Todd Pitman, *Ex-Sierra Leone Rebel Head on Trial*, WASH. POST, June 5, 2002, at A1 (describing Mbalu Sankoh’s reaction at her father’s hearing).

3. *See* Norimitsu Onishi, *Children of War in Sierra Leone Try to Start Over*, N.Y. TIMES, May 9, 2002, at A14 (recounting the experience of a child soldier who fought alongside the R.U.F. when the rebel group attacked Freetown, the capitol of Sierra Leone, killing, raping, and maiming thousands of civilians), available at <http://www.crin.org/resources/infodetail.asp?ID=2595&flag='news'Resources/News/> (last visited Nov. 2, 2002); COALITION TO STOP THE USE OF CHILD SOLDIERS, GLOBAL REPORT 2001 (2001) [hereinafter GLOBAL REPORT] (listing Sierra Leone as one of the Sub-Saharan countries most affected by the problem of children soldiers), at <http://www.globalmarch.org/virtuallibrary/childsoldiers-global->

Sankoh's children are not alone in watching to see whether Sankoh will be held accountable for his actions.⁴ In fact, thousands of children, both boys and girls, whose playtime became a nightmare of AK-47's, sexual exploitation, and horrific violence⁵ will look on to see if justice will be done or if Sankoh's trial is, as he himself has asserted, "just another game."⁶

report/global-report-contents.html (last visited Nov. 2, 2002); Press Release, Amnesty International, Sierra Leone: Action needed to end use of child combatants (Aug. 31, 2000) [hereinafter Amnesty Press Release] (noting that more than 5,000 children under the age of eighteen have fought in Sierra Leone's internal armed conflict), [available at](http://web.amnesty.org/ai.nsf/Index/AFR510752000?OpenDocument&of=COUNTRIES\SIERRA+LEONE) [http://web.amnesty.org/ai.nsf/Index/AFR510752000?OpenDocument&of=](http://web.amnesty.org/ai.nsf/Index/AFR510752000?OpenDocument&of=COUNTRIES\SIERRA+LEONE)

COUNTRIES\SIERRA+LEONE (last visited Nov. 2, 2002). Cf AMNESTY INT'L, SIERRA LEONE: ENDING IMPUNITY – AN OPPORTUNITY NOT TO BE MISSED, 2 (2000) [hereinafter ENDING IMPUNITY] (citing arbitrary killings, mutilations, rapes, and abductions as some of the human rights abuses attributed to the R.U.F.); Ismene Zarifis, *Sierra Leone's Search for Justice and Accountability of Child Soldiers*, 9 HUM. RTS. BRIEF 18, 19 (2002) (explaining that after children were forcibly recruited in Sierra Leone, they were drugged and indoctrinated into the systematic killing, raping, and maiming of innocent victims).

4. See *Hearing on U.S. Ratification of the Optional Protocols to the Convention of the Rights of the Child Before the Senate Foreign Relations Comm.*, 107th Cong. (2002) [hereinafter *Becker Hearings*] (testimony of Jo Becker, Advocacy Director, Children's Rights Division, Human Rights Division Human Rights Watch) (discussing the plight of child soldiers in more than thirty different world conflicts), [available at](http://www.hrw.org/press/2002/03/childsoldiers0307.htm) <http://www.hrw.org/press/2002/03/childsoldiers0307.htm> (last visited Nov. 2, 2002).

5. See ENDING IMPUNITY, *supra* note 3, at 7 (documenting former child soldiers' testimony regarding the universal recruitment of child soldiers); see also *Becker Hearings*, *supra* note 4 (recounting the experience of a Sierra Leonean child soldier Ishmael Beah). Beah stated:

I vividly remember the very first day that I was in combat . . . I was recruited with the kids that were eight years old, nine years old. They were so small some of them couldn't even carry the AK-47's that were given to us so they had to drag it. I was in an ambush and bullets were flying back and forth, people were shooting. I didn't want to pull the trigger at all but when you watch kids . . . being shot and killed and . . . dying and crying and their blood was spilling all over your face you just moved beyond, something just pushed you and you start pulling the trigger.

Id.

6. See *Sankoh Rejects Sierra Leone Elections*, *supra* note 1 (quoting Sankoh describing himself as "the inner God" and asserting that the trial was part of the "same old game"); see also Nicole Fritz & Alison Smith, *Current Apathy for Coming Anarchy: Building the Special Court for Sierra Leone*, 25 FORDHAM INT'L

The use of children in armed conflict is not unique to Sierra Leone or to Foday Sankoh.⁷ Human rights organizations and humanitarian groups report that girls and boys under the age of fifteen, some as young as five, have fought or are fighting in thirty-seven of the world's fifty-five ongoing or recently concluded conflicts.⁸ Moreover, at any given time, commanders around the world are employing more than 300,000 children under the age of eighteen in armed conflict.⁹ Thus, the tragedy surrounding the use of child soldiers in Sierra Leone is not an isolated incident.¹⁰ Rather, it mirrors what in some war-ravaged areas of the world might be more accurately described as the norm.¹¹

Furthermore, in parts of the world where children's suffering at the hands of armed groups is likely to be the greatest, accountability

L.J. 391, 391 (2001) (highlighting the absolute horror of the R.U.F.'s signature amputations and commenting that the soldiers in the Sierra Leonean conflict seemed to be the cruelest of combatants).

7. See Cris R. Revaz, *The Optional Protocols to the U.N. Convention on the Rights of the Child on Sex Trafficking and Child Soldiers*, 9 HUM. RTS. BRIEF 13, 15 (2001) (stating that The Coalition to Stop the Use of Child Soldiers reports that armed groups in more than eighty-five countries employ children as soldiers in armed conflict).

8. See *Children at War*, NEWSWEEK WEB EXCLUSIVE, May 4, 2002 (explaining that from Africa to Asia to Latin America, children are fighting in wars and rebellions and are serving as sex slaves, servants and spies), at <http://www.msnbc.com/news/747688.asp> (last visited Nov. 2, 2002); see also AMNESTY INT'L, SIERRA LEONE: CHILDHOOD – A CASUALTY OF CONFLICT [hereinafter AMNESTY INT'L] (2000) (reporting that in Sierra Leone more than 5,000 children under the age of eighteen, some as young as five years old, have fought in combat); GLOBAL REPORT, *supra* note 3 (noting that approximately 300,000 children are engaged in military conflict in more than eighty-five countries); Revaz, *supra* note 7, at 15 (stating that in addition to the approximately 300,000 children engaged in armed conflict throughout the world, another 500,000 are recruited into paramilitary organizations, guerilla groups, and civil militias).

9. See GLOBAL REPORT, *supra* note 3 (discussing why military recruitment of children under the age of eighteen should be prohibited).

10. See *supra* notes 7-9 and accompanying text (detailing the widespread use of child soldiers in more than eighty-five countries).

11. See AMNESTY INT'L, *supra* note 8, at 4-9 (describing how all four armed groups participating in the civil war in Sierra Leone used child soldiers).

is often the most difficult to attain.¹² Indeed, in countries like Sierra Leone, where the rule of law is often overrun by protracted conflicts, the challenges of holding perpetrators accountable for recruiting minors are substantial.¹³ As a result, decimated national legal systems, an inability to adequately fund judicial processes, and the immediate need for political stability and nation-building often compromise the search for justice in these states.¹⁴

This Comment addresses the complex issues of accountability involved in bringing to justice those individuals, like Foday Sankoh, responsible for the recruitment of children into armed conflict in Sierra Leone.¹⁵ Through an examination of the proposed Special Court (“Court”) in Sierra Leone, this Comment argues that international efforts to hold perpetrators accountable for the recruitment of child soldiers in Sierra Leone have failed to account for the social, political, and economic realities present in war-torn

12. See *infra* note 14 and accompanying text (discussing the inherent obstacles to holding perpetrators accountable in states where prolonged conflict has debilitated and de-legitimized the judicial system).

13. See *infra* notes 105-109 and accompanying text (discussing the dire state of the national judicial system at the end of the civil war in Sierra Leone). See generally *The Promises of International Prosecution*, 114 HARV. L. REV. 1957 (2001) (critiquing generally the ability of international criminal tribunals to bring justice to war-torn states); AMNESTY INT’L U.K., IN THE FIRING LINE – WAR AND CHILDREN’S RIGHTS 61 (1999) [hereinafter *FIRING LINE*] (explaining that minors often are recruited when the number of adult soldiers is insufficient for the force needed because the conflicts have been so prolonged and so many have already died). As internal armed conflicts continue, therefore, armed forces begin to recruit younger and younger individuals so that they may meet their manpower needs and so that they may deprive the enemy of potential recruits. *Id.*

14. See, e.g., Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT’L L. 7, 30-31 (2001) (arguing that despite obstacles in implementing methods of international criminal justice, there are many positive results from criminal prosecution and accountability). These results are imperative in the post-war peace building process. *Id.* See generally Gwen K. Young, *Amnesty and Accountability*, 35 U.C. DAVIS L. REV. 427, 433-41 (2002) (discussing how the need for immediate political leadership often compromises any search for accountability in war-ravaged states where judicial systems have been decimated by conflict).

15. See *infra* Part III (discussing the challenges of successfully prosecuting those responsible for the recruitment of child soldiers in Sierra Leone).

states such as Sierra Leone, where children are most likely to engage in armed conflict.¹⁶

Part I introduces the current plight of child soldiers throughout the world, and, specifically, in Sierra Leone.¹⁷ This section outlines the last decade of conflict in Sierra Leone and describes the creation of the Special Court of Sierra Leone.¹⁸ Part II analyzes the potential of Sierra Leone's Special Court to bring perpetrators to justice.¹⁹ Finally, Part III proposes recommendations to the Government of Sierra Leone, the United Nations, and the international community for ending impunity by holding accountable those who recruit children into combat.²⁰

I. BACKGROUND

In the past century the face of warfare has changed drastically, making it exceedingly difficult to distinguish between civilian and soldier on the one hand, and child and adult on the other.²¹ Wars are no longer confined to definitive battlefields, but occur more often in populated areas where recruiters can easily take children from villages, roadsides, buses, schools, markets, and churches.²² U.N.

16. See *infra* Part III (revealing the inadequacies of the Statute of the Special Court as a result of the international community's and the United Nations' failure to consider the specific circumstances in Sierra Leone).

17. See *infra* Part I (describing the recruitment and treatment of child soldiers in Sierra Leone and throughout the world).

18. See *id.* (providing background information on children's participation in armed conflict throughout the world, the civil war in Sierra Leone, and the establishment of the Special Court of Sierra Leone).

19. See *infra* Part II (arguing that the Special Court's jurisdictional and budgetary limitations render it inadequate to bring to justice those responsible for the recruitment of child soldiers).

20. See *infra* Part III (proposing steps that the United Nations, the international community, and the Government of Sierra Leone should take so that the Special Court is effective in holding individuals accountable for the recruitment of child soldiers).

21. See Onishi, *supra* note 3, at A14 (illustrating how the unconventional wars in Sierra Leone, Liberia, Congo, and Sudan have blurred the distinctions between adults and children in combat situations).

22. See Amy Beth Abbott, Note, *Child Soldiers – The Use of Children as Instruments of War*, 23 SUFFOLK TRANSNAT'L L. REV. 499, 509 (2000) (suggesting that wars have moved from well-defined battlefields to populated areas such as

figures indicate that around the turn of the century, five percent of all war casualties were civilian.²³ That number climbed to sixty-five percent during World War II²⁴ and has jumped to ninety percent in recent wars.²⁵

Of these civilian casualties, over forty percent are children.²⁶ Indeed, the rising number of child casualties illuminates the global problem of the invasion of conflict into children's lives.²⁷ However, a more specific problem exists where children find themselves not only in war's path, but actively participating in war.²⁸ Clearly, recruitment of children into armed conflict is the extreme example of children living in the line of fire.²⁹

There are several explanations as to why children are increasingly participating as combatants in armed conflicts.³⁰ First, technological

villages); *see also* Mike Barber, *Child Soldiers a Growing Concern on Foreign Battlefields*, SEATTLE POST-INTELLIGENCER, Apr. 8, 2002 (asserting that conflicts today, in contrast to the Cold War, are driven by non-state actors rather than political ideologies), *available at* http://seattlepi.nwsourc.com/national/65670_childsoldiers08.shtml (last visited Nov. 2, 2002). Because many of these armed groups are fueled by poverty and hopelessness, these wars are especially conducive to the use of child combatants. *Id.*; *see also* *Becker Hearings*, *supra* note 4 (explaining that in the Democratic Republic of Congo, thousands of children have been recruited into the war as a result of abductions from homes, roadsides, and markets).

23. *See Women and Children Bear Brunt of War*, SAIGON TIMES DAILY, May 3, 2002, *available at* 2002 WL 3335988 (considering historical statistics for civilian casualties during war). In the last decade, more than two million children have been killed in wars and more than twelve million have been orphaned. *Id.*

24. *See id.* (discussing historical statistics for civilian casualties during war).

25. *See id.* (noting the rise in the number of civilian casualties).

26. *See* FIRING LINE, *supra* note 13, at 16 (explaining that one reason for the high number of child casualties is that wars often take place in poorer developing countries where children under the age of eighteen constitute nearly one-half of the population).

27. *Id.* (linking the rise in the number of child casualties to changes in the nature of warfare).

28. *Id.* at 17 (explaining that "holding a gun, firing it, and seeing a person drop down has become the only reality" that children know).

29. *Id.* (illustrating the trauma experienced by children in armed conflict).

30. *See generally* Steven Hick, *The Political Economy of War-Affected Children*, 575 ANNALS AM. ACAD. POL. & SOC. SCI. 106, 110-20 (explaining the increased use of children as soldiers in armed conflict). Poverty, according to Hick, is the greatest reason for the use of children in warfare. *Id.* Hick argues that the exploitation of resources by transnational corporations serves to heighten poverty

developments have produced automatic weapons and lightweight arms that are affordable and accessible, thereby making it easier for governmental and insurgent groups to arm children.³¹ Second, extreme poverty continues to grip major portions of the world, forcing children into powerless situations where volunteering to fight may be their only chance for survival.³²

Finally, since the Cold War, the world's conflicts have become more internalized.³³ During these localized conflicts between armed civilians or ethnic factions, opposing sides do not distinguish between children and adults.³⁴ For instance, where ethnicity is the ultimate cause of the conflict, opposition groups foster hatred for

levels, leading to civil unrest and, ultimately, the recruitment of children for armed conflict. *Id.* The increase in income inequality among countries and the sale of weapons to poor countries also contribute to the rising number of children who participate in armed conflict. *Id.* Hick believes the best way to protect children from wars is to stop wars from happening by promoting equitable development, reducing the wealth gap among countries and within countries, and stopping the proliferation of weapons sales from developed to developing countries. *Id.* at 144.

31. See Abbott, *supra* note 22, at 509 (explaining that the proliferation of automatic weapons has increased the desirability and utility of child soldiers); see also Barber, *supra* note 22 (describing how a child can operate and learn to care for an AK-47 assault rifle in less than an hour); Amnesty Press Release, *supra* note 3 (articulating how traffic in small arms and light weapons encourages the use of child combatants). Children who have been abducted and recruited by rebel forces in Sierra Leone have received arms and ammunition from illegal arms distribution. *Id.*; Hick, *supra* note 30, at 114 (stating that assault rifles such as the AK-47 and M-16 are lightweight and simple to use). The availability of these weapons has steadily increased in war zones and over fifty-five million AK-47s have been sold since 1947. *Id.* The weapons are also inexpensive, as evidenced by the fact that in one African country the rifles are sold for only six U.S. dollars. *Id.*

32. See Hick, *supra* note 30, at 114 (noting that many children in Cambodia joined armed groups in the 1980s to secure food and protection). In 1990, children as young as seven entered combat in Liberia because, according to the director of the Liberian Red Cross, "those with guns could survive."; see also *infra* notes 39-41 and accompanying text (explaining that joining armed forces might be the only way that children can avoid starvation when their families cannot adequately provide for them).

33. See Abbott, *supra* note 22, at 508 (examining the transformation in the nature and methods of warfare as conflicts become products of nationalist, ethnic, and religious dissension). As a result of this transformation of warfare, it has become more difficult to protect children from human rights abuses during conflict. *Id.*

34. See *id.* at 523 (positing that in conflicts between armed civilians or ethnic factions, hatred exists for both children and adults).

their enemies regardless of age.³⁵ These factors have led not only to rising numbers of child casualties, but also to the increasing use of children as instruments of war.³⁶

A. PLAYING WAR: THE CHANGE FROM CHILD TO COMBATANT

Whether armed groups forcibly recruit children or the children themselves volunteer, the same groups of children are most likely to become child soldiers.³⁷ These groups include the most vulnerable and disadvantaged children—those without traditional families to protect them, those with little or no education, and those from marginalized sectors of society.³⁸ Because these children are deprived of the security provided by traditional familial structures and economic wealth, they are usually the first children recruited into

35. See *id.* (stating that in conflicts between groups within the same country, ethnic factions hate both children and adults of the opposition); see, e.g., AMNESTY INT'L, *supra* note 8, at 8 (demonstrating how the R.U.F. failed to differentiate between children and adults in their mass killings).

36. See Abbott, *supra* note 22, at 499 (coining the term “instruments of war” to describe child soldiers).

37. See FIRING LINE, *supra* note 13, at 58 (describing the groups of children most likely to become child soldiers).

38. See THE INT'L SAVE THE CHILDREN ALLIANCE, CHILDREN'S RIGHTS: REALITY OR RHETORIC? THE UN CONVENTION ON THE RIGHTS OF THE CHILD: THE FIRST TEN YEARS 46 (Sarah Muscroft ed., 2000) [hereinafter SAVE THE CHILDREN] (outlining the types of children most vulnerable to be recruited to be child soldiers); see also FIRING LINE, *supra* note 13, at 58 (highlighting that orphans and refugees are more likely than middle or upper class children to become child soldiers). The first group includes children who are separated from their families, are without families, or who have disrupted family backgrounds. *Id.* Orphans, refugees and displaced children, children on the street, children of single-parent families, and step-children fall into this group. *Id.* Children with little or no education or with no access to education make up a second group of children likely to be recruited as child soldiers. *Id.* Lastly, children from the most marginalized sectors of society and the lowest socio-economic groups and children from war zones repeatedly become child soldiers. *Id.* See generally Megan E. Kures, Note, *The Effect of Armed Conflict on Children: The Plight of Unaccompanied Refugee Minors*, 25 SUFFOLK TRANSNAT'L L. REV. 141, 141-63 (2001) (analyzing the problem of unaccompanied refugee minors both historically and today). Because unaccompanied refugee minors have lost one or both of their parents, they are especially at risk for neglect, violence, military recruitment, sexual exploitation, and other abuses. *Id.* at 144.

armed groups.³⁹ For these children, the lack of alternative means to fulfill basic needs such as food and shelter is likely to lead to their participation in armed conflict.⁴⁰ Accordingly, any "choice" these children have as to whether or not to enlist is illusory.⁴¹

In many conflicts, such as the civil war in Sierra Leone, armed groups recruit both boys and girls as child soldiers.⁴² Although armed forces expect child soldiers to perform the same duties regardless of their sex, girls face gender-specific abuses such as sexual exploitation.⁴³ In Sierra Leone, armed forces often abducted girls,

39. See *FIRING LINE*, *supra* note 13, at 58 (concluding that armed groups often find these children easy targets for recruitment because participation in armed conflict gives these children a sense of belonging and importance).

40. See HUMAN RIGHTS WATCH, *WAR WITHOUT QUARTER* chap. VI (1998) (explaining that "[t]here are areas where children beg insistently to join the guerillas, but there are also situations in which their very own mothers, who are desperate, take their children to the guerillas because their families live in misery."), available at http://www.hrw.org/reports98/colombia/Colom989-06.htm#P1873_455945 (last visited Nov. 2, 2002).

41. See Abbott, *supra* note 22, at 517-19 (arguing that any "choice" children have to enlist in the armed forces is non-existent); see also *Becker Hearings*, *supra* note 4 (explaining how a society breaks down during conflict and often children are driven from their homes and separated from their families). Consequently, children begin to view armed groups as their best chance for survival. *Id.*

42. See GRAÇA MACHEL, *THE IMPACT OF WAR ON CHILDREN: A REVIEW OF PROCESS SINCE THE 1996 UNITED NATIONS REPORT ON THE IMPACT OF ARMED CONFLICT ON CHILDREN* 13 (2001) (stating that both boys and girls participate in conflict in many states). In the Philippines, for instance, the Moro Islamic Liberation Front teaches girls from ten to sixteen years old how to fire M-16 Armalite rifles. *Id.*; see also AMNESTY INT'L, *supra* note 8, at 1 (citing the participation of girls in armed conflict in Sierra Leone and quoting Resolution 1314 (2000) on Children of Armed Conflict of 11 August 2000). Resolution 1314 emphasized:

[t]he importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflict, including, *inter alia*, those heading households, orphaned, sexually exploited and used as combatants [and determined] that their [girls'] human rights, protection and welfare be incorporated in the development of policies and programs, including those of prevention, disarmament, demobilization and reintegration.

Id. at 13; see also SAVE THE CHILDREN, *supra* note 38, at 53 (stating that where girls are recruited, they assume almost identical positions as soldiers as the boys and the girls constitute about one-third of the total number of child soldiers).

43. See *Violence Against Women Rife During Sierra Leonean War*, AGENCE FRANCE-PRESSE, Mar. 20, 2002, available at 2002 WL 2366996 (quoting Radhika Coomaraswamy, U.N. Special Rapporteur on Violence Against Women, who

forcing them to become “wives” or concubines.⁴⁴ As a result, international organizations report that women and girls suffered the greatest at the hands of armed groups during Sierra Leone’s conflict.⁴⁵

stated that “systematic and widespread rape and other sexual violence has been a hallmark of the conflict in Sierra Leone”). A U.N. report implicated every faction involved in the conflict for violations such as rape, sexual slavery, and forced marriages. *Id.*; see also *Sexual Violence Within the Sierra Leone Conflict*, HUMAN RIGHTS WATCH REPORT 2001: SIERRA LEONE (Human Rights Watch, New York, N.Y.), February 26, 2001 [hereinafter *Sexual Violence*] (reporting that victims of sexual violence in Sierra Leone explain that the violence is often premeditated and organized, suggesting responsibility on the part of the military), at <http://www.hrw.org/backgrounder/africa/sl-bck0226.htm> (last visited Nov. 2, 2002). The report documents that boys as well as girls have been subject to sexual violence at the hands of the military. *Id.*

44. See SAVE THE CHILDREN, *supra* note 38, at 53-54 (describing how girls have no control over the outcome of this sexual exploitation and may become impregnated and forced to have an abortion or abandon the child); see also *Sexual Violence*, *supra* note 43 (revealing cases where fathers were forced to watch the rape of their daughters, middle aged women were raped by boys as young as eleven, women were raped in public places, and girls were raped during sacred coming of age rituals); *Becker Hearings*, *supra* note 4 (recounting in Uganda the Lord’s Resistance Army abducted more than 10,000 children, including girls forced to serve as “wives” for rebel commanders); Press Release, UNICEF, UNICEF Calls for Eradication of Commercial Sexual Exploitation: New Report Says Millions of Children are Sexually Exploited (Dec. 12, 2001) (explaining that armed conflict creates special risks of sexual violence and exploitation for children and refugees at the hands of camp officials, border guards, police officers, and military personnel), available at <http://www.unicef.org/newsline/01pr97.htm> (last visited Nov. 2, 2002); MACHEL, *supra* note 42, at 13 (noting that the majority of girls forced into military roles become infected with sexually transmitted diseases). In some armed groups once a leader dies, the girl is given a ritual cleaning and then passed on to another leader. *Id.*

45. See SAVE THE CHILDREN, *supra* note 38, at 54 (asserting that in some countries girls are eager to join armed conflicts as a means of escaping from traditional constraints on the freedoms and status of women); see also Barber, *supra* note 22 (reporting that the Liberation Tigers of Tamil Eelaam in Sri Lanka have organized thousands of children into a “baby brigade” consisting only of combatants younger than sixteen). Approximately half of the Baby Brigade members are girls and some of them are as young as ten. *Id.* They have been chosen to be suicide bombers because they are less likely to be thoroughly searched at security checkpoints. *Id.* Teenage girls are often recruited to become suicide bombers since it is easy for them to hide explosives around the waist. SAVE THE CHILDREN, *supra* note 38, at 54.

1. Recruitment of Child Soldiers

While different armed groups employ various recruitment methods, statistics show that many armed groups recruit children by force.⁴⁶ Armed groups use force to take children from schools, public spaces, and even their own homes.⁴⁷ During these abductions, armed groups may compel children to follow orders by threatening death, or by forcing the children to commit atrocities against family members and friends so that they become hardened to violence.⁴⁸

Reports by international organizations indicate that inefficiency, corruption, and structural inadequacies often offset the legal safeguards established by states to prohibit the use of children in armed conflict.⁴⁹ As a result, forced recruitment occurs even in states where legislation is in place to prohibit compulsory military service before the age of eighteen.⁵⁰ The non-existence of identification papers stating an individual's name and age, for instance, often facilitates the recruitment of minors.⁵¹ In these situations, even if

46. See FIRING LINE, *supra* note 13, at 59 (reporting that many armies resort to random, forcible seizures in public places to recruit children). Young men who appear to be close to military age are taken without being given a chance to prove whether or not they are of age. *Id.*; see also Abbott, *supra* note 22, at 512-13 (providing examples of direct and indirect recruitment of child soldiers).

47. See FIRING LINE, *supra* note 13, at 59 (explaining that random sweeps are made to recruit children most often in public places, but sometimes the armed groups even conduct sweeps from house to house).

48. See *id.* at 63 (reporting that armed groups often force recruited children to take part in gruesome initiation ceremonies). Groups may force children to commit atrocities against people they know in order to harden them to violence. *Id.* The leaders of these groups may brutalize children to teach them respect for authority. *Id.*

49. See SAVE THE CHILDREN, *supra* note 38, at 54 (explaining that lack of universal identification papers indicating a child's age often thwart legislative attempts to regulate the age of soldiers).

50. See FIRING LINE, *supra* note 13, at 59 (noting that "inefficiency, corruption or structural inadequacies" inhibit the effectiveness of legislation setting an age limit of eighteen for participation in armed conflict).

51. See Donald G. McNeil Jr., *In Angola, Soldiers Aren't Recruited, They're Kidnapped as Decades-old War Flares Anew, Forced Conscription Becomes Real Fear*, MILWAUKEE J. SENTINEL, Jan. 31, 1999, available at 1999 WL 7656443 (indicating that even with identification papers soldiers may still recruit children); see also MACHEL, *supra* note 42, at 9 (stating that worldwide, one-third of all births, which amounts to about forty million children, go unregistered every year).

minimum age requirements are in place, without identification papers recruiters may evade the law.⁵² Consequently, as evidenced by the abuses committed in Sierra Leone, forced recruitment often becomes systematic due to the lack of serious legal ramifications armed groups face.⁵³

Forced recruitment, however, is not the only way in which children end up on the front lines.⁵⁴ In countries like Sierra Leone, where children have been raised in war zones, a variety of factors may cause children to volunteer for service in armed groups.⁵⁵ The physical, mental, and emotional toll of growing up in a culture of violence, the need for security, the desperation for food, and the desire to avenge the deaths of family members and friends, all drive

In some cases, children themselves do not know their ages and recruiters will guess and record a child's age as eighteen in order to produce the appearance of legal compliance. *Id.*

52. See *supra* notes 49-51 and accompanying text (suggesting that without the distribution of accurate identification papers, recruiters may ignore legislative policies establishing minimum age requirements for participation in armed conflict); see also *FIRING LINE*, *supra* note 13, at 59 (explaining that the lack of age documentation deprives parents of the opportunity to prove the child's ineligibility for military service). Because of these procedural inadequacies, many governmental and armed opposition groups easily implement forms of conscription and abduction without any threat of legal consequences. *Id.* at 59-61.

53. See *Becker Hearings*, *supra* note 4 (providing examples of countries, such as Uganda and Afghanistan, that have implemented systematic methods of child recruitment). The Ugandan rebel group, the Lord's Resistance Army, has abducted more than 10,000 children from Northern Uganda over the last decade. *Id.* In Columbia, there are up to 10,000 members of guerilla forces under the age of eighteen. *Id.* Similarly, two generations of children have been subject to recruitment in Afghanistan. *Id.* The resistance forces to the Soviet invasion and later warring factions recruited the first group. *Id.* In the most recent conflict with the Taliban regime in Afghanistan, the Northern Alliance recruited Afghani children as young as eleven. *Id.*; see also Barber, *supra* note 22 (discussing the need for the military to address the issue of child soldiers). In April 2002, the United States witnessed the tragic consequences of this long-standing policy of child recruitment when a fourteen-year-old boy used an assault rifle to kill Fort Lewis Green Beret Sergeant Nathan Chapman. *Id.* Sergeant Chapman was the first U.S. fighting casualty of the conflict in Afghanistan. *Id.*

54. See *FIRING LINE*, *supra* note 13, at 60 (explaining that many children join armed forces without being forced to do so).

55. See, e.g., *id.* (describing how children's choice to join armed forces is a simple case of survival because the recruiting soldiers provide guns—a means of getting food—for children who would otherwise starve).

children toward participating in armed conflicts.⁵⁶ Because children and their families are unable to find ways to fulfill their basic needs, desperation, rather than military zeal, most often pushes children to become soldiers.⁵⁷

Furthermore, children seldom have the understanding to make informed choices about participating in armed conflict.⁵⁸ Recruiters do not always give children or their parents the necessary information to determine what service in the governmental or rebel armed forces will entail.⁵⁹ As a result, children often enter the armed services unaware of what commanders will expect of them and

56. See Abbott, *supra* note 22, at 516-17 (insinuating that any "choice" children have in enlisting in the armed forces is non-existent, since children do not have the capacity to act in their own best interests); FIRING LINE, *supra* note 13, at 60-61 (explaining the factors that may lure children to armed conflict, including survival, prestige, social conditioning, and revenge). The book argues that children's negative experiences with governmental armed forces constitutes the most predominant factor in children's decisions to volunteer to fight for opposition groups. *Id.* at 61; see also Becker Hearings, *supra* note 4 (explaining how a society breaks down during war and that often, children are separated from their homes and families). Consequently, children begin to view armed groups as their best chance for survival. *Id.*

57. See, e.g., HUMAN RIGHTS WATCH, *supra* note 40 ("There are areas where children beg insistently to join the guerillas, but there are also situations in which their very own mothers, who are desperate, take their children to the guerillas because their families live in misery."); see also FIRING LINE, *supra* note 13, at 60 (pointing out that armed groups may provide shelter, protection and a surrogate family for children who may have been orphaned or separated from their families during conflict).

58. See HUMAN RIGHTS WATCH, *supra* note 40 (stating that a public advocate has explained that guerilla groups appeal to children by promising adventure and financial security for their parents).

59. See Press Release, Amnesty Int'l, United Kingdom: U-18s: Child Soldiers at Risk (July 11, 2000) (stating that the information given to recruited individuals in the U.K. as to their participation in the armed forces is often difficult to understand and incomplete), available at <http://web.amnesty.org/ai.nsf/print/EUR450582000?OpenDocument> (last visited Nov. 2, 2002). The "Notice Paper," for instance, which sets out the terms and conditions of service, does not make clear that a soldier under age eighteen could be deployed in armed conflict. *Id.*

unable to grasp the gravity of the consequences of participation in armed conflict.⁶⁰

Cultural values and ideology may also play a significant role in an armed group's recruitment by inducing children to enlist.⁶¹ In Sierra Leone, parents permitted children as young as twelve years old to fight for the Civil Defense Forces ("C.D.F."), the civilian militia based on traditional hunters, because of the elevated social status associated with membership in groups of traditional hunters.⁶² Former child soldiers have explained that fighting for these armed groups meant that they belonged to what many in their region considered to be "the supremacy of society."⁶³

Some children receive military indoctrination in school programs, through the integration of military life into the general curricula.⁶⁴ Because of their young age, however, children cannot differentiate between competing ideologies or fully appreciate the implications of

60. See Abbott, *supra* note 22, at 515-18 (noting the disastrous physical, emotional, and sexual consequences that children suffer as a result of military service).

61. See FIRING LINE, *supra* note 13, at 60 (including ideology as one of the reasons children volunteer to participate in armed conflict); see also MACHEL, *supra* note 42, at 11 (proclaiming that children are often responding to economic, cultural, social, and political pressures when they volunteer for armed conflict, as opposed to exercising their own free will).

62. See, e.g., AMNESTY INT'L, *supra* note 8, at 9 (reporting that when Mohamed, a twelve year old from the Port Loko District of Sierra Leone, was recruited by the C.D.F., his parents did nothing to prevent it because of the status associated with the hunters). The C.D.F. is a civilian militia based on societies of traditional hunters that supported the government of President Kabbah. *Id.* at 3.

63. See *id.* at 9 (quoting one C.D.F. child soldier).

64. See Press Release, Coalition to Stop the Use of Child Soldiers, Children Invisible Soldiers in the Middle East and North Africa (April 7, 2001) (summarizing a report discussing the infiltration of military indoctrination in children's schooling), available at <http://web.amnesty.org/ai.nsf/index/MDE010032001?OpenDocument&of=THEMES> (last visited Nov. 2, 2002). In Iraq, food rations and school examinations have been withheld from Iraqi youths who refuse to join "Saddam's Youth." *Id.* Further, Iranian boys are reportedly indoctrinated to participate in combat by being given "keys to paradise" and promises that they will go directly to heaven if they die as martyrs against the Iraqi enemy. *Id.*

their decisions and actions.⁶⁵ Often, societal pressure forms the basis for the children's actions, rather than their own decision-making.⁶⁶ Therefore, participation in armed conflict becomes more of a duty than a choice for many children.⁶⁷

2. TREATMENT OF CHILD SOLDIERS

Fighting groups generally treat child soldiers the same as adult recruits and do not afford them special treatment because of their young age.⁶⁸ Child soldiers in Sierra Leone during the civil war experienced the usual beatings, punishments, forced marches carrying heavy loads, exposure to malnutrition and disease, and separation from their families.⁶⁹ In some cases, however, child soldiers suffered additional exploitive abuse because of their age.⁷⁰ For example, armed groups in Sierra Leone often forced the child soldiers to undertake more dangerous missions because they viewed the children as "dispensable" or "expendable" because of their youth.⁷¹

65. See Abbott, *supra* note 22, at 518 (noting that young children cannot independently form opinions or differentiate competing ideologies).

66. See MACHEL, *supra* note 42, at 11 (questioning a child's ability to act free from ideological, economic, and cultural constraints).

67. See *supra* notes 65-66 and accompanying text (analyzing the factors that tend to negate a child's ability to exhibit free will when deciding whether to enter armed conflict).

68. See SAVE THE CHILDREN, *supra* note 38, at 49-50 (explaining that soldiers are treated alike regardless of age). Usually, the training and exercises are structured to break the will of the recruits and to make them subservient to their superiors. *Id.*; see also *Becker Hearings*, *supra* note 4 (explaining that children often begin as porters, cooks, or messengers, but eventually fight in combat).

69. See SAVE THE CHILDREN, *supra* note 38, at 45 (noting that thousands of children have been fighting in Sierra Leone). In armed opposition groups, new recruits are sometimes required to kill other children or family members as a form of initiation. *Id.* at 50.

70. See *Becker Hearings*, *supra* note 4 (explaining that armed groups often believe children are less important or useful than adult soldiers).

71. See *id.* (describing how in Colombia, guerillas use children to "collect intelligence, make and deploy mines, and serve as advance troops in ambush attacks, while paramilitaries force families to provide children for service or risk being killed as suspected guerilla sympathizers"). In Rwanda, adult troop leaders forced unarmed children into battle as decoys and ordered them to make noise by beating on trees with sticks so that government fire would be diverted away from

In addition, armed groups often view children as possessing special attributes for high-risk functions.⁷² In Sierra Leone, the R.U.F. exploited natural teenage recklessness by drugging teenage boys and sending them into battle.⁷³ Commanders forced the children to take drugs before entering battle so that they would feel invincible and unafraid.⁷⁴ These policies, coupled with child soldiers' inexperience and lack of training, contribute to a much greater risk of death for child soldiers than adult soldiers.⁷⁵ Likewise, because of children's underdeveloped bodies and minds, child soldiers find

the more experienced adult troops. *Id.*; see also *Children at War*, *supra* note 8 ("They can be cheap, expendable and easier to condition into fearless killing and unthinking obedience.").

72. See *Becker Hearings*, *supra* note 4 (discussing how children are often forced into the most hazardous roles, such as entering minefields before older troops or being sent on suicide missions); see also AMNESTY INT'L, *supra* note 8, at 3 (explaining that armed groups consider children particularly useful because of their size and agility).

73. See AMNESTY INT'L, *supra* note 8, at 4 (quoting a former child combatant, now age sixteen saying, "[a]fter sniffing cocaine, I was not afraid of anything. I became bloody."); see also SAVE THE CHILDREN, *supra* note 38, at 50 (noting that this abuse is often deliberately targeted at children because of their vulnerability); Matthew Price, *Sierra Leone: The Battle for Childhood*, BBC NEWS ONLINE (recounting how one Sierra Leonean boy had a scar deep into his forehead from where the rebels often used a machete to cut into his skull), at <http://news.bbc.co.uk/2/hi/world/africa/1136430.stm> (last visited Nov. 2, 2002). The rebels would fill the wound with drugs and tape it up again. *Id.*; see also Tom Masland, *Voices of the Children: 'We Beat and Killed People . . .'*, NEWSWEEK, May 13, 2002 (interviewing four Sierra Leonean boys who all spoke about the drug factor while they were child soldiers), available at 2002 WL 7294190. One boy recounted that the boys continually smoked marijuana, and another told of how the commanders would cut his left pectoral and insert heroin. *Id.* A third boy showed where he had been given injections and stated that this had happened more than twenty-five times before going into battle. *Id.*

74. See SAVE THE CHILDREN, *supra* note 38, at 50 (noting that child soldiers are often provided with drugs and alcohol to reinforce natural teenage recklessness); see also Masland, *supra* note 73 (recounting a Sierra Leonean child soldier's story of when military commanders would cut open his head and insert cocaine before they sent the child into battle); Amnesty Press Release, *supra* note 3 (reporting that the U.N. High Commission for Refugees asserted that cocaine-induced children were extremely vicious). One Sierra Leonean child soldier, now age fourteen, recounted that taking drugs rendered him unafraid of battle and that refusal to take drugs could have resulted in death at the hands of his superiors. *Id.*

75. See FIRING LINE, *supra* note 13, at 66 (attributing higher casualty rates to children because of their lack of experience and training).

themselves more susceptible to particular mental and physical conditions as a result of participation in armed conflict.⁷⁶ Accordingly, even if children survive the battlefield, former child soldiers suffer irreparable harm from their involvement in armed conflict.⁷⁷

B. A DARK DECADE: THE CIVIL WAR IN SIERRA LEONE

The conflict in Sierra Leone began in 1991, when Liberian-supported R.U.F. combatants entered Sierra Leone from Liberia in an attempt to overthrow the Government of Sierra Leone.⁷⁸ The Government of Sierra Leone fought back by recruiting from among the poor and disaffected youth of Sierra Leone.⁷⁹ Despite efforts to

76. See Children at War, *supra* note 8 (asserting that the physical and psychological traumas that child soldiers experience often last well into adulthood); see also AMNESTY INT'L, *supra* note 8, at 10 (underscoring that children are particularly vulnerable to disease and malnutrition).

77. See Children at War, *supra* note 8 (noting that the rehabilitation needs of children differ significantly from those of adults); *supra* notes 74-76 and accompanying text (discussing how children suffer as a result of participation in armed conflict).

78. See Fritz & Smith, *supra* note 6, at 394 (explaining how the R.U.F. easily took control of the eastern region of Sierra Leone with the help of its chief ally, Charles Taylor of Liberia). Taylor provided the R.U.F. with troops and a model for the RUF's combat strategy. *Id.* From Taylor, the R.U.F. adopted the practices of abducting children, sexually exploiting children, and amputating the limbs of their enemies. *Id.*; see also Daniel J. Macaluso, Note, *Absolute and Free Pardon: The Effect of the Amnesty Provision in the Lomé Peace Agreement on the Jurisdiction of the Special Court for Sierra Leone*, 27 BROOK. J. INT'L L. 347, 349 (2001) (describing how the R.U.F. challenged the Sierra Leonean government); Lucinda Saunders, Note, *Rich and Rare are the Gems They War: Holding De Beers Accountable for Trading Conflict Diamonds*, 24 FORDHAM INT'L L. J. 1402, 1422-36 (2001) (noting that the R.U.F. never stated the political objectives of the insurgency). There is speculation that control over the diamond mines in Sierra Leone was a driving force for the insurgency. *Id.* But see *Background to Civil War*, *supra* note 1 (maintaining that the R.U.F., and not Charles Taylor, was the initial impetus for the invasion). See generally Stephen Ellis, *War in West Africa*, 25 FLETCHER F. WORLD AFF. 33 (2001) (contextualizing the conflict in Sierra Leone with respect to conflicts in other West African countries and analyzing the interrelationships between the conflicts).

79. See David Pratt, *Sierra Leone: The Forgotten Crisis*, Report to the Minister of Foreign Affairs, the Honourable Lloyd Axworthy, P.C., M.P. from David Pratt, M.P., Nepean-Carleton, Special Envoy to Sierra Leone (Apr. 23, 1999) (describing how after the R.U.F. attacked, Sierra Leone President Momoh doubled the size of

stop the R.U.F., however, the makeshift national army was ill-equipped and unprepared for the attack; only months later, the R.U.F. controlled more than one-fifth of the country.⁸⁰ While the President of Sierra Leone, Joseph Momoh, attempted to build a movement to halt the increasingly powerful R.U.F., his attempts failed.⁸¹ Momoh's reign ended in 1992, when he was ousted by a military coup lead by Captain Valentine Strasser.⁸²

Although the government and the R.U.F. briefly entered into a cease-fire after Strasser's coup, shortly after, in late 1992, the R.U.F. began to attack the economic targets of Sierra Leone's diamond rich district of Kono.⁸³ As the R.U.F. gained power, local troops began to form militias in order to protect their citizens, further intensifying the civil strife in Sierra Leone.⁸⁴ As a result, in 1994, the Economic Community of West African States Monitoring Group ("E.C.O.M.O.G.") sent troops in from Nigeria to defend the

his army from 3,000 to nearly 6,000 troops), *available at* <http://www.sierra-leone.org/pratt042399.html> (last visited Nov. 2, 2002). He obtained most of his recruits from the vagrants of Freetown. *Id.* Momoh's foreign minister described the recruits as the "rural . . . unemployed, a fair number of hooligans, drug addicts, and thieves." *Id.*

80. See *Background to Civil War*, *supra* note 1 (explaining how the Momoh conscripted hundreds of recruits in order to launch a counter-offensive). However, these recruits were poorly trained and often highly undisciplined. *Id.*; see also Pratt, *supra* note 79 (noting that these troops were underpaid and demoralized).

81. See *Background to Civil War*, *supra* note 1 (reporting that the United Libertarian Movement for Democracy consisted mostly of former supporters of Liberia's President Sam Doe).

82. See Macaluso, *supra* note 78, at 349 (explaining that Strasser was deposed in a coup by a military junta that succeeded in organizing the first multi-party elections); see also Pratt, *supra* note 79 (reporting that Strasser was overthrown by his deputy Brig. Julius Maada Bio); Karen Gallagher, Note, *No Justice, No Peace: The Legalities and Realities of Amnesty in Sierra Leone*, 23 T. JEFFERSON L. REV. 149, 155 (noting the timeline of events in the conflict).

83. See *Background to Civil War*, *supra* note 1 (commenting on the significance of control over the diamond regions of Sierra Leone).

84. See *id.* (discussing how four main groups, the Kamajors, Temne Kapra's, Koranko Tamaboros, and the Kono Donsos, began to initiate their own protection of the civilian population by forming civil defense forces).

government.⁸⁵ However, the foreign effort failed to defeat the rebel forces, and the conflict continued.⁸⁶

In February 1996, under U.N. supervision, the people of Sierra Leone democratically elected Ahmend Tejan Kabbah of the Sierra Leone People's Party as President.⁸⁷ Soon after the election, Kabbah began negotiations with the R.U.F. that resulted in the Abijan Accord,⁸⁸ a peace agreement in which Kabbah agreed to grant amnesty to the R.U.F. and other combatants, while the R.U.F. agreed to an immediate cease-fire, disarmament, and demobilization.⁸⁹ The peace proved to be temporary, for in May 1997, the government army faction Armed Forces Revolutionary Counsel ("A.F.R.C."), led by General Johnny Paul Koroma, deposed Kabbah.⁹⁰

In 1998, E.C.O.M.O.G. troops drove the rebels from the capital city, Freetown, and restored Kabbah to power.⁹¹ By late 1998, however, the Sankoh-led R.U.F. controlled over half the country, and

85. See Pratt, *supra* note 79 (identifying E.C.O.M.O.G. as an intervention force initiated by the Economic Community of West African States ("E.C.O.W.A.S.") consisting of troops from Sierra Leone, Nigeria, Guinea, Ghana, and Gambia); see also Fritz & Smith, *supra* note 6, at 395 (documenting the entrance of E.C.O.M.O.G. into the "fray" in Sierra Leone in 1994).

86. See Macaluso, *supra* note 78, at 350 (discussing the failure of E.C.O.M.O.G. to drive out the R.U.F.).

87. See *id.* at 349 (describing the R.U.F.'s refusal to recognize the election results declaring Kabbah's victory); see also *Sierra Leone News Archives*, *supra* note 1 (discussing Kabbah's victory in the post-war elections of May 2002 and the various peacekeeping measures taken to ensure a peaceful election). U.N. authorities congratulated Sierra Leone on the peacefulness of the elections and called it a good sign for the re-building of Sierra Leone's government after the decade-long civil war. *Id.*

88. Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, Nov. 30, 1996, art. 1, available at http://www.usip.org/library/pa/sl/sierra_leone_10301996.html (last visited Nov. 2, 2002).

89. See Diane Marie Amann, *Message as a Medium in Sierra Leone*, 7 ILSA J. INT'L & COMP. L. 239 (2001) (describing the terms of the Abijan Accord).

90. See Macaluso, *supra* note 78, at 350 (recounting the A.F.R.C.'s attack).

91. See *id.* (noting that the rebels had gained control of half of Sierra Leone when E.C.O.M.O.G. forces drove the rebels out of Freetown and reinstated the Kabbah-led government).

by early 1999 the rebels had retaken Freetown.⁹² In May 1999, both sides declared a cease-fire.⁹³ The R.U.F. and the government negotiated the Lomé Peace Agreement,⁹⁴ which offered amnesty to all combatants and provided for R.U.F. inclusion in a new coalition government in exchange for disarmament.⁹⁵ Nevertheless, Sankoh and the R.U.F. failed to adhere to the terms of the Lomé Peace Agreement, and devastating human rights abuses continued.⁹⁶

In May 2000, R.U.F. rebels took several hundred U.N. peacekeepers hostage, spurring the international community to take

92. See Steve Coll, *The Other War: The Gratuitous Cruelties Against Civilians in Sierra Leone Last Year Rivalled Those Committed in Kosovo at the Same Time*, WASH. POST, Jan. 9, 2000, at W8 (reporting that commentators called the two weeks during which the R.U.F. overtook Freetown “a war that was at that moment the world’s cruelest, as well as its most invisible”). Eventually, the E.C.O.M.O.G. troops pushed the R.U.F. back, however, by this time approximately 6,000 civilians were dead, thousands were mutilated and limbless and an estimated 3,000 children had been abducted. *Id.*; see also Yvonne C. Lodico, *The Justification for Humanitarian Intervention: Will the Continent Matter?*, 35 INT’L LAW. 1027, 1028-35 (2001) (arguing that the U.S. has developed a Somalia syndrome and is extremely hesitant to intervene in African conflicts). While the attack on Freetown killed as many people in a few days as the Serbs killed in one year in Kosovo, the United States and the international community did not undertake a NATO-like response. *Id.* at 1028.

93. See Amann, *supra* note 89, at 240 (reporting the cease-fire).

94. See Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone, July 7, 1999 [hereinafter Lomé Peace Agreement] (calling for a cease fire between the governmental forces and the R.U.F.), *available at* http://www.usip.org/library/pa/sl/sierra_leone_07071999_toc.html (last visited Nov. 2, 2002).

95. See *id.* Part Two art. VII (appointing Foday Sankoh the Chairman of the Commission for the Management of Strategic Resources, National Reconstruction and Development). See generally Macaluso, *supra* note 78 (examining the effect of the amnesty provision contained in the Lomé Peace Agreement on the ability of the Special Court to try those “most responsible” for violations of Sierra Leonean criminal law).

96. See Macaluso, *supra* note 78, at 350 (illustrating the human rights abuses which continued after the signing of the Lomé Peace Agreement, particularly the escalation of sexual violence); see also AMNESTY INT’L, *supra* note 8, at 1 (stating that despite the signing of the Lomé Peace Agreement, the recruitment and use of children as combatants by both government-allied and rebel forces continued).

action.⁹⁷ Thereafter, the capture and arrest of Foday Sankoh led to the first discussions of an international criminal tribunal for Sierra Leone.⁹⁸ In June 2000, the Sierra Leonean government requested that the United Nations provide assistance in establishing a court to try war criminals.⁹⁹ The Government of Sierra Leone approved a draft resolution that formally requested the Secretary-General set up a criminal tribunal and that the Security Council adopt the resolution in August 2000.¹⁰⁰

C. PICKING UP THE PIECES: THE ESTABLISHMENT OF THE SPECIAL COURT OF SIERRA LEONE

Humanitarian groups closely documented the countless human rights abuses that children suffered at the hands of armed groups throughout Sierra Leone's civil war.¹⁰¹ These reports detail how the R.U.F. forced abducted children to both witness and participate in

97. See Gallagher, *supra* note 82, at 167 (recounting that presumably, Foday Sankoh ordered the R.U.F. to take the peacekeepers hostage).

98. See Macaluso, *supra* note 78, at 351 (explaining how Sierra Leone did not believe that it had the legal resources to try war criminals and therefore wrote to the United Nations to ask for assistance in establishing a criminal tribunal).

99. See AMNESTY INT'L, *supra* note 8, at 5 (stating that Sierra Leone sent a letter to the United Nations requesting its help in establishing a war tribunal); see also S.C. Res. 1315, U.N. SCOR, 55th Sess., 4186th mtg., U.N. Doc S/RES/1315 (2000) [hereinafter Resolution 1315] (initiating the development of a war tribunal in Sierra Leone); Alison Smith, *A Response to "A 'Special Court' for Sierra Leone's War Crimes,"* GLOBAL POLICY FORUM, Aug. 15, 2001 (asserting that the impetus for commencing negotiations on the Special Court was a letter sent by President Kabbah to U.N. Secretary-General Kofi Anan requesting assistance in establishing a court), at <http://www.globalpolicy.org/security/issues/sierra/court/2001/critique.htm> (last visited Nov. 2, 2002). But see Michelle Sieff, *A "Special Court" for Sierra Leone's War Crimes*, GLOBAL POLICY FORUM, 2001 (claiming that the capture of 500 U.N. peacekeepers instigated the U.N.'s involvement in establishing a court in Sierra Leone), at <http://www.globalpolicy.org/security/issues/sierra/court/2001/analysis.htm> (last visited Nov. 2, 2002).

100. See Smith, *supra* note 99 (describing Sierra Leone's acceptance of a draft resolution).

101. See AMNESTY INT'L, *supra* note 8, at 4-7 (providing a detailed overview of the human rights violations that the R.U.F. committed); see also *Sexual Violence*, *supra* note 43 (documenting the human rights abuses that took place during the civil war in Sierra Leone, specifically sexual violence).

atrocities such as burning people alive, beheadings, amputations, and mass rapes.¹⁰² The R.U.F., however, was not alone in committing these war crimes;¹⁰³ the Revolutionary Armed Forces (“R.A.F.”), Armed Forces Revolutionary Council (“A.F.R.C.”), Civil Defense Forces (“C.D.F.”), and even the government’s Sierra Leone Army forcibly recruited children for participation in armed conflict.¹⁰⁴

Due to the pervasiveness of the recruitment of children for armed conflict, the Government of Sierra Leone faced enormous prosecutorial challenges once it decided to establish a war crimes tribunal.¹⁰⁵ Other obstacles, such as a dysfunctional legal system, also hindered bringing perpetrators to justice.¹⁰⁶ Indeed, the dire situation in Sierra Leone mirrored that of Rwanda after the 1994 genocide.¹⁰⁷ Similar to Rwanda, the ten-year civil war decimated the justice system in Sierra Leone.¹⁰⁸ The criminal and civil justice institutions were barely functional, and Sierra Leone’s national judicial institutions lacked personnel with the training necessary to try those accused of crimes under both national and international law.¹⁰⁹

After observing the seriousness of the situation in Sierra Leone, on August 14, 2000, the U.N. Security Council took its first major step toward the creation of a Special Court of Sierra Leone when it

102. See AMNESTY INT’L, *supra* note 8, at 4-7 (discussing extensively the atrocities committed by the R.U.F.).

103. See Amnesty Press Release, *supra* note 3 (reporting that Amnesty International delegates in Sierra Leone obtained graphic testimony from former child combatants with the A.F.R.C., C.D.F., and the R.U.F.).

104. See AMNESTY INT’L, *supra* note 8, at 4-9 (documenting former child soldier testimony from combatants fighting with the R.U.F., A.F.R.C., and C.D.F.).

105. See *infra* Part III (evaluating the challenges of attaining justice in Sierra Leone through the Special Court).

106. See ENDING IMPUNITY, *supra* note 3, at 3 (reporting that the justice system in Sierra Leone had collapsed during the prolonged conflict).

107. See Fritz & Smith, *supra* note 6, at 406 (commenting that the judicial system of Rwanda was virtually destroyed during the genocide). Approximately ninety-five percent of the country’s lawyers and judges were killed, exiled, or imprisoned. *Id.*

108. See ENDING IMPUNITY, *supra* note 3, at 3 (noting that almost all the courts outside Freetown stopped functioning during the war).

109. See *id.* at 3-4 (stating that the necessary equipment and tools are not present to conduct trials).

unanimously passed Security Council Resolution 1315.¹¹⁰ The Security Council proposed the Special Court as a hybrid court to be jointly administered by the Sierra Leone Government and the United Nations.¹¹¹ The unique structure of the Special Court related directly to funding, because there was no political support for creating another expensive international criminal tribunal like those established in Rwanda and the former Yugoslavia.¹¹²

After extensive negotiations on several contentious aspects of the Special Court's statute, on January 16, 2002, Sierra Leone and the United Nations agreed upon the Statute of the Special Court.¹¹³

110. See Avril McDonald, *Sierra Leone's Shoestring Special Court*, 84 No. 845 INT'L REV. OF THE RED CROSS 124, 124 (Mar. 2002) (explaining that the nine-paragraph resolution assigned to the Secretary-General the task of negotiating with the government of Sierra Leone an agreement to create an independent Special Court); see also Smith, *supra* note 99 (indicating that the Resolution was the result of a letter from President Kabbah to the United Nations requesting assistance in establishing an international criminal court).

111. See Sieff, *supra* note 99 (noting that the Special Court of Sierra Leone is neither a U.N. body similar to the Yugoslavia and Rwanda Tribunals nor a domestic tribunal); see also Briefing Paper, Att'y Gen. of Ministry of Justice of Sierra Leone, An Outreach and Special Education Program for the Special Court: Recommendations of the Task Force to the Planning Mission for the Special Court (Jan. 18, 2002) [hereinafter Briefing Paper], available at <http://www.specialcourt.org/documents/PlanningMission/BriefingPapers/Outreach.html> (last visited Nov. 2, 2002). The Briefing Paper proclaimed that the Special Court's international criminal tribunal is aimed at

individual criminal liability, ending impunity, establishing facts around a conflict generally and particular massive abuses specifically; the establishment of individual responsibility for atrocities to overcome any tendency for apportioning blame collectively; providing victims of crimes with the opportunity to attain a sense of justice in their own individual cases; and contributing to a meaningful process of reconciliation.

Id.

112. See McDonald, *supra* note 110, at 124 (explaining that Ralf Zacklin, U.N. Assistant Under-Secretary General for Legal Affairs, stated that there was no longer support on the Council for the creation of subsidiary legal bodies and that the Security Council would not fund ad hoc tribunals other than had those in Rwanda and the former Yugoslavia).

113. See *id.* at 121 (explaining that the delays in reaching a final agreement were mainly the result of insufficient funding for the Special Court). The Special Court was not established by a Security Resolution like the tribunals in Rwanda and the former Yugoslavia, but rather was the result of an Agreement between the United Nations and the Government of Sierra Leone. *Id.*

While the scope of the Special Court's prosecution will be limited due to the Statute's jurisdictional and financial restrictions, the current state of the national judicial system in Sierra Leone demands guidance and the restoration of credibility to judicial enforcement there.¹¹⁴ Whether those responsible for the conscription of children into armed conflict will be brought to justice thus depends most heavily on the Special's Court's ability to administer justice.¹¹⁵

II. ANALYSIS

The novel structure of the Special Court of Sierra Leone is a direct response to the successes and failures of previous tribunals such as the International Criminal Tribunal of Yugoslavia ("I.C.T.Y.") and the International Criminal Tribunal of Rwanda ("I.C.T.R.").¹¹⁶ As a result, the creation of the Special Court represents an innovative attempt by the United Nations to establish a more efficient and effective international criminal tribunal.¹¹⁷

114. See *supra* notes 105-109 and accompanying text (expressing the importance of Sierra Leone's mission to rebuild its judicial system).

115. See *infra* Part III (discussing the critical role the Special Court will play in the peace-building process and in re-establishing a just and respected judicial system in Sierra Leone).

116. See Fritz & Smith, *supra* note 6, at 405 (discussing that many of the major criticisms of the I.C.T.Y. and I.C.T.R. were taken into consideration during the drafting of the Statute of the Special Court); see also McDonald, *supra* note 110, at 122-124 (delineating the differences between the Special Court and previous tribunals).

117. See Fritz & Smith, *supra* note 6, at 402 (suggesting that the more extensive involvement Sierra Leone will be afforded in the administration of the Special Court, as compared with the former Yugoslavia or Rwanda and the I.C.T.Y. and I.C.T.R., appears to be a positive development). Furthermore,

The Special Court offers a promise of rebuilding Sierra Leone's society by ending impunity but also offers a promise of rebuilding the society in a much more tangible sense by generating institutional skills and resources crucial to any functioning democracy, which will live on long after the Special Court completes its work.

Id. at 404.

While the United Nations was criticized for situating the I.C.T.R. and I.C.T.Y. outside of Rwanda and Yugoslavia, the Special Court will sit in Freetown, the capital of Sierra Leone.¹¹⁸

Because one objective of the Special Court is to help Sierra Leone rebuild a strong national judicial system, the Court's establishment in Sierra Leone is critical to its success.¹¹⁹ Since the judicial process will be both visible and accessible to the people of Sierra Leone, the Special Court will have the potential to send the important message that "international and domestic trials are complementary parts of an integrated, holistic, and multifaceted approach to justice."¹²⁰

Notwithstanding the benefits of the Special Court's location, many structural and procedural inadequacies of the Special Court are likely to hinder the Court's efforts to bring those responsible for the recruitment of child soldiers to justice.¹²¹ Limitations on the Special Court's jurisdiction, the United Nations' decision not to grant the Special Court Chapter VII powers, the amnesty provision of the Lomé Peace Agreement, and substantial funding restraints will most likely present significant obstacles to holding accountable all persons responsible for the recruitment of children into armed conflict in Sierra Leone.¹²²

118. See *id.* at 405 (noting particular criticism by Neil Kritz of the United Nations' decision to establish the I.C.T.R. outside of Rwanda because substantial amounts of the population could not benefit from the media coverage of the trials).

119. See generally ENDING IMPUNITY, *supra* note 3, at 1-12 (stressing the importance of holding those responsible for criminal acts accountable in order to further post-conflict peace processes).

120. See Neil Kritz, *Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights*, 59 LAW & CONTEMP. PROBS. 127, 132 (1996) (asserting a holistic approach to justice and accountability).

121. See *infra* Part II and accompanying text (critiquing the weaknesses of the Special Court and arguing that budgetary restraints, restricted jurisdiction, and the lack of Chapter VII powers granted to the Special Court are likely to impede its overall effectiveness).

122. See *infra* Part II and accompanying text (analyzing the inherent difficulties created by the Special Court in terms of its ability to effectively hold accountable those persons responsible for the recruitment of children into armed conflict).

A. TEMPORAL AND PERSONAL JURISDICTION

Limitations placed on the Special Court's jurisdiction are likely to prove prohibitive in prosecuting persons responsible for the recruitment of child soldiers.¹²³ Critically, the temporal jurisdiction of the Special Court dates only from 1996, despite the fact that the civil war began when the R.U.F. invaded Sierra Leone in 1991.¹²⁴ This decision was mainly the result of U.N. precautions taken so that the prosecutor of the Special Court would not be overburdened.¹²⁵ While this may have been a practical decision regarding the internal administration of the Special Court, when placed in the context of Sierra Leone's ten-year civil war, many believe that the limited temporal jurisdiction is both arbitrary and unfair.¹²⁶

In particular, many Sierra Leoneans find the temporal jurisdiction of the Special Court unjust because it focuses on atrocities committed in and around Freetown, the capital of Sierra Leone, over other provinces of Sierra Leone.¹²⁷ This is because the start date of the Court's temporal jurisdiction, November 1996, corresponds precisely with the time when Freetown first came under attack, while

123. See *infra* notes 124-125 and accompanying text (discussing the obstacles produced by restricting the temporal jurisdiction of the Special Court to those crimes committed after 1996).

124. See Fritz & Smith, *supra* note 6, at 410-11 (acknowledging that the temporal jurisdiction start date of November 30, 1996 was the date of the first comprehensive peace agreement between the Government of Sierra Leone and the R.U.F.); see also Gallagher, *supra* note 82, at 156 (identifying this initial Peace Agreement as the Abidjan Accord).

125. See Fritz & Smith, *supra* note 6, at 411 (suggesting that overloading the Court was a concern, but also that it was intended that the start date of the Special Court's jurisdiction should not appear to be politically motivated or biased).

126. See *The Establishment of a Special Court for Sierra Leone: Report of the Secretary-General*, U.N. SCOR, Annex 1, U.N. Doc. S/2000/915, art. 1 (2000) [hereinafter *Special Court Report*] (establishing November 1996 as the start date for the temporal jurisdiction of the Special Court); see also Briefing Paper, *supra* note 111 (discussing how individuals who do not live in the Western Province of Sierra Leone, where Freetown is located and where the Special Court will sit, believe that they are being overlooked and excluded from the political and judicial processes). Because of the restricted temporal jurisdiction of the Special Court, these individuals believe that justice is unlikely to be served on the perpetrators of crimes committed prior to November 1996. *Id.*

127. See Briefing Paper, *supra* note 111 (noting that the November 1996 date corresponds with the time when the capital first became a target of attack).

most of the conflict prior to November 1996 took place outside Freetown.¹²⁸ The ultimate consequence of the Special Court's restrictive jurisdiction is that those responsible for the abduction and forced recruitment of children before 1996 are unlikely to be held accountable for their actions.¹²⁹ Indeed, five years of international law violations by the R.U.F., A.F.R.C., C.D.R., and former Sierra Leone Army will go unpunished because the perpetrators will not fall under the Special Court's jurisdiction.¹³⁰

The Court's personal jurisdiction, which extends only to those individuals who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996, will further limit the Court's prosecutorial potential.¹³¹ By restricting personal jurisdiction to those who bear the greatest responsibility, the Special Court will not bring to justice all persons responsible for the recruitment of child soldiers.¹³² While the United Nations recommended that jurisdiction be extended to "persons most responsible" so that the Special Court would have more prosecutorial power, the original phrasing has not been changed.¹³³ As a result, the personal jurisdiction of the Special Court will only reach a very small number of the many persons responsible for the atrocities committed in Sierra Leone.¹³⁴

128. See generally Background to Civil War, *supra* note 1 (demonstrating how the conflict did not reach Freetown until after the Abidjan Peace Accord).

129. See *Special Court Report*, *supra* note 126, annex art. 1 (detailing how crimes prior to 1996 will not be prosecuted by the Special Court).

130. See *infra* notes 149-153 and accompanying text (explaining that it is unlikely that these crimes will be prosecuted by Sierra Leone's national courts due to the enforceability of the amnesty provision of the Lomé Peace Agreement on Sierra Leone's national courts).

131. See *Special Court Report*, *supra* note 126, annex art. 1 (outlining the ability of the Court to prosecute only those persons "who bear the greatest responsibility for the commission of crimes").

132. See *id.*

133. See Fritz & Smith, *supra* note 6, at 413 (stating that the language has been retained in various drafts of the Statue in spite of the Secretary-General's recommendation).

134. See Bruce Zagaris, *UN Security Council Adopts Resolution on Protecting Children During Armed Conflict*, 18 INT'L ENFORCEMENT L. REP. 203, 204 (2002) (concluding that because the Special Court will be able to prosecute so few people,

The Statute for the Special Court provides that persons who bear the greatest responsibility include “those leaders who, in committing such crimes, threatened the establishment of and implementation of the peace process in Sierra Leone.”¹³⁵ In Sierra Leone, not only the highest-ranking leaders were responsible for serious human rights abuses against children.¹³⁶ In fact, persons of all ranks in armed groups and militias contributed to the atrocities.¹³⁷ Thus, by limiting personal jurisdiction to the most notorious perpetrators, the Special Court for Sierra Leone will never try many of the individuals guilty of violations of international and domestic law.¹³⁸ Because the people of Sierra Leone believe that all individuals guilty of crimes during the war should be held accountable, this jurisdictional limitation is likely to undermine the legitimacy and effectiveness of the Special Court.¹³⁹

B. CHAPTER VII POWERS

The United Nations’ decision not to grant Chapter VII Security Council powers to the Special Court of Sierra Leone presents another challenge to holding individuals accountable for the recruitment of child soldiers.¹⁴⁰ Chapter VII, Article 48 of the U.N. Charter

other measures are necessary to enforce international law concerning the protection of the rights of children in armed conflict).

135. *The Planning Mission on the Establishment of the Special Court for Sierra Leone: Report of the Secretary-General*, U.N. SCOR, Attachment, art. 1, U.N. Doc. S/2002/246 (2002) [hereinafter *Planning Mission Report*].

136. *See generally* AMNESTY INT’L, *supra* note 8, at 5-7 (stating that R.U.F. soldiers and training officers beat children).

137. *See, e.g., id.* at 8 (reporting how one soldier beat Hassan, a child soldier recruited at age thirteen, severely on the back and three weeks later scars were still visible).

138. *See supra* notes 135-136 and accompanying text (providing examples of how not all children are mistreated and recruited by “leaders”).

139. *See* Macaluso, *supra* note 78, at 355 (stressing that the people of Sierra Leone want to see more who are responsible punished for crimes committed during the decade long conflict in Sierra Leone); *see also supra* note 134 and accompanying text (indicating the small number of people who will actually be prosecuted by the court).

140. *See infra* notes 143-147 and accompanying text (examining the implications of the United Nations’ decision not to grant the Special Court Chapter VII powers).

obligates all member state national courts to comply with Security Council decisions, rather than just the national court of the state in which the international tribunal is operating.¹⁴¹ Therefore, by establishing the ad-hoc I.C.T.Y. and I.C.T.R. tribunals under Chapter VII, these tribunals enjoyed primacy and concurrent jurisdiction with respect to all national member courts.¹⁴²

In contrast, Sierra Leone Special Court's primacy is limited to the national courts of Sierra Leone because the United Nations did not grant the Special Court of Sierra Leone Chapter VII powers.¹⁴³ As a result, other countries are not required to comply with the Special Court's requests for evidence.¹⁴⁴ Crucially, the lack of Chapter VII powers means that other states have no obligation to arrest an accused individual who has fled Sierra Leone seeking safe harbor in another state.¹⁴⁵

The failure of the United Nations to grant the Special Court Chapter VII powers is likely to substantially inhibit the prosecution of those responsible for the recruitment of child soldiers.¹⁴⁶ Many R.U.F. commanding officers fled Sierra Leone to fight in Liberia, and many more openly express their intention to leave Sierra Leone before the Special Court becomes operational.¹⁴⁷ As a result, without

141. U.N. CHARTER art. 48 (stating the requirements of all member state national courts). See Fritz & Smith, *supra* note 6, at 416 (interpreting Chapter VII, Article 48 of the U.N. Charter).

142. See Fritz & Smith, *supra* note 6, at 416 (differentiating between the I.C.T.R. and I.C.T.Y., which were granted Chapter VII powers, and the Special Court, which was not granted Chapter VII powers).

143. See *id.* (stating that the ad hoc tribunals in Yugoslavia and Rwanda do have primacy and concurrent jurisdiction with respect to all national courts while the Special Court of Sierra Leone does not).

144. See McDonald, *supra* note 110, at 125-26 (underscoring the limitations placed on the power of the Special Court to demand compliance with evidence requests due to the Special Court's lack of Chapter VII powers).

145. See *id.* (explicating how Chapter VII powers were indispensable for the operation of the ad hoc tribunals in the former Yugoslavia and Rwanda because many indictees fled to other countries).

146. See *infra* note 147 and accompanying text (analyzing the ways in which the Special Court's lack of Chapter VII powers will inhibit the prosecution of those responsible for the recruitment of child soldiers).

147. See Letter from Peter Takirambudde, Executive Director Africa Division, Human Rights Watch, to Laila Stenseng, Second Secretary, Permanent Mission of

Chapter VII powers, it is likely that many of the leaders most culpable for the systematic recruitment of child soldiers will escape unscathed by Sierra Leone's Special Court.¹⁴⁸

C. AMNESTY PROVISION OF THE LOMÉ PEACE AGREEMENT

The amnesty provision of the Lomé Peace Agreement, the most recent accord entered into by the Government of Sierra Leone and the R.U.F., granted "free and absolute pardon" for all activities undertaken in pursuit of the conflict in Sierra Leone.¹⁴⁹ At the time of the signing of the Agreement, however, the United Nations stated that this amnesty provision would not be applicable to genocide, crimes against humanity, war crimes, or other serious violations of international humanitarian law.¹⁵⁰ Because the recruitment of child soldiers is a violation of international humanitarian law, it was encompassed by the United Nations' exception to the amnesty provision.¹⁵¹

Norway to the U.N. (Mar. 7, 2002) [hereinafter Recommendations Letter] (arguing that the problem of indictees who have fled Sierra Leone needs to be addressed), available at <http://hrw.org/press/2002/03/sleone0307-ltr.htm> (last visited Nov. 2, 2002); see also Letter from Peter Takirambudde, Executive Director Africa Division, Human Rights Watch, to Foreign and Justice Ministers of Burkina Faso, Cote d'Ivoire, Democratic Republic of Congo, Gambia, Ghana, Liberia, Libya, Mali, Nigeria, Senegal, South Africa, Togo, and Zambia (June 13, 2002) [hereinafter Cooperation Letter] (reporting that members of the Human Rights Watch staff in Sierra Leone have received credible information that certain Sierra Leoneans who believe they may be indicted by the Special Court are developing "exit strategies" to flee from Sierra Leone to other African states), available at <http://hrw.org/press/2002/06/sierraleone-africa-ltr0613.htm> (last visited Nov. 2, 2002).

148. See *id.* (asserting that indictees will flee Sierra Leone in order to avoid prosecution by the Special Court).

149. See Lomé Peace Agreement, *supra* note 94, art. IX(2) (providing a pardon for conflict-related activities in Sierra Leone).

150. See Colum Lynch, *Sierra Leone Seeds Aid on Tribunal; U.N. Weighs Request on War Crimes*, WASH. POST, June 16, 2000, at A24 (noting the argument of the United Nations that the Agreement did not preclude international adjudication of war crimes).

151. See AMNESTY INT'L, *supra* note 8, at 22-26 (explaining that recruitment and use of children under the age of fifteen as combatants is prohibited by both international human rights law and international humanitarian law); see also Convention on the Rights of the Child, G.A. Res. 44/25, annex, U.N. GAOR Supp. No. 49, at 167, art. 38(2), U.N. Doc. A/44/49 (1989) ("States Parties shall take all

Nevertheless, the amnesty provision remains binding on crimes committed under domestic law, prohibiting the Government of Sierra Leone from prosecuting crimes committed from 1991 to 1999 under Sierra Leonean law.¹⁵² Due to the Special Court's hybrid nature, the amnesty provision will bar prosecution of violations of domestic law in the Special Court prior to 1999, but will permit the prosecution of violations of international law as early as 1996.¹⁵³ In other words, the Special Court has authority to prosecute all crimes under international law after 1996, but the Court may only prosecute crimes under Sierra Leone law committed after July 7, 1999.¹⁵⁴

Since only the Special Court may prosecute persons responsible for the recruitment of child soldiers prior to 1999, impunity will persist for those who committed crimes before 1999 and who are not prosecuted by the Special Court.¹⁵⁵ Furthermore, jurisdictional and

feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.”). This article further discusses age restrictions for children in combat:

States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are the oldest.

Id.; see also Protocol Additional to the Geneva Conventions relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, art. 4(3)(c) (1978) (“Children who have not attained the age of fifteen shall neither be recruited in the armed forces of groups nor allowed to take part in hostilities.”); AMNESTY INT’L, *supra* note 8, at 24 n.11 (noting that Sierra Leone acceded to the Geneva Convention on June 10, 1965 and acceded to both the Additional Protocol I and II in October 1986).

152. See Lomé Peace Agreement, *supra* note 94, art. IX(2) (outlining the amnesty provision in the agreement).

153. See Macaluso, *supra* note 78, at 367-68 (commenting on the inconsistency of the Statute of the Special Court). Macaluso argues that Article 1 cannot stand because the Government of Sierra Leone granted “absolute and free pardon” to Foday Sankoh and all combatants on July 7, 1999. *Id.*

154. See Lomé Peace Agreement, *supra* note 94, art. IX(2) (granting “absolute and free pardon” to all combatants for crimes committed prior to July 7, 1999).

155. See *id.* (discussing the types of individuals for whom impunity will not hold); see also NO PEACE WITHOUT JUSTICE, *FAQ: What is the Special Court Act?*, Oct. 31, 2002 (explaining that while the amnesty provisions apply for crimes under Sierra Leone law committed before July 7, 1999, they do not prevent people from being prosecuted before the Special Court, for violations of international law), at <http://www.specialcourt.org/documents/FAQImplLegn.htm> (last visited

financial constraints will limit the number of individuals tried by the Special Court.¹⁵⁶ Consequently, most of those individuals responsible for the recruitment of child soldiers will never be held accountable by any judicial process since they will not be prosecuted by either the Special Court or the national courts of Sierra Leone.¹⁵⁷

D. FUNDING THE SPECIAL COURT OF SIERRA LEONE

The Special Court's budgetary restraints are also likely to encumber the judicial process in Sierra Leone.¹⁵⁸ The U.N. Security Council was unwilling to support another expensive criminal tribunal and the Council refused to fund the Special Court as it had in the I.C.T.Y. and I.C.T.R.¹⁵⁹ Instead, the United Nations decided to fund the Special Court through voluntary contributions.¹⁶⁰ Unfortunately, the Security Council did not make this decision because it was the most appropriate approach to take, considering Sierra Leone's circumstances, but because it was the only politically viable

Nov. 2, 2002). The amnesty provision, however, "continues to apply in Sierra Leone courts and even the Special Court's Prosecutor can only prosecute crimes under Sierra Leonean law committed after 7 July 1999." *Id.*

156. See *supra* notes 123-138 and accompanying text (outlining how the personal and temporal jurisdiction of the Special Court will limit the number of individuals prosecuted by the Special Court); see also *infra* notes 158-177 and accompanying text (arguing that financial restrictions on the Special Court will impede the Court's ability to prosecute more than a handful of persons).

157. See *supra* notes 152-154 and accompanying text (arguing that the Special Court's statute unnecessarily hinders its objectives of bringing justice to the people of Sierra Leone for the many crimes committed during the civil war).

158. See McDonald, *supra* note 110, at 142 (emphasizing that "cut-price and shoddy attempts at international criminal justice run a huge risk not only of discrediting the idea of justice itself but of further alienating the affected populations.").

159. See *id.* at 124 n.6 (explaining that Ralph Zacklin, U.N. Assistant Under-Secretary-General for Legal Affairs, indicated that there was no longer support in the Security Council to establish subsidiary legal bodies, and that the U.N. Security Council would not fund other ad hoc Tribunals as it had the I.C.T.Y. and I.C.T.R.).

160. See Resolution 1315, *supra* note 99 (requesting that the Secretary-General submit recommendations on the "amount of voluntary contributions, as appropriate, of funds, equipment and services to the special court, including through the offer of expert personnel that may be needed from States, intergovernmental organizations and non-governmental organizations").

option.¹⁶¹ As a result, the means provided to establish the Special Court are unlikely to meet the ends sought by both Sierra Leone and the United Nations.¹⁶² While the Secretary-General's original budget estimates for the Special Court were modest in comparison with the Rwanda and Yugoslavia Tribunals, voluntary contributions failed to meet those estimates.¹⁶³ Unwillingly, the Secretary-General was forced to make even greater budget cuts, raising concerns about the viability of the Court.¹⁶⁴ One concern is that the decision to fund the operations of the Special Court through voluntary contributions likely will impede the prosecution of those individuals responsible for the recruitment of child soldiers.¹⁶⁵

Because Sierra Leone only recently emerged from a decade-long civil war, the country remains politically, socially, and economically vulnerable.¹⁶⁶ This instability renders Sierra Leone particularly

161. See McDonald, *supra* note 110, at 124 (explaining that the Security Council decided to create a *sui generis* Special Court because there was no support for another expensive criminal tribunal and the Court could only be established with support from Sierra Leone).

162. See *infra* notes 170-177 and accompanying text (arguing that the objectives of the Special Court are unlikely to be met because of the Court's lack of resources and personnel).

163. See McDonald, *supra* note 110, at 138 n.56 (citing estimates in a letter dated July 12, 2001 from the Secretary-General to the President of the Security Council of \$30.2 million for the first year and \$84.4 million for the following two years, defining the financial demands of Sierra Leone's Special Court as comparatively small). Voluntary contributions as of July 6, 2001 were only \$15 million. *Id.* at 139; see also Fritz & Smith, *supra* note 6, at 420 (reporting that the 2001 awarded budget for the I.C.T.Y. was \$108,487,700).

164. See McDonald, *supra* note 110, at 138 (recounting how the Secretary-General's concern about the validity of a Special Court budgeted at such a reduced level forced a meeting of Security Council members on June 1, 2001). At the meeting, his message was that the Special Court would have to be a "bargain basement" court, but at the same time would have to comply with the required standards of due process and other human rights. *Id.* at 138-39.

165. See *infra* notes 166-182 and accompanying text (discussing the implications of funding the Special Court through voluntary contributions).

166. See Chris McGreal, *War Scarred Sierra Leone Votes for Peace*, GUARDIAN UNLIMITED, May 15, 2002 (demonstrating the instability of Sierra Leone by reporting that 17,400 peace-keepers were employed in Sierra Leone to guard the polls in the Presidential elections), available at <http://www.guardian.co.uk/sierra/article/0,2763,715608,00.html> (last visited Nov. 2, 2002); see also *Sierra Leone: Jury Still Out*, HUMAN RIGHTS WATCH, July 11,

susceptible to improper influence by donor states.¹⁶⁷ By allowing other states to make voluntary contributions, the Special Court's independence may be jeopardized by significant contributions from donor states.¹⁶⁸ Indeed, the risk that states will attempt to gain political sway through substantial contributions to the Special Court is especially great given the volatility of Sierra Leone's recent political history.¹⁶⁹

Furthermore, the implementation of a voluntary contribution funding system is likely to undermine the Special Court's fundamental objectives of bringing justice to the victims of Sierra Leone's civil war and restoring the national court system to a legitimate and respected legal body.¹⁷⁰ Without sufficient financial

2002 (pointing out that peace remains fragile in Sierra Leone) , at <http://cgi.wn.com/?action=display&article=14589735&template=sierraleone/indexsearch.txt&> (last visited Nov. 2, 2002). Deep-rooted issues that gave rise to the war, weak rule of law, crushing poverty, and inequitable distribution of natural resources remain mostly un-addressed. *Id.*; see also *Country Profile: Sierra Leone*, BBC NEWS, July 10, 2002 (stating that "[t]he problems of poverty, tribal rivalry and official corruption that caused the war are far from over."), at http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1061561.stm (last visited Nov. 2, 2002). Indeed, the neighboring civil war in Liberia highlights the instability of the region. *Id.*

167. See Recommendations Letter, *supra* note 147 (warning that the hybrid nature of the Special Court creates challenges to maintain the Court's independence from the Government of Sierra Leone). Additionally, the use of voluntary contributions to fund the Special Court makes it "equally important to ensure the Court's independence by donor states." *Id.*; see also Press Release, Amnesty Int'l, Sierra Leone: The U.N. Security Council Must Make the Special Court Effective and Viable (Feb. 13, 2001) ("The current Security Council proposal for voluntary funding would not only undermine the Special Court's effectiveness creating uncertainty, but may also undermine its independence."), available at <http://web.amnesty.org/ai.nsf/Index/AFR510012001?OpenDocument&of=COUNTRIES\SIERRA+LEONE> (last visited Nov. 2, 2002).

168. See generally Recommendations Letter, *supra* note 147 (recommending that there be close monitoring of the Special Court so that political incentives do not compromise the Court's impartiality).

169. See *supra* Part I (illustrating the instability of Sierra Leone's political leadership during the past decade as a result of continuous power struggles among competing political groups).

170. See McDonald, *supra* note 110, at 142 (predicting that once the Special Court becomes operational, it will become clear that it "cannot function on its current budget and at its envisaged size . . . [lest it] be remembered primarily for its contribution to the regression of human rights").

support from volunteering states, the Special Court will not be able to retain the requisite personnel and monetary resources to administer the Court effectively.¹⁷¹ This, in turn, will directly affect the Special Court's ability to run fair and effective criminal trials.¹⁷²

The Special Court's lack of financial resources will also severely limit the number of individuals the Court may prosecute.¹⁷³ Because of the Special Court's financial restraints, it is improbable that the Court will be able to prosecute all those who bear the greatest responsibility for the atrocities in Sierra Leone.¹⁷⁴ Instead, the Court will likely have to settle for the most notorious suspects.¹⁷⁵ Thus, those responsible for the recruitment of child soldiers whom the Prosecutor does not consider to be the most reprehensible of

171. See Letter from Kofi Annan, U.N. Secretary-General, to the President of the U.N. Security Council (Mar. 8, 2002) (reporting that the availability of resources for the Special Court in Sierra Leone are either non-existent or extremely scarce), available at <http://www.un.org/Docs/sc/letter/2002/246e.pdf> (last visited Oct. 19, 2002). In addition, the availability of evidentiary material was extremely limited and substantial investigations would be needed to bring indictments. *Id.*; see also *Sierra Leone: Establish Special Court Quickly*, HUMAN RIGHTS WATCH, Mar. 20, 2002 (quoting the Executive Director of the Africa Division of Human Rights Watch as saying, "[f]or the Special Court to be effective, U.N. member states who have not contributed to the Special Court trust fund will have to step up and pledge adequate funds."), at <http://www.hrw.org/press/2002/03/sleone0320.htm> (last visited Nov. 2, 2002).

172. Cf. *Special Court Report*, *supra* note 126, para. 70 (citing the Secretary-General's argument that the risks associated with voluntary contributions are great "in terms of both moral responsibility and loss of credibility of the Organization, and its exposure to legal liability"). The Special Court "based on voluntary contributions would be neither viable nor sustainable." *Id.*; see also Judy Aita, *U.N. to Begin Naming Sierra Leone War Crimes Court*, Mar. 21, 2002 (reporting that a twenty-person planning mission led by Hans Corell, Under Secretary-General for Legal Affairs, traveled to Sierra Leone in January 2002), at <http://usinfo.state.gov/regional/af/a2032001.htm> (last visited Nov. 2, 2002). The planning mission found that most of the resources needed for the court's operation were either "non-existent or extremely scarce" in Sierra Leone. *Id.*

173. See Cooperation Letter, *supra* note 147 (warning that the Special Court will be able to prosecute very few individuals because of large budgetary restraints).

174. See Zagaris, *supra* note 134 (asserting that the Special Court of Sierra Leone will probably only be able to prosecute less than twenty people).

175. See *Special Court Report*, *supra* note 126, annex art. 15 (providing that the Prosecutor ultimately decides who will be prosecuted by the Special Court).

criminals will not be prosecuted.¹⁷⁶ These perpetrators will slip from the Special Court's grasp not because of their innocence, but because of the United Nations' inability to establish an effective funding mechanism for Sierra Leone's Special Court.¹⁷⁷

Finally, the Special Court's budget restraints will have a negative impact on its legitimacy.¹⁷⁸ Secretary-General, Kofi Annan, himself argues that the risks associated with voluntary contributions are quite significant "in terms of both moral responsibility and loss of credibility of the Organization, and its exposure to liability," and that the Special Court's financial basis of voluntary contributions is "neither viable nor sustainable."¹⁷⁹ The United Nations' struggle to find states willing to fund the Special Court inhibits the Court's prosecutorial agenda and delays its proceedings.¹⁸⁰ This struggle sends the message that the international community is not as committed to or interested in bringing justice to Sierra Leone.¹⁸¹ In

176. See *supra* notes 173-175 and accompanying text (explaining that only a handful of individuals will be prosecuted by the Special Court, leaving many culpable parties unpunished).

177. See *supra* notes 158-172 and accompanying text (demonstrating that insufficient funds will prevent the Special Court from prosecuting all responsible for the greatest violations of international and Sierra Leonean law).

178. See *Special Court Report*, *supra* note 126 para. 70 (alerting the international community that funding the Special Court through voluntary contributions could undermine the credibility of the Court).

179. See *id.* (noting Kofi Annan's arguments regarding voluntary contributions).

180. See McDonald, *supra* note 110, at 121 (attributing the continuous delays in reaching a final agreement between Sierra Leone and the United Nations to the difficulty in finding the money to establish the Special Court); see also Abbott, *supra* note 22, at 418 (noting U.N. Secretary-General Kofi Annan's comparison of the Special Court and the other war crimes tribunals). Annan has stated:

While the Special Court differs from the two Tribunals in its nature and legal status, the similarity in the kind of crimes committed, the temporal, territorial and personal scope of jurisdiction, the number of accused, the organizational structure of the Court and the Rules of the Procedure and Evidence suggest a similar scope and duration of operation and a *similar need for a viable and sustainable financial mechanism*.

Id. (emphasis added).

181. Cf. Amann, *supra* note 89, at 239-45 (arguing that the message of the amnesty provision of the Lomé Peace Agreement is that the West does not care and does not have the political will to do what really needs to be done in Sierra Leone).

order for those responsible for the recruitment of children in Sierra Leone to be held legally accountable, it is critical that everyone involved view the Special Court as a credible and legitimate legal body.¹⁸² Without this legitimacy, witnesses and victims are unlikely to come forward and tell their stories and, as a result, impunity will persist.¹⁸³

III. RECOMMENDATIONS

A. RECOMMENDATIONS FOR THE UNITED NATIONS AND THE ADMINISTRATION OF THE SPECIAL COURT

To ensure that the Special Court prosecutes those responsible for the recruitment of children into armed conflict, the U.N. Security Council should endow the Special Court with Chapter VII powers.¹⁸⁴ Without Chapter VII powers, the Special Court will not succeed in ending impunity for those individuals who systematically recruited child soldiers because those who flee Sierra Leone may never face prosecution.¹⁸⁵ Presently, the Special Court's inability to reach many of these individuals is likely to frustrate Sierra Leone's efforts to reinstate a legitimate and respected national legal system.¹⁸⁶

Alternatively, if the Security Council continues to refuse to endow the Special Court with Chapter VII powers, the Council should adopt a resolution mandating that states comply with the Special Court's

182. See ENDING IMPUNITY, *supra* note 3, at 2 (underscoring the importance of the credibility and effectiveness of judicial process).

183. See Briefing Paper, *supra* note 111 (illustrating the negative effects of international tribunals when information about their nature is widely unknown by people, and suggesting that cooperative efforts to ensure clear and accurate information dissemination are essential to formation and maintenance of a legitimate Special Court).

184. See *supra* Part II (highlighting the major reasons why the U.N. should grant the Special Court Chapter VII powers).

185. See *id.* (concluding that without Chapter VII powers, the Special Court will be unable to prevent indictees from fleeing Sierra Leone and attaining safe harbor in neighboring countries).

186. See Recommendations Letter, *supra* note 147 (describing how the legitimacy of the Special Court may be questioned if the Special Court is not granted Chapter VII powers).

requests to surrender persons who are indicted by the Court.¹⁸⁷ Likewise, regional actors such as the Organization of African States should exhibit their support of Sierra Leone's Special Court by independently obligating member states to comply with such requests.¹⁸⁸ By requiring states to comply with requests by the Special Court for evidence and persons, those individuals responsible for the recruitment of child soldiers will not find safe havens outside of Sierra Leone.¹⁸⁹ Rather, they will be held accountable for their actions in spite of their efforts to evade the jurisdiction of the Special Court.¹⁹⁰

Establishing legitimacy for the Special Court will also be contingent upon the Court's ability to hold perpetrators accountable for their actions, regardless of their political positions or status.¹⁹¹ Although the Special Court's Prosecutor must exhibit sensitivity to Sierra Leone's political stability, it is critical to the future of the Sierra Leonean judicial system that there be a credible and respected prosecutorial procedure.¹⁹² Continued monitoring by the United Nations, in order to ensure that the prosecutor is acting

187. *See id.* (suggesting that a resolution requiring states to comply with the Special Court's requests for evidence and persons would aid in increasing the Court's efficiency and effectiveness).

188. *See id.* (proposing that the Organization of African States require member states to assist in providing requested evidence and persons to the Special Court).

189. *See id.* (arguing that the aid of other states is necessary to ensure that indictees will not escape prosecution by fleeing Sierra Leone).

190. *See id.* (predicting that with the cooperation of other states, individuals will not be able to escape the jurisdiction of the Special Court).

191. *See* AMNESTY INT'L, *Sierra Leone: An Independent Prosecution Policy Must be Assured*, Jan. 21, 2002 [hereinafter *Independent Prosecution*] (asserting that in order to bring justice to Sierra Leone, a strong and independent prosecution policy must be adopted), at <http://web.amnesty.org/ai.nsf/print/AFR510012002?OpenDocument> (last visited Nov. 2, 2002).

192. *See* Chris McGreal, *Unique Court to Try Killers of Sierra Leone*, *GUARDIAN UNLIMITED*, Jan. 17, 2002 (arguing that the Special Court of Sierra Leone is likely to face charges of selective justice if it does not prosecute the leaders of groups other than the R.U.F. who are responsible for atrocities in Sierra Leone), at <http://www.guardian.co.uk/sierra/article/0,2763,634697,00.html> (last visited Nov. 2, 2002).

independently of political pressure, will be essential to bringing those responsible for the recruitment of child soldiers to justice.¹⁹³

The Security Council should also approve an amendment to the Statute of the Special Court extending temporal jurisdiction to encompass the entire conflict in Sierra Leone.¹⁹⁴ Currently, the Special Court will not prosecute or investigate five years of war crimes as a result of the November 1996 start date for the Special Court's jurisdiction.¹⁹⁵ To the people of Sierra Leone, as well as much of the international community, this date appears to be arbitrary and unfair.¹⁹⁶ In order to rebuild the Sierra Leoneans' confidence in the ability of the legal process to be just, it is necessary to expand the jurisdiction of the Special Court to include the entire conflict in Sierra Leone.¹⁹⁷ Otherwise, many individuals responsible for the recruitment of child soldiers will never be prosecuted.¹⁹⁸

Finally, the Government of Sierra Leone and the United Nations must work to publicize the administration of the Special Court.¹⁹⁹ The I.C.T.R. and I.C.T.Y. came under considerable attack because the people of Rwanda and the former Yugoslavia were not aware of the tribunals' proceedings.²⁰⁰ One way to disseminate information about the Special Court would be to establish an Outreach and Public

193. See Independent Prosecution, *supra* note 191 (stating that the independence of the Prosecutor from the United Nations and Sierra Leone must be established).

194. See AMNESTY INT'L, *supra* note 8, at 27 (recommending that the temporal jurisdiction of the Special Court be extended to include all crimes committed during the decade-long conflict in Sierra Leone).

195. See *Special Court Report*, *supra* note 126, stat. art. 1 (granting power to the Special Court to persons "most responsible" for crimes committed since November 30, 1996).

196. See *supra* notes 126-129 and accompanying text (explaining the discontent of the Sierra Leonean people over the November 1996 start date).

197. See AMNESTY INT'L, *supra* note 8, at 2 (emphasizing the importance of international tribunals in bringing legitimacy to legal systems devastated by war).

198. See *supra* notes 126-129 and accompanying text (explaining that without amending the Statute of the Special Court, all violations of international law committed prior to 1996 will go unpunished).

199. See Briefing Paper, *supra* note 111 (stressing the importance of outreach regarding the Special Court to the rehabilitation of Sierra Leone's people).

200. See *id.* sec. 2 (noting that with the exception of a relatively small portion of the Yugoslav population, most of the affected people do not know of the existence of the I.C.T.Y. and the I.C.T.R.).

Education Program within the Special Court.²⁰¹ An Education Program would assist in building credibility for the Special Court by educating the people of Sierra Leone about the Court, its structure, and its substantive law and internal procedures.²⁰²

Through the development of a Public Outreach and Education Program, the people of Sierra Leone would gain confidence in the rule of law and its ability to bring justice to Sierra Leone.²⁰³ More specifically, an education program would help children who were victims of the conflict to come forward as witnesses and tell their stories.²⁰⁴ Indeed, without the testimony of child soldiers, recruiters will never be prosecuted, and justice will not be served.²⁰⁵

B. RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY

For the Special Court of Sierra Leone to succeed, it is imperative that states increase their contributions to the funding of the Court.²⁰⁶ At present, the estimated budget for the Special Court is insufficient to cover adequately the cost of bringing justice for crimes committed during the civil war in Sierra Leone.²⁰⁷ Without more generous

201. See *id.* sec. 1 (proposing the establishment of an Outreach and Public Education Program).

202. See *id.* sec. 3 (explaining that an education program is necessary due to the misconceptions evident domestically in media coverage concerning the nature of the Court).

203. See *id.* (illustrating how unchecked misconceptions could lead to disillusionment with the Special Court). Ultimately, disillusionment with the Special Court could undermine the legitimacy of the Court. *Id.*

204. Cf. *id.* sec. 4.3 (observing that many ex-combatants need reassurance that the vast majority of them will not be subject to prosecution before the Court).

205. Cf. Briefing Paper, *supra* note 111, sec. 2 (describing how the I.C.T.Y. was an extremely distant and misunderstood entity to the people of Bosnia). Few understood the exact nature of the crimes for which people could be indicted by the I.C.T.Y. *Id.* This problem appears to be repeating itself in Sierra Leone. *Id.* sec. 4.3.

206. See Press Release, Human Rights Watch, Funds Urged for Sierra Leone Court (July 24, 2001) (noting that it is necessary for more states to pledge funds in order to give the Court a solid footing), at http://www.hrw.org/press/2001/07/un_courts0724.htm (last visited Nov. 2, 2002).

207. See McDonald, *supra* note 110, at 138-39 (explaining that despite repeated budget reductions, the Court has still not yet been provided with sufficient funds to

contributions and support, the effectiveness of the Special Court's unique structure is likely to collapse under financial restraints.²⁰⁸ While the funding accumulated thus far could support a handful of trials, many of those perpetuating the use of child soldiers would undoubtedly never see the courtroom.²⁰⁹ As the international tribunals in Rwanda and Yugoslavia demonstrate, the cost of justice is quite high.²¹⁰ However, those tribunals proved to be essential in reestablishing peace and security.²¹¹

Additionally, countries must put the well-being of children ahead of their own national agendas.²¹² One step states should take is to ratify the Optional Protocols to the Convention on the Rights of the Child in accordance with the Protocols' original policy requiring a minimum age of eighteen before a child may be recruited by the military.²¹³ By agreeing not to allow children under the age of

fulfill its mission). More funds must be found if the Court is not to be remembered "primarily for its contribution to the regression of human rights". *Id.* at 142.

208. *See supra* notes 173-177 and accompanying text (arguing that the Special Court will not be able to bring perpetrators to justice without a better foundation of resources and support).

209. *Cf. McDonald, supra* note 110, at 132 (stating that only a very select handful of individuals will ever be prosecuted due the budgetary restraints of the Special Court).

210. *See id.* at 139 (comparing Special Court to the I.C.T.Y. and I.C.T.R. and commenting on the extremely high cost of running an international tribunal); *cf. Smith, supra* note 94 (arguing that the Court has the potential to address atrocities and violations of international humanitarian law committed in Sierra Leone and is therefore beneficial to the peace process).

211. *See McDonald, supra* note 110, at 122-23 (explaining the important role accountability plays in cleansing a nation and advancing the peace process).

212. *Cf. Becker Hearings, supra* note 4 (arguing that the use of children in combat is always unacceptable).

213. *See Michel J. Dennis, Newly Adopted Protocols to the Convention on the Rights of the Child*, 94 AM. J. INT'L L. 789, 791 (2000) (discussing the benefits of a minimum age of eighteen for military recruitment); *cf. Becker Hearings, supra* note 4 (arguing that the United States should ratify the Optional Protocol to the Convention on the Rights of the Child in order to provide international leadership on the rights of children). Currently, the voluntary provision of the Optional Protocol provides an escape hatch for state parties that want to recruit minors. *See Dennis, supra*, at 790-91 (discussing the fact that the Protocol on Children in Armed Conflict allows seventeen year olds to be recruited by the military provided that safeguards are taken to prevent their introduction to actual combat). By setting the minimum age requirement at eighteen years old, this loophole would be

eighteen into hostilities under any circumstance, states will be showing a strong commitment toward protecting children's rights.²¹⁴

C. RECOMMENDATIONS FOR THE GOVERNMENT OF SIERRA LEONE

In order to prevent the future use of child soldiers in Sierra Leone, the Government of Sierra Leone must take several critical steps. First, the Government of Sierra Leone should sign and ratify the Protocol on the Involvement of Children in Armed Conflict ("Optional Protocol") adopted by the U.N. General Assembly on May 25, 2000.²¹⁵ The Optional Protocol raises the age for military conscription from fifteen to eighteen years of age and requires state parties to raise the age of voluntary recruitment to an age above the former international standard of fifteen years.²¹⁶ The Protocol also sets the minimum age of voluntary recruitment at sixteen years old and demands that states take "all feasible measures" to ensure that

eliminated. *See id.* at 790 (explaining that many states that rely on a voluntary military objected to the prohibition of recruitment of children younger than eighteen).

214. *See supra* note 212 and accompanying text (indicating the need to put the well-being of children first).

215. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Annex I, Supp. No. 49, U.N. Doc. A/54/49 (2000) [hereinafter Optional Protocol]; *see* Dennis, *supra* note 213, at 789 (indicating that the United Nations adopted the Protocol on the Involvement of Children in Armed Conflict and the Protocol on the Sale of Children, Child Prostitution and Pornography ("Sale of Children Protocol") on the same day). The Sale of Children Protocol defines and prohibits the sale of children, child prostitution, and child pornography. *Id.*; *see also* Press Release, Amnesty Int'l, Child Soldiers: Governments Agree to Ban Use of Child Combatants but Treaty Fails to Prohibit all Recruitment of Under-18's (Jan. 21, 2000), at <http://web.amnesty.org/ai.nsf/Index/IOR510022000?OpenDocument&of=THEME/S/CHILDRENUJUVENILES> (last visited Nov. 2, 2002) (explaining that the Convention on the Rights of the Child defines a child as anyone under the age of eighteen but was adopted in 1989 with fifteen as the minimum age for recruitment and use in hostilities). The draft of the Protocol addresses this anomaly in international legal children's rights standards. *Id.*

216. *See* Optional Protocol, *supra* note 215, arts. 1, 3 (providing the required age limits).

members of their armed forces under the age of eighteen do not take a "direct part" in hostilities.²¹⁷

The ratification of the Optional Protocol will obligate the Government of Sierra Leone to criminalize the recruitment of children as child soldiers.²¹⁸ While Sierra Leone would be permitted to continue to accept volunteers under the age of eighteen, several safeguards would be mandatory before the child could enter the armed forces.²¹⁹ Finally, the Protocol would require Sierra Leone to provide assistance for the rehabilitation and reintegration of former child soldiers.²²⁰ By signing and ratifying the Optional Protocol the Government of Sierra Leone would send a strong message to its

217. See *id.* art. 3(1) (requiring states parties to raise the minimum age for voluntary recruitment of persons into their national armed forces above that required by the Convention on the Rights of the child, which was fifteen). Article 1 requires states to "take all feasible measures to ensure" those under the age of eighteen do not take a direct part in the hostilities. *Id.* art. 1; see also Dennis, *supra* note 213, at 791 (underscoring that the language of the Optional Protocol is drawn from Article 38(2) of the Convention of the Rights of the Child and Article 77(2) of Geneva Protocol I, both of which require states parties to take all "feasible measures" to ensure that children under the age of fifteen do not take a "direct part in hostilities"). The term "feasible" has been understood in law of war treaties, including Geneva Protocol I, to mean that which is "practicable or practically possible taking into account all circumstances ruling at the time including military and humanitarian considerations." *Id.* The term "[direct] participation in the hostilities" has been understood in the context of treaties relating to the law of armed conflict to mean a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place. *Id.* at 792.

218. See *Becker Hearings*, *supra* note 4 (explaining that the Protocol requires governments to criminalize the recruitment of children under eighteen or take other appropriate measures to stop the practice).

219. See Optional Protocol, *supra* note 215, art. 3(3) (requiring State Parties that permit voluntary recruitment into their national armed forces under the age of eighteen to maintain, at minimum that (a) such recruitment is genuinely voluntary; (b) such recruitment is carried out with the informed consent of the person's parents or legal guardians; (c) such persons are fully informed of the duties involved in such military services; (d) such persons provide reliable proof of age prior to acceptance into national military service).

220. See *id.* art. 6(3) (obligating parties to take all feasible measures to ensure that persons recruited or used in hostilities contrary to the present Protocol receive appropriate assistance for their physical and psychological recovery and social integration).

people that it will no longer tolerate the recruitment of child soldiers.²²¹

Finally, the government of Sierra Leone should implement an effective and universal birth registration system.²²² In order to prevent the use of child soldiers, it is imperative that Sierra Leone ensure that all children are registered at birth and families receive documentation of age.²²³ Without reliable age documentation, families will continue to have no legal recourse against those individuals who force their children into armed conflict.²²⁴ Without adopting and enforcing a universal birth registration system, ratification of the Optional Protocol will be useless because armed groups will continue to argue that they believed that the children were of age when they abducted them.²²⁵

CONCLUSION

The international legal community took great strides over the past decade to protect children's rights more vigorously.²²⁶ International Criminal Tribunals such as the I.C.T.Y., I.C.T.R., and Special Court of Sierra Leone are prosecuting those responsible for human rights

221. See generally Amann, *supra* note 89 (emphasizing the importance of sending a strong message to the people of Sierra Leone that those responsible for war crimes will be held accountable). Because the amnesty provision of the Lomé Peace Agreement sent the message that the international community did not care about Sierra Leone, it is even more critical that the Special Court demonstrate that the international community is dedicated to ensuring that justice is done in Sierra Leone. *Id.* at 242.

222. See Hick, *supra* note 30, at 115 (proposing the establishment of a universal birth recordation system to combat the use of children in armed conflict).

223. See *id.* (noting that failure to document the age of children makes it difficult to prevent their recruitment as soldiers).

224. See *supra* note 51 and accompanying text (describing how recruiters are able to evade age limitations on recruitment due to lack of documentation regarding a child's age).

225. See *supra* notes 48-51 and accompanying text (explaining that even minimum age requirements are ineffective if there is no universal form of age documentation and personal identification).

226. See *supra* Part II (acknowledging the creation of the I.C.T.Y., I.C.T.R., and Special Court of Sierra Leone).

abuses and war crimes against children.²²⁷ Further, legislation implemented by the United Nations, such as the Optional Protocol,²²⁸ directly addresses the problem of children in armed conflict.²²⁹ Nonetheless, while these international efforts mark progress in the fight for full protection of children's rights, major inadequacies still exist, as evidenced by the Special Court's inability to address adequately the realities of prosecuting those responsible for the recruitment of child soldiers.²³⁰

Indeed, the majority of these deficiencies are the result of the continuous failure to put the interests of children, particularly the poorest and most vulnerable children, before national interests.²³¹ This failure has occurred on both the state and international levels and, as a result, a unified and comprehensive attack must be waged to prohibit and punish the recruitment of child soldiers.²³² The pursuit of justice embodied by the Special Court of Sierra Leone presents a chance for individual, state, and international actors to make a statement with respect to the use of children in combat.²³³ By taking critical steps to strengthen the Special Court's effectiveness in prosecuting those responsible for the recruitment of child soldiers, it is possible to send a powerful message to the international

227. See *supra* Part II (discussing the prosecutorial power of the Special Court of Sierra Leone).

228. See *supra* notes 215-217 and accompanying text (introducing the Optional Protocol).

229. See *id.* (specifying the international legal focus on the recruitment of child soldiers).

230. See *supra* Part II (analyzing the deficiencies in the Special Court's structure and critiquing the loopholes created by certain provisions in the Optional Protocol).

231. See *supra* note 135 and accompanying text (demonstrating the failure of the United Nations to put children's rights above political concerns).

232. See *supra* Part II (implicating Sierra Leone, the United Nations, and the international community as contributors to the universal failure to adequately address the problem of the recruitment of child soldiers).

233. See Amann, *supra* note 89, at 242 (arguing that the international community has a chance to do better with respect to Sierra Leone and the Special Court than it did when it played its role in the creation of the Lomé Peace Agreement).

community.²³⁴ Therefore, when Foday Sankoh faces the Special Court and the war-ravaged children of Sierra Leone look on to see if justice really exists, it is imperative that the United Nations, the Government of Sierra Leone, and the international community show the children that it does.²³⁵

234. *See id.* at 245 (asserting that by punishing those responsible for atrocities in Sierra Leone, a message of accountability will be sent).

235. *See supra* Part II (emphasizing the importance of holding those like Foday Sankoh accountable for their actions).