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Sierra Leone's Search for Justice and Accountability of Child Soldiers

by Ismene Zarifis*

The Lome Peace Accords were signed in July 1999, ending nine years of internal armed conflict between the government forces of Sierra Leone and the Revolutionary United Front (RUF), an armed rebel group known for committing gross human rights violations. The conflict in Sierra Leone was one of the most brutal in Africa because of the nature and extent of war crimes committed by both sides and the forced recruitment of approximately five thousand child combatants. The United Nations and international human rights organizations reported that RUF combatants adopted a systematic practice of raiding villages, abducting children from their homes, and using them as combatants against their will. According to Amnesty International (AI), personal accounts by former child soldiers reveal that the RUF threatened children's lives as well as their families' lives if the children refused to join the RUF. After the children were forcibly recruited, they were drugged and indoctrinated into the systematic practice of killing, raping, and maiming their victims.

The internal armed conflict in Sierra Leone began in March 1991, when the RUF launched an attack to overthrow the government and gain political control of the country. Fighting between the RUF and government forces persisted, despite several UN-brokered attempts at peace in February 1995, November 1996, and October 1997. The parties ultimately reached an agreement to end hostilities in July 1999. Now that the internal armed conflict has officially ended, Sierra Leone is obligated under international law to prosecute and punish perpetrators of war crimes. The fact that both government forces and the RUF recruited children under the age of fifteen to participate in the armed conflict is a violation of international humanitarian law, while the acts committed primarily by RUF combatants during the hostilities are punishable crimes under international law. The combination of these elements poses a unique problem of establishing the accountability of child combatants who were both victims and victimizers in the hostilities.

Obligations to Prosecute

Obligations under the Lome Peace Accords

The Lome Peace Accords marked an official cease-fire between warring parties, provided for demobilization and disarmament of all combatants, and called on the parties to form a government of national unity, thereby transforming the RUF into a political party. Since 1999, demobilization of the thirty percent of minors under the age of eighteen who make up the RUF forces has been slow. In January 2000, only about 1,700 of an estimated 5,000 child combatants were disarmed and returned to their homes or rehabilitation centers to undergo special psychological and reintegration treatment. RUF commanders in particular lack the political will to implement the demobilization duty established in the Lome Peace Accords. In fact, they continue to employ child combatants to secure their control of politically contested diamond fields in the eastern region of the country, and have



Panelists at a seminar on Sierra Leone's Truth and Reconciliation Commission.

Credit: International Human Rights Law Group

been recapturing demobilized child combatants from rehabilitation centers.

The Lome Peace Accords also called for the establishment of a truth and reconciliation commission as an essential element of a post-conflict program. Additionally, a national amnesty law was passed providing a "[f]ree pardon to all combatants for any of their actions committed in pursuit of their objectives since March 1991." This contentious amnesty law was included in the Lome Peace Accords, according to some, to promote lasting peace in Sierra Leone. The amnesty law, however, shields combatants from prosecution of crimes under domestic law since the war's inception, causing public concern that human rights abusers will enjoy immunity for their criminal acts.

Obligations under International Law

The amnesty law conflicts with Sierra Leone's obligations under humanitarian law. Under the Geneva Conventions, Sierra Leone is obligated to punish the perpetrators of international crimes. The Special Court of Sierra Leone (Special Court) was established in August 2000, pursuant to UN Security Council Resolution 1315, and represented an agreement between the Sierra Leonean government and the UN to prosecute perpetrators for violating international human rights and humanitarian law after 1996. The Special Court statute is a bilateral agreement binding on both parties.

Both the Additional Protocol II to the Geneva Conventions of 1949 (Additional Protocol II), to which Sierra Leone became a party on June 8, 1977, and UN Resolution 1315 impose international obligations on Sierra Leone, which supercede the domestic amnesty law. Article 10 of the statute of the Special Court bars amnesty protection of combatants for international crimes defined in the statute: crimes against humanity (Article 2); violations of Article 3 common to the Geneva Conventions and of the Additional Protocol II (Article 3); and other serious violations of international humanitarian law (Article 4). Article 10 is grounded in international

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human rights law jurisprudence, which holds that national amnesty laws are contrary to a state's duty to respect and ensure human rights. The duty to respect and ensure human rights includes the state's obligation to investigate, prosecute, and punish human rights violators. Significantly, under the Special Court statute, children between ages fifteen and eighteen are neither excluded from nor protected against criminal responsibility for violations of the international crimes in the statute.

Sierra Leone is now in a transitional justice phase in which the prosecution of war criminals is essential to end impunity and strengthen the rule of law. Establishing the accountability of child combatants for violations of international law where their very participation in the hostilities is a product of illegal recruitment poses a unique challenge.

Children in the Conflict

Forced Recruitment

Both the Sierra Leonean government and the RUF engaged in recruitment of child soldiers as young as ten years old, which is a violation of domestic law and international humanitarian law. Under domestic law, the minimum age for voluntary recruitment is eighteen years. International humanitarian law, through the Additional Protocol II, establishes fifteen as the minimum age requirement for recruitment or participation in hostilities. Recruitment under international law includes conscription (compulsory recruitment), voluntary enlistment, and forced recruitment. Participation in hostilities includes direct participation in combat and active participation linked to combat such as spying, acting as couriers, and sabotage. Finally, Article 22(2) of the African Charter on the Rights and Welfare of the Child, which entered into force in November 1999, and to which Sierra Leone is a signatory, requires "state parties . . . [to] take all necessary measures to ensure that no child [below age eighteen] shall take direct part in hostilities and [to] refrain in particular from recruiting any child."

Many international human rights groups have documented the RUF's systematic practice of forcibly abducting children, and issuing death threats to recruit child soldiers in Sierra Leone. For example, after an RUF attack and temporary occupation of the capital city of Freetown in January 1999, 4,800 children were reported missing and 7,335 people were reported dead. The abducted children were forced to become soldiers, sex slaves, or work in the diamond fields, and were routinely exploited as human shields for the rebels. AI has reported that the RUF killed children who refused to join them or forced them to use drugs to induce their compliance. Personal accounts from demobilized child combatants now undergoing rehabilitation recount tales of sexual violence and physical abuse. Others claim that they were threatened into aiding and abetting in the rape of girls.

Crimes Committed by Child Soldiers

Under physical and psychological duress, child combatants committed widespread and systematic atrocities condemned under Common Article 3 of the Geneva Conventions (Common Article 3), Additional Protocol II, and the Special



Credit: International Human Rights Law Group

Information session on Sierra Leone's Truth and Reconciliation Commission for ex-combatants at a disarmament camp.

Court statute. Children were drugged, threatened with death, sexually and physically abused by their abductors, and terrorized into adopting the RUF's practice of committing war crimes. "When I go to battle fields, I smoke enough. That's why I become unafraid of everything," a child combatant interviewed by AI stated. "When you refuse to take drugs, it's called technical sabotage and you are killed." Widespread and indiscriminate murder, rape, and amputation of limbs were signature crimes of the RUF and are well documented by international human rights groups such as AI and Human Rights Watch (HRW). The widespread and systematic nature of the abuses committed by RUF forces, including child combatants, fits the definition of crimes against humanity.

Crimes against humanity established in international customary law primarily consist of murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial, or religious grounds and other inhumane acts committed as part of a widespread or systematic attack against a civilian population. In particular, international customary law automatically binds all states to prevent and punish these abuses. The statute of the Special Court adopts the international definition of crimes against humanity, and Article 2 of the statute of the Special Court gives the Court the power to prosecute persons who committed such crimes. According to this definition, RUF combatants, including children, may be held individually criminally responsible for committing crimes against humanity.

Article 3 of the Special Court statute also incorporates violations of Common Article 3, the Additional Protocol II, and other international humanitarian law violations into the list of punishable crimes. These include: violence to life, health, and physical or mental well-being of persons; acts of terrorism; outrages upon personal dignity; rape, pillage, threats to commit these acts; and intentionally directing attacks against civilian populations or against individual civilians not participating in the hostilities. Under these definitions, child combatants who committed such crimes may face criminal accountability.

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Mechanisms of Accountability: Establishing the Criminal Responsibility of Children

The Special Court of Sierra Leone

The Special Court of Sierra Leone was created to prosecute individual perpetrators for violating international law during the armed conflict. The temporal jurisdiction of the Special Court, however, dates only from 1996, leaving perpetrators of war crimes committed prior to 1996 unaccountable under the Special Court jurisdiction or domestic law jurisdiction. According to Article 1 of the Special Court statute, the goal is "to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone." According to a report by the UN Secretary-General Kofi Annan on the establishment of the Special Court, the "authority position of the accused" and the "gravity or massive scale of the crime" are indicators of "greatest responsibility" for purposes of prosecution under the statute.

These factors imply that children between ages fifteen and eighteen are not likely to be targets of prosecution by the Special Court because of their junior status in the RUF command structure. The UN Secretary-General, however, reported that children who held positions of authority, such as brigadier, and who committed gross violations under the statute are not necessarily excluded from prosecution. At the same time, the UN Secretary-General recognized the violent circumstances under which children are recruited into battle, stating, "[t]hough feared by many for their brutality, most if not all of these children have been subjected to a process of psychological and physical abuse and duress which has transformed them from victims into perpetrators." Thus, the potential prosecution of children for war crimes presents a moral problem.

International human rights organizations have stated their objections to judicial accountability of children younger than eighteen on the grounds that prosecution would place their rehabilitation at risk. HRW recommended that the Special Court focus on adult offenders rather than prosecution of children younger than eighteen in light of the children's inherent immaturity and forced abduction into the armed conflict.

In the event that juvenile offenders are prosecuted, the statute calls for special protection mechanisms for juveniles. Article 7 of the statute states that children between the ages of fifteen and eighteen shall be treated in accordance with international human rights standards specific to the rights of the child, and "[s]hall be treated with dignity and a sense of worth, taking into account his or her young age and the desirability of promoting his or her rehabilitation, reintegration into and assumption of a constructive role in society." Instead of ordering imprisonment as a penalty, the Special Court is limited to ordering any of the following rehabilitative measures: care, guidance, and supervision orders; community service orders; counseling; foster care; correctional, educational, and vocational training programs; approved schools; and, as appropriate, any disarmament, demobilization, and reintegration programs of child protection agencies. Other protective measures include: ordering the

release of the accused, whenever possible; establishing a juvenile chamber; providing a separate trial for a juvenile from an adult; and providing all legal and other assistance to ensure the juvenile's privacy. In order to ensure that these rights are afforded to the child-defendant, the judges and the staff of the prosecutor's office are expected to have prior experience in juvenile justice.

Determining whether a child may be prosecuted for crimes in the statute depends on the prosecutor's consideration of several factors, such as whether the child's status of authority and the nature of the crimes committed fulfills the "greatest responsibility" requirement in the statute. Another factor the prosecutor must consider is codified in Article 15 of the statute, which states that "[i]n the prosecution of juvenile offenders, the Prosecutor shall ensure that the child-rehabilitation program is not placed at risk, and that, where appropriate, resort should be had to alternative truth and reconciliation mechanisms, to the extent of their availability." In a series of communications, the UN Secretary-General and the president of the Security Council, Sergey Lavrov, expressed the importance of limited prosecution of juvenile offenders, pointing to the Truth and Reconciliation Commission (TRC) as an alternative to prosecution of juveniles in order to promote the child's rehabilitation and social reintegration.

Truth and Reconciliation Commission

Pursuant to the Lome Peace Accords, the TRC was established in February 2000 by an agreement between the Sierra Leonean government and the UN. The TRC's underlying objective is to foster national reconciliation by allowing victims and perpetrators to tell their personal stories of their roles in the hostilities. "Truth is a prerequisite to genuine reconciliation . . . revealing the truth leads to the addressing of impunity," stated Ambassador Oluyemi Adeniji of the UN Mission in Sierra Leone, the human rights observer mission tasked with reporting human rights developments in the country. Unlike the Special Court, the TRC does not have a punitive, prosecutorial role, but rather allows perpetrators and victims of human rights violations to come forward and account for their actions in the spirit of promoting national peace and reconciliation. All those who were involved in the hostilities will be eligible to participate in the TRC.

The primary objective of the TRC will be to create an impartial historical record of human rights violations committed during the armed conflict in Sierra Leone. The TRC will investigate and report on the causes, nature, and extent of the violations, and work to restore the human dignity of victims and promote reconciliation through truth telling. The TRC envisions special procedures to address child victims and perpetrators. Accordingly, the TRC may serve as an effective alternative to the prosecution of juvenile offenders whose criminal responsibility is minimal or difficult to assess. Finally, the TRC will issue a final report based on its findings and present its recommendations to the government of Sierra Leone, suggesting reforms needed to achieve the non-repetition of the violations, addressing impunity, and promoting healing and reconciliation.

Human rights groups support recording child perpetrators' accounts through the TRC as opposed to criminal pros-

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education because the TRC fosters the children's total rehabilitation and social reintegration in accordance with Sierra Leone's obligation to "take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of . . . armed conflict," according to Article 39 of the Convention on the Rights of the Child (CRC). The child combatant's unique position of first victim and then victimizer requires a special accountability mechanism such as the TRC. Such an approach also is consistent with Article 40.3 of the CRC, which emphasizes the importance of using alternatives to judicial proceedings when dealing with children who have violated the law, provided that human rights and legal safeguards are respected.

In pursuing the difficult task of determining the accountability of a child combatant, many experts argue that accountability would best be established through a non-punitive truth telling process, a form of catharsis allowing the victim and perpetrator to heal emotionally and psychologically. Experts argue also that it would be unfair to hold children to the same standards of criminal liability as adults who orchestrated armed attacks and forced abductions of children. As such, truth telling before the TRC complies with international human rights standards in the CRC, and appears to be the most effective accountability mechanism for children.

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the Committee raised concerns about hydroelectric and other development projects that might affect the way of life and the rights of persons belonging to the Mapuche and other indigenous communities, and concluded that "relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant," and that "when planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them."

Conclusion

It is questionable whether an overemphasis on the drafting history of the Genocide Convention serves the Convention's purpose to protect the right to existence of minority groups. When interpreting genocide, should one be guided by the realization that international law is not static, but an evolving body of standards and directives that must be interpreted and applied in a contemporaneous fashion? Despite the encouragement engendered by the emerging genocide approach toward development-induced displacement, however, one must certainly be careful not to stretch the law to make it fit one's vision. Hence, the crucial question to be answered is whether the concept of genocide is adequate to deal with forced relocations in the context of development projects that result in both the physical and cultural extinction of an ethnic and racial minority and indigenous group. The concept of genocide is not quite adequate to deal with the destructive consequences of development-induced displacement of minority communities. In most cases, it will be difficult, if not impossible, to prove that forced dislocations in the context of a development project, including those leading to the physical or cultural destruc-

Conclusion

The moral dilemma of holding juvenile offenders accountable for war crimes is addressed collaboratively by the Special Court and the TRC. The Special Court focuses on prosecuting war criminals with the greatest responsibility, while the TRC focuses on fostering national peace and reconciliation. There is strong support from Sierra Leone for the prosecution of juvenile offenders in order to comply with the international obligation to punish perpetrators of human rights and humanitarian law violations. The lack of prosecution, some argue, could perpetuate impunity and pose a risk of similar abuses recurring in the future. In light of the special circumstances of the forcibly recruited child soldier, however, it appears that the RUF adult leaders primarily qualify as "individuals with the greatest responsibility," and should therefore be targeted for prosecution. The unique position of the child combatant, first victim then perpetrator, would best be served by truth telling before the TRC to facilitate effective social rehabilitation and reintegration. At the same time, the TRC promotes national reconciliation, which is essential for the population to heal after nine years of armed conflict. ☸

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tion of a minority group, constitute genocide within the meaning of the Genocide Convention.

The case law of the international criminal tribunals does not support the application of the concept of genocide to development-induced displacement either. The factual situations the tribunals have dealt with were fundamentally different from most cases of forced relocations in the context of development projects. In the cases before the tribunals, states and individuals accused of having committed the crime of genocide set out to exterminate the members of the particular victim groups simply on the grounds of their ethnic difference. Yet to prove that a government intentionally uses development-induced displacement as a means to extinguish a minority group *qua* group will be a difficult, if not impossible, endeavor. Whether forced relocations in the context of development projects are referred to as a "soft form" or "special category" of genocide, the apparently insurmountable hurdle of establishing the elements of genocide remains. One may argue that in cases in which an individual is held liable for the tort of genocide and not the crime, that in these cases the intent requirement might be less stringent. With regard to protection against cultural genocide or ethnocide, it remains to be seen whether the proposed declarations by the UN and the OAS on Indigenous Peoples' Rights, once adopted, will be used as standards against which the practice of ethnically targeted development in general, and of development-induced displacement of minority communities in particular, are measured. ☸

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