

12-15-2001

Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone

Diane Marie Amann

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [International Law Commons](#), [Juvenile Law Commons](#), and the [Military, War, and Peace Commons](#)

Recommended Citation

Diane Marie Amann *Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone*, 29 Pepp. L. Rev. Iss. 1 (2001)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol29/iss1/10>

This Symposium is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact bailey.berry@pepperdine.edu.

Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone

Diane Marie Amann*

This is a decade of enforcement for international criminal law. For the first time since the Nürnberg and Tokyo trials a half-century ago, defendants have suffered prosecution and punishment by international tribunals. In Arusha, a former prime minister of Rwanda stands convicted of participating in genocidal attacks against some 800,000 of his own citizens.¹ At The Hague, a Bosnian Serb general has been found guilty of leading the mass killing of 7,000 unarmed Bosnian Muslims.² And in Freetown, defendants soon may face a mixed tribunal adjudicating charges of abductions, rapes, arson, mutilations, and executions during Sierra Leone's protracted civil war. Should this proposed Special Court for Sierra Leone come into effect, defendants likely would include rebel leaders, most notably Corporal Foday Saybana Sankoh. But a new kind of defendant also could be called to account: the child soldier. In a unique proposal to the United Nations Security Council, U.N. Secretary-General Kofi Annan recommended that a Juvenile Chamber of the Special Court have authority to try defendants as young as fifteen. The plan sparked immediate controversy. Sierra Leoneans wanted the worst perpetrators punished regardless of age, while human rights organizations argued that juvenile prosecutions would weaken rehabilitative efforts. The Security Council subsequently diluted the

* Professor of Law, University of California, Davis; B.S., 1979, University of Illinois; M.A., 1981, University of California, Los Angeles; J.D., 1986, Northwestern University. A version of this article was presented on January 27, 2001, in a panel entitled "International Criminal Law" at International Law Weekend West, Malibu, California. Thanks to participants at that conference for comments that strengthened this piece, and to Gwen K. Young and Sophie Cohen for invaluable assistance. I would like to dedicate this article to my colleague Friedrich K. Juenger, who passed away on the day he was to have presented at the same conference.

1. See *Prosecutor v. Kambanda*, Case No. 97-23-S, Trial Chamber, Judgement and Sentence (ICTR 1998), reprinted in 37 I.L.M. 1411 (1998).

2. See *Prosecutor v. Krstic*, Case No. IT-98-33, Trial Chamber I, Judgement (ICTY Aug. 2, 2001), available at <http://www.un.org/icty/krstic/TrialC1/judgement/index.htm> (last visited Sept. 26, 2001).

proposal; nevertheless, it merits examination, given the increasing use, in Africa and around the world, of children in combat.

Indicative of growing awareness of child soldiering, a novel on the subject recently won a top French literary prize.³ The narrator, Birahima, tells how, as an orphan perhaps eight years old, he came to fight in Liberia and Sierra Leone. A man had said:

There, there was a tribal war. There, street children like me became child soldiers Small soldiers had it all. They had Kalachnikovs. Kalachnikovs, those are the rifles invented by a Russian that shoot without stopping. With Kalachnikovs, child soldiers had it all. They had money, even American dollars. They had shoes, military stripes, radios, caps, and even cars, called 4 by 4s. I cried, 'Walahé! Walahé!' I wanted to go to Liberia. Quickly.⁴

Years later Birahima quits the battlefield. "I have killed many innocents in Liberia and Sierra Leone, where I took part in the tribal wars, where I was a child soldier, where I was well drugged with hard drugs," Birahima, now ten or twelve, writes. "I am pursued by their spirits, therefore everything gets worse around me."⁵

How nation-states and the international community should treat such children, how to accommodate their dual status as perpetrators and as victims of atrocities, are questions destined to recur. Thus this article examines the concept of a Juvenile Chamber to adjudicate atrocities that violate international law. First it sets out the background of the conflict in Sierra Leone, placing it within the child-soldiering phenomenon. Then it analyzes the Secretary-General's proposal for holding at least some child perpetrators accountable in Sierra Leone, as well as the Security Council's dilution of that proposal. The article sees the provision for juvenile prosecutions as the result of a constructive, pluralistic approach to the child-soldiering problem. It concludes that adjudication of selected juvenile cases

3. See *French Literary Prize Goes to Jean-Jacques Schuhl*, ASSOCIATED PRESS NEWSWIREs, Oct. 30, 2000, available at Westlaw, 10/30/00 APWIREs (reporting that the Renaudot, France's second most prestigious literary award, was given to AHMADOU KOUROUMA, ALLAH N'EST PAS OBLIGÉ (2000)).

4. KOUROUMA, *supra* note 3, at 45 ("Là-bas, il y avait la guerre tribale. Là-bas, les enfants de la rue comme moi devenaient des enfants-soldats Les small-soldiers avaient tout et tout. Ils avaient des kalachnikov. Les kalachnikov, c'est des fusils inventés par un Russe qui tirent sans s'arrêter. Avec les kalachnikov, les enfants-soldats avaient tout et tout. Ils avaient de l'argent, même des dollars américains. Ils avaient des chaussures, des galons, des radios, des casquettes, et même des voitures qu'on appelle aussi des 4 x 4. J'ai crié Walahé! Walahé! Je voulais partir au Liberia. Vite et vite."). All translations in this article are my own.

5. *Id.* at 12 ("Et moi j'ai tué beaucoup d'innocents au Liberia et en Sierra Leone où j'ai fait la guerre tribale, où j'ai été enfant-soldat, où je me suis bien drogué aux drogues dures. Je suis poursuivi par les gnamas, donc tout se gâte chez moi et avec moi.").

may be appropriate in the specific context of Sierra Leone, though it voices concerns about certain provisions in the original plan.

I. CIVIL WAR IN SIERRA LEONE

For Sierra Leone, this has been a decade of war.⁶ Numerous coups have plagued the Sierra Leone government. Nigerian-led troops restored the democratically elected president, Ahmed Tejan Kabbah, to power in 1998. Rebels received amnesty in peace agreements signed in 1996 at Abidjan, Côte d'Ivoire, and in 1999 at Lomé, Togo; nevertheless, they continued their attacks.⁷ The rebels were driven out of the capital, Freetown, following a brutal attack in January 1999. But for some time thereafter they continued to control much of the rest of the country, including the lucrative diamond-mining regions. Chief among the rebel groups is the Revolutionary United Front, led by Sankoh, a Libyan-trained ally of Liberian President Charles Taylor.⁸ Sankoh joined a post-Lomé power-sharing government late in October 1999, but the arrangement was short-lived. In May 2000, rebels seized 500 U.N. peacekeepers as hostages. Sankoh, whom the Lomé Agreement had pardoned, was arrested; he remains in custody.

Sierra Leone's story would be tragically routine were it not for two things: the savagery unleashed against civilians and the use of children in combat. Rebels frequently used rape "as a terror tactic against women."⁹ Civilians from all segments of the population – "hundreds if not thousands" of males and females, young and old – suffered amputation and mutilation.¹⁰ More than a million Sierra Leoneans – more than a quarter of the population

6. On these historical events, see generally *U.S. Dep't of State, 1999 Country Reports on Human Rights Practices: Sierra Leone*, Feb. 25, 2000, § 1, available at <http://www.state.gov/g/drl/rls/hrrpt/1999/> [hereinafter SIERRA LEONE COUNTRY REPORT]; *Fourth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, U.N. SCOR, 55th Sess., ¶¶ 2, 56-79, 95, U.N. Doc. S/2000/455 (2000); AMNESTY INTERNATIONAL, ANNUAL REPORT 2000: SIERRA LEONE, available at <http://www.web.amnesty.org/web/ar2000web.nsf>; Karsten Nowrot & Emily W. Schabacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, 14 AM. U. INT'L L. REV. 321 (1998); Barbara Crossette, *U.N. to Establish a War Crimes Panel to Hear Sierra Leone Atrocity Cases*, N.Y. TIMES, Aug. 15, 2000, at 6; John Donnelly & Joe Lauria, *UN Peace Efforts on Trial in Africa*, BOSTON GLOBE, May 11, 2000, at A1; James Rupert, *Civilian Rule Overturned in Sierra Leone*, WASH. POST, May 26, 1997, at A21.

7. For a critique of these amnesty provisions, see Diane Marie Amann, *Message As Medium in Sierra Leone*, 7 ILSA J. INT'L & COMP. L. 237 (2001).

8. See Ibrahim Abdullah & Patrick Muana, *The Revolutionary United Front of Sierra Leone*, in AFRICAN GUERRILLAS 172, 176-81 (Christopher Clapham ed., 1998).

9. SIERRA LEONE COUNTRY REPORT, *supra* note 6, § 1(c).

10. *Id.*, § 1(c).

– remained refugees.¹¹ Amnesty International has reported, “In some areas up to 80 percent of internally displaced people were reported to be children, many unaccompanied.”¹²

Some of those children fell into military hands. An estimated 5,000 children, and perhaps twice as many, fought in Sierra Leone’s civil war.¹³ Ten percent of the rebels who besieged Freetown in January 1999 were children.¹⁴ During that one-month assault, rebel forces seized another 4,000 children, more than half of them girls who were then subjected to sexual abuse.¹⁵ Children hurt children: one account told of a two-year-old girl who lost her right arm to a machete wielded by a twelve-year-old boy.¹⁶ Both sides to the conflict recruited children, although the government-aligned Civil Defense Forces promised in June 1999 no longer to do so.¹⁷ Rebels routinely kidnapped children and compelled them to become soldiers.¹⁸ As Birahima attests, commanders routinely used drugs to ensure child soldiers’ ferocity and allegiance.

II. GROWING USE OF CHILDREN IN COMBAT

Birahima writes only of Sierra Leone and Liberia, but his plight recurs in countries around the world. One need only look in the newspaper to see evidence: a moon-faced child shouldering a rifle in Congo, and the “waiflike” Johnny Htoo, at fifteen a three-year veteran leader of a rebellion against the Burmese military.¹⁹ Children have taken part in war for centuries.²⁰ The extent to which children are used in combat, however,

11. *Id.*, intro., § 2(d); AMNESTY INTERNATIONAL, *supra* note 6.

12. AMNESTY INTERNATIONAL, *supra* note 6.

13. SIERRA LEONE COUNTRY REPORT, *supra* note 6, § 5.

14. AMNESTY INTERNATIONAL, *supra* note 6.

15. See *Rights of the Child: Additional report of the Special Representative of the Secretary-General for Children and Armed Conflict, Mr. Olara Otunnu, submitted in accordance with General Assembly resolution 53/128*, Hum. Rts. Comm., 56th Sess., Provisional Agenda Item 13, ¶ 11 at 31, U.N. Doc. E/CN.4/2000/71 (Feb. 9, 2000).

16. See Diane Cardwell, *For Maimed Victims, a Tenuous Respite in Staten Island*, N.Y. TIMES, Dec. 17, 2000, § 1, at 55.

17. See SIERRA LEONE COUNTRY REPORT, *supra* note 6, § 1(g); see also AMNESTY INTERNATIONAL, *supra* note 6 (explaining that this group is the “civilian militia” supporting President Kabbah). The group admitted, however, that it had about 200 child soldiers as late as November 1999. See AMNESTY INTERNATIONAL, *supra* note 6.

18. See SIERRA LEONE COUNTRY REPORT, *supra* note 6, intro., § 5.

19. See photograph by Tyler Hicks, captioned “Soldiers of the Movement for the Liberation of Congo moved by boat along the Ubangi River last week,” accompanying Ian Fisher, *Congo’s War Triumphs Over Peace Accord*, N.Y. TIMES, Sept. 18, 2000, at A1; Associated Press, *Rebel Twins Say Fighting Is Finished For Them*, N.Y. TIMES, Jan. 23, 2001, at A4.

20. See François Bugnion, *Les enfants soldats et le droit international humanitaire*, 12 AFR. J. INT’L & COMP. L. 262, 264 (2000) (citing involvement of children in wars since medieval times); Dominique Marshall, *The construction of children as an object of international relations: The Declaration of Children’s Rights and the Child Welfare Committee of League of Nations, 1900-1924*, 7 INT’L J. CHILDREN’S RTS. 103, 133-34 n.149 (1999) (noting that historian Stéphane Audoin-

appears to be escalating. It is estimated there are 300,000 child soldiers worldwide, more than half of them in Africa.²¹ A 1996 report by Graça Machel, an expert appointed by the U.N. Secretary-General, deemed growing use an “alarming” global trend.²²

Machel traced this development to several factors: the preference of commanders for children, who are “more obedient” and “easier to manipulate than adult soldiers”; the susceptibility of adolescents, often impoverished, to ideological rallying cries; and the availability of cheap, light firearms.²³ Her report urged release of all child combatants and implementation of an ambitious network of programs aimed at rehabilitation and prevention.²⁴

Since publication of Machel’s report, the Security Council has condemned the use of child soldiers.²⁵ A number of international treaties likewise addressed the issue.²⁶ The 1998 Rome Statute of the proposed International Criminal Court stated that conscripting, enlisting, or using in combat children under fifteen is a war crime.²⁷ A 2000 Optional Protocol would amend the 1989 Convention on the Rights of the Child to raise the minimum age for compulsory recruitment and for combat duty from fifteen to eighteen.²⁸

Rousseau had maintained that in much of history the French viewed the child not as a victim, but as “a heroic soldier”).

21. See Bugnion, *supra* note 20, at 265 & n.4.

22. *Impact of Armed Conflict on Children: Report of the expert of the Secretary-General, Ms. Graça Machel, submitted pursuant to General Assembly resolution 48/157*, ¶ 34, U.N. Doc. A/51/306, 51st Sess., Item 108 of the provisional agenda (1996) [hereinafter Machel report].

23. See *id.*, ¶¶ 27, 34, 42-43. See also Bugnion, *supra* note 20, at 264-65 (stating that the proliferation of lightweight, small-caliber arms enables children to carry weapons that can destroy entire families in a few seconds).

24. See Machel report, *supra* note 22, ¶¶ 49-62.

25. See S.C. Res. 1261, 54th Sess., 4037th mtg., U.N. Doc. S/Res/1261 (1999).

26. In addition to the treaties mentioned in the balance of this paragraph, see International Labour Organization, *Worst Forms of Child Labour Convention*, 1999 (No. 182), arts. 1-3 (pledging to take steps to end “worst forms of child labour,” including “forced or compulsory recruitment of children for use in armed combat”). See also Mark E. Wojcik, Cris Revaz & Lois A. Gochnauer, *International Human Rights*, 34 INT’L LAW. 761, 771-72 (2000) (noting recent efforts to outlaw use of child soldiers).

27. Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.183/9*, art. 8(2)(b)(xxvi), reprinted in 37 I.L.M. 999, 1008 (1998) [hereinafter ICC Statute].

28. Compare Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, arts. 1-2, 4, U.N. Doc. A/54/L.84, May 16, 2000 (setting age at eighteen) with Convention on the Rights of the Child, art. 38, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25 (1989) (setting age at fifteen). See also Bugnion, *supra* note 20, at 266-75 (tracing efforts to raise age from fifteen to eighteen in various international instruments).

Clearly, the questions of how to prevent recruitment of child soldiers and how to deal with child veterans will linger even after the United Nations acts on Sierra Leone.²⁹

III. EVOLUTION OF PROPOSALS TO TRY SIERRA LEONE CHILD SOLDIERS

On August 14, 2000, the U.N. Security Council, acting on a request by Sierra Leone's government, asked the Secretary-General for a report on establishment of "an independent special court" to adjudicate atrocities.³⁰ Its resolution recommended conferring "personal jurisdiction over persons who bear the greatest responsibility" for such offenses, "including those leaders who, in committing such crimes, have threatened the establishment and implementation of the peace process in Sierra Leone. . . ."³¹ Because of this narrow language, the Security Council's action was dubbed the "Sankoh resolution."³²

A. U.N. Secretary-General Annan's Proposal for a Juvenile Chamber

Seven weeks later, Annan submitted a proposed agreement and draft statute for a Special Court for Sierra Leone.³³ His plan called for a mixed tribunal, composed of Sierra Leonean as well as international judges. The court would consider charges based on domestic and international criminal law; that is, arson and abuses of girls, as well as crimes against humanity, violations of the law of internal armed conflict, and violations of international humanitarian law.³⁴ Offenses in the last category would include "[a]bduction and forced recruitment of children under the age of 15 years

29. It is a question with which Rwanda also has struggled in the wake of the 1994 genocide, committed in part by children. See generally Chen Reis, *Trying the Future, Avenging the Past: The Implications of Prosecuting Children for Participating in Internal Armed Conflicts*, 28 COLUM. HUM. RTS. L. REV. 629 (1997).

30. See S.C. Res. 1315, 55th Sess., 4186th mtg., preamble, ¶¶ 1, 5-8, U.N. Doc. S/Res/1315 (2000) [hereinafter Resolution 1315]. In this instance, the Security Council chose a path different from that used in two recent incidents. See Micaela Frulli, *The Special Court for Sierra Leone: Some Preliminary Comments*, 11 EUR. J. INT'L L. 857, 860 (2000) (characterizing establishment of *ad hoc* tribunals for Rwanda and the former Yugoslavia as "unilateral and 'authoritarian,'" and stating that in the case of Sierra Leone, "it was decided to take into account as far as possible the concerns, views and demands of the state where the crimes were allegedly perpetrated").

31. Resolution 1315, *supra* note 30, ¶ 3.

32. *Government Welcomes War Crimes Court*, AFR. NEWS SERVICE, Aug. 16, 2000, available at 2000 WL 25340641 (quoting Peter Takirambudde, executive director of the Africa Division of Human Rights Watch).

33. See *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. SCOR, 52d Sess., U.N. Doc. S/2000/915 (2000) [hereinafter Secretary-General's Special Court Report]. Attached to the report are the proposed Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone and the draft Statute of the Special Court for Sierra Leone [hereinafter Special Court Statute].

34. See Special Court Statute, *supra* note 33, arts. 2-5.

into the armed forces or groups for the purpose of using them to participate actively in hostilities.”³⁵

The Special Court would have jurisdiction over persons alleged to have been “most responsible for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996,” the date of the Abidjan Accord.³⁶ Annan stated that the reference to the “most responsible,” a formulation broader than the Security Council’s reference to those bearing “the greatest responsibility,” would enable the prosecutor to charge not only leaders, but also persons whose alleged crimes were especially grave or massive in scale.³⁷

In determining those “most responsible,” the Special Court prosecutor would be permitted to look at persons believed to have committed atrocities when they were between fifteen and eighteen years of age.³⁸ Defendants younger than eighteen would be classified as “juvenile offenders.”³⁹

Although it authorized charges against juveniles as well as adults, the draft statute prescribed different modes of adjudication for each category of defendant. Adults were to tread the path made familiar in the last decade by the *ad hoc* international criminal tribunals for Rwanda and for the former Yugoslavia: investigation, indictment and arrest, trial, and, if convicted, incarceration. Juvenile cases would blaze a new trail. Throughout the process a juvenile is to 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.”⁴⁰ Thus, Annan’s draft statute encouraged referral of juvenile cases to the planned Truth and Reconciliation Commission for Sierra Leone, though the ultimate decision of whether to bring criminal charges would rest with the prosecutor.⁴¹

35. *Id.*, art. 4(c).

36. *See id.* The executive director of Human Rights Watch urged the Security Council to extend the Special Court’s temporal jurisdiction to 1991, when the civil war began. *See* Human Rights Watch, *Justice and the Special Court for Sierra Leone: Letter to United Nations Security Council*, Nov. 1, 2000, available at <http://www.hrw.org/press/2000/11/sl-ltr.htm>.

37. *See* Secretary-General’s Special Court Report, *supra* note 33, ¶¶ 29-30, at 6-7. The report stated that the term is not to be deemed a jurisdictional limitation, but rather a guide for exercise of prosecutorial discretion. *See id.*, ¶ 30, at 7.

38. *See* Special Court Statute, *supra* note 33, art. 7.

39. *Id.*, art. 7(2).

40. *Id.*

41. *See id.*, art. 15(5) (recommending consideration of “alternative truth and reconciliation mechanisms”). When the Secretary-General submitted the draft statute to the Security Council, the Sierra Leone truth commission had not yet begun operating. *See* Secretary-General’s Special Court Report, *supra* note 33, ¶ 33, at 7. That is expected to occur sometime in 2002. *See Twelfth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, U.N. SCOR, 56th Sess., ¶¶

Trial of a juvenile, moreover, would take place apart from any adult codefendants. A special Juvenile Chamber, comprising “at least one sitting judge and one alternate judge possessing the required qualifications and experience in juvenile justice,” would hear the case.⁴² A juvenile’s identity could remain anonymous.⁴³ The proceedings could be held *in camera*, though presumably according to the same fair-trial procedures guaranteed adult defendants.⁴⁴ Defense aid would include not only legal counsel, but also social assistance and participation by the juvenile’s parent or guardian.⁴⁵ The statute speaks not of sentencing, but rather of “disposition” of a juvenile’s case by rehabilitative means such as supervision or community service, counseling, foster care, and participation in correctional, educational, training, disarmament, and reintegration programs.⁴⁶

The Secretary-General’s report termed the question of whether to prosecute children in such a tribunal a “moral dilemma.”⁴⁷ On the one hand, child soldiers often are the victims of forcible abduction, drugging, and duress, and nongovernmental organizations had argued that holding children accountable in court would endanger their rehabilitation.⁴⁸ On the other hand, Sierra Leoneans insisted that combatants suspected of heinous offenses – even children – be held criminally responsible.⁴⁹ The Secretary-General thus posited an accommodation of both views, one that allows prosecution yet advances an alternative means of reconciliation, and further requires that convicted juveniles receive rehabilitation rather than incarceration.⁵⁰ In Annan’s words,

67-68, at 9, U.N. Doc. S/2001/1195 (2001) [hereinafter *Twelfth Report*]. The Sierra Leone statute proposing to establish a seven-member commission may be found at <http://www.sierra-leone.org/trcat2000.html>, pt. II(3)(1) (last visited Dec. 14, 2001).

42. See Special Court Statute, *supra* note 33, art. 7(2), (3).

43. See *id.*, art. 7(3)(e).

44. See *id.*; see also *id.*, art. 17 (articulating rights of the accused to “a fair and public” trial with defendant present, “subject to measures . . . for the protection of victims and witnesses”; to the presumption of innocence; to information of the nature and cause of charges; to adequate time and facilities for preparation of a defense; to counsel of choice or assignment of counsel if indigent; to examination of adverse witnesses and attendance of favorable witnesses; to an interpreter if needed; and to be free from giving a compelled confession or adverse testimony).

45. See *id.*, art. 7(3)(d).

46. See *id.*, art. 7(3)(f).

47. See Secretary-General’s Special Court Report, *supra* note 33, ¶ 32, at 7.

48. See *id.*, ¶ 35, at 7. See also Barbara Crossette, *Sierra Leone to Try Juveniles Separately in U.N. Tribunal Plan*, N.Y. TIMES, Oct. 6, 2000, at A7 (reporting on objections to proposal by UNICEF and various human rights organizations).

49. See Secretary-General’s Special Court Report, *supra* note 33, ¶ 32, at 7. See also Crossette, *supra* note 48 (stating that Sierra Leone’s government initially asked that no age limit be placed on prosecution of those deemed “most responsible” for atrocities).

50. See Secretary-General’s Special Court Report, *supra* note 33, ¶¶ 36-37, at 7-8.

[I]f the Council, also weighing in the moral-education message to the present and next generation of children in Sierra Leone, comes to the conclusion that persons under the age of 18 should be eligible for prosecution, the statutory provisions elaborated will strike an appropriate balance between all conflicting interests and provide the necessary guarantees of juvenile justice.⁵¹

B. U.N. Security Council's Dilution of Annan's Proposal

On December 22, 2000, the Security Council's President responded by letter to Annan's proposal.⁵² The letter reiterated the support of Security Council members for a Special Court for Sierra Leone, yet called for three changes pivotal to the question of how to treat child soldiers.⁵³ First, it described the crime of creating child soldiers in terms more encompassing than Annan had, so that "[c]onscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities" was defined as a violation of international humanitarian law.⁵⁴ Second, the letter amended the draft statute to provide that the Special Court would "have the power to prosecute persons who bear the greatest responsibility" for atrocities.⁵⁵ As in the Security Council's August 2000 resolution, this was to include "leaders" whose criminal behavior had

51. *Id.*, ¶ 38, at 8.

52. See Letter dated 22 December 2000 from the President of the Security Council addressed to the Secretary General, U.N. Doc. S/2000/1234 (2000) [hereinafter Security Council Letter]. Attached to the letter was an annex, which included amendments to the proposed agreement and the draft statute [hereinafter Amended Draft Statute].

53. The letter further dealt with how the court would be funded, a critical matter beyond the scope of this article. Compare Security Council Letter, *supra* note 52, ¶ 2, at 2 (restating Security Council preference for funding Special Court with voluntary contributions) with Letter dated 12 January 2001 from the Secretary-General addressed to the President of the Security Council, ¶¶ 10-13, at 3-4, U.N. SCOR, U.N. Doc. S/2001/40 (2001) [hereinafter Secretary-General's Letter] (agreeing to move forward based on voluntary funding, but only after receipt of contributions sufficient for one year of operation, plus pledges sufficient for an additional two years).

54. Amended Draft Statute, *supra* note 52, art. 4(c). Annan's original proposal had proscribed only recruitment by force or kidnaping. See Special Court Statute, *supra* note 33, art. 4(c), quoted *supra* text at note 35. His report had maintained that it was unclear whether customary international law yet prohibits recruitment not entailing force. See Secretary-General's Special Court Report, *supra* note 33, ¶¶ 17-18, at 4. Human rights organizations disagreed and argued for broader language, patterned on the ICC Statute, *supra* note 27, art. 8(2)(b)(xxvi), reprinted in 37 I.L.M. at 1008. See Human Rights Watch, *supra* note 36; see also Frulli, *supra* note 30, at 865-66. The Security Council's amendment endorses the latter view.

55. Amended Draft Statute, *supra* note 52, art. 1(a).

threatened efforts to pacify Sierra Leone.⁵⁶ Third, the letter substituted Annan's detailed proposal for a Juvenile Chamber with this single paragraph:

Should any person who was at the time of the alleged commission of the crime below 18 years of age come before the Court, he or she shall 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, and in accordance with international human rights standards, particularly the rights of the child.⁵⁷

Such "simpler and more general formulations" were justified, the letter indicated, because it had narrowed the scope of individuals who might come before the Special Court.⁵⁸ With specific reference to "juvenile offenders," the letter stated, "It is the view of the members of the Council that the Truth and Reconciliation Commission will have a major role to play," and it urged development of "suitable institutions, including specific provisions related to children, to this end."⁵⁹

By reply letter dated January 12, 2001, Annan acknowledged that the amendments made it less likely that the Special Court would hear cases involving defendants who were children at the time of the alleged crimes.⁶⁰ He agreed that the proposed truth commission could handle cases of juveniles; nevertheless, he held fast to the view that the Special Court too could play a role.⁶¹ Annan further maintained that the amended draft statute's reference to certain leaders as potential defendants is intended to guide, but not to tie the hands of, the prosecutor.⁶² Having thus interpreted the amendments to preserve the possibility of juvenile prosecutions, Annan reinstated two components of his original plan for a Juvenile Chamber. According to this proposal, the final statute would specify that the Special Court could not hear cases of persons who had been less than fifteen when the crime occurred, but that there would be jurisdiction for persons who had been between fifteen and eighteen.⁶³ Moreover, the statute would make

56. Compare *id.*, art. 1(a), with Resolution 1315, *supra* note 30, ¶ 3.

57. Amended Draft Statute, *supra* note 52, art. 7.

58. See Security Council Letter, *supra* note 52, ¶ 1, at 1.

59. *Id.*, ¶ 1, at 1.

60. See Secretary-General's Letter, *supra* note 53, ¶ 2, at 1.

61. See *id.*, ¶ 9, at 2 ("[C]are must be taken to ensure that the Special Court for Sierra Leone and the Truth and Reconciliation Commission will operate in a complementary and mutually supportive manner, fully respectful of their distinct but related functions.").

62. See *id.*, ¶ 3, at 1-2.

63. See *id.*, ¶ 7, at 2 (proposing revision to Article 7 of Amended Draft Statute, *supra* note 52).

clear, as had Annan's original proposal, that any juvenile found guilty could not be sentenced to prison, but rather would be ordered to participate in programs aimed at rehabilitation.⁶⁴

IV. CONTEXTUAL ANALYSIS OF THE JUVENILE CHAMBER PROPOSAL

The idea of a hybrid tribunal is not new; planning for a similar body to try leaders of the Khmer Rouge reign of terror in the 1970s has been under way for a number of years.⁶⁵ What is unique about the draft statute for the Special Court for Sierra Leone is its attention to child soldiers. Such concern is warranted. A significant number of children fought on all sides of Sierra Leone's long war. Recruited out of despair or by force, retained through drugs and terror, these child soldiers were driven to commit unspeakable acts. Many remain in the bush. Those who have returned face an arduous road to psychological recovery and social reintegration. Like Birahima, they remain haunted by the ghosts of those whom they have killed. The unfortunate global prevalence of child soldiering requires thought about how to address the needs of these children and their societies.

The U.N. Secretary-General's proposal for a Juvenile Chamber of the Special Court for Sierra Leone deserves particular consideration. At the time this article is written, it does seem likely that the final statute will not include many components of Annan's original plan. But the issues those components entail – no less than the very notion of a Juvenile Chamber – will have to be confronted. Some may be broached in development of the Special Court's own procedural and evidentiary rules.⁶⁶ Others may arise in other conflicts, when, as is now the case with Sierra Leone, states and the international community struggle with how to treat children who may be both victims and perpetrators.

64. See *id.*, ¶ 8, at 2 (proposing that language in Special Court Statute, *supra* note 33, art. 7(3)(e), be added to Article 7 of Amended Draft Statute, *supra* note 52). This article reflects drafting through mid-February 2001. As this article went to press in December 2001, the Special Court remained in preliminary stages, as U.N. officials sought funding and continued planning efforts. See *Twelfth Report*, *supra* note 41, ¶¶ 69-72, at 9-10.

65. See Chris Decherd, *Human rights envoy urges U.N. to resume talks on Khmer Rouge tribunal*, ASSOCIATED PRESS, Nov. 28, 2001, available in Westlaw, 11/28/01 APWIRES; David Lamb, *Cambodia Moves to Create a Tribunal on Khmer Rouge*, L.A. TIMES, Jan. 3, 2001, at A1; Associated Press, *U.N., Cambodia Near Pact on Tribunal*, L.A. TIMES, Apr. 30, 2000, at A4.

66. See Special Court Statute, *supra* note 33, art. 14 (providing that the Special Court should adapt the rules of the International Criminal Tribunal for Rwanda to its own context). See also Secretary-General's Special Court Report, *supra* note 33, ¶ 19, at 5 (stating that the court may consult Sierra Leone's procedural rules in determining necessary changes).

A. *The Concept of a Juvenile Chamber*

Inclusion of juveniles within the jurisdiction of a tribunal adjudicating international humanitarian law, under the auspices of an international organization is, to be sure, novel. The statutes for the *ad hoc* international criminal tribunals do not discuss age, and the Yugoslavia tribunal has considered youth as a mitigating factor for a defendant who was twenty-three at the time of his crimes.⁶⁷ Furthermore, the ICC Statute expressly forbids prosecution of individuals under eighteen years of age when they were alleged to have committed a crime.⁶⁸

It is thus not surprising that human rights organizations opposed Annan's original proposal. When the draft statute first was released, UNICEF and other organizations argued that the plan ran counter to international norms regarding the treatment of children.⁶⁹ In a subsequent letter to the Security Council, Human Rights Watch wrote:

Although we believe that children should be accountable for their offenses, in light of their inherent immaturity as well as the subjection of many child combatants to forcible abduction, brutalization and other forms of coercion, we recommend that the Special Court's limited resources would be far better used in pursuit of justice for adult offenders, rather than children.⁷⁰

This latter, more temperate approach is to be commended. Too great a focus on international norms invites criticism that Western organizations are attempting to impose their own, inapposite values without due regard to the specific situation. One need not be a strict cultural relativist to harbor such concern. Sierra Leone is the poorest country on earth.⁷¹ It has suffered more than ten years of war. In such circumstances, how relevant are the ideals of prosperous Westerners? What is a child in a society in which a male's average life span is thirty-seven years?⁷² Certainly teenaged boys and girls

67. See *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Trial Chamber, Judgement, ¶¶ 284, 291 (ICTY 1998), reprinted in 38 I.L.M. 317, 373 (1999); see also *id.*, ¶ 291, reprinted in 38 I.L.M. at 375 (stating that it is "especially mindful of the age of the accused," and expressing "support for rehabilitative programmes in which the accused may participate while serving his sentence" for defendant who was twenty-three at the time of his crimes).

68. See ICC Statute, *supra* note 27, art. 26, reprinted in 37 I.L.M. at 1017.

69. See Crossette, *supra* note 48.

70. Human Rights Watch, *supra* note 36.

71. According to a U.N. report, in 1997 Sierra Leone had the lowest human development index of all states. See U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2000 137 (2000) (showing Sierra Leone last out of 174 ranked states). Its per-capita gross domestic product was \$410; its adult literacy rate, 33.3 percent. See *id.* at 134.

72. See *id.* at 137 (reporting that in 1997, Sierra Leone's life expectancy rate at birth was 37.2 years). By way of contrast, in Canada the life expectancy rate at birth was seventy-nine years. See *id.* at 134.

in Sierra Leone may share with adolescents elsewhere impulsiveness and rash invincibility. But Sierra Leoneans live in a society in which childhood cannot exist, in which responsibility must be assumed at an early age.⁷³ The crimes at issue defy imagination. In this context, it is not difficult to understand why the people of Sierra Leone would want to hold war criminals accountable without regard to age.

Considering such concerns need not require abandoning fundamental principles of justice. In recent years, scholars have begun to chart a middle way between rigid universalism and formless relativism. They advocate a pluralistic approach, one that forsakes imposition of a single world-view in favor of consideration and accommodation of particular viewpoints.⁷⁴ Pluralism, in the words of Professor Adeno Addis, “holds that differences are to be celebrated rather than feared.”⁷⁵ Pluralism begins simply, with acknowledgment of difference. It ought not to stop there: acknowledgment alone may cause the different group to be seen as a deviant “Other.” Such a perception fosters “paternalistic pluralism,” by which the dominant group deigns to preserve the Other in a cultural capsule, but shuns trying to integrate it into society.⁷⁶ Paternalistic pluralism both perpetuates the dominant group’s view of an Other as inferior and deprives the society as a whole of contributions the Other could make. Pluralism is best realized, in Addis’ view, when communities not only acknowledge each other’s differences, but also work as equal partners, “in a creative and constant dialogue,” toward compromises that respect, accommodate, and incorporate differences.⁷⁷ This process Addis labeled “critical pluralism.”⁷⁸

The Secretary-General’s report seems to have adopted this approach. Groundwork for establishment of a Special Court began at the request of the Sierra Leone government. That government participated in negotiation of a draft statute, making demands based on its own views and values. Most

73. Cf. Bugnion, *supra* note 20, at 270 (observing that, despite international efforts to define childhood, “the notion of maturity varies from one country to another and, in each country, according to the type of activity at issue”) (“la notion de maturité varie d’un pays à l’autre et, dans chaque pays, selon le type d’activité envisagée”); Marshall, *supra* note 20, at 128-145 (discussing how attitudes about childhood reflected constructions of specific societies).

74. See, e.g., Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 66 NOTRE DAME L. REV. 1219 (1991) (setting forth theory of “critical pluralism”); Mireille Delmas-Marty, *Human Rights: an ideal of universality*, http://www.france.diplomatie.fr/label_france/DUDH/english/ideal.html (last visited Dec. 14, 2001) (proposing a “genuinely pluralist common law” as a basis for protection of human rights).

75. Addis, *supra* note 74, at 1224.

76. *Id.* at 1223-26.

77. *Id.* at 1224.

78. *Id.* at 1223-24.

notable were its demands that suspects of all ages be subject to prosecution, and that conviction carry the possibility of capital punishment.⁷⁹ Human rights advocates and child rehabilitation workers also weighed in.⁸⁰ The Secretary-General refused the request for the death penalty, yet compromised on the issue of juvenile defendants. At face value, at least, the process reflected the critical pluralist model. The result, Annan's original plan, seemed to represent a statute that met the needs of the specific society without compromising fundamental criminal justice principles.

It is important to recall that, even in its amended form, the Special Court statute embodies a twofold approach to child-soldiering. Not only does the Statute retain the possibility that some accused juveniles will face prosecution, but it also encourages prosecution and punishment of those responsible for impressing children into military service. Prosecutions for the crime of drawing children into combat duty may have a lasting effect. As the 1996 U.N. report by Graça Machel stated, "Unless those at every level of political and military command fear that they will be held accountable for crimes and subject to prosecution, there is little prospect of restraining their behaviour during armed conflicts."⁸¹

Furthermore, it is far from clear that Western norms preclude calling children to account for commission of atrocities. It is true that the ICC Statute forbids prosecution of individuals under the age of eighteen. That does not mean that minors cannot be prosecuted at all. The statute's complementarity provisions indicate a strong preference for all cases to be handled at the national level.⁸² Nothing in the statute bars states from prosecuting children for crimes against humanity, genocide, or other heinous offenses.

Many, perhaps most, states provide for adjudication of a child charged with conduct that would be criminal if committed by an adult.⁸³ Some Western industrialized countries even seem inclined to treat juveniles with increased severity. California prosecutors recently considered bringing a delinquency petition against an eleven-year-old girl who had admitted having lied that she was kidnapped on her way home from school.⁸⁴ The U.S. trend toward transfer of juvenile cases to adult criminal courts is well documented.⁸⁵ In France, one faction calls for repression of "*sauvageons*,"

79. See Secretary-General's Special Court Report, *supra* note 33, at 2, ¶ 7.

80. See *id.* at 7, ¶ 34.

81. Machel report, *supra* note 22, ¶ 248.

82. See ICC Statute, *supra* note 27, arts. 1, 17, reprinted in 37 I.L.M. at 999, 1012.

83. See United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985) (discussing standards to which juvenile justice systems in U.N. member states should adhere).

84. See *Child Says Report of Kidnap Attempt Was False*, S.F. CHRON., Dec. 16, 2000, at A27.

85. See generally Lisa S. Beresford, Comment, *Is Lowering the Age at Which Juveniles Can Be*

or wild children, while an opposing faction prefers rehabilitation of “adolescents whose personalities are still in formation.”⁸⁶

Whether deviant children are victims or perpetrators is no more apparent during armed conflict. Children are most vulnerable; they suffer dislocation and trauma that may linger for decades.⁸⁷ Yet these ordeals also may lead them to join the battle, to commit crimes of war. Thus even the Machel report, which stressed the plight of children as war victims in need of aid, recognized that some child perpetrators could be tried. It recommended that a minimum age of prosecution be established, and further that child defendants be accorded “the fundamental rights and legal safeguards accorded to children under the Convention on the Rights of the Child.”⁸⁸ The report specified:

Children should, inter alia, be given the opportunity to participate in proceedings affecting them, either directly or through a representative or an appropriate body, benefit from legal counseling and enjoy due process of law. Deprivation of liberty should never be unlawful or arbitrary and should only be used as a measure of last resort. In all instances, alternatives to institutional care should be sought.⁸⁹

What is required, the report suggested, is appreciation of “the complexity of balancing culpability, a community’s sense of justice and ‘the best interests of the child’”⁹⁰ – in short, a willingness to engage in a truly pluralistic dialogue.

Sierra Leone does not appear to have an adequate system for adjudicating juveniles suspected of atrocities.⁹¹ The Truth and Reconciliation Commission, on which the Security Council would place great emphasis, is not yet operative. Adjudication by a mixed tribunal

Transferred to Adult Criminal Court the Answer to Juvenile Crime? A State-by-State Assessment, 37 SAN DIEGO L. REV. 783 (2000).

86. See Cecile Prieur, *La protection judiciaire de la jeunesse défend ses missions éducatives*, LE MONDE, Nov. 21, 2000, available at LEXIS, Le Monde (quoting advocates on either side of the debate, the latter France’s Justice Minister).

87. Indeed, concern for the special suffering of children during World War I motivated the first international pronouncement on children’s rights. See Marshall, *supra* note 20, at 133 (discussing circumstances that led to 1924 Declaration of Children’s Rights, *reprinted id.* at 129).

88. Machel report, *supra* note 22, ¶ 251.

89. *Id.*

90. *Id.*, ¶ 250.

91. Cf. SIERRA LEONE COUNTRY REPORT, *supra* note 6, intro. (indicating that civil war had rendered the entire judicial system of Sierra Leone unable to function).

would satisfy one justification for international criminal prosecution; namely, to provide a judicial accountability mechanism when states cannot. In the words of the Machel report, "It is difficult, if not impossible, to achieve reconciliation without justice."⁹² Provision of trials for juveniles suspected of the worst crimes could contribute to reconciliation. As Annan's report recognized, it could send a "moral-education message" about accountability, and thus provide a modicum of redress for the victims of Sierra Leone's war.

Trials could even promote rehabilitation of child soldiers haled before the court. The proposed Truth and Reconciliation Commission may not have the same power of compulsion as the Special Court. Participation in rehabilitation programs has been voluntary, and less than U.N. officials would have liked.⁹³ Juveniles under court order to take part in rehabilitation programs could benefit from ensuing closer supervision and guidance. In these special cases, paternalism is proper.

The concept of a Juvenile Chamber for the Special Court for Sierra Leone was, therefore, a good one. That is not to say, however, that no devils lurk in the details of proposals for grappling with child soldiers.

B. Classification of Juveniles

Although Annan's original proposal conferred jurisdiction over persons as young as fifteen at the time the alleged offenses occurred, it prescribes Juvenile Chamber treatment only for persons under eighteen at the time of prosecution.⁹⁴ It thus left unclear whether a defendant eighteen or older, who was younger than eighteen at the time of the alleged offense, would be treated as a juvenile or an adult. Annan's later suggestion, in response to the Security Council's amendment, clarified that the age at the time of the incident, not age at the time of prosecution, should determine adult or juvenile status.⁹⁵ A contrary result would undermine the special attention to children that animates both the Machel report and the draft statute.

92. Machel report, *supra* note 22, ¶ 248.

93. See, e.g., *Third Report of the Secretary-General on the United Nations Mission in Sierra Leone*, U.N. SCOR, 55th Sess., ¶¶ 6, 23-25, U.N. Doc. S/2000/186 (2000) (reporting on slowness of disarmament, demobilization, and reintegration programs). Disarmament, demobilization, and reintegration for all combatants came to a halt after the May 2000 hostage-taking. See *Fifth Report of the Secretary-General on the United Nations Mission in Sierra Leone*, U.N. SCOR, 55th Sess., ¶¶ 2, 32-36, U.N. Doc. S/2000/751 (2000).

94. Compare Special Court Statute, *supra* note 33, art. 7(1) with *id.* art. 7(2).

95. See Secretary-General's Letter, *supra* note 53, ¶ 7, at 3. This conforms with the law in, for instance, Minnesota, which focuses on the age at the time of the crime in determining whether the accused is a "child"; however, the possibility that a child accused of violent crime may be transferred to adult court dilutes the force of this definition. MINN. STAT. § 260B.255 (2000).

Furthermore, the original draft statute strayed in labeling children accused of crime as “juvenile offenders.”⁹⁶ Although the Security Council’s amendment omitted the term from the draft statute, the Council continued to use it in discussion.⁹⁷ The term, at odds with presumption of innocence, should be supplanted with something like “accused juvenile” or “juvenile defendant.”⁹⁸

C. Special Procedures

Annan’s proposed means of dealing with accused juveniles would be progressive in the United States, where few juvenile courts adhere to the reformative goals of the first juvenile court, instituted in 1899 in Chicago.⁹⁹ In most of today’s United States, children often are prosecuted and punished as adults. Those adjudicated as juveniles and found delinquent are detained in facilities that may approximate prison.¹⁰⁰

Perversely, however, the very procedures that the original draft statute proffered to protect juveniles – procedures that might resurface in the rules of this or some other tribunal – could thwart a key function of a Juvenile Chamber.

The Secretary-General’s report advised the Security Council, when deciding whether to establish the Juvenile Chamber, to consider the “moral-education message to the present and next generation of children in Sierra Leone.”¹⁰¹ One wonders whether the message will reach those who most need to hear it, such as children likely to be lured into military and paramilitary service.¹⁰² Still, some in Sierra Leonean society might learn of,

96. Special Court Statute, *supra* note 33, art. 7(2).

97. See Security Council Letter, *supra* note 52, ¶ 1, at 1.

98. In a similar vein, a journalist has complained that the goal embodied in the official title for the Yugoslavia tribunal – “Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law’ (as opposed to accused of serious violations) – shed[s] doubt on the presumption of innocence . . .” Henri Astier, *Defending War Crimes Suspects Is Bound to Be Unpopular. But Without Due Process, International Tribunals Won’t Serve Justice*, AMER. PROSPECT, Aug. 14, 2000, available in 2000 WL 4739377. See Statute for the International Criminal Tribunal for the Former Yugoslavia, intro., S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg. at 1, U.N. Doc. S/RES/827 (1993), reprinted in 32 I.L.M. 1159, 1192 (1993) (containing this language); Amended Draft Statute, *supra* note 52, art.1(a) (using similar words to define court’s competence).

99. See, e.g., THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 86-89 (1991); CLIFFORD E. SIMONSEN, JUVENILE JUSTICE IN AMERICA 228 (1991).

100. See Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 BOSTON U. L. REV. 821, 894-95 (1988) (observing little difference between adult and juvenile facilities).

101. Secretary-General’s Special Court Report, *supra* note 24, ¶ 38, at 8.

102. A New York Times account underscores the difficulty of dissemination of information to

and from, trials. Though claims about the deterrence value of criminal prosecution ought to be viewed skeptically, it is possible that persons contemplating use of child soldiers could learn that they may not do so with impunity. Victims could attain a sense of redress and vindication, could even turn away from revenge, upon learning that the worst perpetrators have been brought to justice.¹⁰³ Perhaps the greatest education might come in a trial in which the juvenile asserted duress or diminished capacity.¹⁰⁴ Such a defense would require ventilation of all the sordid details of forced recruitment and enforced service of child soldiers. Publicity about what Sierra Leone's children endured – public revelation of child soldiers not only as perpetrators but also as victims¹⁰⁵ – could foster the reintegration of child veterans into a society now wary of them.

None of those results could occur, however, if a Juvenile Chamber were to keep proceedings against accused juveniles secret.¹⁰⁶ Therein lies a new moral dilemma. How might a court cloak child soldiers in confidentiality so that, once reformed, they can return to society, yet simultaneously disseminate the proceedings in a manner that will serve the goals of education and reconstruction? There is no obvious answer; on this, a new round of creative dialogue is in order.

CONCLUSION

It is today's sad truth that children scarcely able to dribble a soccer ball may take up arms and commit unthinkable atrocities. They may have no choice. In the novel quoted at the outset of this article, Birahima matter-of-factly observes:

remote and ravaged areas. Of an interview with Jemilatu Bangura, a thirty-year-old woman who had come to a regional town from her village in the bush, the reporter wrote:

[S]he isolated was Ms. Bangura that she did not know whether Sierra Leone was at peace or at war. She did not know that such a thing as the United Nations existed, much less that it now had 12,500 troops in her country.

'I don't know, I don't know,' she repeated.

Norimitsu Onishi, *Horrors Behind Rebel Lines in Sierra Leone*, N.Y. TIMES, Nov. 30, 2000, at A1.

103. See MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS* 26 (1999) (discussing the possibility that a "trial in the aftermath of mass atrocity" may "mark an effort between vengeance and forgiveness"); accord GARY JONATHAN BASS, *STAY THE HAND OF VENGEANCE* 159 (2000) ("A criminal trial need not just be a giving away to vengeance; it is a containment of it.").

104. Cf. *Prosecutor v. Erdemovic*, Case No. IT-96-22, Appeals Chamber, Judgement (ICTY Oct. 7, 1997), available at http://www.un.org/icty/erdemovic/appeal/judgement/erd_aj971007e.htm (last visited Feb. 8, 2002) (ruling that proof of duress may be a reason for mitigation of sentence following conviction for a crime against humanity).

105. Cf. Secretary-General's Special Court Report, *supra* note 33, at 2, ¶ 7 (stating that people of Sierra Leone must be led to understand "that although the children of Sierra Leone may be among those who have committed the worst crimes, they are to be regarded first and foremost as victims").

106. See Special Court Statute, *supra* note 33, art. 7(3)(e) (permitting anonymity measures).

And when you no longer have anyone on earth, neither mother nor father nor brother nor sister, and you are little, a little darling in a screwed-up and barbarous country where everyone slits throats, what do you do?

Of course you become a small soldier, a child soldier, to eat and to cut throats in turn. Nothing else remains.¹⁰⁷

Any effort to reconcile war-scarred children with civil society must exploit all resources. Humanitarian relief is essential. International political will to effect lasting peace and international economic support to nurture educational and employment opportunities are most important, yet lacking in Sierra Leone. Special Court prosecutions of juveniles suspected of the most awful crimes may aid both rehabilitation and accountability, and thus serve as one more tool for reconciliation.

¹⁰⁷. KOUROUMA, *supra* note 3, at 100 (“Et quand on n’a plus personne sur terre, ni père ni mère ni frère ni soeur, et qu’on est petit, un petit mignon dans un pays foutu et barbare où tout le monde s’égorge, que fait-on? Bien sûr on devient un enfant-soldat, un small-soldier, un child-soldier pour manger et pour égorger aussi à son tour; il n’y a que ça qui reste.”).
