

The Protection of Children in Peacemaking and Peacekeeping Processes

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I. BACKGROUND AND INTRODUCTION

Despite increased international attention to and awareness of children's rights, children are largely overlooked in the peacemaking and peacekeeping process. Rules of engagement for peacekeepers disregard children, and reconstruction and reconciliation programs that emerge from negotiations ignore the differential impact on and particular needs of children. The effect is to marginalize persistent problems like the rehabilitation and reintegration of child soldiers and, more broadly, to miss the opportunity to address widespread systemic problems common to war-torn societies.

Children suffer disproportionately in war, and they benefit disproportionately less in peace. The international community has recognized the deficiency of the international bill of rights in addressing specific classes of injustice or the status of entire groups of persons, and it has acknowledged the need for programmatic tools to address the special needs of vulnerable communities. The United Nations Convention on the Rights of the Child (CRC), to which I refer throughout as a guidepost for children-oriented initiatives, is the most widely ratified human rights treaty and obliges States to take positive measures to ensure the protection of children's rights both in peace and in war.¹ A similar approach is both warranted and reasonable in peace proc-

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1. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Agenda Item 108, U.N. Doc. A/RES/44/25 (1989) [hereinafter CRC]. The CRC entered into force on 20 September 1990 and has been ratified by all but two States (the U.S. and Somalia). The CRC embraces civil, economic, social, and cultural rights, and basic humanitarian protections relevant to children. The CRC remains in force in war. One CRC principle, the concept of "the best interests of the child," advocates that priority be given to children in the allocation of resources (a concept reinforced in the Geneva Conventions). See LAWRENCE J. LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD, UNITED NATIONS LAWMAKING ON HUMAN RIGHTS (1995); Ilene Cohn, *The Convention on the Rights of the Child*:

esses. Peacemakers must buffer children from the potentially negative consequences of the peace process while respecting their evolving capacities and their right to guided participation.²

In addition to the CRC, international humanitarian law, which has long provided special protection for vulnerable children, reflects these concerns.³ Many other declarations, resolutions, and regional instruments, applicable in distinct circumstances and binding to different degrees on different actors, also urge greater protection for children in war.⁴ The law relevant to children's rights may vary depending on circumstances but a child's moral claim to special care does not.

The general thrust behind national and international action on behalf of children is the moral and legal recognition of their emotional, physical and psychological vulnerability, their need for special care, and recognition of the obligation to respect and ensure respect for their rights. These concerns reflect the value that society places on childhood for its own sake, not as a training ground for adulthood. Simultaneously, we must recognize that events in childhood will affect the individual as an adult and consequently, society as a whole.

What it Means for Children in War, 3 INT'L J. REFUGEE L. 100 (1991); Stuart Maslen, *Relevance of the Convention on the Rights of the Child to Children in Armed Conflict*, 6 TRANSNAT'L L. & CONTEMP. PROBLEMS 329 (1996); Geraldine Van Bueren, *The International Legal Protection of Children in Armed Conflicts*, 43 INT'L & COMP. L.Q. 809 (1994).

2. Throughout the Article, I refer often to the need for both "child protection" and "protection of children's rights" during peace processes. My call for child protection is not intended paternalistically, but rather reflects the fact that peacemakers have, and must assume, power over children's lives when they draft cease-fire, demobilization, reinsertion, reconciliation and reparations provisions during peace processes, not to mention when they set out to reform the legal, social and economic bases of post-conflict society. For an early espousal of the shift from the "caretaker conception of child protection" to an ideology of children's rights, see HOWARD COHEN, *EQUAL RIGHTS FOR CHILDREN* (1980). The CRC incorporates several principles to guide the implementation of child rights: the best interests of the child reflected in CRC art. 3(1), the concept of a child's evolving capacities incorporated in CRC art. 5, and the right of the child to participate effectively in decisions codified in CRC art. 12. See also GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 45-51 (1995).

3. Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV]. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature Dec. 12, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1391 (1977) [hereinafter Protocol I], Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature Dec. 12, 1977, 1125 U.N.T.S. 609, 16 I.L.M. 1442 (1977) [hereinafter Protocol II]. See Maria Teresa Dutli & Antoine Bouvier, *Protection of Children in Armed Conflict: the Rules of International Law and the Role of the International Committee of the Red Cross*, 4 INT'L J. CHILDREN'S RTS. 181 (1996); Maria Teresa Dutli, *Captured Child Combatants*, 278 INT'L REV. RED CROSS 421 (1990); Denise Plattner, *Protection of Children in International Humanitarian Law*, 240 INT'L REV. RED CROSS 140 (1984).

4. See, e.g., African Charter on the Rights and Welfare of the Child, art. 22, reprinted in INTERNATIONAL DOCUMENTS ON CHILDREN 41 (Geraldine Van Bueren, ed., 2d ed., 1998); Resolution on a European Charter of Rights of the Child 1992, Eur. Parl. Ass. Rec., ¶ 8.21, reprinted in INTERNATIONAL DOCUMENTS ON CHILDREN 54, *supra*; Declaration on the Protection of Women and Children in Emergency and Armed Conflict, U.N. GAOR Res. 3318 (XXIX), reprinted in INTERNATIONAL DOCUMENTS ON CHILDREN 442, *supra*; U.N. Declaration on the Rights of the Child 1959, principle 8, reprinted in INTERNATIONAL DOCUMENTS ON CHILDREN 5, *supra*.

Today, peacemaking does more than end war; it lays the normative ground for transition and sets the agenda for peace time. Peace processes have sometimes performed as constitutional conferences in which key actors strive to define the political, social and economic framework for a new social and legal order. The international community, states and institutions, local civil society, and international nongovernmental organizations (NGOs) come together in peace processes to determine how post-conflict society can incorporate warriors to civilian life, facilitate resettlement of the displaced and return of refugees, advance a national agenda reconciling opposing factions and social or ethnic groups, allocate resources for development, ensure equal access to justice, and remedy past injustices.

Peacemakers do not adequately address children's needs for several reasons: lack of awareness of the nature and extent of the impact of conflict on children, ineffective lobbying by child welfare advocates, and lack of access to information on child-conscious policies and programs that should be adapted or avoided in light of experiences in other contexts. Some child welfare workers, human rights advocates, and policy-makers reject advocating on behalf of specific populations (e.g., children) or specific groups of children (e.g., child soldiers) on moral, practical, and strategic grounds. Implicit in this argument is the unconvincing assumption that programs that redress general systemic wrongs will eventually benefit youth along with the population-at-large. In actuality, children are often marginalized while more aggressive groups ensure their own representation. Peace processes to date demonstrate that, absent specific references to children during peace processes, post-conflict programs and resources are not allocated to reflect children's needs. On the other hand, we have at least one clear example in which a focus on certain child rights issues during a transition period has proven a useful tool in moving society toward higher levels of protection for all groups.⁵

5.

The Grandmothers of Plaza de Mayo human rights group has identified several hundred cases of missing children. This relatively small proportion of human rights violations in Argentina played an important role in human rights monitoring, protest, and reform. The mere existence of a separate Grandmothers' organization speaks to the differential mobilization potential generated by this tactic. No other group in Argentina represents such a small number of victims, and few groups anywhere are organized around a specific type of abuse. The international community responded strongly with aid, monitoring, and technical assistance. The Grandmothers have received a high level of financial support from foreign governments, churches, and foundations, while the American Association for the Advancement of Science created a new technique of blood-typing for genetic grandpaternity specifically to assist the Grandmothers. The United Nations investigated this issue with special vigor and exerted strong diplomatic pressure for extradition on countries harboring allegedly illicit adoptive parents who had fled Argentina following the transition to democracy. Domestically, prosecutions for child-stealing were exempted from closure under the Due Obedience Law. After lobbying by the Grandmothers, the Alfonsín administration even created a Special Prosecutor to investigate missing children and established a National Genetic Data Bank to provide records for future cases of this sort.

This study examines the protection of children during peacemaking and peacekeeping, and the regional and multilateral institutions that now play a role in palliating conflicts around the world. It identifies children's substantive needs, considers efforts made in some peace processes and proposes alternatives. The focus is on what might be done to better ensure that children's rights are considered from the moment mediation efforts begin until the peace-building agenda is fully hammered out. Although many of the issues, such as human rights and peacekeeping, the potential use of regional peacekeepers, and truth, justice and reconciliation, have produced a great deal of writing and debate, no one has yet examined the conflict resolution period from a children's rights perspective.

Part II will describe the nature of war's impact on children, point out patterns common to children across conflict-types and cultures, and stress the psychosocial implications of war-related experiences. Part III seeks to identify the ways in which the modern peace process is not only a forum for determining how material resources, technical assistance, and expertise will be allocated in the post-conflict era and beyond, but is also a context in which the needs of certain populations can be addressed. I identify each of the key actors with the potential for advancing child well-being and their own constraints and concerns.

Part IV reviews the commonly occurring products and by-products of peace processes, their potential impact on children, and ways in which peacemakers can conceptualize and address child rights at each stage.

Part V summarizes a number of recommendations for all key actors. In this Part, I urge recognition by both children's rights advocates and peacemakers of the ways in which their agendas overlap. I suggest a commitment to maximizing the opportunities afforded by peace processes to secure a place for children on the post-conflict agenda.

The issue of missing children resonated so strongly because it actually combined a specific type of abuse and type of victim. The ethical basis of human rights insists that the status and behavior of victims is irrelevant, but political analysis demands that we recognize that missing children were politically privileged because they were unequivocally *innocent* victims. Other aspects of victims' characteristics also shaped the assessment of human rights abuse and the course of human rights reform in Argentina. As human rights scholars, we tally all deaths equally. But political systems do not just ask *how many*, but *who* is affected by human rights violations.

Alison Brysk, *The Politics of Measurement: The Contested Count of the Disappeared in Argentina*, 16 *HUM. RTS. Q.* 676, 680, 685, 689-90 (1994) [hereinafter *The Politics of Measurement*].

Scope (types of violation) and range (victims' characteristics) are rarely incorporated in aggregate quantitative assessments [of human rights violations], but may change the social and political impact of abuse and influence subsequent debates on human rights policy.

Id. at 677.

As a result of the Grandmother's poignant and unapologetic tactics, Admiral Emilio Massera was recently detained, and former junta leader General Jorge Videla remains under house arrest, on charges of child abduction committed during the military dictatorship. *See infra* note 206 and accompanying text.

II. THE DIFFERENTIAL IMPACT OF WAR ON CHILDREN

War affects children differently depending on the region and nature of the conflict.⁶ Any one child's experience might include direct participation in, witnessing of, or victimization during hostilities; displacement; separation from or loss of loved ones; physical injury; restricted freedoms of movement, expression or association. Types of weapons, methods of recruitment, economic insecurity, exposure to chronic violence, the influence of ideology, politics, religion, peer groups and family, a child's developmental processes and her subjective appraisal of the causes and meanings of events and of her own abilities to cope, all play a role in exacerbating or mitigating war's impact.

The experience of children in war varies widely. Land mines remain a particular danger in Afghanistan, Cambodia, and Angola but not in Guatemala. While forced recruitment of children was not a salient concern in the former Yugoslavia, it most certainly was in Mozambique and Liberia and is today in Sierra Leone and Uganda.⁷ Ideological commitment and political activity allegedly play an important role in buffering Palestinian children from some deleterious effects of the violence in the Israeli Occupied Territories⁸ and the

6. All regions in the 20th century have seen alarming and ever-increasing numbers of civilian war victims, many of them children. "During the Spanish Civil War, World War II, and the Korean and Vietnam Wars, 50%, 48%, 34%, and 48% of the deaths respectively, occurred among civilians. In the 1980s, 85% of war deaths were civilians." Edward Goldson, *The Effect of War on Children*, 20 CHILD ABUSE & NEGLECT 809, 809 (1996). This century has been called "mankind's most bloody and hateful century," in which "over 87,000,000 combatants and civilians were lost to war, and another estimated 80,000,000 persons were deliberately killed by their own governments." Walter Gary Sharp, Sr., *Protecting the Avatars of International Peace and Security*, 7 DUKE J. COMP. & INT'L L. 93, 93 (1996) citing ZBIGNIEW BRZEZINSKI, *OUT OF CONTROL: GLOBAL TURMOIL ON THE EVE OF THE TWENTY-FIRST CENTURY* 4 (1993).

7. The Lord's Resistance Army is abducting children and forcing them to participate in atrocities in Uganda. HUMAN RIGHTS WATCH/AFRICA AND HUMAN RIGHTS WATCH/CHILDREN'S RIGHTS PROJECT, *THE SCARS OF DEATH: CHILDREN ABDUCTED BY THE LORD'S RESISTANCE ARMY IN UGANDA* (1997). In most countries, few victimizers are ever detained, and even fewer are ultimately held accountable in domestic or international fora. But hundreds of Rwandan children, some as young as six during the 1994 genocide, are being held in re-education centers and juvenile detention centers, accused of being *genocidaires*. Mary Braid, *Silent Scream of Rwanda's Youth*, THE INDEPENDENT (London), May 23, 1998, at 17.

8. Some research maintains that the role of Palestinian children in the Intifada "was the most dominant feature of Palestinian adolescents' and children's lives. They viewed themselves as freedom fighters, and this ideological commitment functioned as a protective factor and source of resilience." Samir Qouta et al., *The Impact of the Peace Treaty on Psychological Well-Being: A Follow-up Study of Palestinian Children*, 19 CHILD ABUSE & NEGLECT 1197, 1205 (1995), citing GARBARINO et al., NO PLACE TO BE A CHILD: GROWING UP IN A WAR ZONE (1991); Y. NASHEF, THE PSYCHOLOGICAL IMPACT OF THE INTIFADA ON PALESTINIAN CHILDREN LIVING IN REFUGEE CAMPS IN THE WEST BANK, AS REFLECTED IN THEIR DREAMS, DRAWINGS, AND BEHAVIOR (1992). Other "research has shown that active participation in the Intifada increased self-esteem among Palestinian children . . ." Samir Qouta et al., *supra* at 1206, citing A. Baker, *The Psychological Impact of the Intifada on Palestinian Children in the Occupied West Bank and Gaza: An Exploratory Study*, 60 AM. J. ORTHOPSYCHIATRY 496 (1990). However, at least one other study of Palestinian children showed that "traumatic experiences increased children's active participation in the national struggle, but this activity did not save them from psychological suffering." *Id.* at 1206. Research is lacking on the relationship between exposure to or participation in war-related or political violence and psychological outcomes in children, and on the role of individualistic and societal factors in mediating the impact of violence on children's psychological responses. But patterns have been empirically observed and the need for further research is widely acknowledged. RAIJA-LEENA PUNAMAKI-GITAI, POLITICAL

spirit of *jihad* armed Afghan children spiritually and emotionally for battle with Soviet-backed government troops;⁹ but this was not the case in Mozambique or in Uganda today.¹⁰

Treatment of children also varies widely. Sectors of some societies, in Lebanon or the former Yugoslavia for example, managed to continue their children's education and to retain a certain level of family functioning even under siege; the continuity may do much to mitigate war's negative impact and to bolster resiliency.¹¹ Children in other places will never have had access to a pre-war educational infrastructure or will suffer the indirect effects of war's destruction of the existing health, education and welfare infrastructure.¹² Unaccompanied children may scarcely exist in regions where extended families can absorb them, but others will become refugees, or internally displaced. Some young children will be forced to become heads of large households after parents have been killed.

How wars are brought to a close can also have varying implications for children. A negotiated partial solution in Bosnia-Herzegovina that leaves many entrenched in hostile environments will have a different impact than a negotiated solution in El Salvador, where post-conflict governmental reform is meant to benefit all citizens and the peace agreements can serve a unifying function. Little data exists on the psychosocial impact of peace processes on youth, but one tentative effort by Palestinian psychologists found that "the peace treaty signed between Israel and the PLO [on September 13, 1993] positively influenced Palestinian children's well-being: [t]hey showed less neuroticism after the peace treaty than before. Those who welcomed the peace treaty by participating in the celebrations suffered less from neuroticism and enjoyed better self-esteem than those who did not."¹³

Despite the varied consequences of specific wars for children, patterns emerge in the experience of children that are distinct from those of adults. The explanation for war's differential impact on children and adults is to be found in the very reasons children require greater protection than adults. Age, physical stature, and developmental factors limit children's and adolescents' capacity to adapt or to respond to war crises.¹⁴ "A mine explosion is

VIOLENCE AND PSYCHOLOGICAL RESPONSES: A STUDY OF PALESTINIAN WOMEN, CHILDREN AND EX-PRISONERS 9-15, (Tampere Peace Research Institute, Research Reports No. 41, 1990).

9. HELSINKI WATCH/ASIA WATCH, TO WIN THE CHILDREN: AFGHANISTAN'S OTHER WAR 2, 14-16 (1986).

10. See Elizabeth Rubin, *Letter from Uganda: Our Children are Killing Us*, NEW YORKER, Mar. 23, 1998, at 56.

11. See Lina Kurdahi Zahr, *Effects of War on the Behavior of Lebanese Preschool Children: Influence of Home Environment and Family Functioning*, 66 AM. J. ORTHOPSYCHIATRY 401 (1996).

12. For a discussion of the direct and indirect physical effects of war and political violence on children see Goldson, *supra* note 6.

13. Samir Qouta et al., *supra* note 8, at 1204.

14. One author noted:

It has been assumed that children's stress reactions vary according to their emotional and cognitive maturity. Researchers suggest that the younger the child at the time of exposure to political violence, the more severe the psychological consequences Boys have been found to

likely to cause greater damage to the body of a child than to that of an adult"¹⁵ and maimed child survivors require extended medical treatment and psychological support. Displacement is stressful in general, but for a child, separation from family is devastating. A child's reactions to war often reflects those of a parent or caretaker; a child whose parent can provide physical closeness, reassurance and an opportunity to process the experience will cope better than one whose caregiver is anxious, fearful, and resists a child's attempts at questioning or discussion.¹⁶ A child's moral intelligence, more so than an adult's, reflects his war-time experiences and the way in which he is able to make sense of the suffering.

Numerous studies and papers describe the wide-ranging impact of war on children and indicate the psychosocial consequences of exposure to chronic violence.¹⁷ Research on children living in war-torn areas "point[s] to numerous domains of cognitive, social, emotional, and psychophysiological functioning that can be severely affected by exposure to violence, including depression, withdrawal, fear, anxiety, affect dysregulation, aggression, dissociative reactions, and intrusive thoughts."¹⁸ There is little evidence to support the view that "children either are resilient in the face of adversity or are too naïve to fully appreciate events that trouble adults."¹⁹

III. THE POTENTIAL OF THE PEACE PROCESS

A. The Unique Potential of the Peace Process

Even though peace processes are the defining opportunities for long-term programs and international assistance in the aftermath of armed conflict, it remains standard practice to ignore war's impact on youth once the peace-making stage is reached. Children's rights advocates must exploit those singular characteristics of peace processes that can serve the protection of children:

- Peace processes are the only opportunity to ensure that the distinctive situation of child soldiers is addressed during demobilization and re-integration;

be more vulnerable to stress up until the age of puberty, whereas thereafter females are more vulnerable.

RAIJA-LEENA PUNAMAKI-GITAL, POLITICAL VIOLENCE AND PSYCHOLOGICAL RESPONSES: A STUDY OF PALESTINIAN WOMEN, CHILDREN AND EX-PRISONERS, *supra* note 8, at 13.

15. *Impact of Armed Conflict on Children, Report of the Expert of the Secretary-General, Ms. Graça Machel*, U.N. Doc. A/51/306, ¶ 116 (1996) [hereinafter Machel study].

16. See MORRIS FRASER, CHILDREN IN CONFLICT 73-87 (1973).

17. See, e.g., Machel study, *supra* note 15, at Annex: Research Contributions to the Report on the Impact of Armed Conflict on Children.

18. J.E. Richters, *Community Violence and Children's Development: Toward a Research Agenda for the 1990s*, 56 *PSYCHIATRY* 3-6 (1993), cited in Stephen L. Buka & Isolde Birdthistle, *Exposure to Violence: Extending the Research Frontier*, THE CHICAGO PROJECT NEWS (The Project on Human Development in Chicago Neighborhoods, Harvard Univ., Boston, Mass.) vol. 3, no. 1, Winter 1997, at 2.

19. Felton Earls and Leon Eisenberg, *International Perspectives in Child Psychiatry, in CHILD AND ADOLESCENT PSYCHIATRY: A COMPREHENSIVE TEXTBOOK* 1196, 1202 (M. Lewis ed., 1996).

- Peacemaking and peacekeeping processes offer unique possibilities for raising standards, expanding their scope and ensuring compliance. During the peacemaking process, the application of international humanitarian and human rights norms to non-state actors and the international verification of compliance with negotiated agreements can serve as special backdrops for ending persistent rights abuses and generating confidence in the peace process;
- International peace talk moderators or negotiators confer a covered international political legitimacy on the parties,²⁰ and can use the resulting leverage to hold the parties to higher standards of conduct than might otherwise have been possible;
- A special constitution of power exists during the peace process that can be utilized to exact precise commitments from all parties. Once election results favor a particular party and guerrilla factions become civilians organized as political parties, the dramatic shift in bargaining power can make it difficult to negotiate new agreements;
- In the transition and post-conflict setting, most funding, support and attention of international agencies is directed to the issues agreed upon in the peace negotiations; a powerful opportunity arises here to make children's issues a priority.²¹

B. Key Actors

Children's rights advocates include domestic agencies with single-issue agendas, international actors with specific mandates, or international bodies or agencies like the U.N. Committee on the Rights of the Child or the International Save the Children Alliance.²² These actors could effectively join

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One of the U.N.'s main sources of influence in El Salvador was its ability to convey international political legitimacy. Both sides in the Salvadorean conflict were strongly motivated to rehabilitate their international images. For the government, a positive international reputation was essential to its prospects for attracting significant international assistance for reconstruction, as well as foreign investment that would be crucial to El Salvador's economic recovery For the FMLN, international political recognition was important to its prospects for political success at home, as well as for its confidence that the peace accords would move forward after its military demobilization.

William Stanley & David Holiday, *Peace Mission Strategy and Domestic Actors: U.N. Mediation, Verification and Institution-building in El Salvador*, 4 INT'L PEACEKEEPING 22, 42-43 (1997).

21. When requesting General Assembly approval for a U.N. verification mission during the Guatemalan peace process, the Secretary-General commented that at a June 1994 meeting convened by the World Bank "donor countries expressed their support for the peace process and their readiness to coordinate at this early stage their efforts to facilitate the financing of the implementation of the agreements." *Establishment of a human rights verification mission in Guatemala: Report of the Secretary-General*, U.N. GAOR, 48th Sess., Agenda Item 40, ¶ 37, U.N. Doc. A/48/985 (1994).

22. The U.N. Committee is empowered to suggest or recommend that a State Party involved in a peace process address the needs of child victims and participants explicitly. CRC, *supra* note 1, art. 45(d). Prior to considering Guatemala's initial report in June 1996, the Committee presented the Government with 54 specific follow-up questions. U.N. Doc. CRC/C.12/WP.1, (1996). With regard to the conflict, the Committee inquired as to the promulgation of new military service legislation and asked whether any

forces with representatives of civil society with overlapping agendas, such as criminal justice reformers or agencies addressing family reunification.

Children's rights advocates must acquire the skills necessary to get their concerns for children in war on political, humanitarian, and economic agendas. Lobbying efforts must go beyond traditional, explicitly child-oriented issues. The case of Argentina's Grandmothers of the Plaza de Mayo illustrates the role domestic child rights organizations can play in the transition to peace and democracy. The work of the Grandmothers also illustrates that advocacy focused on specific types of abuse can shape domestic and international human rights assessments that precipitate national reform.²³ Advocates must anticipate the constraints on peacemakers' capacities to incorporate a child-conscious approach to peacemaking and peacekeeping and should help to steer them around these obstacles.

Other peacemakers well-equipped to ensure that children are on the peacemaking agenda include representatives of fighting factions, international or national moderators, and representatives of countries "friendly" to the peace process.²⁴ Other influential actors include bilateral and international donors or lenders approached to fund peace-building programs, and the media. These actors have the capacity to narrow the gap that war typically opens between children's needs and the protection routinely available to them. Full implementation of children's rights requires that all actors involved in the transition to peace acknowledge the impact of their decisions on children and proactively address children's interests.

International bodies such as UNICEF could more actively ensure that peacemaking and peacekeeping actions contemplate the needs of children through the Department of Humanitarian Affairs/Department of Political Affairs/Department of Peacekeeping Operations framework for coordination

research had been undertaken as to the effects of the war on children. *Id.* ¶¶ 43, 44. No new military service legislation had been drafted as of June 1996 and the response to the latter inquiry indicated that while no government studies had been undertaken, there was ample evidence in NGO reports that the war has had a considerable psychological impact on youth and the population in general. *Respuestas del Estado de Guatemala a las Preguntas Formuladas en Relación al Informe Inicial Relativo a la Aplicación de la Convención sobre los Derechos del Niño* [Guatemalan Government's Responses to Questions formulated in relation to the First Report on the Implementation of the CRC], *Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos* (COPREDEH), Apr. 1996, at ¶¶ 43–44 [hereinafter *Respuestas del Estado de Guatemala*]. The Committee's Concluding Observations acknowledged progress made in the peace process without ever specifically recommending that that process incorporate commitments to implement and respect the CRC. *Concluding Observations of the Committee on the Rights of the Child: Guatemala*, U.N. Doc. CRC/C/15/Add.58 (1996).

23. See *supra* note 5.

24. The parties to the Guatemalan peace talks expressly requested that Colombia, Mexico, Norway, Spain, the United States, and Venezuela form a "group of friends of the Guatemalan peace process" that would support the Secretary-General's representative "in order to facilitate the negotiating process" and as witnesses, would give firmness to commitments that had been entered into by the parties. *Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca*, U.N. Doc. A/49/61, S/1994/53, Annex at IV (1994) [hereinafter *Framework Agreement*]. It is fairly common that a core group of Governments will accompany a peace process and have proportionately more influence with one or another of the parties.

and by monitoring Security Council meetings.²⁵ The U.N. Special Representative on Children and Armed Conflict has challenged the Security Council to deliberate on child soldiers and "what, if anything, can be done to keep children away from combat."²⁶

The World Bank, the European Union, USAID and other bilateral development agencies increasingly acknowledge that short and long term gains can be anticipated from the provision of social and economic support to children and families in post-conflict societies. Child advocates must exploit and appeal to this new outlook among donor and lending agencies. They must creatively characterize child rights policy concerns in the language of economic incentives and imagine ways of bringing certain child protection issues out of the typically "private" domain into the realm of public regulation and programmatic response.

C. Case Studies

The peace processes in El Salvador, Guatemala, and Liberia offer a wide range of lessons for child advocates. Despite differences, these three cases illustrate that peacemakers too often overlook child rights and needs during peace processes.

1. The Peace Process in El Salvador

In El Salvador throughout the 1980s,

[p]olitical "death squad" killings, disappearances, torture, and bombing of civilian neighborhoods by the security forces, augmented by targeted assassinations by the FMLN, resulted in some 75,000 deaths. An additional 1.2 million peasants, out of a population of 6 million, were uprooted from their homes. The country's institutions—including the police and the judiciary—were thoroughly politicized and discredited.²⁷

In late 1989, the U.N. undertook to mediate an end to the decade-long civil war between the U.S.-backed government of El Salvador and the FMLN. The two-year negotiation process produced a complex set of agreements regulating the conduct of the parties and reforming the normative and institutional framework of Salvadoran society.²⁸ A final peace accord was signed on January 16, 1992.²⁹

25. See Machel study, *supra* note 15, ¶ 292.

26. Barbara Crossette, *U.N. Council Looks at Rise in Number of Children in Combat*, N.Y. TIMES, June 6, 1998, at A3.

27. Reed Brody, *The United Nations and Human Rights in El Salvador's "Negotiated Revolution"*, 8 HARVARD HUM. RTS. J. 153, 153 (1995).

28. UNITED NATIONS, *ACUERDOS DE EL SALVADOR: EN EL CAMINO DE LA PAZ (1992) [EL SALVADOR ACCORDS: THE PATH TO PEACE]* [hereinafter *EL SALVADOR ACCORDS*] (All cites to Spanish version).

29. See *id.* at 48.

From July 26, 1991 to June 30, 1997, the U.N. provided the international verification of all substantive agreements.³⁰ The Secretary-General's final report deems the Salvadoran peace process one of the most successful in which the U.N. has participated and sums up the levels of compliance with commitments on matters ranging from respect for human rights and humanitarian law, reparations programs, agrarian, electoral and justice reform, to the demobilization and reintegration of armed forces and FMLN troops.³¹ In spite of a number of short-comings,³² the process has generated, "slowly but surely," the grounds for the gradual consolidation of peace in the country.³³ Though the confluence of circumstances so conducive and perhaps essential to a successful peace process are "unlikely to be repeated elsewhere,"³⁴ there are lessons to be learned from the way key actors in the process used their leverage and exploited opportunities presented within the process to advance and institutionalize greater respect for human rights.

2. The Peace Process in Guatemala

Latin America's longest running civil war ended with the signing of the Firm and Lasting Peace Agreement between the Guatemalan government and the URNG on December 29, 1996.³⁵ This internal conflict began with the CIA-backed overthrow of the democratically elected Arbenz government in 1954 and in the early 1980s, spiraled into the slaughter of an estimated 150,000 civilians, the internal displacement of about 1 million, and an exodus of some 50,000 persons to Mexico.³⁶ Responsibility for this devastation,

30. See *infra* Part IV.B.

31. Other matters include reparations programs for war-wounded and the families of fallen combatants, the restructuring and strengthening of justice administration, public security and the electoral system, agrarian reform and a fundamental revision of the military's role in post-conflict society. *Evaluación del proceso de paz en El Salvador, Informe del Secretario General* [Evaluation of the Peace Process in El Salvador, Secretary-General's Report], ¶ 65 & generally, U.N. Doc. A/51/917 (1997) [hereinafter U.N. Doc. A/51/917] (All cites are to Spanish).

32. One commentator notes:

El Salvador is far from out of the woods. The new institutions are weak. There is still almost total impunity for crimes and human rights abuses. Civil society, including the press, does not play a decisive watchdog role. Rising crime, high unemployment, and the failure fully to integrate ex-combatants threaten fragile gains. Yet El Salvador's peace process—at this early stage—appears to be on the road to consolidation.

Brody, *supra* note 27, at 154.

33. U.N. Doc. A/51/917, *supra* note 31, ¶ 60.

34. Stanley & Holiday, *supra* note 20, at 23. See also William Stanley & David Holiday, Under the Best of Circumstances: ONUSAL and Dilemmas of Verification and Institution Building in El Salvador, at 3 (1996) (unpublished paper given at the Conference on Peacemaking and Democratization in the Hemisphere, Multilateral Approaches, The North-South Center, Miami, April 11–13, 1996); Brody, *supra* note 27, at 155–56; Interview with Alvaro de Soto, former Special Representative of the Secretary-General for El Salvador and U.N. moderator of the Salvadoran peace process, in New York, New York (Oct. 27, 1997).

35. *Agreement on a Firm and Lasting Peace*, U.N. GAOR, 51st Sess., Agenda Item 40, Annex II, U.N. Doc. A/51/796, S/1997/114 (1997) [hereinafter *Agreement on a Firm and Lasting Peace*].

36. See Leonardo Franco & Jared Kotler, *The Challenge of Buying In Without Selling Out: The Challenges of Verifying Human Rights and Strengthening Institutions in the Guatemalan Peace Process*, 39–40, in HONORING

targeted predominantly at civilians of Mayan ethnic origin, lies almost exclusively with the Guatemalan armed forces and allied paramilitary units. The alleged motive was counter-insurgency, but the violence against civilians was entirely disproportionate to the URNG's limited popular support and military strength.

The persistent civil strife conveyed an image of political instability that discouraged foreign investment and limited the government's economic modernization projects.³⁷ Much as in El Salvador, domestic and international circumstances aligned to create an opportune context in which to end three decades of strife. A desire to improve its international image and attract aid and investment pushed the Guatemalan government towards the negotiating table. The URNG gained some political legitimacy by being at the negotiating table, a feat they never accomplished militarily. In emphasizing a human rights agenda, they made maximum use of the one area in which they had relative political clout.

The first substantive agreement in U.N.-moderated peace talks was the Comprehensive Agreement on Human Rights, signed on March 19, 1994.³⁸ Efforts to reach a negotiated solution spanned a decade, pre-dating U.N. involvement, and gradually evolved from a means of ending conflict to a forum for the drafting of a blueprint for a new national project (*proyecto de nación*). U.N. verification of all agreements was requested in January 1994. The U.N. Human Rights Verification Mission (MINUGUA) initiated verification of the Comprehensive Agreement on Human Rights in November 1994, and will continue to verify compliance with the array of accords through 2000.

3. The Peace Process in Liberia

The Liberian internal armed conflict began on Christmas Eve in 1989 when the NPFL launched attacks aimed at ousting the dictatorship of President Samuel Doe and "effectively triggered a war that has brought the almost complete destruction of Africa's oldest republic."³⁹ In August 1990, the Economic Community of West African States (ECOWAS) sent in its Ceasefire Monitoring Group (ECOMOG) to halt the carnage. While not authorized by ECOWAS' statute, regional politics, principally Anglophone,

HUMAN RIGHTS, FROM PEACE TO JUSTICE (Alice H. Henkin, ed.) (1998).

37. *See id.*

38. *Comprehensive Agreement on Human Rights*, preamble, section II. U.N. GAOR, 48th Sess., Annex 1, Agenda Item 40, at 3-4, U.N. SCOR, 49th yr., U.N. Doc. A/48/928; S/1994/448 (1994) [hereinafter *Comprehensive Agreement*]. By the time the Firm and Lasting Peace Agreement was signed, the parties had reached agreements on the rights of the indigenous population, resettlement of uprooted populations, creation of a truth commission, reform of the agrarian sector, and the role of the armed forces in a democratic society among other issues.

39. Max Ahmadu Sesay, *Bringing Peace to Liberia*, in ACCORD: THE LIBERIAN PEACE PROCESS 1990-1996 9 (Jeremy Armon & Andy Carl, eds., 1996).

determined the ECOWAS agenda and level of ECOMOG involvement.⁴⁰ U.N. Security Council authorization was eventually obtained in spite of ECOMOG's unclear peacekeeping mandate and aggressive involvement in peace enforcement activities that revealed a lack of impartiality.⁴¹ In 1993 the United Nations Observer Mission in Liberia (UNOMIL) was established to oversee cease-fire agreements and marginally, to report on major violations of international humanitarian and human rights law and assist local human rights NGOs identify funding sources for capacity-building, training, and logistic support.⁴² "By 1996, three successive interim governments had been installed with the help of the international community. Over a dozen peace accords [had] been acceded to by the various parties to the conflict, but none [had] established a lasting cessation of hostilities."⁴³ On July 19, 1997, Charles Taylor, former NPFL warlord, won national elections that swept him to the Presidency and gave control of the legislature to his National Patriotic Party.⁴⁴

In stark contrast to the El Salvador and Guatemala processes, the Liberian experience was shaped by "three crucial factors—the economics of war, the erosion of civilian power and the incoherence of international peacekeeping."⁴⁵ While the Salvadoran and Guatemalan governments saw peace as the road to economic development and the FMLN and the URNG saw their Cold War funding sources drying up, the Liberian conflict was fueled by national and international processes that "sustained and profited perpetrators of violence at the expense of others."⁴⁶ Unlike the peace processes in El Salvador and Guatemala, there were no attempts to address the concerns of civilian groups in Liberia. The peacemaking process continually expanded to "include all groups with the capacity to wreck the peace," thus ceding authority to the more powerful factions and legitimizing violence and criminality as paths to political power.⁴⁷ International peacemaking initiatives in Liberia were irresolute and proceeded in an incoherent manner.⁴⁸ The clash of interests among ECOWAS member states was reflected in ECOMOG's failure to fulfill its peacemaking mandate, especially early on.⁴⁹ The slowly deployed U.N. observer forces lacked coordination and profes-

40. Scholars tend to agree that there was no legally justifiable basis for ECOMOG's peace enforcement activities in the early stages of the war in Liberia. See Anthony Chukwuka Ofodile, *The Legality of ECOWAS Intervention in Liberia*, 32 COLUM. J. TRANSNAT'L L. 381 (1994).

41. ERIC AVEBURY, ROYAL AFRICAN SOCIETY, LIBERIA: THE ROLE OF THE UNITED NATIONS 2-3 (1993).

42. See U.N. Doc. S/Res/866 (1993), U.N. Doc. S/Res/1020 (1995).

43. Sesay, *supra* note 39, at 9-10.

44. See HUMAN RIGHTS WATCH/AFRICA, EMERGING FROM THE DESTRUCTION: HUMAN RIGHTS CHALLENGES FACING THE NEW LIBERIAN GOVERNMENT, at 1 (1997).

45. Jeremy Armon & Andy Carl, *Preface to ACCORD: THE LIBERIAN PEACE PROCESS 1990-1996*, at 5 (Jeremy Armon & Andy Carl, eds., 1996).

46. *Id.*

47. *Id.* at 6.

48. See *id.*

49. See *id.*

sionalism.⁵⁰ Presently, a tense peace is holding in Liberia as the immense task of rebuilding has tentatively begun.

D. Key Actors' Capacities to Address Children's Rights Concerns

In a foreshortened peace process that aims primarily to stop the guns, as in Liberia, the most conscientious children's rights advocates will be at a loss to intervene. Even in El Salvador and Guatemala, where peacemakers seized the opportunity to craft a post-war rebuilding agenda, they did not take a child-conscious approach. Opportunities abounded to incorporate a child-consciousness into the framework of the Guatemalan agreements, and the lessons learned in El Salvador compelled such an approach, yet no parties to the talks raised children's rights issues.⁵¹ Negotiations on the Guatemalan Comprehensive Agreement, the Agreement on Identity and Rights of Indigenous Peoples⁵² and the Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict⁵³ neither provoked discussion of children's rights nor produced any child-specific provisions. The URNG might have used their credibility and leverage on the issue of human rights to ensure that the Comprehensive Agreement on Human Rights included specifics on issues such as child recruitment, juvenile justice reform, reparations for past violations, physical and psychosocial recovery programs.⁵⁴

50. "[I]f regional initiatives like that of ECOWAS are to be sustained and consistently professional, the wider international community must provide far more substantial and timely support." *Id.*

51. Interview with Jean Arnault, U.N. moderator of the Guatemalan peace negotiations, in Guatemala City, Guatemala (Aug. 4, 1997). The U.N. moderator of El Salvador's peace process, several former FMLN commanders, and combatants close to the negotiations process now acknowledge that they were simply "not alerted" to the importance of children's rights issues during the process. Most tended to agree that they would have been amenable to appeals from children's rights advocates and that funding would have been easily obtained for related programs. Interview with Alvaro De Soto, *supra* note 34. Several FMLN political representatives explained that the importance of many issues was obscured by a single-minded focus on political-military concerns (i.e., reducing the government's armed forces).

52. Agreement on Identity and Rights of Indigenous Peoples, U.N. GAOR, 49th Sess., Agenda Item 42, Annex, U.N. SCOR, 50th yr., U.N. Doc. A/49/882, S/1995/256 (1995).

53. Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, U.N. GAOR, 48th Sess., Agenda Item 40, Annex, U.N. SCOR, 49th yr., U.N. Doc. A/48/954, S/1994/751 (1994).

54. There are obvious child-conscious facets to the commitments to end forced recruitment into the armed forces and the volunteer civil defense committees (CVDCs or PACs), the pledge to stop the suffering of the civilian population and to respect the rights of those *hors de combat*. A U.N. preliminary mission sent to Guatemala to investigate the possibility of U.N. verification of the Comprehensive Agreement delineated seven elements they felt comprised this humanitarian commitment, and in addition, they might easily have included the elimination of child recruitment. *Establishment of a human rights verification mission in Guatemala, Report of the Secretary-General, supra* note 21, ¶ 17. MINUGUA interpreted the phrase on elimination of suffering among the civilian population to include a prohibition on the recruitment of children and verified allegations of forced recruitment by the armed forces of persons of any age, recruitment by the armed forces of persons under age 18, and recruitment of persons under age 15 by the URNG. The Comprehensive Agreement's commitment to justice administration reform, the request that U.N. monitors take into account the situation of the most vulnerable groups of society and the population directly affected by the conflict, and the commitment to provide compensation and/or assistance to the victims of human rights violations all might have made specific reference to children. The Comprehensive Agreement might easily have reflected the concerns underlying article 39 of the

On the advice of the U.N. moderator, a late draft of the Agreement on Socioeconomic Issues and the Agrarian Situation included a paragraph reaffirming the government's commitment to implement the CRC. Though the provision in no way broadened the Government's existing obligations,⁵⁵ it inexplicably vanished from the final version of the Agreement. In contrast, the same agreement explicitly reaffirms the government's obligations as a party to the Convention on the Elimination of Discrimination against Women and commits to legislative and programmatic reforms to "strengthen women's participation in economic and social development on equal terms."⁵⁶

The September 1996 Agreement on the Strengthening of Civilian Power⁵⁷ provides for the reform of all branches of the justice system. In February 1996, the U.N. Committee on the Rights of the Child asked the Guatemalan government to report on its efforts to train "personnel in detention centers, security personnel, government officials, judges and lawyers about the Convention."⁵⁸ The Government emphatically replied that as soon as the new Children and Adolescent Code passed Congress, international cooperation and financial support would be required to train new justice administration personnel and to develop the requisite administrative infrastructure.⁵⁹ Yet these Government negotiators never raised these concerns during the peace process.

1. Failing to Take Opportunities in the Political Process

Recognizing the essential role that Guatemalan society could play in the reconciliation process, parties to the peace process promoted the establishment of an Assembly, comprised of domestic NGOs, to formulate recommendations on major substantive themes.⁶⁰ The participation of a broad social sector was intended to ensure that the accords reflected a national consensus. The Assembly of Civil Society (ACS)⁶¹ was established on May 17,

CRC and framed the provision of physical and psychological recovery and social reintegration programs for all child victims in the language of rights. In its comments on Guatemala's periodic report the U.N. Committee on the Rights of the Child recommended that Guatemala "give consideration to the implementation of specific projects for children [traumatized by the armed conflict], to be carried out in an environment which fosters the health, self-respect and dignity of the child." *Concluding Observations of the Committee on the Rights of the Child: Guatemala, supra* note 22, ¶ 39. This might have helped such services reach all youth without any one sector having to request what are often very stigmatized types of assistance or support.

55. The proposed wording was virtually identical to CRC, *supra* note 1, art. 4.

56. Agreement on Social and Economic Aspects and Agrarian Situation, U.N. GAOR, 50th Sess., Agenda Item 45, Annex, ¶ 13, U.N. Doc. A/50/956 (1996).

57. Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, U.N. GAOR, 51st Sess., Agenda Item 40, Annex, U.N. SCOR, 51st yr., at 5-9, U.N. Doc. A/51/410, S/1996/853 (1996).

58. *List of Issues to be Taken Up in Connection with the Consideration of the Initial Report of Guatemala*, at ¶¶ 11, 12 U.N. Doc. CRC/C.12/WP.1 (1996).

59. *See Respuestas del Estado de Guatemala, supra* note 22, ¶ 11.

60. *See Framework Agreement, supra* note 24, §§ III-IV. For a number of years prior to this agreement civil society had facilitated and promoted the peace process.

61. According to Edgar Cabral, current ACS Secretary and former coordinator of the NGO sector,

1994.⁶² As the children's rights movement had had no prior involvement in civil society's efforts to influence the peace process, they were not initially invited to participate in the ACS, and they failed to request representation in a timely manner. By the time of finalization of consensus documents, an umbrella organization for child welfare groups (CIPRODENI) joined the NGO sector of the ACS, but its representative's contribution was imperceptible.⁶³

Though the ACS submitted its proposals in October 1994, the peace process dragged on until December 1996, enabling the ACS to submit revised proposals for agreements on socio-economic matters, agrarian reform, strengthening of civilian power, and the role of the military. The original consensus proposals on socio-economic and agrarian matters included several child-relevant demands including one for an improved health care system comprised of, inter alia, (a) emergency programs to reduce infant mortality, (b) sexual and reproductive health and planning programs, (c) specific mental health programs for uprooted and returnee populations, and (d) physical and mental health attention for women and children affected by political, family and sexual harassment or violence. Included were protective measures for child laborers, community based child-care programs, and protection for children in difficult circumstances. The U.N. moderator recalls no discussion of these issues at the negotiating table. For example, primary health and education are major themes in the final socio-economic agreement but the programmatic aspects of these issues were determined by current World

ACS membership was loosely based on criteria established in the Framework Agreement (legitimate, representative and lawful NGOs) and was ultimately determined by Bishop Quezada Toruño with the approval of the parties to the process. Interview with Edgar Cabral, in Guatemala City, Guatemala (Aug. 11, 1997). The Framework Agreement states that the ACS's organizing committee would be comprised of a representative of each sector that participated at the Oslo talks plus representatives of the Mayan sectors. According to Bishop Quezada, the following sectors were represented ultimately in the ACS: political, religious, trade unions, university, small and medium business, pobladores, cooperativists, mayan, women, NGO, research centers, human rights promotion organizations, communications media. See DOCUMENTOS DE LA ASAMBLEA DE LA SOCIEDAD CIVIL-ASC-MAYO-OCTUBRE 1994 8 [DOCUMENTS OF THE CIVIL SOCIETY ASSEMBLY, MAY-OCTOBER 1994] (Guatemala) (1994) [hereinafter ASC DOCUMENTS].

62. The ASC was allotted only four to five months to consult and formulate consensus proposals relative to scheduled agreements on resettlement, indigenous peoples, socioeconomic and agrarian issues, the role of the army, and constitutional reform. See *Framework Agreement*, supra note 24, § III. The Agreement on a Timetable for Negotiations of a Firm and Lasting Peace in Guatemala scheduled these and several other agreements to be concluded by November 1994, with the signing of the final peace slated for December 1994. U.N. GAOR, 48th Sess., Agenda Item 40, Annex II, U.N. Doc. A/48/928, S/1994/448 (1994).

63. Reverend Ricardo García had been involved in the peace process since 1987 through the religious sector and, because of his church's work with children and consequent CIPRODENI affiliation, had tried to persuade the children's rights NGO to take part in the ACS. Members expressed disinterest in the political process and fear, though they belatedly sent the Reverend to represent them. It was by then too late to form a distinct children's sector and the Reverend joined the NGO sector. He presented a document and even tried to lobby the URNG directly on the socio-economic agreement, but his appeals met with neither resistance nor receptivity. Telephone Interview with Reverend Ricardo García, from Guatemala City to Quetzaltenango, Guatemala (Aug. 25, 1997).

Bank priorities and there was no discussion of how the proposed macroeconomic reforms in the agreement would affect children.⁶⁴

With the inauguration of Alvaro Arzú as President in 1996, the peace process notably became a forum for defining a *proyecto de nación*. While there was clear consensus on the need to address the role of women and the indigenous population in this "new society" project, as well as on the need to reckon with past abuses, children's rights advocates failed to get their concerns to the table.

Advocates crafting the new Children and Adolescent's Code and ACS members working on the socio-economic or strengthening of civilian society themes were simultaneously grappling with the issues of decentralization, regionalization, popular participation and justice administration reform. Some communication among the Guatemalan Pro-Convention on the Rights of the Child Commission (PRODEN), the Office of the Children's Rights Ombudsman (PDN), other key children's rights activists and the ACS might have streamlined their proposals and the Children's Code might have garnered broad-based support early on.⁶⁵ The Children's Code has not yet entered into force. The ACS continues to monitor compliance with the peace accords and formulate proposals for post-conflict policies, but the children's rights sector remains unrepresented.

64. Interview with Jean Arnault, *supra* note 51.

65. According to one ACS member, the Human Rights Ombudsman's office was "no friend to the ACS". Interview with Carmen Rosa de León, ACS member and participant in the drafting of the ACS' socio-economic and strengthening of civil society proposals, in Guatemala City, Guatemala (Aug. 6, 1997). According to the Children's Rights Ombudsman, her efforts to intercede in the peace process were belated and unpersuasive. Interview with Matyls de Estrada, Children's Rights Ombudsman, in Guatemala City, Guatemala (Aug. 19, 1997). Ms. de Estrada's office submitted to Héctor Rosada of the Government's negotiating team an unpublished document entitled *Algunas Consideraciones sobre la Situación del Niño, Niña y el Adolescente Guatemalteco y las Acciones Prioritarias para la Ejecución de una Política de Protección Integral, a Considerarse dentro del Proceso de Paz* (Some considerations on the situation of Children and Adolescents and the Priorities for the Execution of an Integral Protection Policy, to be Considered within the Peace Process). The document describes the socio-economic state of Guatemalan children and proposes that a legal basis must be laid for future action and policies on behalf of children and youth. The first step proposed is the finalization of a new Children and Adolescents' Code. This document was received in late 1995 just as a new government was taking office, Hector Rosada resigned from the peace process, and the agreement on social and economic issues was already partly drafted. The Ombudsman's proposal was never taken into account and it is unclear whether it ever reached the negotiating table. The *travaux préparatoires* to the final ACS proposals include not a single UNICEF document. The *Casa de la Reconciliación* [Reconciliation House] in Guatemala City houses all of the ACS preparatory and background documents from the period of Bishop Quezada's chairmanship (May 1994-Oct. 1995). The author has copies of the preparatory materials to the original ACS proposals and interviewed Gladys Figueroa, Head of Documentation, in Guatemala City, Guatemala (Aug. 11, 1997). ACS members insist that strong lobbyists were able to carry their issues to the peacemakers through the ACS and believe that child-conscious proposals on housing, health, education, juvenile justice, and welfare would not have met resistance.

2. The Reluctance of Peacemakers to Address Issues They Perceive to be Politically Inexpedient

The time and resources allocated within a peace process to demobilization, rehabilitation and reinsertion programs partially depend on the political-military context that brings parties to the negotiating table and on the degree to which society is receptive of the process. A fighting faction will have to balance the desire to allay its combatants' anxieties over compensation while avoiding public resentment over the perceived rewarding of violent behavior. Imminent post-demobilization election schedules can exacerbate these tensions. The use and abuse of child soldiers was a particularly stigmatized practice in Mozambique and, in order to avoid acknowledging its own child soldiers just as the 1994 national election campaigns were getting underway, FRELIMO was allegedly willing to refrain from denouncing RENAMO's forced recruitment of children and from insisting on rehabilitative programs for demobilizing youth.⁶⁶ Political expedience can result in complicit denial of children's rights violations by all factions, and children's rights advocates should frame the issues in ways that ensure they are addressed.

In Guatemala, proportionately little attention was devoted to the agreement on reincorporation of the URNG⁶⁷ because the government felt that an overly detailed agreement would provoke political opposition and public resentment over preferential treatment for former guerrilla fighters.⁶⁸ As it was, the reincorporation agreement engendered resentment among demobilized civil patrollers, who far out-numbered the URNG combatants and who received no benefits or compensation for what was very often their forced participation at the expense of lost wages and, often, physical injury. Additionally, commanders wanted to portray former combatants as better off for their valiant experience, not as needy, depressed, anxious or aggressive malcontents in need of therapy or mollification. According to several peacemakers, the URNG commanders emphasized future opportunities for combatants over redress or rehabilitation for past suffering.⁶⁹ During the negotiation process, the commanders maintained an idealized view of education's role in the URNG and projected a desire for educational opportunities onto their troops. When surveys were eventually carried out in the demobilization camps, the overwhelming majority hoped to reincorporate into the agricultural sector.

66. Interviews with UNICEF staff closely involved with the Mozambique peace process, in New York, N.Y. (October 27, 1997).

67. *See Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca*, U.N. GAOR, 51st Sess., Agenda Item 40, Annex II, U.N. SCOR, U.N. Doc. A/51/776, S/1997/51 (1997) [hereinafter *Agreement on URNG Integration*].

68. Interviews with Jean Arnault, U.N. moderator of Guatemalan peace talks, *supra* note 51, and Carlos Gonzalez, URNG commander and party to the peace talks, in Guatemala City, Guatemala (Aug. 23, 1997).

69. *See id.*

The propensity to portray former combatants, and war-affected populations in general, as healthy and fulfilled limited the URNG's capacity to urge psychosocial rehabilitation programs. Ana Guadalupe Martínez, former FMLN commander in El Salvador, suggested to ACS members that they urge the Guatemalan government and URNG to commit jointly to mental health services for the demobilized population, but the advice was not heeded.⁷⁰ When asked directly, Carlos González and the late Rolando Morán, former URNG commanders and peace process participants, did not deny that psychosocial issues might hinder their combatants' reincorporation into family and community life. Former combatants unrealistically placed enormous faith in vocational training and many, González feared, might ultimately face frustration, resentment and feelings of uselessness when they lacked the skills or opportunities necessary to succeed in their chosen vocation. González also anticipated community-level power struggles between URNG combatants with leadership experience and community leaders fearful of challenges to their positions. Finally, he pondered the possible difficulties that former fighters accustomed to a communal, externally organized and disciplined lifestyle would have in managing their new personal independence. González felt that the demobilizing URNG troops would have rejected the incorporation of any mental health program during their brief encampment period due to the associated stigma.

Creative programming would anticipate and resolve the conflicts between (1) the psychosocial reincorporation needs of many former combatants and the stigma attached to specific programs, (2) the need for vocational and educational training in keeping with realistic goals and expectations, and (3) the need to bolster positive self-image while recognizing difficulties inherent in a transition from an ordered, hierarchical existence, where basic needs are institutionally resolved, to one in which the individual must fend for and discipline himself.

IV. CRAFTING A CHILD-CONSCIOUS PEACE PROCESS

This Part examines the component parts and products of a "typical" peace process and discusses the need to exploit resulting opportunities, tensions and dynamics on behalf of war-affected youth. Peacekeepers enjoy a degree of access and authority that equips them to prevent grave abuses and, occasionally, to perpetrate them.⁷¹ They must avoid causing harm to children and would ideally act as agents of protection. Furthermore, the normative framework, monitoring mechanisms, institutional reforms and mechanisms of redress crafted during peace negotiations can establish the basis for a continued respect for children's rights. The products of peace processes must be

70. Interview with Gladys Figueroa, Executive Director, *Casa de la Reconciliación*, in Guatemala City, Guatemala, (Aug. 11, 1997).

71. See *infra* notes 101–108 and accompanying text.

consciously crafted to respond to children's needs, avoid exacerbating harmful situations, ensure future protection, and redress past wrongs.

A. Avoiding Abuse: Humanitarian Law Guidelines, Codes of Conduct, Training, and Sanctions Procedures for U.N. and Regional Peacekeepers

As the U.N. organ with the "primary responsibility for the maintenance of international peace and security,"⁷² and the unique capacity to authorize peacekeeping and peace enforcement interventions,⁷³ including those by regional peacekeeping forces,⁷⁴ the Security Council has the duty to ensure that its troops act in accordance with children's rights.⁷⁵ All U.N.-endorsed troops should be trained in the relevant humanitarian and human rights corpus, and the Security Council should monitor peacekeepers' conduct, promptly investigating abuses and censoring transgressions. It is insufficient for the Security Council to exhort nations to abide by the Geneva Conventions and CRC, while U.N. and regional peacekeepers hover at the fuzzy margins of normative and disciplinary regimes.

On June 29, 1998, the Security Council debated "the rapid increase in the number of child soldiers worldwide"⁷⁶ and considered a number of preventative measures. News coverage of this important event asserted that although "the Security Council has limited power and no experience in dealing with the problem, members agreed to take children into account when discussing peacekeeping operations or other responses to conflict."⁷⁷ For two years prior, the General Assembly had called upon the Security Council to do just that, and there are a number of initiatives the Council might well pursue.⁷⁸

72. U.N. CHARTER art. 24, ¶ 1.

73. *See id.* chapter VII.

74. *See id.* chapter VIII, art. 53.

75. The Security Council has institutional obligations to protect children in war and certainly to abstain from employing youth in U.N. forces. In an effort to improve the credibility of U.N. peacekeeping operations, the U.N. Secretary-General announced on October 29, 1998 that "countries contributing to U.N. operations should not send any civilian police officers or military observers under age 25. Troops should preferably be over 21, but never younger than 18." The Undersecretary-General for Peacekeeping Operations acknowledged the U.N.'s moral obligation consistently to oppose the participation of children in conflict and recognized that military and police observers do "have a responsibility in terms of human rights." Barbara Crossette, *Seeking Mature Judgment, U.N. Sets Minimum Age for Its Troops*, N.Y. TIMES, Nov. 1, 1998 at A16.

76. Barbara Crossette, *U.N. Council Looks at Rise in Number of Children in Combat*, N.Y. TIMES, June 6, 1998 at A3.

77. *Id.*

78. *The Rights of the Child* omnibus resolution of Feb. 20, 1997 calls upon "United Nations bodies and organizations to treat children in situations of armed conflict as a priority concern in human rights, humanitarian and development activities, including field operations and country programmes . . ." and recommends "that the humanitarian concerns relating to children affected by armed conflict and their protection be fully reflected in United Nations field operations, which, *inter alia*, promote peace, prevent and resolve conflicts and implement peace agreements . . ." *The Rights of the Child*, G.A. Res. 51/77, U.N. GAOR, 51st Sess., Agenda Item 106, § II, ¶¶ 19, 21, U.N. Doc. A/RES/51/77 (1997) [hereinafter G.A. Res. 51/77]. The omnibus children's rights resolution of the subsequent year, dated Dec. 12, 1997, repeats these entreaties almost verbatim. *The Rights of the Child*, G.A. Res. 52/107, U.N. GAOR, 52d Sess., Agenda Item 108, § IV, ¶¶ 4-5, U.N. Doc. A/52/107 (1998) [hereinafter G.A. Res. 52/107].

1. Establishing Standards for Peacekeeper Conduct

U.N. and regional peacekeeping forces have had to confront situations involving child victims or participants in hostilities and have, at times, demonstrated an inadequate ability to react in accordance with international standards. Tense circumstances, vague mandates, and a lack of training and operating guidelines have produced lamentable encounters between peacekeepers and youth.⁷⁹

The sources of the law affording special protection to children in time of armed conflict include international human rights and humanitarian law treaties, customary international law and national law. International humanitarian law (IHL) relative to the protection of youth in international and non-international armed conflict, embodied in the fourth Geneva Convention⁸⁰ and Additional Protocols I and II,⁸¹ includes rules governing, *inter alia*, the recruitment and participation of youth in hostilities,⁸² the treatment of youth detained during conflict⁸³ and the status of civilian youth

More recently the General Assembly reaffirmed its call to action on behalf of war-affected children in its 1998 Omnibus resolution. *The Rights of the Child*, G.A. Res. A/C.3/53/L.14 Rev. 1, U.N. GAOR 53d Sess., Agenda Item 106 (1998).

79. In Liberia, the U.N.-supported, West African regional peacekeeping forces (ECOMOG) were for many years actively engaged in combat with factions comprising child soldiers, some as young as six or seven. ECOMOG lacked satisfactory rules of engagement for their peace enforcement operations and did in fact confront and kill child soldiers in combat, detain child combatants and suspected faction members, and even inflict physical abuse possibly amounting to torture on Liberian combatants, children among them. See *infra* note 139. Children were among the many victims of ECOMOG aerial bombings and offensives in Sierra Leone and were among the numerous casualties of ECOMOG's 1998 drive to take Freetown. See generally Howard French, *Nigerian Troops Near Sierra Leone's Capital*, N.Y. TIMES, Feb. 11, 1998, at A8.

80. Geneva Convention IV, *supra* note 3.

81. Protocols I & II, *supra* note 3.

82. Though no rule in the Geneva Convention or Protocols provides that a child may never become a combatant, limits are placed on the authorities that control recruitment. With respect to international armed conflicts in which the State and/or the armed opposition have declared their adherence to Protocol I, article 77(2) provides:

The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

The *formal* immunity of children from recruitment and 'involvement' is stronger in the civil war situations anticipated in Protocol II, even if its application is often obstructed by threshold issues and complex language. Article 4(3)(c) provides that 'children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities'.

COHN & GOODWIN-GILL, *CHILD SOLDIERS, THE ROLE OF CHILDREN IN ARMED CONFLICT* 64 (1994). Common article three places no limits on the recruitment or participation of children.

83. Though participation of children under age 15 in hostilities is prohibited in international armed conflicts, IHL nevertheless ensures their protection if they are captured. There is no age limit for entitlement to prisoner-of-war status, though age may justify privileged treatment:

[A] child combatant under age fifteen who is captured can not be sentenced for having borne arms. Since the prohibition [on recruitment] contained in Article 77, paragraph 2, of Protocol I is addressed to the Parties to the conflict and not to the children, the participation of the lat-

who take up arms.⁸⁴ Article 38 of the CRC limits the recruitment and participation of youth in armed conflicts.⁸⁵ These instruments and a number of other normative instruments codify or reflect a range of protective measures applicable to *children as civilians* in war time.⁸⁶ One commentator noted:

The basic principles which ought to apply include: limitations placed on the means of injuring the enemy; distinctions made between the civilian population and those participating in hostilities (in the conduct of military operations every effort should be made to spare the civilian population); and a prohibition on civilian populations being the objects of reprisals, forcible transfers or other assaults upon their dignity.⁸⁷

Article 38(4) of the CRC recalls states' obligations to respect IHL and requires that they take "all feasible measures to ensure protection and care of children who are affected by an armed conflict."

The applicability of these standards depends on the type of conflict and whether or not a given state has ratified or acceded to the relevant treaties. Non-state actors such as individuals or 'non-state entities' (NSE's) are traditionally the most difficult to hold accountable.⁸⁸ Yet many of IHL's child protection provisions are widely construed to comprise customary international law, valid in both international and internal armed conflicts and for all

ter in hostilities does not constitute a breach of the law by them. Responsibility for such a breach lies with the Party to the conflict which recruited and enrolled the children.

Maria Teresa Dutli, *Captured Child Combatants*, *supra* note 3.

Child POWs, or any child of any age who falls into the power of an adverse Party continue to benefit from special protection. Protocol I, art. 77(1). If arrested, detained or interned for any reasons related to the conflict, children must be held in quarters separate from adults. *Id.* art. 77(4).

[T]his special status does not exclude penal proceedings in respect of serious breaches of international humanitarian law committed by children . . . In such circumstances, however, their responsibility should always be evaluated according to their age, and as a general rule educational measures, rather than penalties, will be decided on.

Id. The death penalty can not be executed for an offense related to the armed conflict on a person under age 18 at the time the offense was committed. *Id.* art. 77(5).

84. Once children participate, whether forcibly recruited or on their own volition, they lose civilian status and become legitimate military targets. Nonetheless, if captured, children under fifteen who had taken a direct part in hostilities do continue to benefit from special protection provided by the Geneva Conventions and Protocols, and the CRC.

85. The CRC contains no derogation clause, remains fully in force in time of armed conflict, and has been ratified by all but two States. Therefore, minimum IHL and human rights standards relevant to children in time of war must include the standards embodied in the CRC. *See* Cohn, *supra* note 1, at 105-07.

86. "The Geneva Convention on the Protection of Civilians 1949, Geneva Convention 4, incorporates 17 articles of specific concern to children, affording general protection to children as civilians and special protection for children living in both unoccupied and occupied territory." Geraldine Van Bueren, *supra* note 1, at 811 *citing* Geneva Convention 4 arts. 14, 17, 23-27, 40, 50, 51, 68, 76, 81, 82, 89, 94, and 132, *supra* note 3. *See generally* JENNY KUPER, INTERNATIONAL LAW CONCERNING CHILD CIVILIANS IN ARMED CONFLICT (1997); Plattner, *supra* note 3.

87. Van Bueren, *supra* note 1, at 819, *citing* FRITS KALSHOVEN, THE LAW OF WARFARE (1973).

88. *See* COHN & GOODWIN-GILL, *supra* note 82, at 56.

parties to the conflict, much like article three common to the Geneva Conventions itself.⁸⁹

The authority of the totality of IHL and human rights law over U.N. peacekeepers is a debatable topic, but as an agent of the international community in the service of peace and human rights, the U.N. and their subcontractees "should be held to an even higher standard than those embodied in the current laws of war."⁹⁰ The implications of this position would entail, for example, training peacekeepers to respond to the very serious military danger often posed by armed children *even though*, legally, both coerced and voluntary child combatants lose their civilian status and become legitimate military targets.

U.N. policy should mandate that all U.N. peacekeepers and regional peacekeeping organizations adhere to certain field guidelines, dealing with how to confront child soldiers, the protections due to detained child combatants and child civilians, and recommended procedures to demobilize child soldiers. Such guidelines would entreat peacekeepers and peace enforcers to weigh the potential collateral damage a given military attack poses to children, civilians and civilian objects more heavily than typically required by humanitarian law's proportionality rule.⁹¹ Unfortunately, current Draft Guidelines for U.N. Forces Regarding Respect for International Humanitarian Law mention children only to proclaim that "[w]omen and children shall be the object of special respect and shall be protected in particular against any form of indecent assault."⁹² Though the Draft Guidelines do not distinguish among detained combatants of different ages, they would ensure humanitarian treatment of detainees,⁹³ and the CRC would further require the separation of detained children from adults.⁹⁴

89. The general protection afforded the civilian population and civilian objects found in the regulations to Hague Convention 4 (1907) are considered customary in nature. Pursuant to the Appeals Chamber decision in the Tadic Jurisdictional Motion in the International Criminal Tribunal for the Former Yugoslavia, commentators have begun to describe the content of customary international humanitarian law in international and non-international armed conflicts. The Prosecutor v. Dusko Tadić *a/k/a* "Dule," No. IT-94-1-AR72, <<http://www.un.org/icty/tadic/appeal/decision-e/51002.htm>> (Int'l Trib. for the Prosecution of Persons Responsible for Serious Violations of IHL committed in the Territory of the Former Yugo. since 1991, 1995). Among relevant provisions deemed likely to have customary law status are Geneva Convention 4 arts. 14, 23-27, 50, 51, 76; Protocol I, art. 77, Protocol II, art. 4(3). See THEODOR MERON, HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW 66 (1989), *citing* remarks by military experts that Protocol I, arts. 77 and 78 "were likely candidates eventually to reflect general practice recognised as law."

90. Julianne Peck, *The U.N. and the Laws of War: How Can the World's Peacekeepers be Held Accountable?*, 21 SYRACUSE J. INT'L L. & COM. 283, 303 (1995).

91. The proportionality rule places restraints on attacks against military targets in order to minimize collateral injury to civilians or damage to civilian objects. It is a fundamental rule of customary law, codified in Protocol I, *supra* note 3, arts. 51(5)(b) and 57(2)(iii).

92. Guidelines for U.N. Forces Regarding Respect for International Humanitarian Law, U.N. Internal Document, unpublished, undated, ¶ 21.

93. *Id.* ¶ 22.

94. CRC, *supra* note 1, art. 37.

Security Council resolutions, U.N. Guidelines and perhaps a code of conduct should also confer an obligation on U.N. or U.N.-endorsed peacekeepers to report and to intervene in children's rights violations they encounter.⁹⁵ Twelve case studies on the sexual exploitation of children in armed conflict⁹⁶ prepared for the U.N. Expert on Children in Armed Conflict's report, "found the main perpetrators of sexual abuse and exploitation to be the armed forces of parties to a conflict, whether governmental or other actors."⁹⁷ Peace operations should devise mechanisms to channel reported violations back to the parties, ensure they are addressed within the peace process and, if necessary and appropriate, go public with their findings. When a U.N. or regional peacekeeper encounters child soldiers under age fifteen participating in hostilities in violation of applicable international, humanitarian and/or domestic legislation,⁹⁸ pertinent Guidelines should require them to report the violation and, where feasible, bring the child into protective custody pending family reunification or some other suitable placement.

Peacekeepers require special training to help them foresee predicaments and confront them appropriately. The U.N. Expert on Children in Armed Conflict has recommended that governments train their security and armed forces, "especially those participating in peacekeeping operations, in humanitarian and human rights law."⁹⁹ Improved final U.N. Guidelines might serve as a useful core curriculum. Military training for all military personnel, and U.N. or U.N.-endorsed peacekeepers in particular, "should emphasize gender sensitivity, child rights and responsible behavior towards women and children. Offenders must be prosecuted and punished for acts against women and children."¹⁰⁰

2. Investigating and Punishing Peacekeeper Violations of Children's Rights

The investigation and discipline of peacekeeper transgressions is in urgent need of standardization. In six out of the twelve countries referred to above

95. All U.N. agencies, international and bilateral organizations operating in conflict areas should be obliged to report human rights and children's rights violations they observe and each agency should establish the procedures necessary for "prompt, confidential and objective reporting" by staff. Machel study, *supra* note 15, ¶ 240(d). The Machel study recommended in particular that UNICEF adopt such a procedure for its personnel. *Id.* ¶ 292.

96. Eylah Kadjar-Hamouda, International Federation Terre des Hommes, An End to Silence, A Preliminary Study on Sexual Violence, Abuse and Exploitation of Children Affected by Armed Conflict 12 (1996) (unpublished study prepared for the Machel study, *supra* note 15).

97. Machel study, *supra* note 18, ¶ 107.

98. Fifteen is the internationally accepted minimum age for participation in armed conflicts of any type. Many states favor a higher standard, generally eighteen, often already reflected in their own legislation. The newly drafted Rome Statute of the International Criminal Court classifies the conscription or enlistment of children under fifteen or their active participation in hostilities as a war crime. *Rome Statute of the International Criminal Court, adopted by the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*, U.N. Doc. A/CONF.183/9 (1998), <<http://www.un.org/icc/part2.htm> at arts. 8(b)(xxvi), 8(e)(vii) [hereinafter *Rome Statute of the ICC*].

99. Machel study, *supra* note 15, ¶ 240(c).

100. *Id.* ¶ 107, 110(b).

(Angola, Bosnia, Cambodia, Croatia, Mozambique and Rwanda)¹⁰¹ "the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution."¹⁰² The Liberia case study notes that the presence of ECOMOG soldiers fueled child prostitution¹⁰³ and the same occurred upon ECOMOG's arrival in Sierra Leone. An objective international body should assume the task of inquiring into such scenarios, or, at least, states should adopt uniform disciplinary procedures. At present, investigation and punishment falls to *ad hoc* procedures or to the domestic civilian or military courts in troop-contributing nations. Consequently, there is no consistency in determinations of whether to initiate an investigation, how to try the accused, and what sanctions to impose. The sluggish response by both the U.N. and Italy to reports of widespread child prostitution by Italian soldiers of the United Nations Operation in Mozambique (ONUMOZ) in 1992¹⁰⁴ is indicative of the problem.¹⁰⁵ According to the Machel study, the story of abuse by UNOMOZ peacekeepers ended when "the soldiers implicated were sent home."¹⁰⁶ We do not know what measures, if any, were taken domestically by the Italian government.

101. Kadjar-Hamouda, *supra* note 96, at 12.

102. Machel study, *supra* note 15, ¶ 98, citing Ernst Schade, Experiences with regard to the United Nations Peacekeeping Forces in Mozambique (1995) (unpublished study undertaken by Redd Barna, Norway).

103. Kadjar-Hamouda, *supra* note 96, at 12.

104. Machel study, *supra* note 15, ¶ 98, citing Ernst Schade, *supra* note 102.

105. The case of Mozambique (1993 to 1995):

UNOMOZ deployed a force of 8,000 to 10,000 men in Mozambique, including an Italian contingent of roughly one thousand in Manica and Sofala provinces. On arrival, these troops had only limited knowledge about Mozambique, and were provided with limited guidelines on the appropriate behaviour of peace-keeping forces. Their wages enabled the troops to lead a comparatively high life-style.

Following the October 1992 peace agreement, certain soldiers started strongly inciting girls to prostitute themselves, particularly girls aged 12 to 18. Other soldiers established a more stable relation with young girls. Some local people derived profit from the soldiers' behaviour by renting houses where the soldiers could meet the young girls.

At the end of 1993, articles appeared in the Mozambican press denouncing the abuses perpetrated by some of the UNOMOZ soldiers, and early in 1994 articles were published in the international press. UNOMOZ then held an enquiry and met with members of Redd Barna, an organization which had complained about the soldiers' behaviour. The enquiry also spoke with sexually-exploited children and some parents. The UNOMOZ Investigation Commission concluded that Redd Barna's accusations were true and that the soldiers who had misbehaved had to be punished.

The soldiers' presence brought about a rapid expansion of child prostitution, and some minor girls acquired the habit of offering sexual services to foreigners. Many pregnant girls resorted to abortion. Shortly after publication of the UNOMOZ investigation report the persons responsible for sexual exploitation of children were repatriated. In April 1994 the Italian contingent left Mozambique, partly for financial reasons, and was replaced by a contingent from Botswana which caused no similar problems.

In February 1995 UNOMOZ left Mozambique. The government has also made its own enquiry. This affair led to a public debate which in turn resulted in measures seeking to protect children against sexual exploitation. It appears that some child prostitutes returned to school and have been able to lead normal lives.

Elyah Kadjar-Hamouda, *supra* note 96, citing Schade, *supra* note 102.

106. *Id.*

Similar cases, however, reveal that domestic sanctions tend to be disproportionately light both in relation to the crimes involved and in light of the inherently unequal relationship between peacekeepers and the civilian population. A Belgian soldier with the U.N. peacekeeping mission in Somalia was recently convicted in a Belgian military appeals court for mistreating Somali children. Half of his one year jail sentence was suspended. The same soldier received a three-month suspended sentence in a lower court in March 1998 "for offering a friend an underage Somali girl for his birthday and tying a second child to a moving vehicle during the 1993 U.N. operation."¹⁰⁷ A Canadian Court Martial Appeals Court recently heard the appeals of five army personnel charged in the three-hour beating, torture and killing of a sixteen-year-old Somali youth, while posted to peacekeeping duties with UNOSOM in March 1993.¹⁰⁸ Sentences ranged from severe reprimands and rank reductions to a five-year jail term for torture and manslaughter for a Private, who had photographed himself with the prisoner before he died. By requiring troop-contributing nations to adhere to minimum standards, the U.N. could at least pressure member states to take action consistently against transgressors.

B. Ensuring Protection: Norms, Institutions, Monitoring Mechanisms, and Programs

1. The Normative Framework for the Transition

The peace process is an environment in which participants can push the scope and content of IHL and human rights law beyond their traditional limits, benefiting from opportunities to stipulate both the basis for the parties' interaction and the norms and institutions that will govern post-conflict society. The El Salvadoran government and the FMLN, for instance, came to the negotiating table partly over their mutual desire to end the conflict by political means, foment the democratization of the country, guarantee unrestricted respect for human rights and reunify Salvadoran society.¹⁰⁹ The San José Agreement on Human Rights elaborated on this stated commitment to human rights and, going beyond the State's human rights obligations codified in the internal legal order and numerous international

107. *Belgian Soldier Goes to Jail Over Somalia Crimes*, REUTERS (wire news service, from Brussels), May 7, 1998.

108. *Elvin Kyle Brown v. The Queen* [1995] C.M.A.C. 372. Major Seward, charged with negligent performance of a military duty, for allegedly having stated that troops could abuse prisoners they apprehended, was sentenced to imprisonment for three months and dismissed from military service. Captain Sox and Sergeant Boland, also charged with negligent performance of duty, received a severe reprimand with rank reduction and one year imprisonment respectively. The latter had allegedly told troops in his section they could do whatever they wanted to apprehended Somalis short of killing them. Private Brown received five years for torture and manslaughter. Another Private also charged with torture was acquitted. Master Corporal Matchee, allegedly the most aggressively and enthusiastically involved in the beating, attempted suicide before trial and has been ruled incompetent to stand trial.

109. *Geneva Agreement*, ¶ 1, reprinted in *EL SALVADOR ACCORDS*, *supra* note 28, at 1, [hereinafter *Geneva Agreement*].

conventions, declared the FMLN capable and willing to assume a commitment to respect the inherent attributes of the human person.¹¹⁰ The Guatemalan Government and URNG early on reached a similar commitment to human rights. In terms almost identical to the San José Agreement, the Comprehensive Agreement on Human Rights reflects both the Guatemalan Government's domestic and international obligations to respect human rights and the URNG's commitment "to respect the inherent attributes of the human being and to contribute to the effective enjoyment of human rights."¹¹¹ These references to the capacity of non-state entities (FMLN and URNG) to respect basic human rights principles offer a precedent that could be employed to bring NSEs within the scope of human rights and humanitarian norms in the future.

In Guatemala and El Salvador, although the agreements did not advance novel interpretations of the states' obligations, they established a framework binding on both governmental and non-governmental entities, which facilitated the international monitoring. In both cases, the parties requested international verification of the agreements and consented to monitoring both during the transition period and thereafter.

Although these agreements are not treaties, and there is no legal recourse for violations of their commitments, factors peculiar to peace processes increase the likelihood of respect for such pacts. For example, inclusion at the negotiating table coupled with monitoring of compliance can to some extent legitimize or confer international credibility on the government and opposition groups. Governments may foresee the need for an international *imprimatur* of good conduct and "democratic vocation" to attract international donor aid and economic investment, as well as technical assistance for post-conflict institution-building.¹¹² As mentioned before, the inclusion of certain opposition groups at the negotiating table may lend a status or legitimacy beyond that previously acknowledged by the government. Such opposition groups may hope to impress the civilian population and the international community. After all, these groups often aspire to participation in the political life of the country once they make the transition from armed opposition group to legitimate political party.

The establishment of a normative basis for monitoring all parties' conduct can have great influence when peacemaking and conflict continue on parallel tracks. In both El Salvador and Guatemala, the first topic addressed in the peace negotiation processes was human rights, and the parties sought international verification even prior to the conclusion of peace talks. In El Salva-

110. "Human rights" was defined as all those recognized by the domestic legal system, including treaties ratified by El Salvador, as well as declarations and principles on human rights and humanitarian law approved by the U.N. or the OAS. *Agreement on Human Rights*, U.N. GAOR, 44th Sess., Annex, Agenda Item 34, preamble, U.N. Doc. A/44/971; S/21541 (1990), reprinted in *EL SALVADOR ACCORDS*, *supra* note 28, at 7 [hereinafter *San José Agreement*].

111. *Comprehensive Agreement*, *supra* note 38.

112. Stanley, *supra* note 20, at 23.

dor, the San José Agreement,¹¹³ concluded on 26 July 1990, became subject to U.N. monitoring in July of 1991, approximately six months before a final cease fire went into effect on February 1, 1992. In Guatemala, this interim period was much greater; over two years elapsed between the initiation of U.N. monitoring of the Comprehensive Agreement on Human Rights and the signing of the "firm and lasting peace" on December 29, 1996. Afterwards, once the NSE evolves into a political actor and its members join the civilian citizenry, the principle normative obligations attach to the State, while the NSE might be required to fulfill certain procedural obligations, e.g., concerning elections, documentation of its members, disclosure of information on arms or past rights violations.

The impact of the Guatemalan agreement was more striking than the San José Agreement. Since conflict in El Salvador warranted application of Protocol II,¹¹⁴ and international NGOs had long monitored FMLN conduct in accordance with the Protocol's terms, the agreement did not significantly alter standards regulating FMLN conduct. In Guatemala, however, the conflict could only be characterized as violent internal strife. The URNG demonstrated neither the capacity nor willingness to comply with the terms of Protocol II, and international organizations did not hold them to these standards.¹¹⁵ The Comprehensive Agreement elevated the URNG to the status of an entity willing and able to accept normative obligations and respond to allegations of conduct falling short of their commitments.¹¹⁶

Although the majority of the obligations enumerated in the Comprehensive Agreement rightly belong to the Government, both parties accepted a number of important undertakings. For example, the agreement by both Parties "that the freedoms of association and of movement are internationally and constitutionally recognized human rights which . . . must be fully enjoyed in Guatemala"¹¹⁷ enabled MINUGUA to verify and denounce roadblocks at which the URNG forced civilians to attend political meetings or make "donations." The Mission further verified forced conscription of both youths and adults by the URNG as a potential violation of their commitment.

Even more far-reaching was commitment 9, paragraph 1 of the Comprehensive Agreement: "Until such time as the firm and lasting peace agreement is signed, both Parties recognize the need to *put a stop to the suffering of the civilian population* and to respect the human rights of those wounded, captured and those who have remained out of combat" (emphasis added). The

113. *San José Agreement*, *supra* note 110.

114. Protocol II, *supra* note 3. El Salvador ratified Protocol II on Nov. 23, 1978.

115. Guatemala ratified Protocol II on Oct. 19, 1987.

116. In declaring the Government and the URNG parties to the Comprehensive Agreement on Human Rights, the preamble reiterates the Government's obligations concerning respect for human rights and sets human rights standards for the URNG. *Comprehensive Agreement*, *supra* note 38, at preamble. See *supra* note 111 and accompanying text.

117. *Comprehensive Agreement*, *id.* § V(1).

obligation here is broader than that enunciated in article 3 common to the Geneva Conventions. More may well be required to *end suffering* than refraining from egregious violations of the rights to life, physical integrity, individual liberty, and due process. The Guatemalan negotiation process thus served to expand the reach of humanitarian law concerning the protection of civilians during the peacemaking process—an outcome that benefited children both directly and indirectly.

Including provisions in peace accords that extend human rights and humanitarian law to NSEs, or even establish higher standards applicable to all parties, can be a useful peacemaking strategy. Any number of violations may occur between the initiation of peace talks or the proclamation of a cease-fire and the consolidation of peace. A party might step up forced recruitment to create the impression of being a larger force as demobilization approaches and reintegration packages are negotiated. Opposition parties may desperately exact war-taxes as they anticipate their dissolution and diminished fund-raising capacity. Humanitarian provisions that are effective immediately and are monitored by an international body can reinforce public confidence in the peace process and reduce the incidence of serious violations of children's rights pending final peace.

2. The Institutional Framework for Post-Conflict Society

Peace plans increasingly tend to lay the financial and technical assistance groundwork for post-conflict institution-building and strengthening programs, yet children's needs are often ignored.

El Salvador's peace accords created two new institutions: the National Civilian Police (PNC) and the Human Rights Ombudsman (PDH). The former was to comprise a Minor's Department but it was never formed. The Ombudsman's office does include a "Minor's Defender," but, like the parent organization, it is weak, under-funded and incapable of carrying out its mandate to "investigate complaints, assist victims, promote judicial and administrative remedies, monitor the situation of detainees, supervise administrative conduct, propose reforms and issue reports."¹¹⁸ Salvadorans still fear complaining to a government-related agency. Many individuals perceive children's rights violations as "normal" aspects of private life. Furthermore, many NGOs have yet to overcome their reflexive inclination to report violations to the international community before engaging with a domestic state agency. In short, the new institutions do little to inspire child advocacy in Salvadoran society.

El Salvador's San José Agreement authorized the U.N. Observer Mission in El Salvador (ONUSAL) to "offer its support to the judicial authorities of El Salvador in order to help improve the judicial procedures for the protection of human rights and increase respect for the rules of due process of

118. EL SAL. CONST. art. 194, cited in Brody, *supra* note 27, at 172.

law,"¹¹⁹ but ONUSAL's efforts in support of the newly created PNC and PDH disregarded these institutions' responsibilities vis-a-vis children. The PDH comprises a Children's Rights Ombudsman's office with an extensive—yet under-funded and under-staffed—protection and reporting mandate, and the PNC is obliged to respect the rights of children accused of transgressing the law, ensure the protection of abused children, and refrain from perpetrating their own abuses. ONUSAL also undertook to provide technical assistance to the judiciary and various NGOs, but reform efforts never extended to the juvenile justice system. The judiciary has staunchly resisted reform and efforts to work closely with NGOs rarely extended to child advocacy groups.

Guatemala's Comprehensive Agreement on Human Rights, however, enabled the verification of certain allegations of children's rights violations and the provision of minimal institutional support to the children's rights movement. Peacemakers learned from El Salvador's experience that a failure to reform and strengthen the justice administration system could weaken the transition to the rule of law.¹²⁰ The Guatemalan agreement thus obliged the parties to strengthen the institutions responsible for justice administration and the promotion of human rights, and it empowered MINUGUA to provide technical advice and other support to specific agencies.¹²¹ To avoid creating institutions lacking substance and perpetuating corrupt ones, these accords emphasized constitutional and statutory reform, institutional strengthening, and technical cooperation, while also providing for the necessary financing mechanisms.

Unfortunately, *juvenile* justice administration was never even considered at the negotiating table, and children's rights advocates tried to elaborate a new Children and Adolescents' Code in a parallel process.¹²² Peacemakers

119. *San José Agreement* at 14(h), *supra* note 110, at 11. (Translation by author.)

120. The human rights agreements reached in the El Salvador and Guatemala peace processes similarly specify the States' obligations to respect and guarantee human rights and the oppositions' commitment to respect the inherent attributes of the human being. The principle distinction is in Guatemala's emphasis on "the importance of national institutions and entities for the protection of human rights and the desirability of strengthening them and building them up . . ." which is again reflected in an explicit commitment to strengthen institutions for the protection of human rights. *Comprehensive Agreement, supra* note 38, at preamble, § II.

121. The Comprehensive Agreement empowered MINUGUA "to cooperate with national institutions and entities for the effective protection and promotion of human rights; sponsor technical cooperation programs and carry out institution-building activities; offer its support to the judiciary and its auxiliary organs, the Public Prosecutor's Office, the Counsel for Human Rights and the Presidential Human Rights Committee; promote international technical and financial cooperation to strengthen the Office of the Counsel for Human Rights and other national institutions and entities; . . ." *Report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala*, U.N. Doc. A/49/856, 49th Session, Agenda Item 42, Annex, ¶ 3, 1 March 1995.

122. The Civil Society Assembly did propose, in its second submission relevant to the Agreement on the Strengthening of Civil Society and the Role of the Army in a Democratic Society, that one means of strengthening the justice administration system would be to create juvenile courts with broad jurisdiction in all municipalities. This recommendation was never considered by the parties. Fortalecimiento del Poder Civil y la Función del Ejército en una Sociedad Democrática: Propuesta de la Sociedad Civil. [Pro-

ignored the concerns of children, despite the fact that children constitute over fifty percent of the Guatemalan population and were surely the social sector "most affected by the armed conflict, displacement, poverty and in general, by the culture of exclusion, fear and silence."¹²³ The new Children's Code was scheduled to enter into force on September 27, 1997, one year after its approval by Congress, but the failure to integrate it in the peace-making framework caused complications.

Over the course of that year, while international agencies funded, trained and monitored the reform and progress of those components of the justice system provided for in the peace accords, almost no resources were devoted to building the institutional framework necessary to realize the new Code's objectives. Entry into force was postponed for six additional months. In the absence of affirmative efforts to convey the Code's new philosophical framework to the public and to initiate the institutional changes mandated, reactionary sectors of society have filled the void with advertisements and editorials denouncing the Code.¹²⁴ Allegations that the Code violates the universal and divine rights of parents and wrongly allocates responsibility for children to the state have caused further delays in its entry into force and unleashed a flood of proposed reforms flowing into Congress,¹²⁵ which could have been avoided if children's rights advocates and peacemakers had worked together to reflect the Code's principles within the new social order and to ensure the allocation of the resources and expertise necessary for the realization of the Code's objectives.

Children fared far worse in Liberia, where the peace process set its sights much lower, intending principally to halt hostilities and enable the semblance of a democratic transition. In this case, the peacemakers neither made substantive, post-war commitments nor did they provide for an overseeing mechanism to monitor their progress. The U.N. Observer Mission in Liberia

posol of the Civil Society Assembly on the Strengthening of Civil Power and the Role of the Army in a Democratic Society] (Guatemala) § 1.2.2.6, (June 21, 1996). See *infra* notes 60–65 and accompanying text.

123. Código de la Niñez y la Juventud [Children and Adolescents' Code], Decree Number 78-96, (Sept. 27, 1996). Introduction by MINUGUA to version published by MINUGUA and European Union, Guatemala, December 1996, at 7. (Translation by author.)

124. See, e.g., José Joaquín Camacho, *El Código: su música de fondo* [The Code: Its Background Music], SIGLO XXI (Guatemala) March 14, 1998, at 16; Jorge Jacobs A., *Defienda a la familia: ejerza sus derechos* [Defend the Family: Exercise Your Rights], PRENSA LIBRE (Guatemala), March 14, 1998, at 12, <<http://www.prensalibre.com.gt/noticias.asp?seccion=3&idnoticia=8482&showdate=165>>; Marra Pilon, *¿Qué es el Código Bíblico?* [What is the Biblical Code?], PRENSA LIBRE (Guatemala) Feb. 21, 1998, at 12; *Campo pagado—Liga Pro Patria y Coordinadora Pro Derechos de la Familia* [Sponsored Ad—paid by the Nationalist League and the Family Rights Coordinator], SIGLO XXI (Guatemala), Feb. 21, 1998; Constantino Díaz-Durán Alvarado, *Contrario a la Iglesia* [Against the Church], SIGLO XXI (Guatemala), Feb. 23, 1998, at 16. (Articles compiled by MINUGUA press office, on file with author.)

125. Among the many proposed reform packages flooding Congress are those from the Executive Office, the Norwegian Church, Mayan Rights NGOs (Wuqub'No'), ADECOGUA, Fundación ULEU, CECOPA, CEDEPEM, and various other NGOs (*Grupo de Madres Angustiadas, Liga Pro-Patria, Asociación por el Poder Local*) [Anguished Mothers' Group, Nationalist League, Association for Local Power]. (Proposals on file with author.)

(UNOMIL), established in 1993, had worked in conjunction with ECOMOG troops to oversee cease-fires and demobilization plans, but had no specific peacemaking mandate. In December 1997 the U.N. established a Peace-building Support Office in Liberia to "pursue the political objectives of post-conflict peace-building" by "mobilizing international political support for international assistance to Liberia; . . . developing an integrated approach to the [Government's] peace-building programs . . . facilitating the provision of technical assistance and support by the U.N. system for reconciliation efforts and the establishment of democratic institutions . . ." ¹²⁶ As institutions are rebuilt, legislation re-drafted and personnel trained throughout the social welfare and justice systems, the U.N. Peace-building Office needs to ensure the prominence of child participation and protection.

3. International Monitoring and Verification of Compliance with Peace Agreements

a. Access and Tools: The Monitoring Mandate, Staff Training, and Field Manuals

International monitoring and verification of peace agreements can keep the parties at the negotiating table, instill public confidence in the peace process, and play a significant role in securing compliance with the provisions of peace accords. El Salvador is the first, and perhaps best example of U.N. verification of the terms of peace agreements. Even though the parties requested U.N. verification in each agreement reached under U.N. auspices, beginning with the Geneva Agreement in April 1990,¹²⁷ the extent of the verification requested under the terms of the San José Agreement in July 1990 and the wide-ranging faculties with which it endowed ONUSAL crucially moved the process forward and sealed its irreversibility. ONUSAL's purpose was to investigate the human rights situation, paying special attention to the rights to life, physical security and integrity, due process, individual liberty and freedom of expression and association. The agreement further authorized ONUSAL to take any steps it deemed appropriate to promote and defend these rights.¹²⁸ However, although children are clearly subjects of human rights ONUSAL offered its staff negligible guidance on children's rights monitoring. Nonetheless, because "human rights" were understood by the parties to encompass international humanitarian law,¹²⁹ ONUSAL could verify cases of forced recruitment and the recruitment of minors by the parties until the conflict ended on January 16, 1992. ONUSAL furthermore undertook a special investigation of the conditions of

126. United Nations Peace-building Support Office in Liberia, *Terms of Reference*, ¶¶ 1 & 3 (Dec. 8, 1997) (unpublished document, on file with the *Harvard Human Rights Journal*).

127. *Geneva Agreement*, *supra* note 109.

128. *San José Agreement*, *supra* note 110, § II, ¶¶ 11, 13, 14, *supra* note 110, at 9–10.

129. *Id.* at preamble.

imprisoned youth. Despite these positive steps, the "Methodological Guide" for active rights verification made no mention of children's rights per se.¹³⁰

The Guatemalan government and the URNG charged the U.N. with active verification of alleged human rights violations. The agreement particularly emphasized the rights to life, integrity and security of person, individual liberty, due process, respect for the freedoms of expression, association and movement, and to political rights¹³¹ and requested special attention for "the situation of the most vulnerable groups of society and to the population directly affected by the armed confrontation (including displaced persons, refugees and returnees)."¹³² Children are clearly among the victims of violations of all but the last of these "priority rights" and form the majority of the most vulnerable sectors of society. Verification staff training and the Verification Manual, adapted from the ONUSAL Methodological Guide, thus referred to children's rights.

Although mandates among verification missions and possibilities for effective monitoring vary widely, missions would be more likely to track children's rights if the Methodological Guides, Monitoring Manuals and other tools included appropriate references to the particularities of children's rights verification. The Office of the High Commissioner for Human Rights is currently moving in this direction in its drafting of a model human rights verification manual.¹³³ In recognition of both the strong role a human rights field officer can play in protecting children's rights and the low priority uniformly granted to the monitoring of children's rights, the U.N. Human Rights Field Operation in Rwanda (UNHRFOR), Radda Barnen and Save the Children Federation—USA compiled a manual on the protection and promotion of children's rights in the field. The manual was available in Rwanda and was used for several months to orient UNHRFOR staff. Unfortunately, as UNHRFOR staff turned over and the manual's principal draft-

130. Human Rights Division, ONUSAL, *Guía Metodológica para el Trabajo de la División de Derechos Humanos de la Misión de Observadores de las Naciones Unidas para El Salvador (Methodological Guide for the Work of the Human Rights Division of the United Nations Observer Mission in El Salvador)* (Nov. 1992). "This was, apparently, the first U.N. guide for human rights verification and would serve as a model for similar efforts in Haiti and Guatemala." Brody, *supra* note 25, at 162.

131. *Comprehensive Agreement*, *supra* note 38, § X, ¶ 12.

132. *Id.* § X, ¶ 13.

133. The U.N. Office of the High Commissioner for Human Rights is drafting a *Training Manual on Human Rights Monitoring* to provide practical guidance to U.N. field operation staff and others engaged in human rights monitoring and related activities. The *Manual* requires adaptation to the specific context in which it will be used, but the model *Manual* does include references to child rights. The 1997 draft *Manual's* chapter on Applicable International Human Rights and Humanitarian Law specifies the administration of juvenile justice within the section on "Rights in the administration of justice," enumerates the major aspects of the CRC and refers to other relevant norms. The section on interviewing includes precautionary statements on interviewees who might require special care, including children. The section on visits to detainees specifies the particular rights of juvenile detainees. The section on monitoring refugee returns includes children as a distinct vulnerable group but the section on the rights of refugees omits reference to UNHCR's *Guidelines on the Protection of Refugee Children*. U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, PROGRAMME OF TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS, TRAINING MANUAL ON HUMAN RIGHTS MONITORING (1997).

ers left Rwanda, the manual fell out of use and whatever data was collected using the manual is currently unavailable.¹³⁴ Had the international child rights organizations in Rwanda been more committed to institutional "ownership" of the manual, perhaps they could have persuaded new UNHCR staff to continue using it and disseminate it as a model for adaptation and use in other country contexts and monitoring missions.

The Liberian peace process addressed only the immediate mechanics of cease-fire, demobilization and political transition, and concerned NGOs and international agencies pursued efforts at the margins of the peace process to address child rights. UNOMIL¹³⁵ was "required among other things, to investigate violations of the [Cotonou] cease-fire agreement and to 'report on any major violations of international humanitarian law,'"¹³⁶ but ultimately proved unable to overcome regional political limitations and international disinterest in its ability to monitor violations. They deployed with one human rights officer, who remained only a short time. In November 1995 the mandate was expanded to include investigation of human rights abuses.¹³⁷ UNOMIL also assisted local human rights NGOs identify funding sources for capacity building, training and logistical support. The second human rights official was on board from late 1995 until March 1996 and departed just before the offices and their contents were destroyed by factional fighting in Monrovia in April 1996. No files were ever replaced for the next human rights officer, who arrived in November 1996. Between February 1997 and September 1997, two additional, supporting human rights officers arrived. Such a skeleton staff could not be expected to produce many high quality investigations. Worse still, since their own colleagues, the ECOMOG troops, were often among the perpetrators of violations subject to UNOMIL verification, UNOMIL was often bogged down in the politics surrounding these investigations.¹³⁸

134. Interview with Todd Howland, former Chief of the Legal and Human Rights Promotion Unit with the U.N. Human Rights Field Operation in Rwanda (1994–1996), in Cambridge, Mass. (June 30, 1998).

135. U.N. SCOR: 48th yr., Res. 866, 3281st mtg. at 110, U.N. Doc. S/RES/866 (1993).

136. AMNESTY INTERNATIONAL, *LIBERIA: A NEW PEACE AGREEMENT—AN OPPORTUNITY TO INTRODUCE HUMAN RIGHTS PROTECTION* 6 (Sept. 20, 1995).

137. U.N. SCOR: 50th yr., Res. 1020, 3592d mtg. at 52, U.N. Doc. S/RES/1020. (1995) These internal reports from UNOMIL to the Special Representative of the Secretary-General for Liberia are not public, but are said to contain UNOMIL-verified accounts of violations committed by ECOMOG forces. The issues raised were considered politically inexpedient for the U.N. to address vociferously, and, in the Secretary-General's public reports to the Security Council these concerns were almost always downplayed or eliminated.

138. The March 1997 UNOMIL progress report notes that UNOMIL "invited" ECOMOG to conduct an internal investigation into allegations that "some ECOMOG soldiers may have mistreated former fighters during weapons recovery operations conducted after the end of the official disarmament period." *Twenty-second Progress Report of the Secretary-General on the United Nations Observer Mission in Liberia*, ¶ 37, U.N. Doc. S/1997/237 (1997). UNOMIL investigators met with 70–85 persons in the Monrovia Central Prison, detained by ECOMOG troops some time after the February 7, 1997 close of the demobilization process. Photos and depositions taken then testify to torture of the detainees at the hands of ECOMOG troops. Two detainees died and others sustained serious physical injuries. As the incident came to light,

Guatemala and El Salvador, on the other hand, offered broad access and investigative powers to the respective U.N. verification missions and requested active monitoring of compliance with human rights commitments. Nevertheless, children's rights were not explicitly prioritized in the San José Agreement or the Comprehensive Agreement, little active verification of children's rights violations was undertaken and children's rights issues remained marginal to the post-conflict peace-building agenda.

b. The Need for Proactive Verification

Active verification that includes a focus on child rights would inevitably produce information supportive of child advocates seeking to improve child protection within the peace process and post-conflict. Though MINUGUA did not actively verify respect for child rights, cases of violations were denounced and investigated, and local NGOs requested assistance on child-related issues. Eventually the Mission came to possess a quantity of information on child rights in Guatemala that might have fed back into the ongoing peace process or been used to support child advocates' efforts to improve protective legislation and institutions.

From November 1994 to May 1995, after one and a half years on the ground, fewer than seven percent of the cases MINUGUA admitted for verification involved minors as victims.¹³⁹ Complainants alleged violations of the rights to life, physical integrity, individual liberty, due process, and the freedom of association. As for cases involving children in the armed conflict, MINUGUA verified several cases of forced recruitment and participation in the civil patrols (Voluntary Civil Defense Committees).¹⁴⁰ Investi-

ECOMOG secured the group's release from Monrovia Central Prison and never conducted an internal investigation. UNOMIL's human rights officer reported his findings to U.N. Headquarters and ECOMOG authorities. The latter responded by withdrawing the security they were providing to the U.N. mission. The June 1997 report comments on another UNOMIL investigation into allegations that ECOMOG killed one detainee and injured others during a cordon-and-search operation. Absence of a forensic pathologist made exhumation and further investigation of this case impossible. *Twenty-Third Progress Report of the Secretary-General on the United Nations Observer Mission in Liberia*, ¶ 32, U.N. Doc. S/1997/478 (1997). The same deficiency curtailed investigations into another allegation that ECOMOG soldiers beat a man to death while questioning him about a weapon. *Twenty-Fourth Progress Report of the Secretary-General on the United Nations Observer Mission in Liberia*, ¶ 33 U.N. Doc. S/1997/643 (1997). According to UNOMIL staff this incident really involved allegations that ECOMOG forces fired on a fleeing ex-combatant during an arms sweep and left him there to die. Interviews with UNOMIL staff in Monrovia, Liberia (November 1997).

139. On average fewer than half of the complaints admitted for verification are found to constitute rights violations. *Second Report of the U.N. Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala*, Annex, ¶ 28 U.N. Doc. A/49/929 (1995) 49th Session, Agenda Item 42; Note that a single case may involve multiple victims, among whom one, some or all might have been minors.

140. Refusal to patrol has been known to result in threats and intimidation, arbitrary detentions, physical abuse, and even death at the hands of military commissioners, members of the armed forces or other civil patrollers. See, e.g., THE ROBERT F. KENNEDY MEMORIAL CENTER FOR HUMAN RIGHTS, INSTITUTIONAL VIOLENCE: CIVIL PATROLS IN GUATEMALA (1993-1994) 4-17 (1994); INTERNATIONAL HUMAN RIGHTS LAW GROUP, MAXIMIZING DENIABILITY: THE JUSTICE SYSTEM AND HUMAN RIGHTS IN GUATEMALA 40-52 (1989); AMERICAS WATCH, CIVIL PATROLS IN GUATEMALA 38-40 (1986).

gations showed that children were accepted into the army in spite of their age and in violation of the domestic military service law. Military and civilian authorities were occasionally found to have falsified documents for minors to overcome the age restriction. In two cases soldiers who had enlisted as minors were involved in causing or participating in the deaths of civilians: in one case a seventeen-year-old soldier killed an unarmed fisherman, and in another, a seventeen-year-old was among the patrol of twenty-five soldiers responsible for the deaths of eleven persons and the injury of twenty-three more in the returnee population of Xaman in October 1995.¹⁴¹ The Mission had received two complaints alleging forced recruitment of minors by the URNG. Investigation of these complaints provided insight into why children volunteered for the armed forces or the URNG and what their participation involved.

A brutal picture of children as victims can be drawn from several cases MINUGUA verified even during a period of much diminished armed confrontations. The "Xaman tragedy . . . described by the Mission as the gravest incident since its establishment" involved the deaths of three children,¹⁴² among the eleven unarmed peasant returnees killed by soldiers who fired upon them in the "Aurora 8 de Octubre" returnee village in Verapaz.¹⁴³ In another incident a girl was killed in a URNG attack on an army base, and still another boy was slightly injured and traumatized when he was trapped with his family on a road that suddenly converted to a battleground. A series of mine or grenade explosions that caused a number of injuries and deaths shows how children will continue to fall victim even in the war's aftermath.

Verification also reveals the psychological and social state of war-torn communities, and the particular difficulties children face even post-conflict. MINUGUA offices observed the frustration of young returnees, the majority of whom were born and/or grew up in Mexico and had to adapt to much more precarious living conditions in Guatemala than they had previously known. Children also have to live with the constant latent fear that the presence of armed forces or opposition groups produces in their parents. The militarization of society and the "normal" penchant for attributing violent actions to parties in the conflict has enabled delinquent gangs to commit common crimes while calling themselves guerrillas or dressing in military garb.

141. The child soldier, Martín Tiul Xoy, declared himself to be 17 at the time of the massacre and claimed to have already spent some 15 months in the army. Due to falsification of his recruitment documents and difficulties in acquiring his birth certificate, it has been impossible to establish his exact age. PROCURADOR DE LOS DERECHOS HUMANOS, INFORME ANUAL CIRCUNSTANCIADO DEL AÑO 1995 [Human Rights Ombudsman, Annual Report to Congress on the Human Rights Activities and Situation in Guatemala (1995)] at 193-96, 199-201 (Case documentation on file with author).

142. The child victims were 7, 8, and 17 years old. (Case documentation on file with author).

143. *Fourth Report of the Director of the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala*, U.N. Doc. 50th Sess., Agenda item 45, Annex, ¶ 6 A/J50/878, (1996).

MINUGUA's collaboration with a local street children's organization revealed what urban life for many children was like, irrespective of the peace process. Violence against street children by police and private security forces has long been rampant in the capital. MINUGUA verified due process and individual liberty cases that exemplify the abuses inflicted on children on the streets and the inability and unwillingness of juvenile justice authorities to ensure prompt and fair treatment of minors, whether victims, detainees or accused.

Only after about two years of operation did MINUGUA decide to pursue institutional-strengthening projects aimed specifically at children's rights-related institutions. Currently, state institutions are incapable of ensuring respect for children's rights, and child advocates are inexperienced at challenging the system and securing remedies for children's rights violations. The Institutional Support Program for Legislative Reform (PROLEY) produced several studies on the then-proposed Child and Adolescent's Code. These included a feasibility study intended to counter arguments that the sorely needed reform would be too costly to implement and substantive suggestions to improve various drafts.

MINUGUA has not realized its potential in protecting children's rights. Pursuant to the Comprehensive Agreement's terms, MINUGUA reports regularly to the U.N. Secretary-General, and some reported cases have involved minors. Nevertheless, institution-building activities related to justice administration did not consider child-related issues and it would be overstating the facts to say that the Mission paid particular attention to children's rights cases or issues. The scenario in Guatemala was very favorable to U.N. monitoring of children's rights, and a mission with equivalent resources and political space could have undertaken significant initiatives to further children's rights.¹⁴⁴

4. Demobilization, Reintegration, and Reparations Programs

The pragmatic reasons for addressing child protection during a peace process are best illustrated in terms of the consequences of not having done so in the past. Though causal associations are impossible to establish, anecdotal evidence suggests a positive correlation between the failure to incorporate explicitly children's rights at key junctures in the peace process and certain negative social, emotional, and moral developmental outcomes. The following discussion of demobilization and reinsertion programs in El Salvador, Guatemala and Liberia will exemplify this assertion.

Post-conflict settings are often characterized by competition for scarce resources, fragmentation of civil society, and the inability of key actors to act in concert once the unifying pressures of the war and peace process slacken.

144. Why children's rights were not on the Guatemala peacemaking agenda was described in Part III *supra*.

Efforts to clarify vague peace provisions at this stage are laborious. Thus, the opportunities afforded by the peace process should not be missed.

Peacemakers and child welfare advocates interested in promoting the rehabilitation and reintegration of child participants in war will find a paucity of documented past experience to learn from. The El Salvador, Guatemala and Liberia peace processes provided for no child-oriented demobilization, reintegration or reinsertion programs. Reparations for the war-wounded or families of fallen combatants are rarely provided for and appear designed to reach very few of those deserving.

a. Demobilization and Reintegration in El Salvador

The National Reconstruction Plan (NRP) provided for in the El Salvador peace accords foresaw two broad programs through which benefits would be conferred upon participants and victims of the war. The first was intended to facilitate the reincorporation of FMLN combatants into civilian life, "including programs such as scholarships, jobs and pensions, housing programs and business start-up loans." The second aimed to benefit both the war-wounded as well as civilian family members of war victims.¹⁴⁵ Unfortunately, the NRP was vague and required extensive post-conflict renegotiation. The post-conflict correlation of power put the FMLN at a bargaining disadvantage, the 1994 national elections injected a political agenda into the government's negotiating strategy, and it became exceedingly difficult to extract the government funds necessary for the NRP's implementation.¹⁴⁶ According to the Coordinator of the FMLN's commission to follow up on the peace accords, only a fraction of the resources called for in the NRP went to the former conflict zones and very little benefited children there.¹⁴⁷

i. Reincorporation of Combatants to Civilian Life

The FMLN negotiators were so intent on reducing and reforming the Salvadoran military that the terms of the demobilization of over 8000 FMLN troops and their reincorporation into civilian life were left overly vague.¹⁴⁸ Some 1500–1600 children below the age of eighteen were among the 8552 FMLN combatants encamped and demobilized between February 1 and De-

145. *Peace Accords of El Salvador*, ch. V., § 9, reprinted in *EL SALVADOR ACCORDS*, *supra* note 28, at 89. (Translation by author.)

146. Interview with FMLN political leaders and members of FUNDESA who participated in the protracted renegotiations of the National Reconstruction Plan, in San Salvador, El Salvador (Aug. 15, 1997).

147. Interview with Antonio Alvarez, Coordinator of the FMLN Follow-up Commission for the Peace Process, in San Salvador, El Salvador (Aug. 15, 1997).

148. Several former FMLN guerrillas suggested the lack of special provisions for the 105 combatants under age 16 at demobilization was a conscious attempt to avoid acknowledging the participation of youth in the conflict in violation of humanitarian norms. Nidia Díaz, former FMLN commander, party to the peace talks and currently a Deputy in the Legislative Assembly and Deputy General Coordinator of the FMLN, stated that 105 were simply too few to have raised at the negotiating table. Interview with Nidia Díaz (María Marra Valladares), in San Salvador, El Salvador (Aug. 15, 1997).

ember 15, 1992.¹⁴⁹ One hundred five of these were between the ages of eleven and fifteen.¹⁵⁰ Though the FMLN negotiators knew that the reincorporation programs would eventually offer ex-combatants a choice between scholarships for university or technical study and access to small business loans ("the urban option") or a small parcel of land on credit and some agricultural training ("the rural option"), they gave no special thought to what these options would mean for young combatants. According to an FMLN-affiliated NGO, some eighty percent of former combatants chose the rural option, and it was evident that youth were unlikely to choose the urban option.¹⁵¹ It was not until after the peace process had ended, however, that the Government asserted a legal technicality to bar persons under eighteen from applying for credit, an obvious prerequisite to acquiring the rural option's land parcel. The numbers of young ex-combatants choosing the rural option was significant enough to elicit strenuous FMLN efforts to overcome this obstacle.

Renegotiation tables were set up, and participants describe the process as far more grueling than the formal talks. Salvador Sanchez Cerén, former FMLN commander and negotiator at the peace talks and currently FMLN Party Coordinator, recalls that the Government adamantly insisted that the peace accords only benefit citizens, meaning persons over age eighteen. This was a blatant attempt to reduce the pool of beneficiaries and program costs. An arduous fight resulted in special legislation that enabled those between sixteen and eighteen to apply for credit to take advantage of the land offer. Ultimately, the 105 demobilized combatants under age sixteen received no benefits at all.¹⁵²

149. In addition there were 2474 persons classified as affiliated, wounded non-combatants and another 3983 "políticos" demobilized for a total of 15,009. ONUSAL, *Proceso de Desmovilización del Personal del FMLN [Demobilization Process for FMLN Personnel]*, Annex 1, June 1994 (unpublished study conducted by ONUSAL). During encampment the troops were documented and received a small package of household articles and some agricultural or vocational training.

150. Also among the demobilized population were 55 wounded non-combatants and 26 political affiliates of the FMLN between the ages of 11 and 15. Age was determined as of 16 January 1992, the official date that the war ended. *Id.* at Annex 9, Grafico 9B, 9C.

151. Young people would have had too little prior education to enable them to pass the equivalency exams necessary to enter the university scholarship program, and the allowance paid to those who might have qualified was generally viewed as insufficient to enable one to study full time. Interview with Alma Daisy, FUNDESA (formerly Fundación 16 de enero), in San Salvador, El Salvador (August 14, 1997).

152. Gobierno de la República de El Salvador, Secretaría de Reconstrucción Nacional, Programa de Apoyo a la Reinserción de los Ex-Combatientes de la Fuerza Armada de El Salvador y del Frente Farabundo Martí para la Liberación Nacional [Government of El Salvador, National Reconstruction Secretariat, Program to Support the Reinsertion of Ex-combatants of the Armed Forces of El Salvador and the Farabundo Martí National Liberation Front], San Salvador, El Salvador (July 1992) (unpublished program document); Gobierno de la República de El Salvador, Secretaría de Reconstrucción Nacional, Programa de Apoyo a la Reinserción de los Ex-Combatientes del Frente Farabundo Martí para la Liberación Nacional [Government of El Salvador, National Reconstruction Secretariat, Program to Support the Reinsertion of Ex-combatants of the FMLN], San Salvador, El Salvador (Sept. 8, 1992) (unpublished program document). These documents describe the short and medium term programs sponsored by the Government for demobilized troops, principally from the FMLN. Short term programs included documentation, provision of a basic household goods package, some educational and vocational training while

In late 1994, after over two years of post-conflict renegotiation, the National Reconstruction Secretariat (NRS), responsible for administering the NRP, inquired into the educational or vocational training interests of FMLN demobilized minors excluded from the land transfer program on January 16, 1992. Some 250 appear on the final lists of those eligible to enroll in one of the NRS' two possible options:¹⁵³ enrollment in existing Ministry of Education courses along with some undefined basket of school supplies and basic food supplements for one year, or attendance at a technical training course offered by European Economic Community or German Cooperation along with up to one year's basic food supplies. The survey purported to address the Government's failure to extend the original benefits plan to all demobilized FMLN combatants. One hundred and fifty-two surveyed youth chose to participate in the education program, though for untold reasons only nine actually enrolled, and only one finished his studies and received the monthly food package.¹⁵⁴ Though ninety-seven youth were identified by the survey as eligible for the technical training program, not a single one was actually registered, and the program was closed down.¹⁵⁵

ii. Compensation for War-Wounded and Families of Fallen Combatants in El Salvador

Failure to clarify in the peace accords precisely who would be eligible for the negotiated programs providing reparations for injury or for the loss of a family member during the war reduced the numbers of claimants and enabled the Government to impose restrictive interpretations as to eligibility.

The program to benefit war victims was codified in the Law for the Protection of the Wounded and Handicapped in the Armed Conflict. Among beneficiaries are the war-wounded and handicapped on both sides of the conflict as well as the elderly parents, minor children and incapacitated family members of any age, who had been economically dependant on a child or parent killed in the war.¹⁵⁶ An institution was created to administer the one-

troops were concentrated in demobilization centers. Medium term programs included support for those choosing between the rural and urban demobilization packages, a housing program that has still barely begun, and a physical rehabilitation program for wounded former combatants.

153. Secretaría de Reconstrucción Nacional, Encuesta Nacional a Menores de Edad Desmovilizados del FMLN: Resultados [National Reconstruction Secretariat, Results of the National Survey of Demobilized Minors from the FMLN]. San Salvador, El Salvador (Oct. 1994).

154. Gobierno de El Salvador, Los Acuerdos de Paz en El Salvador, Informe de cumplimiento al 30 de abril de 1996, [Government of El Salvador, The Peace Accords in El Salvador, Report on Compliance as of April 30, 1996], 54-55.

155. *Id.* at 55. In addition to the failure of the training program, the majority of demobilized FMLN combatants still have no housing in spite of provisions in the peace agreements. Some beneficiaries ultimately sold their land out of frustration with their lack of agricultural skill. Resources for necessary training were unobtainable in the post-conflict period. Many became angry over the quantitative material loss attributable to their participation in the war. Some are known to have joined urban gangs, and some are contributing to the rise in rural delinquency. Interview with Alma Daisy & Edmundo López, FUNDESA (formerly Fundación 16 de enero), in San Salvador, El Salvador (Aug. 14, 1997).

156. Decreto Legislativo [Legislative Decree] No. 416, Dec. 13, 1992, published in the *Diario Oficial*

time or periodic payments and medical, rehabilitative or therapeutic services for which qualifying beneficiaries are eligible.¹⁵⁷ Persons were initially granted twenty months within which to apply for benefits, after which their rights under the law would expire.¹⁵⁸

More than four years after the publication of the above-mentioned law, a relatively paltry number of beneficiaries had actually qualified for and received benefits.¹⁵⁹ The principal explanation for the painfully slow flow of benefits is the predictable inability of beneficiaries to amass the extensive documentation required by the administering institution to prove their own identities, and their relationship to the combatant killed in the war. It was difficult to obtain the death certificate for the combatant and proof that the claimant was economically dependent on the deceased relative.¹⁶⁰

Procuring benefits was thus fraught with administrative difficulties. The cut-off date to apply for benefits allowed no time for public confidence in the peace process to take hold and gave the impression that it was intended only to minimize government expenditures. In 1997, the Government extended the time limit for potential beneficiaries to apply and grudgingly created a temporary mechanism through which death certificate substitutes can be more easily obtained for purposes of attaining benefits.¹⁶¹ The legislation failed to eliminate the "complex, lengthy and costly bureaucratic procedures that family members must submit themselves to in order to obtain the requisite documents."¹⁶²

(Official Gazette) No. 9, Jan. 4, 1993 (El Salvador), reformed by Decree No. 183, published in the Official Gazette No. 325, Nov. 30, 1994, title I, ch. I, art. 1 & title II, ch. I, arts. 22, 24.

157. *Id.* arts. 2, 25–28.

158. *Id.* art. 38.

159. Approximately 35,000 potential beneficiaries were identified in a 1993 census: 12,000 wounded combatants and 23,000 family members of deceased combatants. U.N. Doc. A/51/917, *supra* note 31, ¶ 48. Other official reports refer to as many as 50,000 eligible relatives. Fondo de Protección de Lisiados y Discapacitados a Consecuencia del Conflicto Armado, *Memória de Labores [Fund for the Protection of Wounded and Disabled as a result of the Armed Conflict, Record of Work] (1995–May 1997)* (unpublished report). According to U.N. and national reports, only some 4000–4568 were very belatedly receiving benefits as of April 1997. U.N. Doc. A/51/917, *supra* note 31, ¶¶ 48–49. Children under 18 constituted 28.5% of the beneficiaries, or 1324 cases. Fondo de Protección de Lisiados y Discapacitados a Consecuencia del Conflicto Armado, *Memoria de Labores [Fund for the Protection of Wounded and Disabled as a result of the Armed Conflict, Record of Work] (May 1996–June 1997)* (unpublished report, on file with the author).

160. U.N. Doc. A/51/917, *supra* note 31, ¶ 49. It is not surprising that children separated from their combatant parents and whose identities were hidden or altered to avoid persecution would not have easy access to genuine identity papers now. It is no less novel that relatives of guerrilla combatants killed in combat did not file for death certificates or even report the person missing for fear of repercussions. Additionally, hundreds of municipal buildings and handwritten record books were destroyed in the war, leaving tens of thousands of persons with no record of their birth. This caused particular problems for young persons, who require the identity cards issued at age 18 to vote or obtain a passport.

161. Much to the frustration of the U.N., recent legislation, encouraged by the Special Representative for El Salvador and former moderator of the peace talks, Mr. Alvaro De Soto, was modified at the last minute. *Ley Transitoria para Suplir la Certificación de la Partida de Defunción de los Combatientes Fallecidos a Consecuencia del Conflicto Armado, [Transitional Law to substitute certification of the death certificates of combatants killed in the armed conflict]*, Decree No. 1040, El Salvador, (Apr. 30, 1997).

162. U.N. Doc. A/51/917 (1997), *supra* note 31, ¶ 50.

Succinctly put, benefits failed to reach many children who were, or should have been, eligible. A great number of children whose parents were killed during the war were excluded from the terms of the benefits legislation simply because they were already over eighteen when the law entered into force and thus did not qualify as "children" within the meaning of the law. Many others were not included in the government census of potential beneficiaries because they were unaware, unable or afraid to have their names included on a government list that would identify them as family members of FMLN combatants. Still others were included in the census but had no understanding of the procedures to follow subsequently.¹⁶³ NGOs that want to locate people on the official census and help them apply for the benefits are denied access to the official list and told that it is solely a government obligation.

There is much for peacemakers to learn from the two programs described above about the need to employ language that explicitly eliminates foreseeable obstacles to a child's ability to claim entitlements intended precisely for him or her. Both child combatants and victims in El Salvador's conflict suffered the consequences of foreseeable hindrances to their reinsertion and reparation.

b. Demobilization and Reintegration in Liberia

Not all "lessons learned" can be applied in all peace processes. The FMLN's bargaining power ensured that *some* benefits would devolve onto their combatant and civilian population base, but the Liberian peace process afforded no opportunity to negotiate reincorporation programs or reparations for victims, much less structural reforms to the economy or any other national institution. Still, Liberian child soldiers were featured in countless media broadcasts and publications throughout the war¹⁶⁴ and a limited number of donors were relatively amenable to funding programs targeting this population.

The Liberian accords further included several provisions that might have provided a framework for substantive demobilization programs and special attention to the thousands of children to be demobilized. For example, the cease-fire agreement in the Cotonou Accord of July 25, 1993 prohibited the recruitment and training of combatants during the cease-fire period and referred to a complete "process of demobilization, retraining, rehabilitation and re-absorption of all former combatants."¹⁶⁵ The Akosombo Agreement

163. Interview with Nidia Díaz, *supra* note 148.

164. JoMarie Fecci, *Gang-bangers: Boy 'Soldiers' bring Terror to Liberia*, *SOLDIER OF FORTUNE*, Nov. 1997, at 44; Alyson Hyman, *Images of the Children: Liberia Before and After the War*, *NEW WORLD OUTLOOK*, July-August 1992, at 36; *The Nissan Patrols and the Boys in the Trenches*, *NEWS (Liberia)*, July 24, 1992, at 3; Shana Swiss, *Liberia: Women and Children Gravely Mistreated* (May 1991) (unpublished report, available from the Women's Commission for Refugee Women and Children).

165. *Cotonou Accord*, § C, art. 4(1); § D, art. 5(2)(e); § H, art. 9(2), July 25, 1993, in *ACCORD: THE LIBERIAN PEACE PROCESS 1990-1996*, *supra* note 39, at 43 [hereinafter *Cotonou Accord*].

of September 12, 1994 supplemented and amended Cotonou. It provided that encampment centers would be set up during demobilization to "serve as transit points for the further education, training and rehabilitation of . . . combatants" and called on national, regional and international entities to "design a program which recognizes the peculiarities of the parties and finances the process of demobilization, retraining, rehabilitation and reintegration of all former combatants to normal social and community life."¹⁶⁶

Despite the best efforts of several child welfare organizations in Liberia,¹⁶⁷ the final, hasty demobilization of 21,315 combatants,¹⁶⁸ including 4306 minors, between November 1996 and February 1997 involved none of the elements aspired to in the accords. To encourage youth to demobilize, the requirement of handing in a serviceable weapon was waived, and the U.N. distributed education vouchers, which ultimately proved worthless. Special care, such as tracing and interim care provided by UNICEF and Save the Children/UK, was available only for those under age eighteen who identified themselves as unaccompanied. Of the 4306 children who walked through the demobilization process, only some 416 demobilized youth were transferred to transit homes;¹⁶⁹ the others received a package of vegetable oil and bulgur wheat and were left to fend for themselves; their whereabouts are largely unknown. Estimates are that thousands more did not formally demobilize at all, and they, along with many of those who did demobilize, remained under the de facto command of their military leaders.¹⁷⁰ These and the thousands who entered the factions at a young age and spent an average of five years fighting prior to demobilizing as adults are presumed to be among those still fighting in neighboring Sierra Leone. Others are likely amidst the Monrovia street youth population, child laborers exploited by gold miners or groups of youth roaming the countryside.¹⁷¹

Even in a political environment this frustrating, a conscientious effort by child advocates might stand a chance of attracting the funding and support necessary for programs likely to ease the transition to post-conflict society and produce long-term social benefits. Lessons learned in Liberia are fueling current efforts to galvanize the international community to respond to the

166. Akosombo Agreement, § F, art. 7; § H, art. 9, in ACCORD: THE LIBERIAN PEACE PROCESS 1990-1996, *supra* note 43, at 54 [hereinafter *Akosombo Agreement*].

167. E.g., Save the Children Fund/UK and UNICEF.

168. Statistics obtained from the Office of the United Nations Humanitarian Assistance Coordination Office (UNHACO), interview with Peter Tingwa, UNHACO Coordinator, in Monrovia, Liberia (Nov. 11, 1997).

169. UNICEF LIBERIA, THE DISARMAMENT, DEMOBILIZATION AND REINTEGRATION OF CHILD SOLDIERS IN LIBERIA 1994-1997 31 (1998).

170. "No exact figures exist, but it is generally believed that a significant number of children continue to live in communities throughout the country where the command structure of the factions still exist Despite having passed through the [demobilization] sites, some child fighters are known to still be in the 'care' of their former commanders and there are reports that . . . they continue to be engaged in labor intensive activities." SAVE THE CHILDREN FUND UK IN LIBERIA, LIBERIA'S EX-CHILD FIGHTERS 13 (1997).

171. UNICEF LIBERIA, *supra* note 169, at 49.

plight of war-affected children in Sierra Leone. This initiative merits close attention as a possible example of a concerted and conscientious approach to the protection of children in peacekeeping and, eventually, post-conflict settings.

Far less time has elapsed in Liberia, unlike El Salvador, since the formal close of hostilities in 1996, and it is difficult to get an overview of what is happening to children. A limited number of interviews conducted in Monrovia with NGO staff in November 1997 indicated increased numbers of street children and heightened delinquent behavior in urban areas associated with a lack of attention to psychosocial needs. There was insufficient family and community counseling in preparation for the return of former child soldiers, who might display disruptive attitudes and behavior. A counselor working with war-affected children at the UNICEF-supported Children's Assistance Program in Monrovia predicted that many families and communities will respond badly to the returning youths' lack of discipline. Save the Children Fund/UK (SCF/UK) designed a community-based follow-up program that should provide a clearer picture of how youth are coping in their post-war communities.

c. Demobilization and Reintegration in Guatemala

The situation in Guatemala stands in stark contrast to that of Liberia due to nature of the conflict in Guatemala, the political context of the negotiations, the motivation and objectives of international involvement and the length of time afforded to draft and then implement the agreements. In Guatemala's case the parties intended, with international community support, to structure a new social order or *proyecto de nación*.

One entire Guatemalan agreement addresses the integration of URNG combatants and political affiliates into civilian life.¹⁷² The initial integration phase for URNG combatants comprised a two-month demobilization plus a one-year reinsertion phase, both of which included various documentation, training and employment services.¹⁷³ Between 836 and 882 youth, or approximately thirty percent of the URNG combatants, were between ten and twenty years old during the demobilization period.¹⁷⁴ Another thirty-seven

172. *Agreement on URNG Integration*, *supra* note 67 at Annex II.

173. *Id.* ¶ 3. Demobilization began on Mar. 3, 1997 and ended on May 2, 1997. The reinsertion stage should have concluded on May 2, 1998.

174. According to a URNG document presented to the Comisión Especial de Incorporación [Special Incorporation Committee] a total of 2778 former combatants were demobilized and 836 were between 10 and 20 years of age. Of the 99 former combatants between 10 and 15 years old, 30 (30%) were female and 69 male. Of the 737 between the ages of 15 and 20, 153 (21%) were female and 584 male. The proportion of female combatants to males continues to decrease as age increases, perhaps due to child bearing or other family responsibilities. URNG, *Información Suscinta Sobre Desmovilizados Concentrados y Seguimiento del Proceso Educativo (Elementos Generales)* [Brief Information on Demobilized former Combatants in the Concentration Centers and Follow-up on the Educational Process (Basic Facts)] (May 1997) (unpublished document prepared by the URNG, Guatemala). According to a data sheet provided to the author by the Fundación Guillermo Torriello, the URNG civilian foundation mandated

percent were between the ages of twenty-one and thirty, and of these, many had probably joined the URNG as youth. Nevertheless, there were no special programs targeting youth during the demobilization.

Having concluded the initial integration phase on May 2, 1997, Guatemalan former URNG combatants and political affiliates became eligible for the year-long "URNG integration programme," a package of legal, political, economic and security measures and subprograms intended to "ensure the success of the integration process."¹⁷⁵ The integration program specifically states that former combatants, women, young people and disabled persons would be treated as "sectors requiring specific priority attention."¹⁷⁶

The URNG estimated the size of their total combatant and political affiliate population between ages ten to eighteen to be 1912 persons, or approximately forty-four percent of a total 4360 URNG members. The relatively high number of youth among URNG associates should have warranted special components in the integration program to address specific issues. Such issues could include, for example, the difficulties the younger age group might face in accepting family or work responsibilities, their possible distaste for discipline in the workplace or educational programs, the rejection or stigmatization they might encounter within their new communities and the frustration they may feel at their inability to participate productively in the family or community due to disability, lack of skill or social rejection. The lack of attention to this younger sector of the URNG is, according to the U.N. moderator of the peace talks, proportional to the attention paid to reintegration overall within the peace process.

In spite of the lack of attention to child rights in the peace accords, international and domestic agencies are implementing children's rights and child welfare programs in El Salvador, Guatemala and Liberia. The lack of systematic monitoring mechanisms built into the programs makes it unlikely we will learn the many potential lessons these efforts could tell us about children in post-conflict settings. At present, we are incapable of identifying whether or not there have been any trickle-down effects to children from general provisions in the peace processes, although many programs and policies negotiated during the Guatemalan and Salvadoran peace processes would, if realized, have benefited children.

Creative advocacy at the early stages of peacemaking can succeed in imbuing a child-consciousness into the normative and institutional frameworks of post-conflict society. Mechanisms equipped to monitor compliance with the parties' commitments can enable better conceived and funded, and more willfully implemented, demobilization, reinsertion and reparations pro-

by the peace accords, 2950 former combatants demobilized, 882 of whom were between 10 and 20 years of age. According to the latter document, 1912 total URNG affiliates and combatants between ages 10 and 18 were demobilized.

175. *Agreement on URNG Integration*, *supra* note 67, ¶ 6.

176. *Id.* ¶ 12.

grams whose impact on youth we must attempt to track over longer periods of time.

C. *Redressing Wrongs: Truth, Impunity, and Accountability for War-time Abuses*

Victims and witnesses of war-time abuses expect those responsible to be identified and punished in order to achieve truth, justice, and, possibly deterrence. But society, or certain powerful individuals or institutions, are often unwilling to incur the costs involved. When incompetent judicial systems or broad amnesty legislation frustrate victims' expectations, victims may become vengeful. They may fear or mistrust other persons, groups, government and a general repetition of events. Adults may transmit their insecurities and prejudices to their children. Peace processes are increasingly the forum for resolving these tensions and peacemakers must concoct, and answer for, the compromises they inevitably reach. Amnesties, truth commissions and judicial remedies all affect children and their adult caretakers and peacemakers must therefore pay particular attention to how war-time children's rights violations are acknowledged and addressed.

1. Truth Commissions

a. The Limited Focus of Truth Commissions on Children's Rights Violations

Only one truth commission to date has had a mandate to pay special attention to abuses of or by children. The National Commission on Disappeared Persons (CONADEP), established to clarify the facts related to the disappearance of persons in Argentina, was legally mandated to "determine the whereabouts of children removed from the care of their parents or guardians as a result of actions undertaken with the alleged motive of repressing terrorism, and to intervene as appropriate in organisms and tribunals for the protection of minors."¹⁷⁷ CONADEP's final report, *Nunca Más*, describes in graphic and wrenching detail the perverse nature of the crimes perpetrated on children, including fetuses who suffered the effects of their pregnant mothers' torture, very young children who witnessed their parents' torture and kidnapping, infants who were extracted from the womb for illegal adoption, children who were deliberately denied their identities, or used as bait in the capture of others, their mangled bodies washing up on the shores of the Río de la Plata.¹⁷⁸ Some 250 adolescents were kidnapped and

177. Comisión Nacional sobre la Desaparición de Personas [National Commission on Disappeared Persons], (Argentina) Decree No. 187/83, arts. 1, 2(c) (Dec. 19, 1983).

178. See NUNCA MÁS; INFORME DE LA COMISIÓN NACIONAL SOBRE LA DESAPARICIÓN DE PERSONAS [NATIONAL COMMISSION FOR DISAPPEARED PEOPLE] 293-340 (1984) [hereinafter NUNCA MÁS] (all references are to the Spanish version). See also Theo Van Boven, *Prevention of the Disappearance of Children*, U.N. Hum. Rts. Comm., 40th Sess., Agenda Item 9(c), U.N. Doc. E/CN.4/Sub.2/1988/19 (1988), cited in Jo M. Pasqualucci, *The Whole Truth and Nothing but the Truth: Truth Commissions, Impunity and the Inter-American Human Rights System*, 12 B.U. INT'L L. J. 321, 327 (1994).

many more were disappeared along with their parents.¹⁷⁹ Families were targeted, detained together, forced to witness or hear each others' torture.¹⁸⁰ The Commission recommended that laws be passed to ensure that the children and families of disappeared persons receive economic and social assistance, scholarships, and job opportunities and that measures be taken to address the diverse family and social problems caused by forced disappearances.¹⁸¹

Most truth commission mandates have been sufficiently broad to include many children within their lists of victims and witnesses, though very few have analyzed their data in terms of the ages of the victims or perpetrators.¹⁸² "In light of the direct impact of the policies of the former state on young people and the active role they played in opposing apartheid," South Africa's Truth and Reconciliation Commission held special hearings and devoted a full chapter of the Final Report to the experiences of children and youth.¹⁸³ The El Salvador truth commission's annexes to the final report note that children were among victims of massacres, executions and forced displacement of civilian populations by troops of the Salvadoran armed forces and security forces.¹⁸⁴ None of the highlighted cases significantly involved

179. NUNCA MAS, *supra* note 178, at 323–31.

180. *Id.* at 332–41, 480.

181. *Id.* at 477. There is only brief mention of children in the Commission's conclusions. *Id.* at 480, ch. IV.

182. In El Salvador, the truth commission investigated "grave acts of violence which have occurred since 1980 and whose impact on society most urgently demands public knowledge of the truth." Mexico Agreements, § IV, reprinted in EL SALVADOR ACCORDS, *supra* note 28, at 17 [hereinafter Mexico Agreements]. They issued recommendations "destined to prevent the repetition of violent acts and to foster national reconciliation." *Id.* at 30 (Annex on Truth Commission, ¶ 3). The Guatemalan truth commission's mandate differed in important ways from the Salvadoran. The Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer, signed in Oslo on June 23, 1994, established Guatemala's truth commission to clarify "the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict." Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that Have Caused the Guatemalan Population to Suffer, U.N. GAOR 48th Sess., Agenda Item 40, Annex II, at 13, 14, U.N. Doc. A/48/954, S/1994/751 (1994) [hereinafter Agreement on the Commission to Clarify Past Violations]. The three-person commission and their investigators began work in August 1997 and their findings and recommendations, made public on February 25, 1999, aim to encourage peace and national harmony, preserve the memory of the victims, foster the observance of human rights and strengthen the democratic process. *Id.* at 13. The commission is prohibited from attributing individual responsibility for any act and neither the report nor the recommendations will have any judicial aim or effect. *Id.* at 14. Ironically, these limitations and restrictions contradict various components of the peace agreements that refer to "the right to know the truth." For example, the final Agreement on a Firm and Lasting Peace insists that the Guatemalan people are entitled to know the full truth about the human rights violations and acts of violence that occurred in the context of the internal armed conflict. Shedding light objectively and impartially on what happened will contribute to the process of national reconciliation and democratization in the country. Agreement on a Firm and Lasting Peace, *supra* note 35, at 37, § I, ¶ 4; See also Agreement on URNG Integration, *supra* note 67, at 19, § III(A), ¶ 18.

183. Truth and Reconciliation Commission, Final Report, vol. 4, ch. 9, <<http://www.niza.nl/trc/4chap9.htm>>.

184. Informe de la Comisión de la Verdad para El Salvador, De la Locura a la Esperanza [Report of the Commission on the Truth for El Salvador, From Madness to Hope: The Twelve-Year War in El Salvador], U.N. SCOR, 48th yr., Annexes, U.N. Doc. S/25500 (1993) [hereinafter El Salvador Truth Commission

youth and none of the final recommendations aimed at “promoting human rights, democracy, and the rule of law and national reconciliation” focus on children.¹⁸⁵

The Guatemalan Truth Commission made no particular effort to interview children, or adults who suffered violations as children, and staff received no special training on interview techniques to use with youth. However, the data has been analyzed to describe the strategies and consequences of violence on children and to recommend future programs and policies.¹⁸⁶ The nongovernmental historical documentation project undertaken by the Guatemala Archbishop’s Human Rights Office devotes an entire chapter to the experiences of children as victims and witnesses of disappearances, massacres, torture, displacement and life on the run in conditions of extreme deprivation and immeasurable fear, the destruction of their homes and communities, their own militarization and recruitment.¹⁸⁷

b. The Impact of Truth-Seeking Processes on Individual and Collective Recovery and the Need to Include and Protect Children in Such Processes

The Machel study recommends that governments in transition from conflict establish truth commissions that consider violations of children’s rights as one possible vehicle for reaching “community healing,” justice and reconciliation.¹⁸⁸

Report]. The Argentine forensic team’s report on the exhumation of the Mozote massacre of December 11, 1981, states that 85% of the 117 victims were children under twelve years of age. *El Salvador Truth Commission Report, supra*, Annex 1.A, [El Mozote: Informe de la Investigación Forense, Equipo Argentino de Antropología Forense] at 11. Another report on the same events prepared by another group of forensic experts identified the presence of 143 skeletons, including 136 children and adolescents. The average age of the children was determined to be six years. Other very young children were likely to be among the remains but were impossible to identify due to extreme fragmentation. *See id.* at Annex 1.B, at 1. The statistical analysis of testimonies collected by the commission showed that neither youth nor the elderly were spared massive cleansings of areas in which the entire population was suspected of FMLN collaboration. Women, children and the aged joined the “guindas” or forced flights into internal displacement or refugee camps. *See id.* at Annex 5, at 18. Approximately 16.6% of the victims in cases directly reported to the commission were under age 16, and 11.9% of the victims in cases received indirectly by the commission were under age 15. *See id.* at Annex 5, at 4, 23.

185. *Id.*

186. Though children comprise some 55% of the population and the conflict in Guatemala was conducted largely against civilians, rough estimates are that some 20% of all violations registered by the commission were perpetrated on children, some 20% of all victims identified by the commission were children during the events and a similar proportion of those who sought to testify to the commission were themselves children at the time of the violations they reported. Though results are as yet inconclusive, there appears to have been only one registered child perpetrator of war-time abuse, and he was the child soldier among the platoon responsible for the so-called Xaman massacre in October 1995. *See supra* note 141 and accompanying text. Not surprisingly, many very young children died during the forced displacement of civilian populations and a relatively high percentage of reported forced recruitment victims were youth.

187. *See OFICINA DE DERECHOS HUMANOS DEL ARZOBISPADO DE GUATEMALA, GUATEMALA: NUNCA MÁS; IMPACTOS DE LA VIOLENCIA*, chapter 3 (1998).

188. *See Machel study, supra* note 15, ¶¶ 247, 276. There is a lively debate among scholars and practitioners in fields ranging from law to psychology to medicine over the extent to which diverse efforts to unearth the truth about past abuses (1) fulfill a right of the population to know the truth about past

No data exists on the long-term effects of truth-seeking processes on participants or society in general. The Argentine Nunca Mas has looked specifically at child victims of forced disappearances, briefly summarizing the emotional disturbances, clinical pathology, personality disorders, and even suicide of children witnesses to and victims of state brutality. In one singular sentence following the report of a child who for years after birth suffered extreme clinical reactions to his mother's electric shock torture administered during pregnancy, the commission asserts that "since having come to a state organism such as this Commission . . . one observes favorable evolution in the mother and child, in their relations with each other and toward the rest of society."¹⁸⁹

It is too soon to detect the impact of the South African and Guatemalan reports (both official and nongovernmental) on victims and on the national healing processes. It is unclear whether the efforts or findings of the Chilean truth commission¹⁹⁰ served in some way to mitigate what Chilean psychologists have referred to as "latent fear" among victims who, because of broad amnesty legislation, today walk the streets with their torturers. Fearful adults often transmit their traumas to their children, and the legacies left by efforts at achieving "truth" or "truth and justice" may influence how today's youth perceive the legitimacy of their government and state institutions.

The potential benefits to children and society of a truth-seeking process that aims to provide a complete and accurate historical record outweigh concerns that very few children might come forward or that many of those vic-

events, (2) provide the public accountability essential to a successful transition to the rule of law, (3) effectively deter violence or vigilantism (4) satisfy the victims' desire for justice, (5) perform therapeutic functions for victims, their families, perpetrators, bystanders and society, (6) facilitate reconciliation, (7) expose perpetrators to preclude any public denial of the facts, (8) create historical records that challenge whole societies to revisit their self-images, (9) serve as the basis for developing reparations policies and responsive interventions for victims, (10) correct negative images about victims by disseminating the truth as to their fates, and (11) elicit the allegedly restorative power of truth-telling both for society and the participants. See Priscilla Hayner, *Fifteen Truth Commissions—1979-1994: A Comparative Study*, 16 HUM. RTS. Q. 597 (1994) (the author discusses several premises for truth commissions: official acknowledgment of the truth can play an important psychological role for victims, truth commissions during political transitions can affirm a change in government human rights practices, legitimize or strengthen the authority of a new head of state, truth commissions may or may not deter future abuses, promote national reconciliation or foment resentment, truth commissions have the potential to contribute recommendations for future reform, truth commissions respond to a right to truth emerging in international human rights debate); NAOMI ROHT-ARRIAZA, *IMPUNITY AND HUMAN RIGHTS IN INTERNATIONAL LAW AND PRACTICE* (1995); JUDITH HERMAN, *TRAUMA AND RECOVERY* (1992) (remembering and telling the truth are prerequisites for individual and social recovery from trauma; the restorative power of truth-telling); *Wounded Nations Broken Lives: Truth Commissions and War Tribunals*, 25 INDEX ON CENSORSHIP 109 (Sept./Oct. 1996); Gregory Jowdy, *Truth Commissions in El Salvador and Guatemala: A Proposal for Truth in Guatemala* 17 B.C. THIRD WORLD L.J. 285 (1997); Rodolfo Cardenal, *Justice in Post-Civil War El Salvador: The Role of the Truth Commission*, 9 JOURNAL OF THIRD WORLD STUDIES 313 (1992); Pasquucci, *supra* note 178, at 330-33 (inalienable right of society to know the truth about past events, truth-telling contributes to deterrence, truth as a right of the victim or victim's family, truth restores dignity of victim, therapeutic value of being heard by a truth commission).

189. NUNCA MÁS, *supra* note 178, at 317-21. (Translation by author.)

190. See NATIONAL COMMISSION ON TRUTH AND RECONCILIATION, REPORT OF THE CHILEAN COMMISSION ON TRUTH AND RECONCILIATION (Phillip E. Berryman trans., 1993).

timized as children might have forgotten or repressed their memories. The South African Truth and Reconciliation Commission (TRC) found that few children under eighteen approached to tell their stories until the TRC convened special hearings on children and youth. Once organized, the special hearings drew enormous input from NGOs and child care professionals. Children participated in creative and flexible ways and were encouraged to witness the hearings. Concerns over the quality of memory are particularly significant if testimony will lead to judicial proceedings or serve as the basis for accusing specific individuals publicly. Though such events often seem clearly ingrained in the individual and collective conscience of the victims—the majority of those testifying to the Guatemalan truth commission who suffered violations as children were very confident in the veracity of their memories, for example—one must weigh the therapeutic effect of giving voice to such memories against the questionable credibility of such testimony in certain settings. A slightly more aggressive approach to obtaining information on child abuses would require only marginally more investment. In El Salvador, for example, the truth commission had data on the ages of witnesses and victims and might have done more simply to cross-reference age with data on a wide range of violations. The South African TRC's innovative methods of including children in the process while prohibiting them from formally testifying should be studied closely.

Other objections to consciously addressing children's rights violations in truth-telling processes are implicit in a rejection of such processes altogether, especially in societies with long traditions of customary healing practices often described as antithetical to approaches that emphasize revisiting atrocities and verbalizing accusations. In post-conflict Mozambique, for example, the parties to the conflict prioritized demobilization and "rebuffed international human rights organizations' proposals for a truth commission body. Nor [did] there seem to be an interest on the part of the general Mozambican population in reviewing the horrors of the past."¹⁹¹ Some former combatants likely to have perpetrated grave abuses, possibly in their own communities, participated in community cleansing or purification ceremonies, after which neither they nor their communities were willing to participate in any outside attempts to review the past.¹⁹²

One Mozambican author describes the cleansing and purification rituals and veneration of the ancestral spirits used to restore "well-being both within and between communities."¹⁹³ Her examples illustrate the extent to which (1) "trauma is perceived as a collective affliction affecting not only individuals, but also their relatives, both living and dead" and (2) "customary

191. Hayner, *supra* note 188, at 610.

192. Interview with UNICEF staff involved in the Mozambican peace process, in New York, New York (Oct. 30, 1997).

193. Alcinda Honwana, *Sealing the Past, Facing the Future: Trauma Healing in Rural Mozambique*, in CONCILIATION RESOURCES, ACCORD: THE MOZAMBIKAN PEACE PROCESS IN PERSPECTIVE (1998) <http://www.c-r.org/cr/acc_moz/honwana.htm>.

healing involves making a clean cut with past traumas” as opposed to “verbalizing the affliction” or “dwelling too much on the past.”¹⁹⁴ And yet we really know very little about what methods, or combination thereof, work best over time in terms of individual mental health, social reconciliation and diminished potential for future violence. These acknowledged tensions are very difficult to resolve, especially in the context of young victims and young perpetrators of abuse.¹⁹⁵

Unfortunately, we have no follow-up data on the demobilized population’s ability to take up their places in their families, communities and occupations. We simply do not know, for example, how the former RENAMO child soldiers who received therapeutic attention at the Llanghene center in Maputo—many of whom had witnessed or been forced to commit very violent atrocities—are faring several years down the road. In more global terms, one author has stated that:

The ordinary response to atrocities is to banish them from consciousness. Certain violations of the social compact are too terrible to utter aloud: this is the meaning of the word *unspeakable*.

Atrocities, however, refuse to be buried. Equally as powerful as the desire to deny atrocities is the conviction that denial does not work. Folk wisdom is filled with ghosts who refuse to rest in their graves until their stories are told. Murder will out. Remembering and telling the truth about terrible events are prerequisites both for the restoration of the social order and for the healing of individual victims.¹⁹⁶

The academic and practice literature mainly agrees that truth-telling is an important, if not indispensable, component of individual and collective re-

194. One example described a cleansing ritual performed on a nine-year-old boy who had been kidnapped by RENAMO and was later able to reunite with his family. The same Mozambican author who advocates a strong role for customary practices, observes that:

While these local processes of healing need to be recognised and accommodated, it is also important to acknowledge their limits. The extreme disruptions of the past three decades in Mozambique in terms of economic hardship, social change and displacement have been important factors shaping and inhibiting healing processes. In communities where people were killed by their neighbors, where families were divided for long periods of time, where people can no longer muster the resources to carry out ceremonies properly, and where the reputation of traditional leaders was compromised during the war, the effectiveness of customary remedies has come into question. It is also evident that the horrors experienced by many Mozambicans cannot simply be erased from the collective memory as customary practices sometimes require. If drawing a line under the past fosters denial and impunity, there is also the risk of facilitating further human rights abuses.

Id.

195. *Id.*

196. HERMAN, *supra* note 188, at 1.

covery from trauma across societies.¹⁹⁷ The great uncertainties tend to revolve around methods and mechanisms. Children's rights advocates should urge peacemakers to direct any investigative commission they ultimately create to identify those persons responsible for drawing children into and victimizing them during the conflict and to describe abuses perpetrated by children¹⁹⁸ and the surrounding circumstances. The compilation of descriptive narrative from children's testimonies would begin to give substance and assign responsibility for the "desolate moral vacuum" identified by U.N. expert Graca Machel as "a space devoid of the most basic human values; a space in which children are slaughtered, raped and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality."

A supportive process intended to reinforce the moral value of truth-telling would benefit child perpetrators as well as victims. In fact, the incorporation of truth-telling procedures as components of other programs ongoing throughout the conflict may be quite beneficial. In the aftermath of traumatic experiences, children need an opportunity (1) to express their own fears (which often mirror adult anxieties) and questions about the events and (2) to be reassured, i.e., given responsive, factual information by supportive parents or the nearest adult caretakers.¹⁹⁹ If this avenue of expression-reassurance is blocked, a child's risk of suffering long-term disturbances increases.²⁰⁰ Though the best therapist will be a parent who can share anxiety with the child "in the common belief that something can be done to meet the threat," many others in contact with children in war-time can also be supportive.²⁰¹ Absent appropriate support and protection, the experience of participating in a truth-seeking process might indeed prove damaging for children.

As the transition towards peace progresses, programmatic support is necessary to promote, as the CRC requires, the "psychological recovery and social reintegration of a child victim of . . . armed conflicts."²⁰² Staff who interview or work with children should be trained to understand typical child reactions to war-time stressors, to respond to the child's need for factual and

197. See *id.* at 181.

198. A number of the recent truth commissions were designed during political peace negotiation processes, as in Guatemala and El Salvador, and political transition negotiations as in South Africa. One commentator has attributed what she feels were shortcomings in the Salvadoran commission's mandate and in its final report to the fact that it was defined to suit the political interests of those represented at the negotiating table and, consequently, produced a report that "neglected large portions of Salvadoran society." Margaret L. Popkin, *Judicial Reform in Post-War El Salvador: Missed Opportunities*, Address at the 1995 Meeting of the Latin American Studies Association 5 (Sept. 28-30, 1995) (unpublished transcript) quoted in Jowdy, *supra* note 188, at 308-09 (1997). This only reinforces the need for children's rights advocates to lobby peacemakers and ensure children's interests are indeed reflected in the negotiations process.

199. See FRASER, *supra* note 16, at 76-87.

200. See *id.* at 84.

201. *Id.* at 78, 85.

202. CRC, *supra* note 1, art. 39.

informative explanations, to incorporate techniques to establish trust and encourage discussion with children, and to balance the benefits of eliciting the child's story with the damage that insensitive questioning can cause.²⁰³ Done well, determinations of moral culpability for abuses committed both against and by children can advance the child's moral development and reinsertion into a family or community. Much work remains to be done to develop the necessary guidelines, techniques and training tools.

c. The Potential Policy Implications of Addressing Child Rights Violations within the Truth-Telling Process

The information gathered through truth-seeking processes can have significant social value during transitions to democracy, catalyzing a "*politics of information*," in which various political forces in the subject state use the figures to argue for their own preferred human rights policies. At a bilateral level, the assessment of abuses influences the level and type of foreign aid a state will receive. Finally, international judgments on a regime's repressiveness shape international policy.²⁰⁴ The international and domestic reactions to the Argentine truth-commission's findings, especially regarding the military's systematic illicit adoption of children of women pregnant when kidnapped, "highlights the role of qualitative factors in generating domestic protest and international condemnation."²⁰⁵ The influence of the issue of missing children in Argentina can simply not be explained by the mere numbers involved.²⁰⁶

Documentation on specific types of abuse and victims—the recruitment of child soldiers, trafficking in children, or the indiscriminate attack of child-care or educational facilities, for example—can be very influential in generating protest, stimulating the international monitoring of abuses, and fomenting international and domestic policy debates that can lead to broad human rights reforms.²⁰⁷ One outcome of the "politics of information" in the hands of Argentina's Grandmothers of the Plaza de Mayo was the exclusion of those causes of action involving the kidnapping of children from Argentine amnesty legislation, passed after the publication of CONADEP's truth commission report.²⁰⁸ Child advocates must not squander the opportunity to insist that specific child rights abuses, however disproportionately

203. South Africa's Truth and Reconciliation Commission made an effort to retain social workers and psychologists on staff and to provide counseling both before and after testimony was given.

204. *The Politics of Measurement*, *supra* note 5, at 677–78.

205. *Id.* at 678.

206. There is much debate over how to measure the numbers of disappeared children, many of whom were not yet born at the time of their mothers' detention. "Of the documented disappeared, almost 150 were children under the age of fifteen, 125 victims were over sixty years old, and 268 were pregnant women." *Id.* at 690, citing NUNCA MÁS, *supra* note 178, at 285. On the other hand, "[t]he Grandmothers' human rights group has identified several hundred cases of missing children." *Id.* at 689. In any case, given the thousands of disappeared, the number of missing children remains relatively low.

207. *See id.* at 689.

208. *See supra* notes 5, 177–181, 206 and accompanying text.

infrequent they appear, be investigated and acknowledged in truth-seeking processes. The resulting findings must then be employed during subsequent policy and amnesty legislation debates and reform efforts.

A truth commissions' operating guidelines should ensure that the procedures (1) do not conflict with local healing methods, and (2) incorporate the supportive programs necessary to enhance the therapeutic value, and minimize any negative impact, that participating in a truth-seeking process might have on child victims, witnesses and perpetrators, and on their caregivers and communities. Further research is required here and, in each case, context-specific adaptations of any model program or policy would be essential. A truth commission's recommendations should aim to deter future violations of and by children and should suggest programs or policies to facilitate the recovery, reintegration and reconciliation process.

2. Amnesties and National Prosecutions in Post-Conflict Settings

a. Limiting the Scope of Amnesty Legislation: Carving Out Child-Conscious Exceptions

Amnesties are often conceded during peace processes to cull the acquiescence of opponents of the process, to reduce the danger occasionally posed by military and security forces who fear prosecution, and to bring reluctant factions to the table. Yet child advocates must harness the moral and legal force of international consensus on the heinous nature of children's rights violations to ensure that the perpetrators of such abuses are not exempted from legal responsibility.

Despite the moral and legal questionability of amnesty legislation, it is almost always deemed politically unavoidable. The threat to South Africa's political transition posed by wary security forces resulted in a sweeping amnesty belatedly appended to the Interim Constitution;²⁰⁹ subsequent legislation created the process through which amnesties would be granted.²¹⁰ In Sierra Leone, the Conakry Agreement extended "unconditional immunities and guarantees from prosecution" to all involved in the coup against President Kabbah in May 1997.²¹¹

The El Salvadoran Legislative Assembly passed a blanket amnesty on March 20, 1993, five days after the publication of the Truth Commission's

209. See Constitution of the Republic of South Africa Act, No. 200 (1993), epilogue. The final section of the Act is entitled "National Unity and Reconciliation" and provides in part: "In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past."

210. See Promotion of National Unity and Reconciliation Act § 3(1)(b) (1995). This Act establishes the Truth and Reconciliation Commission which is meant to clarify the causes, nature and extent of past human rights abuses and is required to facilitate "the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective"

211. ECOWAS *Six-Month Peace Plan for Sierra Leone*, Oct. 23, 1997-Apr. 22, 1998, reprinted in 9 AFR. J. INT'L & COMP. L. 998 (1997).

report, in violation of provisions in the peace accords,²¹² national legislation,²¹³ and the recommendations of the Truth Commission.²¹⁴ The amnesty effectively ended the possibility of achieving the justice the Truth Commission had aspired to foster.

In Guatemala the parties removed the amnesty decision from the legislative body altogether; the peace accords spelled out the amnesty's broad scope and the National Reconciliation Law (NRL) was compliantly passed by Congress soon after the accord was signed.²¹⁵ The NRL exempted only genocide, forced disappearances and torture from the provisions of the amnesty.²¹⁶ A more conscientious effort by peacemakers might have resulted in the exclusion of other egregious violations, such as extrajudicial executions, so prevalent in Guatemala's prolonged strife.²¹⁷ Fortunately, judges have been narrowly interpreting the NRL's criteria for a successful amnesty application and to date no serious cases have been amnestied. Of course, ineptitude and apathy in the justice administration system practically guarantee de facto impunity for violators.

Yet precedent exists for children's rights advocates to achieve limits on an amnesty's scope. The Southern Cone serves, once again, as the best example.

212. See *Peace Accord of El Salvador*, ch. 1, § 5, reprinted in *EL SALVADOR ACCORDS*, *supra* note 28, at 55. This section, headed "Overcoming Impunity," recognizes the importance of avoiding any semblance of the armed forces enjoying impunity for human rights violations and states that all such cases must be submitted to the truth commission. Moreover, both parties to the conflict recognized that all such acts, regardless the sector to which the individual responsible belonged, must be dealt with judicially and punished in accordance with the law.

213. The National Reconciliation Law of Jan. 23, 1992 provided that amnesty would not be granted to persons who, according to the Truth Commission report, had participated in grave acts of violence whose impact on society urgently required public knowledge of the truth. The Legislative Assembly would be able to consider how to handle such cases six months after receiving the Truth Commission's report. *Ley de Reconciliación Nacional* [National Reconciliation Law], Decree No. 147, art. 6 (Jan. 23, 1992).

214. See U.N. Doc. A/51/917 *supra* note 31, ¶ 25.

215. The Agreement on the Basis for the Legal Integration of the *Unidad Revolucionaria Nacional Guatemalteca* required the Government to propose legislation—a National Reconciliation Act—whose stated object was to promote a culture of harmony and mutual respect, eliminate all forms of revenge, and preserve the fundamental rights of the victims. In furtherance of the aims of the Agreement itself and in accordance with relevant humanitarian law, the NRA was intended to extinguish criminal liability for political crimes and certain related common crimes committed by members of the URNG and permit them to integrate lawfully into society. However the parties went on to exceed accepted international legal limits and agree that the NRA would extinguish criminal liability for any member of a state institution who committed any common crime intended to prevent, suppress, thwart or punish any of the political or related common crimes committed by URNG members. See *Agreement on URNG Integration*, *supra* note 67, ¶¶ 17–23. This provision ran counter to earlier agreements reached by the same parties to the peace process, namely their "commitment against impunity": "[t]he government shall not sponsor the adoption of legislative or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations." *Comprehensive Agreement*, *supra* note 38, at commitment 3, ¶¶ 1–3.

216. See *Ley de Reconciliación Nacional* [National Reconciliation Law], Decree No. 145-96, art. 8 (Dec. 18, 1996). The NRL also excluded those crimes deemed imprescriptible in domestic law or relevant international law. *Id.*

217. See Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 *YALE L.J.* 2537, 2578.

Amnesties and pardons were ultimately granted to persons many had assumed would be punished after Argentina's "dirty war."²¹⁸ Among these was retired general and former Argentine junta leader Jorge Videla, who was tried in 1983 and sentenced to life in prison on sixty-six charges of murder, 306 counts of kidnapping and ninety-seven charges of torture. President Carlos Menem pardoned junta leaders and guerrillas in 1990, and Videla was released. Nevertheless, in Argentina (and Uruguay), where untold numbers of children were stolen from their disappeared mothers and illegally adopted by families selected by the military regimes, abuses against children were excluded from the scope of amnesties conceded to military leaders during and after the political transitions of the mid-1980s.²¹⁹

On June 9, 1998, two decades after the facts, Videla was detained on charges of abducting and hiding children and falsifying public documents.²²⁰ A federal judge recently ruled that Videla had not been pardoned for "crimes against children" and he was consequently charged with five cases of child abduction.²²¹ In August 1998 five more charges of child kidnapping were added to the case; more could materialize as the investigation

218. See Machel study, *supra* note 15, ¶ 247. Former Argentine President Jorge Videla, for example, was sentenced to life imprisonment in 1987 for human rights abuses during his dictatorship, but was pardoned shortly after Menem's election.

219. In Uruguay, article 4 of the 1986 amnesty legislation provides that in spite of the broad amnesty granted to military and police personnel in order to "conclude the transition to full constitutional order" ("*concluir la transición hacia la plena vigencia del orden constitucional*"), judges should forward to the Executive Branch all testimonies related to complaints concerning persons detained and disappeared during military and police operations "as well as on minors presumably kidnapped in similar circumstances. The Executive Branch will initiate immediately the investigations required to clarify such acts." ("*así como de menores presuntamente secuestrados en similares condiciones. El Poder Ejecutivo dispondrá de inmediato las investigaciones destinadas al esclarecimiento de estos hechos.*") *Ley de Caducidad de la Pretensión Punitiva del Estado Respecto de los Delitos Cometidos hasta el 1 de marzo de 1985* [Law waiving the exercise of the State's punitive power with respect to crimes committed until 1 March 1985, known as the "Expiry Law"], Law No. 15,848, Dec. 22, 1986.

In Argentina, the "*Punto Final*" [Full Stop] legislation passed in 1986 limited the period to present any and all claims related to crimes committed during the dictatorship to sixty days. Article 5 states that: "This law does not apply to criminal prosecutions for the crimes of change of civil status and kidnapping and hiding of minors." ("*La presente ley no extingue las acciones penales en los casos de delitos de sustitución de estado civil y de sustracción y ocultación de menores.*") Neither did the amnesty apply to civil causes of action. *Punto Final* (Full Stop Law), Law No. 23,492, Dec. 23, 1986, Argentina, reprinted in 8 HUM. RTS. L.J. 476 (1987). *Punto Final* set off a chain of reactions that began with a deluge of claims against military and police personnel, spurring uprisings among military units, and ultimately concluding in another piece of legislation. The "Due Obedience" law codified a presumption of innocence in favor of lower ranking officers and troops. Nevertheless, even at this juncture, violators of children's rights remained beyond the amnesty's scope. According to article 2 of the "Due Obedience" law, "The presumption established in the previous article shall not apply to crimes of rape, kidnapping and hiding of minors, change of civil status, and appropriation of immovables through extortion." ("*La presunción establecida en el artículo anterior no será aplicable respecto de los delitos de violación, sustracción y ocultación de menores o sustitución de su estado civil y apropiación extorsiva de inmuebles.*") *Obediencia Debida* (Due Obedience), Law No. 23,521, June 4, 1987, Argentina, reprinted in 8 HUM. RTS. L.J. 477 (1987).

220. See Gerardo Young, *Detienen a Videla en un caso por robo de bebés*, Clarín digital, (Argentina), June 10, 1998, <<http://www.clarin.com.ar/diario/98-06-10/f-0020ld.htm>>.

221. See Anthony Faiola, *Argentine Dictator Runs Out of Pardons, Ex-Ruler Accused in Child Abductions*, WASH. FOREIGN SERVICE, July 8, 1998, at 24.

continues.²²² He “could serve 3 to 25 years in prison if convicted. Several of the children whom he is accused of stealing were apparently born in secret prisons around Buenos Aires.”²²³ More recently, on November 24, 1998, former chief of the Navy and member of Videla’s junta, Admiral Emilio Massera, was detained pursuant to a federal investigation into the kidnapping and illegal adoption of a child born to disappeared parents in 1977.²²⁴

Because the Argentine courts have found that the crime of abducting and hiding a child continues as long as that child’s whereabouts are unknown and his or her identity remains false, a provision long innocuous may now prove a key tool in the struggle for justice for the thousands of victims and their families who suffered under Videla’s military rule. As the *Washington Post* declared: “In the end, it is the children who could be the downfall of a former Argentine dictator.”²²⁵

Child advocates should insist that the full range of crimes within the jurisdiction of the International Criminal Court (ICC) be excluded from any amnesty. Children could be among the victims of any of the acts against the civilian population stipulated in the Rome Statute as comprising genocide, crimes against humanity or war crimes.²²⁶ Among these are several specific to children, such as the forcible transfer to another group of the children of a group targeted for destruction; the intentional, direct attacking of a building dedicated to education; and the conscription or enlistment of children under age fifteen or their use for active participation in hostilities.²²⁷

Sexual abuse and exploitation and the theft, sale or trafficking of children should also be beyond an amnesty’s scope. The General Assembly has already proclaimed rape in the conduct of armed conflict to be a war crime and possibly even a crime against humanity and an act of genocide, and has called repeatedly on all states to “strengthen mechanisms to investigate and punish all those responsible and bring the perpetrators to justice.”²²⁸ Rape and all forms of sexual violence are also, according to the Rome Statute, crimes against humanity and war crimes and might arguably constitute genocide.²²⁹ The international community’s formal rendering of these acts as serious violations of international law resulting in individual criminal re-

222. See *Argentina’s Videla Accused of More Baby Thefts*, Reuters, (wire service), Aug. 11, 1998.

223. Clifford Kraus, *Ex-Argentine Junta Leader Held in 70’s Kidnappings*, N.Y. TIMES, June 10, 1998, at A3.

224. See *Detuvieron a Massera*, La NaciON LINE, Nov. 25, 1998, <<http://www.lanacion.com.ar/imgs/frame3/i-nada.htm>> Like Videla, Massera had been convicted of rights abuses after the transition to democracy in 1983, but was pardoned by President Menem in 1990 in an effort to achieve reconciliation and calm the military. A total of nine officers “have been arrested, detained or summoned to court this year for their suspected involvement in the baby-snatching scheme.” Clifford Kraus, *Argentine Kidnapping Inquiry Stepped Up*, N.Y. TIMES, Dec. 31, 1998, at A9.

225. Faiola, *supra* note 221.

226. See *Rome Statute of the ICC*, *supra* note 98, arts. 6-8.

227. *Id.* arts. 6(e), 8(2)(b)(ix) & (xxvi), 8(2)(e)(iv) & (vii).

228. See G.A. Res. 51/77, *supra* note 78, ¶ 28; G.A. Res. 52/107, *supra* note 78, § IV.

229. See *Rome Statute of the ICC*, *supra* note 98, arts. 6(b), 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi).

sponsibility should strengthen advocates' arguments for child-conscious amnesty exclusions.²³⁰

b. The Domestic Prosecution of Children's Rights Violators and Child Perpetrators of Grave Abuses

Graça Machel asserts that the "prime responsibility for consistent monitoring and prosecution of violations rests with the national authorities of the State in which the violations occurred."²³¹ She recognizes though, that in that rare post-conflict setting in which the prevailing social and political environment permits prosecutions, the state of the national justice system may simply be inadequate to the task. "Following the conflict in Rwanda, for example, only 20 percent of the judiciary survived, and the courts lacked the most basic resources [T]he reconstruction of the legal systems must be viewed as an urgent task of rebuilding and . . . substantial international assistance may be required."²³²

The state of the national justice system is of particular concern when child perpetrators are to be prosecuted. Again, Rwanda provides a telling example. As of June 1996, according to the Machel study, 1741 Rwandan children

were being held in detention in dreadful conditions. Of these, approximately 550 were under 15 years, and therefore beneath the age of criminal responsibility under Rwandan law They were subsequently released into newly established juvenile or community detention facilities. For the 1191 children who are detained and charged with criminal responsibility, UNICEF, through the Ministry of Justice, provides legal assistance for their defence. It is also advocating special provisions for the trial of these adolescents.²³³

However, as of mid-1998 there are neither special legal procedures in place for the handling of child detainees nor is any legal assistance available for their defense.²³⁴ Though capital punishment is provided for in the 1996 Genocide Law and has already been applied in a number of adult cases, the law makes no reference to the age of those accused of genocide or crimes against humanity.²³⁵ In contrast, the CRC and Rwandan law prohibit capital

230. See generally Theodor Meron, *Rape as a Crime under International Humanitarian Law*, 87 AM. J. INT'L L. 424 (1993); Margareth Etienne, *Addressing Gender-Based Violence in an International Context*, 18 HARV. WOMEN'S L.J. 139 (1995); Catherine N. Niarchos, *Women, War, and Rape: Challenges Facing The International Tribunal for the Former Yugoslavia*, 17 HUM. RTS. Q. 649 (1995).

231. Machel study, *supra* note 15, ¶ 252.

232. *Id.*

233. *Id.* ¶ 250.

234. Telephone Interview with UNICEF Program Officer for Children in Armed Conflict, in New York, N.Y., (July 1, 1998).

235. See Organic Law No. 08/96 of 30 August 1996 on the Organization of Prosecution for Offences

punishment or life imprisonment for offenses committed by persons under age eighteen and article 77 of the Rwandan Penal Code ensures more lenient sentencing for those fourteen to eighteen at the time of the infraction and those under fourteen are exempted from criminal responsibility by law.²³⁶

Detained children under fourteen were purportedly separated and placed in special institutions pending family reunification. However, the Rwandan government has been unable or unwilling to execute the documentation process that it required prior to family reunification.²³⁷ All youth between fourteen and eighteen years at the time of the events should have been separated from the adult detainees and housed in UNICEF-sponsored detention facilities. But these facilities were not immediately available and many detainees could not prove their age; so, it is unclear whether all eligible youth were in fact separated from the adult detainees.

Furthermore, a 1995 study by Save the Children Federation—USA, in collaboration with three Rwandan NGOs, found that Rwandan adults' understanding of juvenile culpability and punishment for children who participated in the genocide greatly diverged from the CRC and Rwandan law.²³⁸ Rwandans participating in the study

did not accept the notion of immunity from punishment [A]n overwhelming majority of participants proposed punishing children who committed murder during the genocide in the same manner they would punish adults: with capital punishment Many participants said that the children who had committed rape by definition could no longer be children and should receive the death penalty²³⁹ [The dominant idea among all participants was that harsh] punishment was necessary to eradicate forever the impunity that had characterized Rwandan society since 1959 . . . and deter both other children and adults from committing atrocities in the future.²⁴⁰

Some felt severe punishment would demonstrate empathy with the survivors and serve the ends of justice while simultaneously protecting the perpetrators from their victims' vengeance.²⁴¹ Any advocacy position on the proce-

Constituting the Crime of Genocide or Crimes against Humanity committed since 1 October 1990 (Rwanda) (1996).

236. Rwandan Penal Code, Law of August 18, 1977, cited in Protection and Promotion of Children's Rights in the Field, A handbook for human rights field officers 27 (unpublished manual, on file with Save the Children Federation U.S.A.).

237. *Supra* note 234.

238. See Save the Children Federation—USA, Children, Genocide, and Justice: Rwandan Perspectives on Culpability and Punishment for Children Convicted of Crimes Associated with Genocide, Final Report of a Pilot Project on Children, Genocide, and Justice (1995) (unpublished paper available from Save the Children Federation—USA, 1995).

239. *Id.* at 8, 13.

240. *Id.* at 14.

241. See *id.*

dures and sanctions applicable to these Rwandan youth must incorporate a longer, programmatic view of protection and consider future social ramifications of lenient sentences for children deemed guilty of complicity in, or actual commission of, genocide. Counseling and protective programs might be required for witnesses and freed convicts.

Child advocates must take the CRC and complementary national law as their starting point,²⁴² and devise a comprehensive approach that addresses both the distinct circumstances of the very young accused perpetrator who must be "presumed not to have the capacity to infringe the penal law"²⁴³ but who nonetheless requires "appropriate measures to promote physical and psychological recovery and social reintegration"²⁴⁴ as well as those older adolescents accused of infringing the penal law. With regard to the former group, Machel recommended that States Parties should establish a minimum age for criminal responsibility in accordance with criteria in the U.N. Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the Committee on the Rights of the Child.²⁴⁵

With regard to the latter group, the advocates' approach should seek to (1) ensure respect for the procedural guarantees of the accused and convicted in accordance with CRC article 40, (2) provide the technical and financial support to build a penal system capable of rehabilitating and reeducating convicted youth, (3) educate the public as to the tenets underlying the CRC and domestic law, (4) work with communities in advance of a convicted child's release and return to his or her home community and (5) monitor the child's long-term reintegration and safety.²⁴⁶ The gap between public perception of what "juvenile justice" should imply and protective normative strictures can complicate the advocates' juggling of the components of this holistic approach.

242. Advocates must identify and promote the highest standard of protection relevant to children, whether it is found in the national or international law applicable to a given State. Article 41 of the CRC states that "Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State Party; or (b) International law in force for that State." See Cohn, *supra* note 1, at 105-09.

243. CRC, *supra* note 1, art. 40(3)(a).

244. *Id.*, art. 39.

245. The Beijing Rules "stress that this age shall not be fixed at too low a level, bearing in mind the child's emotional, mental and intellectual maturity. The Committee on the Rights of the Child states that the assessment of the children's criminal responsibility should not be based on subjective or imprecise criteria, such as the attainment of puberty, age of discernment or the child's personality." Machel study, *supra* note 15, ¶ 251, citing *Committee on the Rights of the Child*, U.N. Doc. CRC/C/46, *supra* ¶¶ 203-38.

246. CRC article 40(2)(b) provides in part that every child alleged as or accused of having infringed the penal law has at least the following guarantees: the presumption of innocence, the right to be informed of the charges against him or her, the right to have the matter determined by a competent, independent and impartial authority or body, the right not to be compelled to give testimony, the right to examine adverse witnesses, the right to full respect for his or her privacy, the right to an interpreter and the right to appeal an adverse judgement. CRC article 40(3)(b) also provides that whenever appropriate children alleged as, accused of or recognized as having infringed the penal law should benefit from measures that avoid judicial proceedings while respecting human rights and legal safeguards.

Machel suggests that in the “cases of the gravest abuses, including but not limited to genocide, international law can be more appropriate than national action.”²⁴⁷ Ad hoc tribunals,²⁴⁸ such as those established for the former Yugoslavia and Rwanda, and the new International Criminal Court, discussed below, “deserve greater financial support and more determined political backing.”²⁴⁹ Sanctions are another possible international response to egregious rights violations.²⁵⁰

3. The Deterrent and Therapeutic Value of the Proposed Permanent International Criminal Court

The Rome Statute of the International Criminal Court, adopted on July 17, 1998, will ideally establish a permanent tribunal to end the traditional impunity of those responsible for genocide, crimes against humanity and war crimes. The ICC should also deter such crimes, perform a protective and therapeutic function for victims and witnesses, and prevent violent acts of vengeance by offering a non-violent route to justice.

Children have always been among the victims of the crimes within ICC jurisdiction. But criminals increasingly target children for use as soldiers and, most often in the case of girls, sex-slaves.²⁵¹ Child advocates' lobbying efforts throughout the drafting phases of the Rome Statute ensured that the ICC has jurisdiction over several child-specific crimes. The child rights lobby also achieved the exclusion of persons under age eighteen from the ambit of ICC jurisdiction and the codification of a number of protective provisions for children involved in ICC proceedings as witnesses and victims.

a. Child-Specific Crimes within the Jurisdiction of the Court

Conscripting or enlisting children under the age of fifteen years into the national armed forces (in international or internal armed conflicts), or into armed forces or groups (in non-international armed conflicts), or using them

247. Machel study, *supra* note 15, ¶ 249.

248. The United States has long advocated the establishment of a special tribunal to try senior Khmer Rouge figures for atrocities committed between 1975 and 1979 in Cambodia. *See* U.N. Law Reports, vol. 32, no. 9, at 109 (May 1, 1998).

An ad hoc tribunal should examine many offenses against children. Children were pressed into Pol Pot's service and made to participate in atrocities. Children were also butchered by the thousands. One commentator suggested that these “enduring casualties of [Pol Pot's] work . . . tens of thousands of other Cambodians now in their 20s who remember too much and wake up screaming like children. . . .” be placed on the tribunal chosen to judge and condemn him. Roger Rosenblatt, *Memories of Pol Pot; Recollections of the youngest victims of a monster*, TIME, Aug. 18, 1997, at 26.

249. Machel study, *supra* note 15, ¶ 249.

250. *See id.* ¶¶ 127–35.

251. *See* Barbara Crossette, *In West Africa, a Grisly Extension of Rebel Terror: Conquest by Mutilation and Rape*, N.Y. TIMES, July 30, 1998, at A1, A6 (citing a Human Rights Watch report on Sierra Leone that says “children and women have also been singled out for sexual abuse [by RUF rebel forces]. Accounts of gang rapes and kidnappings for purposes of sexual slavery are common.” The report also says Kamajor forces supporting Pres. Kabbah use child soldiers.)

to participate actively in hostilities, are serious violations of the laws and customs of war within ICC jurisdiction.²⁵² Delegates to the Rome conference considered four options regarding child recruitment as a war crime.²⁵³ The language finally agreed upon implies that hostile parties must not conscript, enlist or use a child under fifteen for any purpose, even if the child "volunteers," reflecting, and even extending the scope of, existing levels of international legal protection.²⁵⁴ Both the Rome Statute and Protocol II rule out all participation of those under fifteen in non-international armed conflicts; however, the Rome Statute may succeed at reaching individual perpetrators from NSEs that have often fallen beyond the reach of Protocol II. In international armed conflicts the Rome Statute apparently raises the level of protection afforded by Protocol I and the CRC by prohibiting voluntary enlistment and indirect participation in hostilities by children under fifteen.

The forcible transfer of the children of a group targeted for intentional destruction constitutes genocide for ICC purposes.²⁵⁵ Particularly grave forms of sexual violence including rape, sexual slavery, and enforced prostitution are both crimes against humanity, war crimes and possibly also genocide.²⁵⁶ Intentional attacks against educational buildings is a war crime in both international and non-international armed conflicts.²⁵⁷

252. See *Rome Statute of the ICC*, *supra* note 98, arts. 8(b)(xxvi), 8(e)(vii).

253. *Preparatory Committee Meeting*, U.N. Doc. A/JAC.249/1998/CRP.8 War Crimes, sec. B (t) and sec. C(f) (March-April 1998). Option 1: "forcing children under the age of fifteen to take direct part in hostilities" was rejected by child advocates as too narrow. Option 2: "recruiting children under the age of fifteen years into armed forces [or groups] or using them to participate actively in hostilities", around which consensus was building in April 1998, would have enabled armed forces and groups to accept the voluntary, indirect participation of children under fifteen contrary to the standard codified in Protocol II. See *supra* note 3. Codification of a lesser standard than currently exists may have further undermined ongoing international efforts to raise the minimum age of participation to eighteen. Option 3: "recruiting children under the age of fifteen years into armed forces or groups; or allowing them to take part in hostilities" replicated the terms of Protocol II, art. 4(3)(c) and was the most protective of the four options in the draft ICC statute as of the close of the preparatory committee meeting in March and April 1998. Option 4 would have eliminated child recruitment from the list of war crimes.

254. Footnote 11(bis), sec. B(t) to *Preparatory Committee Meeting*, U.N. Doc. A/JAC.249/1998/ CRP.8 (1998) reads:

In drafting this option, we have sought to incorporate the essential principles contained under accepted international law while using language suitable for individual criminal responsibility as opposed to State responsibility. The words "using" and "participate" have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer's married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology.

255. See *Rome Statute of the ICC*, *supra* note 98, art. 6(e).

256. See *id.* arts. 6(b), 7(g), 8(b)(xxii), 8(e)(vi).

257. See *id.* arts. 8(b)(ix), 8(e)(iv). Though ICC jurisdiction extends to individuals, as opposed to States, the exercise of jurisdiction will depend on the ratification of the Rome Statute by either the "State on the territory of which the conduct in question occurred" or the "State of which the person accused of the crime is a national." *Id.* arts. 25 (individual criminal responsibility), 12 (preconditions to the exercise

b. Exclusion of Jurisdiction over Persons under Age Eighteen

After much debate and lobbying by child rights advocates, ICC jurisdiction does not extend to perpetrators of crimes within ICC jurisdiction who are either under age eighteen or who were under eighteen at the time of the acts committed.²⁵⁸ Nevertheless, child perpetrators of serious abuses may prove important witnesses to such crimes as the conscription, enlistment or use of children under age fifteen in hostilities. Civilian child victims and witnesses will also be important to the prosecution of accused individuals. The Rome Statute incorporates provisions intended to ensure the safety of child victims and witnesses and protect them from being re-traumatized during investigations and prosecutions. The Statute reflects a therapeutic commitment to children who will be caught up in its proceedings; the implementation of the legal framework remains to be seen.

c. Ensuring a Protective and Therapeutic Commitment to Child Victims and Witnesses

The ICC must commit resources to the physical and psychological protection of child witnesses, especially those who have suffered sexual abuse and those who testify against adults charged with forced recruitment, enlistment or children's use in hostilities.²⁵⁹

of jurisdiction). Consequently, depending on the extent of State ratification, the ICC has the potential to resolve one of the biggest limitations inherent in the CRC: non-applicability to non-state entities. Perhaps States in which the primary recruiters of children are NSEs and where the national justice system would have great difficulty bringing such criminals to justice (e.g., Uganda, Angola, Sri Lanka) will be induced to ratify the Rome Statute and close the legal loophole. As a practical matter, however, it will be difficult to get the accused to appear at an international tribunal.

258. *See id.* art. 26. For documentation of the debate surrounding the age of responsibility see the so-called "Zutphen text" produced at the January 1998 drafting session. *Report of the Inter-sessional Meeting from 19 to 30 January 1998 in Zutphen, The Netherlands, Preparatory Committee on the Establishment of an International Criminal Court*, article 20[E] U.N. Doc. A/AC.249/1998/L.13 (1998). Article 68[A] of the Zutphen text on "applicable penalties" offered two bracketed options relevant to minors, one of which was particularly harmonious with a therapeutic approach to child perpetrators: "When imposing a penalty on a person under the age of 18 years [at the time of the commission of the crime], the Court shall determine the appropriate measures to ensure the rehabilitation of the offender." Footnote 234 adjacent to the bracketed proposals in article 68[A], offered two options regarding age of responsibility. One option would have excluded all those under 18 at the time the crime was committed from the ICC's jurisdiction. The other option would have established a presumption in favor of exclusion for those under 18 but would "under exceptional circumstances" have enabled the Court to "exercise jurisdiction and impose a penalty on a person aged 16 to 18 years, provided it has determined that the person was capable of understanding the unlawfulness of his or her conduct at the time the crime was committed."

Footnote 247 to article 70 [BCE] on "determination of the sentence" in the Zutphen text considered including a list of aggravating and mitigating factors to be considered prior to sentencing, many of which would work against heavy sentences for convicted youth.

While acknowledging the difficulties inherent in balancing a child's culpability, his or her best interests and a community's sense of justice, U.N. expert Graça Machel supported the creation of the ICC and apparently did not oppose extending jurisdiction to children under protective circumstances. *See Machel study, supra* note 15, ¶¶ 249–51.

259. Expertise will be necessary to measure the competence of young people to testify and to weigh the reliability of a child's testimony. This issue raises difficult questions about the reliability of memory during traumatic events especially since we are generally talking about young people exposed to on-

Expertise on child rights and protection has been woven into the Court's structure. The Prosecutor's Office will employ "advisers with legal expertise on specific issues, including . . . violence against children."²⁶⁰ States Parties involved in selecting judges are required to "take into account the need to include judges with legal expertise on . . . violence against . . . children."²⁶¹ A Victims and Witnesses Unit will provide "protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence."²⁶²

During investigations, the Prosecutor must "respect the interests and personal circumstances of victims and witnesses, including age, gender . . . and take into account the nature of the crime, particularly where it involves . . . violence against children, . . . and [may] take necessary measures . . . to ensure . . . the protection of any person . . ."²⁶³ When investigating and prosecuting crimes involving violence against children, and when involving young witnesses or victims in such proceedings, the Prosecutor must take steps to protect their "safety, physical and psychological well-being, dignity and privacy."²⁶⁴

During trial proceedings, the Court must consider the ages of the witnesses and victims as well as the nature of the crime and take "appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses." Measures such as in camera proceedings or the presentation of evidence by electronic or other means are to be ordered by the Court in the case of a victim of sexual violence or a child who is a victim or witness.²⁶⁵

Though the Victims and Witnesses Unit "may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance,"²⁶⁶ it is unclear who will implement and finance these measures and whether any agent or unit of the ICC will follow-up to ensure that child victims or witnesses are protected, receive restitution or compensation, and are provided opportunities for rehabilitation after their involvement in Court proceedings.²⁶⁷

The ICC can request States Parties to assist in the protection of victims and witnesses in relation to investigations or prosecutions. While these requests must formally be extended to the State Party in which the victim or

going traumatic war experiences over prolonged periods at very sensitive stages of their development.

260. *Rome Statute of the ICC*, *supra* note 98, art.42(9).

261. *Id.* art. 36(8)(b).

262. *Id.* art. 43(6).

263. *Id.* arts. 54(1)(b), 54(3)(f).

264. *Id.* art. 68(1).

265. *Id.* art. 68(2).

266. *Id.* art. 68(4).

267. *See id.* art. 75(1).

witness resides to prevent the intimidation or persecution of potential witnesses, they must also be made to other States Parties, international agencies or NGOs who command the ability to relocate witnesses in danger, and the financial and technical resources to ensure rehabilitative services. The Court might also ensure follow-up by imposing a reporting requirement on the status of witness protection and rehabilitative progress achieved. Peacemakers should urge States to commit in peace agreements to the provision of therapeutic programs and protective measures.

d. Avoiding Manipulation of ICC Jurisdiction during Peace Negotiations

Child advocates must ensure that potential ICC defendants do not subvert ICC jurisdiction by pressuring peacemakers to concur in broad amnesties or exemptions from ICC jurisdiction while negotiating peace and "national reconciliation." When such measures are unavoidable, advocates should press for explicit exceptions for those accused of egregious child rights violations enumerated in the Rome Statute. Potential defendants will surely be tempted to flee to non-State Parties or may attempt to pressure friendly non-State Parties to avoid entering agreements to cooperate with the ICC and to harbor them from extradition. Child advocates must urge wide acceptance of ICC jurisdiction and simultaneously dissuade parties from negotiating over their obligations to submit their nationals, or persons in their custody, to international criminal adjudication.

V. CONCLUSIONS AND RECOMMENDATIONS

A child-conscious approach to human rights promotion, peacemaking, peacekeeping, and peace-building will help us promote a stable and sustainable peace settlement. No peace treaty to date has formally considered specific children's rights issues related to the conflict, such as the need to demobilize child combatants,²⁶⁸ address the health needs of victims of gender-based violence, provide educational opportunities, or pay special attention to mental and physical health concerns. Yet the mandate and moral obligation to do so are clear.

The international community's commitments to children codified in the CRC dictate a comprehensive response. Every article in the Convention remains relevant during armed conflict and, as there is no derogation clause, the entire Convention remains in effect regardless the level of national emergency.²⁶⁹ Human rights norms and humanitarian law must be employed in tandem to ensure what is often a higher standard of protection for children

268. See Machel study, *supra* note 15, ¶¶ 49, 62(c). The Liberian Akosombo Agreement contained a provision that might have been interpreted to require child-consciousness in the design of the demobilization, retraining and rehabilitation of former combatants, but no one attempted to advocate for such an interpretation and ultimately almost no substantive demobilization programs were possible. See *infra* note 173 and accompanying text.

269. See Cohn, *supra* note 1, at 105.

than for adults.²⁷⁰ But norms alone are insufficient. Respect for children's rights in war and war's aftermath is more likely to be advanced when the national and international debates over the nature of transitional and peace-time societies include children and when specific peace processes and peace-building agendas design specific programmatic responses and initiatives to redress children's rights violations and implement and protect their rights.

The CRC represents the success of the children's rights movement in shifting child advocacy's focus from child protection to the protection of children's rights. This shift from a conception of the child as an object of rights to one of the child as a subject of rights, from the child as a person in need of paternalistic protection to the child as a person with evolving capacities to participate in decision-making, has been translated into a number of national norms the world over, but it is not standard practice for child advocates to conceive of furthering the child rights agenda within the framework of political peace processes. The process of making, keeping and building peace is utterly compatible with a children's rights-conscious approach and is an obvious context in which to invoke the CRC.

The General Assembly has called upon the U.N. system to reflect "the humanitarian concerns relating to children affected by armed conflict and their protection" in "U.N. field operations, which, inter alia, promote peace, prevent and resolve conflicts and implement peace agreements."²⁷¹ Such assistance programs should include "measures to ensure respect for the rights of the child, including in the areas of health and nutrition, formal, informal or non-formal education, physical and psychological recovery and social reintegration . . ."²⁷² The General Assembly has urgently requested Member States and U.N. agencies to "ensure the physical and psychological recovery and reintegration into society of child soldiers, victims of landmines and victims of gender-based violence."²⁷³ and to identify, register, conduct family tracing for and continuously monitor the care arrangements for unaccompanied or displaced children, and to enhance the assistance mechanisms for child-headed households.²⁷⁴ Refugee, internally displaced and unaccompanied children likewise warrant specific protective measures.

Of course even the most ambitious and conscientious peacemakers may be reigned in by what society can bear and the most comprehensive peace accords are dead-letter unless society, and often specifically the military and fighting factions, back the provisions.²⁷⁵ But each potential constraint is

270. *Id.* at 105–09.

271. G.A. Res. 51/77, *supra* note 78, § II, ¶ 21; G.A. Res. 52/107, *supra* note 78, § IV, ¶ 4.

272. G.A. Res. 52/107, *supra* note 78, § IV, ¶ 6.

273. G.A. Res. 51/77, *supra* note 78, ¶ 30; G.A. Res. 52/107, *supra* note 78, § IV, ¶ 13.

274. *See* G.A. Res. 52/107, *supra* note 78, § IV, ¶¶ 2–4.

275. Some of the many additional considerations peacemakers must balance when urged to give a higher priority to children's needs and rights in ways suggested throughout this Article:

- that resources and international interest may be insufficient to sustain an extensive peace-building agenda;

surmountable and none outweighs the call of children to the peacemakers' special attention and care. Achieving a place for children during peace-making is likely to translate into greater recognition and respect for children's rights in post-conflict society and to this end I propose that peacemakers and child advocates enthusiastically join forces.

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- that tension exists between the goals of achieving respect for minimal political objectives, in particular, an end to hostilities, and the ideal of assembling a more comprehensive post-conflict, rights-based agenda;
 - that international verification of compliance with peace agreements during an on-going conflict will interfere in the ability to make peace;
 - that denouncing rights violations during the conflict might result in restricted access to certain geographical regions or populations and exacerbate tensions, again interfering in peacemaking;
 - that denouncing the conduct of a given faction during the conflict and the peace process may engender resentment that, depending on that faction's post-war position and power, could have negative consequences for the peace-building agenda.

