

Innocence and Impunity

Accountability of Child Soldiers as Part of the Process of Reintegration

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In international law, child soldiers are perceived as victims of the crimes of recruiting children into the armed forces and having them take part in active hostilities. However, focussing solely on their victimhood obscures the role that (former) child soldiers have played in armed conflicts. Locally, former child soldiers are perceived as perpetrators as they have often been involved in the commission of war crimes or crimes against humanity. The dual role of child soldiers as victims and perpetrators does not only pose legal-technical dilemmas of justice and culpability. More importantly, the victim-perpetrator nexus has serious implications in post-conflict societies through processes of reintegration and post conflict justice. As demonstrated in this thesis, acknowledging the status of former child soldiers as victims *and* perpetrators is crucial in light of their reintegration, future role in society and broader societal processes of reconciliation.

Adult combatants are frequently held accountable for wartime conduct in processes of post conflict justice. In both criminal and transitional justice accountability is of integral importance. Therefore, this thesis studies whether accountability could play a role in reconciliation processes involving former child soldiers. More specifically, the thesis investigates the question of accountability within a mechanism to reintegrate former (child) soldiers that is widely utilized in post-conflict settings: The Disarm, Demobilize and Reintegrate (DDR) approach. Resulting from their prominence and importance in theories on post conflict justice, criminal and transitional justice have been selected as the major theoretical paradigms for analysing this topic. The following research question is central to the thesis: *How is the accountability of child soldiers under domestic and international law reflected in the DDR process and in what ways does this affect processes of transitional justice and criminal justice in post-conflict societies?*

This thesis is positioned within the larger academic debate on the culpability and accountability of children. Divergent ideas on this topic manifest itself in both the international and domestic legal and political spheres. This paper primarily focusses on the legal dimension, but also pursues an empirical analysis of the problem by focusing on reintegration processes. In doing so, this paper provides a novel approach to the problem allowing for a closer link to practice. Implicitly, the thesis investigates the possibilities to improve and enhance the DDR practice by addressing this from the socio-legal angle of culpability and accountability, thereby appealing to the need for a more prominent position of transitional justice in DDR.

Through a thorough study of the concepts of criminal and transitional justice and an exploration of the legal aspects of child accountability and culpability, the theoretical and legal importance, conceptualisations and limitations of accountability have been explored. In the current (international) legal framework possibilities to hold former child soldiers criminally accountable are limited but it is certainly not impossible or unprecedented. Furthermore, holding former child soldiers accountable in mechanisms of transitional justice is a viable option on paper, but its implications need to be studied empirically.

In order to move beyond a legal-technical or theoretical analysis of the issues introduced above, an empirical analysis of the criminal and transitional justice processes in the DDR program in Sierra Leone was carried out. The data for this empirical study primarily consisted of transcripts of all cases at the Special Court for Sierra Leone, transcripts and reports by the Truth and Reconciliation Commission, official reports on the DDR practices in Sierra Leone, government documents, NGO reports and other research projects. The data was systematically analysed for evidence on the topic of accountability of former child soldiers in criminal or transitional justice venues.

The case study revealed that children were facing numerous difficulties during the DDR programme and after their reintegration was officially completed. Difficulties included severe feelings of guilt over acts committed during the armed conflict, continued usage of violent strategies to resolve disputes, stigmatisation, receiving blame, feelings of resentment from home communities and problems with reintegrating resulting in homelessness or criminal behaviour and imprisonment. Additionally, the case study shows that child soldiers were involved in processes of criminal justice primarily as witnesses. In transitional justice, and primarily in the truth and reconciliation commission, children were heard in relation to

atrocities that they were a victim of and that they committed. Furthermore, children were subjected to local cleansing ceremonies, which have been classified as a means of transitional justice. In relation to the DDR approach, it was found that children are treated as victims and are not held accountable throughout the process.

All in all, the thesis establishes that the current focus and configuration of DDR programs for children combined with the influence of the international community in post-conflict settings leads to a lack of criminal accountability of former child soldiers for war crimes. In attempting to balance child rights, the right to remedy and normative ideals on child soldiers and child culpability, the balance has shifted heavily towards the side of child rights. Thereby, the importance of taking into account the right to remedy is underestimated, which negatively influences the reintegration process. The Sierra Leone case shows that both DDR as well as other transitional justice practices are heavily prospective. Various initiatives are focused on developing stable future relationships, but thereby forget to look back at the conflict beyond therapy for individual children. A more restorative focus that pays attention to the community and victim sentiments stemming from the events and experience in the conflict is required to improve future DDR and transitional processes and accommodate community sentiments. The thesis demonstrates that accountability should be considered as a potential strategy to improve the process of reintegration, as it can have a positive impact on various difficulties faced by both former child soldiers as well as local communities. Whereas criminal accountability could be beneficial in some instances, enhanced means of accountability for child soldiers in the processes of transitional justice and a formal link with DDR mechanisms are more viable policy options as it is less controversial, easier to implement and offers great potential benefits to the children and local communities.