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# Prosecuting Children in Times of Conflict: The West African Experience

by David M. Crane\*

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*It was a clear hot day. The school meeting hall rippled with the heat of over five hundred persons. I had been speaking to the students, faculty, and others in one of my many town hall meetings I conducted throughout Sierra Leone. The purpose of the meetings was to provide a vehicle for the people to talk about the war, the crimes, their pain, and other issues related to our work. As I finished answering a question, a shy, small arm was raised in the middle of the hall. I walked back to the student. He meekly stood up, head bowed, and mumbled, loud enough for those around him to hear, "I killed people, I am sorry, I did not mean it." I went over to him, tears in my eyes, hugged him and said, "Of course you didn't mean it. I forgive you."*<sup>1</sup>

## INTRODUCTION

FOR THE FIRST TIME IN HISTORY, those who bear the greatest responsibility for war crimes, crimes against humanity, and other serious violations of international humanitarian law that took place during the conflict in Sierra Leone have been charged with the use of child soldiers.<sup>2</sup> The use of children in armed conflict is an age-old issue.<sup>3</sup> Modern international norms, however, have identified and outlawed their use and have largely excused them for their actions. The Special Court for Sierra Leone (the Court) is on the cutting edge of international criminal law in holding accountable warlords, commanders, and politicians who turned to children as young as six to carry out orders that sometimes resulted in war crimes and crimes against humanity. The cynical recruitment of children, forced to fight under great duress for ill-gotten gains, is no longer ever an excusable act.

Only in the past ten years has the international community begun to grapple with the scourge of child soldiers.<sup>4</sup> A 1996 report to the Secretary General laid out a comprehensive program to protect children during armed conflict.<sup>5</sup> The report dramatically declared:

[M]ore and more of the world is being sucked into a desolate moral vacuum. This is 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. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink.<sup>6</sup>

This article highlights the Court's groundbreaking efforts to bring to justice those who destroyed a generation of children, and discusses the decision *not* to prosecute child soldiers on both legal and moral grounds. The article will outline the conflict's history, explaining the role children played in Sierra Leone's civil war in the 1990s and the current state of the law related to children in conflicts. It then addresses why children are not



Photo courtesy of Adrián E. Alvarez

All sides of the conflict in Sierra Leone enlisted and used children in hostilities.

liable for crimes committed on the battlefield, concluding with a useful analogy to Omar Khadr,<sup>7</sup> a child involved in the conflict in Afghanistan who should be immediately released from detention because the military commission trying him lacks personal jurisdiction. Khadr has a protected status under international humanitarian law and is not liable for his alleged actions.

## THE CONFLICT

Sierra Leone sits along the West African coast, a small state in a string of nations linked together by a colonial past, with a history of poor governance, conflict, and disease. West Africa generally, and Sierra Leone in particular, possess vast natural resources, including diamonds, rutile, bauxite, and other minerals. These commodities, however, are Sierra Leone's curse. Corruption and diamonds were the catalysts that ignited a conflict that resulted in the murder, maiming, mutilation, and rape of over a half-million people in West Africa.

Prostrate before Libyan head of state Muammar al-Gaddafi, these struggling former colonies of France and Great Britain were vulnerable to unrest, conflict, and coup d'états. In the early 1990s, young ruthless leaders, fresh from Libyan training

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Many children were dragged into the bush and forced to serve as soldiers. Some were made to murder their parents.

facilities, descended upon West Africa to begin a decade-long campaign to conquer the region politically, by force if necessary. Charles Taylor, who had escaped from prison in the United States, slipped quietly into Liberia and began a long civil war. Taylor looked west over the border with Sierra Leone to that country's alluvial diamond fields and partnered with Foday Sankoh, another graduate of the Libyan training camps and corporal in the Sierra Leonean Army. Diamonds would help keep Taylor's revolution and bank account well financed.<sup>8</sup>

With backing and planning assistance from Gadaffi and Burkina Faso's President Blaise Campaoré, Taylor assisted Sankoh in launching two strikes into eastern Sierra Leone in March 1991.<sup>9</sup> Sankoh was admonished by Taylor to vigorously recruit civilians to the cause, *by terror and force*, if necessary.<sup>10</sup> What followed was a death struggle between various warring factions, each brutalizing civilians, particularly women and children. The civil war, under Taylor and Sankoh's Revolutionary United Front (RUF) leadership, evolved into a terror campaign seeking to control the diamond fields and subscribe the entire nation into a joint criminal enterprise. Pain, suffering, and agony reached new dimensions. The atrocities committed almost defied description. "Believe the unbelievable," is what I told the chamber responsible for trying the Civil Defense Force (CDF) leadership in the opening statement that began their prosecution.

All sides of the conflict in Sierra Leone used children. A favorite rebel tactic to induce children to join a force was to move in and surround a village. Children were made to kill their parents and then driven into the bush and forced to serve as soldiers, often for many years. Thousands of children, ranging from six to 18 years of age, under the influence of cocaine and marijuana distributed by commanders, roamed battlefields and destroyed their own country. Over time, the warring factions became their homes and families. A vast majority of children had no choice but to fight, murder, rape, and mutilate, or they would be killed themselves.

When the conflict staggered to its bloody conclusion in 2002, an entire nation lay in ruins. Child soldiers found themselves

with no families, little to no education, and a society unable to assist them in rebuilding their lives. Many were physically and psychologically damaged. The lost generation of Sierra Leone now sits by pock-marked roads with little hope but for someone to return them to the only life they had ever known — fighting, raping, pillaging, and murdering.<sup>11</sup>

### THE SPECIAL COURT FOR SIERRA LEONE

The Special Court was an innovative step in the evolution of international war crimes tribunals. Even with the establishment of the International Criminal Court (ICC), the Special Court is a model that can work in the future to combat impunity in troubled areas of the world.

The Court is a hybrid tribunal, independent of the United Nations (UN) and any state.<sup>12</sup> Established through an agreement between the UN and the Government of Sierra Leone in January 2002, the Court is both international and national.<sup>13</sup> The signing of this treaty was the culmination of a year and a half of discussions following a UN Security Council resolution directing the Secretary-General to enter negotiations to create the Court. Sierra Leone's national parliament implemented the treaty by passing a law in March 2002.<sup>14</sup>

The Court's mandate is to try those who "bear the greatest responsibility" for serious violations of international humanitarian law, including the laws of war, crimes against humanity, and certain crimes under Sierra Leonean law.<sup>15</sup> Crimes against humanity encompass widespread or systematic murder, rape, enslavement, sexual slavery, and other forms of sexual violence, torture, and other inhumane acts, including unlawfully recruiting and using children. Cases can be brought against anyone who committed crimes or was responsible for crimes committed in Sierra Leone since November 30, 1996.<sup>16</sup> This very specific mandate is key to the Court's success.

Importantly, the Court sits in the country where the violations occurred. This is the right place for the Court to directly deliver justice to the people who suffered during the civil war. The courtroom is open to the public. An ambitious outreach and public information program is in place to keep Sierra Leoneans informed and engaged in the Court's work, for the Court belongs, first and foremost, to them.

The Court hopes to make a lasting contribution to promoting accountability and the rule of law. Capacity-building and legacy activities constitute an important part of its work. Courtroom facilities will be turned over to the people of Sierra Leone at the conclusion of the trials. In addition, the Court hired a high percentage of Sierra Leonean professionals and reached out to the local legal community to design initiatives to bolster legal reform. These include facilitating scholarship opportunities and training programs in international humanitarian law, as well as establishing a partnership with the local law school. Trials may end, but the Court's legacy will remain.

### THE INDICTMENTS AND THE CHARGES

Criminal investigations began two weeks after the Prosecutor arrived in Sierra Leone in August 2002. On March 3, 2003, the Prosecutor signed eight indictments and a trial chamber judge confirmed the indictments in London on March 7. On March 10, just seven months after the Prosecutor's arrival, members of the investigations team, along with the Sierra Leone Police,

launched “Operation Justice,” simultaneously arresting all indictees in Sierra Leone at the time, including the Minister of Interior, Samuel Hinga Norman. A total of 13 indictments have been issued to date. The six indictees arrested in March 2003, plus three more arrested over a period of several months, are detained at the Court compound in Freetown. Two of the three joint trials are completed with a third expected to be complete in 2008, including the trial against former Liberian President Charles Taylor.<sup>17</sup>

The Court has been encouraged by the public response to the indictments and trials. Peace has held, and many have spoken out to support the Court’s work. According to polls, over two-thirds of the population believe the Court is necessary, with another two-thirds believing it will deter future conflict.<sup>18</sup>

Sankoh in Liberia in February 1991, children were rounded up to bulk up Sierra Leonean forces. The CDF, particularly the Kamajors — a traditional ethnic warrior group — subsequently initiated children into their ranks. Children served on all sides throughout the ten-year conflict.

The charges in the indictments stem from crimes enumerated in the Statute. The specific crime of the use of child soldiers is found in Article 4, “other serious violations of international humanitarian law.” This provision allows the Prosecutor to indict a person for three international crimes — intentionally attacking civilians (Article 4a); crimes against peacekeepers or humanitarian assistance workers (Article 4b); and the recruitment and use of child soldiers (Article 4c). The Prosecutor used all three in the various joint criminal indictments.

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Each indictee has been jointly and severally charged, and, thus far, largely convicted, for using child soldiers, among other international crimes. The extent of their involvement was widespread and systematic. Each indictee had command responsibility of the combatants that he led, including child soldiers. The various combatants had small boy units (SBUs). Some of these SBUs had specific duties. For example, in the January 1999 burning of Freetown, children were part of squads ordered to mutilate, burn, and pillage. Child soldiers were seen throughout the three week occupation carrying burlap bags full of body parts, trailing blood along the way. They were required to bring the bags to their commanders. If they refused, they were usually killed.

In their amended indictment, the RUF leadership is charged with recruiting and using child soldiers, specifically conscripting or enlisting children under the age of 15 into armed forces or groups, or using them to participate actively in hostilities.<sup>19</sup> Similarly, the leadership of the Armed Forces Revolutionary Council (AFRC) was charged and convicted for these crimes.<sup>20</sup> The dreaded leadership of the CDF was charged and convicted for the unlawful recruitment of child soldiers.<sup>21</sup> Taylor is also charged with recruiting and using child soldiers, as is fugitive indictee Johnny Paul Koroma. The Prosecutor likewise charged deceased indictees Foday Sankoh and Samuel Bockerie.

It is alleged that all indictees are individually criminally liable for using children in armed conflict, either under the aiding and abetting theory in Article 6.1 of the Statute of the Special Court for Sierra Leone (the Statute) or, alternatively, under the command responsibility theory of Article 6.3 of the Statute. Each indictee is charged with recruiting and using children during all times relevant to the indictment. As Taylor directed

On June 20, 2007, Trial Chamber II entered a finding of guilty against the leadership of the AFRC on 11 of the 14 counts against them. One count on which they were found guilty was the unlawful recruitment of child soldiers under the age of 15 into an armed force. This marked the first time in history where commanders and political leaders were held liable for this recently defined crime against humanity.<sup>22</sup> The Trial Chamber sent a clear message to the world that a person who recruits child soldiers into a conflict is a war criminal, but the children recruited and forced to commit unspeakable acts are not. The Appellate Chamber upheld these finding on February 22, 2008.

#### **THE CHALLENGES**

During the pre-trial phase, several indictees made jurisdictional challenges to the charges and to the Court itself. On June 26, 2003, Hinga Norman specifically challenged the charge against him relating to the use of child soldiers as not being a crime at the time of its alleged commission. Another indictee intervened as well. This preliminary motion was referred to the Appeals Chamber pursuant to Rule 72(E) of the Court’s Rules of Procedure and Evidence after the Prosecutor’s July 7, 2003 response. Various amicus briefs were filed by the University of Toronto, International Human Rights Clinic, while the Court, also, invited UNICEF to submit an amicus brief.<sup>23</sup> An oral hearing occurred on November 6, 2003, with a follow on post-hearing submission by the Prosecutor on November 24, 2003.

On May 31, 2004, the Appeals Chamber issued the decision on the preliminary motion based on lack of jurisdiction (child recruitment) dismissing the motion. The Appeals Chamber held that child recruitment was criminalized under customary international law at the time frames relevant to the indictment,

thus protecting the legality and specificity principles Norman questioned. This was another first in legal history: a high court ruled that the recruitment of child soldiers was a crime under international law.<sup>24</sup>

### THE STATE OF THE LAW

The Appeals Chamber's decision correctly reflects the state of the law.<sup>25</sup> The use of children in warfare is not a new phenomenon. Children have followed armies for centuries as support personnel — as pages, water carriers, and musicians, particularly drummers. In navies throughout Europe, nobility seconded children to warships to learn a trade. Others were pressed into seamanship.

With the advent of The Hague rules governing weapons in war in the late nineteenth and early twentieth centuries, the rules of warfare took on a universal status. Coupled with the Red Cross movement, the role of the combatant became a legal term of art. The status of the non-combatant also began to take shape.<sup>26</sup> Yet specifics regarding combatants' ages were not well-defined early in the regulation process. The international community focused more on regulating weapons that would cause unnecessary suffering and the types of targets combatants could engage.

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After World War I and into World War II, the shift away from universal rules relating to weapons and targets began. By the end of the two wars, the focus was rightfully on non-combatants. The founding of the UN in 1945 created a permanent body that could be a voice for non-combatants, particularly for children.

The universal rules began to narrow and define the special status of non-combatants. The Geneva Conventions of 1949 are the cornerstone of these rules, which by their nature, protect persons who are “out of the combat” — prisoners of war, the shipwrecked, and civilians.<sup>27</sup> It is here that children became specially protected under international law. Around this time the international community laid out international human rights

principles in the Universal Declaration of Human Rights, which echoes fundamental principles of human dignity found in the Geneva Conventions.<sup>28</sup> The world had a new standard for protecting non-combatants' rights and status in wartime.

One of the tragedies of the ensuing Cold War was the conflicts ignited in developing country “flashpoints.” Children were once again the victims. In the 1970s, the world paused long enough to reconsider the Geneva Conventions of 1949, shaping them through two new protocols to reflect the realities of modern armed conflict.<sup>29</sup> Once again the bar had been identified and raised. Most of the nations of the world, including many newly independent states, agreed to the new standards.<sup>30</sup>

The Protocols specifically prohibit the use of children in armed conflict. The criminality of the act of using children in conflict, however, is not specifically laid out. The implication is that violating the Geneva Conventions' provisions related to civilians as non-combatants implies a grave breach when using children in combat.<sup>31</sup> Such breaches impose a duty to investigate and prosecute upon all signatories.<sup>32</sup>

The subsequent adoption of the Convention on the Rights of the Child (CRC) highlights the prohibition against the use of children in armed conflict.<sup>33</sup> It is my judgment that the CRC criminalizes the concept of child recruitment. One can argue that child recruitment as a crime is reflective of customary international law.<sup>34</sup> The CRC requires national jurisdictions to establish a minimum age at which criminal responsibility may be assigned.<sup>35</sup> Article 1 of the CRC defines children as “*all human beings below the age of 18.*”<sup>36</sup> Additionally, the CRC Optional Protocol II admonishes armed groups that are distinct from armed forces of a state not to recruit or use in hostilities, under any circumstances, persons under 18.<sup>37</sup> The applicable international agreements also cover the detention of delinquents and the issues related to this stage of the juvenile justice process.<sup>38</sup>

Despite states' political and legal recognition that child recruitment was a universal crime and that children had a special status in conflict, child recruitment continued unabated. Millions of children died in the 1980s and 1990s, mainly in Africa where children played a significant role in armed conflicts. The 1996 Secretary-General's report on this issue stunned the UN by highlighting the extent of the problem throughout the world. There were calls for action and an evolving plan emerged to monitor recruitment of child soldiers.

In the late 1990s, the international community began to develop a mechanism to prosecute war crimes and crimes against humanity. The Rome Statute created the ICC, which is now the world's attempt to stamp out impunity. The Rome Statute specifically states that the recruitment of children under the age of 15 is a “serious violation of international humanitarian law.”<sup>39</sup>

### THE DECISION NOT TO PROSECUTE THE CHILD SOLDIERS OF WEST AFRICA

The Statute of the Special Court gives the Prosecutor authority to indict children for crimes they committed between the ages of 15 and 18. The basis for including this controversial provision was to give the Prosecutor legal authority to prosecute any child soldier he might consider as having borne the greatest responsibility for war crimes and crimes against humanity committed during Sierra Leone's civil war.

The Prosecution decided early in developing a prosecutorial plan that no child between 15 and 18 had the sufficiently blameworthy state of mind to commit war crimes in a conflict setting. Aware of the clear legal standard highlighted in international humanitarian law, the intent in choosing not to prosecute was to rehabilitate and reintegrate this lost generation back into society. It would have been impractical to prosecute even particularly violent children because there were so many. Further, it was imperative that the prosecution seriously consider the clear intent of the UN Security Council and the drafters of the Statute creating the Court to prosecute those and *only* those who bore the greatest responsibility — those who aided and abetted; created and sustained the conflict; and planned, ordered, or directed the atrocities. No child did this in Sierra Leone.

In November 2002, the Prosecution announced that child soldiers would not be prosecuted, as they were not legally liable for acts committed during the conflict. There was universal praise for this decision. It took prosecuting child soldiers themselves for the tragedy they have experienced off the legal table, instead placing children on the rehabilitation track, as is the appropriate norm under international law.

### CONCLUSION: THE FUTURE

DESPITE ASSERTIONS THAT THE RECRUITMENT of child soldiers is an international crime, the tragedy continues worldwide. Between 1986 and 1996, over two million children were killed in armed conflict.<sup>40</sup> Countless more have been killed since, many in places such as Sierra Leone. A February 2005 UN report specifically singled out 42 armed groups in 11 countries. The UN Secretary-General's Special Envoy for Children in Armed Conflict, Olara Otunnu, stated that these armed groups should be punished for war crimes or crimes against humanity for what they have done to children.<sup>41</sup>

Certainly, there is an increasing awareness of the scourge of child soldiers and a shift towards action. The UN must be at the forefront of this effort, backed by a unified Security Council that takes swift and decisive action when confronted with the issue. International courts will have to aggressively charge this crime in future indictments to help prevent the practice of using child soldiers.

The Court's *Norman* appellate decision and its subsequent conviction of the leadership of the AFRC, as well as the conviction of Norman's co-defendants in the CDF case, both in 2007, will certainly help advance the jurisprudence on child recruitment. The ICC's statute contains a provision identical

to the Special Court's Statute related to recruitment of children under the age of 15. The ICC will, thus, be able to look to the groundbreaking work of the Special Court in charging warlords, politicians, and governments who continue to ignore the clear prohibition for this criminal conduct.<sup>42</sup> Only when the rule of law is enforced will abusers of children be held accountable at the international level, and only then will this crime begin to diminish.

And the children truly are the victims in this scenario. Just as we could not hold these Sierra Leonean children responsible for the horrific violence they were forced to carry out, we also cannot hold similar children involved in other conflicts accountable for their acts, no matter our level of interest in the region or that our forces were the targets of the violence.

Omar Khadr, a young Canadian, could have been a child in Sierra Leone. But he was in Afghanistan, in similar circumstances, not of his making or under his control, in an environment from which, as a child, there was no escape. Legally, morally, and politically the international community, including the United States, has separated out children from the horrors of combat, to protect and nurture, to rehabilitate and support, not to punish. No children found in combat should be held liable for their acts. The jurisprudence of the Special Court for Sierra Leone demonstrates that this is the legal standard of the world community and of the United States.

I will close with another tragedy in this ten-year long tale of horror:

*[A child] lived in a village in the Kono district. [His family was] told that the rebels were going to attack . . . [H]e fled into the bush with his parents and brother, but [they] were caught by the RUF. The rebels took his younger brother and himself to Kaiama along with thirteen other boys. The rebels lined the fifteen children up and offered them a choice: Join one line if they wanted to be a rebel, another line if they wanted to be freed and allowed to go home. All fifteen of these boys . . . joined the line for freedom. It was the wrong choice. They were accused of sabotage to the revolution. To keep them from escaping each was held down, screaming, and one-by-one had AFRC and/or RUF carved into their chests with the blade of a sword. The [child] was now just marked property. . . . [H]is scarred chest . . . to this very day bears the letters: A-F-R-C R-U-F.*<sup>43</sup>

**HRB**

### ENDNOTES: Prosecuting Children in Times of Conflict

<sup>1</sup> The event took place in March 2004 in Makeni, Sierra Leone.

<sup>2</sup> Statute of the Special Court for Sierra Leone art. 4(c), (2002), available at <http://www.sc-sl.org/Documents/scsl-statute.html> (last visited May 5, 2008).

<sup>3</sup> Convention on the Rights of the Child art. 1, Sept. 2, 1990, 1577 U.N.T.S. 3, available at <http://www2.ohchr.org/english/law/crc.htm> (accessed Apr. 7, 2008). It does not, therefore, only refer to a child

who is carrying or has carried arms. See generally, Graça Machel, *The Impact of War on Children: A Review of Progress*, 7 (2001); United Nations Children's Fund (UNICEF), *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa* (1997) available at [http://www.unicef.org/emerg/files/Cape\\_Town\\_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) (last visited May 5, 2008).

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<sup>4</sup> Conscripting or enlisting children under the age of 15, or using them to participate actively in hostilities, is a war crime within the jurisdiction of the International Criminal Court. Rome Statute of the International Criminal Court art. 8(2)(b)(xxvi) and (e)(vii), July 17, 1998, 2187 U.N.T.S. 90 [hereinafter Rome Statute], available at <http://untreaty.un.org/cod/icc/statute/rome.htm> (last visited May 5, 2008).

<sup>5</sup> Graça Machel, *Promotion and Protection of the Rights of Children, Impact of Armed Conflict on Children*, submitted pursuant to G.A. Res. 48/157, (1996) [hereinafter Machel, *Impact of Armed Conflict on Children*], available at [http://www.unicef.org/emerg/files/report\\_machel.pdf](http://www.unicef.org/emerg/files/report_machel.pdf) (last visited May 5, 2008).

<sup>6</sup> *Id.* at ¶ 3.

<sup>7</sup> Omar Khadr, a Canadian citizen, has been in U.S. military custody since the summer of 2002 both at Guantanamo Bay, Cuba and Bagram Air Base in Afghanistan. Khadr was 15 years old at the time of his capture and detention. A survey of the legal and historical precedent shows that no child ever has been prosecuted for a war crime at this level.

<sup>8</sup> See No Peace Without Justice, *Conflict Mapping in Sierra Leone, Violations of International Humanitarian Law from 1991 to 2002*, 72 (2004), available at <http://www.specialcourt.org/Outreach/ConflictMapping/NPWJCMReport10MAR04.pdf> (last visited May 5, 2008).

<sup>9</sup> Prosecutor v. Sesay, et al., SCSL, Case No. SCSL-2004-15, Pre-trial Proceedings (Trial Chamber), (May 13, 2004), testimony from a confidential witness.

<sup>10</sup> *Id.*

<sup>11</sup> See Human Rights Watch, *Youth, Poverty and Blood: The Lethal Legacy of West Africa's Regional Warriors*, sec. III (Mar. 2005) available at <http://www.hrw.org/reports/2005/westafrica0405/> (last visited May 5, 2008) (noting that porous borders between Liberia, Sierra Leone, Guinea and Cote d'Ivoire facilitated migration of young fighters who found economic incentives in the regional conflicts).

<sup>12</sup> S. C. Res. 1315, U.N. Doc. S/RES/1315 (Aug. 14, 2000), available at [http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1315\(2000\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1315(2000)) (last visited May 5, 2008). See generally, the Secretary-General, *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, U.N. Doc. S/2000/915 (Oct. 4, 2000), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N00/661/77/PDF/N0066177.pdf?OpenElement> (last visited May 5, 2008).

<sup>13</sup> Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Jan. 16, 2002, available at <http://www.sc-sl.org/Documents/scsl-agreement.html> (last visited May 5, 2008); see also Special Court Agreement, 2002 (Ratification) Act, 2002, Apr. 25, 2002, available at <http://www.sc-sl.org/Documents/SCSL-ratificationact.pdf> (accessed May 5, 2008). The Court's Registrar Robin Vincent from the United Kingdom, and the Prosecutor were appointed by the UN Secretary-General in April 2002. The Deputy Prosecutor Desmond DeSilva was appointed by the Government of Sierra Leone in the fall of 2002. The Court's Chambers are a combination of five international and national justices in the Appellate Chamber and three international and national justices each in the two Trial Chambers. The first eight justices (five in the Appeals Chamber and

three for the first Trial Chamber) were sworn into office in early-December 2002. The second Trial Chamber was sworn in January 2005.

<sup>14</sup> *Id.*

<sup>15</sup> Statute of the Special Court for Sierra Leone, *supra* note 3, art. 1.

<sup>16</sup> *Id.*

<sup>17</sup> The joint criminal trial against the RUF leadership is in its final stages with the defense team presenting evidence. The trial against Charles Taylor has begun in The Hague and will last approximately one year.

<sup>18</sup> Informal poll, No Peace Without Justice (June 2003). No Peace Without Justice's website can be accessed at <http://www.npwj.org>.

<sup>19</sup> Prosecutor v. Sesay, et al., SCSL, Case No. SCSL-04-15, Amended Consolidated Indictment (Trial Chamber), May 13, 2004.

<sup>20</sup> Prosecutor v. Brima, et al., SCSL, Case No. SCSL-04-16, Further Amended Consolidated Indictment (Trial Chamber), Feb. 18, 2005; Prosecutor v. Brima et al., SCSL, Case No. SCSL-04-16, Judgment (Trial Chamber), June 20, 2007.

<sup>21</sup> Prosecutor v. Norman, et al., SCSL Case No. SCSL-03-14, Indictment (Trial Chamber), Mar. 3, 2003. In the case against the CDF, of the remaining two indictees, one was convicted on the unlawful recruitment of children charge in July 2007. See Prosecutor v. Fofana and Kondewa, SCSL, Case No. SCSL-04-14, Judgment (Trial Chamber), Aug. 2, 2007.

<sup>22</sup> *Brima et al.*, Case No. SCSL-04-16, Judgment (Trial Chamber), June 20, 2007. The accused were acquitted on the ill treatment of civilians in Kenema District count, and no convictions on counts related to sexual slavery and forced marriage, which constitute "other inhumane acts" under crimes against humanity.

<sup>23</sup> See Amicus Curiae Brief of University of Toronto International Human Rights Clinic and interested International Human Rights Organizations (Nov. 3, 2003); see also, Amicus Curiae Brief of UNICEF (Jan. 21, 2004) (noting that state practice demonstrates a firm commitment to hold those who recruit child soldiers liable under criminal law).

<sup>24</sup> See Prosecutor v. Norman, SCSL, Case No. SCSL-2004-14, Decision on Preliminary Motion Based on Lack of Jurisdiction (Trial Chamber), May 31, 2004; see also Alison Smith, *Child Recruitment and the Special Court for Sierra Leone*, 2 J. INT'L CRIM. JUST. 1141, 1141, 1152 (2004) (noting that this marked the first time the crime was charged in an international court and hailing the correctness of the Court's decision).

<sup>25</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 77, June 8, 1977, 1125 U.N.T.S. 3, [hereinafter Protocol I Additional to the Geneva Convention], available at <http://www.unhcr.ch/html/menu3/b/93.htm> (accessed May 5, 2008); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 4(3) June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II Additional to the Geneva Convention], available at <http://www.unhcr.ch/html/menu3/b/94.htm> (accessed May 5, 2008); Convention on the Rights of the Child, *supra* note 4, art. 38; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict arts. 1-7 May 25, 2000, 2173 U.N.T.S. 236, available at <http://www2.ohchr.org/english/law/crc-conflict>.

htm (accessed May 5, 2008); Rome Statute, *supra* note 5, art. 8(2)(b)(xxvi), 8(2)(e)(vii); Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182) art. 3, Nov. 19, 2000, 2133 U.N.T.S. 161, available at <http://www1.umn.edu/humanrts/instree/ilo182.html> (accessed May 5, 2008). See generally Smith *supra* note 25.

<sup>26</sup> See The Hague Convention Relative to the Opening of Hostilities (Hague Convention III), Oct. 18, 1907, available at <http://www.icrc.org/ihl.nsf/FULL/190?OpenDocument> (last visited May 5, 2008); The Hague Convention Respecting the Law and Customs of War on Land and its Annex: Regulations Respecting the Laws and Customs of War on Land (Hague Convention IV), Oct. 18, 1907, available at <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument> (last visited May 5, 2008); The Hague Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague Convention V), Oct. 18, 1907, available at <http://www.icrc.org/ihl.nsf/FULL/200?OpenDocument> (last visited May 5, 2008).

<sup>27</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Geneva Convention I), Aug. 12, 1949, 75 U.N.T.S. 31 available at <http://www.icrc.org/ihl.nsf/FULL/365?OpenDocument> (last visited May 5, 2008); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Geneva Convention II), Aug. 12, 1949, 75 U.N.T.S. 85, available at <http://www.icrc.org/ihl.nsf/FULL/370?OpenDocument> (accessed Apr. 8, 2008); Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III), Aug. 12, 1949, 75 U.N.T.S. 135, available at <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument> (accessed Apr. 8, 2008); Geneva Conventions Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), Aug. 12, 1949, 75 U.N.T.S. 287, available at <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument> (accessed Apr. 8, 2008).

<sup>28</sup> See Universal Declaration of Human Rights, G. A. Res. 217 A (III) U.N. Doc. A/810 at 71 (Dec. 10, 1948) available at <http://www.un.org/Overview/rights.html> (accessed May 5, 2008).

<sup>29</sup> See Protocol I Additional to the Geneva Conventions, *supra* note 26; Protocol II Additional to the Geneva Conventions, *supra* note 26.

<sup>30</sup> The United States has not ratified either of the protocols.

<sup>31</sup> See Geneva Convention IV, *supra* note 26 (providing, throughout, for special protections for children under 15 during times of armed conflict). Using children in combat is a grave breach because one cannot force non-combatants to fight. As children are especially protected, the breach is even more pronounced, even aggravated. Coupled with Geneva Convention IV, the CRC's implication is that a child soldier recruited under duress cannot commit a war crime.

<sup>32</sup> See Geneva Convention II, *supra* note 28, arts. 49–50; Geneva Convention III, *supra* note 26, art. 129; Geneva Convention IV, *supra* note 28, art. 146. Universal jurisdiction over those committing grave breaches of the customary principles of the laws of armed conflict has been around even prior to 1949. See generally William B. Cowles, *Universality of Jurisdiction over War Crimes*, 33 CAL. L. REV. 177 (1945).

<sup>33</sup> Convention on the Rights of the Child, *supra* note 4; Optional Protocol to the Convention on the Rights of the Child on the

Involvement of Children in Armed Conflict, May 25, 2000, available at <http://www2.ohchr.org/english/law/crc-conflict.htm> (accessed Apr. 8, 2008).

<sup>34</sup> UN Declaration of the Rights of the Child, preamble and principle 2, G.A. res. 1386(XIV) (1959), available at <http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/142/09/IMG/NR014209.pdf?OpenElement> (last visited May 5, 2008) (noting that children need special safeguards, including appropriate and special legal protection).

<sup>35</sup> Convention of the Rights of the Child, *supra* note 4 art. 40(3)(a).

<sup>36</sup> *Id.*, art. 1. See also United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985), available at [http://www.unhcr.ch/html/menu3/b/h\\_comp48.htm](http://www.unhcr.ch/html/menu3/b/h_comp48.htm) (accessed May 5, 2008) (requiring jurisdictions not to establish an age of juvenile criminal culpability that fails to consider issues pertaining to the child's emotional, mental and intellectual maturity).

<sup>37</sup> The CRC Optional Protocol II was signed on 25 May 2000 and came into force on 12 February 2002. It has 115 signatories and has been ratified by 70 states.

<sup>38</sup> Juveniles offenders, like adult offenders, are to be awarded prompt due process. The rights of a child in conflict state that detention of a juvenile offender may not be unlawful or arbitrary; a child has the right to timely access to legal counsel, and the right to timely review of their detention. Furthermore, the child has the right to appeal the decision that ordered their detention. Unnecessary detention of juvenile offenders should be prevented at all costs, and the detention should only be used as a last resort, in exceptional circumstances, and for the shortest possible duration. Additionally, alternatives to detention, including rehabilitation and education programs, should be used as early as possible if it is reasonable under the circumstances. During the detention phase, separation of juveniles from confined adults is required by the applicable international agreements. Juveniles should not only be separated from adults in a detention facility, but pre-adjudication detainees should also be isolated from adjudicated juveniles. See Convention on the Rights of the Child, *supra* note 4, arts. 37–40.

<sup>39</sup> See Rome Statute, *supra* note 5, art. 8(2)(e)(vii). At the time the Rome Statute was drafted, the President of Sierra Leone reached out to the UN for help in punishing those who committed atrocities in the conflict that had ravaged his country in the 1990s. Children were recruited or conscripted under great duress to fight as soldiers or act as support personnel. As stated earlier, Article 4 of the Statute for the Special Court of Sierra Leone universally recognizes the crime of child recruitment. It mirrors the Rome Statute. All of the indictees currently undergoing trials are charged with this crime.

<sup>40</sup> See Machel, *Impact of Armed Conflict on Children*, *supra* note 6.

<sup>41</sup> Otunnu's office was set up after the release of the UN Secretary-General's 1996 Report, drafted by Graça Machel. See Machel, *Impact of Armed Conflict on Children*, *supra* note 6, ¶ 2.

<sup>42</sup> See Amicus Curiae Brief of UNICEF, *supra* note 24, at 8.

<sup>43</sup> David M. Crane, *Opening Statement against the Leadership of the Revolutionary United Front in an Amended Joint Indictment*, Prosecutor v. Sesay et al., SCSL, Case No. SCSL—2004-15, Pre-trial Proceedings (Trial Chamber), July 5, 2004.