



**The effectiveness of restorative justice in preventing
children's participation in armed conflict in North Kivu
Province, the Democratic Republic of Congo:
a participatory action research**

Submitted in fulfilment of the requirements of the degree Doctor of
Philosophy: Public Management (Peacebuilding) in the Faculty of
Management Sciences

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ABSTRACT

While children used as soldiers are primarily perceived as victims under internal human rights law and international humanitarian rights law, they also commit war atrocities. In the aftermath of war, the mainstream justice system internationally targets warlords, who abduct and enrol children as combatants, leaving child perpetrators without accounting for their gross, human rights violations. Attempts to prosecute child soldiers through the mainstream justice system have resulted in child rights abuses. Where no accountability measures have been taken, former child soldiers have experienced rejection by their communities. Eventually, some have returned to armed conflict. In other contexts, locally based restorative transitional justice has yielded positive outcomes, such as reconciliation, satisfaction expressed by victims and reintegration into the community. This inquiry used restorative justice peacemaking circles (RJPCs), as a model of transitional justice for former child soldiers. Restorative justice evaluation was based on its outcomes. The intervention was efficient as observed: (1) the greater majority of children below the age of 18 (97.2 %) exposed to RJPCs, who intended to join armed groups before, changed their mind and never joined or re-joined armed groups after seven months; (2) apologies by former child soldiers were accepted and they were forgiven, and (3) support for prosecution of child soldiers dropped after RJPCs. In addition, Baraza emerged as an existing model of accountability, conflict resolution and prevention and reconciliation. Unfortunately, it was not exploited to its fullest capacity. Finally healing former child soldiers was a critical step towards change of identity, the transition from soldiering to civilian life, necessary for meaningful reintegration into society. That implied addressing these child soldiers' psychosocial well-being and creating an environment where peace prevails and adequate accountability measures are in place and effective. The overall results reveal that RJPC yielded empathy, vicarious justice, forgiveness, reconciliation, and deterrence of child soldiers.

DECLARATION

This research represents original work by the author, its only prior publication (by the same author) being in peer-refereed conference and journal papers. Where use was made of the work of others, it has been duly acknowledged in the text. This thesis has not been submitted for a degree at any other university, and its only prior publication was in the form of conference papers and/or journal articles.

Prior publications and conference from this study:


- Kiyala, Jean Chrysostome K. 2013. Tackling violence in educational environment in South Africa using restorative justice approaches. Paper presented at the *Strategies for Nonviolence in Education. International Center of Nonviolence (ICON)*. Durban University of Technology, Ritson Campus. Monday 1st to Wednesday 3rd July 2013.
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Durban: 1 March 2016

Signature:

A large black rectangular box redacting the signature of the author.

DEDICATION

To all the *kadogo*,

my friends, child ex-combatants in North Kivu: Kiwede, Rushati, Chabwa, Rouge, Rasta, Kabuno, Mutima Mabi, Roi Kanza, Gingombe, Kata Masoko, Sungu-Sungu, Yokoro, Kasole, Kiriboli, Kingombe, Morgan Smith, Patchanga, Kamukongoto, Makofi Safi, Buffalo, Kalao Blanc, Pharaon, Bifarumba, Baraka, Yuda, Kidemaya, Bahuma Bandu, Rumodi, Chinide, Etienne, Karadumbe, Kamundala, Rodari, Foka-Foka, Kitshwa Drogue, Kenzo, Django Meshack, Joel Hirondele, Shetani, Bakata Kingo, Sans Pitien Katangais; Desperation and vulnerability could not be taken away from your eyes as you shared your grieves and the horrors of soldiering;

To Josué Mufula Jive (DRC former child soldier) and Ishmael Beah (Sierra Leonean former child soldiers), your notorious resilience gives hope to your peers entangled in the jungle, and the night-side of life;

To the many of your companions, brothers and sisters in rival fighting forces; and to uncountable victims of atrocities suffered through exploitation and manipulations of children turned into warriors, and all deceased child soldiers;

This thesis is dedicated to you in our search to halt the use of child soldiers.

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LIST OF ACRONYMS

ACRWC	African Charter on the Rights and Welfare of the Child
ADF	Allied Democratic Forces
ADF-NALU	Islamic Alliance of Democratic Forces for the National Liberation of Uganda
AFDL	Alliance of Democratic Forces for the Liberation of Congo
APCLS	Alliance of Patriots for a Free and Sovereign Congo
AR	Action research
ATJRN	African Transitional Justice Research Network
BR	Beijing Rules
BUNADER	National Office for the Demobilization and Reintegration of Child Soldiers
CAAFG	Children Associated with Armed Forces and Groups
CAFF	Children Associated with Fighting Forces
CENI	Independent National Electoral Commission
CGIAC	Crisis Group's International Advisory Council
CIAT	International Committee in Support of the Transition in the Democratic Republic of Congo
CNDP	National Congress for the Defence of the People
CNS	<i>Conférence Nationale souveraine</i>
CONADER	National Coordination of the Demobilisation, Disarmament and Reintegration Programme
CPA	Child Protection Law/Act
CPAR	Contextual Participatory Action Research
CRC	Convention on the Rights of the Child
CSCS	Coalition to Stop the Use of Child Soldiers
CVR	<i>Commission Vérité et Réconciliation</i>
CWP	Children and War Project
DDR	Disarmament, Demobilisation and Reintegration
DDRRR	Disarmament, Demobilisation, Repatriation, Reintegration or Resettlement
DRC	Democratic Republic of Congo
EAFGA	<i>Enfants Associés avec les Forces et Groups Armés</i>
FAC	Congolese Armed Forces
FAP	People's Armed Forces

FARDC	Armed Forces of the Democratic Republic of Congo
FDLR	Democratic Forces for the Liberation of Rwanda
FDLR FOCA	Democratic Forces for the Liberation of Rwanda-Abacunguzi Combatant Forces
FNI	Forces of Nationalists and Integrationists
HCR-PT	High Council of the Republic and Parliament of Transitional
ICC	International Criminal Court
ICC-DRC	International Criminal Court for the Democratic Republic of Congo
ICT-DRC	International Criminal Tribunal of the DRC
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICYT	International Court for the Former Yugoslavia
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organisation
LBTJ	Locally-based Restorative Transitional Justice
LRA	The Lord's Resistance Army
LRRTJ	Local Referral Restorative Transitional Justice
LTTE	Liberation Tigers of Tamil Eelam
MLC	Movement for the Liberation of Congo
MONUC	United Nations Mission in the Democratic Republic of Congo
MONUSCO	United Nations Mission of Stabilization in Congo (DR)
NCB	National Child Bureau
NDC	Nduma Defense of Congo/Cheka
NGOs	Non-governmental Organisations
NSC	National Sovereign Conference
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPAC	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
OSISA	The Open Society Initiative for Southern Africa
PARECO	Coalition of Congolese Resistant Patriots
PNDDR	National Programme of Disarmament, Demobilisation and Reinsertion

PTSD	Post-traumatic Stress Disorder
RCD	Congolese Rally for Democracy
RENAMO	<i>Resistência Nacional Moçambicana</i>
RJ	Restorative Justice
RJPCs	Restorative Justice Peacemaking Circles
RUF	Revolutionary United Front
SA-TRC	South African Truth and Reconciliation Commission
SADC	Southern African Development Community
SBGV	Sexually-based Gender Violence
SCSL	Special Court for Sierra Leone
SDCC-DRC	Special Domestic Criminal Court for the Democratic Republic of Congo
SFHR	Swedish Foundation for Human Rights
SPLA	Sudanese People's Liberation Army
SSRC	Social Science Research Council
TJ	Transitional Justice
TRC	Truth and Reconciliation Commission
UEPNDDR	Unit of Execution of the National Programme of Disarmament, Demobilisation and Reinsertion
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITA	<i>União Nacional pela Independência Total de Angola</i>
UNODC	United Nations Office on Drugs and Crimes
UPC	Union of Congolese Patriots

PART ONE: GENERAL INTRODUCTION

Part one of this inquiry comprises the research problem and context.

CHAPTER ONE

RESEARCH PROBLEM AND CONTEXT

1.1 Problem background

The phenomenon of child soldiers, commonly known as the *Kadogo* (little ones) in the DRC, or children associated with armed forces and groups (EAFGA), is one of the most disturbing issues in the Democratic Republic of Congo (DRC), especially in the eastern and north-eastern provinces, where children have been used as soldiers. These regions have experienced systematic armed conflicts. During the first Congolese war in 1996, many children volunteered to join either the armed forces or the Mai-Mai, to fight against foreign aggression by the neighbouring Rwanda. However, forced recruitments escalated during the second war that began in August 1998 (CSCS 2010).

The word *kadogo* is traced to that period and describes under-age soldiers. In spite of the Child Protection's Legal Framework, many children continue to be enrolled for military service with armed factions. According to Bell (2006: 4), an estimate of 30,000 children were involved in fighting and lived in the ranks of armed forces or militia groups in the DRC. Many boys and girls, some younger than 10 year old, participated in armed conflicts in the DRC wars.

A Global Report, published by the Coalition to Stop the Use of Child Soldiers (CSCS), states that an estimated 7,000 child soldiers remained in government forces and armed groups, even in foreign armed groups, mainly in the provinces of Equateur, Ituri, Katanga, North and South Kivu, and Maniema, in 2008, where these minors were used as “combatants, porters, guards and sexual slaves” (CSCS 2007: 106). They were recruited from various locations, such as schools, taken from their homes, from the field, and refugee camps along the Rwando-Congolese and Ugando-Congolese borders. Besides conscription of these minors by fighting factions, many children enlist voluntarily for various reasons. These include revenging the loss of their parents or relatives, defending their communities, even running for safety in the hope that, by becoming soldiers, they will be protected (Brett and Specht 2004: 69).

Though official reports suggest that child recruitment in the DRC stopped in 2003, and under the 2008 Goma Peace Agreement, whereby all fighting forces were called to release children still in their ranks (Human Rights Watch 2008), the children remained vulnerable and continued to be used as soldiers. Such recruitments have been exacerbated by the scale and complex nature of militarised conflicts, involving more than 50 different armed groups and an estimate of five foreign groups, deployed across the eastern Congo (Stearns 2014: 158).

Sporadic and unceasing resumptions of hostilities in some parts of the Northern Kivu and Southern Kivu provinces, where rebel activities are on-and-off, have resulted in children still being recruited. In addition, amongst the Mai-Mai fighters, child soldiering is not just a circumstantial occurrence, but an ongoing practise, rooted in the belief that children have supernatural powers and these can be used to confer invulnerability, after going through ritual ceremonies (Jourdan 2011: 100).

Recruitment of children by the National Congress for the Defence of the People (CNDP), the Mai-Mai and the FDLR were noted by the UN Secretary General in April 2008, during a submission made to the UN Security Council¹ (Human Rights Watch 2008: 5). Besides the militias, the DRC regular forces had also used children as soldiers, those who volunteered and those were conscripted, especially by Laurent Désiré Kabila.

The Mai-Mai Yakutumba, also in South-Kivu, continue using children as soldiers (Human Rights Watch 2008: 6; Stearns and Verweijen 2013: 47). Moreover, according to a global report, issued by Coalition to Stop the Use of Child Soldiers (CSCS 2008: 23), troops commanded by Laurent Nkunda, a former commander of the Rwandan-backed Congolese Rally for Democracy (RCD) based in Goma, perpetuated deployment of children in hostilities against opposing armed groups.

The practice of child soldiering is an international problem. Amnesty International (2003) describes these children's fates, as lost lives. Effectively, the increasing death toll in the DRC has been caused by bloody conflicts, in which children remain the heaviest casualties, both as

¹ Report of the Secretary-General on MONUC, S/2008/218, April 21, 2008, paragraph 70 in Human Rights Watch. 2005. The Curse of Gold: Democratic Republic of Congo (Online). Document 1564323323. Available: http://www.hrw.org/sites/default/files/reports/drc0505_0.pdf (Accessed 22 October 2013).

soldiers and through other, perilous consequences of violent, armed conflict. Sahovic (2011: 3) reports that an estimated 1.5 million children died in the 1980s of causes related to war, in the time of civil wars in Mozambique, Cambodia, Sierra Leone, the former Yugoslavia, Rwanda, El Salvador, Guatemala, the Middle East, and other locales; several million children died as a direct consequence of atrocities.

Drumbl (2012: 27) avers that children have, throughout history, participated in armed conflict, fighting as soldiers; maintaining morale as drummer boys; cooked [cooks]; portered, and sustained garrison life” (Drumbl 2012: 27). The use of children in hostilities is not a new practice, but rather an ongoing challenge. In this regard, Drumbl (2012: 28) notes: “the unlawfulness of the use of child soldiers and the criminalisation thereof is a new dimension of an historical phenomenon”. These children are, nonetheless, depicted as victims, perpetrators, and heroes, while being stereotyped as demons, bandits and damaged goods, and so on (Drumbl 2012).

It is further stated by Drumbl (2012: 1) that, even though specific incidents have been reduced, with the aid of international interventions, child soldiering still continues. This situation needs redress, begging the question as to which strategy should be adopted, especially when research shows that many children join armed groups and forces voluntarily (Brett and Specht 2004; Wessells 2006; Schmidt 2007; United Nations 2009a; Drumbl 2012). Though the concept of voluntary participation is arguable, it is commonly understood that several children enlist with armed groups because they are compelled by ecological, economic and political constraints.

This study critically explores the use of children in hostilities and attempts to identify the means that can help prevent this ongoing practice. Prevention can, however, not be done without looking into the causes of soldiering by minors, and the consequences of their participation in fighting, on both themselves and their communities. This leads to the quest for the role society can play to halt this phenomenon.

1.2 Statement of the problem

The challenge of this study was to investigate ongoing interventions, underway with the aim of dissuading children from joining armed groups and forces, while exploring the mechanisms of restorative justice (RJ). In addition, the extent to which the praxis of peacemaking circles could

enhance local agency (local capacity) was scrutinised, for the purpose of preventing children's participation in armed conflicts in North Kivu Province, DRC, post 1996.

The rationale for considering restorative justice peacemaking circles (RJPCs) is that these programmes touch on the ways that communities can act, in response to crimes or wrongdoings, by considering the needs and interests of affected parties, namely victims, offenders, their acquaintances, their families and the community at large (Pranis, Stuart and Wedge 2003). Peacemaking circles are also referred to as healing circles, because they provide a platform that enables offenders to share the pains of the victims; in taking responsibility for past wrongdoing, an offender is empowered to reform their life and healing is enhanced (Pranis 1997: 73). The focus is on transformation, healing and prevention of further harm (Umbreit, Coates and Vos, 2002).

In order to achieve its goals, this inquiry was guided by the following question: How and to what extent can RJ circles help build local capacity, to prevent ongoing participation of children in armed conflict, in the Northern Kivu Province of the DRC and promote sustainable peace?

The following sub-questions helped explore, understand and address the problem:

- How are local communities intervening to dissuade children from joining armed forces and groups and to what extent are these efforts effective?
- What intervention programmes are underway to stop ongoing participation of children in hostilities, in North Kivu Province and how effective are these programmes?
- Do criminal justice and traditional justice systems assist to hold child soldiers accountable for their actions, and to what extent can that accountability dissuade them from re-mobilising and deter ambitions by children below the age of 18 to enlist?
- How can RJ mechanisms, particularly peacemaking circles, contribute towards enhancing local capacity to limit ongoing participation of children in armed conflict, promote reconciliation and sustainable peace, and prevent the soldiering practice by minors?

RJPCs were planned, implemented and evaluated, to test the hypothesis that this intervention would help prevent the participation of children in armed conflict. Five main sites were selected, namely Goma, Rutshuru, Kiwanja, Masisi and Kitchanga in North Kivu, because of their constant exposure to violence, and as areas where many children are used as soldiers.

1.3 Assumptions and hypothesis

Based on a pilot study conducted between 2011 and 2012, prior to registration at Durban University of Technology (DUT) for this degree, and an MA Phil research paper, based on reconciliation in the DRC, this study was conducted under the following assumptions:

- There are overwhelming violations of children's rights and dignity, where boys and girls have been abducted and forced to take up arms and fight bloody wars. This practice, in itself, constitutes a grave injustice to children.
- Ongoing conscription and voluntary enrollment of children in armed groups are sustained by the lack of accountability for past crimes, by both child soldiers and those who illegally prey on them and force them to fight.
- Ongoing violence in war-torn areas, especially in the Eastern DRC, is sustained by existing, chronic and structural violence that characterises this vast country.
- The inefficiency of the justice system, to deal with complex issues of belligerent children, requires a more adapted and contextualised paradigm of justice that is relevant and could potentially deter the practice of child soldiering.
- RJ circles can bring accountability for war-related atrocities committed by children, enhance reconciliation and healing, and empower local communities to become a driving force in the campaign against the child soldiering phenomenon.
- Intervention programmes currently being implemented to address the problem are insufficient and not adapted to the complex circumstances of child soldiers' reality.
- Criminal justice and local justice apparatus are facing many challenges, due to conventional court proceedings that do not seem suitable to address the crimes perpetrated by child soldiers.
- Restorative circle mechanisms could help bring accountability and address the needs of the community and the victims (justice, reconciliation, forgiveness, reparation, and sustainable peace).

- Local communities could be empowered with peacemaking circle skills, with which to pursue a reconciliation agenda and build local capacity, in order to lead the campaign against the ongoing practice of child soldiering.

The main hypothesis, among others being tested here, was the following: Children who are exposed to RJPCs could be dissuaded from joining armed groups and militias. In the case of the DRC, the prospects of resolving this complex equation, by using RJ approaches in the post-military conflicts era, would appear realistic. This research examined and attempted to address these issues holistically.

1.4 Objectives

The overall purpose of this study is to attempt to dissuade children from joining armed forces and groups, via the use of RJPCs. The specific aims of this study are to:

- Investigate local communities' efforts to dissuade children from joining armed groups;
- Explore current intervention approaches to stop the practice of child soldiers;
- Examine the practices employed by the criminal justice and local justice systems in holding child soldiers accountable, as well as the manner in which deterrence of further engagement with armed forces and groups is stimulated;
- Experiment with RJPC and evaluate the extent to which this justice paradigm can contribute to building local capacity, in response to the need for justice; for atrocities perpetrated by child soldiers and the extent to which these processes can lead to deterrence, promote reconciliation and sustainable peace.

1.5 Rationale of the study

The phenomenon of child soldiers has drawn the attention of politicians, psychologists, jurists, and sociologists, as well as law-makers and policy-makers, locally and internationally. For instance, at the level of international legislation, child soldiering issues have been dealt with globally, through pre-emptive measures aimed at protecting the rights and dignity of children, in addition to indicting perpetrators, who are mostly armed group leaders, and having them prosecuted. This undertaking has been promoted by organisations, such as Amnesty International, Coalition to Stop the Use of Child Soldiers (CSCS), the United Nations High Commissioner for Refugees (UNHCR), and the International Center for Transitional Justice

(ICTJ), as well as the United Nations Children's Fund (UNICEF), the International Committee of the Red Cross, and Human Rights Watch, Save the Children, and the International Criminal Court (ICC).

In the past and recently, a great deal of attention has been placed on the prosecution of incriminated adults, who are responsible for accepting and enrolling the underage for military objectives; and also on social and economic reintegration. In the aftermath of civil wars, in a society where horrendous atrocities have been committed by underage soldiers against their fellow community members, there is a necessity to remake peace and heal relationships that have been damaged, so that such a dark experience can be averted in the future. The traumas people go through can have dramatic consequences for individuals, as well as the community, when they are not dealt with properly.

The recurrence of violence and human rights violations, especially in the Eastern DRC, cannot be ignored. It needs a more realistic and pragmatic approach, so that societal harmony can be revitalised and traumatised memories healed. A search for peace, without reconciliation and justice, makes any peace process fragile. In circumstances, such as those prevailing in the DRC, where the peace process takes place amidst ongoing rebel attacks, as well as other effects of violence and human rights violations, justice is definitely perceived as the way to achieve and build lasting peace.

Such innovativeness is capable of preventing conflicts and subsequent involvement of children and adolescents with armed forces and groups. In an environment where administration of justice is ostensibly decried, prevention of conflict can be attained by empowering local communities to own justice processes at grassroots levels. Moreover, RJ is assumed to be a model of justice, capable of transforming the relations between child soldiers and war-survivors, and their communities and thus, facilitate their reintegration into society.

The following are the main arguments that support this inquiry:

- Flagrant injustices, affecting the lives and future of many former child soldiers and those still serving in various armed groups, need to be addressed;

- Horrible atrocities, committed against child soldiers and all the protracted consequences they suffer, as a result of dramatic and traumatic experiences in battle fields and in training and indoctrination camps, cannot be overlooked;
- Justice that should be demanded, by individual victims or human communities that have suffered various crimes committed by child soldiers, where they are still looked on as terrorists, rebels and assailants that must be kept far away from the community, needs to be addressed;
- RJ and seeking reconciliation should be the priority of programmes, such as demobilisation, disarmament and reintegration (DDR), for children exiting armed conflict, to be welcomed and accepted by their respective communities;
- This study would lay the groundwork that could benefit both the victims of child soldiers' terrorist and barbaric acts, as well child soldiers themselves, who are also victimised;
- Rediscovering the potentialities of RJ approaches could serve as a platform, from which to facilitate an adequate and just process of transition from soldiering to civilian life. This possibility opens up a brighter future for both those children and the community in which they live.

These points clearly illustrate how crucial this study is. It presents a comprehensive approach required to solve the intricate question of belligerent children. The questions raised in this inquiry could be addressed by the praxis of RJ mechanisms. By taking responsibility for their heinous crimes, the underage could be dissuaded from further engagement with the militaries. Broken relationships need to be healed in the aftermath of bloody conflicts, should a society want to circumvent the cycle of violence and move forward harmoniously. Then again, how should this intervention be conducted? This inquiry attempted to answer this complex question.

Besides preventing children from participating in armed conflict, achieving justice, healing, forgiveness and reconciliation, the mode of inquiry and designs involved here, notably participatory action research and pre-test/post-test control designs, constitute an innovation in child soldiering studies. That is, a means of providing child soldiers and their communities with the necessary knowledge and skills that are essential in addressing injustices of war and ensuring the protection of children affected by armed conflict.

The outputs of this study would be extended to improving government policies and local legislation in this sector. RJ programmes could also be introduced in the DRC's legislation, as done in countries worldwide. These few points are considered crucial and convinced the researcher to embark on this investigation. It is difficult if not impossible to ignore the horrible crimes committed by child soldiering and the need for justice, in favour of numerable victims of alleged child soldiers' crimes.

1.6 Contribution to scholarly knowledge

Previous and current interventions (criminal justice, Transitional justice (TJ), demobilisation, disarmament and reinsertion process) aimed at addressing the problem of children associated with armed forces and groups, show a number of limitations. From the literature reviewed, it appears that there is no evidence of in-depth studies on the use of RJ circles, as means of building local capacity to prevent the participation of children in armed conflicts. This study provides an alternative way of remaking peace between child soldiers and the victims of their brutal acts, while covering the gaps left by previous studies in the global debate on child soldiers.

The use of action research design and approaching the question pragmatically, through experimental design that imparts knowledge to a local community and embarks with them on the resolution of the problem, is a novelty in the field. The praxis of RJ circles and the empowerment of the local community is seen as a catalyst for social transformation and immediate response, to the paradoxical question of children soldiering in North Kivu Province.

1.7 Pilot testing

Creswell (2009: 88) asserts: "[...] proposal developers can conduct pilot projects to establish trust and respect with participants so that inquirers can detect any marginalization before the proposal is developed and the study begun". Between 2011 and 2012, before registering with DUT, a pilot study was personally conducted in the DRC, where I am from, on the role of civil society to prevent children's participation in armed conflict. The current research was inspired by an own, earlier study at Master's level, between 2007 and 2010, based on the relevance of reconciliation, from the Judeo-Christian tradition perspective to the DRC context.

The need for justice was uncovered as a catalyst to peacebuilding. In the context of the Congo, affected by systematic conflict and latent resumption of hostilities, a more adapted and flexible

justice approach was required in dealing fairly with young soldiers and their victims. The findings of the research identified impunity, failure to address social justice issues, and the lack of reconciliation and justice, as collateral factors fuelling conflict, which makes children vulnerable and easy targets for belligerent groups.

Twenty participants were involved, from the following institutions: The Unit for National Execution of the Demobilisation, Disarmament and Reintegration Programme (UEPNDDR); Caritas Kinshasa, which coordinates the National Commission for Disarmament, Demobilisation and Reinsertion (CONADER) and facilitates social and economic reintegration of ex-combatants; the Order of Re-education and Protection of Street Children; Church leaders ministering to street children; and Lawyers dealing with both street children and child soldiers. It was possible to access relevant information regarding the programme of integration and re-insertion of child soldiers country-wide, including the challenges faced by humanitarian organisations in facilitating the child soldiers' social and economic reintegration.

Convenient and snow-bowling sampling techniques were used to recruit participants. A combination of personal interviews and questionnaires was adopted to investigate the way society perceives child soldiers and how this practice could be prevented. All participants viewed child soldiers as victims and supported ongoing humanitarian programmes put in place by the UEPNDDR and Caritas Congo, to assist demobilised soldiers reintegrate into the community.

The findings from this pilot testing revealed that criminal responsibility for child soldiers' violence was attributed to adults, who conscribe and accept them in their ranks; children are vulnerable and at risk in war affected areas; and the DDR programme offers the minimum of assistance needed by all non-soldiers who have and continue to exit hostilities. It was further found that Caritas Congo and the Congolese Government are striving to pursue the psychosocial well-being of child ex-combatants. Justice and accountability for former belligerents were not considered in the DDR programmes.

Additionally, participants spoke of several children who were released from armed groups and forces and re-unified with their families, without justice and reconciliation processes to help them and other combatants take responsibility for their war-related crimes. A blanket amnesty had been granted to all the ex-combatants, though some were eventually harassed, arrested and

illegally detained in precarious conditions. There was no evidence that local campaigners against child soldiering practice were using any form of peace-building strategy, to dissuade children from participating in armed conflicts. Above all, financial constraints led to a premature end of the DDR in 2008, leaving many children unassisted.

The need for reconciliation and forgiveness was emphasised as an important step towards ending hostilities between child soldiers and their communities. Besides all these results, this study was inspired by familiarity with the child soldiering phenomenon, which the researcher came in contact with for the first time in 1997, after the overthrow of President Mobutu Sese Seko by Laurent Kabila. It was the time when child soldiers were extolled as heroes, as they paraded the streets of Kinshasa. They started committing crimes without being apprehended. The lack of accountability for their violence and the increasing number of children joining armed groups prompted the pursuit of this inquiry.

1.8 Delimitations of the study

This study covers the period between 1996 and 2015. The post 1996 era was characterised by an escalation in the recruitment of child soldiers, especially when the Alliance of Democratic Forces for the Liberation of Congo (AFDL), led by Laurent Désiré Kabila, in a military campaign that ousted the late president, Joseph Désiré Mobutu Sese Seko, from power, in May 1997. The campaign was confined within the North Kivu Province of the DRC, a region most affected by war, where ongoing participation of young people in hostilities is reported.

With former belligerent children having been involved in RJPC programmes, this approach was found to be capable of holding child soldiers accountable for their barbaric acts, bringing justice to their victims, and facilitating reconciliation with their respective communities. This course of action, based on RJ circles, was instrumental in dissuading young people from joining armed forces and groups.

1.9 Definitions of concepts

Research is conceived as a debate that uses communicative action (Mingers 2001: 244). The fundamental aim of communicative action is to achieve and maintain understanding amongst persons involved in this colloquial action (Mingers 2001: 244). In order to make communication possible, it is essential to explain the main concepts used in a study. Legal and

orthodox definitions of the main concepts were used in this inquiry. In some cases they are cited integrally. New meanings and nuances may emerge as the study evolves.

1.9.1 Child soldiers

The definition of child soldiers is fluid and denotes some contradictions. First of all, professional soldiering is supposed to be an adult job, not a venture for minors, the *kadogo*. There are various debates regarding the definition or the concept of child soldiers. Under normal circumstances, a person who chooses a profession or career goes through a certain amount of training and is prepared to venture into this professional occupation, once all the required conditions are met, including age, as well as physical and mental aptitudes.

Child soldiering is one of the cases whereby unfit persons are forced or allowed to perform onerous duties that should exclude them, in principle and in practice. Such a state of affairs serves as the origin of different controversies on the use of child soldiering concepts. Certain scholars prefer using “children associated with armed forces and groups”, “children in arms”, “children affiliated with fighting forces”, “army of the minors”, and so on. In the DRC, child soldiering is described as *enfants associés avec les forces et groupes armés* (EAFGA) [Children Associated with Armed Forces and Groups (CAAFFG)] or Children associated with Fighting Forces (CAFF).

Wessells (2006: 6) remarks that even this label, CAFF, is not perfect because it deprives children who have played roles other than direct fighting, on-the-ground, from certain benefits that would be accessible to child combatants in the DDR programmes. It is agreed that the term and concept of “child soldier” is broadly used and needs to be retained to describe this category of soldiers (Wessells 2006: 6). To expound further on the contested definition of child soldiers, Honwana (2006: 51) describes a soldier as “a professionally trained person employed to serve in governmental services, controlled and sponsored by the state, under defined rules and discipline or in armed forces”. Honwana (2006) views a child soldier as a fighter, serving in the rank of rebels/guerrilla, who is:

[...] inadequately trained and outfitted, often operating under the influence of drugs. Such soldiers harass, loot, and kill defenceless civilians indiscriminately. Not only do they show their victims no mercy, they may even fail to distinguish between friends and foes, kin and non-kin (Honwana 2006: 51).

The reality of child soldiers, as well as the circumstances and conditions of their recruitment, does not qualify them to be called soldiers, when looking at the soldiering profession strictly as an adult profession. Forced and voluntary recruitment neither alter the reality of childhood nor does it negate the role and responsibility of society vis-à-vis this category of people. The responsibilities include care and protection, as well as providing them with education, security and a spacious, developmental environment.

In the absence of a consensual definition and understanding of child soldiers, conventional definitions stated in UN standards and the international legal framework for the protection of the child's rights will be used for this study.

According to international law, a child soldier is any person under 15 years of age recruited in armed forces or used in hostilities, which is a violation of child rights: "Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities".²

According to the Optional Protocol to the Convention on the Rights of the Child (OPAC), on the involvement of children in armed conflict, coercive recruitment of persons under 18 into armed groups is absolutely outlawed.³ The Convention permits those under 18 to be enrolled willingly to state armed forces, under certain strict conditions, to ensure that such recruitment is voluntary.⁴ The nature of voluntary enlistment is defined under OPAC:

States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that: (a) Such recruitment is genuinely voluntary; (b) Such recruitment is done with the informed consent of the person[']s parents or legal guardians; (c) Such persons are fully informed of the duties involved in such military service; (d) Such persons provide reliable proof of age prior to acceptance into national military Service.⁵

² Article 8 (2) (b) (xxvi) of *The Rome Statute of the International Criminal Court*. Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002. Available: http://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf (Accessed 23 July 2013).

³ Article 2 of United Nations Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflicts (OPAC). Adopted and opened for signature, ratification and accession by General Assembly resolution, A/RES/54/263 of 25 May 2000, entered into force on 12 February 2002 (online). Available: <http://www.refworld.org/pdfid/47dfb180.pdf> (Accessed 23 August 2014).

⁴ OPAC, article 3(3).

⁵ OPAC, article 3(3).

It is evident that the conditions and circumstances of child recruitment do not reflect these legal requirements. In this study the terms “child soldiers”, “belligerent children”, “children associated with fighting forces” or “child soldiering” were used interchangeably with the *kadogo*, according to The Paris Principles.⁶ Although CAAGF is commonly used to designate this category of children, this study refers to them as child soldiers, since the definition provided by The Paris Principles covers a broad range of activities that these children are involved in. In addition, it is difficult to draw a line between the roles played by child soldiers, as described by international law, and those played by the *kadogo* or CAAGF.

The argument gathered from one of the participants interviewed during pilot testing in Kinshasa was that, referring to them as child soldiers would imply that they choose to be soldiers, in the same manner that adults take up this profession, while strictly speaking, they do not qualify to do so.⁷ The *kadogo* do not choose to soldier as a career. Nonetheless, they become involved because of circumstantial constraints, without which they would not join.

The definition of child soldiers in this study was based on the Paris Principles, which state:

A child associated with an armed force or armed group refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.⁸

This definition includes a range of activities that children who participate in hostilities are involved in, and which would bring them under the category of child soldiers.

1.9.2 Disarmament, demobilisation and reintegration

The DDR process consists of three programmes, namely disarmament, demobilisation and reintegration. The Paris Principles define the disarmament process as follows:

“Disarmament” is the collection, documentation, control and disposal of small arms, ammunition, explosives and light weapons of combatants and often also of the civilian

⁶ The Paris Principles: Principles and guidelines on children associated with armed forces or armed groups. 2007. (online). Available: <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (Accessed 18 October 2013).

⁷ Interview with the Director of CARITAS International, Kinshasa, 18 August 2011.

⁸ The Paris principles, article 2(2), UNICEF, 2007. Principles and guidelines on children associated with armed forces or armed groups (UNICEF, February 2007). Available: <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (Accessed 18 October 2013).

population. Disarmament also includes the development of responsible arms management programmes.⁹

The later concept of DDR will embrace cross-border programmes related to the resettlement of foreign combatants operating in the DRC.

The last part of Article 2(8) of the Paris Principles touches directly on child rights and dignity, which needs to be considered in any attempt to prevent children's involvement in armed conflict. It should be noted that reinsertion is conceived within a framework called DDR, according to the Paris Principles. It stipulates:

“Formal DDR process” is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilisation may extend from the processing of individual combatants in temporary centres, to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilisation encompasses the support package provided to the demobilised [adults], which is called reinsertion.¹⁰

The Paris Principles define reintegration as a process, whereby children transit from soldiering to civilian life and are reinserted into society, wherein they can play “meaningful roles”, as stated in the following:

“Child Reintegration” is the process through which children transition into civil society and enter meaningful roles and identities as civilians, who are accepted by their families and communities in a context of local and national reconciliation. Sustainable reintegration is achieved when the political, legal, economic and social conditions, needed for children to maintain life, livelihood and dignity, have been secured. This process aims to ensure that children can access their rights, including formal and non-formal education, family unity, dignified livelihoods and safety from harm.¹¹

Two important aspects of the process in this definition concern the acceptance of returnee child soldiers by their families and communities; and reconciliation on local and national level. The challenges facing disarmament, demobilisation and reintegration of child soldiers are also discussed in this research.

⁹ The Paris Principles, article 2(7).

¹⁰ The Paris Principles, article 2(9).

¹¹ The Paris Principles, article 2(8).

1.9.3 Reconciliation

The term reconciliation is here perceived as a process of healing human relationships in a post-conflict situation, where many people have been victims of unjust and oppressive political rules, and suffered, among other damages, as a result of inter-ethnic violence and armed conflict.

In the context of this study, reconciliation refers to The Paris Principles cited below:

Where truth-seeking and reconciliation mechanisms are established, children's involvement should be promoted and supported and their rights protected throughout the process. Their participation must be voluntary and by informed consent by both the child and her or his parent or guardian where appropriate and possible. Special procedures should be permitted to minimize greater susceptibility to distress.¹²

Reconciliation is used in the context of social reconciliation, which implies mending and healing wounded interpersonal relations, in areas where atrocities have been perpetrated by former child soldiers. By social reconciliation the inference is what Hay (1998: 18) calls *Ukubuyisana*, a Zulu word that means “to return to each other”, “to come back to each other”. *Ukubuyisana* is about mutual forgiveness between aggressors and their victims (Hay 1998: 13). When this reconciliation materialises, it can be expanded to a national event because of the nationwide scale of violence experienced by the DRC. This is the reason why, in this research, it is constantly referred to as national reconciliation (Kiyala 2010).

National reconciliation is also envisioned by The Paris Principles, as an aspect of “the formal DDR process”:

While the reintegration of children into civilian communities should, wherever possible, be carried out in ways that facilitate local and national reconciliation, it should always be preceded by a risk assessment, including a cultural and gender analysis, addressing issues of discrimination and should be based on the child's best interests, irrespective of national considerations or priorities.¹³

DDR is not simply a humanitarian intervention but rather a requirement, sustained by the legal, international standard, regarding children in armed conflict, which needs to be fully implemented.

¹² The Paris Principles, article 3(8).

¹³ The Paris Principles, article 7(31).

1.9.4 Prevention

The concept of prevention refers here to the legal and other humanitarian means used to keep children and adolescents away from armed conflict. Later on in this study, prevention is understood as an aspect of the peacebuilding process. Prevention strategy against child soldiering practice features in legal documents. According to The Paris Principles, “prevention of recruitment, release, protection and reintegration are interdependent and indivisible”.¹⁴ This document also states that the resolution of the child soldiering problem should entail a lasting solution and include all children in armed conflict zones:

Efforts to develop lasting solutions to children’s recruitment or use by armed forces or armed groups, and to prevent its future occurrence, should be inclusive of all children affected by armed conflict and address other egregious violations of children’s rights, under applicable international law or the national law of the countries affected.¹⁵

In the understanding of the Cape Town Principles,¹⁶ The Paris Principles and the Michel’s Report (United Nations 2009a), prevention encompasses exclusion of persons under 18 years from unlawful recruitment, and demobilisation of children entangled in hostilities and their reinsertion into their respective families and communities. Prevention is expanded, in the context of this study, to include developing mechanisms that deter re-recruitment and re-enrolment, in the case of voluntary participation by minors. Reconciliation, sustainable peace and conflict prevention revolve around justice and respect for human rights and the rights of victims.

1.9.5 Restorative justice

RJ is defined as “a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders” (United Nations 2006: 6). It consists of programmes, such as victim offender mediation (VOM), community and family group conferencing, sentencing circles, RJPC, reparation probation and community board panels. One of the objectives of RJ is: “[R]educing recidivism by encouraging change[s] in individual offenders and facilitating their reintegration into the community” (United Nations 2006: 11). This objective underlines the impact of past behaviour of the offender on his future behaviour and its consequences. Past aggressive behaviour can be transformed or reformed through RJ

¹⁴ The Paris Principles, article 3 (4)(1).

¹⁵ The Paris Principles, article 3 (4)(1).

¹⁶ The Cape Town Principles. Adopted at the symposium on the prevention of recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa, 1997. Available: [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf) (Accessed 28 October 2013).

processes, so that taking responsibility for past atrocities can prevent recidivism of future criminal acts (United Nations 2006: 11).

1.10 Preliminaries notes on research design and methodology

This inquiry employed sequential mixed methods, using qualitative and quantitative methods in a sequence with findings from one method feeding into the other; and convergent design that merges analysis of statistical findings with qualitative themes emerging from fieldwork. Fieldwork data was obtained through structured and semi-structured interviews, focus group discussions and face-to-face surveys using questionnaires. Child soldiers in CTOs and students were assisted in responding by legitimate guardians (caretakers and teachers). This was necessary to ensure questionnaires were understood and accurately responded.

The research proceeded from a purposive sampling of individuals who have been identified as representative of the larger target population being studied and considered to have experienced child soldiering practices or having been directly or indirectly touched by systematic conflicts in North-Kivu. All child soldiers found in interim centres at Kiwanja, Nyahanga, Masisi and in 12 selected schools, including members of NGOs and public servants and officials, were selected through snowball sampling and by convenience.¹⁷ A purposive random sampling was subsequently used, drawing a random sample of a small number of entities from a larger target population. This sampling method is employed to increase the credibility of the findings of a larger study, as sustained by Teddlie and Tashakkori (2009: 187). The target population included the youths from two parish communities in Goma and students from 12 schools (two primary and ten secondary), accessed through the parish and school registries, totalling 1,900 subjects, from which a random sample was drawn. Interval or systematic sampling was applied. The total number of participants equalled 1,447, which was assigned to the sample by both probability and non-probability sampling. The sample was increased from 282 to 1,447 participants, by including 1,165 in the follow up phase of the study that was randomly included from a population of 3495.

¹⁷ Names of child soldiers at three interim centres (Nyahanga, Kiwanja and Masisi) were found in the registries accessed with the permission of Caritas Goma and Union for Peace and the Promotion of Child Rights (UPEDECO). Gatekeepers were obtained from these institutions to conduct the study.

By randomly assigning units of analysis, the research intended to avert the effects of history and sensitivity of participants to the instruments, in addition to which it was also necessary for internal validity of the study (Bless, Higson-Smith and Kagee 2006: 91), by limiting data collection to only two rounds with the same subjects, within a period of seven months. To ensure the reliability of the study, the sampling was based on the variability, heterogeneity of groups and diversity of the study population and by examining variables simultaneously in the data analysis. This practice is suggested by Bless, Higson-Smith and Kagee (2006: 108). Different categories of participants included self-demobilised child soldiers, and members of security services, as well as the Armed Forces of the Democratic Republic of Congo (FARDC), members of NGOs, war-victims, students, educators, local and traditional leaders and members of war-affected communities. Research sites were selected by convenience because of their exposure to systematic wars, interethnic violence and ongoing child soldiering practices. These are Goma, Masisi centre, Rutshuru, Kiwanja and Kitchanga.

The study was longitudinal, involving two stages of data collection. The aim of the first phase, was to appraise the conductivity (justice system, effects of DDR programmes and the role of the community) of post-war context in North-Kivu, to deter child soldiering practices, with various circumstances leading to self-demobilisation that were examined. The second phase of the study had a threefold objective: (1) To involve more participants in RJ training through workshops (role-playing of peacemaking circles involving victims, child soldiers and community members), in order to allow a good assessment of its potential so as to assist with the reintegration of child soldiers; (2) To evaluate the immediate effects of the training on participants; (3) To conduct focus group discussions to deepen the themes emerging from this data. For this reason, the sample was extended from 282 to 1,447, over the course of the three phases of data collection. The training consisted of two days and half-day training by the research team.

1.11 Outline of the study

This study consists of five parts, set out as follows: (1) General introduction, (2) Review of literature, (3) Research design and methods, (4) Fieldwork data collection, findings and analysis, and (5) Concluding remarks. Each part contains chapters that run through the thesis. These comprise the research problem and its setting, an overview of the DRC, the problem of child soldiering, RJ in theory and practice, RJ from an African perspective, research design, research methodology, findings, discussions, conclusions and recommendations.

In Part one, the first Chapter gives a general orientation of the study comprised of the introduction, the problem setting, aims, assumptions and hypotheses, as well as the objectives and specific aims, significance of the study and contribution to scholarly knowledge, were presented in Chapter 1. The rationale for the study was also discussed, as were the pilot testing, the researcher's personal experiences, and delimitations of the inquiry, along with the focus of the study and the definition of concepts. This chapter attempted to substantiate the existence of the child soldiering phenomenon from documented sources, and the fact that it is ongoing, closing off the chapter with an outline of the study.

Chapter 2: An overview of the DRC is presented; its political environment, economic situation, democratic process, and security, along with the genesis of the two Congo wars, and the challenges of TJ. The DRC truth and reconciliation commission is revisited, as are the challenges faced by the criminal justice and local justice systems, with an extensive debate on the impact of structural and chronic violence on the child soldiering practice. The chapter ends with some prospects, such as structural peace and emerging models of accountability for child soldiers that could help avert this ongoing phenomenon.

In Part Two, Chapter 3 lays out the problem of child soldiering is reviewed, covering a range of issues, such as historical background, the DRC child soldiers, the factors contributing to and sustaining the use of children as soldiers, as well as variations in recruitment, paradoxical portrayals (victims-perpetrators-heroes) and the thoughts revolving around victimisation, vulnerability, resilience and agency.

Chapter 4: Issues pertaining to the "formal DDR process", with a particular emphasis on North Kivu province are critically assessed. Additionally, the concept of childhood is explored from the African worldview, as well as from Western and international legislative perspectives.

Chapter 5: Concerns pertaining to accountability are explored, along with intervention programmes aimed at the prevention of child soldiering, while international legal protective and preventive measures, in addition to the DRC legislation protective instrument, were extensively reviewed. The chapter ends with an important debate on the concept of self-demobilisation (challenges and prospects), as far as child soldiering prevention is concerned.

Chapter 6: The conceptual framework of the study, namely RJ, is introduced. It discusses the historical development of RJ within the global theory of justice, while RJ programmes, the concept of RJ circles, the assumptions, sanctions, and modes of evaluation of RJ are expounded on, including the relationships between RJ and TJ, and RJ and social justice.

Chapter 7: Empirical studies on RJ and their effectiveness to reduce recidivism, lead offenders to change, bring accountability, justice and reconciliation are dealt with in this chapter. It concludes with a section on the rationale for using the RJ theoretical framework of this participatory action research.

Chapter 8: The historical perspectives of RJ in Africa are reviewed. It explores the Truth and Reconciliation Commission in South Africa, Gacaca in Rwanda, Ka Pahla in Mozambique, Fambul Tok in Sierra Leone, Mato Oput in Uganda and the Inter-community Baraza in the DRC. These paradigms of justice have gained impetus in African transitional societies coming out of brutal and oppressive political rules and those attempting to move forward, in the aftermath of bloody, armed conflict. The chapter ends with a section on the challenges of community-based approaches of justice, before drawing a conclusion that substantiates the viability of locally-based, transitional RJ, in post-conflict and post-war societies in Africa.

Part Three starts with Chapter 9, which sets out the mode of inquiry and designs adopted are overviewed in this chapter, namely contextural participatory action research (CPAR) and pre-test/post-test control group designs. The rationale for this approach lies in the objective and specific aims of this inquiry: diagnosing the problem, planning the first intervention model to tackle it, and evaluating the outcomes before proceeding to the next intervention. That was an appropriate strategy to measure the impact of RJ in preventing children's participation in armed conflict.

The issues covered here include action research's definitions, types, critiques and underlying reason for its adoption in this study, especially in a study with children as the source of data. This chapter also discusses sampling methods, experimental research, notably pre-test/post-test control group designs, criteria of inclusion and exclusion of participants, with the last section dedicated to the research paradigmatic framework (constructivist realism).

Chapter 10: An assessment of the methodological framework that starts with explanations on mixed methods research and the rationale for using a pluralist mixed methods and multi-methodology is done in this chapter. Different methods of data collection (interviews, focus groups, search conference and survey questionnaires) are elaborated on. Several modes of data analysis and interpretation (phenomenological, discourse analytical method, content analysis, and Statistical package in Social Sciences) are also discussed here.

The three last sections of this chapter are dedicated to the limitations of methods and designs, along with the validity and reliability of methods and designs. It concludes with ethical considerations, touching on procedural questions, critically addressed to give credibility to the study's outcomes.

Part Four starts with Chapter 11 that focuses on diagnosing the problem. The key findings include a dysfunctional or non-existing, juvenile justice system in the DRC, the inability of the local justice system to protect children and prevent their association with armed groups, the scourge of impunity that stands as a serious impediment to the child soldiering prevention campaign, and the incapacity of the local community to prevent children from being recruited as soldiers. Furthermore, participants' intention to join armed groups is investigated, alongside the circumstances leading children to becoming soldiers, the real motives for their self-exit and desertions from fighting forces; and finally, the advocacy of the community to keep them away from hostility. In this regard, the Baraza institution is suggested as one way of dealing with the child soldiering practice, in parallel with restorative mechanisms.

Chapter 12: Fieldwork that encompasses planning, implementing and evaluating RJPCs are set out in this chapter. The main components of the chapter are the collection, analysis and findings of empirical data; obtained by interviews and focus group discussions. In addition, the training of peacemaking circle facilitators and planning meetings with co-researchers, as well as implementing RJPCs as intervention, through participatory action research, and observing experimental groups and control groups' scores, and with finally, drawing statistical inferences from findings. Data used to plan action research are basically drawn from interviews and focus groups gathered to measure pre-test observations. And the main findings include the characteristics of the sample, identification of armed groups, and the state of existing and ongoing interventions aimed at preventing the practice of child soldiering.

A section on statistical reliability is included here. Furthermore, the phenomenon of self-demobilisation, the failure of adult DDR and the emerging Baraza platform of justice and conflict prevention and resolutions, were the important results of the study. The last phases of fieldwork established the effectiveness of the intervention programmes, namely RJPCs, by comparing scores of control groups and an experimental group. A follow-up of emerging themes (Baraza and RJ) was also conducted. RJPC effects were summarised, in terms of empathy for child soldiers, vicarious justice, and forgiveness of child soldiers, as well as satisfaction of victims and prevention of participants below 18 years from becoming soldiers.

Chapter 12: The discussion to the overall context of the study is opened by this chapter, by interpreting the findings in light of the existing literature. It considers first, the results of fieldwork, conceptualises them, while placing them within the broader debate, as it flows from the literature review. The key findings and the theoretical framework are compared, and discussed within the lens of a constructivist realism paradigm. This assists in interpreting the findings and gaining the meanings embodied in data, in order to substantiate the effectiveness of RJ, in preventing the participation of children and adolescents in armed conflict.

In this process, the researcher also recapitulates the challenges and impact of other prevention measures utilised by transnational, national and local non-governmental organisations and the international legal instruments to protect children and prevent their association with armed groups and armed forces. An attempt is made to fit deterrent and pre-emptive effects of RJPC within the overall interventionist approach to child soldiers, while pointing out the peculiarities of RJ to pursue reconciliation and sustainable peace, as well as prevent conflict and build the nation.

Chapter 13: In this chapter, a range of preventive mechanisms resulting from the field study are discussed. It is divided into three parts: (1) the challenges of reintegration and how that hinders prevention; (2) child soldiering prevention and the viability of RJ to attain that; and (3) child soldiering prevention and collateral strategies to achieve that. The overall discussion points to the necessity to redress injustices by child soldiers, which can hinder their social reintegration and cause some to remobilise; the healing dimension of RJ to generate empathy and vicarious justice, reconciliation and reintegration; and the role Baraza can play, to minimise conflict and facilitate acceptance of children who want to return home.

Chapter 13 presents the overall conclusions of the inquiry, makes recommendations and points to areas for further research.

Part Five concludes the study with Chapter 14 that presents the general conclusions, recommendations and areas of further study.

CHAPTER TWO

THE CONTEXT

This chapter overviews the DRC, the generalities, natural resources, economic indicators, structural and chronic violence, illegal arms trade, impunity, the impasse of the TJ process and peace processes.

2.1 General introduction

Situated in Central Africa, the DRC is the second largest country in Africa, after Algeria. It shares borders with nine countries, namely Angola, Republic of Congo, Central African Republic, South-Sudan, Uganda, Rwanda, Burundi, Tanzania and Zambia.

The DRC opens to the Atlantic Ocean, with the Congo River that is 4,374 km (2,718 miles) long, making it the second longest river in Africa (after the Nile) and one of the longest in the world. It follows the Amazon (in Latin America) as the second largest river in the world, in terms of its volume of water discharged to the Atlantic Ocean:

Upstream from Malebo Pool, the Congo basin receives an average of about 60 inches (1,500 mm) of rain a year, of which more than one-fourth is discharged into the Atlantic. The drainage basin of the Congo is, however, only about half the size of that of the Amazon, and the Congo's rate of flow—1,450,000 cubic feet (41,000 cubic metres) per second at its mouth—is considerably less than the Amazon's flow of more than 6,180,000 cubic feet (175,000 cubic metres) per second (Pourtier n.d)

The vast territory of the DRC covers 2.5 million km². The DRC population is estimated at 70,916,439, according to the 2010 US Census Bureau's estimate, and the population density approximates 31.3 people p/km², making the DRC a “country continent” (EStandards Forum Report 2009: 1).

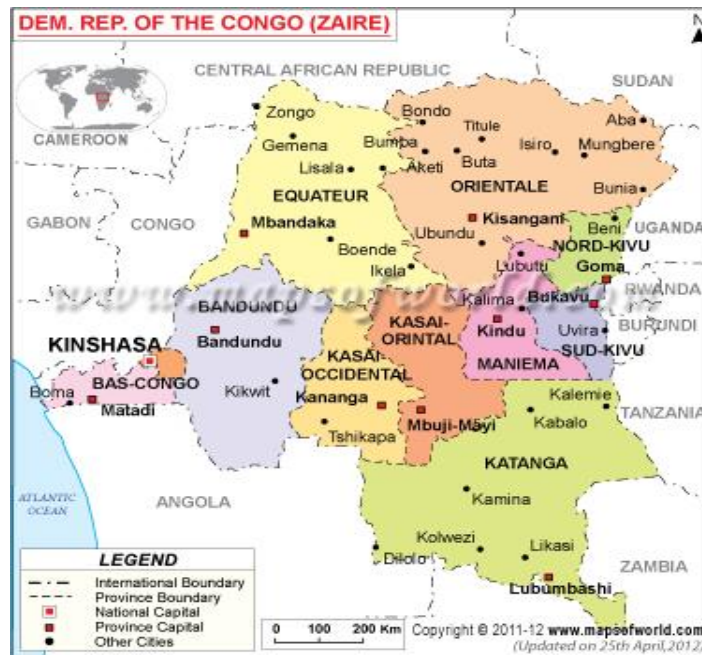


Figure 1: Political map of the DRC¹⁸

The DRC gained independence from Belgium on 30 June 1960. Joseph Kasavubu was the first president and Patrice Emery Lumumba his Prime Minister. Joseph Désiré Mobutu, a Colonel in the Congolese Public Force, seized power on 24 November 1965, following a mutiny and struggles in the army. This day inaugurated 32 years of nightmare for the whole nation. Gruesome human rights violations were perpetrated throughout the time Mobutu ruled Zaire. The DRC was plunged into anarchy and obscurantism, with summary executions of opponents, as Mobutu established “monopartism” and kleptocratic rule that led to the destruction of the whole nation. The country is actually ruled by President Joseph Kabila Kabange, who serves his second term after being elected in general suffrage, for five years in 2011. The DRC has a bicameral legislature comprised of the Senate and the National Assembly. The constitution allows freedom of religion.

2.2 Natural resources and economic indicators

The DRC is described as a “geological scandal” because of the amount and variety of its mineral resources. Ekakhhol (2009: 153) notes: “By 1953, it [DRC] became the leading African producer of minerals such as cobalt, diamonds, tin, zinc, and silver, as well as the second largest producer of copper after Zimbabwe (formerly Rhodesia)”. Besides, the DRC has crops

¹⁸ Source: <http://www.mapsofworld.com/democratic-republic-of-congo/> (accessed 11 May 2011)

of “coffee, sugar, palm oil, rubber, tea, cassava, papaya, mangoes, pineapples, oranges, quinine, tapioca, palm oil, bananas and corn” (Ekakhol 2009: 5).

In addition to mineral deposits already mentioned, the DRC is also home to reserves of tantalum, petroleum, manganese, coal, hydropower, coltan and timber that constitute its major natural resources (EStandards Forum Report 2009: 5). It is important to note the principal industries: “Mining (diamonds, gold, copper, cobalt, coltan and zinc), mineral processing, textiles, footwear, cigarettes, food processing, beverages and cement...” (EStandards Forum Report 2009: 5). These natural resources have been fuelling conflict in the eastern and north-eastern DRC.

Table 1: IMF Country data overview 2009 (Est.)¹⁹

<i>GDP Growth</i>	<i>GDP:</i>	<i>GDP per capita:</i>	<i>CPI:</i>	<i>Current Account as % of GDP</i>	<i>Budget deficit as % of GDP</i>	<i>FDI (UNCTAD 2008)</i>
27%	\$11.104 bln	\$171	39.2%	-14.6%	-9.3%	\$1.00 bln

Given the pertinence of the child soldiering phenomenon, ongoing and systematic conflict and sporadic rebel attacks in the DRC, this second largest country in Africa was chosen to study the intricate problem of child soldiers. The researcher purposively located the inquiry in North Kivu Province, where children and adolescents are unceasingly conscribed and enrolled by fighting forces. It is important to investigate how violence, the child soldiering phenomenon and resources are intertwined. Later on, the geopolitics of the Great Lake Region should also be examined, in order to understand how conflict in neighbouring countries spills over across countries and causes devastation in the DRC.

2.3 Structural and chronic violence in the DRC

The theoretical development of the concept of violence and peace flows from the work of Galtung (1969: 171) that has been an inspiration for several scholars. He framed the multiple aspects of violence and understanding of its relation to peace. As maintained by Galtung (1969: 170), violence can be direct, when its materialisation is owed to an agent (“actor”) or indirect, when there is no such agent (“(actor)”), However, it is rather embedded in a structure or a

¹⁹ Source: <http://www.estandardsforum.org/system/briefs/246/original/brief-Democratic%20Republic%20of%20Congo.pdf?1260312059> (accessed 4 July 2011).

system that sustains it and allows it to explode into concrete manifestations that are perceptible in personal violence, often interrelated with structural violence. A full debate on violence is beyond the scope of this inquiry. This background was necessary to introduce two other types of violence, namely chronic and structural violence, which have been experienced in the DRC.

The concept of chronic violence is used to “characterise the crisis of escalating social violence that currently affects about one quarter of the world’s population” (Adams 2012: 1); and structural violence consists of the “disabilities, disparities and even deaths that occur, when a system or institution policies attempt to meet the needs of the people and their rights, at the cost of others” (Schirch 2004: 22).

Structural violence encompasses material poverty in all its manifestations: Deprivation of basic needs, lack of access to clean water and food, lack of minimal infrastructure for the majority of Congolese, insecurity, lack of justice for victims of rape, robberies, murder, and so on. This state of affairs has a bearing on children’s decision to become soldiers.

Structural and chronic violence are the sustaining factors of the practice of child soldiering. Some patterns of this proposition explain the context in which the child soldiering practice emerges. These include recourse to non-democratic means to obtain or share power, the illegal trade of minerals, illegal trafficking of light weaponry and foreign involvement in the “shade” of local alliances of armed factions, ostensibly exposing children to violence.

Chronic violence in the DRC encompasses human rights violations, sexual violence, violence related to the exploitation of mineral resources, post-election violence, armed conflicts and finally, child soldiering practices. Structural violence includes ethnic violence, poverty, infrastructures, civil liberties and the rule of law, as well as local justice and the security situation. It should also be noted that chronic violence sometimes overlaps structural violence, in the sense that structural violence is based on ethnicity, racial, or tribal prejudices and these may spread over a vast territory and last for many generations, creating a basis for continued clashes. In view of this explanation of how violence originates from social structures and evolves into a chronic status quo in the DRC; it is perceived through the emergence of self-defence communities (Vlassenroot 2001; Jourdan 2011; Stearns 2014).

Structural and chronic violence have been identified as the root causes of social and political instability in the DRC since 1990, when President Mobutu Sese Seko started losing grip on his rule. Young (2004) describes this period as the context of post-colonial Africa, marked by a search for a new platform of more engaged politics in Africa. The legacy of past colonial rule and its heritage here, gives way to a contest, resulting in a severe erosion of the states' features and inaugurating an era of unsuccessful reforms and a series of conflicts (Young 2004).

This state of affairs precipitated the fall of Congo/Zaire into anarchy that reverberated in constitutional turmoil two years later, between Mobutu and the transitional institutions, notably the national Sovereign Conference and the High Council of the Republic-Parliament of Transition. As a result, the DRC was subjected to systematic lootings and total anomy. Four years later, violence erupted and degenerated into civil war that finally helped oust Mobutu from power, in a rebellion sponsored by countries neighbouring the DRC, mainly Uganda, Rwanda and Burundi. During the revolutionary campaign to topple President Mobutu, the DRC experienced a resurgence of the child soldiering phenomenon. Since then, the use of child soldiers has become a common practice.

2.3.1 Structural violence

Schirch (2004) asserts that all forms of violence are intertwined, and defines structural violence as the type characterised by failed states and governments that become dysfunctional. As a result, these states and governments are incapacitated to satisfy the basic needs of people and to some extent, shut them out and prevent them from participating in decision-making and public life. This structural violence generates "secondary violence", which becomes manifest in "civil wars, crime, domestic violence, substance abuse and suicide" (Schirch 2004: 23).

This dimension of violence in the DRC impacts negatively on the lives of young people (Seymour 2011: 63), which partly justifies their involvement in hostilities, especially in the context of ongoing conflict, where demobilisation and reintegration of combatants are challenged (De Vries and Wiegink 2011). Other characteristics of failed states that engender violence, which prompts children to become soldiers, are the lack of opportunities, and economic and social marginalisation, which, for example, sustain child soldiers among the Mai-Mai (Jourdan 2011).

Criminal activities are prominent among people who live in abject poverty, deprived of basic needs and opportunities, those who have been subjected to humiliations and inhuman conditions, and these categories of people turn violent in the attempt to reclaim justice and their rights. This violence originates from social, cultural, and economic disparities, with these inequalities perceptible in unequal distribution of wealth, as well as discrepancies in salaries between the wealthy and the poor (Schirch 2004: 23). This conceptualisation of structural violence better describes the actual situation of the DRC.

Structural violence is manifest in ethnic violence, inefficiency of the justice system and the rule of law and poor infrastructure. For Bourgois (2001: 3), “Structural violence refers to the political-economic organization of society that imposes conditions of physical and emotional distress, from high morbidity and mortality rates to poverty and abusive working conditions”. It is described as a combination of “disabilities, disparities and even deaths that occur when a system or institution policies attempt to meet the needs of the people and their rights at the cost of others” (Schirch 2004: 23). This type of violence is not sporadic but rather imbedded in social, economic, and political structures. Its manifestations are ethnic violence, land disputes, poverty, human rights violations, poor infrastructure, and deprivation of civil liberties and poor administration of the rule of law.

i. Ethnic violence

According to Human Rights Watch (2003: 1), an estimate of 5,000 civilians died as a result of ethnic violence, in the Ituri district, between July 2002 and March 2003. In addition, 50,000 civilians had been killed there since 1999. This results from ethnic conflicts that stemmed from the opposition of the Lendu that forced the displacement of thousands of people. These conflicts include the massacres in a mining town, Mabanga, where the Hema and Gegere militias attacked other groups, slashing peoples’ heads and hands with machetes; the massacre of Songololo and Nyakunde (Human Rights Watch 2003: 12); ethnic cleansing of the Luba emigrants (“Kasaians”) in Katanga province (Lemarchand 2001: 22); the anti-Banyarwanda violence that erupted in Masisi and Walikale in North Kivu province, leaving an estimated 10,000 people dead, most of them Hutu, with approximately 250,000 people displaced (Lemarchand 2001: 27) over the contentious issue of nationality, demonstrate the scale of destruction left behind by ethnic conflicts.

Most militia groups identify themselves with particular ethnic groups, presenting themselves as their protectors. For example, there are several ethnicised militias, such as the FDLR, the UPC, the CNDP, and the AFDL.

- The FDLR and *Interamwe*, consisting of about 6,000 Hutu militiamen of Rwandan origin, have been operating on DRC soil since the 1994 Rwanda genocide (Goodman 2010: 25), have directed their violence against the Tutsi populations, and at times, indiscriminately massacres the Congolese civilian populations. This has been an ongoing issue in FDLR-controlled territories.
- The UPC was born amidst the ethnic conflict between the Hema and the Lendu in the Ituri. This Hema-led militia was commanded by Thomas Lubanga²⁰ (Moffett 2009; Human Rights Watch 2012b). Interethnic violence has been the origin of ethnicised militias that attack each other.
- The CNDP, a Tutsi-led militia commanded by Laurent Nkunda and backed by Rwanda, emerged as a movement that defended the Tutsi populations of Rwandan descent and that often confronted the FDLR Hutu elements and the Mai-Mai Yakutumba (Stearns and Verweijen 2013: 32).
- The AFDL sprang from the Congolese Tutsi known as the *Banyamulenge*, under claims over the Congolese nationality they were stripped of. The conflict veiled real motivations that consisted in dismantling the bases of the *Interamwe genocidaires*²¹, who planned and launched attacks on Rwanda from their bases, in the refugee camps in the Kivu provinces of the DRC. The AFDL produced Laurent Desiré Kabila, as the commander of the movement (Davis 2009: 8). Raised from ethnicity conflict, the AFDL grew into a revolutionary movement that finally ousted President Mobutu Sese Seko, ending more than three decades of autocratic rule.

On the other side, the hostilities between the Tutsi Banyamulenge and the Hutu-led FDLR, constitute another nightmare for peace in Southern Kivu. Ethnicity remains a serious concern and a real threat to lasting peace in the Eastern Congo. A global solution is needed to address social and economic inequalities, impunity and ethnicity. These examples illustrate the manner

²⁰ Lubanga was sentenced by the ICC on 10 July 2012 for 14 years imprisonment for war crimes committed by his UPC, including the recruitment and use of child soldiers. His conviction was the first by the ICC for international crimes.

²¹ The *Interamwe* are elements of the former Rwandan army and the Hutu militia who perpetrated the Rwandan genocide in 1994. They know as the “Rwandan genocidaires” (Rwandan perpetrators of genocide).

in which the feeling of being socially and politically marginalised and oppressed can trigger violence. The source of it all is structural injustices. A reflection of the experience of the Congo, as asserted by Seymour (2011: 63), especially for the youth, who shared their uncertainties for the future and the worsening of the situation tomorrow with the author, is summarised as follows: “The impact of structural violence is evident in the hopelessness and defeat expressed by so many young people [...]” in the DRC.

ii. Land contention

Land issues are another matter that fuels conflicts. Moffett (2009: 9) avers that the issues regarding land distribution, and social and economic inequalities among the Hema and Lendu, have been the origin of bloody conflict in the Ituri district and this issue has never been tackled by peace processes.

It is unconceivable to imagine a people without land. Every human community or ethnic group identifies itself with a land that serves as reference to its origin, the basis of tracing its ancestry, use for burials, as well as food and survival. There have been several confrontations over the land in the eastern DRC, which had justified the existence of fighting factions belonging to particular ethnic groups. Land disputes and ethnicity are intertwined and often influence people to take up arms. The presence of foreign settlers has further exacerbated conflict (Thakur 2008: 56).

iii. Poverty

According to a study by Ekakhol (2009: 329), the DRC was found to be one of the poorest nations in the world. Poverty and economic degradation resulted from badly conceived policies, such as the “Zarianisation and radicalisation” initiated by Mobutu Sese Seko, in privatising most of the firms and businesses, by handing them to parliamentarians. This was a failed attempt to enhance economic freedom which, on the contrary, led to increased poverty, worsened by corruption and mismanagement (Ekakhol 2009: 315). This state of the nation was also reported by an EStandards Forum Report (2009), describing the economic situation and the consequences of poverty in alarming terms: “...the DRC’s economic development has been undermined by high inflation, poor economic management, bloody chaotic internal conflicts and rampant corruption” (EStandards Forum Report 2009: 1). This situation has persisted over the years.

As believed by Mahatma Gandhi in his dictum, cited in Wessells (2006: 24), “poverty is the worst form of violence”, it creates war, intensifies it and sustains it. The consequences of war include the destruction of infrastructures and economic collapse. The most affected category of people, as a result of poverty, is children. Wessells (2006: 24) states that poverty, for children, not only implies not having money and material items but also means the loss of social status through social exclusion, accompanied by shame and humiliation. That explains the mobilisation of children in identified and non-identified armed groups, with efforts to eradicate child soldiering practices impeded by persisting poverty, lack of education opportunities, and a decent life and livelihood.

Poverty is often seen as a consequence of a dysfunctional political and economic system; it is a characteristic of “failed states”. The DRC, according to an EStandards Forum Report (2009: 1) ranks 5th out of the Fund Peace Failed State Index’s 177 nations; indicative of “a very high level of economic and political dysfunction and a country that is not capable of providing for the basic needs of its people” (EStandards Forum Report 2009: 1). Food security is a serious concern. A World Food Program report on Food Security and Vulnerability notes that the production of almost all agricultural products has declined over the last ten years.²² EStandards (2000) further observes that instability and persisting looting of crops by belligerents have caused severe deterioration in agricultural produce that used to be supplied by the eastern Congo provinces. The consequences of this situation are such that the population suffers from malnutrition.

Other manifestations of poverty are poor health and chronic diseases, such as malaria, respiratory infectious diseases, tuberculosis, and diarrhoea that cause high mortality among children. According to the Ministry of Health, “deteriorating health conditions have allowed the resurgence of epidemics, such as measles and typhoid fever... in rural areas, hospitals and clinics have often been destroyed by conflict and a large production of the population does not live within reach of health services” (EStandards Forum Report 2009: 13). Other than this, people are generally living in degrading conditions. Social indicators, presented by Estandards Forum’s report on the DRC, are shocking²³.

²² See A World Food Program Food Security and Vulnerability Report published in July 2009, World Food Program Country Report for the Democratic Republic of the Congo (<http://www.wfp.org/countries/congo-democratic-republic>) cited in *EStandards Forum Report 2009*.

²³ “The DRC is ranked 176 of 182 in the 2009 UNDP Human Development Index. The infant mortality rate is 9.4 per 1,000 live births (US Census Bureau for 2010), the probability of dying before the age of 40 is 37.3%, 74%

As far as education is concerned, for those 15 years and older, the literacy rate is 67 percent (EStandards Forum Report 2009: 14). As in any other sectors, the education system suffers from the lack of funding, with teaching materials and infrastructure either in a lamentable condition or non-existent. Parents pay school and academic fees and support educators financially, and students pay for both their education and study materials, with little concern by the government. There are no modern libraries and laboratories for research in most schools and universities, leaving schools and other public facilities, such as hospitals and clinics inadequately equipped, especially in war-stricken areas.

In addition, the report by the CSCS (2010) finds poverty as one of the elements that creates vulnerability of children, exposing them to recruitments, as stated here: “With few prospects, association with Mai-Mai is seen by some young people as a means of enhancing their status within their community, or simply to provide a way out of poverty and hunger” (CSCS 2010: 8). There is a high unemployment rate. According to the OECD, in 2002, an estimate of only four percent of the working population had jobs (EStandards Forum Report 2009: 4). For instance, a number of educated young people and the potential working class conduct informal activities to survive, while public servants earn less than 110 USD. EStandards (2009) reports:

The minimum wage is about \$1 a day in the formal economy. More than 90% of the workforce is engaged in subsistence agriculture, informal commerce or mining, or other informal activities where the minimum wage does not apply. Government employees receive around \$50-\$110 a month. Salary arrears are common in both the civil service and public enterprises. A 2007 study of teacher training in the DRC by the UK NGO “Refugees into Teaching” indicated that teachers earned just £7.50 pounds on average a month (EStandards Forum Report 2009: 5).

Poverty is also seen in poor infrastructure. According to EStandards Forum Report (2009: 2), “the infrastructure is inadequate, dilapidated and in some areas severely damaged by internal conflicts”. As the country continues to rebuild its infrastructure, “under the terms of a trade

of births are attended to by a skilled health care professional, the under 5 mortality rate is 161 per 1,000 live births, 79% of one-year olds are fully immunized against measles, 12% of infants are born with low birth weight, the maternal mortality rate is 1,100 per 100,000 live births, 76% of the population is considered to be undernourished, 46% of the population have access to clean drinking water, 33.6% of children under 5 are underweight for their age, 31% of the population have access to improved sanitation facilities, the probability of dying between the ages of 15 and 60 is 41.7%, 79.5% of the population lives on less than \$2 a day, 71.3% of the population lives below the national poverty level and the projected life expectancy for 2010 (according to the US Census Bureau) is just 54.7 years (55.6 years for females and 52.9 years for males)”, according to *EStandards Forum report* (2009).

agreement with China, the Chinese Ex-Im Bank is lending the DRC money that will be used to upgrade the road and rail network and build hospitals and upgrade water systems” (EStandards Forum Report 2009: 2).

Poverty, low earnings and economic inequalities have sustained bribes and corruption practices. Many young people who cannot afford to go to school and those who are jobless, see soldiering as an alternative. Poverty is a contributing factor to the vulnerability of adolescents who join armed groups and forces.

iv. Governance and security

The DRC is confronted with serious security challenges along its eastern and north-eastern borders, and even in the interior. The climate of terror, harassment and crackdown on journalists, as well as arbitrary arrests and terrorising by Special Forces, illustrate this situation. According to the World Bank report, “Freedom House ranks the DRC 175 of 195 in its Freedom of Press survey for 2009 and characterizes the press as “not free”” (EStandards Forum Report 2009: 1). Besides a lack of freedom to express one’s opinion, without being apprehended, there is widespread fear among the populations of the eastern and north-eastern territories of the DRC.

A study conducted by Vinck *et al.* (2008) from September to December 2007, gives relevant information on people’s attitude to peace, justice and social reconstruction among the populations of the Oriental province Ituri district and the districts comprised of the Kivu provinces. The study investigated how people graded their safety in different circumstances. These included “going to nearest market”; “going to the field, fetch wood or water”; “going to nearest town/village”; “sleeping at night”; “meeting policemen”; “meeting people from another ethnic group”; “meeting strangers”; “walking at night in village”; “talking openly about your experience during the conflict”; “meeting soldiers / armed groups” (Vinck *et al.* 2008: 28).

This inquiry was compared with other findings for the same investigation but that was conducted in Kinshasa and Kisangani. Of all participants in the survey, only one-third expressed that they felt protected by the FARDC, and a third of the respondents felt protected by “Jesus/God” (31%), with six percent stating that they felt protected by nobody (Vinck *et al.* 2008: 26). This survey explains, to some degree, the circumstances under which children are taken by force by brigands, rebels and other militias, to be used as soldiers. The incapacity of a

state to provide protection and ensure the safety of its people is regarded as a failure that is a mark of failed states.

The DRC is still struggling with governance, protection of its civilian populations, and respect of civil rights. In several remote areas, there is no military/police presence, nor are there justice structures to ensure people are free and safe in their movements. Such an environment of insecurity is linked to the corrupt judicial system and rule of law. The DRC Government 's reaction to the UN Mapping Report (United Nations 2010) acknowledges the needs to reinforce the judicial resources in personnel, equipment and infrastructures, in order to respond effectively to the actual challenges faced by this sector (DR Congo 2010: 42). On domestic or national level, security concerns need to be confronted on two sides, namely credibility and visibility of military forces to tackle violence carried out by the militias, who pose a serious challenge to the safety of the population, in particular women and girls (Davis 2009: 13).

v. Judicial system and rule of law

According to a report by The World Bank (2007), the judicial system is not totally independent. It remains subordinate to political authorities; and courts are dysfunctional, poorly funded and equipped, and often corrupt. Civil rights are frequently violated by state agents and members of the security service, particularly in the territories that are most affected by civil wars. Very often, victims do not benefit from justice. Procedures for violations of their rights offer no redress, as the World Bank (2007: 8) states: “For all practical purposes, given the state of the judiciary and the weak rule of law, there is no possibility of redress for the vast majority of the population” (.

A report by Bertelsmann Stiftung (2009: 2) maintains: “major challenges and deficits persisted and have partially worsened, [e]specially in the area of security and the rule of law, but also as regards political and civil rights” (Bertelsmann Stiftung 2009: 2). It appears that the justice system is faced with several challenges, and in this context, where impunity prevails, children continue to be abused and enrolled as soldiers.

The delivery of justice and delay in court proceedings constitute another important violation of human rights, which is in itself and act of indirect violence. Davis (2009: 19) raises the issue of accountability, averring that persons suspected of committing gross human rights violations are not regularly brought to justice, including security personnel who evade prosecutions because

of the generalised climate of impunity that prevails in the DRC. The state of the justice system in the DRC reflects the wider consequences of the three decades of dictatorial rule of Mobutu Sese Seko and the subsequent wars that engulfed this country. In this environment, people in rural set-ups rely on tribal and local or traditional justice.

It is a common understanding that justice, at any level, is directed to deter crimes and prevent antisocial behaviour. Unfortunately, the DRC is still battling to undertake and pursue reforms in its judicial system, to establish a credible justice system and the rule of law for both civil and military jurisdictions. These remain the main challenges of nation-building in the aftermath of the two Congo Wars (1996-1997 and 1998-2002).

Nonetheless, when the mainstream justice system is applied, with formal prosecutions, many convicts neither pay compensation nor make reparations and often disappear from jails and prisons because of corruption and the inefficient security system. Davis (2009: 20) observes: “As with the army, a lack of clear command and control enables senior officers to engage in corruption”. These cases illustrate how perpetrators of crimes cannot be properly held accountable to prevent further crimes. On the other hand, victims of sexual and gender-based violence (SGBV) suffer neglect, which is a serious injustice to these survivors. In this instance, “the ability of courts to deliver justice for victims of rape and sexual violence is shockingly low” (Davis 2009: 21). Time and again, the DRC depends on the ICC for most of the gross IHL and IHRL violations perpetrated on its soil. This is due to lack of robust means to arrest and convict perpetrators in its domestic courts.

A few trials have been successful, yet in most of the cases, those alleged to be responsible continue with their barbaric acts against innocent civilians. These are mostly warlords and rebel leaders of unidentified militias and bandits. In some parts of the country rebels have taken hold of the justice system. In this regard, Mushi (2012: 28) asserts that the patterns of the native administrative tribal rule have become fragile, though they remain popular. Nevertheless, in rebel controlled-areas, justice is administered by warlords. In some other areas people take the law in their own hands by applying “mob-justice”; or faith-based organisations intervene to play the role of arbitrator, as a means of settling conflict by promoting and using forgiveness and reconciliation (Mushi 2012: 28-30).

It appears that the eastern Congo is in search of alternative justice approaches, initiated by NGOs, as possible ways of dispute resolution. This situation is an indication of a “failed state” where people, under desperation, attempt locally to take ownership of administering justice, in the absence of State-sponsored justice structures or where courts and tribunals are non-existent or dysfunctional. Some NGOs and faith-based association that venture into this field, in the context of war, operate with funds from multiple donors to support community-based structures, and they seem to be a preferred option to magistrates courts being established (Mushi 2012: 28). The process of reforming the justice and security sector has started but has not yet yielded substantial outcomes. This is one step towards eradication of impunity and the creation of a safe environment that would discourage warlords from recruiting and using minors, under 18 year of age, in hostilities.

After exploring different aspects of structural violence and how these impact the child soldiering practice, especially poverty, ethnic conflict, land disputes, the decadent judicial system and rule of law, chronic violence will be discussed as well.

2.3.2 Chronic violence

Chronic violence is the manifestation of structural violence, described as “[...] a historically-entrenched political-economic oppression and social inequality, ranging from exploitative international terms of trade to abusive local working conditions and high infant mortality rates” (Galtung 1969, 1975; Bourgois 2001: 3). While it is also described as “historically-entrenched political-economic oppression and social inequality” (Seymour 2011: 63), chronic violence is generated by numerous aspects. These include social inequalities, gender prejudices, social interactions and imbalances, along with contested democratic processes, illegal trade practices, the disadvantageous effects of globalisation and deviant influences of mass media (Schirch 2004). Manifested in human rights violations, chronic violence is also demonstrated through election and sexual violence; violence related to mineral resources exploitation; armed conflicts and finally, child soldiering practices, which are some corollaries of a generally-violent environment.

i. Human rights violations

The Universal Declaration of Human Rights enshrined in the UN Charter states: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.²⁴ The declaration sets the basis that regulates interpersonal relations. Freedom, equality, dignity and individual rights constitute the fundamental and inviolable principles of human dignity. Unfortunately, human rights violations in the DRC are common and well-documented (Human Rights Watch 2005; Amnesty International 2007; Human Rights Watch 2008; Davis 2009; Open Society Initiative for Southern Africa 2009); they include deprivations of rights to fair trial and inaccessibility to justice. Bertelsmann Stiftung (2009: 8) reports incidents of frequent civil rights violations by members of state and its personnel, particularly the security forces, in war-stricken districts of the eastern Congo.

In the wake of general elections, between 2006 and 2007, it was again the special security brigades that were responsible for gross human rights violations (Amnesty International 2007). Those responsible were mainly the *Direction des Renseignements Généraux et Services Spéciaux de la police* [Directorate General of Intelligence and Special Police Services], also known as the “Special Services” police, and the *Garde Républicaine* [Republican Guard], the *Division de Protection Présidentielle* [Presidential Protection Division], the National Security Council (CNS), the National Intelligence Agency, the Rapid Intervention Forces, and the Congolese Armed Forces, which includes an Office for the Military Detention of Anti-Patriotic Activities (Amnesty International 2007).

Many human rights violations take place in order to gain control of mineral resources. Besides foreign troops’ interventions on the Congolese side and their subsequent abuses, there are also cross-border rebel movements that continue operating in the DRC, especially the Lord’s Resistance Army (LRA) from Uganda and the Hutu-led FDLR. These militias are responsible for several, grave human rights violations. Nonetheless, local armed groups and ethnic-based alliances that terrorize and violate the rights of local populations, such as the movement led by Laurent Nkunda, were responsible for heinous human rights violations that ranged from

²⁴ Article 1 of the United Nations International Bill of Human Rights (A). 1. Universal Declaration of Human Rights Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. Geneva. United Nations publication GE.02-45812-February 2003-9,040 Sales No. E.02.XIV.4 (Vol. I, Part 1), ST/HR/1/Rev.6 (Vol. I, Part 1 (online)). Available: <http://www.ohchr.org/documents/publications/compilation1.1en.pdf> (Accessed 7 October 2014).

“forced displacement of civilians, rape, looting, and extrajudicial killings,” to “the massacre of civilians in Kisangani in 2002” (Prendergast and Thomas-Jensen 2007: 3).

These acts contravened the *Code Penale de la Justice Militaire* (Penal Code of Military Justice) of the DRC (Prendergast and Thomas-Jensen 2007: 3), and constituted flagrant violations of Article 37(a) of the CRC, which the DRC ratified, as it did for other international treaties (CSCS 2007). Some progress seems to have been made, according to the CSCS, with reports of a decrease in arrests and incarceration of child soldiers around 2005, on various charges, for example, “desertion and other military offences (such as abandonment of duty and disobeying orders)” but apparently “cases of children detained for desertion have continued to be identified” (CSCS 2007).

Abuses committed by security agents and persistent insecurity have prompted calls for reforms of the Security Sector for lasting peace and the protection of the civilian population in the eastern DRC (Mobekk 2006; Davis 2009; Mobekk 2009; Boshoff 2010). Davis (2009: 7) argues that the process of “security sector reform” should embody initiatives to tackle “the legacy of impunity for human rights violations and the ongoing human rights violations committed by elements within the security forces” (Davis 2009: 7). Violations of human rights by militia and security forces are alarming, according to the UN reports (MONUSCO and UN Human Rights-Office of the High Commissioner 2013). Moreover, the denial of the right to defence in court and prosecutions of civilians in the military jurisdiction are common human rights violations (Open Society Initiative for Southern Africa 2009: 15).

Human rights violations also affect child soldiers who are illegally recruited, used and abused in contravention of IHL and IHRL in the DRC. Some cases of these contraventions include the trials of child soldiers in military jurisdiction, sometimes for crimes they allegedly committed while being in armed groups, incarceration and the sentencing to death of nine child soldiers under 18, between 2003 and July 2007 (CSCS 2007: 10). These acts contravened the DRC *Code Pénale de la Justice Militaire* [Penal Code of Military Justice] of the DRC²⁵, and constituted flagrant violations of Article 37(a) of the CRC (1989), which the DRC ratified, as it did for other international treaties (CSCS 2007: 10).

²⁵ Article 114 of the Military Justice Code, Law no. 023/2002 of 18 November 2002 (CSCS 2007:10).

Although some progress has been made, such as the decrease in arrests and incarceration of child soldiers around 2005, for various charges such as “desertion and other military offences (such as abandonment of duty and disobeying orders)”, apparently “cases of children detained for desertion have continued to be identified” (CSCS 2007: 4). Furthermore, foreign and local militias fighting each other on Congolese soil have been responsible for horrendous human rights abuses, which continue to jeopardise lasting peace and safety of the populations in the East and Northeast of the country.

ii. Post-electoral violence

Post-election violence in the DRC has become a common occurrence since the first democratic polls took place in 2006. The Crisis Group’s International Advisory Council (2006) analysed the situation and observed that there were some indicators that the country would experience instability before or after the elections. This scepticism was based on the assumptions that the Congolese Rally for Democracy (RCD) troops would continue attacking the newly integrated national army, the lack of adequate preparation for the polls and the fear that the opposition leader, Etienne Tshisekedi, would boycott elections for being left out of the negotiations.

As predicted, post-election violence in the DRC was observed in 2006 and again in 2011. The first opposed combatants loyal to Jean Pierre Bemba by the special forces of the incumbent President Joseph Kabila. Both sides claimed post-electoral victory as they disputed the poll’s results. This conflict led to a bloody confrontation, during which many innocent people lost their lives.

The second wave of brutality opposed unarmed supporters of the charismatic opposition Leader Etienne Tshisekedi and Joseph Kabila’s army, allegedly won fraudulently. Subsequently, violence erupted in Kasai Province and the capital after Etienne Tshisekedi’s self-proclaimed victory of the 2011 presidential election, in defiance of the Independent National Electoral Commission (CENI), presided by Pastor Daniel Ngoyi Mulunda. Many people were killed and injured during these post-election confrontations (Lee 2012).

In the same perspective, Amnesty International (2007) reports that several arrests and tortures were carried out against political leaders opposed to the regime of Kinshasa, by Directorate General of Intelligence and Special Police Services Branch of the Police, in the course of the 2006–2007 elections and following the same polls. Violence was contained with the help of the

European Union Peacekeeping Force during the 2006 post-election clashes, and by MONUSCO following the 2011 elections. The UN Peacekeeping mission played an important role in maintaining peace and preventing a total collapse of the Congo because of the mishandling of election results by the National Independent Electoral Commission (CENI) that had also lost its credibility.

iii. Sexual violence

Sexual violence is a widespread phenomenon across the globe. To illustrate this fact, Goetze (2008) reports that several Muslim women were raped by Bosnian Serbs during the Bosnian war; and Hutu militias raped thousands of Tutsi women in the context of the Rwandan genocide. These atrocities are horrifying and disheartening. They are the worst forms of inhumanities, perpetrated by civilians but mostly by soldiers and are also used as a degrading and terrorising weapon of war (Goetze 2008; Banwell 2014). In the light of a report by Human Rights Watch (2003), the main forms of sexual violence in the DRC are the rape of men, women, and children, forced prostitution, child trafficking for sexual purposes, and sexual exploitation, as well as sexual labour, spousal sexual assault, public rape (coercive sexual acts in public), sexual and genital mutilation (by belligerents), and sex slavery (by armed forces and militias) (Human Rights Watch 2003).

Most of these brutalities are driven by wickedness and evil intentions to humiliate and destroy life (Human Rights Watch 2003) that leave victims devastated at an important time of their life. Sexual violence is carried out in the field, in homes and in penitentiary houses. For instance, 20 women inmates were raped in Goma central prison on 22 June 2006 by male inmates trying to escape and by militias, particularly the FDLR (IRIN 2009a). In 2007, an estimated 2,773 rapes were reported at the Panzi hospital, of which 2,447 were attributed to the FDLR in Bukavu; and in June 2008, 2,200 rape cases were recorded in North Kivu (IRIN 2009b).

In 2009, 17,500 incidents of rape were reported and the legal system of the DRC never pursued justice for victims, according to the UN Population fund (IRIN 2010). A Congolese women's letter to the UN reported 800 rape cases in North Kivu province, and 250,000 to 500,000 women were raped in three months of conflict in Rwanda (Goetze 2008: 4). The age of rape victims ranges from 80 year-old women, to little girls and toddlers, with approximately 40,000 cases of rape treated in medical facilities owned by the UN and its affiliates (Goetze 2008: 4).

Though SGBV sweeps across the world, worse conditions of this horrific violence are experienced in war-torn regions, where men and boys are not spared from this barbaric act. Unfortunately, several cases of sexual, gender-based violence go unaccounted for, with those mentioned among the very few cases reported. However, accountability of perpetrators presents several challenges, especially because of the poor security system and failure of the justice system to prosecute perpetrators in the war-torn communities of the eastern DRC (Davis and Hayner 2009; Mansfield 2009).

Rape is violent, particularly committed by the Rastas (militia group), the FDLR, the Cobra Group, the Mai-Mai, the CNDP and the Coalition of Resisting Congolese Patriots (PARECO), who were notorious for carrying out rape crimes (Davis 2009: 12; Stearns and Verweijen 2013: 36). All these groups are militias operating in the Eastern DRC, in the Ituri District, of the North and South Kivu Provinces.

Sources from the UN report: “Of the countrywide sexual violence cases documented by the UN Human Rights Office in the first half of 2007, 54% were committed by the FARDC and 43 % by the Police Nationale Congolaise” (cited in Davis 2009:12). Sexual violence against women causes indelible psychological marks. This act has innumerable effects of health, namely HIV and sexually transmitted infections, at a rate approximating 27% amongst rape survivors; fistulas, urinary and faecal incontinence, as well as permanent damage to the woman’s reproductive organs (Davis 2009: 13). Unfortunately, there are insufficient efforts to hold perpetrators accountable.

Goetze (2008: 5) describes the low rate of convictions for rape perpetrators as proof of the ineffective legal system of the DRC. To illustrate this point, the Minova verdict, that set 37 seven officers in the DRC Government army free, after allegedly being implicated in looting and mass-rape, while escaping from the M23 rebels, is a case in point.²⁶ On 5 May 2014, the sentencing by the military court in Goma, convicted only two out of 39 soldiers, who had been

²⁶ The M23 designates [a] rebels movement “named after a peace agreement they signed with the Congolese government on March 23, 2009 when they were fighting as part of a group calling itself the National Congress for the Defence of the People (CNDP). Many CNDP fighters were integrated into the Congolese army, officially known by its French initials FARDC [...] The rebels belong to the minority Tutsi ethnic group and have close ties to the Tutsi in neighbouring Rwanda. Their rebellion began in April 2012 when they mutinied. At that time, the CNDP was led by Bosco Ntaganda, who is now at The Hague in the Netherlands, where he is awaiting trial by the International Criminal Court (ICC) for alleged war crimes and crimes against humanity in the north east of the country from 2002 to 2003”. See “Q&A: Who are DR Congo's M23 rebels?” Available: <http://www.aljazeera.com/news/africa/2013/08/201382411593336904.html> (accessed 24 July 2015).

tried for rape and grave crimes perpetrated by DRC Government soldiers in the town of Minova in November 2012. This verdict was shocking and comes as more evidence of the “dilapidated legal system” of the DRC, as stated by Lake (2014). The author also remarks that, despite the enormity of evidence of mass rape in Minova and immense numbers of victims and witnesses that testified during the trial, a verdict was delivered in only two cases by the court (Lake 2014). Atrocious sexual acts are of concern to all, in this case, specifically the female population of North Kivu. Militia groups and security forces use the same patterns of war strategy to humiliate local populations via sexual violence, while rape is also widely committed by civilians. In the context of war, female child soldiers constitute the highest casualties, as far as this crime is concerned.

iv. The plague of mineral resources

The DRC has become home to violence and a theatre of ongoing conflict that continues to slow reconstruction and peace processes. The plunder of mineral resources, economic crimes and human rights violations have created a humanitarian tragedy, in the eastern and north-eastern DRC. Human Rights Watch (2005) reports that violent theft of gold in the DRC by Uganda, of an estimated one ton of Congolese gold valued at over \$9 million, has been ignored even though that violates the rules of war. Moreover, Uganda was accused of abusive practices of mine exploitation that caused the collapse of the Gorumbwa mine in 1999, and the alleged killing of about 100 people and the destruction of the livelihoods of the inhabitants of this area (Human Rights Watch 2005: 1).

Mineral resources have been one of the causes for military rivalries among several warlords, with the clear intention to control rich mineral resources (Stearns 2013: 40; Stearns 2014: 167; Yonekawa 2014: 174). It is commonly acknowledged that armed conflict is fuelled by illegal mineral exploitation and trading. Human Rights Watch (2005) affirms that the corner of the northeast of the DRC is “home to the richest goldfields” that has become its own curse. The plague of the DRC, known as “The Curse of Gold” (Human Rights Watch 2005) and “The Curse of coltan” (Oboth 2011) are evidence of violence perpetrated against local people, in order to illegally exploit and trade its mineral resources. Oboth (2011) notes that the trillions of dollars’ wealth of the DRC’s various minerals has served to arm rebel groups that have turned the DRC into “...the centre of an economic war that has claimed the lives of over five million Congolese in the past twelve years” (Oboth 2011: 764). Several studies have highlighted the fight over the control, “access and trade of five key mineral resources: coltan, diamonds,

copper, cobalt and gold. The other resources of the Democratic Republic Congo are: Cassiterite - Uranium, zinc and silver - Oil and gas – Manganese – Lead – Coal – Timber” (Moore 2001: 10; Grega *et al.* 2008: 86).

The competition for the control of gold mines and routes for evacuation of these minerals, is said to have sustained armed conflict since 1998 to the present, and it also help explain the emergence of warlords, who control the illegal exploitation of gold and other mineral resources that often result in crimes committed against civilian populations (Human Rights Watch 2005). This report also remarks: “Competition to control the gold mines and trading routes has spurred the bloody conflict that has gripped this area since the start of the Congolese war in 1998 and continues to the present” (Human Rights Watch 2005: 1). Among armed groups that benefit from this illegal exploitation and trading were the FDLR, the CNDP and the National Congolese army (FARDC), while they also perpetrated mass crimes against humanity (Oboth 2011: 765)

Violence and the proliferation of armed groups in the Congo are long sustained by illegal exploitation and trafficking of the DRC mineral resources; it has even sustained the phenomenon of “warlordism”, which consists in warlords’ hegemony over military controlled territories (Grega *et al.* 2008). Ongoing recruitment of child soldiers is understood in this context, whereby rebel leaders seek to keep mineral-rich reserves under their control, by training and arming children for this purpose. This is a serious situation that needs to be taken into account in the efforts to prevent child soldiers’ recruitment because of the proliferation of militias, rebel movements and unidentified armed groups in the North Kivu Province.

v. Armed conflicts: First and second Congo War

The DRC has been plagued by armed conflicts, especially in the Eastern Congo, which remains volatile as armed factions continue launching their attacks against Government troops and institutions, creating a climate of social and political instability. In the territories of North and South Kivu and in a part of the Oriental Province, children continue to be enrolled as soldiers. Negotiations to strike a peace deal with the rebels fighting the regular forces are at a standstill and often marked by ceasefire violations. Violence in Zaire/Congo has taken the worst form; from chronic to structural violence. The understanding of child soldiers here is related to the context of multidimensional violence affecting the DRC. The DRC is as a “no peace, no war” society (Swart 2012: 4).

In 1996, the DRC entered a phase of systematic armed conflicts that plunged the country into civil war, which many observers described as Africa First World War. It involved seven countries that share common borders with the DRC, notably Central African Republic, Sudan, Uganda, Rwanda, Burundi, Tanzania, Namibia and Angola (Human Rights Watch 2005: 12). This war was triggered by the nationality crisis, when the Banyamulenge were stripped of their Zairean nationality by Kinshasa. Using that incident as alibi, the long planned intention of Rwanda, under Kange, to attack the bases of the *Interamwe* (Hutu militias who committed genocide of the Tutsi in 1994) became evident. Many children and youngsters were lured by Laurent D. Kabila and joined the revolution to bring down the dictatorial regime of President Mobutu Sese Seko; which was done when the AFDL overthrew the dictator on 17 May 1997. This war was known as the “Liberation war”.

Historically, The Congo Wars have been fought along ethnic, economic and political fronts. The Second Congo War became a regional war involving militias allied with Uganda, namely the MLC, the Forces for renewal, the UPC, Tutsi-forces, Anti-Angolan forces (UNITA); and Uganda, Rwanda and Burundi, who fought the DRC troops. The Kinshasa Government was supported by Angola, Chad, Namibia, Zimbabwe, Anti - Ugandan Forces (The LRA), Sudan (allegedly), the Mai-Mai, the *Interamwe*, the FDLR, the Islamic Alliance of Democratic Forces for the National Liberation of Uganda (ADF-NALU), and the FNI.

The involvement of eight states and local militias indicates how brutal these messy confrontations were. The Sun City Peace Accord, signed on 19 April 2002, ended these fierce hostilities. Described as the Africa’s First World War, these battles resulted in the death of 3.5 million people, exceeding any death casualty since World War II, with the greatest casualties among the eastern Congo’s populations (Human Rights Watch 2005). Among war casualties, children are the most affected and killed, either for direct participation in the conflict or because of their vulnerability to withstand the tragic realities of war, and the hard conditions of life during and in the aftermath of a war.

The Second Congo War broke out in August 1998 when Rwandan and Ugandan troops invaded the DRC, following the decision by President Laurent Kabila to break the ties with these two former allies that helped him conquer the battle for Kinshasa, against Mobutu’s dictatorship. This war was also referred to as the “Aggression war”. The DRC territory was ravaged, causing its balkanisation and rule by three movements, namely the People’s Rally for

Democracy (RCD), led by Azarias Ruberwa who controlled the eastern Congo; the Congo Liberation Movement (MLC), led by Jean Pierre Bemba, who extended its hegemony in the North and North-east Congo; and the remaining part of the Country being governed by Kabila and his AFDL.

Mass child recruitment became the practice of these insurrectionist movements and collateral associated with armed groups that continued mushrooming, causing more and more vulnerability to children. Three years later, after the resumption of hostilities, which became the First African War, Laurent Kabila was assassinated on 11 February 2001 by a teen-soldier, an 18year-old *kadogo*, controversially known as Rashidi Kasereka (Jeffries 2011).

Following the two Congo wars, several armed groups have emerged and are changing their warfare strategies. There are about 50 armed groups²⁷ operating in North Kivu. These militias include the M23, the Mai-Mai movements still active in Masisi in North Kivu, and the Mai-Mai Kifuafua that are allied to Rahiya Mutomboki, which is another element of the Mai-Mai fighters.

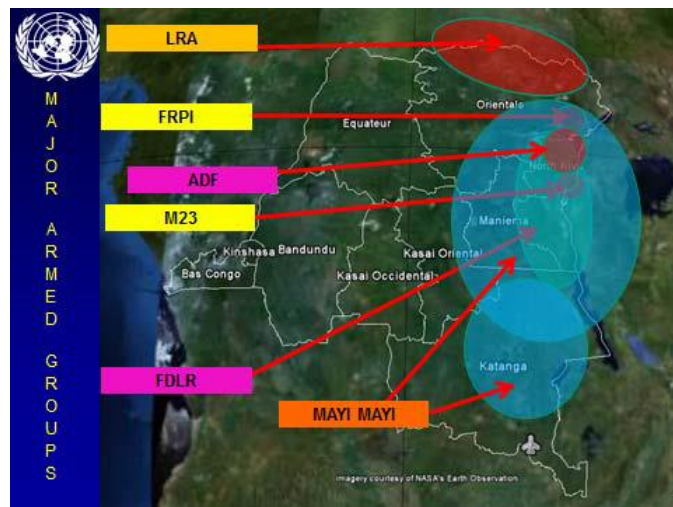


Figure 2: The DRC Major armed groups (Source: MONUSCO- October 2013)

Additionally, there are the CNDP and FDLR fighters that are still active in this volatile region. Actually, the M23 are members of the CNDP who, under the 23 March 2009 peace accord,

²⁷ An estimation given by a member of Caritas International. This figure was generated from statistics obtained from interviews with self-demobilised soldiers and registers at transit and orientation centres where child soldiers who exit armed groups and militias recuperate from psychosocial support before family reunification. Many of these armed groups are unidentified and bear the name of the self-proclaimed general that purchases weapons and distributes these to his soldiers for control of rich mineral resorts or to protect particular ethnic groups who feel threatened by rival ethnic groups, or to protect agricultural land (the Coordination office, Goma, 13 May 2014).

accepted to reintegrate the FARDC. They subsequently revolted, accusing President Kabila of breaching the terms of the accord that had to recognize this military movement as an official political party. The Mai-Mai are identified as “the most prolific recruiters and users of Children” among all these militias (CSCS 2010: 1). Children, therefore, remain vulnerable to recruitment and use as soldiers. This practice is supported by the influx of light ammunitions illegally smuggled into war-torn zones.

2.4 Arms trafficking and impact of armed conflict on populations

Marks and Mash (2007: 32) note that small arms are transported inside the country by illegal cross-border trade. In recent years, the influx of arms has created a condition of vulnerability for the communities along the Sudan-Congo and Rwanda-Congo borders. This has an impact on the local population, especially young people, who are finally dragged into fighting. The negative effects of the illegal import and trade of arms is perceptible in the devastating consequences of war, causing loss of millions of lives and the displacement of people (about 2 million IDPs from 2009 to 2012), as reported by the Integrated Regional Information Networks (IRIN) (IRIN 2012).

This human tragedy, which the UNHCR seems to be tired to manage, especially as the needs caused by war increases, in shelter, water provision, sanitation, health, food and needs other than food items (IRIN 2012). This condition has been described as “conflict fatigue”, with some 90,000 IDPs spread in 31 camps supported by the UNHRC (IRIN 2012). There is just no institution that can sustain its financial aid to alleviate the suffering of affected populations left hopeless and helpless, in a violent and terrorising environment.

Light weaponry makes it easier for children and adolescents to become involved in fighting. Coordinated and concerted efforts need to be made within the DRC and in the region, to dismantle the network of illicit arms trafficking that reduces the chance of a peaceful solution to the Congolese crisis, in the areas where militias are using children as soldiers.

2.5 Impunity

Most scholarly works and national and transnational NGOs refer to impunity as an important but neglected crisis of the DRC. In addition, several sources see a close link between impunity, ongoing violence and the perpetuation of human rights violations in the DRC (Vinck *et al.* 2008; Davis 2009; Moffett 2009; United Nations 2009a; Goodman 2010). Most of the

perpetrators, especially high profile personalities, go free without answering for their acts, while others evade imprisonment. High profile officials involved in crimes, especially in the context of armed conflicts, are promoted to higher and more lucrative positions in the Government (Moffett 2009: 12).

During Mobutu's rule, impunity and corruption were the marks of his autocratic regime. This malpractice continued till after the Second Congo War in 2002, after the signing of the Global and Inclusive Peace Accord at Sun City. Transition was without justice. This section overviews that period and suggests a way of tackling impunity, which has a bearing on the child soldiering phenomenon.

2.5.1 Transition without justice

Justice to victims of war and other gross human rights violations has been perceived as the way that society should adopt in order to heal the wounds of the past and move forward. The experience of the DRC provides a contrary lesson in this regard because of the impunity that has become so common and the little effort made in redress. In the transitional period between 2002 and 2006, the recommendations put forward by the All-Inclusive Global Peace Agreement, signed at Sun City in 2002 to initiate the truth and reconciliation commission, were ignored. The four parties entangled by the conflict, namely the MLC, RCD, political opposition and the government, not only shared power but were also gratified with immunity for their implication in human rights violations. There was no political will to pursue this TJ mechanism. Even State security agents implicated in human rights violations and war crimes were not held accountable.

Goodman (2010: 14) attributes the neglect of justice priority in "the Final Act and Transition" to four factors, namely: "(1) the staggering human toll of the conflict; (2) the lack of political will of the negotiating parties; (3) the weakness of the central state; and (4) the lack of international community interest" (Goodman 2010: 14). Exploring these four elements and the various aspects of the DRC conflict in detail and how different rebel groups developed and operated, is beyond the scope of this study.

However, it should be noted that the culture of impunity has been a contributing factor to protracted conflicts in the Congo. Added to this, employing persons allegedly responsible for entertaining these conflicts in high public offices and as superiors in the army and security

services, only led the country to collapse. This is a view sustained by Goodman (2009), who warns that accepting the status quo is a resignation to addressing the consequences of mass displacement, appalling human rights abuses, and conceding to the risk of regional war, when appointments in the government or army are carried out by including those responsible for conflict-related atrocities. This is a recipe for failure (Goodman 2010: 37).

Trading justice for peace was sanctioned in the formula “1+4”, one President and four vice-Presidents, who shared the wealth of the Congo and benefited from amnesty after authoring countless IHL and IHRL violations. Goodman reports the grief of Thierry Kambere, a Global Rights Program Officer in Kinshasa, who expressed with regrets that the “[f]ormula 1+ 4” was “the price for peace” (Goodman 2010: 11). The US State Department also found that this formula was “inefficient and ineffective” (Moffett 2009: 16). Impunity was undisputable in peace agreements as this was, arguably, deemed necessary to safeguard a fragile peace secured by all protagonists to the Congolese crisis. The transitional period was characterised by the abandonment and neglect of accountability for injustices committed during the Congo conflict in the transitional period (Goodman 2010: 5).

To elaborate more on this missed opportunity, Kron (2011 cited in Yonekawa 2011), refers to presidential candidate Antipas Mbusa Nyamwisi, former militia leader who, after orchestrating ethnic massacres of the Hema and Bira groups, killing more than a 1,000 of them in 2007, was appointed as Minister of Foreign Affairs in 2008 (Yonekawa 2012: 79). In spite of limited, incidental and locally-targeted prosecutions, warlords and security officers involved in atrocities, committed against civilian populations of the Congo, go free. A few are prosecuted by the ICC or the domestic civil or military courts of the DRC (Vinck *et al.* 2008: 7). However, widespread impunity and favouritism have contributed to a selective target of warlords being handed to the ICC, while leaving several alleged perpetrators of the same crimes free and some are even awarded high posts in the national army (The World Bank 2007: 19).

Impunity is a serious obstacle to peace. Hall and LaRocco (2012: 2) remark: “Sustainable peace will not take root in Congo while perpetrators remain free. In the country’s turbulent East, the Congolese army must establish itself as the protector of civilians, not their predator”. The pursuit of a durable solution to the crisis that affects the DRC, in the aftermath of armed conflict, would imply addressing the profound causes of recurring conflicts and guaranteeing

respect for the rule of law that was swallowed up by power-sharing agreements, as reflected in the following statement:

The skewed power-sharing arrangement meant that the transitional partners had little incentive to begin the difficult tasks of resolving the root causes of Congo's recurrent conflicts, ending impunity, and instituting the rule of law and the enforcement of basic human rights (Vinck *et al.* 2008: 12).

Very often, injustices were ignored for the sake of maintaining the fragile peace in a volatile region where internal actors (Congolese rebels and faction groups) and external actors (forces sponsored by highly influential officials in neighbouring Rwanda and Uganda), with proxy armed groups and militias still active in the DRC (Stearns 2014). Mishandling or ignoring justice have become ingredients for interminable conflicts, destabilisation and leaving children vulnerable and exposed to join fighting factions. Unfortunately, as maintained by Goodman (2010), the strategy of appeasement that consists of abandoning a full peace process, by ignoring human rights violations, is a perilous approach that does not create the condition for sustainable peace. Impunity is characteristic of the transitional processes and institutional organisation affecting genuine peace, accountability and justice.

As a result, violence persists, involving various militia groups, especially the CNDP, the FDLR and other armed groups (Goodman 2010; Stearns 2014). I should also acknowledge that some prosecutions have been carried out by domestic military jurisdictions. These prosecutions concern security services and members of the Government forces who committed sexual violence and rape against women.

The case of the Songo Mboyo Trial is an illustration of these prosecutions (Davis 2009: 21). Nevertheless, these justice achievements are less significant when compared to the magnitude of human rights violations perpetrated against local populations.

Efforts to curb the cycle of violence and perpetuation of child soldiers require a creative approach that would combine truth telling, with justice for victims of massive human rights violations, by enforcing international legal instruments. This is done by the creation of a special or hybrid court, to examine all human rights violations of a large scale, from 1996 to date within the Congo, and those perpetrated by cross-border actors. Breaking the impunity

culture is an imperative to stability. Goodman (2010: 37) notes: “[...] without piercing the armour of impunity the prospects for a lasting peace are not even slim—they are non-existent”.

Because of its impact on the child soldiering phenomenon (Wessells 2006: 33-34), impunity needs to be combatted. In addition, unaddressed justice questions remain a threat to the peace process in the DRC. Initiatives aiming at combatting impunity should be broadened and “be part of a larger comprehensive agenda that focuses on several other sectors including governance, security, and resource management” (Hall and LaRocco 2012: 3). The complexity of the DRC’s situation does not create an illusion that the prospect of justice and long lasting peace is unrealistic, as this situation can be averted by combatting the culture of impunity (Goodman 2010: 5).

2.5.2 “African exceptionalism” and “elite protectionism”

These two concepts characterise the way African leaders conduct themselves when accountability is needed. “African exceptionalism” and “elite protectionism” can be described as legitimised impunity. The notion of African “exceptionalism” is used by Orentlicher to describe the tendency of withdrawal by some African leaders, from implementing international accountability legal instruments, in matters of human rights violations (Orentlicher 2007: 21).

So many crimes in Africa have been unaccounted for in recent years, especially by tyrannical regimes. There should be no excuse by African Governments to not abide by international standards on human rights, the rule of law and regulatory measures, in handling post-war violence and other human tragedies that have resulted from large scale violence, such as ethnic cleansing, genocide, and civil wars, as well as despotic and barbaric political rules.

African “elite protectionism” consists of attitudes that African governments and leaders rally behind the so called “elites” to ensure them protection and prevent them from being prosecuted for crimes, such as genocide, crimes against Humanity and domestic mass human rights violations. This attitude hinders the administration of international justice, when some leaders display a lack of cooperation by refusing to arrest and surrender high profile leaders allegedly responsible for violations of human rights laws. They also undermine indictments of their peers and obstruct the proceedings of the international criminal justice body for alleged crimes against humanity, genocide and war crimes. That was manifest in South Africa in June 2015 when Sudanese President Omar Al Bashir escaped arrest, under an international warrant issued

by the ICC. A-Bashir is wanted for war crimes, crimes against humanity and genocide perpetrated during the Darfour conflict, during which about 400,000 people died and an approximate two million have fled their homes since 2003, when rebels took up arms against his regime.²⁸

Another example is that of the CNDP leader Laurent Nkunda, who fought in the DRC between 2006 and 2009, with the backup of some high-ranking officials in Rwanda (Stearns 2014). Laurent Nkunda has found refuge in Rwanda and has been under house arrest since 2009, without the prospect of extradition to the DRC or to the ICC to face criminal charges. The same reality is observed with disaffected members of M23, who have found refuge in Uganda. Several peace processes in the DRC (*Kimia I and II, Amani Leo*) have rested on slippery ground because they have excluded TJ mechanisms. Peace cannot be without justice and reconciliation without accountability.

African leaders find all types of reasons to justify why he should not have been arrested, in spite of the arrest warrant issued against him. That is a typical example of elite protectionism. Several State leaders have paraded an obstinate refusal to apprehend warlords in exile in their countries and extradite them where they are wanted, to be charged and face prosecutions. Such an attitude has hampered progress towards accountability and condoned the culture of impunity.

2.5.3 Tackling impunity in security services

Most of the literature consulted identifies impunity as one of the factors that contribute to the perennial enrolment of children in the military. Growing impunity in the DRC is reported by several studies (Wessells 2006; Vinck *et al.* 2008; United Nations 2009a; CSCS 2010; Goodman 2010). Honwana (2006: 39) points out that the responsibility of all states to bring an end to impunity is stressed by the Security Council Resolution 1261 of 1999, along with their duty to take legal action against those responsible for severe violations of the Geneva Convention. Honwana (2006: 39) writes: “In its resolution 1379 of 2001, the Security Council urged member states ‘to prosecute those responsible for egregious crimes against children’”. Moffett (2009: 12) writes: “As long as impunity remains there will be no deterrence and will

²⁸ UN sources reported by BBC. “News South Africa court bid to arrest Sudan’s Omar Al-Bashir”. BBC News, 14 June 2015. Available: <http://www.bbc.com/news/world-africa-33125728> (accessed 13 October 2015).

rather perpetuate further conflict as victims' interests remain unaddressed by the government forcing them to redress the situation themselves”.

Several reforms have been announced by the DRC Government that will touch the security service and the FADRC (Davis 2009; Boshoff 2010), which the researcher considers as necessary in the effort to fight child soldiering practices. These reforms should enforce the rule of law, in addition to transforming the current perception of justice in the DRC where, for instance, the security personnel who are “accused of serious human rights violations have not, to any meaningful extent, been brought to justice” (Davis 2009: 19).

While acknowledging some steps taken by the military courts to prosecute some military personnel involved in human rights violations, the criteria for selecting cases and individuals to prosecute may question the credibility and the real intent to objectively tackle impunity in the security sector. Everybody should be equal before the law. Impunity has also contributed the emergence of community-based armies and ethnicised militias.

2.5.4 Emergence of community self-defence armed groups

The phenomenon of self-defence militias in the DRC can be traced back to 1990, to the Mai-Mai fighters. Self-defence armed groups are “locally-based militias organized on an ethnic basis”, and their determination to fight is supported by a protectionist ideology, namely safeguarding of their communities, as with the CNDP (Stearns 2014). Their concerns are their land, political power and economic interests (CSCS 2010: 2) and they have ambiguous ambitions.

The recent development of child soldiering in the DRC is frequently related to community self-defence groups in conflicts mostly of ethnic origin, such as the FDLR (Hutu), CNDP (Tutsi), Nyatura (Hutu), Mai-Mai (variety of particular ethnic groups), UPC (Hema), FNI (Lendu), and so on. All these groups have been a great obstacle to peace and are often involved in violence and atrocities against civilian populations (Swarbrick 2007; Swart 2012). Insecurity, anomy, anarchy and the inability of local administrative authorities and the police service to secure children, contribute to the ongoing child soldiering practice, with the existence of entrenched local militias built on the idea of “community self-defence”.

The vulnerability of children in the territories controlled by the Mai-Mai is perpetuated by the incapacity to protect these communities and as a result, they organise their own self-defence, especially against foreign armed groups that threaten and attack their communities. Even children mobilise behind this cause.

The CSCS (2010) reports that the majority of children interviewed described their enrolment with the Mai-Mai as ‘voluntary’ and that they are motivated to defend their land and take revenge against aggressors who kill their people (CSCS 2010: 9). This kind of organisation is so widespread and goes beyond the boundaries of one tribe or district. For example, in North Kivu, there are more than 10 Mai-Mai armed groupings, including the Mai-Mai Hillaire (300 fighters), Mai-Mai PRM (60-80 fighters), Mai-Mai Shetani (800 fighters), Mai-Mai Nyatura (600 fighters), Mai-Mai Cheka (300-500 fighters), Mai-Mai Kifuwa-fuwa (300 fighters), Mai-Mai Simba-Lions (1,000), Mai-Mai Rahiya Mutomboki (more than 1,000 fighters), and Mai-Mai Burondo (more than 300 fighters) (MONUSCO 2013). Leaders of these armed bands and militias are not apprehended.

Efforts to curb impunity should consist of a global strategy to hold all perpetrators of human rights violations accountable, especially rebel leaders and other members of the security forces suspected of carrying out atrocities on civilian populations. The present situation in the DRC is characterised by insecurity, incomplete military justice and security reforms, along with the non-existence of rule of law, and persisting flagrant impunity, with the DRC still having a long way to go, in protecting the youth and ending the practice child of soldiering.

Unless adequate and reliable TJ mechanisms are put in place and a judicial, economic, political and social transformation takes place, other efforts to protect children remain counter-productive. The end of impunity and the establishment of peace structures need to be supported by statutory and normative legal instruments that provide safeguards and guidelines on preventing the use of child soldiers. The legal framework is discussed in the following section.

2.5.5 Enforcing international norms to fight impunity

The Machel Study 10-Year Strategic Review covers a good range of impunity issues that culminates in her recommendation suggesting that a “universal implementation of international norms” should be achieved and impunity should be ended (United Nations 2009a: 66-67).

Priorities in “peacemaking, peacekeeping and peacebuilding” should incorporate children’s protection and safety (United Nations 2009a: 54). The report emphasises the fight against impunity at all levels of institutions, appealing to higher international institutions, such as the Security Council, the UN and others, to become involved in this commitment.

The severity of the matter is illustrated by the campaign launched by Security Council Resolution 1612 (2005), through the Council’s Universal Periodic Review; a process that allows the investigation of matters of child protection, particularly children affected by armed conflict. This task has to be undertaken by members of the Council to ensure “the application and enforcement of international norms and standards to protect children’s rights and end the impunity of violating parties” (United Nations 2009a: 52).

A few warlords and alleged persons, responsible for mass-killing and conscription of children as soldiers, have been indicted both by domestic courts and the ICC (Thomas Lubanga, Bosco Ntaganda, Jean Pierre Bemba, Mathieu Ngujolo, Jean Pierre Biyoyo). However, several others, including the members of the M23, the CNDP, the Alliance of Patriots for a Free and Sovereign Congo (APCLS), the NYATURA, the PARECO, and so on, are still at large.

A few arrests were reported, notably those in Mbandaka, where six security service agents were jailed in 2006 for mass-rape committed in 2003, and other military personnel were arrested and convicted by Military Tribunals for offenses ranging from “deportation, forced displacement of people, rape, sexual enslavement, forced prostitution, forced pregnancy, forced sterilisation and other forms of sexual violence” (REDRESS 2006: 28). In the same perspective, a captain was convicted for war crimes in Ituri in a Military Court, where the Rome Statute was applied (REDRESS 2006: 28). It would be untrue to state that there is total impunity in the DRC. The truth of the matter is that prosecutions of high profile leaders are problematic, selective and politically sensitive and feared because of the risk that such measures will cause a resurgence of violence.

According to The Hague Justice Portal (2009), the International Court of Justice attempted, unsuccessfully, to ensure accountability of foreign individuals and neighbouring countries involved in fuelling conflict in the DRC. The process has been complex, and declined jurisdiction over the involvement of Rwanda in the DRC, while criticising the actions of Uganda on Congolese soil. Uganda was summoned to pay compensations to the DRC for the

plunder of its natural resources, which continues to attract foreign interests, while the Government is struggling to effectively exercise its sovereignty and extend control over its national territory (The Hague Justice Portal 2009).

The UN Mapping research, in paragraph 1052, considers that a hybrid mechanism to try perpetrators of crimes could help overcome accountability challenges in the DRC, in order for the victims of the heinous violations could experience justice. It further states that, taking into consideration the “existing mechanisms and the numerous factors that impede judicial independence”, this hybrid court is necessary and could be comprised of national and international personnel (United Nations 2010). The intervention of the international community is needed because local courts lack sufficient means and structures to proceed with arrests and prosecutions of all authors of gross human rights violations.

2.6 Challenges of the judicial approach to the DRC transitional justice

According to the UN Mapping Report 1993-2003, paragraph 1996, the scale of massive violations of IHL and IHRL in the DRC is too high to be handled by any justice system that operates adequately at its full capacity, and where perpetrators and victims are numbered in hundreds of thousands (United Nations 2010). This report suggests the application of TJ mechanisms to societies that are in transition from the experience of gross human atrocities. The UN Security Council Document “Rule of Law and TJ in conflict and post conflict societies” states that TJ aims at:

[...] helping war-torn societies re-establish the rule of law and come to terms with large-scale past abuses, all within a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided population, is a daunting, often overwhelming, task.²⁹

Several challenges have persisted in the DRC and have become a stumbling block to successful TJ. This situation has called for deeper reforms of the security sector, the army and institutions (Davis 2009, Boshoff 2010, Swart 2012, Prendergast and Thomas-Jensen 2007). Such transformation is one of the key elements of TJ. Unfortunately, the volatile situation in the east of the DRC and ongoing institutional reforms have met with many challenges. Commenting on the UN Mapping Report, the DRC Government acknowledges some facts raised by this report,

²⁹ Article II (3) of the United Nations, The rule of law and transitional justice in conflict and post-conflict societies. UN Security Council Distr.: S/2004/616* General 23 August 2004 (Original: English) (online). Available: <http://www.unrol.org/files/2004%20report.pdf> (Accessed 30 September 2014).

though it objects to some others, especially the scale of atrocities implicating Government officials and some figures tabled by the Mapping Report. The DRC agreed that TJ is vital for sustainable peace and reconciliation (DRC 2010, 45).

2.7 Transitional justice: impasse and impact on child soldiers

This section explores the concept of TJ and its historical development, and similar approaches designed to achieve TJ objectives. The researcher further argues that a comprehensive approach needs to be considered in the context of protracted and systematic conflict, in which excessive numbers of people are victims and perpetrators. This argument draws from the survey of secondary data on TJ and peace processes in the DRC. These issues are relevant because they can help prevent the child soldiering practice, which has been ongoing, partly because of unsuccessful peace processes and TJ.

It is a common view that transitional societies, emerging from brutal political regimes and experience of the accompanying bloody conflict, may use prosecutorial TJ mechanisms or non-prosecutorial approaches. Nonetheless, punitive sanctions alone have been insufficient to prevent those societies from relapsing into crimes or lasting instability or protracted threats of the resumption of hostilities. For instance, in the case of Rwanda, following the 1994 genocide, the selected prosecutions of persons alleged to have committed genocide-related crimes has left Rwanda under risk of attack by the FDLR and the *Interamwe*. This state of affairs portrays negative peace and reflects the concept of latent violence, which is a type of violence that is not there outwardly but is potentially present and might erupt in concrete material forms (Galtung 1969: 172).

The scenario outlined describes the DRC's situation. The prospect of lasting peace should not be clouded by unaddressed injustices of the past that continue to perpetuate victimisation of people who are already victims of armed conflict, violence and impunity. This kind of violence deprives them of their rights, therefore, a holistic theory of justice is necessary. Emphasis is placed on "the coexistence and restoration of relationships between former enemies as a basis for the prevention of the recurrence of human rights abuses and the restoration of the dignity and material well-being of victims" (Villa-Vicencio 2008: 388). South Africa epitomises such societies.

Unfortunately, several attempts to attain TJ in the DRC have aborted. These include the National Sovereign Conference (NSC) (1991-1992) and the DRC TRC (2002). On the other hand, some progress has been made regarding disarmament, demobilisation and reintegration processes and peace initiatives. Ongoing institutional and security service reforms have been lagging due to domestic and foreign armed groups still being active in the eastern Congo. Residual war syndromes are perceptible in fear, insecurity, uncertainties and distrust in politicians and armed officers. Besides, the Amnesty law of 11 February 2014 has become another challenge of TJ and has exacerbated the sentiment of helplessness by communities affected by armed conflict.

2.7.1 Trajectory of transitional justice in the DRC

The history of the DRC has been punctuated by extreme brutalities that can be even traced back to Belgian colonial rule. Human rights violations perpetrated during the hegemony of King Leopold II of Belgium on the Congo Free State and in the post-colonial rule, have to date never been addressed (Wamba dia Wamba 2004). The scale of violence worsened during Mobutu's Regime, as he used brutal and coercive means to affirm his autocratic and despotic rule for more than three decades. Human rights conditions deteriorated further as a result of systematic armed conflicts, insurrections and ethnic violence between 1996 and 2002, when the Sun City Peace Accord was signed to end the six year long civil war.

Afterwards, post electoral violence erupted, and later on, the terms of the Goma Peace Agreement eroded causing a resumption of hostilities. Further massacres, war crimes and crimes against humanity were then committed during the insurrectional Movement of 23 March 2009. Sporadic military confrontations have become endemic in the East and North of the DRC. The populations in these war-torn regions live in constant fear of violence, and children continue to be used as soldiers. There is a serious concern investigating the past in view of moving forward, so as to prevent a recurrence of the human rights violations. This is possible by addressing the legacies of mass atrocities (Davis and Hayner 2009: 7).

The first move towards TJ can be situated in the year 1990, which saw a new political development in the DRC that compelled President Mobutu to convene the Constitutional Conference in August 1991. This conference became a Sovereign National Conference (SNC), a form of national assembly that consisted of delegates from different provinces, associations,

political parties, civil society organisations, traditional leaders, the Congolese in the Diaspora, and guest speakers from the Congolese intelligentsia.

The primary objective of the National Conference was to elaborate an institutional and legal framework to take forward the democratisation process and eventually, put in place a timetable for democratic elections. This platform, however, decided to make itself an institution that subjected the 26 years of Mobutu's dictatorial regime, to rigorous scrutiny. Untold political and economic crimes committed over the last 30 years were uncovered and some witnesses were called to testify at this forum. From being a national conference, this assembly self-proclaimed its Sovereignty, which meant its resolutions would be binding and unopposed.

Mobutu forced the 'assembly' to close in December 1992. It re-opened under mass pressure, and established the High Council of the Republic and Transition Parliament (HCR-PT), chaired by the Prelate Archbishop, Laurent Monsengwo. The HCR-PT became the legislative body under the Constitutional Act of Transition that played the role of a National Assembly, promulgated by President Mobutu on 9 April 1994 (Kangashe 1998). The HCR-PT managed to draft the Constitution of the Country before being dissolved in May 1997, with the overthrow of Mobutu by the AFDL led by Laurent Désiré Kabila.

Before proceeding with events and circumstances that led to the demise of transitional processes, it is important to first of all note that experience of societies, in the aftermath of gross human rights violations, show that TJ mechanisms are workable where there is a successor regime that will attempt to try persons allegedly responsible for egregious atrocities carried out in a prior regime (Orentlicher 1991). This is an imposed duty of international law, customary and conventional (Orentlicher 1991) that is often hindered by the status quo. In such environments, the successor government may have close links with officials of the prior government.

A transitional government that is not an alternate government or that succeeds itself, may put in place an apparatus that either silences victims or one that prevents a trustworthy truth-telling process. This happened in Zaire, where President Mobutu was at loggerheads with the transitional institutions and blocked their attempts to uncover all the truth and to call perpetrators to account. The regime of Mobutu engineered disappearances of witnesses and prominent political leaders who were suspected capable of unearthing past crimes committed

by his brutal rule. Mobuto's reprisal machinery did not even give space to witnesses or victims to testify at the National Conference. The same reality occurred during the Sun City Global and Inclusive Peace Agreement (2002) transition.

TJ in the DRC took two forms, namely the SNC (1991-1992) and the Truth and Reconciliation Commission (2003-2007). Following one of the important dimensions of the Sun City Agreement was the institution of a truth and reconciliation commission. This commission ran between 2003 and 2007, with several interruptions. It was dysfunctional and could not achieve its goals.

2.7.2 The Sovereign National Conference

The SNC was sought to investigate politically motivated assassinations and economic crimes (embezzlement, plunder of natural resources, and so on), as well as illegal expropriation of properties owned by the population. Members of the SNC sought to restore justice for victims by compensating their families; and rewrite the history of the DRC. The SNC attempted to pave the way for the Third Republic that would emerge from two Republics, namely the Free State of Congo-Belgium, and the Republic of Zaire. It pushed its agenda to recognise national heroes, remembering the victims and establishing a new political, institutional and constitutional framework to take the country forward. It followed the same pattern as many other national conferences that took place in Africa, namely in Benin, Togo and Congo-Brazzaville.

Nzongola-Ntalaja (2006) affirms that the SNCs in Africa concentrated on the African tradition of palaver in conflict resolution, by examining what went wrong in the past and setting a new framework to carry out a new economic and political order that respects the rule of law, follows the principles of building a developmental state and fights practices that are against this ideal; namely despotism, nepotism, impunity and incompetence (Nzongola-Ntalaja 2006: 131). The palaver approach proceeds without prosecution of perpetrators but rather prioritises peaceful cohesion and political progress towards democratic elections.

Inspired by this ideal, many African countries used national conferences as a pillar for democracy and national reconciliation, through truth-telling and constitutional reforms. This was perceived as the way to redeem past memories. via the use of dialogue that has binding

decisions on all parties and groups involved in the conflict, modelled on the modern rule of law mechanism aimed at restoring multi-party democracy (Nzongola-Ntalaja 2006: 131).

The SNC gave rise to the HCR-PT that was headed by the Catholic Prelate, Archbishop Laurent Monsengwo Pasinya. This institution was dismissed and shut by President Mobutu in July 1995. The failure to tackle causes of the DRC post-SNC precipitated chaos and the eruption of revolutionary war led by Laurent Kabila, who toppled Mobutu in 1997. This was the First Congo war during which children across the country were used and called the *kadogo*, child soldiers, and liberators.

Though the Sun City Global and Inclusive Agreement urged the Government to initiate the process of truth-telling and reconciliation to consolidate democracy and build lasting peace, three years later, a World Bank report affirms that the DRC's TRC has never operated, in spite of several demands for justice. In this situation, the prospect of lasting peace has been shattered and as a result, the DRC has been plagued by civil wars (The World Bank 2007). This is an illustration of the failure to attend to the most vital and crucial existential issues, notably justice and peace, that consolidate nation-building.

Actually, these reports were concerned with the premature demise of the DRC *Commission Vérité et Réconciliation* (CVR) [Truth and Reconciliation Commission]. Other commissions were also recommended by the Sun City Agreement, such as the Commission for Humanitarian, Social and Cultural Affairs, the Commission for Economic and Financial Affairs, the Commission for Peace and Reconciliation, and the Commission for Defence and Security (Kakuru 2008).

2.7.3 Truth and reconciliation commission

In February 2006, the International Committee of Transition Monitoring (CIAT) was initiated to help solve the DRC crisis, following the assassination of LD Kabila on 17 January 2001. The CIAT consisted of five institutions representing the UN Security Council permanent members, namely Belgium, South Africa, Angola, the African Union and Congo Brazzaville.

Nzongola-Ntalaja writes that the democratisation process was taken care of by five institutions that were put in place by the CIAT, namely the Independent Electoral Commission, the High Authority for the media, the National Observatory of Human Rights, the Truth and

Reconciliation Commission, and the Commission for Ethics and the Fight against Corruption (Nzongola-Ntalaja 2006). It was set up on 3 July 2004 by law; Article 04/018, and chaired by Bishop Jean-Luc Kuye Ndondo wa Mulemera, finishing in February 2007 (United States Institute of Peace 2003; Rankin 2003). The CVR's objectives were to "examine the political, economic, and societal conflicts between the country's independence in 1960 and the conclusions of the peace agreement in 2003".

The commission was constituted by 21 members, of which eight were "Members of the Bureau", who represented each of the parties involved in the Inter-Congolese Dialogue, with approval by the National Assembly (United States Institute of Peace 2003; Rankin 2003). Additional members to the Commission were chosen from "religious leaders, representatives of scientific associations, women's organizations and other civil society groups, with objectives similar to the commission".³⁰ The CVR was also expected to contribute to the compensation of victims (Rankin 2003).

Among the challenges of this commission was that of obtaining finances to sustain its work and the limited involvement of victims, witnesses and perpetrators, which prompted the commission to suggest a public awareness campaign, to clear the way for a future truth commission initiative (United States Institute of Peace 2003). However, the method used by the CVR to appoint its members, suspected of having affinities with the political establishment, raised concerns. Its credibility came under serious criticisms.

The United States Institute of Peace's (2003) report states that, though the CVR was representative and inclusive of political forces involved in the peace process and negotiations, "some of the commissioners had informal ties with those who were implicated in the crimes", and therefore, doubts arose regarding its independence (United States Institute of Peace 2003). It follows that the CVR did not fully achieve its goal of accountability and leading the country to national reconciliation. This was yet another aborted TJ process in the DRC, after the catastrophic end of the NSC and the transitional institutions, shattered in 1997 by Laurent Kabila's AFDL. The persistence of systematic conflict and the ongoing recruitment of child soldiers should be looked into in this context, of failed TJ. This situation has been exacerbated by impunity and absence of the rule of law.

³⁰ See CRC, UN Security Council. Document CRC/C/OPAC/COD/1, Distr.: General 18 April 2011. Available: http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.COD.1_en.pdf (Accessed 23 August 2014).

TJ can have popular catharsis effects when it is able to yield tangible acts that recognise the violations of victims and restore their dignity. Verwoerd (2000) remarks that the limitations of the TRC agenda to investigate politically motivated human rights violations have not done justice to many past injustices. The author envisioned a contrasted route, and asserts: “This route involves contrasting the TRC with two highly tempting but, deeply problematic ways of dealing with past injustices: forgetting and selective remembering” (Verwoerd 2000: 157). The point of remembering the victims of past injustices and allowing them to recount stories in other forums than just the TRC is stressed by the author.

In extremely difficult circumstances, where perpetrators remain strong and are still equipped with the means to cause further harm, negotiations are required that aim at responding to the needs of justice. These include trading justice by offering amnesty and seeking non-punitive alternatives to make reparations, in order to defeat impunity. This was the experience of the South African TRC, during the transition from the Apartheid rule to a democratic South African regime (Villa-Vicencio 2008: 387,388). The difficulty in pursuing this enterprise rests on the fact that conflict is ongoing, and it is to some extent difficult to bring victims and perpetrators together.

Considering this puzzle, Villa-Vicencio ascertains: “[T]he establishment of sustainable peace and the rule of law is, at the same time, impossible to attain without a reasonable level of cooperation between victims, offenders and others in pursuit of its goal” (Villa-Vicencio 2008: 390). The rule of law is important, yet in some intricate circumstances, a more creative justice approach is needed to build an alternative society where victims, offenders and communities are involved through cooperative efforts. A TRC is a matter of urgency for the DRC, should this country intend to move swiftly to the way of national reconstruction.

The failures of these two processes are regarded as the causes of the systematic and protracted armed conflicts and related violence that have dragged children in and used them as soldiers. This section explores the historical background, challenges and prospects of TJ in the DRC. While the DRC has made some progress towards political transition, the critical issues of justice have remained a stumbling block to sustainable peace and social and economic development. It is necessary to explore these challenges, with a view to transforming the present uncertain conditions to a better future.

2.7.4 The Challenges of TJ in the DRC

TJ takes place in the context whereby violence and atrocities have stopped. Unfortunately, local communities in the eastern and north-eastern DRC remain militarised, in the Masisi, Rutshuru and Ituri districts.³¹ Societies that have moved forward after TJ have mostly been supported by alternative institutions, not those that have committed human atrocities. Theissen (2004) argues:

War-torn societies and countries that have experienced large-scale atrocities usually find themselves unable to deal adequately with all of the injustices that have been committed. [...] Often, the political power structures that emerge after the end of open hostilities inhibit proper consideration of certain atrocities (Theissen 2004: 15-16).

The UN Mapping Report documents the most serious violations of human rights and IHL committed within the territory of the DRC between March 1993 and June 2003 (United Nations 2010). The DRC Government agreed partially to some aspects of the report, acknowledging the UN findings and demanded a review of some parts that were contentious, in a document dated August 2010 (DR Congo 2010). This objection signals that it would not support investigations that may implicate its officials in atrocities carried out during that period. The likelihood of TJ to be jeopardised has been evident. One of the main challenges to effectively lead this process is the lack of alternative government.

According to Orentlicher (1991), the duty to settle accounts of human atrocities (prosecution of human violations carried out by prior regime) lies on an alternative or a successor government. This process requires taking legal international instruments into consideration, pertaining to the management of gross human rights violations, in efforts to bring stability, reconciliation and democracy: “Crucially, international legal norms concerning prosecution of atrocious crimes have played an important role in enabling such countries to overcome otherwise insurmountable barriers to prosecution” (Orentlicher 2007: 22).

Among the challenges of TJ justice are fear of victims to witness, accountability of children who have committed war crimes, the difficulty to reconcile amnesties and persecutions, making reparations and restitution to victims, who represent a large portion of the population, and the controversies surrounding the granting of amnesty.

³¹ See Paragraphs 164 and 165 of the 2010 UN Mapping Report. Democratic Republic of the Congo 1993-2003. What is the “DRC Mapping Exercise?” – Objectives, methodology and time frame (online) United Nations Human Rights Office of the High Commissioner. Available: http://www.ohchr.org/Documents/Countries/CD/FS-I_Mapping_exercise_FINAL.pdf (Accessed 29 September 2014).

i. Fear of victims to witness

It is common in transitional societies that victims or other witnesses fear for their safety when having to testify in court or in an inquiry of a criminal matter, including truth and reconciliation. The concerns raised here are witness safety, lack of protective structures and the rule of law, when societies emerge from violent and bloody conflict that might have destroyed or affected the justice system. This situation is even worse in communities that are militarised; where armed gangs and militias operate with impunity and where the state has lost its grip on the security and safety of its citizens. Taylor-Smith (2009: 41) ascertains that some witnesses may not be willing to testify at special criminal courts for fear of reprisals. Accounts of victims and witnesses of war crimes show that there are threats, pressure and other acts of intimidation, as well as reprisals against them to discourage them from making the truth known (Taylor-Smith 2009: 41). Relatives of victims and witnesses are also frequently targeted by such actions (Fery 2012: 4).

ii. Child soldiers in TJ

Child soldiers, in spite of their complex identity as victim-perpetrators, are considered primarily as victims, according to international legal norms. Acknowledging the rights to reparation for victims is seen as the foundational basis for transformation of identities between victims and perpetrators, and it is approved by some scholars that the SA-TRC achieved that end (Servaes and Birtsch 2008). While financial restitution is often a great challenge of developing countries, with some having measures in place to assist victims of internationally organised crimes (Van Dijk 2002: 21; 2005), forgiveness and reconciliation may be achieved through truth-telling processes.

This procedure needs to be applied to child soldiers, who present a complex identity as victim-perpetrators, though they are primarily regarded as victims (Redress 2006). Acknowledging the rights to reparation for victims is seen by Servaes and Birtsch (2008: 10) as the foundational basis for transformation of identities between victims and perpetrators. This was achieved during the SA-TRC (Verwoerd 2000; Servaes and Birtsch 2008: 10). Esterhuyse (2000: 146) asserts: “Hearing personal and individualised histories of suffering, or listening to motivation, experiences and emotions of perpetrators, is part of a person-centred ethic and the generation of attitudes imbued with forgiveness, compassion and empathy” (Esterhuyse 2000: 146).

iii. Reconciling amnesties and prosecutions

At times it is difficult to reconcile prosecutions and amnesties, judicial and non-judicial mechanisms, the “default normative” legal instruments and emerging contextual approaches, based on customary, social and institutional practices that engender acceptable jurisprudence. Nevertheless, it is important to avoid falling into the trap of legal relativism that TJ will be shaped by social and cultural practices only.

It is imperative that transitional approaches take the principles enshrined in conventional normative instruments into account. Such a lack of consideration is the reason why the amnesty law of 2004 in the DRC is contested and is not accepted as part of TJ approaches. Especially in the eastern Congo that continues to experience instability and sporadic military confrontation. The need for peaceful settlement to the DRC’s protracted conflict has been ever increasing, in the context of failed TJ measures.

iv. Reparation and restitution

While acknowledging the necessity of making reparation and restitution for past atrocities via TJ, there is still a serious dilemma, notably, when gross human violations are carried out on a greater majority of the populations. This poses enormous problems, in identifying victims and satisfying their needs with material reparations. According to Article 41(a) (1) of the UN Victim Declaration: “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim” (United Nations 1985).

The nature and scale of human rights violations in the DRC go beyond the scope of war and other military-related violence. Fery (2012) notes: “Violations of human rights without any direct link with the conflict continue to be perpetrated as well. Even in other parts of the country, [...] including summary executions, rape, torture and cruel, inhuman and degrading treatment” (Fery 2012). Moreover, human and international rights have even been violated by non-state and foreign actors. Holding them accountable in a transitional context poses enormous challenges.

v. The challenge of holding foreign perpetrators accountable

The difficulty of TJ involving international actors in the DRC is noted also by the UN Mapping report in paragraph 999, stating “The process of seeking truth and finding facts, even more so the establishment of accountability will be difficult in certain cases without the help and

cooperation of third-party States or their citizens” (United Nations 2010). While the right of victims to “the truth, justice and reparation” remains the imperative to restore their dignity, in several cases they have been “silent partners” in judicial proceedings or reduced to mere witnesses to testify before courts (Amnesty International 2007). In several cases they have been totally ignored or silenced.

Preventing victims from knowing the truth, accessing justice and benefiting from reparations constitutes a serious violation of their rights. Amnesty International’s (2008) report acknowledges: “Giving victims a real voice in the legal process is crucial because it contributes to healing and the potential for closure. Only with a constructive interaction between victims and the legal process can courts fulfil their promise of reconciling society” (Amnesty International 2008).

Unfortunately, the reality of the majority of victims in the DRC, especially in the war-torn North Kivu province is lamentable and painful. Several of them do not have access to both psychological and legal facilities. This has been one of the main challenges of post-conflict communities in the DRC. The lack of accountability constitutes an impediment to peace and a set-back in efforts to heal the wounds of the past and prevent re-victimisation, as stated in the Amnesty International Fact-Sheet:

Allowing victims to participate in the criminal process serves a dual purpose: (1) it may deter potential future perpetrators, and (2) it may enable victims to start to heal any emotional trauma suffered as a result of the crime, and to regain the sense of control that the crime itself may have taken from them (Amnesty International 2008).

Reparation amongst other supporting sanctions resulting from TJ may have healing effects on victims (Vinck and Pham 2008). Though it is very complex to make reparation or prosecute massive gross violations, a TRC with a possibility of granting amnesty and making some reparations may be envisaged in TJ. Graça Machel remarks that unless the root causes of children’s suffering are addressed, namely specific conflicts and political violence, TJ mechanisms will remain temporary solutions³² and there would be no real halt to the child soldiering practice. Even granting amnesty remains challenged and worsens the recruitment of

³² Machel’s foreword in Parmar et al. 2010. *Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation*. Human Rights Program at Harvard Law School (Boston: Harvard University Press).

child soldiers, especially when it is granted in contravention of the law, to those accused of children's rights violations:

Those suspected of committing crimes against children under international law should receive particular attention in post-conflict or transitional justice mechanisms. No amnesty for crimes under international law, including those committed against children, should be granted in any peace or cease-fire agreement.³³

The contention surrounding amnesty law in the DRC is explained by the fact that it did not meet the requirements of this legal instrument. The sections that follow explore the challenges of the DRC Amnesty law.

2.7.5 Amnesty Law as challenge of transitional justice in the DRC

There have been several amnesty laws granted to warring parties since 2002, with this dispensation having been included in peace deals subsequent to fighting in 2002, 2006 and 2008 (Davis 2009: 1). The final decree culminated in the 2014 Amnesty Law. The debate on the Amnesty Law is a clear indication of how disenfranchised and robbed of justice victims feel, when suspected rebel leaders and war criminals attempt to escape from justice. Often justice and accountability are sacrificed under the slogan "peace first - justice will follow"; as a result, operations of armed groups continue and the eastern Congo remains volatile.

With regard to the 2014 Amnesty Law, the DRC National Assembly and the Senate, in its sitting in January 2014, approved this project. The Legal Document, No. 289/1 that was signed and promulgated by Joseph Kabila, under *Loi N° 14/006 Du 11 Février 2014 Portant Amnistie pour Faits Insurrectionnels, Faits de Guerre et Infractions Politiques* [Amnesty Law on insurrectionist acts, acts of war and political crimes] (DR Congo 2014). This Law focused on crimes committed between 18 February 2006 and 20 December 2013. Nevertheless, it has been decried because it grants blanket amnesty.

In order to understand such discontent among local populations, the stipulation of UN Rule of Law of 2004 about such remission should be considered:

[...] blanket amnesties exempt broad categories of serious human rights offenders from prosecution and/or civil liability without the beneficiaries having to satisfy preconditions, including those aimed at ensuring full disclosure of what they know about crimes covered by the amnesty, on an individual basis (United Nations 2009b: 8).

³³ The Paris Principles, article 3(5).

Amnesty granting in the DRC lacks the prerequisites, such as truth-telling and other legal institutional coercive or negotiated measures, to bring perpetrators to disclose the truth about their acts. The proliferation of armed groups that continue to recruit children as soldiers is substantiated by this kind of impunity and the delay in applying TJ justice mechanisms, especially for war crimes, with the escalation of cases of SGD.V. It is the requirement of the law that victims' rights are respected to prevent re-victimisation. The rights of victims should not be undermined when transitional societies are determined to move from barbaric to decent societies (De Gruchy 2002).

If TJ implies transformational justice, the hastened granting of amnesty in the DRC is at odds with the underlying principles and mechanisms of transformational justice. Esterhuyse (2002) explains transformational justice as the concepts of justice that lead to legitimisation of transition and transformation. Truth and reconciliation are the catalysts of such transformation. The author ascertains: "reconciliation necessarily has as its converse side the fundamental change of relationships as well as of conditions within which distorted relationships previously existed" (Esterhuyse 2000: 154). In the same perspective, it is meaningful to observe that reconciliation can be compromised when amnesty is granted to war criminals without a proper procedure, in which victims participate. Victims expect perpetrators to be held accountable for their actions. This is a fact that is sustained by several studies.

For instance, in a study conducted by Vinck and Pham (2008) in the DRC (North Kivu, South-Kivu and Ituri) involving 2,620 adult participants, the majority of respondents (68.9 %) expressed that war criminals must be punished (Vinck and Pham 2008: 404). This indicates that those responsible for war atrocities are expected to be prosecuted and punished accordingly. It is difficult to convince these populations that amnesty, without prosecution and truth-telling, can enhance peace and deter criminal behaviour, in the context of mass human atrocities. The standing of victims in this regard has legal grounds. The UN Document "Rule-of-law tools for post-conflict" defines amnesty as:

Legal measures that have the effect of: (a) Prospectively barring criminal prosecution and, in some cases, civil actions against certain individuals or categories of individuals, in respect of specified criminal conduct committed before the amnesty's adoption; or (b) Retroactively nullifying legal liability previously established (United Nations 2009b: 5)

Amnesty is neither a remission of sentence nor an escape from justice. It does, however, imply setting aside and forgetting the offences committed. In the context of this study amnesty could be described as processes, in which victims and perpetrators or their representatives participate, to hear the motivations and circumstances that led to the commitment of atrocities. With victims and their associates also having been affected, a form of accountability is attained to heal both perpetrators and victims.

It is commonly understood that amnesty uses norms that society has set as a means of achieving justice through truth telling and reconciliation, in view of facilitating reintegration and acceptance of perpetrators into the community. "Truth, justice and reparations are complementary rather than alternative responses to gross violations of human rights and serious violations of international humanitarian law" (United Nations 2009b:33). Public apology and acknowledgment of wrongful actions by perpetrators are essential to heal relations, allow the protagonists to move forward with new identities and work to rebuild the environment affected by inhumane acts. Perpetrators do not evade justice; they carry both the moral and criminal burdens of their atrocious acts. And because crimes affect a great range of society, I observe that amnesty grants should, accordingly, include to the greater extent possible victims and their associates (friends, relatives, parents, and so on) who need to be aware of the conditions and circumstances that warrant an eventual acceptability of amnesty grant. Besides, the process should include a formal request from perpetrators who apply for amnesty. And this is given in certain conditions, such as revealing the truth and expressing regret for their odious actions (United Nations 2009b: 25, 27, 31). Victims who have been disempowered by acts of brutalities are empowered by their participation in the process, which they may sanction. Such a step is deemed to bring justice and may have deterrent effects on criminal behaviours. Justice in transitional context constitutes the requirement of the Rule of Law (United Nations 2009b; United Nations 2004).

Granting amnesty should comply with the demands of various sources, including international and United Nations policies. For example, the UN Document "Rule-of-law Tools for post-conflict states" singles out the conditions under which amnesties are impermissible, notably:

- (a) Prevent prosecution of individuals who may be criminally responsible for war crimes, genocide, crimes against humanity or gross violations of human rights, including gender-specific violations; (b) Interfere with victims' right to an effective remedy, including reparation; or (c) Restrict victims' and societies' right to know the truth about violations of human rights and humanitarian law (United Nations 2009b: 7)

This document further submits: “[...], amnesties that seek to restore human rights must be designed with a view to ensuring that they do not restrict the rights restored or in some respects perpetuate the original violation” (United Nations 2009b: 11). The controversies surrounding amnesties in the post-conflict era originate from the fact that society must prevent inhumanities of the past and combat impunity.

Human rights activists and several scholars share the view that it is imperative to observe the principle laid down in the preamble of the Rome Statute of ICC that states: “[...] Affirming that most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”.³⁴ On these grounds, initiating and granting amnesty to perpetrators in transitional societies demand a particular consideration for victims and the international victims’ rights and Human Rights Declaration, in order to avoid aggrieving victim populations and re-victimising them.

However, in extreme cases, where peace is at stake and amnesty is the only way to salvage peace, Orentlicher (2007) avers that not pursuing prosecution, for a peace agreement that could eventually end human carnage, makes sense (Orentlicher 2007: 21). Should there be a danger that peacebuilding would be jeopardised, by upholding international prosecutorial standards for gross human rights violations, and granting amnesties would prevent a peace process from collapsing, then amnesty may be accorded to perpetrators. Yet this is not a primary option, rather the last resort. However, when the need arises to grant amnesty for atrocious crimes and to leaders who authored such systematic violence, Orentlicher argues: “Norms matter: they are the indispensable foundation of the whole enterprise of combating atrocious behavior” (Orentlicher 2007: 21). It implies that granting blanket amnesty should consider exhausting all legal obligations entailed to prosecutions.

Amnesty would not be an acceptable way to justice and reconciliation, when it is not guided by a legal framework, within which victims are fully associated as legitimate partners and their views are taken into consideration. Failure to take that into account could trample the rights of victims, who will continue to feel rejected. This was the case illustrated by Vinck and Pham

³⁴ The Rome Statute of the International Criminal Court, Text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998 and corrected by procès-verbaux of 10 November. 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on 1 July 2002.

(2008) who assert that, in the context of high demand for accountability in the DRC, any process capable of shattering future public justice proceedings, including granting amnesty, for past crimes is not a preferred alternative.

To illustrate this view, the Lomé Peace Accord that negotiated the end of hostilities in Sierra Leone was also perceived as a failure for granting blanket amnesty (Park 2010: 98). The dilemma of TJ is caused by the demand for accountability and securing the process of uncovering the truth from perpetrators. Amnesties are often contrary to this ideal and do not reflect the spirit of international regulations in matter of gross human rights violations.

This explains the conundrum to reconcile prosecutions and amnesties, judicial and non-judicial mechanisms, the “default normative” prosecutorial instruments and emerging contextual restorative approaches; based on customary, social and institutional practices that engender acceptable jurisprudence. Dealing with mass human atrocities requires careful planning, adopting and executing strategies that are neither minimalist, such as legal relativism nor extremist, such as absolute universalism. Legal relativism creates loopholes and supports that international legal instruments are to be adapted to various contexts, when crimes of national magnitude or international crimes are involved. An absolute universalism would suggest that, since laws of international human rights protection are binding, these laws must be applied literally, without alterations. Dealing with humans requires both sensitivity and being realistic of the outcomes that the process of transformation may generate.

In spite of the criticisms levelled against granting amnesty in transitional processes, the South African TRC was able to determine the truth about human rights violations carried out during the Apartheid era because an amnesty commission was set up, on condition that the applicants would tell the whole truth about instigations, circumstances and the grand design behind their crimes. Slye (2000: 178) affirms: “It [amnesty] requires applicants to make full disclosure of their involvement in human rights violations”. This implies that amnesty can be denied, should the applicant not disclose the truth needed for the success of his/her amnesty application. The process of truth-telling has a certain accountability dimension. The South African amnesty can, thus, serve as a model of what international justice could require, in similar circumstances.

In order to trace the origin of the need for peace, it is important to note that, following the assassination of President Kabila, the DRC embarked on the long road to peace that began in

Lusaka on 10th July 1999, securing a peace truce at Sun City on 17 December 2002 (Kakuru 2008).

2.7.6 Prospective transitional justice mechanism

Any society that survives civil wars or bloody conflict should deal with the past and initiate reconciliation that presupposes bringing justice to victims and laying the bases for a sustainable peace (De Gruchy 2002: 178-179; Theissen 2004: 1,16). The 1985's UN Declaration, issued by General Assembly resolution 40/34 (annex), supports the use of non-criminal or non-conventional approaches of justice for victims of crime and abuse;³⁵ while UN resolution 60/147 of 16 December 2005 supports other accountability measures, namely restorative, customary, and so on³⁶:

The Guidelines could also be applied to processes in informal and customary systems of justice such as RJ and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.³⁷

This statement opens the ground for application of RJ and contextualisation of community-based TJ approaches, to address issues of accountability for injustices of armed conflict, including those carried out against child soldiers and when child soldiers were themselves the perpetrators. On the basis of this provision, the Baraza forum may be considered as a contextualised instrument to redress human rights violations that have resulted from armed conflict and bloody confrontation. This is an informal mechanism of peaceful resolution and prevention of conflict that has been used in the DRC, especially in the eastern Congo, also known as Intercommunity Baraza (Kamwimbi 2008: 28, 30; Mushi 2012: 28, 30).

Baraza promotes forgiveness and reconciliation. This customary-based platform could be included in the legislation of Congo, alongside peace tribunals. It may be sustainable, as

³⁵ Chapter 2(41)(4) of the Compendium of United Nations standards and norms in crime prevention and criminal justice, II. Victims. 41. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. A. Victims of crime, General Assembly resolution 40/34, annex, of 29 November 1985. 1985. (online). Available: https://www.unodc.org/pdf/compendium/compendium_2006_part_03_02.pdf (Accessed 6 September 2014).

³⁶ UN resolution 60/147 of 16 December 2005 on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of IHL and proclaimed by General Assembly. Available. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> (accessed 6 September 2014)

³⁷ Article 44(6) of the Compendium of United Nations standards and norms in crime prevention and criminal justice, UN General Assembly resolution 40/34, annex, of 29 November 1985 (online). Available: https://www.unodc.org/pdf/compendium/compendium_2006_part_03_02.pdf (Accessed 6 September 2014).

several scholars have suggested going back to customary local mechanisms of justice to settle conflicts in the DRC (Savage and Vanspauwen 2008; Savage and wa Kambala 2008). This implies addressing the root-causes of conflict and applying appropriate solutions that could emerge from the deliberative processes. This institution could help quieten long-standing conflicts and prevent them from becoming violent.

Applied in the context of TJ for child soldiers, and taking into account that Baraza works in RJ, this model has the potential to enhance accountability, healing and reconciliation. In the absence of adequate, juvenile justice structures in remote areas, where children are exiting armed groups, even in some important townships and centres, accountability of child soldiers accused of human rights violations could be attained through this platform. Assisting children to live in pacified and secure environments could tremendously minimise their vulnerability and prevent them from being used as soldiers. Peace is a vital need and should be well-studied, in order to be achieved.

2.8 Peace processes and impact on child soldiering

The situation of the DRC is described as “No war no peace...” (Swart 2012: 60). Following the end of the Congo Second War in 2002, a series of peace talks had been initiated to secure a sustainable peace. However, though there is no apparent war being fought, there is no real peace. The populations of the eastern and north-eastern DRC live in fear and under terror, maintained by armed populations, the presence of foreign armed groups (the FDLR and the *Interamwe*), local militias (APCLS, the Mai-Mai Cluster, and so on) and cross-border terrorists, such as the ADF-NALU.

The main outbreak of peace processes was the end of hostilities in 2002, following the signing of the Global and Inclusive Peace Agreement at Sun City, and subsequent settlements, namely Operations Kimia II and Amani Leo. While the Sun City and *Amani Leo* focused on peaceful dealings, *Kimia II* used coercive means to bring about peace.

2.8.1 The Sun City Global and Inclusive Peace Agreement

Violence and war atrocities have dominated the history of the DRC (Human Rights Watch 2005; Autesserre 2007; Baaz and Stern 2008; United Nations 2010, 2011b; Human Rights Watch 2012a; Stearns 2014). The period that followed the First Congo War in 1996 was marked by a long-standing search for peace. From Lusaka (1999), to Gaborone, Addis Ababa

and Pretoria, to finally, Sun City, where the Global and All-Inclusive Agreement, signed at Sun City on 17 December 2003, ended the DRC civil war (DR Congo 2010). This event inaugurated the Transition Government, under the formula 1+4 (one president = four vice-presidents). A subsequent agreement was signed in Goma in 2008 aiming to consolidate peace. The Global and All-Inclusive Agreement signed in Sun City did not achieve much in terms of pursuing TJ to uncover the truth and tackle the root causes of hostilities or “address the legacy of massive crimes committed during the decade of conflicts in Congo” (Davis 2009: 14).

Security has been weakened by the incapacity of the police to investigate crime, especially sexual violence and violations of children’s rights. The security services were constantly accused of injustices. In the same vein, Davis (2009: 20) notes: “Extortion, illegal detention, torture and arbitrary killing by police officers, cases of sexual violence perpetrated against women and girls by police officers – often whilst the victim is being held illegally at a police station – are regularly documented”.

Several arrests, prosecutions and convictions of the Security officials have been carried out by domestic jurisdiction, especially those among the FARDC, and some warlords have been transferred the ICC (Davis 2009: 21). In spite of that, justice during the transitional period remained precarious and the rule of law undermined (Davis 2009: 21). Such disregard for justice, coupled with impunity and corruption, has been a serious impediment to sustainable peace. The failure by the belligerents involved in the Sun City Agreement to follow the clauses of that accord, subsequent peace negotiations were initiated to prevent yet another war; Operations *Kimia II* [Peace] and *Umoja Wetu* [Our Unity] were launched.

2.8.2 Operations *Kimia II* [Peace 2]

Operation *Kimia II* followed *Umoja wetu* [Our unity] and *Kimia I* [peace I]. The launch of Operation *Umoja Wetu* ended with the withdrawal of all Rwandan troops (Dagne 2011: 8). Operation *Kimia I* was undertaken by the Government forces and special brigades of Zaire, to disarm militias in March 1996 but failed to achieve its objectives (UN mapping paragraph 165); while Operation *Mbata* [“slap” in Lingala language], aimed at disarming the Hunde and Nyanga Mai-Mai and the Nande Ngilima militia, also ended in failure, according to UN Mapping Report, paragraph 165 (United Nations 2010).

Further operations, namely *Kimia II*, attempted to bring the CNDP fighters into the FARDC (Stearns and Verweijen 2013: 33). *Kimia II* came under threat when the Mai-Mai Yakutumba felt disenfranchised and prejudiced because high ranking positions were granted to the Rwandophone commanders, and this enterprise failed in 2008 (Stearns and Verweijen 2013: 33). This was followed by direct negotiations between Kigali and Kinshasa, which led to integration of the CNDP rebels into the FARDC, while those former insurgents maintained parallel chains of operations and command in the Kivu (Stearns and Verweijen 2013: 36). However, the Mai-Mai Yakutumba pulled out of the integration processes and returned to fighting the FARDC, with the support of the FDLR (Stearns and Verweijen 2013: 36).

Using U.N. sources, Dagne (2011: 8) avers that *Kimia II* operations were reinforced involving a contingent of government forces, estimated at 16,000, supported by MONUC forces in North and South Kivu in 2009. They engaged in fierce battles against the FDLR. As a result of gross human rights violence perpetrated against the population, by both sides to the conflict, the FARDC and FDLR, operation *Kimia II* was ended (Boshoff 2010: 1; Dagne 2011: 8,9). All of these operations failed to secure lasting peace. For this reason, an inter-province conference, named *Amani Leo* [Peace Today], was called to pursue the agenda of a more sustainable peace.

2.8.3 The *Amani Leo* Peace conference

The scale of armed conflict and different ethnic-led militia became unbearable and led to a peace initiative that was attempted through the Goma Conference, in early 2008, which was named the *Conférence sur la Paix, la Sécurité et le développement du Nord et du Sud-Kivu* [Conference on the Peace, Security and Development of North and South Kivu] (Stearns 2012). According to Article 4 of Chapter IV of the UN Document CRC/C/OPAC/COD/1, 18 April 2011, the 2007-2008 Conference for Peace, Security and Development in North and South Kivu, held in December 2007 and January 2008, involved the participation of members of the Government, several Congolese leaders, traditional leaders (chiefs), civil society (grassroots communities from North-Kivu and South-Kivu), commanders of armed groups from North-Kivu and South-Kivu, as well as the international community (United Nations 2011a). This conference ended with the signing of the Goma Act of Engagement, the resolutions of which were implemented through the “Amani Programme” (United Nations 2011a).

Around that time, an approximate 30 armed groups were active in the DRC (United Nations 2011a). These include: in Katanga Province (the Rahiya Mutomboki; the Mbuyumalo Mai Mai groups; and other groups active around Manono, Moba, Nyunzu (Kisengo), Kabalo and Kongolo territories, and so on); in Maniema Province (the Rahiya Mutomboki in the territory of Kabambare); in Orientale Province, Ituri district (The National Integrationist Front (FNI), led by Peter Karim, active in the territory of Djugu, Walendu Pitsi sector, Lalou area, chiefdom of Walendu Watsi, particularly in the Katanga forest; the Patriotic Force of Resistance in Ituri (FRPI), led by Cobra Matata, present in the territory between Irumu to Cheyi Geti and the surroundings; the Congolese Revolutionary Movement (MRC) [*Mouvement Révolutionnaire Congolais*], Wimbi and Nyemba, established in North Katanga (Tanganyika district)); in North Kivu Province (The CNDP, led by Laurent Nkunda, active in Masisi and Rutshuru districts; the Coalition of Congolese Patriotic Resistance — Popular Armed Forces (PARECO-FAP) in the territory of Lubero; the Union of Young Sacrificed Patriots (UJPS); the Mai Mai group; the Mai Mai Mongol); in South Kivu Province (the Kalambayi Mai Mai; the Rutambuka Mai Mai; the Federal Republican Forces (FRF) group (led by Bisogo and Makanika); the Zabuloni group; the Yakutumba group (Mai Mai Armed Group, GAM); the Rahiya Mutomboki; the Shabunda Mai Mai; the PARECO South Kivu; the Mwenga-Itombwe Mai Mai;³⁸ the Kabare Walungu-Luhinja-Luhindi Mai Mai; the Mai Mai groups led by Alexandre Mwami and Ndagano in Shabunda, Walungu and Mwenga).³⁹

Besides these local armed groups, there were quite a number of foreign groups that include, The LRA operating along the border with Uganda; the Democratic Forces for the Liberation of Rwanda (FDLR) and the *Interahamwe*, active in the territories of Shabunda, Walungu, Mwenga and Kalehe and other districts in South Kivu Province; and some political-military groups, namely the Movement for the Liberation of the Congo (MLC), the Congolese Rally for Democracy (RCD). All these fighting forces and the DRC non-armed political opposition, as well as the political opposition, were invited to the talks that led to the signing of the Sun City Global and Inclusive peace settlement.⁴⁰

³⁸ See Conference for Peace, Security and Development in North and South Kivu, Final Report, pp. 13 and 14 cited in Article 4, paragraph 73 of the Convention on the Rights of the Child. Consideration of reports submitted by States parties under Article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Initial reports of States parties due in 2004. Democratic Republic of the Congo. (online). UN Committee on the Rights of the Child. UN Security Council. Document CRC/C/OPAC/COD/1 of 18 April 2011. Available: http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.COD.1_en.pdf (Accessed 23 August 2014),

³⁹ UN Security Council Document CRC/C/OPAC/COD/1, 18 April 2011, Article 4, paragraph 73.

⁴⁰ UN Security Council Document CRC/C/OPAC/COD/1, 18 April 2011, Article 4, paragraphs 72,73,74, and 75.

Operation *Amani Leo* was launched in January 2009 with the intent of demobilising the FDLR, in a joint mission between FARDC and the United Nations Organisation Mission in the Congo (MONUC). Stearns (2012) maintains that peace dynamism was supported by both the DRC Government and foreign donors, and it also involved local community at grassroots level, to tackle the causes of violence. Parties involved in this peace-venture included rival militia groups and ethnic groups in the region of North Kivu. An ambiguous peace deal was signed behind closed doors between Kigali and Kinshasa (United Nations 2012).

UN reports show that Rwanda was ostensibly implicated in the conflict inside Congo, by providing military support to insurgents fighting the Government of Kinshasa, under Laurent Nkunda Commandment and its CNDP.⁴¹ As part of the deal, Kigali had to arrest Nkunda and Kinshasa would open its borders to the Rwandan army, to hunt down the FDLR as per the accord signed on March 23, also stipulating the integration of the CNDP into the incorporated Congolese armed forces (Stearns 2012).

The March 23 agreement, alongside the Rwandan-Congolese deal, proved more durable than its predecessors and within several months the CNDP and many other armed groups were integrated into the Congolese army. Operation *Umoja Wetu* became Operation *Kimia 2* (Peace 2) in March 2009, before evolving into Operation *Amani Leo* (Peace Today) in January 2010. All of these operations targeted the FDLR along with remaining armed groups (Stearns 2012: 41).

The failure of the March 23 agreement caused the eruption of the M23 insurrection. Stearns affirms: “This deal between the two countries collapsed in 2012, even as Kinshasa tried to dismantle ex-CNDP networks in the Kivus and integrate CNDP fighters into the national army, and Rwanda backed Ntaganda’s new project, the M23 mutiny” (Stearns 2012: 42). It appeared that the Rwando-Congolese common front against the FDLR and other armed groups was successful in “decimating the FDLR” (Stearns 2012: 41).

Unfortunately, the resumption of violence has catastrophic humanitarian consequences; internal displacements of people, human rights violations, insecurity and losses of civilian lives

⁴¹ See United Nations Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council (online). United Nations Document S/2012/843. Security Council Distr.: General 15 November 2012 Original: English. Available: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_843.pdf (Accessed 2 October 2014).

are the worst repercussions of resumed hostilities. As a result, two years later, military confrontations intensified, giving Laurent Nkunda and his troops the opportunity to massacre the civilian populations of the Kivus. Furthermore, the FDLR Hutu rebels and unidentified militias keep proliferating, with more and more children recruited around the Masisi and Rutshuru. The FDLR terror against local populations continues to be a nightmare in the districts of Rutshuru, along the way to Kiwanja and Kanyabayonga, and people are insecure.

Several attempts to bring peace in the DRC have been less than successful (Autesserre 2007). Partly because of failed programmes of disarmament and reintegration, and a lack of strategies for the transitional process, as well as the lack of a clear understanding of the social and economic interests of belligerents in the East and North DRC (Beneduce *et al.* 2006). Often, these factors shape the thinking and motivations of young people, who choose to soldier because they see soldiering as an alternative for both social security (protection of social interests) and economic security (plundering resources) (Beneduce *et al.* 2006). They engage in hostilities with the belief that violence can help them attain their social, political and economic objectives (Beneduce *et al.* 2006).

Most of the time though, these young people are in the margin of peace processes that they will try to disrupt when opportunities come their way. Violence, protracted by actors who remain outside peace processes or fight against them, is a serious impediment to achieving sustainable peace. And there is continuity between such agents and their interests, namely illegal exploitation and trade of natural resources. It is important to consider actors, their relations to neighbouring countries and where their interests lie, to prevent them from interfering with the success of peace efforts. They are “spoilers”.

2.8.4 “Spoilers”, foreign actors and peace processes

The theory of spoilers, as conceived by Stedman (1997: 180), evolves in the context of peace processes, in the aftermath of war. The author argues that peace negotiations create spoilers, who do not believe that the outcome of a peace process can be beneficial to all parties involved in the process.

Spoilers are a group of actors in peace processes, who show apprehensiveness that peace, secured through negotiations, is a threat to their power and interests, and they resort to violence as a means of attaining it, while others from the same camp remain in the negotiations

(Pearlman and Cunningham 2012: 9). This concept includes a broader spectrum of actors, including rebel groups leaders and their proxies, former government forces, and even government allies (Yonekawa 2014: 162).

Why are there spoilers, who are they and what are their objectives? According to Stedman (1997: 180), the peace process engenders spoilers. It is argued that, in the context of civil war, combatants hold various identities, such as rebels, terrorists, bandits, and so on. However, all these are not spoilers. To answer these questions, it is helpful to consider what the following statement points to:

Peace creates spoilers because it is rare in civil wars for all leaders and factions to see peace as beneficial. Even if all parties come to value peace, they rarely do so simultaneously, and they often strongly disagree over the terms of an acceptable peace. A negotiated peace often has losers: leaders and factions that do not achieve their war aims. Nor can every war find a compromise solution that addresses the demands of all the warring parties (Stedman 1997: 180).

In order to tackle the adverse impact of spoilers in peace processes, it is important that custodians consider a number of elements, to mount a robust strategy that can help deal with spoilers. That includes the use of conciliation and coercion (Stedman 1997: 179).

The author presents adequate strategies in three steps, which imply: (1) appropriate diagnosis of the type of spoiler by taking into consideration the constraints posed by other parties involved in the conflict; (2) a well-managed diagnosis that allows policy makers overcome misread intentions and motivations of actions carried out by member organisations; and (3) implement an efficacious strategy, by depending upon the ability of custodians to develop an external coalition for peace and invent resources that are needed by the coalition; to carry its mandate and reach a consensus that the coalition uses to assert the legitimacy ('or lack thereof') of spoilers' demands and behaviour (Stedman 1997: 179-180).

This "typological theory" of managing spoilers needs to be cognisant of the interplay between various circumstances of spoilers, namely their position (those who agree to participate in peace processes and those who are either excluded or decide to be out of the settlements); the number of spoilers involved in peace settlements; the type of spoiler (whether it is limited, total or inspired by greed); and finally the locus of the spoiler (whether a spoiler is a leader, a

follower or both); because all these are problems that custodians need to confront, when leading these peace processes (Stedman 1997: 180).

While spoilers may be foreign actors interfering with peace process across their borders (Yonekawa 2014), they can also be “non-state actors”.

A non-state actor can be defined as “an organized political actor not directly connected to the state but pursuing aims that affect vital state interests” (Pearlman and Cunningham 2012: 3). According to Brown (1996 cited in Yonekawa 2014: 163), neighbouring countries can exert their influence in another state by invasion and intervention. These strategies have various aims: An intervention can be justified as self-defence, built on protecting ones’ own ethnic groups implicated in a conflict or as an opportunity to secure political, economic, and military interests. Furthermore, an opportunistic intervention assimilated with invasion can be used by neighbouring states to become involved in proxy wars, by providing military support to insurgents, and at the same time, displaying an innocent attitude (Brown 1996, cited in Yonekawa 2014: 163).

The changing nature of warfare in post-World War II contemporary society, with the emergence of a multiplicity of agents capable of influencing peace processes, are the real dynamics that need a particular understanding, in order to aggressively manage peace. Spoilers use fluid approaches and operate from different angles, from within an affected country or across the border. Proxy armed groups may have ambivalent ties with foreign nations, states and rebel groups.

This better describes the situation of the DRC. For instance, Swart (2012: 49) describes the CNDP of Laurent Nkunda as another spoiler to peace because of its past military activities in the Congo. It should be noted that Nkunda’s military campaigns had generated animosity against the Tutsi ethnic groups among local populations of the eastern DRC. Nkunda has close ties with Rwanda, and at the same time, he held prominent military positions in the FARDC (Yonekawa 2014: 166); his extradition is expected in the DRC, so that he can face multiple charges, including violations of IHL and IHRL (The Hague Justice Portal 2009).

Stearns maintains that the emergence of local self-defence armies (PARECO, APCLS, PARECO-Lafontaine and the Mai-Mai Kifuaafua) was prompted by the renegade Laurent

Nkunda, and these forces either sided with him or fought against him, while some received the support of the Congolese government (Stearns 2014). This is the tragedy of the DRC: that the government, instead of neutralising armed groups, supported some. It begs the question as to what justice one can expect from a government under these circumstances, in prosecuting war criminals that it supports? The fate of children used as soldiers lies in the hands of both the governments and proxy armed groups and militias. This situation makes TJ even more complex because the government cannot stand as witness and prosecutor.

Uganda and Rwanda are the main invaders of the DRC and interventionist forces in the DRC armed conflicts. They had fought inside the Congo and supported rival militias fighting the DRC Government troops. According to Human Rights Watch (2005), after leaving the DRC, Rwanda continued backing the Hema Union of Congolese Patriots (UPC). In addition, when Ugandan troops withdrew from the Congo in 2003, they left behind the Lendu Nationalist and Integrationist Front (FNI) that they continued to support. This backing up was not without economic benefit.

Uganda was implicated in the plundering of the DRC's mineral resources from 1998 to 2003, during which time Ugandan soldiers took control of gold-rich areas and forced gold miners to extract the gold for them (Human Rights Watch 2005). These operations were marked by extreme brutalities, such as beating local populations and arbitrary arresting those who resisted Kampala orders. This same report affirms that each militia group conquered a "gold-rich area", which they immediately started exploiting. Moreover, the FNI and the UPC confronted each other in five battles over the control of Mongbwalu, each resulting in widespread human rights violations (Human Rights Watch 2005: 2).

Uganda and Rwanda co-coordinated military operations in the Congo wars for several years before they backed rival rebel movements entangled in the conflict, especially in the time when the Congo was on the brink of balkanisation. Their alliance, however, broke down, which was perceptible when their respective armies engaged in combat in May 2002 at Kisangani (Human Rights Watch 2005: 21). This breakdown exacerbated the complex dynamics of locally-emerged armed groups, prompting fierce rivalries among them (Human Rights Watch 2005: 21).

The relations between emerging local rebel groups and their external sponsors (Rwanda and Uganda) had a devastating effect on peace and its impact worsened the recruitment of child soldiers. The interests of armed groups and proxy armies were the “exploitation of mineral and other economic resources” that was fuelled by the conflict, “which was characterized by systematic human rights abuses and population displacement, particularly in the east and north-east” (CSCS 2008: 107). In addition, the contest between Rwanda and Uganda for an upper hand over armed factions fighting in the DRC and the large mineral reserves, “led the former allies to fight each other in mid-1999” (Davis and Hayner 2009: 10).

The conflict between Rwanda and Uganda caused a split of rebel movements. Davis and Hayner (2009: 10) explain that with the RCD splintering into numerous rival factions under control of either Uganda or Rwanda. The author states that Uganda also supported the Movement for the Liberation of Congo (MLC), commanding the vast province of Equateur. In the interim, the Kabila government was backed by Zimbabwe, Namibia, and Angola (Davis and Hayner 2009: 10).

In spite of having the largest reserves of minerals in the world, the DRC has been greatly impoverished by the greed of its leaders, mismanagement, corruption, cronyism and the plunder of its resources by its neighbours Rwanda and Uganda (Grega *et al.* 2008: 137). Furthermore, it is important to observe that operations of spoilers impact negatively on the child soldiering practice. For instance, armed groups and proxy foreign combatants, such as the FDLR, the CNDP, the M23 and others, are responsible for the recruitment of child soldiers.

A Child Soldiers’ Global Report indicates that the FDLR has been involved in recruiting child soldiers, committing atrocities and extortion of civilians (CSCS 2008: 108). Ending the child soldiering practice would be unsuccessful, without tackling negative influences and superfluous ambitions of spoilers and neighbouring countries, especially Rwanda and Uganda. The support received by local insurgents from across the border continues to threaten peace and maintain a climate of insecurity and chaos, so that the looting of the DRC natural resources may continue.

While the use of military might has proved unsuccessful to tackle regional conflicts, the dynamics of the Great Lake Region, historic effects of protracted armed conflicts, and unprecedented death toll, exceeding five million (International Rescue Committee 2007; Mayeba 2012) and approximating six million, necessitates pursuing regional peace efforts that

would include all spoilers and neighbouring countries with a stake to the DRC conflict. The role played by international actors as custodians of peace processes has been marked with success and failures in the Eastern DRC. Although the international mediation through the Sun City peace accord ended hostilities, the resurgence of militias and armed groups, including the M23 insurrectionist movement, is evidence of the negative role of spoilers and failure of international peacekeeping missions.

However, Stedman (1997) notes that, “Where international custodians have created and implemented coherent, effective strategies for protecting peace and managing spoilers, damage has been limited and peace has triumphed” (Stedman 1997: 179). An aggressive strategy to prevent the success of spoilers is crucial because when they achieve their objective by means of violence, the consequences are disastrous.

As Stedman (1997) observes: “Where international custodians have failed to develop and implement such strategies, spoilers have succeeded at the cost of hundreds of thousands of lives” (Stedman 1997: 179). It is optimistic to envision global and comprehensive solutions to the Great Lake Region, through the mediation of international custodians. An international peace conference in the region requires international commitment and inclusion of all actors, nationally and regionally. These efforts are crucial to curb the resurgence of militias, transform the complex conflict of the region, and subsequently, minimise involvement of children in hostilities.

Conciliation should always be a priority, especially in a volatile environment that remains heavily militarised, with the presence of non-state armed groups, foreign rebel movements, and an uncontrollable amount of ammunitions in the hands of civilian populations. Outside spoilers, such as the FDLR, the *Interamwe*, the APCLS, the Mai-Mai clusters who always feel their war interests have not been achieved, can wage severe resistance in case international custodians adopt a coercive strategy. That may have tragic consequences for innocent populations and worsen the recruitment of children as soldiers.

Achieving peace settlements appears a complex undertaking. However, when the process succeeds, it allows long-standing peace. Sometimes though, trading justice for the sake of safeguarding peace may not heal a wounded society. At the same time, coercive and punitive justice in a volatile environment may also spoil peace, as combatants may resort to violence

and resume war. For this reason, non-coercive transitional approaches are adopted in transitional societies, both as a means of achieving justice for victims and ensuring reconciliation.

While the mainstream justice system may be helpful to hold perpetrators of war crimes and crimes against humanity accountable, the complexity of war-torn societies has seen the development of RJ as an alternative to prosecutorial justice. This paradigm of justice is adequate in transitional societies. Wessells (2006: 238) notes that legal prosecution of individuals does not constitute the sole punishment or deterrent mechanism, with other strategies, such as cutting weapon supplies and light ammunitions' delivery to fighting forces that should be applied. Sanctions should not be restrained only to weaponry but should include economic sanctions, such as freezing assets and banning the trade of precious or mineral resources from war zones.

However, in order to avert the negative effects of sanctions on poor people, individuals and groups of persons implicated in crimes that make them liable to such measures need to be targeted (Wessells 2006: 239). Lack of peace along the eastern borders impacts the child soldiering practice, as children remain vulnerable to exploitation, abuses, recruitment for soldiering, and they are also abducted to boost the manpower of armed groups. The prospect of lasting peace in the Congo is illusory, unless these negative forces are neutralised. Due to this uncertain situation, the DRC is described as a “no peace, no war” society (Swart 2012: 4).

A peace process that excludes reconciliation and truth telling about atrocities that affected a community, is counterproductive. Peace in the DRC cannot be envisaged without reconciliation inside the Congo and inside neighbouring countries to the east and northeast.

2.9 Conclusion

The creation of a peaceful environment by eradicating chronic and structural violence, particularly poverty, is a prerequisite for building lasting peace. Children and adolescents need to be protected and be given opportunities to grow in decent and peaceful environments where their needs for food, education, faith practice, being cared for, protection and recreation are met, in order to combat their voluntary participation in hostilities. Particular attention needs to be paid to the relations between spoilers and neighbouring countries. The role of international

custodians is very important in the context of complex conflicts in the DRC involving regional and international actors.

The pursuit of truth-telling and a reconciliation agenda, alongside justice, features as the condition for lasting peace and the prevention of child soldiers. The complexity of the problem demands a comprehensive response that touches on the root-causes of the child soldiering problem, by eradicating chronic and structural violence and repairing harm where it has happened, especially where children have been responsible. These efforts require a TJ model that suits the circumstances of child soldiers and victimised communities.

PART TWO: REVIEWED LITERATURE

The review of literature has some evident usefulness in a scholarly study. In the case of this inquiry, an all-inclusive literature was reviewed and is discussed thematically, under three main sub-headings, namely the problem of child soldiers, RJ in theory and its experimental studies, and finally, RJ from an African perspective. The researcher explored empirical and literary sources, scholarly electronic journal Articles, books (monographs and collected works), and peer-reviewed scholarly journal Articles, along with book reviews and abstracts, dissertations and theses, abstracts of theses, and working papers, in addition to occasional papers, conferences, seminars, and internet sources, as well as audio-visual material posted on websites. This part of the study has been subdivided into three chapters, corresponding to main thematic headings.

CHAPTER THREE

THE NATURE OF CHILD SOLDIERING IN THE DRC

3.1 Introduction

A collective response to the phenomenon of child soldiering has been examined by a number of scholars from various angles, including legal, humanitarian, clinical, sociological and ecological perspectives. This chapter overviews the historical background of child soldiering, its causes (pull and push factors), as well as the variations of modes of recruitment (conscripted and voluntary enlistments). The use of children in armed conflict is referenced to three worldviews, where childhood is explained in dynamic terms and how this conceptualisation of childhood differs from an African and Western perspectives, and from the point of view of international legislation. It further explains how the notion of childhood is socially constructed and what impact such socialisation has the soldiering practice.

A section on various intervention programmes follows and examines the strengths and limitations of those intervention models best suited to tackle the problem. A discussion on the legal preventive and protective framework, against the use of children as soldiers comes after, followed by a section on child protection measures in the DRC. The chapter is concluded with a section on the emergence of the phenomenon of self-demobilisation of children in armed conflict.

3.2 Historical background

The practice of child soldiering is an international phenomenon that dates back to the era of World Wars, during which many children participated in hostilities, such as the conscription of the Nazi juvenile soldiers known as the *Hitlerjugend* (Singer 2005: 209; Vautravers 2008). Children have been used as soldiers worldwide. Jayakumar (2011) ascertains that the conscription of children in armed conflict has also been regarded as an act of heroism, referring to the case of Germany in 1945 where juvenile fighters were extolled as Heroes. In Asia, the Khmer Rouge of Cambodia used young soldiers, as did the Sri Lankan rebel group and the Liberation Tigers of Tamil Eelam (LTTE) in war against the Sinhalese government; while children in El Salvador and Nicaragua were also involved in fighting (Honwana 2006: 29,30).

In addition to these cases, Drumbl (2012: 5) reports that child fighters have operated in Afghanistan, Angola, Colombia, DRC, Indonesia, Liberia, Libya, Mozambique, Nepal, Papua New Guinea, Philippines, Sierra Leone, Sri Lanka, Sudan, Rwanda, Timor-Leste and Uganda. They are used by governments and forces rival to governments or non-government forces; and are considered as a “part of a warfare strategy that is shared across lines of combat and war zones around the globe” (Honwana 2006: 44). Child fighters go through brutal recruitment; they are forcibly separated from their families and mostly boys are coerced to participate in military activities and all sorts of warfare (Sahovic 2011).

The total population of children involved in hostilities varies between 300,000 and half a million, according to different sources. For instance, Popovski and Arts (2006: 1) assert that about 300,000 children below 18 years of age, some even as young as six, and 40 percent of them girls, were illegally recruited in more than 30 conflicts around the world. Other sources speak of 500,000 children who are among fighting forces not presently in direct hostilities (Singer 2005: 1; Czyz 2008: 3). Recent studies have described the situation of boys and girls involved in armed conflict as abhorrent (United Nations 2009a). An estimate of 40 percent of global child soldiers is found in Africa (Drumbl 2012: 5). This figure closely reflects the estimation by Amann (2001: 171) that more than half of the world’s child soldier population is in Africa.

During war children are vulnerable as war casualties and prey to recruitment. In order to illustrate this fact, Sahovic (2011) notes that an estimated 1.5 million children died in the 1980s from causes related to war in the time of civil wars in Mozambique, Cambodia, Sierra Leone,

the former Yugoslavia, Rwanda, El Salvador, Guatemala, the Middle East, and other locales, with several million children dying as a direct consequence of atrocities. Sometimes, children are mistaken for adults, in spite of several awareness campaigns and measures used worldwide to protect the underaged who, in some cases, participate in hostilities as early as the age of five.

3.3 The DRC child soldiers – the *Kadogo*

Before colonisation, children were valued and protected by the larger community; rituals were performed to mark the transition into adulthood. During colonisation, family structures were disrupted and the emerging of insurrectional movements affected social structures to protect children.

3.3.1 The DRC child soldiers' background

After independence, governmental structures remained weak and corrupt, leading to the start of insurgencies that tore the DRC apart, following its independence on 30 June 1960. It was then that Pierre Mulele, an adept of Lumumba who, on his return from exile in China in 1963, initiated underground training camps, where he taught *Lumumbist* ideology and strategies for revolution. The movement gained wide, popular support and attracted the masses in the Kwilu. It expanded and many 17 year old youngsters joined up. This was seen as the first army of youths, however, adults also joined up. These rebels were “bajeunese” (a kikongo – local medium word for youths).

The revolution was brutally repressed by Mobutu's troops, with the backup of western powers, mainly Belgium and the USA. Even earlier than that, the Mai-Mai, “locally-based militias”, were organised on an ethnic basis and engaged in struggles around the protection of their communities and their interests (land, broader economic interests and political power) (CSCS 2010: 2). The Mai-Mai became an armed movement in 1960 and rebelled against the central government of Congo; at that time, the word Mai-Mai described structured, locally established, ethnic armed groups (CSCS 2010: 2; Stearns and Verweijen 2013).

It is noted that Laurent Desire Kabila, who toppled Mobutu SeSe Seko with his AFDL, was a veteran Lumumbist, who had already been defeated with his mercenaries, led by Che Guevara, around 1960 (Stearns and Verweijen 2013). The Cuban soldiers fought alongside the *Simba* [lions] militias, against the troops loyal to Mobutu. The *Simba* fighters were resuscitated by Kabila, who established his political party, known as the Popular Party for the Revolution

(PRP), in the remote lands of Fizi, with its military branch called the Peoples Armed Forces (FAP), where he operated between 1967 to 1984 (Stearns and Verweijen 2013: 15).

The concept of *Simba* was so engraved in his mind, to the extent that he renamed the Congolese national team “*the Simba*”, after he took power in 1997. During the military campaign to overthrow Mobutu’s dictatorial regime, Laurent Kabila proceeded with door-to-door recruitment of child soldiers, from the localities of Katanga, North and South Kivu, Maniema and Oriental provinces.

Honwana (2006: 29) asserts: “In the DRC, forced recruitment of children into armed conflict increased dramatically in the late 2002 and early 2003 that observers described the forces as ‘armies of children’”. Bell maintains that an estimate of 30,000 children were involved in fighting and lived in the ranks of armed forces or militia groups in the DRC in 1996 and many boys and girls, some less than 10 year old, participated in armed conflict (Bell 2006).

A Global Report, published by the Coalition to Stop the Use of Child Soldiers, states that an estimated 7,000 child soldiers remained in government forces and armed groups, even in foreign armed groups. This was mainly in the provinces of Equateur, Ituri, Katanga, North and South Kivu, and Maniema in 2008, where these minors were used as “combatants, porters, guards and sexual slaves” (CSCS 2008: 106). The Mai-Mai remain the most notorious recruiters of child soldiers, though other active armed groups, such as the FDLR, also abduct children and use them as soldiers in the eastern DRC.

3.3.2 The Mai-Mai child soldiers

According to a Report by CSCS (2010), “the term Mai-Mai means ‘water’ and derives from the traditional practice of soldiers dousing themselves in water before going into battle in the belief that it will confer immunity from bullets” (CSCS 2010:2). The term refers collectively to a range of militias prominently known for their recruitment and use of child soldiers. They continue to exist and are spread “within a context of entrenched ethnic polarization, endemic insecurity and widespread human rights abuses against civilians, an absence of rule of law and a fear of ‘foreign invaders’” (CSCS 2010:2).

The Mai-Mai groups are organised as self-defence groups and resist any invasion of their land (CSCS 2008, 2010; Mushi 2012; Stearns 2014). The groups may not have a political or

military significance when compared to other rebel groups operating in the region, and which have military, political and administrative structures. They have remained unmoved by peace talks and agreements intending to neutralise militias. The groups are steady in this practice and do not release children fighting under their command (CSCS 2010: 1). Their consistent enrolment of children and refusal to disarm and demobilise children under their control and reintegrate them into their families, have been a serious issue of concern for local and international organisations of child protection and created contention with the Government.

The Coalition to Stop the Use of Child Soldiers (CSCS 2010) extensively discusses issues pertaining to the recruitment and use of children called Mai-Mai child soldiers in a briefing paper, drawn from secondary sources and interviews conducted by the Coalition in North Kivu and South Kivu in 2009, involving 100 interviewees in four main towns, namely Baraka, Bukavu, Goma and Uvira. Some other Mai-Mai groups are found in Katanga province (CSCS 2010: 13).

The vulnerability of children in the territories controlled by the Mai-Mai is perpetuated by chronic and structural violence characteristic of those eastern Congo areas. Insecurity, anomy, anarchy and the inability of local administrative authorities to secure children, contribute to their exploitation by the Mai-Mai and active local militias, especially, those that are built on the idea of “community self-defence” (CSCS 2010: 11).

Jourdan (2011: 100) observes that the *Mayi* [water] is used in rituals that symbolise magic water prepared by a *nganga* [traditional doctor/healer] who hand it to children who have been initiated in the Baraza. The increasing and constant use of the Mai-Mai child soldiers is sustained by the belief surrounding that mysterious power that children possess that make them invulnerable to attacks of enemies when they carry the treated water. This kind of belief and other economic and social disadvantages make DDR programmes rest on slippery ground and remain fragile processes, notably where children voluntarily join the Mai-Mai fighters.

CSCS (2010: 9) reports: “Most of the children interviewed by the Coalition described their recruitment by the Mai-Mai as ‘voluntary’ explaining that they had been keen to defend their land and avenge killings by warring parties”. In addition, they are used as traditional healers in communities and have the power to administer “potions believed to confer invulnerability in battle” (CSCS 2010: 9). The Mai-Mai are notorious recruiters of child soldiers (Jourdan 2011;

Hoffmann and Vlassenroot 2014), as well as being among the armed parties responsible for grave human rights violations, including extrajudicial executions, rape and torture and the use of child soldiers (CSCS 2010: 2).

In spite of the IHR and IHRL that serve as legal instruments for the protection of children in armed conflict; and the national legal protection for children, with regard to their participation in armed conflict (CSCS 2010: 12), children continue to be recruited and used as soldiers, predominantly among the Mai-Mai, and other belligerent groups in the eastern territories of the DRC.

The Mai-Mai's modus operandi is reported by Mushi (2012) in the following assertion:

The Mai Mai developed network relations which involved their communities, the state in Kinshasa (through satellite telephone) and with known politicians from their region in Kinshasa and elsewhere. Depending on the period, most of them also developed network solidarities with some groups of Interahamwe militia who were stationed in their area, as they perceived them as having a common agenda of resisting Rwandan occupation (Mushi 2012: 74).

The complexity of the Mai-Mai child soldiers resides in the fact that the DRC failed to disarm them, and could not compensate those who fought in the armed forces. To some extent, their leader, Gedeon Kyungu Mutanga in Katanga, was convicted for crimes against humanity, but “the charges were later dropped after the judge ruled that war crimes charges were not admissible in the absence of a declaration of war” (CSCS 2010: 13). Efforts to address the Mai-Mai child soldiers would require critical analysis of children as bearers of supernatural powers and demystifying the concept of childhood-linked, supernatural powers.

3.4 Causes of child soldiers: Push and pull factors

These causes are situated at different levels, namely socio-economic constraints, children's personal predispositions, the era of new warfare, and the militarised and violent environment where children are found. Personal factors encompass child temperament, disposition, makeup, beliefs, values and identity, and an aggressive nature that can incite them to join armed groups and forces if they identify themselves with warriors, ideological and political pursuits, and when they have a positive view about war (Wessells 2006: 45).

It is further argued that situational factors are determined by pressures from families, inaccessibility to education and training, poverty, lack of paying work and “political socialisation”. These elements point to the fact that child soldiers are not just abducted or captured victims used in armed conflict, but they are also agents in their own capacity. That entails that some children enter military service from a personal stand, dictated by the state of affairs and circumstances in their immediate living environment (Wessells 2006: 45).

In the same perspective, Jourdan (2011) identifies the lack of economic opportunities and livelihoods as one of the causes of the Mai-Mai young soldiers. Causes of youths engaging in soldiering involving political socialisation and ideological propaganda, along with marginalisation, explain the strenuous association of children with the Mai-Mai fighters (Vlassenroot 2001; Beneduce *et al.* 2006; Jourdan 2011). Besides that, there are also factors related to the challenges met by the reforms of the security services and the FARDC and the DDR (Beneduce *et al.* 2006; Boshoff 2010; Baaz and Verweijen 2013), as well as the difficulties pertaining to the demilitarisation of militias (Thakur 2008).

In addition to the conscription of these minors by fighting factions, are many others who enlist voluntarily, for various reasons. These include revenging the loss of their parents or relatives, defending their communities, even running for safety, with the hope that, by becoming soldiers, they will be protected (Brett and Specht 2004: 69). The main causes are examined as push and pull factors, and sometimes, because of the intricacy of the dynamic nature of the child soldiering practice, these elements overlap.

3.4.1 Push factors

Push factors are negative circumstances and conditions that children try to evade, by joining armed forces and groups (Wessells 2006: 46). The environment where children are found can exert tremendous pressure on them and thrust them into joining fighting forces. These environmental influences include social-cultural factors, economic deprivation, political, religious and ideological motivations, a militarised and violent environment, and the inadequacy or non-existence of community justice structures (Brett and Specht 2004; Honwana 2006; Wessells 2006).

i. Socio-ecological, political and cultural constraints

Push factors are often perceived as the main drivers of voluntary enrolment. Besides ennui, loss of family structure and support, as well as the militarised environment where children live, are seen as critical determinants in their final decision to join up. The collapse of cultural structures, such as customary values and systems that protect children in times of war, has left children exposed to paradoxical recruitment by the very adults who are supposed to protect them. Some of these structures are schools, parents, siblings, relatives, families, or even loss of trust in society as a whole, due to abuse, violence, exploitation, and injustices wherein children are already victims (Brett and Specht 2004).

It appears that socio-cultural disadvantages generally represent the push factors that contribute to the vulnerability of children and adolescents, who join armed groups in the DRC's North Kivu Province. Brett and Specht (2004) perceive that the cultural environment and the role of media influence youngsters' decision to join armed conflict. It is also believed that culture and tradition shape what the community is going through and help interpret the reality and occurrences. In some cases, children are driven to join the armed struggle because of encouragement from society, particularly from teachers in their schools and members of their communities who, sometimes, despise political systems or other ethnic groups.

With regard to ideological motivations, a case in point in the context of the DRC, is reported by Jourdan (2011: 97), regarding propaganda led by a Mai-Mai commander to incite people to fight against an existing Tutsi plan by Rwanda, to conquer Congo and decimate its populations. There is a ground to believe that ideology constitutes a powerful tool of manipulation that is used for recruitment by militias.

It is ideology that sustains the existence of active and dormant armed groups, such as the Mai-Mai and those identified by Singer (2005) and Czyz (2008) as organised armed groups, without being directly and immediately involved in fighting. For instance, the Mai-Mai, though in a dormant state, keep their military machinery ready and obstinately refuse to embark on disarmament programmes in time of apparent peace. They are on alert and ready to become active and engage in hostilities the moment a threat is detected. This is the prevailing situation around Masisi and Rutshuru districts in North Kivu. Most of their children and youths are trained to fight and use traditional medicine that is performed to confer invulnerability in war (CSCS 2010).

The use of children as soldiers is an important aspect of the Mai-Mai fighting life because of the role that children play in preparing and carrying the medicine known as “dawa”, which is used to protect their fighters (Jourdan 2011). Furthermore, as far as ideology is concerned, it is important to note that Laurent Kabila used ideologically fuelled speeches to recruit young soldiers when he started his military campaign to overthrow President Mobutu, in the revolution led by Kabila’s AFDL. A strong ideology is found behind the first Congo war (Vlassenroot 2001: 130); the beginning of the phenomenon *kadogo*, as reported by a former child soldier of the AFDL (Jive 2006).

ii. Economic constraints

It is often alleged that poverty and social and economic inequalities are the compound cause of up-risings and revolutions that push juveniles to soldiering. However, the real motivation for enrolling young soldiers, especially among the Mai-Mai, includes the pursuit of wealth and enrichment (Beneduce *et al.* 2006; Jourdan 2011: 97). Many children refer to poverty as what drives them to soldiering or military service. This factor plays a much more important role than others (Wessells 2006: 55). The practice of Child soldiering is viewed as cheap labour. Wessells (2006: 33) sustains this point, explaining that, ‘convenience, low cost, and impunity are significant factors in commanders’ decisions to recruit children’. The idea of soldiering holds in children’s minds when they are going hungry and their families are starving. They also consider becoming soldiers as way to gain access to the basics they need; unfortunately, they succumb to promises of wealth and employment (Brett and Specht 2004: 41-42).

iii. Loss of protective structures

Wessells (2006: 46) refers to other issues, such as boredom, abuse in their families, abject poverty, insecurity, intimacy and shameful treatment by their families. However, these alone do not precipitate involvement of children when there is no armed conflict. According to Brett and Specht (2004: 88), both girls and boys who turn to soldiering, mention violence in their families and abuse, such as face physical assault, sexual violence (“not incestual”), domestic servitude that results from their own behaviour and from alcohol abuse by parents.

When children experience oppression and exploitation, they seek refuge in armed factions. Nonetheless, the loss of family support plays tremendously against children’s stability in war-zones. Wessells (2006: 47) affirms that there is a close connection between family separation and soldiering because a great number of child soldiers have been separated from their

families. Under these circumstances, armed groups and forces are perceived as a better environment, where those minors can run to for safety, protection and care, than was the case with UNITA in Angola (Wessells 2006: 48). Unfortunately, armed factions turn out to be an abusive and oppressive milieu for children. Loss of families, schools, traditional/tribal authorities that protect children is as tragic as the future of these young people orphaned.

iv. The Presence of war

Apart from the fact that social and economic marginalisation creates frustrations, it also justifies the taking up of arms in revolts or rebellious movements (Vlassenroot 2001; Jourdan 2011). This has been the case with several armed groups in the DRC, especially the Mai-Mai in the North Kivu province. Undoubtedly, the Mai-Mai child soldiers are notorious for their brutalities and are widespread and entrenched in both North Kivu and South Kivu (Jourdan 2011).

War is, nevertheless, the most significant factor contributing to the phenomenon of child soldiering. Though that is not the only factor, because any situation of war does not necessarily imply the involvement of children, war has a ‘multiplier effect’, for it generates so many factors, such as the death of parents and relatives, dispersal of families, impoverishment, incapacity of children and adolescents to carry on with education, when forced to head households in the absence of parents and taking care of younger siblings and supporting their families (Brett and Specht 2004: 80).

Joining armed forces or military groups becomes an opportunity that attracts youngsters, as they take this chance to access and obtain what they cannot easily acquire under normal circumstances, and also what they are deprived of in civilian life (Wessells 2006: 31,50). Other than push factors there are also pull factors, which are examined in the following section.

3.4.2 Pull factors

These factors consist of the sum of benefits, advantages and gratifications that children expect to gain, through soldiering (Wessells 2006: 46). The promise of high wages, positions and other monetary rewards are often used by adults to lure children and drag them into hostilities. Joining armed groups is viewed by children as an opportunity to obtain what society and the community cannot offer them in normal, ordinary life, which greatly influences children’s predispositions and inclinations for soldiering life (Wessells 2006: 56).

The status of society in a time of war is such that soldiers and military personnel are capable of protecting their families, helping them by providing money and food. Apart from these factors, there is great consideration for collateral elements that include new warfare strategies, the impact of globalisation, adolescent features and familiarity with the concept of war, as well as conflict and the presence of armed groups.

i. New warfare strategies

Children's participation in hostilities is also sustained by the changing nature of warfare. Machel's Report (2009) observes that, while large scale international conflicts have decreased, new warfare is fought within countries, within communities, opposing rival ethnic groups, religions, and so on. (United Nations 2009a). That has been the case along the Libyan-Mali border and a frequent occurrence along borders of The Great Lakes' Region Countries (the DRC, Burundi, Rwanda and Uganda). In this context, the demands for fighters do not spare children. And this situation is exacerbated by "the use of paramilitary and proxy forces with weak systems of accountability for compliance with international law" (United Nations 2009a: 10). Additionally, war is fought from different interest-fronts, namely political, religious, socio-ethnic and economic.

This new development does not suggest that the child soldiering practice is a novelty, but rather that it is taking on new dimensions (Honwana 2006: 4). In spite of many efforts already made in the areas of child protection and prevention of the child soldiering practice, many children continue to be recruited and enlisted to be used as soldiers. What are those factors that sustain the phenomenon of child soldiers? These causes are presented in terms of supply and demand or pull and push factors.

The Machel Study Strategic Review gives a new understanding of the intricate child soldiering phenomenon (United Nations 2009a). The Review reports lamentable facts about the changing modes of contemporary warfare that touch immediately on the lives of many civilians and children because war is brought to them, in their communities, in their homes (United Nations 2009a). A study by Vindevogel *et al.* (2011) on war-affected children in Uganda, reveals that many child soldiers had been exposed to warfare and as result, in North Uganda, children of the LRA admitted to having perpetrated atrocities against civilian populations. Children in an armed conflict context experience war, they fight it, the whole community is affected, and children are not spared. The same report also alludes to the "widespread proliferation and

availability of small arms, light weapons and ammunition” as factors that make it easier for children to engage in military operations.

Light ammunitions, such as the AK 47, are one of the products of these new wars. The increasing mobilisation of child soldiers in the contemporary world is related to this “new face of war” (Honwana 2006: 31; Wessells 2006: 18; Marks and Mash 2007: 535; Drumbl 2012: 41). These scholars warn that modern wars are more sophisticated and extremely bloody because of lethal machine guns, made available to young people and putting them at high risk. This weaponry is deadly to any child who intends to venture into becoming a soldier. As observed by Marks and Mash (2007: 535), the availability of light weapons in developing countries, has intensified the horror of war, which is not without devastating consequences for children. Many societies are militarised and the most common light ammunition used by young soldiers is the AK-47 assault rifle, which is being poured into conflict zones. This type of weapon is easily managed by children and inveigles them into mass killing. Choosing to be a soldier becomes an attraction for the underage. This view is maintained by Wessells (2006: 31) who asserts: “[T]he easy availability of small, low-cost weapons enables the arming of factions, creating context ripe for armed conflict. Children can easily learn to operate these weapons, and many take pride in their skill”.

Furthermore, Honwana (2006: 31) notes that old military equipment restricted minors’ role because of being heavy and complex for children to operate. In addition, the author avers that, nowadays, war has become a ‘child’s game’ with the invention of machine guns, such as the M16, in addition to AK-47 assault rifles, that boys and girls can rapidly move with to the front lines. Other light weapons include “hand grenades, landmines, and other forms of explosives, while dangerous to handle, are easily carried, and thrown and planted by children” (Honwana 2006: 31). They are really deadly cheap killers.

The varying nature of engagement, war strategies, such as spying and infiltrating children into the enemy’s camp to steal information, further contribute to the use of minors in hostilities (Honwana 2006: 31). There is a report suggesting that AK-47s have been used to kill more people than with the combination of artillery fire, airstrikes and rocket attacks. The death toll caused by this war-machine is estimated at a quarter of a million people, gunned down by

Kalashnikovs every year.⁴² These weapons are easily accessible, affordable and portable by children, and most of the time, procurable through illegal trafficking, as explained: “They [weapon and ammunition] are a modern-day scourge. They not only account for the vast majority of direct conflict deaths, they enable wars to continue, sustain a culture of violence and facilitate further conflict” (United Nations 2009a). The same report adds: “They [weapon and ammunition] are a modern-day scourge”.

There is also the rise of inter-state, armed conflicts that continue to destabilise several regions, resulting in cross-borders incursions and peripheral skirmishes, which often degenerate into bloody wars that leave behind catastrophic humanitarian consequences. In this context, the demand for fighters does not spare children. Moreover, the need to protect non-military populations has become ever increasing in the face of this modern warfare.

In the same perspective, Drumbl (2012: 41) asserts that new warfare techniques and approaches entail fragmentation of parties involved in hostilities, the spread of violence by “non-state actors”, including the rise of “militias and other paramilitary syndicates”, and reciprocal and regular violations of IHL, as well as increasing extension and availability of light and/or small ammunitions in the hands of the larger population. Regarding this state of affairs, Drumbl (2012: 41) remarks, “The lines between combatants and civilians become porous. Militia forces are volatile and irregularly staffed”.

In this scenario, new trends in assessing the effects of contemporary warfare present children and women as victims and child soldiers fall in the same category of vulnerable sufferers, with belligerent children entangled in hostilities are viewed as people to be rescued by International Human Law and international Criminal Law, to limit the scale of such human tragedies (Drumbl 2012: 41). Acknowledging the brutal tactical changes of contemporary warfare, Honwana (2006: 31) notes that actors are involved in employing methods “of terror, ethnic cleansing and genocide as deliberate strategies” (Honwana 2006: 32). Furthermore, in these new wars, direct battles are scarce and violence is turned to civilian populations, while it appears that these new wars are characterised by human rights and IHL violations that become “the central methodology”, which has amplified fatalities to above 98 percent among civilians, refugees and displaced people (Honwana 2006: 32).

⁴² See “RIP Kalashnikov: 20 facts you may not have known about AK-47 and its creator”, available: <http://rt.com/news/kalashnikov-rifle-ak47-facts-691/> (Accessed 6 July 2015).

Children have become a part of contemporary wars that are so savage and extremely brutal because of the participation of irregular fighters, those who are untrained, fanatics, along with organised criminal groups, ruthlessly perpetrating sexual violence as a weapon of war (Honwana 2006: 33,34). The new warfare strategies discussed here are to some extent linked to globalisation, which has an impact on the child soldiering phenomenon.

ii. The impact of globalization

The concept of globalisation in Africa coincides with the postcolonial era. This notion is commonly understood as the world becoming a “global village”. Wanba dia Wamba (2004: 137,138) explains globalisation as a set of three processes: the first consists of “the historical process of effective transition to capitalism in each country”; the second is “the historical formation and transformations of anti-colonial (in the broad sense including anti-Atlantic slavery struggles for life) ‘mass’ movements, into more and more organized struggles for the recovering of land, bodies, psyches (selves) and cultures”; and the last consists of the “external domination” in Africa (or forced or willing incorporation of Africa in outside originating processes), often thought of as globalisation (Wanba dia Wamba 2004: 139).

The “global village” concept has several implications, including obstacles for nations to be totally independent, self-determining and self-reliant; the challenge of domineering imperialism and “regional expansionism”; hegemonic control by super-powers to determine the direction of affairs; and the conditions and nature of independence inside western and non-western countries. The phenomenon of “transnationalism” and transnational economic and humanitarian crimes, such as money laundering, drug smuggling and trading, arms trafficking; and new developments of labour/sex enslavement, as well as terrorism by private or super-power states, are the effects of globalisation (Wanba dia Wamba 2004: 138). The points raised by Wanba dia Wamba describes, unequivocally, the context of post-colonial Africa.

The impacts of globalisation can be explained as expanding to transnational conflicts, which have also contributed to the development of child soldiers in Africa. Ethnic conflict caused by power struggle and sharing, the reclaiming of identity, control and access to resources, and “incapacity of state to respond to the situation and to provide for and protect its citizens”, are issues related to colonial patrimony, including “routines, practices, mentalities” (Young 2004: 23). These are the ingredients for African war, as Wanba dia Wamba contends: “High and low

intensity warfare, through regional relationships of forces of super-powers' proxies, continues" (Wanba dia Wamba 2004: 138).

Other effects of globalisation include the changing tactics of warfare or the contemporary nature of war (Honwana 2006: 31; Wessells 2006: 18; United Nations 2009a: 8; Coomaraswamy 2010; Drumbl 2012: 41). The changing mode of contemporary warfare is very much connected to globalisation. Unfortunately, war crosses borders, reaches the inept, including children and civilians, and transforms them into fighting machines; immediately destroying the social fabric and decimating populations. War, in its sophisticated modern standard, is one negative side of globalisation.

The emergence of child soldiers is "rooted in the crisis of the postcolonial state in Africa", characterised by widening inequalities, insecure livelihoods, weakened and strained social fabric, a downturn in household and community capacities to provide food, to raise and protect children, and debilitated social norms and values (Honwana 2006: 46). These are the factors that lead children to soldiering.

Linking postcolonial adversities to globalisation subsequently helps to understand how globalisation exposes children to the concept of war that they experience and engage in. On top of that, exposure to war scenes, cross-border belligerents, foreign fighters, brings children closer to the realities of war. This familiarity with it engenders the feeling to dare, test and become involved; and sparks a sensational and immature inclination to soldiering adventurism. They commit themselves into a fatal reality. Along these lines, the determination of children and adolescents to venture in soldiering is sustained by adolescent features and socialisation with war.

iii. Adolescent features and familiarity with war

Adolescent features are identified as part of the motivation for children's engagement in militarised conflict (Brett and Specht 2004; Wessells 2006). Children, who voluntarily enrol in armed groups or forces, possibly do so in an attempt to fulfil their dreams of holding a gun, fighting for their nation or rescuing their communities and family. Knowledge of war is brought to children by a society where war is experienced. As time goes by, pictures of war and heroism of other child combatants begin to attract them; the imposing look of police officers, soldiers, flying fighter-jets, and the display of armoured tanks, sinks into children's

minds and imagination. The media present war heroes, while violent movies extol gangsters as valiant, after fierce combats.

These images and this type of exploits exhibited to children, including ammunition toys, such as guns and even armoured vehicles, help them develop a fondness for military engagement. These facts are supported by several studies, where children and adolescents show familiarity with the concept of war (Hakvoort and Oppenheimer 1993; Vriens *et al.* 1999; Sarrica and Wachelke 2010).

Adolescents are really a category of persons striving to find their own identity and at times, they just want to be different and even go against what society sees as values, to the extent of believing they can revolutionise the world, and they consider themselves as one of those who could change things. They are fearless when convinced by their perceptions of change, which is already a motivation for joining insurrectional and revolutionary movements. They emulate other children associated with soldiering.

Nonetheless, becoming soldiers will not materialise unless there is conflict and the presence of recruiters. For this reason, conflict and the presence of armed groups are key factors of child soldiering. On an international level, the influx of migrants and displaced persons, carrying their own problems, affect the stability of host countries. This situation denotes the effects of globalisation already discussed in the chapter.

iv. Preventing conflict and enhancing protective structures

According to Wessells (2006: 21), “conflict often erupts along ethnic or religious fault lines in divided societies that extend privileges and status to some groups while denying them to others”. The desire to fight, therefore, comes from the feeling of humiliation, exclusion, oppression, exploitation and segregation that triggers conflict. These sentiments could even be utilised to justify a push for socio-political transformation, economic reforms and independence or liberation, which unfortunately endangers the life of children. Some of them, influenced by parents, families and teachers, are encouraged to pursue the struggle and eventually join the fighting forces (Wessells 2006: 21).

It is important to note “this poisonous mixture of fear and hate heighten perceptions of evil and wrongdoing by the other and strengthens children’s sense of victimhood, motivating attacks

and encouraging on-going cycles of violence” (Wessells 2006: 22). When children live in a condition of such uncertainties, deprivations and humiliations, violence becomes a means of reclaiming their rights and fighting for a decent life, which many youths believe is not achievable by adults with archaic ideas and understanding of progress and development.

This situation is exacerbated by war that evidently crushes the hope of children, and renewed hostilities affect their wellbeing, whether physical, cognitive, emotional, social or spiritual (Wessells 2006: 23). The absence of conflict, militias and armed groups renders the practice of child soldiers impossible. Efforts to ensure protection and prevention of the child soldiering phenomenon cannot be achieved while conflict persists.

A holistic approach to prevent the use of child soldiers should encompass building peace and minimising scales of conflict, especially those that cannot be immediately suppressed. To achieve that, the community has an important role to play in shaping the future of children, by providing a clean and safe environment when relationships are woven between children and parents, peers and adults whom they meet. This includes religious groups, schoolmates, and local government officials, and in such a way that children are not influenced by adults’ ambiguous agenda or lured by irresponsible greedy militants, whose only intent is self-enrichment.

These elements assist in establishing and determining the kind of future that children experience which, at times, turns sour when youngsters are dragged into ideological, ethnic and politically militarised confrontations. At a different levels of society, various circumstances such as ecological (natural environment), socio-economic circumstances, ethno-political context, ideologico-religious conditions and the cultural setting enter into play and leverage a child’s personal disposition, configure childrens’ desires and minds. These elements partly determine the various means and modes of their enrolment and recruitment by armed forces. This view is found across the child soldiering literature whereby pull and push factors are discussed (Brett and Specht 2004; Honwana 2006; Wessells 2006; Pauletto and Patel 2010). Furthermore, the presence of armed groups I referred to earlier and illegal trafficking of light weaponry and foreign involvement in the shadow of local alliances of armed factions, ostensibly expose children to violence of which the child soldiering phenomenon is a result.

In order to protect children, society has the primary role to prevent conflict and adopt traditional values that sheltered children and women in time of hostilities. Such ethos has been eroded alongside family and community moral obligations to care for children. The child soldiering phenomenon describes such ethical subversion whereby minors venture to protect adults whose responsibility is to protect these vulnerable members of the community. Conflict prevention and resolution were conducted through traditional means such Baraza that has fallen in to discuss because of ongoing armed conflicts. This needs a particular consideration as it is discussed later in this study.

3.5 The concept of childhood and child soldiering

According to IHL and the Law on Child Protection, “a child is a person below the age of eighteen, unless the law applicable to children provides otherwise.”⁴³ The concept of childhood is disputed and has evolved in recent years from the traditional, to a contemporary way of looking at a child. It is important to delineate what it entails being a child in the African traditional society, in the Western worldview and according to international legislation.

3.5.1 African vs. Western on the concept of childhood

Honwana (2006) views childhood as a social and cultural construct. The author explains that early responsibility is attributed to persons below the age of 14 years in the Mozambican and Angolan traditional societies. Here children and adolescents play different roles that are deemed important in the community, such as gardening, helping parents in the field, fishing and hunting activities. The transition from childhood to adulthood is, in addition, done through initiation rituals, by which a child becomes an adult and then qualifies to assume the responsibility of protecting others, and playing adult roles in society (Wessells 2006: 35). In this context, both children and families may regard child soldiering as a natural obligation of children to care for and protect their families and communities, especially in times of war.

Role-play in these communities does not emphasise chronological age, rather the biological age; and children are restricted from engaging as warriors (Honwana 2006: 41, 42). Adults who are fully initiated could engage as community warriors. For instance, Bennet (2002 cited Honwana 2006) argues that, in Zulu Society, children are not allowed to become warriors until

⁴³ See article 1 of the *Convention on the Rights of the Child* (CRC) (UNICEF). Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49 Entry into force: 2 September 1990).

they have reached the age of 18 or 20 and duly completed the rites of initiation (Honwana 2006: 46).

Additionally, there are restrictions that prevail in time of war, in traditional African societies, such as the protection of children and crops. Transgressors who attacked women, children, crops, elderly people and livestock, and granaries became impure and needed to go through cleansing rituals before being accepted back in the community (Honwana 2006: 41, 42). This shows how the phenomenon of child soldiering is contrary to social observances in time of war. However, it differs from the Mai-Mai societies, where children play more active roles, even in the battlefield as medicine-boys to support belligerents (Jourdan 2011: 90).

The western concept of childhood is also contested and a richer understanding has developed from cultural and social relations that mould various children's roles and the diverse definitions of childhood (Wessells 2006: ix). In Europe, children have been used as soldiers, for example, the historical Nazi juvenile soldiers (Singer 2005: 209; Vautravers 2008), who were conscripted and extolled as heroes in Germany in 1945 (Jayakumar 2011). In addition, Drumbl (2012) refers to the exploits of Carl Von Clausewitz "a renowned philosopher of war," Alexander the Great, Jeanne d'Arc (who boosted the morale of the French in the Hundred Years War), and many other "hagiographic" teen figures, as prominent illustrations of child fighters in history (Drumbl 2012: 28). There seems to be no significant outcry over the use of minor soldiers, prior to the establishment of the ICC.

3.5.2 Childhood in International law

According to Article 2 of ILO 182, the term 'child' is applied to all persons under the age of 18. The CRC defines a child in the following terms: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."⁴⁴ Coomaraswamy (2010: 545) asserts: "[...], in line with its [CRC] definition of a child to mean 'every human being below the age of eighteen years', it is widely accepted that eighteen is the threshold for society after which adolescents can be legally accountable for their acts".

⁴⁴ Article 1 of the *Convention on the Rights of the Child (CRC)*. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49. 1989.

Wessells (2006: 9) sustains: “[A]ll figures regarding child soldiers must be regarded as soft or provisional. Although soft estimates are often the best one can obtain under difficult circumstances. They are useful”. According to Beijing Rules, “a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”.⁴⁵ Additionally, it stipulates:

It should be noted that age limits will depend on, and are explicitly made dependent on, each respective legal system, thus fully respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules.⁴⁶

This rule has to be read together with rules 3 and 4 that state that minors, found guilty within this range of age, should be considered for “equitable and humane justice for children in conflict with the law”; and “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.⁴⁷ The rule balances the notion of childhood with agency and criminal responsibility, as defined by the domestic and international legislation.

The gap between the western concept of adulthood and the concept of childhood in the African worldview is overcome by a pragmatic look at situations and the agency of those considered as underage combatants. When they liberate their countries, as in the case of the DRC, they become heroes, when they commit severe atrocities they are criminals and when they are abducted and ill-treated, they become victims.

These vacillating conceptualisations of childhood are overcome by Article 3 (1) of OPAC that suggests state members should be addressed and guarantee that persons under 18 benefit from protection. That would mean excluding them from recruitment: “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”; and that it further stipulates: “States Parties

⁴⁵ Rule 2(a) of the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“*The Beijing Rules*”), adopted by General Assembly resolution 40/33 of 29 November 1985 (online). Available: <http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf> (Accessed 19 October 2014).

⁴⁶ The Beijing Rules, 2.2.

⁴⁷ The Beijing Rules, 4 (1).

shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces”.⁴⁸ Taking 18 as the standard age for voluntary enrolment and compulsory recruitment would help surmount the debate. Such harmonisation of the soldiering age will help tackle the issue of accountability, discussed in the following section.

3.6 Variations in child soldiering recruitment

Recruitment of children as soldiers takes multiple forms. However, voluntary and forced recruitment are the main features of recruitment and enrolment. The former implies the act of voluntarily joining armed groups and forces and the latter refers to coerced entry in armed groups and forces (Marks and Mash 2007: 542). The concept of voluntary enlistment is often contested. In most cases, push and pull factors inform children’s motivations to enrol with fighting factions. It is important to understand the variations of child recruitment because they reflect different images used to depict them, and these pictures are often ambiguous.

3.6.1 Coerced recruitment

Coerced recruitment is the most common mode of enrolling children and adolescents by armed forces and groups. Compulsory conscription is used as a prerogative of the State to lawfully enlist persons below the age of 18, within the prescriptions of national legislation and in conformity with international norms:

States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.⁴⁹

Drumbl (2012: 5) affirms: “[...] subject to a variety of conditions, persons under the age of eighteen may voluntarily enlist in armed forces and reserves in a number of countries [...]”. According to Wessells (2006: 41), the methods of forced recruitment include abduction in camps where there are refugees and internally displaced people, and “press ganging”, which was used in Uganda, Burundi and Rwanda. “Press ganging” is “a form of group abduction

⁴⁸ OPAC, Article 2.

⁴⁹ Article 3 of Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflicts. 2000. (online). UN General Assembly Resolution. Document A/RES/54/263. Adopted and opened for signature, ratification and accession on 25 May 2000 entered into force on 12 February 2002 Available: <http://www.refworld.org/pdfid/47fdfb180.pdf> (Accessed 23 August 2014).

wherein soldiers sweep through marketplaces or streets, rounding up youths like fish in nets, or raid institutions, such as orphanages or schools” (Wessells 2006: 41).

Forced recruitment is also achieved through individuals or collective abductions; sometimes, death threats and intimidation are used or cruel, severe punishment is proffered to those who refuse to enrol or attempt to desert the armed group (Schmidt 2007). In addition, there is the quota type, commonly used in Angola in areas controlled by UNITA, whereby armed groups used local authorities to ask local populations to offer a number of children, otherwise the whole village would be attacked (Wessells 2006: 41). In the North Kivu Province, abduction is the most common type of forced recruitment used by armed groups and militias.

3.6.2 Non-coerced recruitment

This type of recruitment refers to children and adolescents who join armed forces or groups, without being abducted or forced. Schmidt describes non-coercive modes of becoming a soldier, in the following terms: “Voluntary recruitment refers to cases where children take the initiative of joining armed groups themselves, without being under immediate physical threat” (Schmidt 2007: 56). Several children explain their decision to become soldiers as voluntary, meaning that they decide to go without being pushed by any external physical agent (Wessells 2006: 23).

While the view that children join soldiering willingly is ascertained, several scholars disagree with the argument on voluntary enlistment, its appropriateness and application to child soldiers’ decision. It is controversial because children may be unable to make a sound and correct judgement of the situation and finally, “structural and emotional factors” may force them to volunteer, even in the absence of an evident physical agent (Schmidt 2007: 56). In the same vein, Twum-Danso (2011: 5) questions the rationality of a child in making a sound decision to join militarised conflict. The source of these contestations lies in factors that influence children’s decision when they leave their homes to join fighting forces, especially war and its corollaries.

In spite of living in destitute poverty, children would not become soldiers if there is no war. War is the immediate trigger to children becoming soldiers. For instance, poverty and factors other than armed conflict do not cause children to join fighting. It rather contributes to this fact because, as argued by Brett and Specht (2004: 14): “young people who are not living in

impoverished circumstances are unlikely to join the armed forces or armed groups, although there will always be exception”.

Honwana (2006: 37) avers that indirect and forceful tactics can be used to convince young people to join the military. Intimidation, social pressure, physical protection, the opportunity for revenge, and access to food and shelter, as well as security and adventure, are some of these inducements (Honwana 2006: 37). On this point, Coomaraswamy (2010: 540) concurs that there is not always a clear distinction between compulsory conscription and voluntary enlistment, with factors, including that of poverty, a lack of physical protection, and the lack of opportunities, possibly inducing children to voluntarily join armed forces or groups.

The concept of “voluntarism” and child participation in hostilities has two aspects, according to Brett and Specht (2004: 105): (1) young people who voluntarily decide to join armed factions are more vulnerable to return to hostilities, should the circumstances that led them to join persist, even after demobilisation. Those who had been abducted do not show the same tendency, though the possibility for their re-recruitment is not precluded. (2) The international legal framework that is applied to military involvement of youngsters in armed conflict seems insufficient to deter the practice. This is supported by Brett and Specht (2004: 108,109), who argue that when young people find themselves in a situation, whereby joining military service remains the only alternative for survival, they may not have a choice but join up, which they would not have committed themselves to if the situation was otherwise.

Given circumstances and the environment may force a person into a decision that would not have been taken had the conditions been different. Most of the child soldiers in Africa are confronted with the difficult reality of war that finds them at home and draws them in. Becoming soldiers under such circumstances certainly does not suggest that children and adolescents are willing and base their decision on discarding other alternatives.

In order to grasp these controversies, it is helpful to consider some explanations provided by Schmidt (2007: 57). The author asserts that recruitment needs to be considered from a “spectrum” of situations. Recruitment of a person may not be suitable under one circumstance yet may be under another, which follows that a number of recruitments seemingly take place at either edge of the spectrum.

There would be a significant number of circumstances whereby recruitments will occur at any point between the two extremities, and in this case “context-specific categories” of recruitments do not explain the “dichotomy” that is commonly perceived and approved (Schmidt 2007: 57). This dichotomy concerns the understanding of children’s voluntary or forced recruitment. What may be believed as voluntary enrolment could be forced enrolment, depending on the situation, as it presents itself on the spectrum.

In reality, several factors also act as agents to influence voluntary enrolment. These include economic, mental, psychological and social factors that intervene in the decision perceived as free or circumstances whereby “structural and emotional factors” may influence the choice to volunteer, even in the absence of an evident physical agent (Schmidt 2007). Children who are destitute more easily join armed groups; they are compelled by their situation and the pressure of multiple constraints interferes with the apparent freedom to choose and to determine their future.

Structural and chronic violence are potential agents that likely exert tremendous pressure on children - more than an identified physical agent would. Desperation, anguish, feelings of insecurity and abandonment, as well as the lack of opportunities and livelihoods, mitigate the authenticity of children’s willingness to enrol with armed groups and forces.

It should be noted that voluntary choice, in the sense of free will to make an informed choice under normal circumstances, does not apply to children aged below 18 becoming soldiers. Secondly, their decision to join does not obliterate social and legal norms that proscribe such adventurism. From this point of view, society, through adults who accept children as soldiers, instead of correcting their wrong decisions, is to be blamed. Accepting children or pressing them into soldiering life is not justifiable, even should children express the desire to join up.

When domestic law permits recruitment of adolescents for soldiering, it should remain consistent with international legal standards. Children should not be substitutes for adults and communities that fail to resolve their problems. Communities that allow children to become soldiers, and warlords who recruit them, act in disregard and contravention of Article 2 of ILO 182 that proscribes recruitment of all persons under the age of 18 for forced labour.

This provision stipulates: “For the purposes of this Convention, the term “child” shall apply to all persons under the age of 18”⁵⁰. Under international legal dispositions, there is no justification for voluntary participation as children are protected by law. Our Society bears a great part of responsibility in the suffering of children and that of the victims of their inhumane actions by not providing children with protective structures and not enforcing IHL, IHRL and the national legislation of Child Protection”.⁵¹

3.6.3 Overcoming the controversy voluntary vs. forced recruitment

Conformity to international legal standards and consistency, with provisions pertaining to recruitment of adolescents and their participation, require a balanced approach to understand the concept of voluntary and coerced recruitment. Amnesty International (2008) observes that recruitment and participation of children in hostilities, whether voluntary or compulsory, emanating from governments or non-government armed groups, “ultimately jeopardize the mental and physical integrity of anyone below the age of 18” (Amnesty International 2008), which is why this organisation upholds the principles of non-participation of children below the age of 18 years in hostilities. It condemns this practice, whether these persons are used by government forces or non-state armed groups.

The fact that a child’s free will and informed decision are blurred, by the contingency of factors on which many decisions are finally taken, indicates that voluntary enlistment should be admitted, with a certain level of scepticism. This does not deny another, namely the conviction displayed by other children, who dream of a career in military service or soldiering. Nevertheless, because of the controversies surrounding age of voluntary and compulsory recruitment of persons below the age of 18, child protection’s advocates “argue for a straight standard, preventing both compulsory and voluntary recruitment under eighteen” (Coomaraswamy 2010: 540).

Children who are left unprotected, without education opportunities and occupational activities, are more likely to join armed groups. This is often the case in North Kivu Province, where this

⁵⁰ Article 2 of the *Convention concerning the Prohibition and Immediate Action for the Elimination of the worse forms of child labor*. Adopted by the Conference at its eighth-seventh session, Geneva, 17 June 1999. Convention 182 International Labour Organisation (ILO), 87th Session, Geneva, June 1999. Available: <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> (Accessed 1 September 2014).

⁵¹ See article 58 of the *Loi N° 09/001 du 10 janvier 2009 Portant Protection de L’Enfant* [Law N° 09/001 of 10 of January 2009 on Child Protection]; and Article 16 and 61 of the Constitution of the Democratic Republic of the Congo that acknowledge human dignity and the sacredness of life. These laws prohibit child exploitation and forced labour.

practice is deeply entrenched. All states must ensure that recruitment of children, below the strict age of 18, for soldiering or any military activities, is not allowed, whether compulsory or voluntary. There should also be a common ground and understanding of childhood, which is discussed in the following section.

3.7 Portrayal of child soldiers' resilience and agency

It is necessary to explore some of the constraints that hinder accountability and reconciliation of former child soldiers with the community; and what can be seen as opportunities. These include the paradoxical portrayals of child soldiers, their resilience and agency, and the concept of a victim.

3.7.1 Paradoxical portrayals of child soldiers

Children affected by conflict are no longer seen only as helpless victims, but agents who have experienced war realities. Child soldiers are viewed as victims, perpetrators and/or heroes. They are victims of the violence that forced them into armed groups and forces. Moreover, in armed forces and groups, belligerent children perpetrate heinous atrocities, including crimes of genocide and those against humanity; and the equation becomes more complicated when these young soldiers are extolled as heroes by their communities. They are portrayed as “faultless passive victims”, “damaged goods”, “the heroes”, and finally, “demons and bandits” (Drumbl 2012).

Drumbl (2012: 7) explains that the “faultless passive victim” image paints the child soldier as a very young child, who is defenceless, guideless, ignorant of what he/she is involved in, and manipulated by adults who transform this minor person into an “instrument of war”. The author further remarks that this caricature sensationalises the victimhood of child soldiers: “This image telescopes the child soldier as a helpless object manipulated locally by adult malevolence, yet at the same time to be rescued transnationally by adult humanitarianism. It portrays child soldiers as forced into service, forced to fight, and forced to kill” (Drumbl 2012: 6).

The term “faultless passive victim” implies that child soldiers are vulnerable and defenceless, innocent children who are programmed to perpetrate atrocities of which they have no full understanding and control (Drumbl 2012: 6-7); it influences interventions to rescue them. At the same time, this type of terminology negates child soldiers' agency and determination to

move on with life in successful ways, after exiting military operations. The “damaged goods” image often associates child soldiers with the trauma and protracted afflictions that affect them and it also highlights the damages sustained by war, such as “physical and emotional injuries” Drumbl (2012: 7). This picture fails to take the resilience that younger belligerents display into account.

Drumbl (2012: 7) remarks: “Constructions of the child soldier as psychologically devastated and pilfered by conflict, for example, have spurred the pre-eminence of trauma recovery models in post-conflict programming”. If child soldiers are portrayed as hopeless damaged persons, how much chance do they stand to be reinserted into society and participate in post-conflict reconstruction of their respective countries? This assertion does not stand, considering the frequency of re-recruitment of former child soldiers and their long stay in armed groups and forces, when they serve as commanders and in other capacities. Their resilience and agency contrast this portrayal.

The case of Ishmael Beah, a former child soldier from Sierra Leone, who has emerged as UNICEF ambassador for children affected by war, is the most prominent contradiction of the child soldiers’ image as “damaged goods”. After losing his parents and siblings in war, he was made a soldier by force at the age of 13. Beah went through all sorts of ordeals and eventually managed to escape, with the help of UNICEF, which provided him with the opportunity for rehabilitation. The effects of war never deterred his humanity and the cause for which he continues to advocate, namely, campaigning for the wellbeing of children affected by war (Beah 2007a).

Another case is that of Jive (2006), an ex-*kadogo* who fought in the FDLR, who managed to complete his Honours in Philosophy and now lectures at the Faculty of Social Sciences at the National Pedagogic University. Following traumatic experiences of war in his early youth, like Beah, Jive was rescued by a certain Lady named Carol, who worked for UNICEF and assisted him to reintegrate into society, through the National Office for the Demobilization and Reintegration of Child Soldiers (BUNADER). Jive finally returned to school until he graduated. These are a few stories, among many others, that reveal the resilience of countless ex-child soldiers.

The Child soldier “hero” portrayal presents child soldiers as brilliant fighters who engage in revolution, and are tirelessly driven to fight against decadent political regimes. That was also the image that was used to describe the *Kadogo*, who were instilled with ideological incentive by Laurent D Kabila in his AFDL. They marched in the streets of Kinshasa after toppling President Mobutu Sese Seko and were welcomed as heroes and liberators that had come to set the DRC free from Mobutu’s dictatorship. The *Kadogo* were extolled as liberators by musicians, who composed rhymes such as *mwana moke soki asimbi mondoki batunaka mbula na ye te* [when a child holds a gun his age does not matter]⁵², and *biso ba kadoko toyaki po na koliberer* [we the little came to liberate].⁵³

Several child soldiers who volunteer to fight in community self-defence armies, such as the Mai-Mai, continue to be perceived as heroes that fight to protect their communities. The repercussions of such a display of fanatic emotions and frenzies are such that the *kadogo* become untouchable and blameless, and get away with human rights violations.

Portraying child soldiers as heroes is misleading and deviates from societal ethical norms that children should be in the front lines of revolutions at their own peril, while adults sit back and praise them for what is, normally, the adults’ responsibility. Claiming and proclaiming child soldiers as heroes is a resignation of society to protect these youngsters. It is contradictory to praise a person as a hero and shortly after or later, prosecute them for what is known as their criminal responsibilities in the very acts they were applauded for.

The difficulty, underlined by the researcher, is that child soldiers are neither mythological figures nor mandated soldiers, who enter soldiering or military service as a career that should win them heroic praises, while they turn violent against their own people. Shall we praise minor soldiers who rape, terrorise, loot, and kill their own villagers? Their glamour of war brutalities and patriotic explosion need to be checked and society should ensure that each child soldier accused of war-related atrocities, is properly held accountable.

Nonetheless, the “demons and bandits” image is mostly presented by journalists who depict child soldiers as “irredeemable, baleful, and sinister” (Drumbl 2012: 8). This image is arguably fallacious because it defeats the prospect of recovery and renders void any efforts of

⁵² Folk music by Koffi Olomide’s band in the Congolese Rhumba in the (DRC).

⁵³ Folk music by Papa Wemba, one of the celebrities of the Congolese Rhumba (DRC).

rehabilitation, while rebuffering girl soldiers. Child soldiers do not constitute a group of useless persons. Teen soldiers are demonised and marginalised, in spite of various roles they have played in armed groups and forces, such as commanders of troops, wives of officers, cooks, water and firewood fetchers, cleaners, and so forth.

Both boy and girl soldiers might have committed heinous atrocities, and at the same time, they might have been physically abused or sexually assaulted. In this paradoxical scenario, portraying them as demons or bandits obscures the fact that they have also suffered abuse (Drumbl 2012: 8). The author further states that the faultless passive victim depiction “forms part of transnational rule of law discourse and technique [...] its core attributes persist and, in fact, are hardening into law and policy” (Drumbl 2012: 9). Even this deviation can be corrected if child soldiers are given a hearing in justice procedures to express their ordeals as victims and explain what is taken for granted, regarding their barbaric actions.

Laws, policies and conventions are often designed to find answers that would suit this “faultless victim” (Drumbl 2012: 9). The importance of defining, imagining and understanding child soldiers without prejudice, and avoiding emotional and sensational representations of child soldiers cannot be stressed enough. Finally, child soldiers should not be defined generically by these images. Each child soldier has a unique experience of war and this should not be generalised to all child soldiers. The same applies to the notion of resilience and agency of these minor fighters.

3.7.2 Resilience and agency

Recent studies, on child soldiers in the post-cold war era, suggest that the vulnerability of children used as soldiers needs to be balanced with their resiliency. Resilience in this context, is the ability of former belligerent children to pull through, while agency refers to their capacity to develop robust attitudes and mechanisms to survive within armed groups and forces, also in addition to the different roles they play by holding different positions within armed groups and forces (Wessells 2006: 42). Rutter (2000: 51-82 cited in Seymour 2011) defines resilience as “the dynamic process of adjustment that leads to a relatively good outcome despite the experience of risk conditions that would otherwise lead to psychopathology or other serious secondary effects” (Seymour 2011: 61-62).

In the same vein, it is noted by the researcher that resilience is associated with thoughts and means that provide the condition to off-load the burden of tragic and traumatic experiences. It contributes to unseating haunting and traumatic memories, by creating physical and mental supportive structures that develop from a state of mind embodied in socio-cultural reality. This disposition is supported by Wessells' (2006) work where he notes that contrary to the portrayal of children in war-zones as vulnerable and damaged beyond rehabilitation, some belligerent children in combat demonstrate significant resilience, "the ability to withstand adversities without suffering long-term damage" (Wessells 2006: 29). In the same perspective, Drumbl (2012) perceives child soldiers' vulnerability and their agency in a progressive and more balanced way.

Resilience and agency are concepts that contested when applied to the child soldiering experience, although some scholars try to balance them. For instance children's resilience is supported by Wessells (2006), Seymour (2011) and Drumbl (2012). Other scholars minimises child soldiers' resilience capacity (Bayer, Klasen and Adam 2007). Child soldiers' resilience should not be taken as a general rule for all children who come out of fighting. There are circumstances when children exit armed conflict really traumatised. This fact is supported by a study by Klasen *et al.* (2010) involving interviews with 330 Ugandan former child soldiers, aged between 11 and 17. The results reveal that, in spite of the severe trauma exposure, "a critical proportion of former child soldiers showed a posttraumatic resilient outcome". Klasen *et al.* (2010: 1098) introduce the concept of "posttraumatic resilience" to "describe trauma survivors with a positive posttraumatic mental health outcome". Children participating in this study were those who have experienced several traumatic experiences in war-situations, such as being beaten, witnessing killing, undergoing death-threats, being raped, being forced to commit atrocities, abduction and killing of other persons (Klasen *et al.* 2010).

Post-traumatic resilience was influenced by factors exogenous to armed conflict, such as "lower exposure to domestic violence, lower guilt cognitions, less motivation to seek revenge, better socioeconomic situation in the family, and more perceived spiritual support" (Klasen *et al.* 2010: 1098). On the other hand, among the juveniles that showed "significant psychopathology, many of them had symptoms extending beyond the criteria for posttraumatic stress disorder, in keeping with the emerging concept of developmental trauma disorder" (Klasen *et al.* 2010: 1098).

These two characteristics of child soldiers, resilience and agency, are sustained by individual temperament, emotional support from a caring adult or parent, development of age; and appropriate competencies, as well as support from peers, and participation in local traditional initiatives that provide meaning and a sense of community (Wessells 2006: 29). It follows that efforts to reintegrate former child soldiers and protect other children should children's agency take into consideration and acknowledge their potential to be resourceful in initiatives to assure their protection. This was experienced in Afghanistan with the "Child Fund Afghanistan", whose staff led a process to address the needs of boys and girls, following decades of war (Wessells 2006: 228).

Working with children was found to have caused excitement and delight. They were heard as the community sought a way of improving their living conditions, with regards to sanitation. These children's ages ranged between seven and 13 and they were primarily girls (Wessells 2006: 229). The children used their own imagination to translate their post-war experiences through drawings, which they presented to their village community; and villagers were captivated by the worth of the message conveyed by their pictorial representations. Their pictures covered unwanted marriage representations, bridges and rivers crossing, fallen objects in human refuse and other disasters, including environmental hazards, and damaged infrastructure, such as damaged bridges and open wells (Wessells 2006: 229).

These scenes served as didactic tools that raised awareness among people who started thinking of the best way to prevent children from encountering what they identified as dangerous for the community and for themselves, at their age. Boys and girls depicted their priorities in pictorial scenes; these issues had evaded adults' attention (Wessells 2006: 229). The fact that children showed skill and imagination to present, in pictorial ways, the effects of war and their assessment of the post-war related risks, compelled the Afghan community to associate them with community committees, set up to "monitor local risks and catalyse action to reduce them" (Wessells 2006: 229).

Recognising children's agency and acknowledging their role in the local capacity building process to address serious social issues, is a very empowering step, as the children can contribute to social and environmental transformation processes. The experience of Afghan child soldiers, facilitated by the Afghan "Child Well-being Committees", serves as undeniable evidence of success in including children in decision-making processes. Including children in

designing reintegration and reconciliation can make these programmes successful. They should not be discriminated against but be taken as real collaborators, partners, and agents of the change society desires, and even in preventing the practice of child soldiers.

According to Wessells (2006: 231), children associated in “Child Well-being Committees” became invigilators, who were dedicated and committed in surveillance missions, and they helped minimise the hopes of commanders to recruit other children because they were watched by children themselves. Child recruitment became even more difficult because community members were made aware of the plight of the extremely difficult conditions of children in war.

It is certain that, in spite of tragic experiences and all the suffering of the battlefield, some children emerge brave and determined to change things. These attitudes displayed by children do not, however, obliterate their pains and all sorts of traumas that they suffer. However, their determination to prevent the recurrence of the same atrocities to other members of the community transpires in their drawings and their commitment to militate against the adversities of war. This is the meaning of the campaign led by Beah (2007b). Many former child soldiers raise their voice against participation of other children in hostilities. Unfortunately, their voice cannot be heard unless they are given opportunities, such as Ishmael Beah was provided with (Beah 2007a). Former child soldiers need to be well treated and given space to debrief and embark into processes or programmes that lead them to assume responsibility and heal. Other than traditional healing processes that focus on mental, physical and psychological remedies for war-affected children, justice, accountability, reintegration and reconciliation also depend greatly on their agency and resilience.

3.7.3 The concept of victim

The concept of victim in international law implies “[...] any person or group of persons that individually or collectively, directly or indirectly, suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights, as a result of crimes within the jurisdiction of a court” (Amnesty International 2008). Huyse (2003: 54) distinguishes direct victims (persons who have suffered direct consequences of violence either by loss of life, or by physical and psychological maltreatment, or by detention, or discrimination) from indirect victims (persons who suffer as a result of direct violence perpetrated on those to whom they are connected).

The definition of victim, according to international and UN standards, suggests that victimhood is established by court procedures, in accordance with the following international standards: (1) The UN Declaration of Basic Principles for Victims of Crime and Abuse of Power (“the Victims’ Declaration”) and (2) The UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross transgressions of IHL and IHRL (Amnesty International 2008).

Child victims offer a complex scenario when child soldiers are also victims of human rights violations under international law:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.⁵⁴

UN Standards that should be put in place by governments, include structures and mechanisms whereby victims of all sorts of harm, as established in the abovementioned definition, are handled with compassion and dignity. This framework supposes that justice procedures are followed to make reparations, which may be in the form of restitution, compensation and rehabilitation, besides their access to justice (Amnesty International 2008).

The researcher concurs with Huyse (2003: 58) that a person qualifies as victim through a socio-political, legal and cultural process. This implies that certain determining factors are required to establish victimhood. These factors are based on social and political norms, customary elements, and also legal factors that allow associating a person with circumstances and victimisation that may occur. The same applies to child soldiers.

It is noted that UN Principles on victims’ rights ought to be indiscriminately implemented, in order that the truth can be known and remedial measures be put into action. This should conform to “The United Nations’ Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious

⁵⁴ CRC, Article 39.

Violations of International Humanitarian Law” (Amnesty International 2008). It is a crucial step towards averting re-victimisation and recurrence of violence.

According to Huyse (2003: 61), re-victimisation may occur in the following ways: “denial of the status of victim”; “unfulfilled expectations in dealing with official agencies”; “unwanted effects of victim-centred initiatives”; and “social stigmatization and exclusion”. The researcher shares the view that reconciliation can be enhanced by recognition of victims, dealing with them at times as “survivors”, rather than victims, allowing different stages of recovery to take place, and providing social security, such as health care and educational and housing opportunities (Huyse 2003: 65).

In the context of cross-border violence, transnational and regional armed conflict, such as in the DRC, acknowledgment of atrocities to victims is necessary. The rights of victims to know the truth, to be rendered justice and receive reparation, need to be upheld (Amnesty International 2008). There should thus be some ways of addressing justice, in order to make reintegration of child soldiers meaningful and successful for achievement.

3.8 Conclusion

This chapter explored the problematic participation of children in armed conflict. An amalgam of factors that lead children and adolescents to become soldiers, ranges from socio-cultural, economic, political, and religious factors, to children’s own culture of daring, the era of new age, and the militarised environment where they are found. The researcher argues that the redress of these challenges requires a global response that revolves around justice, security and accountability at local, national and international levels because of the geopolitics of war-stricken territories, where the child soldiering practice is entrenched.

The actual decision to join hostilities is a result of combined factors. Yet, children are perceived as victimised and they turn out to be perpetrators of crimes, while to some extent, they are portrayed as heroes. This raises an intricate question regarding the criminalisation of their acts. The difficulty is to integrate children perpetrators into the community, without addressing their crimes. Such a process of reintegration is challenged by the principles of justice and its redress requires looking critically at these minor soldiers as agents, especially in cases of those who voluntarily join armed forces and groups.

CHAPTER FOUR

REINTEGRATING AND HEALING CHILD SOLDIERS

4.1 Introduction

Intervention programmes aimed at addressing child soldiers' plight are multiple and diverse. Most deal with a post-conflict context, after belligerent children have exited fighting factions and are returned to their families and society at large. This is due to the fact that, when conflict is going on, the demand for military personnel shatters the chance of underage fighters leaving military operations. The following aspects of interventions are explored next: the general DDR perspectives, DDR in the DRC and challenges, the phenomenon of self-demobilisation, and the impact of healing in prevention.

4.2 General perspectives on DDR

The Office of the Special Representative of The UN Secretary-General on Children in Armed Conflict states that the use of children as soldiers constitutes a multiple contravention of International Human Law, International Human Rights Law, International jurisprudence and the Security Council Resolutions on children and armed conflict that calls for an immediate end to the practice and violations of child rights. Formal Child DDR processes are explained in The Paris Principles (2007)⁵⁵, as an immediate response to protect children, by getting them out of armed conflict (UNICEF 2007).

The legal foundation of the DDR processes is laid in OPAC:

States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.⁵⁶

IHL and IHRL urge State Parties and non-state actors to proceed with the demobilisation and rehabilitation of children fighting in their ranks and all those involved in military operations,

⁵⁵ The Paris Principles Article 32(9) refers the DDR as a "the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilisation may extend from the processing of individual combatants in temporary centres to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilisation encompasses the support package provided to the demobilised [adults], which is called reinsertion".

⁵⁶ OPAC, Article 6(3).

whether by supporting with logistics or participating actively and directly in armed conflict. It should be seen as compliance with Article 77(2) Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1), adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of IHL, applicable in Armed Conflicts entry into force (7 December 1979), in accordance with Article 95 that stipulates:

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 those 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.⁵⁷

Through the DDR processes, former combatants face many challenges. One such difficulty consists of being educated in non-violent mechanisms of conflict resolution, when being offered psychosocial support. This approach prioritises dialogue before fighting, with these former combatants needing to be educated to manage new rules and adopt civilian conduct, while adapting to civilian norms, civility, and being able to use skills acquired while in the battlefield; psychological assistance goes hand-in-hand with social support (Wessells 2006: 192,193). Education is an important aspect of combatting violence against and by children:

Education provides opportunities to learn and, when effective, gives children the skills and competence to meet their needs, protect themselves and build hope for the future. Access to education, including appropriate education for older children, life skills and relevant vocational training should be promoted for all boys and girls including returnees and stateless, refugee and internally displaced children.⁵⁸

According to Article 2(9) of The Paris Principles, successful reintegration is contingent on ameliorating the life conditions of demobilised former belligerent children in all domains and at all levels. In the same vein, Wessells (2006) avers that former child soldiers are entitled to physical, mental and psychological care; besides treating them for physical diseases and putting them through psychotherapy, as mentioned earlier, their memories still need to be healed. The DDR for adults normally takes place after conflict. The author further explains

⁵⁷ CRC, Article 77(2).

⁵⁸ The Paris Principles, Article 6, paragraph 26.

that, when children below 18 years of age are involved, their DDR is immediately demanded (Wessells 2006: 191).

The CRC proscribes abusive use and exploitation of children and application of all sorts of violence on a child:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian (s) or any other person who has the care of the child.⁵⁹

The first step consists in entering a secured area or cantonment where former belligerents surrender their weapons after being registered and receiving a card that documents the surrender of their ammunitions. In the second step, disarmed soldiers enter the demobilisation centre, where they are given cards to validate their exit from fighting factions, to protect them from re-recruitment and officially make them beneficiaries of a demobilisation kit. The final step consists of reintegration, where five kinds of support: family reinsertion assistance, educational opportunities, psychological support, training in vocational skills, mobilising the community to welcome child soldiers and build a spirit of unity disrupted by war (Wessells 2006: 159-160).

While family reinsertion, psychological support, and welcoming returnee child soldiers have received limited support for a few self-demobilised soldiers, the majority of them have not accessed these opportunities. Though the DRC Government has ruled that former child soldiers be accepted to schools without paying, many have not been able to attend schools. This for several reasons namely ongoing conflict and displacement of people, inexistence of schools in rural areas where some have been destroyed by war; and insufficiency of funds that made the PNDDR shut down, etc. These issues are extensively discussed later in this inquiry.

How can victims and society at large welcome former soldiers if there is no reconciliation, the structures that caused the outbreak of war persist, and there is no justice for past crimes? There are enormous challenges involved in the DDR programmes, both for adults and child soldiers.

⁵⁹ CRC, Article 19(1).

The “release process” often encounters setbacks when the conditions of reintegration are not met.

The Paris Principles state the following about the “release process”:

“Release” includes the process of formal and controlled disarmament and demobilisation of children from an armed force or armed group, as well as the informal ways in which children leave by escaping, being captured or by any other means. It implies a disassociation from the armed force or armed group and the beginning of the transition from military to civilian life. Release can take place during a situation of armed conflict; it is not dependent on the temporary or permanent cessation of hostilities. Release is not dependent on children having weapons to forfeit.⁶⁰

This process also describes the phenomenon of self-demobilisation that is common among child soldiers in North Kivu. It is important, as far as this study is concerned, to examine the evolution of DDR programmes in the DRC.

4.3 DDR in the DRC

The DDR in the DRC came about as a result of the Sun City Global and Inclusive Peace Accord signed in 2002. Since 2004, the DDR was financed by the World Bank and the MDRP Group, and later by the African Development Bank; and targeted the release of an estimate 350 000 combatants, among the group of signatories of the Sun City Peace Agreement that submitted to the principle of voluntary disarmament (Boshoff 2010: 2). It was run under the National Commission for Disarmament, Demobilisation and Reintegration (CONADER) between 2004 and 2009 with a projected demobilisation of an estimated 150,000 former combatants entangled in the DRC conflict, under a project called Emergency Demobilisation and Reintegration Programme (EDRP) (The World Bank 2007: 3).

The CONADER was established by presidential decree in December 2003, to implement the National Programme of Disarmament, Demobilisation and Reinsertion (PNDDR) drafted by March 2004 and adopted in May 2004 (The World Bank 2007: 12). MONUC was one of the important institutions that play a key role in the implementation of DDR. The DRC Government runs these two programmes in partnership with national and transnational non-governmentals, such as CARITAS, the World Food Programme, and so on. (DR Congo 2010). The World Bank report acknowledges that ongoing conflict hampered the successful

⁶⁰ The Paris Principles 2(6).

completion of the DDR, especially the renewed fighting in the Eastern DRC (The World Bank 2007).

When the MONUC mandate expired on 30 June 2010, the UN decided however, to take its mission to the second phase of DDR, with the new identification, namely, the United Nations Organization Stabilization Mission in the DRC (MONUSCO), on 1 July 2010, under Security Council Resolution 1925 (Boshoff 2010). The Government was more concerned about mobilisation into armed forces, and new recruitment, instead of demobilising ex-combatants (The World Bank 2007: 1).

The PNDDR aimed at integrating the main fighting forces into the Congolese army and demobilisation, disarmament and reintegration into civilian life of non-concerned military personnel, such as children. The forces that benefitted the DDR were the Congolese Armed Forces (100,000 troops); 45,000 troops from the Congolese Rally for Democracy (RCD-Goma); 10,000 troops from the RCD-National; 15,000 elements of the RCD-K/ML; 30,000 units of the MLC and 30-50,000 elements of the Mai-Mai.

The PNDDR funding was provided by the MDRP and the World Bank (The World Bank 2007: 2). On the other hand, the CONADER was tasked to plan and implement the DDR programmes. By February 2007, 11,5000 adult combatants and 54,000 children associated with fighting forces had been disarmed and demobilised by CONADER and most of these children were assisted with returning home by UNICEF (Boshoff 2010).

Although these programmes concerned children and adults, men and women who forcibly or voluntarily participated in hostilities, in the context of this study, more attention will be directed to children associated with fighting forces. According to the 2010 report by the DRC Department of Defence and Ex-Combatants, in partnership with CARITAS Congo through the PNDDR, 2,816 children were freed from armed forces and groups (DR Congo 2010). They were turned to agents that assure children protection under UNICEF.

A total of 6,704 children were sent to socio-economic reinsertion, out of the 8,000 children associated with armed forces and groups targeted, among whom 1 940 were girls and 4 704 were boys (DR Congo 2010). In both first and second phases of the PN-DDR, 90,000 ex-combatants were reintegrated into society (DR Congo 2010). The demobilised were taken to

projects, such as vocational training, agricultural empowerment, and training in carpentry, hairdressing, poultry keeping and bakery. They were provided with professional kits and they were also assisted with supervision.

However, presently, several communities affected by war in the North Kivu Province have not, at this stage, benefited. Reintegration becomes difficult when returnee child soldiers, who were used to an active life with armed groups, fighting, looting, and so forth, are kept in communities where they are to face the nightmare of hunger, and lack of schooling and jobs. The PNDDR programmes need to be compulsory in areas where children are exiting armed groups and forces. Finally, all demobilised, including child soldiers, need not to be hastened into the community without taking them through accountability processes.

4.4 Challenges of DDR: general perspectives

It is important to underline that, while DDR processes are viewed as an ideal perspective for ex-combatants, this assumption does not reflect the reality of all ex-combatants. Several studies have shown that DDR has some limitations in various contexts. For instance, in Sierra Leone, Schotsmans (2012) notes the phenomenon of “No return home”, as the dilemma facing reintegration of young soldiers who refuse to return home through traditional reinsertion practices. Reasons for that resistance include fear of retribution, stigmas, rejection, lack of opportunities and livelihoods.

As a result, some of them rather decide to relocate into communities other than those of their origins or in locations where they could embrace a new life, through engaging in informal profit generating activities, even illegal ones (Schotsmans 2012: 222-223). Sometime, fear is created by the traditional DDR processes that support the killing of community members who have transgressed societal norms, by “secret societies” (Schotsmans 2012: 225)

Secret societies are described as the “main repository of the traditional ways of life” in Sierra Leone, which ensures societies stick to social norms and resist changes to new habits and customs (Little 1949: 210). Besides being an institution that sanctions behaviour and initiates society to ways of life (Little 1949), secret societies have also posed serious threats to the reintegration of child ex-soldiers (Schotsmans 2012: 226).

Gumbu (2010) observes that secret societies in Sierra Leone are extremely brutal and use social taboos to butcher people and often account for their atrocities. These societies create insecurity in rural areas causing young people to migrate because of their brutalities. That happens when ex-combatants are lured to go for cleansing rituals at a river, where secret society members⁶¹ will either execute or burn them (Schotsmans 2012: 225). Ritual and cleansing mechanisms were a part of the National Commission for Disarmament, Demobilisation and reintegration (NCDDR) in Sierra Leone. In spite of its shortfalls, traditional mechanisms and structures increased reintegration along wider sensitisation campaigns (Schotsmans 2012: 222).

Another difficulty faced by DDR programmes is the lack of strategic intervention, to tackle the underlying causes of political socialisation and ideological campaigns namely, social-economic and political marginalisation, land conflict, and socio-economic disparities. Economic challenges are related to the lack of sufficient job opportunities for former child soldiers when they return to civilian life. These constraints have sustained young soldiering practice among the Mai-Mai populations (Jourdan 2011). They object to DDR processes because these programmes seem to not resolve their concerns about land, security, and socio-economic equalities.

These issues explain the proliferation of armed groups and militias, and interethnic hostilities in the eastern DRC (Thakur 2008; Stearns 2012, 2013; Stearns and Verweijen 2013; Stearns, Verweijen and Eriksson Baaz 2013; Stearns 2014). In addition, the DDR is challenged by a lack of strategies to demilitarise fighting factions and grounding peace processes on lasting solutions to the root causes of hostilities. Insurgencies and ongoing conflict in the eastern DRC are attributed to these factors (Baaz and Verweijen 2013).

Other impediments to DDR undertakings include family tracing and reunification for child soldiers and ongoing conflict. The process of tracing of belligerent children's families and ensuring that they do not re-join armed forces and groups is very complex. Once they have been recruited, reunifying them with their families and reintegrating them in their community poses many difficulties to humanitarian organisations (Vautravers 2008: 102). Ongoing conflict is a negative reality that eternalises recruitment of children and weakens the success of

⁶¹ The concept of "Secret society members" refers to elements of the community that constitute the custodians of traditional and ancestral customs that ought to be observed by all community members.

DDR programmes (Zena 2013: 5). These processes are successful when reintegration into society opens the door that helps the demobilised transit effectively into civilian life, help meet their basic needs, and enable them to support their families and themselves, without being victimised or marginalised (Wessells 2006: 155).

Demilitarisation is another difficult dimension of DDR, which has been challenged by several armed groups, with aspirations to keep a grip on socio-economic and political power (Thakur 2008). These armed groups name insecurity, unresolved land disputes, ethnicity, and power struggles as the motivation for keeping their military effectives and refusing to disarm, while their real interests are spoliations and self-enrichment (Thakur 2008).

Remaining armed becomes an instrument of propaganda for armed factions to advance self-interests (Jourdan 2011). Added to this, armed groups that refuse to demilitarise are also those “combatants with deep ties and vested interests in militancy” and “combatants between self-demobilised and the hardcore” (Zena 2013). These groups and individuals do not see the benefit of DDR and hold to their obscure ambitions, resolved to remain armed though not in active fighting.

Finally, the DDR processes are not a rule for all ex-combatants. Apart from the shortfalls previously discussed, some studies suggest that the assumptions, according to which all ex-combatants are inclined to embrace DDR, is mitigated by the difficulties of “Breaking up and going home” (De Vries and Wiegink 2011). These conjectures imply “[...] the desirability of breaking the command and control (C&C) structures of armed groups and (b) ‘community of origin reintegration’ are necessary prerequisites for successful DDR processes” (De Vries and Wiegink 2011: 38).

The first postulation is described as:

[...] the feasibility of disrupting the cohesiveness of an armed group by breaking the C&C structure (denoting the exercise of authority and direction by a designated commander over forces for a specific mission) that characterizes military units, and sending these former combatants into civilian life as individuals free from the influence of their commanders and former colleagues (De Vries and Wiegink 2011: 39).

Should the success of DDR depend on this assumption, the opposite will be considered as failure, however, that does not mean that social integration is compromised (De Vries and

Wiegink 2011). At the same time, should the breaking up not be adequately done, the possibility of remobilisation under the same chain of command is likely (De Vries and Wiegink 2011: 41). This was seen with the insurrectional March 23 (M23) movement in the DRC that plunged the North Kivu in atrocities perpetrated by these former soldiers after a failed implementation of the peace deal of 23 March 2009; and the CNDP that kept parallel chains of command after their reintegration into the FARDC. This scenario can, nevertheless, be avoided, when DDR is accompanied by supportive programmes of job opportunities and provision of livelihoods to ex-combatants (De Vries and Wiegink 2011: 41).

The second postulation concerns the relationship between ex-combatants and recipient communities and the assumption that soldiers are willing to return home after demobilisation (De Vries and Wiegink 2011: 39). It is argued that, maintaining or severing the bonds that have been tightened by mutual support, when ex-combatants could only rely on that soldiering friendship to keep them going, and confront the adversities of war together, can be a difficult decision. To some extent, these relationships develop positively to partnerships of life (marriage, business, and so forth) and even occasion relocation into new communities and towns or settling in areas where they have operated (De Vries and Wiegink 2011: 45). The pursuit of political objectives and lucrative economic ventures may also cause ex-combatants to stick together (De Vries and Wiegink 2011: 45). These were the experiences of RENAMO ex-combatants in Mozambique and the FDLR in the DRC, who entered into marital relations with local partners, causing them to remain in locations of their choices after war (De Vries and Wiegink 2011: 45).

Drawing from these considerations, it follows that the success of DDR is difficult to establish, due to the dynamics involved and the socio-ecological condition of the recipient community where soldiers intend to return. When the possibilities, of exploiting the circumstantial ties develop in time of war, are open to new wellbeing alternatives, the DDR can be helpful to soldiers and should be understood within this spectrum of possibilities. At the same time opportunities, such as economic and political reintegration, should not be seen as negatively compromising, inasmuch as these can advance the welfare of fighters, as observed by De Vries and Wiegink (2011: 48).

However, the threat posed by the failure to break the C&C needs to be critically dealt with, in order to avert remobilisation, especially in a volatile environment marked by serious security

concerns and the lack of economic opportunities and livelihoods for ex-combatants that may cause the resumption of violence (De Vries and Wiegink 2011: 48). In most cases, such a breakdown has a devastating impact on children, who are enrolled and conscripted to fight.

Having noted that, it is important to underline that adult DDR diverge from the child soldiers' DDR. While the 'no return home', "breaking the C&C", maintaining the bonds of soldiering life and political and economic ambitions, based on past affinities, offer opportunities to adult soldiers, breaking the ties and going home is the dream of many soldiers below the age of 18.

Family reunification and social reinsertion is an important dimension of psychosocial support to these underage combatants. Their dreams of soldiering after conflict is also fact, as some sooner or later join government forces. Nonetheless, in several contexts, these minor soldiers long to return home and be with their families and relatives. Their welfare depends tremendously on the willingness of the recipient community and family to welcome them home and heal them and their relationships.

DDR processes have assisted in reintegrating many former combatants, however, at the same time, there have been several hurdles, due to insecurity, including the suspicious intentions of some rebel and militia commanders, the lack of promising structures to ensure the livelihoods of demobilised soldiers, necessary institutional reforms, and life opportunities, that have caused the DDR to crumble and triggered remobilisation. The success of DDR programmes in that context is limited. DDR should always be treated as a context-based intervention. For this reason, it is necessary to look at these challenges, in the context of the DRC.

4.5 Challenges of DDR in the DRC

First of all, it is important to note that, there were a couple of processes in the DDR programmes in the DRC, namely the demobilisation of the Congolese army and militias through these processes and Disarmament, Demobilisation, Repatriation, Reintegration or Resettlement (DDRRR) processes, organised by the MONUSCO, with funding by the World Bank (Boshoff 2010: 2). The first DDR targeted three main groups: (1) "the Congolese militias, including the CNDP and the Mai-Mai"; (2) the Armed Forces of the DRC (FARDC); and (3) "foreign armed groups, including the FRDLR and the Lord's Resistance Army (LRA)" (Boshoff 2010: 2). The DDRRR involved granting amnesty to former combatants, except those

suspected of committing war crimes, crimes against humanity and genocide (Davis 2009: 16). Other than these two programmes, there was also the “brassage” process.

“Brassage” was a model of reinsertion that looked into re-training of ex-combatants that opted to enter the national army instead of being demobilised (Davis 2009: 16). Some of the demobilised troops pulled out after the “brassage” and constituted another rebel group called the M23 that was incriminated of gross human rights violations and recruitment of child soldiers (Davis 2009).

The brassage is a process whereby former combatants go through 45 days of ‘military training’, prior to their official integration in the FARDC; whereas “mixage” was demanded by the CNDP and the Mai-Mai, to allow former combatants to be integrated into the national army, by remaining in the region where they had been in action (Boshoff 2010: 4). For these purpose, six centres were spread throughout the country at Kitona (Bas-Congo, on the coast), Kamina (Katanga), Kisangani (Orientale), Rumangabo and Nyaleke in South Kivu and Luberizi in South Kivu, where the DDR had to take place (Boshoff 2010: 4). The two processes have been interrupted and delayed by several challenges, causing some dissidents to re-take hidden arms and form armed groups.

Non-completion of these processes hinders effective reforms of the army and affects stability in the eastern DRC (Boshoff 2010: 2). In addition, the presence of foreign armed groups that exclude themselves from DDRRR processes poses a threat to security and increases the use of child soldiers by local militias, who arm themselves to protect their communities against the threat posed by those foreign combatants. This cycle sustains the phenomenon of community self-defence armies.

Many armed groups resist DDR, under the pretext that their communities will become more vulnerable and subject to attacks by these negative forces (rival militias and foreign armed groups). For this reason, two DDR were to be undertaken namely, that of native Congolese militias and DDRRR facilitated by the MONUSCO, under sponsorship of the World Bank (Boshoff 2010: 2).

Resumption of hostilities, funding constraints, lack of determination and political will to properly fund the process, as well as lack of ownership of the DDR and DDRRR, remain the

stumbling blocks to the success of DDR processes. Alongside those difficulties, Boshoff (2010) singles out another issue, namely the “neo-patrimonial” nature of the DRC. This weak point of the DDR is due to the Government’s need for internally-designed reforms within the Country, such as transformation programmes, which are drawn by outsiders (Boshoff 2010: 6). The lack of understanding of the complexities and the geopolitics of the region by outsiders may cause ineffective reform programmes when conceived outside. On the other hand, a colossal amount of resources is required to complete the overall DDR process, including its various components, namely, the DDRRR, the “brassage” and “mixage”.

4.6 Socio-economic constraints

Reintegration of former child soldiers presents several challenges, namely poverty, lack of education opportunities, unemployment and insecurity, but mostly accountability and reconciliation, which have been overlooked in DDR processes. Reintegration requires a long-term strategy and should remain a part of the global child soldiering prevention policies. Here, the researcher has opted to focus on accountability and reconciliation that are certainly difficult to achieve, especially in the context of ongoing conflict in heavily militarised communities. Reintegration is a long process that requires supportive structures, to allow former child soldiers to be fully reinserted into society. In this context, three approaches of accountability are discussed, namely the mainstream justice system and African models of conflict management and traditional accountability mechanism and restorative justice are discussed here. As far as African accountability and conflict resolution approaches are concerned, the model known as Baraza, utilised in the eastern DRC, is extensively explored in inquiry, particularly, because of its assumed potential to mediate conflict on community level (Clark 2008). Furthermore, Baraza is also a peacebuilding tool, used also to reintegrate offenders into the community.

The projects led by the PNDDR, through different partners in 2010, were very limited, taking the large scale of conflicts into consideration. Exiting child soldiers were taken to projects, such as vocational training, agricultural empowerment, and training in carpentry, hairdressing, poultry keeping and bakery. The programmes were supported by professional kits given to child ex-soldiers and there was supervision. Presently, several communities affected by war in the North Kivu Province are not at this stage, offered the same advantages.

Reintegration becomes difficult when returnee child soldiers, who were used to an active life with armed groups, fighting, looting, and so forth, are kept in communities where they are to

face the nightmare of hunger, and lack of schooling and jobs. The programmes organised by the PNDDR need to be compulsory in areas where children are exiting armed groups and forces. Finally, all demobilised, including child soldiers, were hastened into the community without addressing justice for the inhumane acts they were involved in as soldiers.

4.7 Judicial challenges

Addressing the rights of their victims, and holding perpetrators accountable, can be a very difficult mission when dealing with perpetrators who are internationally recognised as victims, and those concerned here are children (Popovski and Arts 2006; Aptel 2010). Nevertheless, children associated with armed forces and groups are, at the same time, responsible for acts of war, genocide and crimes against humanity (Popovski and Arts 2006: 1-4; Aptel 2010).

The DDR programmes in the DRC have overlooked the aspect of juvenile accountability recommended by the CRC.⁶² Ignoring the principle of justice for contraventions of IHL and IHRL has left former child soldiers exposed to the hostility and antipathy of society, which often forces them back to soldiering life. This is caused mainly by a lack of accountability for their past, inhumane actions and lack of opportunities to expose them to reconciliation processes.

While criminal responsibility for war atrocities perpetrated by child soldiers is shouldered by warlords and individual adults who recruit them, they are also called to account for human rights violations they might have perpetrated while soldiering. The Paris Principles (2007) establishes that the treatment of those accused of violations of the rights of the child, should conform to the law:

Those suspected of committing crimes against children under international law should receive particular attention in post-conflict or transitional justice mechanisms. No amnesty for crimes under international law, including those committed against children, should be granted in any peace or cease-fire agreement.⁶³

In addition, the treatment of children accused of crimes under international law should also follow the legal provision in this matter:

⁶² CRC, Article 40(3)(b).

⁶³ The Paris Principles, Article 3, paragraph 5.

Children who are accused of crimes under international law allegedly committed while they were associated with armed forces or armed groups should be considered primarily as victims of offences against international law; not only as perpetrators. They must be treated in accordance with international law in a framework of RJ and social rehabilitation, consistent with international law, which offers children special protection through numerous agreements and principles.⁶⁴

Several scholars see the need for accountability of ex child soldiers (Musila 2005; Honwana 2006; Popovski and Arts 2006; Aptel 2010; Drumbl 2012). These scholars suggest alternative measures to the conventional criminal justice system, such as RJ mechanisms, which have the potential to bring redress for offenses committed by children, during their participation in hostilities.

4.6 Overcoming challenges of reintegrating child soldiers

DDR programmes for child ex-combatants can be confronted with enormous challenges, in a context where justice and security are endangered by ongoing conflict. The dual identity of child soldiers, as victims and as perpetrators, is already a problem in ensuring they are adequately held accountable and reintegrated into society (Derluyn *et al.* 2012).

Reintegration of former child soldiers is often challenged by a number of constraints, such as ongoing conflict, the varied forms of recruitment, the paradoxical portrayals of child soldiers, and the pursuit of justice for violations of IHL and IHRL by rebel leaders and warlords who recruit them. Nonetheless, children associated with armed forces and groups are responsible for war crimes, genocide and crimes against humanity (Popovski and Arts 2006: 1, 4; Aptel 2010: 22). The question thus, is how to hold child soldiers accountable when they exit hostilities? Programmes of DDR have overlooked the aspect of juvenile accountability recommended by the CRC. Ignoring the principle of justice, for contraventions of IHL and IHRL, has left former child soldiers exposed to the hostility and antipathy of society, which often forces them back to soldiering life.

Two main approaches have evolved to assist ex-combatants account for their past war-atrocities, in order to be reinserted in the community. These are the traditional TJ mechanisms (truth and reconciliation commission and criminal special courts/tribunals) and the traditionally-based approaches. Community-based TJ mechanisms have gained ground in a few

⁶⁴ The Paris Principles, Article 3, paragraph 6.

post-war African countries, such as Uganda, Sierra Leone, Mozambique and Rwanda, where emphasis has been placed on restoration instead of retribution. The reason for this new trend could be the difficulties that arise, in applying criminal accountability processes to child ex-combatants (Amann 2001; Coomaraswamy 2010; Park 2010).

In an environment where young soldiers are not provided with opportunities and facilities to exit armed conflict, they use their own agency to escape fighting and return home. For instance, in the case of the DRC, one estimate suggests that 11,000 children, associated with armed groups and forces, had auto-demobilised, without proper reintegration mechanisms, in the eastern part of the country (Juma 2012: 377).

Should they return to the community, child soldiers who exit armed forces face several challenges. These include the lack of sufficient funds from families and local organisations to ensure that their reintegration into the community is effective (Juma 2012); the lack of livelihoods, opportunities and other socio-economic constraints (Vlassenroot 2001; De Vries and Wiegink 2011; Jourdan 2011); the complexities of ongoing conflict, its causes and protracted consequences; and finally, the phenomenon of militias and community self-defence armed groups (Stearns 2013; Stearns and Verweijen 2013; Stearns, Verweijen and Eriksson Baaz 2013; Stearns 2014).

These conditions reflect total instability and sustained vulnerability of former child soldiers and non-soldiers, who are eventually dragged into hostilities. These children also do not exit hostilities, for fear of punishment and reprisals after being involved in atrocities (Juma 2012: 387), and because they do not feel protected by justice structures.

4.6.1 Utilising child agency and promoting its psychosocial well-being and

On the one hand, the prospect of successful prevention of the child soldiering practice rests on the following priorities: facilitating their exit from fighting forces and helping their reintegration into civilian life, achieving peace, preventing their recruitment, ending conflict and stabilising society (Wessells 2006: 154). Such efforts need to consider child agency and acknowledge their potential to be resourceful in initiatives to assure their protection. On the other hand, reintegration of ex-combatants depends on providing job and education opportunities, and changing the negative perception of society towards them, while envisaging creative strategies to engage with militias at local and international levels (Rouw and Willems

2010). These efforts should include taking care of child soldiers' psychological support and wellbeing.

This was experienced in Afghanistan, with the "Child Fund Afghanistan", I alluded to earlier (Wessells 2006: 228). Children used their own imagination to translate their post-war experiences through drawings, which they presented to their village community; and villagers were captivated by the worth of the message conveyed by their pictorial representations (Wessells 2006: 229). It is apparent that, recognising children's agency and acknowledging their role in the local capacity building process, to address serious social issues, is a very important element. They can contribute to social and environmental transformation processes.

Undeniable evidence of success, in including children in decision-making processes, is found in the experience of Afghan child soldiers, facilitated by the Afghan "Child Well-being Committees". Including child soldiers in the design of reintegration and reconciliation programmes can ensure their success. These young soldiers should not be discriminated against but be taken as real collaborators, partners, and agents of change that society desires, even in preventing the child soldiering practice. This approach could be utilised in projects of "child protection and reconciliation" and it remains largely an important roadway for the reintegration of child soldiers into society, in post-conflict reconstruction of war-torn societies, where their leadership should not be undermined (Wessells 2006: 231). It remains largely an important roadway for the reintegration of child soldiers into society, in post-conflict reconstruction of war-torn societies where their leadership should not be undermined (Wessells 2006: 231).

4.6.2 Promoting RJ and Reconciliation against exclusion and marginalisation

International child rights and juvenile justice standards appeal for more possibilities in judicial proceedings involving child soldiers (Aptel 2010), while these procedures should be guided by relevant international legal standards.⁶⁵ CRC stipulates that States Parties shall seek to promote the establishment jurisdiction appropriate to children accused of or those who acknowledged having transgressed the penal law.⁶⁶ Such disposition should include the establishment of the minimum age, below which presumption of the capacity to infringe the penal law by a minor is ascertained; and whenever it is appropriate and desirable, the handling of such children should

⁶⁵ CRC Article 40(3); The Beijing Rules 11.

⁶⁶ CRC Article 40(3).

avoid using judicial proceedings, unless human rights and legal safeguards are fully respected.⁶⁷ More explicitly, CRC lays down the following:

A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offence.⁶⁸

RJ has been supported as the model of accountability for child soldiers (Musila 2005; Honwana 2006; Popovski and Arts 2006; Aptel 2010; Drumbl 2012). It is advocated as a preferred option, to seek redress for juveniles in conflict with international laws in armed conflict. This alternative proceeding is not retributive but rather rehabilitative, correctional, instructive and restorative. Without justice, the reintegration and reconciliation of former child soldiers experience set-backs. Restorative approaches enhance both integration of offenders into the community and their reconciliation with victims and the community.

Reconciliation is a fundamental dimension of TJ that needs to be applied to the context of child soldiering. One of the outcomes of RJ may be reconciliation, which could make the reintegration of child soldiers more effective. It is important to take former child soldiers through appropriate and useful RJ mechanisms (Honwana 2006; Drumbl 2012).

It would be an exaggeration to enclose all child soldiers into a single group as victims or perpetrators, unless a legal framework is used to determine their identities (Amnesty International 2008). While international accountability for crimes perpetrated by child soldiers concerns warlords and individuals who recruit children, leaving these young soldiers without accounting for their misdeeds exposes them to the wrath of their victims. Exposing child soldiers, their victims and the community to restorative mechanisms would enhance reconciliation and social reintegration.

RJ could be taken in its TJ dimension, as the use of the TJ approach and participation in RJ programmes offer the platform needed for victim or perpetrator child soldiers to share their pains and give accounts of the motivations for violent acts that are allegedly attributed to them.

⁶⁷ CRC Article 40(3)(a)(b).

⁶⁸ CRC Article 40(4).

Both integration and reconciliation are enhanced by RJ mechanisms. This image does not fit into ordinary understanding that bluntly stereotypes all child soldiers as victims, prompting the need for justice structures that would isolate each child soldier and deal with him/her accordingly, either as victim or perpetrator.

Added to this, the fact that, in time of war, gross human rights and international humanitarian human rights are carried out, DDR processes that ignore transitional accountability, including truth-telling and reconciliation processes, may not yield sustainable outcomes. Moreover, attending to the psychosocial needs of affected children and their communities, creating education, economic and job opportunities may enhance nation reconstruction and make DDR programmes more effective. Micro economic projects, will serve the purpose of economic reinsertion, and this needs to be sponsored largely by the government.

The projects led by the PNDDR through different partners in 2010 were very limited, taking the large scale of conflicts into consideration. Finally, amnesty grants to former soldiers should be conceived in the context of TJ, through a process of truth telling and reconciliation and conform to international legal standards, set in the Rule of Law and other frameworks (United Nations 2004, 2009b).

Another shortcoming of conventional retributive justice is its incapacity to bring reconciliation and healing of victims, both among child soldiers and members of the community. The wounds that some children sustain, as a result of their involvement with fighting factions, require healing. The researcher is looking into this aspect of intervention, in efforts to ensure child soldiers' wellbeing is taken seriously in order to prevent instances of re-recruitment.

4.7 Self-demobilisation and prevention: challenges and prospects

In order to understand the concept of self-demobilisation, Zena (2013) discusses three patterns of demobilisation: “self-demobilised or voluntary exit”, “combatants with deep ties and vested interests in militancy” and “combatants between self-demobilised and the hardcore”. Child soldiers, who decide to voluntarily exit armed groups in a non-conventional way and without proper demobilisation support, fall into the category of self-demobilised or auto-demobilised child soldiers (Rouw and Willems 2010; Juma 2012; Zena 2013).

Self-demobilisation is a common occurrence among soldiers (De Vries and Wiegink 2011; Juma 2012; Zena 2013). This movement has challenges and prospects that are closely connected to child soldiering prevention. The phenomenon of self-demobilisation has increased since the end of the second phase of DDR in 2009, when children started using their own agency to exit armed forces and armed groups.

Combatants, who have deep connections with armed groups, often dream of promotion to higher ranks and enjoying influential positions within armed groups, and some are even suspects of gross human rights' violation and IHL violations that they fear would cause their arrests and prosecution (Zena 2013: 2). They prefer to remain in an armed group for their own security.

Militiamen, with ambiguous positions of self-demobilisation, who remain in armed groups, are inhabited by fear to disarm because exit from armed groups does not offer them any viable prospect of wellbeing, in an environment that is still volatile and unsafe (Zena 2013: 6). The existence of these two groups of combatants negatively affects the success of DDR for child soldiers.

4.7.1 Why child soldiers self-demobilise

The reasons for child soldiering self-disarmament and self-demobilisation are multiple and varied; mainly weariness and awareness that they are exploited and abused beyond proportion and do not foresee any help from the Government to rescue them. Often, child soldiers are disillusioned about the objectives presented by armed groups, such as community protection, position, wealth, and prosperity. Those who are abducted will try to evade as well.

Most often, extreme suffering, beating and being on guard for several days without sleep, push children associated with fighting groups to desert. Refusal or resistance to take commanders' orders, delaying the execution of orders, such as killing other people, executing those who loot without permission, cruel training by killing people alive or burying them alive, are among the motivations of these young soldiers to exit armed groups and militias. They show a certain determination that consists of undermining the risks of being captured and killed by armed groups and threats that they may be subject to, in retaliation by their victims and associates. They make firm resolution to leave.

Children's agency comes into play in this process because planning self-release involves choosing the right place and the right timing, doing away with the arms and their uniforms. In this context, Wessells (2006: 142) notes that their agency is described as the capacity to develop a strappy and hearty character, allowing them to hold out, while living with fighting forces, which is manifest in the way child soldiers serve in different capacities within armed groups and forces.

The phenomenon of self-demobilisation in the DRC has been observed since 2009, at the end of official, nationally and internationally sponsored phases of the DDR that followed the First and Second Congo War (1996-1997; 1998-2002). According to a 2010 report by the DRC Department of Defense and Ex-Combatants, in partnership with CARITAS Congo, a total of 120,000 adult ex-combatants had to be demobilised and receive benefit from social and economic reinsertion, while 30,000 EAFGA had to be reunified with their families and sent back to school (DR Congo 2010). The report states that the disarmament and demobilisation ended in December 2009, including all structures planned by the Military Structure of Reintegration (SMI).

The responsibility for any combatants who had not been demobilised, became the responsibility of the United Nations Security and Stabilization Support Strategy (UNSSSS) for the eastern DRC and the Congolese Programme of Stabilisation and Reconstruction of Areas Exiting Armed Conflicts (STAREC) (Boshoff 2010: 1).

The conventional demobilisation consisted of providing structures, whereby the demobilised combatants and local communities can be organised into productive entities; reinforcing the quality of benefits granted to association (skills training, professional kit, *suivi* [follow up], and technical monitoring) (DR Congo 2010). It also encompasses reinforcing technical capacities, human and material resources to help these entities, leaders and associates become effective, and durable support for post-war reconstruction (DR Congo 2010).

This official DDR programme ended prematurely because of resumed fighting and the lack of ownership for this process by the DRC Government, as the overall programmes were funded by the World Bank (Boshoff 2010: 2-3). In 2010, 2,816 children were freed from armed forces and groups and were oriented towards agents that assure children protection, with the support

of UNICEF. Of the 8,000 children associated with armed forces and groups targeted, 1 940 of those assisted were girls and 4 704 were boys (DR Congo 2010).

When they exit fighting factions, child soldiers do not follow the process of reporting to demobilising centres, wait to be disarmed and be placed in places provided for the demobilised, where they undergo vocational training and receive demobilisation kits. According to Juma, an approximate 11,000 young ex-combatants auto-demobilised in the DRC (Juma 2012: 377) in the aftermath of civil wars. These young soldiers can be described as escapees and defectors. From 2004 to 2013, 1,000 children exited armed forces and groups, with 984 of them reunified with their families, through Caritas Goma.⁶⁹

4.7.2 Socio-economic constraints as impediment to release processes

The narratives of child soldiers and young revolutionary combatants identify socio-economic constraints, the lack of livelihood opportunities, and socio-economic marginalisation, as motives for engaging in soldiering activities (Vlassenroot 2001; De Vries and Wiegink 2011; Jourdan 2011). These conditions often persist during and after hostilities, even in the context where children have participated in DDR programmes.

Seymour confirms this and notes: “Children’s DDR programmes have often been little more than expensive logistical exercises, which ignore the conditions of entrenched poverty and extremely limited choices that lay the foundations of the child recruitment phenomenon” (Seymour 2011: 59). The limitations of the official DDR and its non-existence, in zones where armed groups are entrenched in North Kivu, explain the massive self-demobilisation of child soldiers. A study by Rouw and Willems, found approximately 3,000 auto-demobilized children in the south of Butembo only (Rouw and Willems 2010: 22).⁷⁰

After evading fighting forces, these young ex-combatants remain vulnerable to re-recruitment, due to the lack of amelioration of their socio-economic conditions, and they also have to deal with an environment that accused them of perpetrating war atrocities against innocent civilian populations. This is a serious conundrum to reintegration. However, while socio-economic constraints are critical issues, the lack of accountability could also be linked to reintegration of child ex-combatants into the community.

⁶⁹ Focus groups with humanitarian agents from CARITAS Goma, 5 June 2014.

⁷⁰ Effectives provided by an NGO in Butembo in the North Kivu, according to Rouw and Willems (2010).

As the situation stands in North Kivu, there are no transitional accountability measures in place to help reintegrate self-demobilised child soldiers into society. For this reason, it is of capital importance to envision adequate accountability mechanisms that are mindful of child soldiers' various circumstances or applying "alternative diversionary measures away from the judicial system..."⁷¹

An analysis of RJ was also included in the inquiry. Juma has identified this model of justice, as one of the useful tools for the reintegration of self-demobilised child soldiers in North Kivu (Juma 2012: 388). Nonetheless, the author observes a lack of skilled personnel in the field of RJ in the DRC that can address the challenges of reintegration. In order to deal with this serious gap, this study in its entirety, involved training local people in RJ. The theory and praxis of RJ are therefore discussed, while its application, to address the problem of accountability and reconciliation is also shown, in reintegrating self-demobilised child soldiers.

When children are recruited and used as soldiers, they are paradoxically regarded as victims, perpetrators and heroes. They are victims of violence, experienced when forced into armed groups and moreover, they are exposed to situations that, unfortunately, lead to atrocities being committed against innocent, civilian populations (Popovski and Arts 2006; Wessells 2006; Drumbl 2012).

Regrettably, war-affected communities do not always accept over-emphasising the victim image, where former young soldiers are called to account for their past crimes. In some cases, the lack of acceptance of child soldiers by recipient communities and non-compliance by child soldiers, with established, traditional practices that condition reintegration, cause them to not return home or not to reintegrate. This was experienced in Sierra Leone, following this country's 11 years of civil war (Schotsmans 2012). "Non-reintegration" may also be sustained by failure to break ties of friendship development during war, through the "command and control" chains and the changes that war-stricken societies undergo (De Vries and Wiegink 2011).

⁷¹ See *The Six Grave Violations Against Children During Armed Conflict*. UN Office of Special Representative of the Secretary General on Children in Armed Conflict. Working Paper No 1, October 2009 (Updated November 2013).

The reverse side of “non-reintegration” or “no return home”, may see ex-combatants end up in criminal activities or they may resort to violence, especially those leaving an unsafe environment together, while also marked by a lack of opportunities and livelihoods (De Vries and Wiegink 2011: 39,47). Transition is not easy, but it is possible, by allowing children to account for their past, antisocial conduct. However, in the context of North Kivu, there are no traditional TJ mechanisms in place to facilitate this process, as many child soldiers auto-demobilise.

The study details the culmination of the researcher’s experience over seven months of fieldwork, in the North Kivu province’s war-stricken communities, which resulted in interactions with the movements of several children exiting armed groups voluntarily, some switching from one militia to another, many voluntarily enrolling with militias, while many others continue to be abducted. Another issue in point that was experienced, is the shaky nature of reintegration by self-demobilised child soldiers, due to the lack of a proper reintegration process and sustainable programmes to accompany this process. Lack of reconciliation and accountability threaten the safety of demobilised soldiers and their reintegration, besides various other constraints.

4.7.3 Prospects of reintegrating child soldiers

The DRC has gone through two phases of DDR programmes, since the end of the first Congo War in 1997 and the end of the second war in 2002. The first phase was inaugurated in 2004 and ended in 2006, with the second initiated in 2008 ending prematurely in December 2009, , because of the resumption of fighting in the DRC (Boshoff 2010).

Since then, the eastern province of the DRC has been at a stand-still, between peace and war. The volatility of the movements and operations of armed groups, militias and foreign armed groups, has called for national and international peace initiatives for stabilisation, security and peace of the region. The DRC is characterised by violence, and is home to armed groups and militias that resist self-disarming. In addition, there is also the presence of foreign armed groups, the influx of light weaponry and the expanded phenomenon; community self- armies, and impunity and corruption.

This situation is characteristic of the macro-context in which child soldiers emerge - a failed state (including its lack of capacity to control violence, secure its national border and protect its

citizens) and armed groups vying for power. While militia and armed groups remain active holding children used as soldiers in their ranks and many children join up, a new trend has emerged. The researcher terms this trend as self-disarmament and self-demobilisation of returnee young ex-combatants. However, the peculiarity of this phenomenon is that young combatants become wearied and helpless. They decide, under several circumstances, to throw down their arms and run for safety to a transit and orientation centre (CTO). Even after reaching CTOs, when they are reinserted, they face enormous risks of re-recruitments and eventually some voluntarily join up.

The North Kivu Province in the DRC is the most affected territory by violence and insecurity and children remain unsafe in this environment. This condition is as a result of the overall challenges faced by the national DDR programmes and subsequent collateral stabilisation and security strategies, to protect communities exiting armed conflict.

While many efforts are made by humanitarian organisations, the sustainability of self-disarmament and self-demobilisation is under test because of the general climate of deep-seated tension, social disparities, the presence of militias and foreign armed groups in action, in the surroundings of locations where the EAFGA resettle. Efforts to resolve these challenges require a frank and serious commitment of the DRC to own DDR processes and support humanitarian philanthropic organisations.

The government should consider putting structures in place to support and monitor the reintegration of juvenile ex-combatants; and adopt the RJ model to deal with contentious issues of justice for youth soldiers' past antisocial acts. This form of accountability is essential to transform their relationship with survivors of armed conflict.

On the other hand, the international community should, at the same time, speed up the DDRRR that remain an alibi for local militia to disarm. This is the responsibility of MONUSCO and its partners. Peace, security and stability will deter the child soldiering practice in the North Kivu province. National and international legal norms must be enforced and the security service and the police should be visibly present, to ensure the population that the Government is in charge and perpetrators of crimes are properly dealt with, according to the law. The rule of law is paramount in any efforts to deter the practice of child soldiering.

Boshoff (2010) has extensively dealt with the historical perspectives of DDR programmes, as well as the achievement and challenges that the programmes face, particularly in the DRC. Pauletto and Patel (2010) assess the socio-economic, political and cultural underpinnings for the child soldiering practice and the extent to which these elements constitute a challenge to DDR process for child soldiers in the North and South Kivu provinces of the DRC. They found that child soldiers' DDR should be examined within the socio-political and cultural context where children are recruited and address children's conditions in a conflict-stricken environment that requires caring for child psychosocial well-being in order to prevent re-recruitment (Pauletto and Patel 2010: 35). This dissertation's research will focus on voices from the field, regarding self-disarmament and self-demobilisation. However, first of all, the appropriate concept is for the DRC to designate disarmed and demobilised children to children who have exited from armed forces and groups (EAFGA). The contexts and challenges for adult DDR and EAFGA DDR are similar; nonetheless, the strategies and patterns of EAFGA DDR differ from the nationally and internationally sponsored DDR.

This study's focus is on the programmes conducted by two institutions in the North Kivu Province, namely, CARITAS Goma and the Union for Peace and the Promotion of Child Rights (UPEDECO) that facilitate reinsertion processes of children, who have exited armed forces and groups since 2004. Often, funding constraints impact negatively on the progress of projects of socio-economic and professional reinsertion, namely, hairdressing, tailoring, mechanical training, carpentry, photography, building, and so on.

While the process of reintegrating former soldiers helped degrade the offensive power of several groups, the resurgence of hostilities, with the insurrectional forces known as the Movement of March 23 (March 23) or M23, plunged the North Kivu into fatal armed conflict. These forces were famous for their abduction of children and use of child soldiers, and extreme atrocities to civilian populations. This insurrection resulted from unprepared and inconsequent peace agreements.

According to Baaz and Verweijen (2013), the insurrection of the M23 was the consequence of a volatile peace deal, signed on 23 March 2009, which occasioned army desertions and violence, fuelled "intra and inter-community conflict" and caused the disintegration of an army that was already crumbling. The authors argue that failure of military integration has been the cause of the proliferation of armed groups that requires commitment from political and military

leaders to play their role, at various levels, to avert increasing instability, also maintained by the presence of armed groups.

In mentioning the impact of reforms of the militaries and security forces, the research intended to show the complexity, perspectives and challenges that prevention of the child soldiering practice is faced with. It is a multi-dimensional array of difficulties, where the fundamental problems resulting in the formation and continuation of armed groups, are not adequately tackled.

The volatile peace in the Great Lakes' region, inter-ethnic clashes, the looting of mineral resources and the unfinished democratisation process, do not exclude the possibility of resurgence of military conflicts. It is not pessimistic to think along these lines, as these issues are potentially capable of triggering revolts. In this scenario, children remain easy targets.

The main gaps, left by early studies, as far as this research is concerned were identified from the literature reviewed as:

- While reasons for young people joining armed groups and forces are well documented, little research has been conducted on the circumstances that push them to self-demobilise.
- An inquiry into the reasons why the child soldiering practice is entrenched in the eastern Congo, while most children in the DRC face similar conditions of deprivations and lack of education opportunities, and why many children do not join up, does not feature in the literature.
- A systematic, in-depth study on the effectiveness of TJ and traditional-based justice processes, in preventing participation of children in hostilities, in the context of the DRC, is absent in the child soldiering narratives. Early studies in this area have focused on reintegration, reconciliation and healing. This study attempts to go beyond that, by touching on prevention and accountability.
- The praxis of RJ circles has never been implemented and evaluated, in order to establish its impact on issues related to the child soldiering practice, especially as a means of dissuading children in enrolling as soldiers.

- Action research, as interventionist and evaluative design, and the application of experimental control groups, as research design to address the problem by involving children and their communities, are not common among other methodologies used in this field of research.

“Youths as peacebuilders”, as part of the solution to the child soldiering problem, is clearly highlighted by Wessells (2006: 245). This idea was propelled into a peacebuilding project in the DRC, through peacemaking circles, to stimulate juvenile ownership of local peacebuilding programmes in war-affected territories. This is the way to exploit their resilience and agency, which is why these issues were critically investigated in this study.

The use of restorative circles could be a realistic approach in building peace, addressing justice issues, and preventing further recruitment of minors for military objectives. The problematic child soldiering phenomenon needs a global and all-embracing solution as Wessells (2006: 233) affirms: “comprehensive prevention requires attention to legal, political economic, social, cultural, and psychological issues”.

Preventive measures imply initiating a “systematic prevention strategy” and addressing social justice issues. In the same vein, Seymour (2011: 64) observes that more effective and protective interventions for children, requires acknowledging and responding to the structures from which the phenomenon of child soldiering originate, structures that are basically oppressive, marked with poverty and lack of opportunities that most young people in the DRC today are confronted with. This step is a key contributing aspect of the prevention of child soldiering, which is not sufficiently addressed by multiple interventions, in the context where child soldiers have self-demobilised or are assisted to exit hostilities.

Preventing the recruitment of child soldiers requires that society engages with children and discern from them how they perceive their recruitment and how society can interpose, to promote their reintegration into society (Wessells 2006: 33). This view justifies the design opted for in this research, which encompasses interviews, focus groups, discussions and a survey questionnaire, with former child soldiers and non-belligerent children, who are partners in this research. An overview of the factors that surround children’s engagement as soldiers leads to the complex issue of the nature of their recruitments.

In addition, the researchers' argument is based on RJ and reconciliation, as imperative to end the practice of child soldiers. These are other aspects of a global solution that are also considered, such as social and economic justice that deter structural violence. This study used action research, which also does not appear considerably in the sources consulted regarding research design, in the efforts to dissuade children from becoming soldiers.

4.8 Healing child soldiers

Child soldiers' wellbeing and wellness appears largely in scholarship from different perspectives. Various aspects of health restoration from different worldviews imbricate, whether from African traditional healing and Western psychology, spiritual and psychological, interpersonal and communitarian healing. But the evidenced fact is that it is a personal need, a way worked out with the support of the community, it may involve remote relations (ancestors), and take modern forms through circles. Healing may have deterrent effects to child soldiering. These are articulated in the following sections.

4.8.1 Healing as personal experience

The experience of children who participate in armed conflict is such that they come out wounded, traumatised, disoriented, dejected, and sometimes even rejected by their own communities. Their psycho-traumatic rehabilitation matters a lot in communities still affected by war (Honwana 1997; Wamba 2004; Honwana 2006; Wessells 2006; Bayer, Klasen and Adam 2007; Harris 2010; Klasen *et al.* 2010). These scholars explore healing in the reintegration processes and the psychological fitness of children, after being exposed to traumatic war experiences.

It is thus, necessary to avoid stereotypes, by dealing with each child soldier as an individual case or a heterogeneous group of people, who present different psycho-social needs, according to their diverse circumstances of participation in hostilities (Wessells 2006; Vindevogel *et al.* 2011; Wessells 2012). Treatment of war-affected children, therefore, goes beyond the narrow understanding of their affliction, as a pathology that calls for a clinical response, but has to be viewed in a broader perspective, as a means of attaining their wellbeing (Wessells 2012).

Included in the treatment is psychosocial support that encompasses economic support, RJ, reconciliation and providing them with livelihoods, as well as dealing with the impact of their

actions on their social and physical environment (Vindevogel *et al.* 2011). Healing of child soldiers is a necessity, in order to dissuade them from turning violent against persons in their communities, while it could also prevent their return to armed groups and seek revenge.

4.8.2 Western psychology vs. African traditional healing

Interventions that aim to respond to the psychosocial needs of war affected children have focussed on a symbiosis of western psychology and an African traditional healing approach (Wamba 2004). At times, it has been done by applying African cosmology via cleansing rituals, as a means of restoring broken relations between the ancestors and child perpetrators and their community (Honwana 1997; Schotsmans 2012).

These interventions are reported in the context of Mozambique (Honwana 1997, 2006; Wessells 2006) and Uganda through the Mato Oput process (Allen 2008; Bangura 2008; Negara 2012)⁷². In the context of Sierra Leone, Schotsmans (2012: 229) avers that purification rites were performed on child soldiers of the Resistance United Front (RUF); and cleansing ceremonies included washing the feet of girl child-soldiers and being made to drink ritual water by the community leader. Youths on whom cleansing rituals were performed expressed that they felt healed mentally and were accepted into society. As a sign of reconciliation, a meal was shared and the spirits of people they killed and the ancestors were appeased by those ritual ceremonies (Schotsmans 2012: 229).

In western psychology, spiritual causes have less consideration in the mechanistic processes of understanding and determining causation of events affecting life (Wessells 2006: 146). Healing processes include finding strategies to prevent the recurrence of past atrocities. When former child soldiers are involved, a symbiosis of Western psychology and African traditional healing approach has been applied. In African cosmology, crime has multidimensional ramifications and needs to be tackled holistically. It affects both the living and the spirit of the ancestors (Honwana 1997). Various cultures understand illness differently. This explains the variety of

⁷²“Mato Oput” is a process of administering bitter roots to ex-combatant perpetrators in order to cleanse them from the impurities of war and help them reintegrate into society. See Negara, K. 2012. Bitter Root: Two former Lord's Resistance Army commanders seek tribal justice in order to be granted atonement for their crimes. 28 Jun 2012 06:36 GMT (online video). Available: <http://www.aljazeera.com/programmes/witness/2011/10/20111012152024670219.html> (Accessed 30 January 2015).

ways for physical and mental healing, all based on different spiritual and cultural worldviews. For example: Western societies utilise scientific explanations for the causes of suffering, illness, war and other calamities (Wessells 2006: 146).

However, from an African worldview, especially in a post-war context, traditional healing is placed in the context whereby illness involves non-physical causes (Honwana 2006: 15). This view contrasts Western psychology from the Africa psycho-spiritual integral healing process. In some cases, healing has demanded a spiritual intervention and associations with other physical means, such as drinking concoctions and invoking ancestors (Negara 2012).

Nonetheless, in western psychology, spiritual causes receive less consideration in the mechanistic processes of understanding and determining causality of events affecting life (Wessells 2006: 146). For these reasons, ritual cleansing ceremonies are performed to heal ex-combatants and reintegrate them into society. Healing, in this context, is all-embracing and believed to be integral, personal and interpersonal; and healing the environment where atrocities have been perpetrated, is important in African cosmology. Even the Judean tradition gives particular attention to the importance of healing people and their land (Parker 2012). This tradition is close to the African worldview and explained in healing child soldiers in post-war Mozambique (Honwana 1997).

In order to illustrate the psychological condition of war-affected children, a study was conducted by Hecker *et al.* (2003), to establish the effects of violence on the mental health of child soldiers in the DRC. The authors tried to validate whether perpetrating violence hurts mental health. The differences between combatants, who were forcibly and voluntarily recruited in the DRC, were examined. The findings revealed that “voluntary combatants reported more perpetrated violence types and a higher level of appetitive aggression than combatants who were forcibly recruited” (Hecker *et al.* 2013: 146). They also demonstrated that there was “[...] a positive relation between PTSD symptom severity and perpetrated violence” (Hecker *et al.* 2013: 146).

The findings made by Hecker *et al.* (2013) show that Western psychology works well, in its mechanistic way, to determine what can cause change in the mental state of a person. African psychology, on the other hand, is so connected to cosmological causes that involve intervention

of non-physical elements, which need to be taken into consideration, in both determining the origin of un-wellness in a person and the course of healing action to be followed.

A study of healing processes of war-affected children in Angola and Mozambique, puts the whole imagination in the African worldview that excludes the Cartesian dualism which defines a person in terms of two “separate entities”, body and mind, whereas African imagination, inherited from traditional beliefs and culture, describes a person in terms of sociability and as a whole (Honwana 2006: 151). The author argues that, while Western psychology traces the origin of illness either in the body or in the mind, African genius takes a more holistic stand that associates illness with the supernatural and causes that are extrinsic to the person. A person is made whole in their connectedness to the whole environment wherever they live, where visible and invisible forces exert significant influence on their mental, physical, psychological and social health (Honwana 1997, 1999, 2006).

This allows an understanding of how Westerners comprehend distress and trauma, and what diagnostic and remedial steps they follow, in identifying and healing un-wellness. Unfortunately, Western psychology is limited when it comes to the spiritual causality of mental disorders; African beliefs would explain that as the influence of spirits or ancestral exertion of power on the living.

Ignoring this dimension may limit the therapeutic intervention leaving it half-way done. Africans “have different ontologies of health and illness” (Honwana 2006: 150), which implies that African beliefs and cultural elements need to be taken into consideration, in healing afflictions experienced by war-affected children. This is fundamental for meaningful reintegration (Honwana 2006: 150).

Health care centres assist in healing physical injuries and psychiatric clinics take care of mental impediments. Nevertheless, one aspect of healing that is problematic for former child soldiers, is the treatment of the complex mental illness, PTSD. While that can be treated by western psychology through counselling, in some circumstances, this treatment is ineffective for child soldiers who lack basic needs, housing, food, schools, jobs, and health care, following their demobilisation and reintegration into society (Wessells 2006). These issues can be dealt with through “community resilience” (Wessells 2012).

The author argues that social ecologies, socio-economic development, and cultural and religious support may enhance the psychosocial wellbeing of war-affected children considerably, though psychosocial support is also a necessity for individual cases (Wessells 2012). The same view is held by Vindevogel *et al.* (2011), who emphasise the socio-ecological dimension of intervention programmes to foster psycho-social wellness and reintegration of child ex-combatants into society.

In the African context, which differs from Western psychology, the wholeness of a person is achieved by the intervention of a traditional healer, while in the Western context, a counsellor or a psychologist plays the role of healer (Wessells 2006: 194). It is understood in traditional African societies that crimes committed during war renders a person impure. It is thus necessary, to perform rituals that would cleanse a person who has been exposed to spiritual impurity in the battlefield.

4.8.3 Healing rituals

Rituals are used to cleanse former belligerent children, with these rituals dependent on cultures and countries. In Uganda, the Mato Oput process was used in reconciling and reintegrating former LRA soldiers. War-affected communities conduct cleansing rituals to expunge bad spirits and re-establish spiritual harmony that has been destroyed by the violation of sacred space, such as the bush, which has been de-sacralised by rape, and other violations (Wessells 2006: 195). Some repercussions of insane behaviour of belligerent children are manifest in stigmatisation, isolation, victimisation, name-calling, violence directed against them, and the belief that they are held by influences of evil spirits (Wessells 2006: 195).

Various rituals are practiced, such as “scrubbing the girls with special leaves and black soap in the river”, and fumigation methods, used by healers wearing white clothes in dancing ceremonies (Wessells 2006: 195,196). These practices have yielded positive outcomes, such as social acceptance, return to civilian identity, healing, an increase in social integration, and former belligerents experience success in business, they prosper, they manage to marry and they are respected by the community (Wessells 2006: 196).

Rituals are owned by local communities, where traditional healers use local resources, through the mediation of local herbs and the use of rivers, to enhance psychological support and healing of former combatant children. The community may rely on local capacity: “effective

assistance to former child soldiers then entails a willingness to help the children engage fully with the cultural resources already present in their villages” (Wessells 2006: 197). These rituals are significant because they symbolise rebirth, entering into civilian life, and being part of the process to reconstruct a new identity as civilians (Wessells 2006: 198).

Healing has a transformative power to lead offenders to a sense of decency. The likelihood of reoffending, by victims who have not been healed from their past experiences through retaliation, is a common occurrence in the context of unresolved conflict and lack of reconciliation and justice. Healing can be enhanced by justice for affected persons and reconciliation between disputing parties.

4.8.4 Spiritual healing of child soldiers from an African perspective

Healing former child soldiers has a spiritual dimension, constructed on spiritual origin of illness, such as hurting the spirit of the ancestors by perpetration of crimes and polluting sacred places (Honwana 1997; Wessells 2006). Child soldiers report being haunted by spirits of their victims that cause sustained insomnia. This state of affairs creates the needs for healing that involves traditional healers in Sub-Saharan Africa (Honwana 1997; Wessells 2006: 147).

It appears that children exiting fighting forces need integral healing for their total and peaceful reintegration into society, as stated in the following note: “Although the psychosocial impact of traditional healing has not been documented well, in this case the conduct of the rituals reportedly healed the girls’ illness” (Wessells 2006: 150). At the same time, full healing requires reconciliation between child soldiers and the ancestors, to keep away haunting and malevolent spirits that harass these children. This operation is conducted through purification rituals that re-establish spiritual harmony, as supported by Wessells (2006: 152), who states: “local communities have a host of purification rituals that local healers perform to clean the returning children, re-establish spiritual, and enable healing and reconciliation”.

Following this idea, it is necessary to hold “a more holistic approach focused on the interrelations between children physical, cognitive, emotional, social and spiritual development” (Wessells 2006: 189-190?). The same practice was used to heal war-affected children in Mozambique, through cleansing rituals (Honwana 1997).

Culture, tradition and religion impact on war and vice-versa. War affects the bonds between the living and the dead, especially where barbaric acts have de-sacralised the land and where killings have taken place. In these circumstances, in African society, it is indispensable to restore harmony by performing rituals that will appease the spirits of the dead, to allow the living to go about their life, without fear of ancestral anger. This argument is sustained by Wessells (2006: 152) who avers: “wellbeing entails not only physical health but also spiritual and social harmony. Social discord and illness prevail when there is disharmony between the living and the ancestors, when the spirits are angry”.

Honwana (1997) notes: “People relate directly to the ancestral spirits with whom they share a combined existence and interact in everyday life. The ancestral spirits are believed to be real entities who influence the lives of the living” (Honwana 1997: 296). Rituals are used as the media of interaction between the living and the ancestral spirits. One such ritual is *ku pahla*, which implies “to honour” the ancestral spirits, which is believed to provide a sense of security, while another is through *tinyanga* (“possessed living people”), who are intermediaries between the living and the ancestral spirits (Honwana 1997: 296). The *tinyanga* are used in traditional religion in Mozambique, to eliminate the effects of social pollution, which is the belief according to which:

After war, when soldiers, children, and refugees return home to their families, they are believed to be potential contaminators of the community and family [...] After war, men, women, and children need to go through a process of cleansing, which is a fundamental condition for their reintegration into society (Honwana 1997: 300).

These rituals are also used for soldiers to purify them from *mpfhukwa*, the spirit of a RENAMO commander who was killed in a certain area, where passers-by were affected by feeling beaten, and the *Tinyanaga* had to disperse that spirit, by performing *ku femba* (“to catch the spirit”) (Honwana 1997: 299). These beliefs are part of African cosmology and traditional religion that explains why spiritual healing of people affected by armed conflict, especially child soldiers, is paramount in war-stricken communities. Child soldiers receive a ritual vaccination called *ku thlavela*, which involves making small cuts on the body that are stuffed with herbal remedies, a practice which is essential to purge and heal individuals from trauma (Honwana 1997: 301).

The same applies to children and adolescents who have killed and committed heinous atrocities against others. It is believed that they have provoked the wrath of ancestral spirits. Without a proper process of spiritual healing, all other aspects of child soldiers' life remain fragile and the condition of vulnerability will persist.

It is sad that war oftentimes demolished even this system of beliefs and the facilities that help reconnecting with the ancestors, leaving the living exposed to harm and ongoing trauma. This is a view held by Wessells (2006: 153): "the conduct of the traditions gives people a sense of meaning in life, continuity across generations, and protection from harm. War shatters these systems of meaning and protection, creating vulnerability far greater than that which owes to trauma". It is important to hear from children what their needs are and they should be involved in the preparatory stage that will lead to healing or cleansing rituals.

Honwana (2006) argues in the same way, by justifying the role of traditional healers: "Traditional healing takes a holistic approach, involving both the social and the physical dimensions of the malady in order to treat the person as a whole" (Honwana 2006: 155). Due to "persons who are polluted by their close encounter with death constitute a threat to the community [...] They go through a period of separation in which they do not belong to the social body and cannot enjoy social interaction" (Honwana 2006: 155). Besides these strategies, there is also an experiment called "kinesthetic empathy" that needs to be explored.

4.8.5 Healing based on "kinesthetic empathy" methodology

The approach experimented with by Harris (2010) consisted of displaying dramatised and improvised dancing, a methodology based on "kinesthetic empathy", aimed at "fostering a sense of collective agency and self-worth, and a restored capacity for positive interaction" that was susceptible to lead children to reconciliation and to play an "active and productive role in the community" (Harris 2010).

The author used healing of memories techniques, to assist former belligerent children in Sierra Leone reintegrate into their communities in a meaningful way. This was done through a display of dramatised and improvised dancing, a methodology based on "kinesthetic empathy" that aimed at "fostering a sense of collective agency and self-worth, and a restored capacity for positive interaction" that was susceptible to lead children to reconciliation and to play an "active and productive role in the community" (Harris 2010).

Healing is emphasised because the prospect for harmonious reinsertion of former child soldiers into society would be unsuccessful, when they cannot process their anger internally and externally and be reconciled with their respective communities as noted here: “Given the liberty within a safe space to acknowledge their experiences, and mourn their suffering and that of those whom they had caused to suffer, the former boy soldiers discovered a route to reconciliation with a community that had shunned them for years” (Harris 2010).

The result of this methodology was that these former child soldiers were made welcome and accepted by their elders (Harris 2010). The failure to achieve interpersonal healing may result in the resumption of violence and eruption of anti-social acts that could be directed towards child soldiers or child soldiers towards their communities.

4.8.6 Healing impact of community back up

Children need support from society (as peers, family members, role models, and so on) to ensure that they are welcomed back to a supportive and peaceful environment (Parmar *et al.* 2010: 30). Honwana (2006: 69) maintains: “we are called [...] to account for civil wars that enlist children in horrific violence and distort both their development and that of their society. From this perspective, boy soldiers are both victims and perpetrators”. Child soldiers’ agency and resilience could be utilised positively, in taking them through accountability processes, and also by assisting them to reintegrate into society in a meaningful way. Their resiliency is perceptible in their way of engaging by switching between different armed groups and militias. This shows that child soldiers have the potential to settle down, following reintegration processes, and are capable of overcoming the adversities experienced in armed conflict (Wessells 2006; Seymour 2011).

Healing can take place through various media, namely truth-telling (Sesay 2007: 28), religious confession (Linn and Linn 1984; Minow 2000: 241), cleansing rituals (Honwana 1997, 2006), and so forth. From whatever way it is processed, child soldiers should be afforded this opportunity, in addition to “community resilience” and other psycho-social interventions, to relish peace and welcome in their communities. Moreover, some circumstances may prevent that from happening, especially the lack of basic needs, housing, food, schools, jobs, and health care, following their demobilisation and reintegration into society. To support this point, Wessells (2006) notes:

In such situations, it may be inappropriate to offer psychological assistance as a singular intervention. More good will likely come through interweaving psychological support with physical construction and assistance in sectors such as health, water and sanitation, and shelter reconstruction (Wessells 2006: 189).

Additionally, the role of “family integration is one of the most fundamental forms of psychological support and healing for war-affected children” (Wessells 2006: 189). In this regard, a comprehensive approach to healing is critical to assist child soldiers recover mentally, psychologically and socially. An integration of different worldviews may be useful, such as Western psychology and African traditional strategies of healing, as demonstrated by several scholars (Honwana 1997; Wamba 2004).

The community needs to engage respectfully with victims, both child soldiers and non-soldiers, through adequate processes of justice capable of enhancing reconciliation. This engagement is, nonetheless, not without challenges, especially when child soldiers maintain the primary identity as victims, and simultaneously join accountability processes as perpetrators. In order to make the process intelligible, it is necessary to explore the concept of victim.

While “community resilience” may help war-affected children, their psychosocial support needs must not be neglected (Wessells 2012). This view is supported by the fact that violence affects the mental wellness of war affected children, as established by Hecker *et al.* (2013: 146) in a study of child soldiers in the DRC. That suggests a holistic approach is therefore, required to address the complexities of the psychosocial wellbeing of child soldiers, in order to prevent their re-recruitment in volatile environments, where conflict persists. Treatment needs to be comprehensive, in order to touch on individually affected child soldiers and their environment, and it should help enhance the psychosocial wellbeing of these ex-combatant children (Vindevoel *et al.* 2011).

It must be pointed out that child soldiers’ resilience should not be taken as a general rule for all child soldiers. There are circumstances when children exit armed conflict really traumatised and struggle to cope. Some even display Post-Traumatic Stress Disorder (PTSD) that is defined “[...] as syndrome in otherwise healthy persons that arose from their exposure to traumatic events that could not be assimilated by the psyche and integrated into their sense of self” (Honwana 2006: 152).

4.8.7 Healing, reconciliation and prevention

Treatment of war affected children remains an important dimension of prevention. Staub *et al.* (2005) avers that healing is necessary in engaging victims and perpetrators towards reconciliation, in order to prevent past victimisation from becoming a cause of violence: “Healing from the psychological wounds created by past victimization should make it less likely that victims engage in unnecessary “defensive” violence” (Staub *et al.* 2005: 300).

As far as relationships and healing are concerned, Staub *et al.* (2005) aver that healing is necessary, in engaging victims and perpetrators towards reconciliation, in order to prevent past victimisation from becoming a cause of violence: “Healing from the psychological wounds created by past victimization should make it less likely that victims engage in unnecessary ‘defensive’ violence” (Staub *et al.* 2005: 300). In the context whereby perpetrators have suffered victimisation they may resort to collective, violent actions, as result of past, unhealed, traumatic experiences (Staub *et al.* 2005: 302). Reconciliation and healing are vital to avert the cycle of violence. This situation applies to former child soldiers, who have suffered victimisation and losses of their social protective structures (families and parents). Several re-enrol to avenge their losses.

Healing is also a foundational step in personal transformation, as well as a prerequisite for meaningful social reintegration. Broken relations need to be healed in the aftermath of bloody conflicts, if society wants to circumvent the cycle of violence. Healing interventions should also be cognisant of factors that sustain social exclusion and rejection of child soldiers, namely the lack of accountability for their alleged past crimes.

Accountability, reconciliation and healing go together. One approach, susceptible of achieving accountability, bringing reconciliation and healing, and assisting with the reintegration of victims, is known as healing circles. Unfortunately, little research has been conducted regarding the restorative effects of healing circles. That is part of the objective of this inquiry. A brief explanation of healing circles follows in the next section.

4.8.8 Healing circles

Healing circles were initiated by local tribal leaders of the Hollow Water aborigine in Manitoba in Canada, to address incest and sexual assaults (McCold 2003). During healing circles, victims and offenders meet with their supporters and some community members come

together under the guidance of a circle facilitator, to tell their stories, in view of creatively and democratically responding to the hurt/harm suffered by victims (Groh 2011; Pranis 2013). This process is based on some principles, namely “respect for each individual, confidentiality, commitment to positive outcomes, openness to hearing the pain of others and an understanding that the pain of one affects all” (Pranis 2013).

However, sentencing circles involve the presence of an officer of the judicial service, member of the police service and the representatives of the community, who assist in the process of negotiating the kind of sentence that should be passed on the crime perpetrator. In both cases, justice aims at restoring the offender and the victim, and the focus is more on reparation than punishment. The context of child soldiers, as discussed, may include this restorative approach.

4.9 Conclusion

The DDR programmes, for both adult and young soldiers, often face enormous challenges, including the shortage of funding, ongoing conflict, and socio-economic constraints, which cause soldiers to desert armed forces. Young former soldiers unfortunately return to communities that are still affected by unresolved issues, such as poverty, ethnic tensions, the presence of foreign armed groups, and a heavily militarised environment. The expectations of a better future are shattered by a society that is presented as hostile to their development and total exit from armed groups. Unfortunately, the protective structures of society, such as justice systems and schools, as well as vocational and occupational training, are non-existent, causing more vulnerability.

The emergence of the self-demobilisation phenomenon was examined and the inexistence of protective, social and judicial structures were found to cause former child soldiers to re-mobilise. Effective reintegration of each returnee child needs to be considered along the lines of accountability, reconciliation and healing, so that their transition from soldiering to civilian life can be fruitful. However, some concerns still stand, such as the impact of such healing processes in a society challenged by a lack of justice for victims of heinous atrocities and a lack of protective structures for the returnee belligerent children, though healing remains a vital human need. So it is crucial to include the process of accountability in the DDR programmes, in order to protect children, who exit fighting forces against the hostility of the community. Finally, preventing further conflict that immediately creates the condition of vulnerability is a key element of prevention. The following chapter’s focus is on accountability and justice.

CHAPTER FIVE

ACCOUNTABILITY AND JUSTICE

5.1 Introduction

In the previous chapter, accountability and justice were found to be important issues in reintegration of the belligerent in society. Some aspects of accountability and justice are discussed here, namely the child protective pillars, the legal framework for protection, customary international law, and judicial challenges, along with criminal responsibility, child soldiers and transitional justice, and the ambiguous role of society and the DRC legislation, as well as complementarity with international law.

5.2 Child protection pillars against soldiering practice

Wessells (2006: 232) avers that “preventing the exploitation of children is one of the monumental challenges of our time”. Enrolment of persons below the age of 18 in armed forces and groups contravenes IHL and IHRL. In the legislation of the DRC, Article 184 of the Transitional Constitution, promulgated on 1 April 2003, bans the recruitment of persons under 18 years or their use in hostilities (Popovski and Arts 2006: 1). In addition, Doek (2011: 13) asserts: “preventing the recruitment and use of children in armed conflict is the most important challenge in international efforts to protect children”.

The main standards concerning prevention of recruitment and the use of children in military operations, are Protocol I and II, additional to the Geneva Convention, the CRC⁷³, ILO 182⁷⁴, the OPAC⁷⁵, and finally, the African Charter on the Right and Welfare of the Child (ACRWC), which proscribe enrolment of children and their direct participation (Doek 2011: 13).

Protection and prevention of the child soldiering practice rest on three key issues, according to (Wessells 2006: 3,4). These are, mainly, the means for attaining peace, developing prevention strategies through provision of meaningful life, and inventing legal strategy. Wessells (2006: 3) concurs that peace cannot be achieved in any society by using children as soldiers.

⁷³ The CRC prohibits recruitment of persons under the age of 15 and their direct involvement in hostilities.

⁷⁴ ILO presses all its state parties for elimination of coerced and mandatory recruitment of persons under 18 years in armed groups.

⁷⁵ OPAC prohibits direct participation of children in hostilities and their forcible recruitment by either armed groups or forces and also interdicts voluntary enrolment of children below the age of 16 by armed groups for all states association of OPAC.

Children who grow up in violent environments become vehicles of violence, which they continue to protract. Deprived of education and other opportunities that may aid their growth into civility and as responsible adults, some youngsters are drawn into barbarism, even beyond their country's frontiers. Experiences of countries where children have been involved in armed conflict, such as Liberia, Sierra Leone, Uganda, Rwanda and the DRC, show that child soldiering constitutes a threat to peace.

Wessells (2006: 3) affirms that child soldiering destroys societies, endangers stability of regions where they have operated; and this phenomenon is listed as “a high-priority issue in building peace, which is indivisible from human rights” (Wessells 2006: 3). The necessity for stability implies tackling the child soldiering phenomenon. This is an issue at stake in the Great Lake Region, particularly in the DRC, which cannot be eradicated without ensuring there is sustainable peace and children and adolescents have livelihoods and opportunities.

When living in an environment marked by social, political and economic struggle, the lack of hope for the future, frustrations and violence, children become vulnerable to soldiering, which they see as an alternative for survival. Also, young people who cannot get what they need, in normal conditions, believe that it is possible to have that, when they join a fighting group. It is important to present children with alternatives and occupational activities that they may value more than soldiering, in order to dissuade them from moving into armed groups.

Wessells (2006: 4) avers: “soldiering is often attractive to children because it provides meaning, identity, and options civilian life does not afford”. Teenagers go through a critical time, during which they try to position themselves vis-à-vis Society. This period needs to be well-managed to avert being enchanted by activities that are unsuitable to their lives and for which they are not fit. Nonetheless, they commit themselves dreaming to obtain certain advantages.

5.3 Legal framework for child protection

International legal framework for child protection (international humanitarian law and international human rights law)	
<p>Proscription of recruitment of minors under 15</p> <p>Article 77 of Protocol I (1977) of Geneva Convention IV (1949): “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”.</p> <p>Article 8 (2) (e)(vii) of the Rome Statute of the ICC: “Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;...”</p> <p>Article 38 of the CRC (1989): “Governments must do everything they can to protect and care for children affected by war. Governments must not allow children under the age of 15 to take part in war or join the armed forces”.</p> <p>Article 4 of Additional Protocol II “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”.</p> <p>The Rome Statute of the ICC, Article 8(2)(b)(xxvi): “Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.”</p> <p>The Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts</p>	<p>Proscription of recruitment of minor below 18</p> <p>Article 2 of ILO 182: “forced or compulsory recruitment of children [under the age of eighteen] for the use in armed conflict is among the worst forms of child labour”</p> <p>The Cape Town Principle (1997): “Child soldier” in this document is any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messenger and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and for forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.”</p> <p>The African Charter on the Rights and Welfare of the Child (1999): “Parties ‘to refrain from recruiting any child [under eighteen]’”.</p> <p>Optional Protocol on the Involvement of Children in Armed Conflict (2000), Article 1: “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”</p> <p>Article 4(1): “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years”;</p> <p>The Paris Principle (2002), Article 6(4)(1): “The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which raises the minimum age for compulsory recruitment into armed forces to 18 years; exhorts armed groups not to recruit or use children under the age of 18 and requires State Parties to take all feasible measures to criminalize such practices;”</p>

Figure 3: Major proscriptive age limit for recruitment

Efforts to help prevent the child soldiering phenomenon require that children are listened to, treated with respect, they are understood and their needs are addressed; and finally, society should acknowledge their agency. In this way, those who exit soldiering life can make a good

transition to civilian life; and be redeemed from the horrific and tragic reality of war and embrace a new identity (Wessells 2006: 4).

Wessells (2006: 232,233) outlines three strategies, namely the “legal strategy”, based on enforcement of legal standards and making the use of child soldiering a crime, followed by “conflict prevention”, as children are recruited to participate in hostilities when conflict turns violent. Finally, there is a “systematic prevention strategy” that implies that plans should be worked out, at various levels, to avoid recruitment of children actors directly involved in a stake.

A brief overview of the historical development of child protection legal instruments, especially on the involvement of the children in armed conflict (OPAC), may help understand Figure 3. Coomaraswamy (2010) provides an exhaustive development of the legal framework that led to the formulation of OPAC, adopted on 25 May 2000, and enacted on 12 February 2002. This legal instrument is erected on the basis laid by the Geneva Convention of 1949 and its Additional Protocols (I and II) of 1977, and other available legal provisions grounded in the IHL and IHRL.

Protocol I addresses issues pertaining to “protection of victims of international conflicts” while Protocol II concerns the “protection of victims of non-international armed conflict” (Doek 2011: 7). The peculiar achievement of the OPAC, was the raising of the legal age for compulsory recruitment and active participation of juveniles in hostilities, to a minimum 18 years. Until 2010, a total of 132 countries had signed the protocol and 24 more had signed but not ratified (Coomaraswamy 2010: 537).

Coomaraswamy (2010) observes that the development of OPAC, in its drafting phase, was concerned with the question of voluntary enrolment of children in hostilities. There was an agreement that voluntary recruitment of the under 18 would be permitted only in armed forces of the state, not in armed groups (Coomaraswamy 2010: 548), and not below the age of 16. This suggests that conscription of persons under 16 and the use of the under 18 in hostilities is unlawful and constitute a war crime under international law.

Nevertheless, the law summons that allows voluntary recruitment of minors under 18, should ensure that such recruitment fulfils the requirement of voluntary recruitment. This implies that

it is done with the informed consent of the person's parents or legal guardians; and they are fully informed of the duties involved in such military service; these persons should obtain reliable proof of age, prior to accepting the underage into national military service.⁷⁶

Brett and Specht (2004: 113) argue, on the basis of these legal instruments, especially under the ILO Convention prohibiting the recruitment of children below 15 years of age that there is no justification for voluntary or forced participation of children in armed conflict. The same applies to children and adolescents under 18, according to the African Charter on the Right and Welfare of the Child (1990). Moreover, there are three legal aspects of child protection, namely the legislation designed to prevent child soldiering practice; prosecution of child recruiters, accountability of child soldiers. These provisions are included in IHL and IHRL.

The judicial approach commonly used to prevent the child soldiering phenomenon implies the indictment and prosecution by the ICC, of armed groups' leaders who recruit and use children as soldiers, especially those that the government cannot apprehend and prosecute in domestic courts. This type of trial is, however, not always straight forward as regards the deterrence of the child soldiering phenomenon. Legal instruments, pertaining to child protection and child soldiers' accountability for crimes, allegedly committed during their participation in armed conflict, include war.⁷⁷

In order to ensure that children are protected in time of war, the Office of the Special Representative of the Secretary General for children in armed conflict singled out six grave violations against children. These include: (1) "Recruitment and use of children"; (2) "killing or maiming of children"; (3) "sexual violence against children"; (4) "attacks against schools or hospitals"; (5) "abduction of children"; and (6) "denial of humanitarian access" (United Nations 2009c: 3).

It is morally wrong to use children as soldiers because vulnerable persons, such as children, are in need of care and protection (Wessells 2006: 31). Their defence and care for their physical, mental and psychological growth are supposed to be looked after by communities, societies, states and international bodies (Honwana 2006: 31). It is deviating when instead, children enrol or are recruited to protect adults and their communities. For this reason, the enforcement of

⁷⁶ OPAC, Article 3.

⁷⁷ The Rome Statute of the ICC, Article 8(2) (b) (xxvi).

international legal instruments needs to be critically investigated, in order to adopt a more promising approach to secure children, especially in war-torn regions.

5.4 Customary International Law

The Paris Principles declare that effective prevention of the unlawful recruitment or use of girls and boys, includes safe attendance of schools, prevention of family separation and early identification, protection and reunification programmes for separated children.⁷⁸ “‘Unlawful recruitment or use’, is recruitment or use of children under the age stipulated in the international treaties, applicable to the armed force or armed group in question or under applicable national law”.⁷⁹ Children’s rights must be observed, their care, respect, safety and protection are paramount in international law (Amnesty International 2000: 4,5).

Child protection also demands their immediate release by armed forces and groups, and their rehabilitation, which has become an international concern:

States Parties shall take all feasible measures to ensure that persons within their Jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.⁸⁰

While the OPAC and other legal instruments have raised the age of recruitment by government forces and direct participation in hostilities to the minimum of 18, recruitment of children between the age of 16 and 18 by states was open to government forces, on condition that such enrolment is done voluntarily and backed by informed consent of parents or guardians.⁸¹

The progress made by OPAC was raising the minimum recruitment age to 18, in order to protect mature children, while making it difficult for recruitment of minor children (Wessells 2006: 234). And this evolution was supported by the International Labour Organisation’s Article 182 that describes “the compulsory or forced recruitment of children under 18 for use in armed conflict as one of the most dangerous form of labour” (Wessells 2006: 234).

⁷⁸ The Paris Principles, paragraph 6(3).

⁷⁹ The Paris Principles, paragraph 2(5).

⁸⁰ OPAC, Article 6 (3).

⁸¹ OPAC, Article 3 (1) and CRC, Article 38.

The African Charter on the Rights and Welfare of the Child⁸² (ACRWC) defines a child simply as a person younger than 18 year of age, as stated here: “All parties shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular from recruiting any child”.⁸³ This Article also excludes the possibility of children taking up arms for the reason of protecting their community, in the event of civil war and threat of national integrity or foreign occupation (Gose 2002: 42). The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO), demands an “Immediate Action for the Elimination of the Worst Forms of Child Labor”.⁸⁴ The Rome Statute of the ICC, under its jurisdiction, prosecutes the following crimes: the crime of genocide, crimes against humanity, war crimes and the crime of aggression.⁸⁵

The Rome Statute of the ICC stipulates that conscription, recruitment and use of minors under 15 years of age constitute a war crime.⁸⁶ In addition, one instrument that is non-binding, is the The Beijing Rules, which however, states that the “age limits will depend on each respective legal system, thus fully respecting the economic, social, political, cultural and legal system of Member States”.⁸⁷

Children fall under the category of civilians, thus non-military persons that are entitled to and who deserve protection.⁸⁸ There is no justification for brutalising girls and boys and other adults to forcibly carry guns and fight against their will. Even under the Constitution of the DRC, a minor is any person, regardless of sex, who has not yet reached the age of 18.⁸⁹ Added to this, Law 09/001 of 10 January 2009 proscribes recruitment of minors in armed groups and forces. It stipulates: “The recruitment and use of children in armed forces and armed groups as well as the Police are prohibited. The State ensures the removal of the child enrolled or used in

⁸² The African Charter on the Rights and Welfare of the Child (ACRWC) promulgated in 1990 by the OAU (Document CAB/LEG/24.9/49 of 1990). AI Index AFR 59/01/97 of September 1997, Article 22.

⁸³ ACRWC, Article 22(2).

⁸⁴ See *Convention concerning the Prohibition and Immediate Action for the Elimination of the worse forms of child labour*. Geneva: International Labour Organisation (ILO), 87th Session, Geneva, adopted by the Conference at its eighth-seventh session, Geneva, 17 June 1999. Convention 182. Available: <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chic.htm> (Accessed 1 September 2014).

⁸⁵ The Rome Statute of the ICC, Article 5(1).

⁸⁶ The Rome Statute of the ICC, Article 8 (b) (xxvi).

⁸⁷ The Beijing Rule (4).

⁸⁸ Article 77 (2) of Geneva Convention (Protocol I): “Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.”

⁸⁹ Article 41 of the *Constitution of the DRC* defines a child as follows: “*L'enfant mineur est toute personne, sans distinction de sexe, qui n'a pas encore atteint 18 ans révolus*” [The minor is any person, regardless of sex, who has not yet reached 18 years].

armed forces and groups, as well as the Police and reintegration into the family and community”.⁹⁰

Child protection is guaranteed by customary international law. Customary International Law affirms the legal norms that interdict recruitment of persons under 15 years and their participation in hostilities (REDRESS 2006). It also bans compulsory conscription of persons less than 18 years of age, as stipulated in the CRC and the OPAC and other internationally recognised legal instruments that enforce child protection and care. Individual states are urged to comply with these regulations and take all needed measures to ensure that children’s rights are upheld nationally and internationally.

Since 30 November 1996, recruitment and enlistment of persons under 15 and their use in armed conflict has been criminalised by the Security Council (REDRESS 2006: 26). The Security Council’s efforts consist of making this promulgation a binding obligation for state parties and non-states actors, towards child welfare and respect of juvenile rights.

During armed conflict and in post-conflict situations, protection of children is seen as an urgency, as stipulated in OPAC: “Children shall be the object of special respect and shall be protected against any form of indecent assault. Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason”.⁹¹

The appointment of the Special Representative of the Secretary General for Children and Armed Conflict serves as an illustration of the importance of child protection. It followed Machel’s 1996 report on “The impact of Armed Conflict on Children” (Machel 1996). That study aimed to promote the rights, protection and wellbeing of children, in various phases of armed conflict, while upholding international standards pertaining to the protection of children against recruitment and participation in armed hostilities, was seen as fundamental (Coomaraswamy 2010: 537).

It is equally important to develop and reinforce mechanisms to protect children within the community. Such efforts should concentrate on eliminating all kinds of threats to child safety. Social exclusion and stigmatisation, humiliation, spiritual contamination, and denied

⁹⁰ Article 71 of the Child Protection Law 09/001 of 10 January 2009.

⁹¹ OPAC, Article 77(1).

accessibility to a positive life should be avoided. That implies envisioning a holistic strategy for child protection, strong relationships with parents or caretakers, provision of health development and coping strategy, access to social support from family members or neighbours, schools, development of peer groups in communities, and creation of a protective environment (Wessells 2006: 225).

War shatters structures that provide care to children, such as families, schools, health care centres, markets, and other facilities to sustain life, and causes the loss of adult lives, removing those that provide basic necessities, such as housing, food, water, sanitation, clothes, and so on, for their families (Wessells 2006: 226). Structures that protect children are also destroyed. These include NGOs, church-based organisations, judicial systems, and child protection units/associations. Children's future is in peril, due to a lack of safety and protective structures, with a possible solution being the mobilising of communities and organisations interested in care and protection of children and all child protection networks.

Wessells (2006: 226) suggests the following elements in the strategy to protect children and prevent their use in hostilities: (1) pursuing the mission to bring fighting factions to peace negotiation table; (2) discussing re-recruitment issues; (3) ending war, which constitutes a stumbling block to child protection; (4) enhancing local capacity to spearhead the reconstruction of facilities and structures to protect children, promote peace by increasing awareness of the destruction caused by war and the urgency to support war survivors after the gun has fallen silent; and finally (5) using community-based child protection to work out the road to reconciliation (Wessells 2006: 228).

Furthermore, society should restore protective structures where children can reconnect with their communities again. Those orphaned or separated from their parents, those made disabled by war, and those at risk of marriage, are vulnerable and entitled to care under International Law (Wessells 2006: 225). Child protection requires a massive mobilisation of the entire community, nationally and internationally, using local resources and international legal instruments, to prevent the child soldiering practice. Moreover, that is not without challenge.

5.5 Judicial challenges

There are enormous challenges in the prevention of child soldiering. For example, how to handle justice for child soldiers needs to take different circumstances and the psychological

condition of children into consideration. Nonetheless, overcoming the judicial challenges of child accountability neither solve the immense difficulties pertaining to their living conditions after war, nor addresses social and economic injustices. This section reviews the judicial challenges of the mainstream justice system and relates that to socio-economic concerns, in order to comprehensively address the child soldiering conundrum.

The mainstream justice approach is often used to hold rebel commanders accountable for using, abducting and enlisting children as soldiers.⁹² The emphasis on the “best interests and needs of children” in implementing IHL and IHRL, sees children more as victims than perpetrators. For instance, The Rome Statute of the ICC holds children as victims in the first place, not perpetrators. This implies that it has no legal mandate to proceed with hearing and to institute a cause referring “any person who was under the age of eighteen at the time of the alleged commission of crime”.⁹³ In addition, the CRC states:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.⁹⁴

For illustration, the Special Court for Sierra Leone (SCSL) is so far the only court that has a legal mandate to prosecute minors aged above 15, but it resolved not to put children on trial, since the “greatest responsibility” of their crimes could not be attributed to them under the assumption that they were coerced to perpetrate those atrocious acts by their superiors (Coomaraswamy 2010: 542). Taking the scale of devastation into account caused by armed conflict, criminal processes can be illusive in many countries, due to a lack of resources, facilities, logistics, and trained personnel with the minimum understanding of child’s rights (Wessells 2006: 220).

The paradox of victims and perpetrators further complicates the prospect of successful, retributive proceedings. The complexity of conventional criminal and punitive justice, when dealing with vulnerable, abducted children, who are manipulated and exploited, poses serious

⁹² The Rome Statute of the ICC, Article 8(2)(b)(xxvi); and Article 8(e)(vii).

⁹³ The Rome Statute of the ICC, article 26.

⁹⁴ CRC, Article 40.

challenges to criminology. Actually, “in practice, it is vexingly difficult to distinguish between victims and perpetrators” (Wessells 2006: 221), when handling a child accused of committing war atrocities. For this reason, many courts are reluctant to prosecute ex-child fighters.

While the office of the UN Special Representative for Children in Armed Conflict proposed the inclusion of SCSL in the legislation, UNICEF and many NGOs working for child protection, objected to this proposal arguing that prosecution would only further marginalise children and provide a basis for re-recruitment (Wessells 2006: 221). Actually, the project was perceived as an opportunity to seek justice under the CRC provisions that could lead to rehabilitation and reintegration of child ex-fighters. Though the court was granted the authority to prosecute people between 15 and 18, the prosecutor at the SCSL was only interested in adult perpetrators and never summoned children (Wessells 2006: 219).

The nature of punitive sanctions inflicted by the mainstream justice system does not meet international standards, regarding children accused of crimes or violation of international law: “Capital punishment or imprisonment for life without possibility of release shall never be used against any person who is proved to have committed an offence against international or domestic criminal law while under 18 years of age.”⁹⁵ As a result, children are marginalised, stigmatised, and feel rejected. This mistreatment jeopardises the success of their integration and dashes the hope for a better future (Wessells 2006: 219). The author further asserts that, “particularly regarding children who were abducted and forced to commit atrocities by armed groups, it seems wiser to regard the children as pawns rather as wilful perpetrators” (Wessells 2006: 219); RJ approaches are esupportd because mainstream justice mechanisms further children’s exploitation by adults.

Referring to the Acoli people in Uganda, escapee child combatants from the LRA are handled as children without responsibility for their acts, and this serves as a kind of amnesty granted to children, even children over 18 years, setting them free from criminal liability (Wessells 2006: 217). The conclusion is that it is imperative to promote a discourse of empathy, unity and non-violence, and increase the power of cooperation. This is achievable by putting judicial structures in place that deal with injustices, such as illegal detention of child soldiers, delay or lack of success in holding them accountable, as well as unfair trials (Wessells 2006: 217).

⁹⁵ The Parish Principles, paragraph 3(9); CRC, Article 37.

Juvenile justice, pertaining to child perpetrators of crimes and breaches of international law, presents tremendous complexities and needs a more adapted approach that embraces child circumstances, rights, needs and best interests. Accountability certainly is a significant step in efforts to attain justice and protect children and it should conform to the norms set by the Paris Principles (2007) in its Article 3 (17), and the CRC (1989) in its Article 37.

At the same times, the Committee on the Rights of the Child stresses that children alleged to have perpetrated crimes in contravention of IHL and IHRL should be seen, in the first place, as victims. This implies that general principles applicable to juvenile offenders involved in acts of genocide, crimes against humanity or war crimes, continue to be implemented (Aptel 2010). Unfortunately, former child soldiers in many countries are disadvantaged and many are subject to reprisal by rival groups and/or suffer unfair treatment (Wessells 2006: 217). The DRC is not an exception.

For instance, the CSCS released a report in 2007 that revealed flagrant violations of children's rights and that of international guidelines, for their accountability through detention and trial by military courts (CSCS 2007). Although the primary responsibility for crimes committed by children rests on the adults who recruit them, their share of responsibility is undeniable. Honwana contends: "although the moral responsibility of individual soldiers may be severely limited by the constraints under which they fought, it is not entirely absent" (Honwana 2006: 50).

The process that leads children into armed conflict, and even the initiation they receive that dehumanises and indoctrinates them, transforms them into an "oxymoron", not soldiers, but rather child soldiers, an expression "that generates an ambiguous association of innocence and guilt" (Honwana 2006: 69). The author further clarifies that, "although these boy soldiers cannot be considered fully responsible for their actions, they cannot be seen as entirely deprived of agency either" (Honwana 2006: 69). For this reason, domestic legislation on child soldiers should incorporate the provisions of international legislation in its juvenile justice system, in order to handle child soldiers with fairness.

5.6 Criminal responsibility and accountability of child soldiers

Criminal responsibility of child soldiers is widely debated. The ethical question that arises here, is that of moral responsibility for underage soldiers, who may not fully understand the

gravity of their acts or those who execute orders from their commanders (Amnesty International 2000). The Beijing Rules also comment on the psychological state of a child to make decisions that can lead to criminalisation of their actions and for which they may be held accountable:

The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child, by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour.⁹⁶

This implies that court proceedings should try to determine individual circumstances leading to the commitment of crimes and violations of international laws. Coomaraswamy (2010: 545) argues that, in the context of child soldiering, “commission and violation” mitigate the court outcome because conscription and enlistment of children are all criminal acts that render complex criminal responsibility of children associated with fighting forces. Under these circumstances, the CRC and the Beijing Rules establish that there should be no imposition of capital punishment on children under 18 and the deprivation of their liberty shall be considered as a “measure of last resort and for the shortest time necessary” (Coomaraswamy 2010: 545).

Juvenile accountability is concerned with the age of criminal responsibility for juvenile offenders. The Beijing Rules does not set a specific age for juvenile accountability. However, it sets a guideline that can help states, in different cultural contexts, to opt for a fair age, under which young offenders can be held accountable. The Rules state: “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”.⁹⁷

The T-range is set in the following statements: “This makes for a wide variety of ages coming under the definition of “juvenile”, ranging from 7 years to 18 years or above. Such a variety seems inevitable in view of the different national legal systems and does not diminish the impact of these Standard Minimum Rules”.⁹⁸

⁹⁶ See The Beijing Rules 4(1) (commentary).

⁹⁷ The Beijing Rules 4(1).

⁹⁸ The Beijing Rules 2(2).

The overestimated victimhood image is supported by the law that defines conscription, recruitment and enlistment of children below the age of 18, as a war crime. This legal provision assigns the responsibility for child soldiers' crimes to their superiors, as asserted by Popovski and Arts (2006: 4): "these crimes are results of superior orders. Child soldiers' forcible recruitment is in itself a war crime". This view reflects Article 8 of the Rome Statutes mentioned earlier, which can be utilised to keep former child soldiers away from any judicial accountability. The CRC nevertheless, stipulates that juvenile law-breakers should be held accountable for their violence, in judicial procedures that are mindful of their interests:

Children who are accused of breaking the law have the right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.⁹⁹

Nonetheless, the responsibility for crimes committed by child soldiers must, generally, be shouldered by their superiors (commanders and warlords), as has been the case with the DRC, Sudan, Sierra Leone, the Philippines, Nepal, Colombia and others places, where tragic human rights violations have taken place (Popovski and Arts 2006: 4). In the same perspective, Amnesty International assigns criminal responsibility of international human rights and IHL violations, to irresponsible, armed group commanders.

The new tendency, in looking at child criminal responsibility during armed conflict, suggests a "progressist" opinion on child soldiers and a break from misapprehension that infantilises children fighters. "Often children's decision to join comes not as a moment of epiphany but through a slow accrual of smaller decisions and gradually increased engagement with members of an armed group" (Wessells 2006: 32). They act out of patriotism, according to which "particular" government officials describe child soldiers' engagement as their decision to "fulfil patriotic duty of their countries" (Wessells 2006: 32). In conditions whereby they become taking up arms to respond to political obligation, a criminal responsibility could be argued on this basis. However, their individual circumstances should not be overlooked. Amann (2001) affirms this, with the case of child soldiers at the SCSL so controversial. It is therefore, important to concede that, when dealing with child perpetrators in courts, it is important to be aware of children's needs:

⁹⁹ CRC, Article 40.

Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected”; and 40 (4) states: “A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”¹⁰⁰

Justice is one of the most pressing and urgent issues in the aftermath of armed conflict and war. The most common model is conventional justice, while RJ is also gaining ground in criminology. Proponents of retributive justice argue that child soldiers must be prosecuted for their crimes because they deliberately choose to commit crimes, as supported by the Rwandan and the USA legislations that apply punitive justice for crimes committed by adolescents (Wessells 2006: 219).

Several times, conflicts erupt in time of peace after war which include land dispute, competition for food, lack of resources, fear and insecurity as disputant parties, former enemies return in the community to live together (Wessells 2006: 208). These contestations can degenerate into resumptions of conflict if they are not well managed and break peace progress. In such a scenario, children are re-recruited as soldiers. There is an urgent need “to repair the torn social fabric and increase unity; community reconciliation is a high priority following war” (Wessells 2006: 209). This is a fundamental issue that requires particular consideration, in order to minimise the vulnerability of children already affected by war.

While it is important to consider child circumstances in time of war, failure to address the accountability issue for their violent acts leaves them even more vulnerable and under threat to return to armed groups; also, when society cannot protect them against their victims’ anger. The way to tackle this challenge is to use formal justice mechanisms adapted to their circumstances:

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; [...]¹⁰¹

¹⁰⁰ CRC, Article 40 (3)(b).

¹⁰¹ CRC, Article 40 (3).

On the other hand, in the aftermath of bloody conflict, justice is very often an illusion because of the destruction of infrastructure, including the judicial system, apart from the perceptible scale of anarchy and chaos left behind. In some instances, the members of the judicial system run away or are killed, while there is a lack of structures and logistics to conduct trials and prosecute criminals. The paralysis and corruption that affect the judicial system in this context, renders prosecution and arrest of bandits impossible.

Even child soldiers may escape justice for their misdeeds. Such impunity is detrimental to peace and societal harmony. It is necessary to consider alternative measures, such as traditional justice mechanisms or RJ. A more holistic approach is, therefore, required to address the complexities of the psychosocial wellbeing of child soldiers, in order to prevent their re-recruitment, in a volatile environment, where conflict persists. This intervention should also be cognisant of factors that sustain social exclusion and rejection of child soldiers, namely the lack of accountability for their alleged past crimes.

5.6.1 Child soldiering accountability

Any initiative that attempts to hold child soldiers accountable triggers numerous disputes, especially among child protection agencies. One reason for such protest is the fact that child soldiers are widely considered as victims. In order to find a balanced understanding on this issue, the work of Drumbl (2012) is useful, as it deals with the intricacies surrounding the image of child soldiers, which can assist in laying the ground work for a new legal approach and initiating policies regarding child soldiering accountability. International legal instruments aiming at child protection in armed conflict and local legislations in war-torn countries where children are used soldiers focus on the vulnerability of underage soldiers, while failing to acknowledge the rights of victims and the need for restoration of all parties involved in war-related atrocities. Great efforts have been directed to accountability for child soldiers viewed as vulnerable and victims themselves. It is often observed that children become upset when they are called rebels or treated as killers for actions they executed under the commandments of adult chiefs and where they did not have other options for their survival.

In this context, former child soldiers reject the criminalisation of their actions, they view their prosecution as a rejection by society and perceive being marginalised as an injustice, which can only lead them to fight back and continue fighting (Wessells 2006: 220). This state of affairs has prompted laws and policies to hold those adult persons that recruit and use them as

soldiers, accountable (Drumbl 2012). Neglecting the accountability of child perpetrators impacts their reintegration into society negatively. This makes it imperative to move from over-emphasised victimisation of belligerent children, to unbiased identity that takes child agency and resilience into account. Holding child soldiers responsible for violations of international law reduces the risk of their rejection, marginalisation and retaliation by the community. They can be protected and accepted in society, if they account for their antisocial behaviour by explaining the circumstances that led to such conduct.

Amann (2001) explores critical issues, regarding accountability for children who allegedly perpetrated grievous violations of IHL and IHRL and the Sierra Leonean law, on Sierra Leone soil, since November 30th, 1990 (Amann 2001: 173). During the institution of the SCSL, there was as a proposal that juveniles, who are allegedly perpetrators of war crimes, should appear before a special chamber. The UN Secretary General, Kofi Annan, urged the SCSL to make former child soldiers account for the alleged war crimes contributed to them, he also advised that this initiative should seek “a constructive and pluralist approach to the child soldiering problem” (Amann 2001: 168).

A selection of cases, in adjudication of former Sierra Leonean child soldiers, was seen as appropriate, in that specific context (Sierra Leone), though there were some concerns about a number of provisions in the initial plan (Amann 2001: 168,169). In its efforts to find persons implicated in crimes of large scale, the SCSL was also interested in children who were between 15 and 18 years of age at the time of committing those heinous crimes (Amann 2001: 173).

The Draft-Statement of the SCSL, referred juveniles to a truth and reconciliation commission; and a special chamber for minor perpetrators was suggested. The final decision to charge young offenders, however, rested on the prosecutor’s shoulders (Amann 2001: 173,174), and the Court finally decided not to put persons under 18 on trial (Popovski and Arts 2006: 5; Coomaraswamy 2010: 541).

Prosecuting and sentencing child soldiers was perceived as a way that would imperil the process of their rehabilitation. At the same time, the people of Sierra Leone urged prosecutors to proceed with summoning all perpetrators with the greatest responsibility of violations of international laws (Amann 2001: 174; Coomaraswamy 2010: 544). The Secretary General (Kofi Annan) suggested a more conciliatory approach that prioritised rehabilitation for

convicted child perpetrators, instead of incarceration (Amann 2001: 174). Prosecution of juveniles alleged of committing war crimes, in spite of their vulnerability, was viewed as a way of enhancing their rehabilitation and reconciliation, in post-civil war Sierra Leone; these proceedings were to be conducted with respect of child rights and dignity (Amann 2001: 185).

This was one historical example, to show how complex accountability of former child soldiers is. For the good of belligerent children, applying the CRC provisions was, however, instrumental in ensuring the successful reintegration of the child offender into society and encouraging that child to engage in a more constructive way towards society. Article 40 of the CRC stipulates:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.¹⁰²

The SCSL observed this principle and never sentenced former child soldiers (Amann 2001; Sesay 2007; Coomaraswamy 2010; Park 2010). In Rwanda, special considerations were given to children alongside the elderly and the sick, who were released on humanitarian grounds and under the Organic Law, “where the length of their pre-trial detention exceeds that of the sentence they are likely to receive [...]”.¹⁰³ This move was commended by The Special Representative after her proposal was taken, and The General Assembly, in its 1998 Resolution on Rwanda, noted with satisfaction the release of minors, elderly inmates, detainees who were terminally ill, and other prisoners jailed for other forms of human rights breaches (Schabas 2005: 11).

The example of Sierra Leone and Rwanda are two cases, whereby children accused of violating IHR and IHRL are not sentenced with retributive sanctions. Because the ICC refers in its jurisdiction to children as victims not as perpetrators: “The Court shall have no jurisdiction

¹⁰² CRC, Article 40(1).

¹⁰³ Organic Law on the Rwandan Genocide Trials; Situation of Human Rights in Rwanda. UN doc. A/RES/53/156, x 14; cited in Schabas (2005: 11).

over any person who was under the age of 18 at the time of the alleged commission of a crime”.¹⁰⁴

Nonetheless, it is evident that some child soldiers are perpetrators of war atrocities. A case in point, is the Sierra Leonean child soldier who carved the letters “RUF” (Revolutionary United Front) across people’s chests using a razor blade (Wessells 2006: 221). Is reintegration in this context possible without accountability, justice and reconciliation? Children may be indoctrinated, exposed to drugs, and trained to use lethal weapons to terrorise civilian populations and to destroy life. They are incited to kill by irresponsible adults, who instil in them an inhumane and savage mentality as noted here: “Standing in the shadows behind many a child perpetrator is a manipulative adult leader” (Wessells 2006: 220). It follows from this view that retribution can exacerbate violence and sustain the spiral of conflict because children, when treated as criminals, may retaliate because of their criminalisation and victimisation.

The bottom line is that children used as soldiers are primarily victims (Aptel 2010), because they are subject to grave breaches of IHL and IHRL namely: (1) “Recruitment and use of children”; (2) “killing or maiming of children”; (3) “sexual violence against children”; (4) “attacks against schools or hospitals”; (5) “abduction of children”; and (6) “denial of humanitarian access”.¹⁰⁵ However their resilience and agency can serve to take them through accountability processes that comply with the IHL and IHRL, as stipulated by Article 39 and 40 of the CRC (UNICEF 1989; Aptel 2010).

The complexity of the child soldiering phenomenon calls for intervention programmes that include the justice approach. The mainstream justice approach is often used to hold rebel commanders accountable for using, abducting and enlisting children as soldiers;¹⁰⁶ and using them in armed conflict.¹⁰⁷ The emphasis is put on the “best interests and needs of children” in implementing IHL and IHRL. For instance, The Rome Statute of the ICC Court holds children in the first place as victims, not perpetrators. This implies that it has no legal mandate to proceed with hearings and to institute a cause referring “any person who was under the age of

¹⁰⁴ The Rome Statute of the ICC, Article 26.

¹⁰⁵ *The Six Grave Violations Against Children During Armed Conflict. The Legal Foundation*, UN Office of Special Representative of the Secretary General on Children in Armed Conflict. Working Paper No 1, October 2009, p.6.

¹⁰⁶ Rome Statute of the ICC, Article 8(2) (b) (xxvi).

¹⁰⁷ Rome Statute of the ICC, Article 8(e) (vii).

eighteen at the time of the alleged commission of crime” according to its Article 26 (Coomaraswamy 2010: 542).

For illustration, the SCSL is the only court thus far, that has a legal mandate to prosecute minors aged above 15, resolved not to put children on trial since “greatest responsibility” of their crimes could not be imputed to them under the assumption that they were coerced to perpetrate those atrocious acts by their superiors (Coomaraswamy 2010: 542). While the office of the UN Special Representative for Children in Armed Conflict proposed the inclusion in the legislation of Sierra Leone, of a special court, where most feared former young soldiers could appear, UNICEF and many NGOs, working for child protection, objected to this proposal, arguing that prosecution would only further marginalise children and provide grounds for re-recruitment (Wessells 2006: 221).

Objections to holding a child accountable through the mainstream justice system are obviously justifiable. Wessells (2006: 219) asserts that punitive justice involves practices that are unfair to children, such as modes of incarceration that are inappropriate and that expose children to abuses, especially when they are jailed with adults. The author instead supports RJ approaches, as mainstream justice mechanisms further children’s exploitation by adults and jeopardises the success of their integration, while dashing the hope for a better future (Wessells 2006: 219). As a result, children are marginalised, stigmatised, and feel rejected: “particularly regarding children who were abducted and forced to commit atrocities by armed groups, it seems wiser to regard the children as pawns rather than wilful perpetrators” (Wessells 2006: 219). Additionally, in some instances, child rights are violated. The CSCS released a report in 2007 that revealed flagrant violations of children’s rights and international guidelines for their accountability, through detentions and trials by military courts (CSCS 2007).

Accountability is necessary to dissuade former child soldiers to return to armed groups. Savage and Vanspauwen (2008) aver that young people who voluntarily decide to join armed factions, are more vulnerable to revert to hostilities when the circumstances that led them to join for the first time persist, even after demobilisation. It is a condition that needs to be taken into account, when attempts are made to secure successful reintegration that will prevent re-recruitments. Honwana (2006: 50) contends: “although the moral responsibility of individual soldiers may be severely limited by the constraints under which they fought, it is not entirely absent”.

The process that leads children into armed conflict, and even the initiation they receive that dehumanises and indoctrinates them, transforms them into an “oxymoron”, not soldiers, but rather child soldiers, an expression “that generates an ambiguous association of innocence and guilt” (Honwana 2006: 69). It is further clarified that, “although these boy soldiers cannot be considered fully responsible for their actions, they cannot be seen as entirely deprived of agency either” (Honwana 2006: 69). A certain form of accountability is necessary, explained on two grounds that are not mutually exclusive, namely from the purely legal principles and the UN legal framework, in this regard.

5.6.2 Accountability of child soldiers under *actus reus* and *mens rea*

Rikhof (2007: 6, 7) bases his argument of two legal principles that focus on materiality and intentionality surrounding the circumstances that led to commission of crime, which is termed *actus reus* and *mens rea*. This research will focus on two arguments regarding child soldiers’ criminal responsibility, namely the *mens rea* (Rikhof 2007) and Article 30 of the Rome Statute of the ICC.

i. *Actus reus* and *mens rea*

According to Rikhof (2007), in criminology in general, there are two elements that need to be established for exclusion or admissibility of the merit of a case. That consist in proving that the offense has been carried out by person (*actus reus*) and also the person had the mental factor/faculty to execute that act (*mens rea*). These two elements explain the materiality and intentionality of the crime. Materiality refers to an agent, without whose intervention there would be no crime, while intentionality defines the intention to commit the crime or the awareness that enacting in that manner, would lead to committing a prohibited act (MacIntosh cited in Rikhof 2009:6).

By putting these legal elements into perspective, prosecution of child soldiers may be seen as an intricate question, when considering that children associated with armed forces and groups very often act under the influence of substances that shape their actions and affect their consciousness.

ii. Rome Statute of the International Criminal Court (Article 30)

Rikhof (2007: 1) explores the international legal framework (Additional Protocols to the Geneva Conventions of 1949, Articles 4 and 5), the CRC, the Paris Commitments and

Principles, to illustrate the duality involved in the child soldiering practice, and the criminal nature of the very act of recruiting, conscribing, and enlisting children below the age of 18 for military objectives.

Article 30 of the Rome Statute of the ICC is based on the intentionality and materiality of a crime that presupposes intent and knowledge in the commission of a crime. Knowledge refers to the awareness that perpetrating a crime will have consequences and a person who actualises/materialises their intention had prior understanding that their action will lead to such results. It is a tricky situation to appreciate the mental and psychological state of children who commit atrocious acts, especially when children give evidence of being drugged or under the influence of substances that blur their conscience and confuse their knowing act.

In this regard, Rikhof (2007: 7) draws the following conclusions:

- Youngsters who were below the age of 12 at the moment of commission of crimes should not account for their acts because no provisions suggest that children under 12 years of age should bear criminal responsibility for their acts (Rikhof 2007: 8).
- For children who perpetrated atrocities while they were between 12 and 18 years, a *mens rea* assessment should be conducted, to establish the factual awareness and possession of their mental capacity, to decide on commission of crimes. Several narratives on child soldiers show that, very often, the mental faculty of child soldiers who commit crimes are affected by drugs, influence of alcohol or other substances and threats (Rikhof 2007: 8). These substances are actually used for the purpose of destroying their mental faculty and emotional capacity, in order to carry out atrocious acts.
- The circumstances under which children between the age of 12 and 18 found themselves at the moment of perpetration of crimes should be established or determined: “For children who committed war crimes or crimes against humanity while between the ages of 12 and 18, individual assessments of whether they possessed the *mens rea* for these crimes need to be conducted” (Rikhof 2007: 8). This implies proving whether these children were conscious that they have been administered substances in question. It is also necessary to prove whether they had the knowledge of the effects of these substances or they were simply under threats or forced to commit crimes under these circumstances.

In a final analysis, Rikhof (2007: 9) argues that a prosecutorial policy is required at all levels whereby the *actus reus* with *mens rea* is assessed. This should be done in a condition where a possible defence is available “as an afterthought” that can be backslidden, without causing much damage to incorruptibility of these processes, while simultaneously dealing with child soldiers implicated in the processes, with much of humanity (Rikhof 2007: 9). This is a daunting task that awaits any jurisdiction attempting to prosecute and convict child soldiers according to UN standards and it appears very complex.

However, the recurring approach suggested in this study, is that which recourses to RJ mechanisms, with the potentialities to handle intricate issues that require justice, without jeopardising the interests of any of the parties implicated in the crime; whether the victim, or the perpetrator of the community where such a crime has been committed. Every effort to achieve this should resonate with international standards. The most appropriate platform for them should be RJ, since the CRC outlaws incarceration and punitive sanctions against demobilised child soldiers, for crimes they committed while in armed groups (Drumbl 2012: 21), which processes the CRC encouraged.¹⁰⁸

5.6.3 Prosecutorial justice and child soldiers

The debate around using prosecutorial justice in the context of the child soldiering practice covers two important aspects: firstly, the prosecution of adults incriminated for enlisting, abducting, recruiting and enrolling persons under 18 years of age in their ranks; secondly, the contested prosecution of child soldiers accused of violating IHL and IHRL. Nonetheless, the challenge with prosecution of adults and child soldiers resides in the lack of sufficient local courts and the means to arrest and prosecute high profile perpetrators.

The international justice system was initiated to indict and convict warlords and other individuals or groups of people involved in mass killing and large scale human rights violations. Such perpetrators include those who recruit and use children as soldiers because that act is a war crime (Wessells 2006: 236). Recent efforts to address these crimes were evident in the establishment of special courts and adapted chambers, depending on circumstances (Sierra Leone, Rwanda, Yugoslavia, USA, Belgium) that have jurisdiction to prosecute suspects and convict them, according to international justice norms (Wessells 2006:

¹⁰⁸ CRC, Article (40).

238). The prosecution of such crimes is stated from the beginning of the Rome Statute of the ICC:

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.¹⁰⁹

Warlords and alleged criminal have been served with arrest warrants and others have been indicted by the ICC. Those include Thomas Lubanga Dyilo, Germain Katanga, and Mathieu Ngudjolo, who have been indicted for war crimes in the DRC; and Ahmed Haroun, a militia leader, Ali Mohamed Abdel Rahman 'Kushayb' and Omar El Beshir, for the Darfur atrocities; and in Uganda, arrest warrants were issued against Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen (Clark and Waddell 2008: 7,39, 42). Among others, Jean Pierre Bemba has been indicted for war crimes, including the recruitment of persons below 18 in their militias in the DRC and Central African Republic, and recently, the sitting President of Kenya, Uhuru Kenyatta, appeared before ICC judges for post-election violence in Kenya. The ICC reserves the prerogative to intervene in situations where domestic jurisdictions are unable to pursue justice for the said category of crimes.

For instance, the judges at The Hague found Lubanga guilty "beyond reasonable doubt" of war crimes including recruitment and use of children, below 15 years of age, directly in hostilities in the UPC he led. Lubanga was extradited to the ICC by the Congolese Government in March 2006 and his trial started three years later, in 2009. The conscription of these minors took place in the Ituri district between 2002 and 2003. Lubanga was also found guilty for other, massive violations of international human rights law, ranging from "ethnic massacres, torture, rape, and the massive recruitment of children, some as young as seven" (Human Rights Watch 2012b). The ICC's guilty verdict against rebel leader Lubanga, was a first step towards bringing justice to the tens of thousands of children forced to fight in conflicts, in the DRC and elsewhere (Human Rights Watch 2012b).

With regard to other, international legal standards, the DRC adhered to OPAC and to the Rome Statute of the ICC, in April 2002. The OPAC became active on 12 February 2002 in the DRC,

¹⁰⁹ The Rome Statute of the ICC, Article 1.

where it is operational and applicable in conformity with the Rome Statute of the ICC, which has been ratified by the DRC and is being applied in domestic courts (REDRESS 2006: 28).

Court proceedings in this context are complex, especially when child soldiers have to testify to crimes implicating them. For instance, in the trial of Thomas Lubanga, the ICC judges excluded the group of victims of crimes perpetrated by Lubanga's child soldiers. The class of persons, supposed to be victims of crimes perpetrated by these child soldiers, were denied the right to participate in the trial against Lubanga (Drumbl 2012: 19). At times, the discretion of the judge may be questionable, as it violates the rights of victims (direct or indirect) to participate in the court proceedings treasured in UN Standards:

The International Criminal Court (ICC) enshrines three key principles relating to victims' rights: (1) victim participation in the proceedings, (2) protection of victims and witnesses and (3) the right to reparations. The Court recognizes the contribution that victims can make to the criminal process and the importance of that process to victims (Amnesty International 2008).

Referring to efforts made by the ICC to prosecute violations of IHL and IHRL, it is noted that children are not prosecuted, even after exiting armed groups and forces, for the crimes they committed during their participation in hostilities. Incrimination of minor soldiers is contested and advocates of child protection remain firm in their objection of such legal procedures. Many scholars share this same view. For example, Drumbl (2012: 21), in unequivocal language, argues against criminal prosecution for alleged violations of international criminal law by the international institutions that would cause incarceration of these under-age soldiers, if found guilty. The author further expostulates against prosecution of child soldiers by national judicial structures.

The researcher concurs with the argument put forward by Drumbl (2012) and other actors, who call off prosecutorial justice for young law-breakers that were belligerents. In many African countries, including the DRC, the lack of adequate and appropriate structures to pursue judicial action can only perpetuate the hardships of these minor fighters, intensify attrition and sustain the adverse effects of demonisation and marginalisation they already suffer. From both humanitarian and legal assumptions, child soldiers do not bear total criminal responsibility for their alleged barbaric acts.

Drumbl (2012) argues on this issue, from a law expert perspective, asserting: “penological goals of rehabilitation and reintegration, which should be particularly salient in the context of juveniles, do not centrally figure among international criminal laws’ aspirations” (Drumbl 2012: 21). However, the researcher observes that justice for victims of torture is one of the pillars of human dignity. Justice and respect for Victims’ Rights should not distinguish between crimes committed by children or adults.

The debatable criminalisation question of child soldiers’ barbaric acts and their victimhood, discussed by Drumbl (2012: 37), read from the perspective of a circumscribed action model, creates the grounds for justice that is needed by both child soldiers and their victims. Child soldiers fall into the category of victimised persons, according to the International Institute for Democracy and Electoral Assistance (2003). In an Article by Huyse (2003: 56): “Child soldiers have frequently been intimidated or abducted, brutalized and coerced to commit atrocities”. Former child soldiers may also benefit from the rights reserved by law to victims.

While former child soldiers may be concerned, the ICC prioritises peace, yet compromises to arrest all alleged perpetrators. Figure 3 illustrates this point. Unless the ICC can apprehend warlords and the DRC domestic courts succeed in arresting rebel commanders, children will not be protected. It is further observed that the ICC’s indictments have been cautious, selective and limited in space and time, due to the lack of cooperation on the side of other actors, such as local governments, who resist handing over presumed war criminals (Clark and Waddell 2008: 8,10).

These limitations suggest that a new model of justice is needed. In this regard, Drumbl (2012: 21) contends: “[T]he fact that child soldiers do not serve as conflict entrepreneurs or political leaders dulls the benefits of incapacitating them. Former child soldiers and those persons harmed by their conduct require restoration, which sequestered incarceration does not provide” (Drumbl 2012: 21).

Against the protectionist trend that tries to rescue child soldiers from punitive sanctions and policies and retributive sanctions, it is observed: “[T]he solution then, is not for international criminal law to recognise the criminal culpability of children but, instead, for transnational discourse to develop a more fine-grained approach to post-conflict accountability” (Drumbl 2012: 22). The fact that conflict cannot only be tackled through prosecutorial justice deepens

the abyss between parties involved and sustains enmities. Pursuing reconciliation and accountability via non-adjudicative approaches may best serve child interests and those of their victims. The researcher concurs that prosecutorial mechanisms of justice are not adapted to the situation of belligerent children, as they neither show any deterrent effect nor remedy broken relations and do not enhance societal harmony. Such proceedings meet various challenges that are discussed in the following sections.

5.6.4 Challenges of International law and criminal justice

The challenges faced by international law and criminal justice are situated in different levels, such as: the incapacity of local/domestic courts to apprehend high profile, alleged perpetrators, who may still lead armed groups or have become members of government; limited cases of indictment and the long duration of prosecutions; lack of cooperation of state parties to support the ICC arrest warrant against high profile politicians and warlords; the difficulty of having witnesses testify at the ICC for fear of retaliation; and choosing between safeguarding peace and making it fragile in volatile environments that have just come out of armed conflict. Furthermore, arrests and prosecutions of rebel commanders are postponed when this could compromise peace processes because pursuing justice in the middle of violence has been a great challenge of the ICC (Clark and Waddell 2008; Grono and O'Brien 2008: 13; Andreevska 2013).

Other than this, local courts of countries that emerge from large scale violence may lack the means to administer justice for genocides, war crimes and crimes against humanity. They are toothless when it comes to arresting and prosecuting high profile perpetrators and those prominent perpetrators that may be serving in the government. Efforts to empower domestic justice structures, to address gross human rights violations and crimes committed against children, are a provision under the principle of complementarity between the ICC and local governments.¹¹⁰ Unfortunately, that would make children who testify against warlords even more vulnerable. They may become subject to reprisals where security is not consolidated. More work needs to be done, such as strengthening and toughening UN standards and combatting impunity; even such attempts still rely on State Parties' cooperation.

The limited number of indictments by the ICC and the minimal prosecutions carried out, amidst large scale human rights violations worldwide, is a clear indication that this institution

¹¹⁰ The Rome Statute of the ICC, Article 1.

cannot manage accountability for violations of international law all over the world. The geopolitics of the regions where conflict is ongoing and the complex nature of conflict in which children are used as soldiers pose more difficulties that even local courts can handle. The ICC seems to prioritise peace and compromises the arrest of alleged perpetrators that serve in the Government or are offered lucrative positions in the state (Davis 2009; Moffett 2009: 12).

The ICC's indictments have been cautious, selective, limited to minor crimes, and limited in space and time (Clark and Waddell 2008). Its task is mainly concerned with war crimes, crimes against humanity and genocide. Prosecutions of rebel movements' commanders in these circumstances may become a hindrance to the pursuit of peace and reconciliation, as argued here:

Seeking to dispense criminal justice during conflict and even in parallel with peace processes, represents an ambitious vision for international justice – one that endeavours to reverse the historical trend of justice being postponed or bartered away as part of peace deals (Clark and Waddell 2008: 8).

The ICC is faced with the challenge of refusal by many state parties and non-parties to cooperate in making arrests of suspects to face charges at The Hague. Would such non-cooperation by African leaders be the result of what Clark and Waddell (2008: 8,9) view as antecedents of the colonial era, whereby most of the ICC's indictments are on the African Continent, rather than in many other parts of the world, where grave violations of international criminal law have taken place:

[...] the Court's focus on Africa has stirred African sensitivities about sovereignty and Courting Conflict? Justice, Peace and the ICC in Africa self-determination – not least because of the continent's history of colonisation and a pattern of decisions made for Africa by outsiders" (Clark and Waddell 2008: 9).

This has been the argument put forward by African leaders who failed to arrest Omar Al Bashir during his last visit in South Africa, to attend the African Union Summit in June 2015. The ICC remains toothless to bring to book some of the suspects who have been summoned with arrest warrants but have yet to be apprehended and sent to custody at The Hague. Therefore, the ICC needs to show impartiality, which seems to be one of its most critical, internal problems, even its weakness because of targeting war criminals mostly from Africa.

It is imperative that The ICC justice institution remains unbiased in its indictments. This step can restore its credibility and enhance the cooperation of State Parties, without which its success will be jeopardised. Disenfranchised countries may withdraw their support. This trend has become the focus of an ICC desired by Africa, amidst ever-increasing strained relations between the African Union and the ICC that pushed Africa to adopt a set of recommendations made by African States Parties to the ICC' in November 2009. These recommendations grapple with a number of vexing issues of international criminal justice that the ICC is battling (du Plessis 2010: vi). This discontent, according to the researcher, justified the lack of cooperation by African heads of state not to arrest Al-Bashir.

The challenge of seeking peace for perpetrators of atrocities in volatile environments is an evident problem for justice. Which approach should be taken that can achieve justice and maintain peace? This argument is furthered by Grono and O'Brien (2008: 13), who suggest an alternative as response to the tensions between peace and justice. The authors evoke an historical pragmatic way that "justice cannot always claim primacy" as noted here:

While impunity for people who have committed the gravest acts of inhumanity is morally repugnant, sometimes doing a deal with perpetrators is unavoidable and necessary to prevent further conflict and suffering. This is partly because the reality of conflict is such that multiple warring parties are likely to have committed atrocities" (Grono and O'Brien 2008: 13).

This aspect of crisis in transitional societies may need to be taken into consideration, in the context where international law needs to be applied, as an approach to settle injustices of the past and tackle violations of IHR and IHRL. The dilemma of pursuing justice amidst violence and ongoing conflict can be overcome, by using a "sequential approach – for example, by obtaining a peace agreement now, then dealing with justice many years later" (Grono and O'Brien 2008: 13). This strategy has been used in Latin America, where transitional justice followed after decades of building peace; and in some circumstances, amnesty was granted to facilitate handing over powers or regime changing (Grono and O'Brien 2008: 13).

While attaining justice for victims and averting impunity are morally sound, it is, however, important to consider the threat that prosecution of offenders may pose to peace. In such circumstances, justice may not be seen as the primacy and other means of settlements may be

negotiated to safeguard peace and prevent resumption of violence (Grono and O'Brien 2008: 13; Andreevska 2013). The pursuit of justice should not be threatened by fear of conflict resumption, but by involving perpetrators in the justice process, which can address their interests and that of affected populations, while opening the debate to look into alternatives of transitional justice that do not sacrifice justice but attain a more participatory and collaborative manner. The same applies for child soldiers accused of international crimes.

5.6.5 Prospects of international law to deter child soldiering practice

Honwana (2006: 38) comments: “the success of the Optional Protocol so far has meant very little to thousands of younger children who are abducted to take part in warfare”. The Rome Statute of the ICC (1998), and the ILO Convention of 1999, 183, art 3(a), were swiftly ratified and endorsed by 147 states. The Rome Statute of the ICC stipulates: “it is a crime to recruit-conscript or enlist children under 15 years of age, or use them in hostilities in both international and intrastate armed conflict, whether on behalf of a government or any non-state armed group”. No institutions have effectively protected children in war riven zones, or prevented their participation in hostilities. Honwana (2006: 157) subsequently affirms that the international legal instrument, set to prevent children’s participation in hostilities, has been ineffective in assuring the safety of children in warring situations for “two fundamental reasons”:

- Conventions and their additional and optional protocols restrain military action against irregular forces and they cannot be reinforced during civil wars to dismantle non-governmental forces.
- The concept of childhood, as defined in international legislation, does not reflect the real existential conditions of juveniles that vary from one society to another, and from one culture to another, due to the socially construed understanding of childhood.

The OPAC loopholes sustain the vulnerability of children by the fact that the interpretation of Article 1, “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”, implies that recruits under 15 could still be used for military activities, which are not less dangerous than direct, active engagement in hostilities.

Coomaraswamy (2010: 539) raises concerns along these lines that justify lobbying and advocacy by child protection institutions, against the use of juveniles under 18 in armed conflict. In addition, the Cape Town Principles broaden the child soldiering definition to alert public opinion that any person under 18, used in any capacity by armed groups and forces, even not taking part in front line or serving in what looks like banal activities (cooks, porters, commanders' sexual servants, messengers, spies) is a child soldier. That is why the call for straight 18 continues to be evoked to protect children (Coomaraswamy 2010: 549).

Article 2 of the Cape Town Principles, "States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces", insinuates that voluntary enlistment of children below 18 is authorised. Nonetheless, the formulation of Article 3, progressing from 2, by calling states to raise the recruitment age to 18 and ensure that voluntary recruitment is supported by parents/guardians' proven consent, indicated the discontent with the use of persons under 18 in direct hostilities, as children of this age category are entitled to protection¹¹¹.

Notwithstanding the pitfalls of the ICC and insufficiencies of the internal legal framework, it is important to acknowledge the potential that the ICC has to contribute to the advancement of international justice and influence domestic jurisdiction, such as in the case of the DRC, Uganda, Sierra Leone, Yugoslavia, and Rwanda. The ICC should be perceived more as an opportunity and hope-generating instrument, than as a panacea to the problem created by armed conflict; a source of inspiration for local and national jurisdiction, instead of a final response to all issues of accountability all over the world. Waddell and Clark (2008:11) point out: "In terms of the ICC's contribution, much depends on the Court's capacity to absorb early lessons and to demonstrate a clear role – both in its own right and in relation to other judicial and non-judicial initiatives" (Clark and Waddell 2008: 11).

Among the ICC achievements, the application of international criminal law in the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) is one. The ICC has some challenges, however, public opinion should refrain from undermining the basis that this institution has laid for the application of international law and the effects that

¹¹¹ OPAC, Article 38, paragraph 3.

indicting high profile politicians and criminal warlords may have on reduction of genocides, crimes against humanity and war crimes.

Wessells (2006: 233) remarks: “[...] international community has achieved greater success in developing high standards than in enforcing them. Vigorous efforts are underway to close this accountability”. This assertion suggests that the existence of international legal instruments for child protection that have been put in place by the international community, do not obliterate the child soldiering phenomenon. In the same vein, Honwana (2006: 38) asserts that the key issue that concerns the IHL regarding children’s participation in armed conflict is more just a “definition” but rather “of public acceptance and effective enforcement”.

Child protection could be successful, by combining International laws and local structures that advocate and stand against the practice of child soldiering. Views from Honwana (2006: 40) suggest that there should be efforts to promote “global understanding of children’s rights” and “reinforce local understanding of norms concerning the notion of childhood and child protection from war”. The way this is also used to halt recruitment of children and using them as soldiers, is by prosecuting adult rebel commanders, who illegally line children under their ranks.

Prosecution of crimes against child soldiers is handled according to the International criminal law and by local courts. The argument put forward by Popovski and Arts (2006: 7), is that criminal responsibility for children's war crimes lies with the adults who enlist them and that children can be held accountable in ways that serve both justice and the child's interests, in the short- and long-terms.

While the child soldiering practice persists, international law and interventions have helped reduce its scale (Drumbl 2012: 1). The condition of child soldiers is a serious humanitarian issue, as well as a real social quandary. Coomaraswamy (2010: 4) remarks that efforts by the Security Council, especially Resolution 1998 that provides for relevant, targeted sanctions, against parties involved in armed conflict that violate international law, appear to be bearing fruit. This view is expressed in the following terms: “These efforts at the international level are beginning to have a deterrent effect. The threat of Security Council sanctions has, for example, moved various groups to enter into action plans with the UN system to release children” (Coomaraswamy 2010: 4).

To overcome the challenge of transiting from military to civilian life and of integrating society, after all the atrocities committed by child soldiers, society should adopt a more conciliating approach towards ex-belligerent children, instead of ostracising them. Beyond the humanist rhetoric, describing the fate of child soldiering in terms of vulnerability, incapacity, victimisation, and frailty, which is a “reflexive response”, Drumbl (2012: 2) argues that it is time for governments and policy-makers to move from “conventional wisdom” to a “meaningful reform” that consists in “reimagining’ child soldiers and the sources. This implies questioning “habits and expectations that pervade contemporary humanism, the universality of human rights, strategies for juvenile civic engagement, and post conflict justice” (Drumbl 2012: 2).

International normative standards offer several alternatives to the mainstream accountability measures that often use coercive means, namely prosecution and incarceration. The complex situation of child soldiers is presented with a variety of approaches that fit within the overall models of accountability for children in conflict with the law. What kind of justice is required to address this intricate problem? This question touches on the fundamental problem of justice for child soldiers.

Prosecutorial/criminal justice, application of non-judicial mechanisms namely TJ, demobilisation, disarmament, reinsertion and reintegration programmes, as well as using humanitarian and philanthropic approaches (material assistance and economic reinsertion), need to consider child soldiers’ agency and resiliency. International legislation and policymakers should not overestimate the deterrent effects of a few prosecutions, to ensure the well-being of child soldiers and protection of the whole child population, especially in war-stricken areas.

Drumbl (2012: 19, 20) sustains that global efforts to end the child soldiering practice should consider “the multiple sources of child soldiering – institutional power politics, commercial, and historical”. Prosecutions are not the sole instruments of redressing violence and its consequences in the fight against the child soldiering phenomenon and neither is it the only tool to address atrocities and hardships in the aftermath of bloody conflict. There are other means that serve to repair social damages caused by armed conflict. Remedial approaches that are susceptible of building peace, promoting societal harmony, reconciliation, and the lessening attraction among war victims, while minimising the feeling of abandonment and

negligence for unaddressed injustices that occurred during armed conflict, include RJ mechanisms.

5.6.6 RJ for child soldiers from circumscribed action model

In order to surmount the difficulty that arises from universalising child soldiering action, Drumbl (2012: 17) suggests that these under-age soldiers may be approached through the lens of circumscribed action. According to this model, “a circumscribed actor has the ability to do, the ability not to do, and the ability to do otherwise than what he/she actually has done” (Drumbl 2012: 17). This implies that circumscribed actors dispose of an array of abilities which are “delimited, and confined [...] they exercise some discretion in navigating and mediating the constraints around them...” (Drumbl 2012: 17). These actors play around their abilities and have the latitude to act upon the range of possibilities with a certain level of free will that prompts them to make “short-term decisions” (Drumbl 2012: 17). This model corresponds to the condition of several child soldiers. It disillusion public opinion, according to which all acts carried out by child soldiers are remotely commanded and they do not always have choices to do otherwise. Some of their accounts reveal that they also take initiatives to command others when they are superiors inside revolutionary or rebel movements.

In the child soldiering context, circumscribed model needs to be examined along the line of child agency, as explained by Drumbl (2012: 17), and according to which an act is attributed to a person not based on the intention but rather by the capacity of perpetrating an act. This faculty is potentially in the perpetrator, as is the possibility of abstaining from committing an act, regardless of the circumstances surrounding the person-agent.

Though war affects child soldiers, it is, however, important not to regard them as passive vulnerable children only, but as actors in their own capacity, switching from being victims to being agents of their own survival. This predicament is called a “flip-flop strategy”, whereby child soldiers switch from being civilians, while at the same time, being soldiers (Wessells 2006: 146-147). From this point of view of agency and the “circumscribed model”, children associated with armed factions need to be exposed to accountability processes. These children are actively involved in operations in different ways. They initiate and develop tactics that allow them to pull through from the adverse realities of life in armed conflict. Their capability to overcome the horrific experiences of war does not start from the moment they exit the warring environment (Schmidt 2007: 61); they already live in tough conditions that force them

to mount strategies either to escape the fights, hide or endure. Such an attitude is dominant during conflict and is eventually carried through in times of demobilisation, reintegration and rehabilitation.

i. Avoiding generalisation

Understanding child soldiers, by generalising their standards and actions, fitting them all in one receptacle, and considering them all as victims or perpetrators, is detrimental to grasping this phenomenon in its entirety. Such an attempt would be aberrant. It is important to balance their narratives by avoiding the assumption and concluding that they are all identical. Child soldiers need to be viewed in a context that causes them to join fighting forces and also to critically separate circumstances that they use as opportunities to escape.

Several studies have shown that these young militants use different tactics and they adopt different standards to survive within fighting factions. Drumbl (2012: 16) argues: “some child soldiers lie to and manipulate commanders to avoid killing. Others refuse to inflict gross human rights abuses upon third-party civilians or combatants. Other child soldiers, however, torture, rape and kill to navigate volatile militarized hierarchies”. These youth utilise this amalgamation of circumstances, attitudes and strategies, to lead their lives within armed groups and forces, and eventually pull through, when they exit the battlefield.

Drumbl (2012: 18) acknowledges that there is a considerable push to exclude children (comprised of child soldiers) from internationalised tribunals and court proceedings that prosecute exceptionally atrocious crimes. However, the author remarks that, though adjuration of children for crimes of such magnitude is lawful, prosecutions of this nature are increasingly perceived as “inappropriate and, even illegitimate” (Drumbl 2012: 18).

Approaches that are non-judicial per se, yet supported by international regulations, regarding establishment of a new order, post-conflict era, such as TJ, are advocated by Drumbl (2012: 18). This is way recommended by the Paris Principles: “All children who take part in these mechanisms, including those who have been associated with armed forces or armed groups should be treated equally as witnesses or as victims”.¹¹² This provides children with the right to participate in TJ processes, either as the accused, victim or witness. Children may also

¹¹² The Paris Principles 8(5).

participate in truth-seeking and reconciliation mechanisms with different statuses, either as victims or witnesses.

It appears here that Drumbl (2012: 18) tries to overcome the paradox by arguing in the following terms: “[T]he preferred push is to void victim-perpetrator ambiguity in the case of child soldiers. When the child inflicts horrors, responsibility passes entirely to the adult abductor, enlister, recruiter, or commander” (Drumbl 2012: 18). Nevertheless, the usefulness of circumscribed action is that it can help give a new impetus in redefining child soldiers and interpreting their barbaric acts, from a more plausible angle and less controversial stand. This model opens the ground for non-judicial approaches that may be susceptible of welcoming former belligerent children offenders into society, while at the same time, making them fully aware of the effects of their acts on their respective communities.

A foreseeable and realistic path to follow should include a transnational justice approach and the RJ model. These mechanisms may be susceptible of breaking with the contested depiction of child soldiers as faultless, passive victims.

ii. Alternatives to child liberty deprivation

There have been sustained debates regarding children’s accountability through the mainstream justice system. Studies have shown that incarceration of child offenders has serious repercussions in their development. A project conducted by Hatt *et al.* (2008), as part of a study of prescriptions put in place by international law and standards, concerned with other options that deprive the liberty of children, showed that these are in conflict with the law in eight countries (Argentina, Brazil, Canada, Germany, Kenya, Norway, Switzerland and Netherlands).

Several alternatives were studied which, unfortunately cannot be discussed in full in this inquiry. These were mainly the Halt-Project in the Netherlands, RJ in Brazil, Mediations programmes in Argentina, Community service in Norway and Project *Seehaus* in Germany. Hatt *et al.* (2008: 5) argue: “Putting children behind bars and separating them from their families and communities seriously damages their physical, mental and social development. Detention leads to lifelong stigmatisation which hampers reintegration of children into communities”. The project was encouraged by the Defence for Children International’s (DCI), which has a plan of action described as “[to] advocate for juvenile justice systems that are

respectful of children's rights and for measures that aim at preventing situations in which children would come into conflict with the law" (Hatt *et al.* 2008:9).

From this background, the researcher argues that retributive justice, as a model of accountability for child soldiers, is inappropriate. Secondly, it is important to separate child perpetrators from non-perpetrators. The fact that children participate in armed conflict does not necessarily mean that all child soldiers are perpetrators of atrocious acts. There should be processes that allow demobilised children to share their stories and truth-telling processes should be permitted, where victims who have identified their aggressors from among the young soldiers, are able to engage in a RJ process that will establish the gravity of the offence and determine the nature of restorative sanctions that should be applied to each particular case.

Hatt *et al.* (2008: 6) aver: "Alternative sanctions to deprivation of liberty represent an important opportunity to ensure that the rights of some of the most vulnerable people in our societies which are our children are further protected." It is important to note, as maintained by Hatt *et al.* (2008: 6):

The Standards promote the use of alternatives to the deprivation of liberty and emphasize that detention of children who are alleged as, accused of or recognized as having infringed the law should be directed towards a restorative purpose and deprivation should always be a measure of last resort (Hatt *et al.* 2008: 6)

Legal prevention and protection standards present a variety of alternatives that serve the best interests of children. This approach shows that children remain vulnerable, even child soldiers, in spite of having been implicated in gross human violations. In taking them through accountability, their rehabilitation should prevail and restorative sanctions will be an act of compliance to international law. However, the dilemma the DRC juvenile justice system is confronted with, relates to the phenomenon of self-demobilisation of children in armed conflict. The next section discusses the various challenges of this trend and the prospects of prevention.

5.7 Child soldiers and transitional justice

The challenge faced by TJ in post-war societies, where children have participated in hostilities, is perceived on two levels: (1) holding accountable adult abductors and warlords for

conscripting minors and using them for military objectives, (2) calling child soldiers to answer for the atrocious acts they allegedly perpetrate against innocent, civilian populations.

Adult responsibility encompasses war crimes, genocide, crimes against humanity and also other egregious crimes they commit, as well as the training they give child soldiers to carry out acts that violate IHL and IHRL, in times of armed hostilities. A comprehensive TJ demands that both child perpetrators and warlords who recruit them, are called to account for their barbaric acts. The legal implications and the quandary of prosecutorial justice for young soldiers allegedly found to have committed war crimes have already been succinctly discussed.

The case of the SCSL illustrates the complexities in carrying out criminal trials. At the same time, while the legal norms for child accountability prioritise the best interests of the child, they do not preclude taking child perpetrators through adequate accountability processes that include RJ. The norms of accountability were sustained earlier in this section and it is noted that Africa should not be an exception, nor its elite class hide behind pretexts not to surrender warlords and other leaders, whether political or military, to international TJ institutions for trial. Lack of cooperation among African elite leaders has factually contributed to impunity and the erosion of decency norms, along with the proliferation of conflicts in which children are preyed upon and used as soldiers.

At the heart of this intricate accountability for child soldiers is their ambivalent identity as victim-perpetrator. “Defendant children” accused of war crimes have to be handled according to international legal standards, without recourse to punitive sanctions, instead taking them through truth and reconciliation processes. Though child criminal accountability is an important fact and interest of TJ, this is discussed in another section of the study. The focus here is on the system that lacks accountability and the negative effects of such a system, perceived in the ongoing child soldiering phenomenon.

Several studies indicate that child soldiering does not consist of a “crying for help” category of children. Child soldiers are not always abducted and forced to join fighting, as explained previously: there are those who enroll to defend their communities. Failure to address their crimes increases impunity and deprives society of the opportunity to curtail the ongoing participation of children.

Drumbl (2012: 21) concurs: “through participation in transitional processes, former child soldiers even may help educate other children in the community about the perils of becoming associated with armed forces or groups”. It follows that the actual child soldiering phenomenon can be addressed by using a TRC model of justice. By taking responsibility for their heinous crimes, underage belligerents could be dissuaded from further engagement with the militaries. They have agency and some also join fighting forces voluntarily. I substantiated in one of my articles that denying child soldiers access to justice, was another form of injustice for both child soldiers and the victims of their criminal acts (Kiyala 2015).

The fact that child soldiers are not exposed to TJ, renders them more vulnerable to re-recruitment and turns their reinsertion into society, into a fragile process. TJ could be used as a realistic approach to facilitate truth-telling and reconciliation between underage ex-combatants and their respective communities (Honwana 2006: 29). In circumstances, whereby conventional criminal justice may jeopardise the pursuit of justice and fail to uncover the truth about heinous crimes perpetrated by individuals or organised groups, TJ and RJ may substitute for criminal proceedings because these are models that are flexible, and have been designed and adapted for such intricate situations as justice for children who have committed atrocities.

Drumbl (20012:2) asserts that child soldiers’ crimes should not abjure accountability and, apart from courtrooms and jailhouses, other accountability standards may be considered, “such as truth commissions and traditional ceremonies [which] may facilitate reintegration, rehabilitation, restoration, and reparation” (Drumbl 2012: 2). Musila (2005: 321) supports this view. The reason for applying TJ and RJ to the context of child soldiers is the contended fact that “criminal trials are ill-fitting in this regard” (Drumbl 2012: 2).

The challenge faced by war-affected communities is the return home of child soldiers. Drumbl (2012) observes: “the attenuation of these conflicts exposes the myriad of challenges of durably reintegrating former child soldiers into civilian life and promoting social repair and reconciliation” (Drumbl 2012: 27). This situation occurs after the guns have fallen silent and society needs to be recreated, alongside other structures that sustain life, which have been destroyed by violent conflict. TJ is seen as a viable approach to address some of these challenges, especially attainment of justice. In TJ, victims have the predominant focus: they are recognised, as are reparations for harm they have suffered. This is restoring justice, as argued

in the following lines, so that they can be fully empowered, after being restored to their dignity (Davis and Hayner 2009: 24).

The success of reintegration of former belligerent persons depends on the manner in which the reconciliation process is managed, the attempt to render justice for crimes that took place during conflicts is evident, and child protection is addressed (Wessells 2006: 209). Truth-telling, seeking reconciliation, and involving former child soldiers in TJ mechanisms, are eloquently suggested but it is quite complicated when it involves interchangeable roles played by child soldiers as victims and perpetrators.

Servaes and Birtsch (2008:4) propose a way of handling this complexity, in engaging victims and perpetrators, which encompasses the following considerations:

- A combination of mechanisms that can ensure that victims are restored in their dignity and perpetrators are also held accountable.
- A critical analysis, of victims-perpetrators' relationships, needs to be taken into account when drawing a TJ strategy, so that a combination or sequence of resolutions to be taken, could serve the purpose of conflict transformation and reconciliation.
- The intricacy of victim-perpetrator identity needs to be examined, to establish whether it has an historical, sociological, or anthropological bearing. In understanding this correlation, the prospect of conflict transformation and reconciliation may be endangered.
- It is important to consider emerging new identities or a shift of personalities that are part of conflict transformation.

A good interaction between victims and perpetrator touches deeply on identity and relationships, in the sense that a new understanding of relationships emerges because this is an important aspect of peacebuilding and conflict transformation. It implies a regeneration of personalities, new characters and new identities, because victims cease to be victims after being restored to their dignity. In addition, perpetrators also change their selfhood after meeting survivors of their acts and after accepting compliance with reparative or restorative measures taken, as part of achieving TJ. These reparative sanctions can benefit victims when

they are presented in the form of “rehabilitation, compensation, restitution, official apologies, memorials and commemoration” (Servaes and Birtsch 2008:3).

DDR programmes should be accompanied with TJ and any initiative to grant amnesty to either child soldiers or their superiors (warlords, rebel commanders, and so on), should be designed and implemented through a formal, legal establishment that is constitutionally approved to investigate crimes, other gross human rights and IHL. This structure should have the legal mandate to ensure that the rights of survivors and witnesses are guaranteed, and also that perpetrators are given the opportunity to explain the circumstances that led to the commission of the crimes, for which they are responsible. This platform then decides on the nature of reparative measures/restorative sanctions to be imposed on the authors of these crimes.

The importance of such a procedure is to prevent reoffending and support justice for survivors, in such a way that transformed identities make victims and perpetrators live a productive life, without suspicion or fear of re-offending or being re-victimised. In this regard, Servaes and Birtsch (2008) write:

An important and fundamental meaning and objective of victim and perpetrator transformation is to be able to live a productive life without, on the part of the victims, taking revenge against perpetrators and, on the part of perpetrators, without continuing to commit atrocities (Servaes and Birtsch 2008: 6).

Child soldiers are not always abducted and forced to join fighting forces, as explained. There are those who enrol to defend their communities and failure to address their crimes increases impunity and deprives society of the opportunity to curtail ongoing participation of children in hostilities (Honwana 2006: 29). By taking responsibility for their dreadful crimes, underage belligerents could be dissuaded from further engagement with the militaries.

In the context of Sierra Leone, after war, alongside a truth and reconciliation commission, local communities embarked on Fambul tok, a “community-based restorative justice”, the mechanisms of which helped integrate accountability of belligerents into reconciliation processes (Graybill 2010; Park 2010). Successful reintegration of belligerents who intend to return to their communities, is likely to dissuade other juveniles to join fighting groups.

While the CRC recognises the rights of children in conflict with the law, it encourages that such children go through processes that restore them in their dignity. Nonetheless, such a move, without a formal settlement between child soldiers and their victims, can become a serious hindrance to reconciliation and their successful reintegration into society. At this juncture, RJ could be a preferred model to handle juvenile criminal acts.

A critical investigation of this aspect of child soldiers' life opens the horizons to seek a model of justice that is adapted to their circumstances and that is realistic in dissuading them from further involvement with armed forces and groups. This is an essential assumption, suggesting that children, implicated in violations of IHL and IHRL, must also answer for their acts through appropriate justice mechanisms (UNICEF 1989; Aptel 2010). The RJ paradigm appears to be the one that presents the best chance to deal with the accountability of former child soldiers and pursuing justice for victims of their outrageous actions.

Who are victims under the IHL and IHRL? The 1985's UN Declaration, issued by General Assembly resolution 40/34 (annex), on Victims (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power) stipulates:

The Guidelines could also be applied to processes in informal and customary systems of justice, such as RJ and in non-criminal fields of law including, but not limited to, custody, divorce, adoption, child protection, mental health, citizenship, immigration and refugee law.¹¹³

Justice processes are vital for both child soldiers and survivors of war-related crimes, as these may enhance healing, as well as sustain peace and reconciliation. Without accountability, efforts to protect children and dissuade their involvement in hostilities may be counterproductive. Accountability and reconciliation may be part of the wide range of intervention programmes that are supposed to help tackle the use of children in hostilities.

5.8 Ambiguous role of society in child soldiering phenomenon

Society is expected to ensure protection of the children. Unfortunately, in time of war, children are exposed to soldiering. This section examines the role of the community to protect children

¹¹³ Chapter 2(41)(4) of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (1985).

and how it ensures child welfare, wellbeing and education, to prevent this age category from being involved in hostilities.

5.8.1 Society as a protective structure

The question raised here concerns the ambiguous, and somehow unfair, treatment of children and adolescents, who join armed forces or groups. They are perceived as persons in need of protection, and at the same time, people punishable for rendering military service and perpetrating war crimes. Society is responsible for the involvement of children in armed conflict because adults, parents, leaders, governments, and local authorities deceive young people and children. They fail to provide in their needs, leaving them without choice but to become soldiers.

If society cannot protect children, feed them, educate them and create a safe environment, violence becomes a refuge for children who feel that their safety is threatened and there is a prospect for a better future. Out of despair, frustration and confusion, young people and children respond to urgent needs; to assume responsibility for their life, protect their families and society. Should adults and governments play their role responsibly in protecting fellow citizens, especially children, there would be no engagement of this vulnerable category of persons in hostilities.

Wessells (2006: 32) asserts that these children are not “passive victims but active actors”. They see their involvement in fighting as an opportunity that will shape their future:

Amnesty International opposes the death penalty and any other cruel, inhuman and degrading treatment, in all circumstances. Other than this, Amnesty International has no position on what would be an appropriate sentence for a young person who was convicted after a fair trial, which respected all the international standards regarding justice for persons under 18 (Amnesty International 2000).

Regarding criminal responsibility for atrocious acts violating International law, the ICC does not give jurisdiction for prosecution of persons under 18 years of age: “The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime”.¹¹⁴

¹¹⁴ Article 26 of the Rome Statute of the ICC.

In summary, these arguments show two antagonist opinions about child soldiers:

- Child soldiers must be prosecuted as adult criminals, but a mitigation on the severity of their trial needs to be considered and in their sentencing, children's vulnerability and the lack full understanding of the acts of violence they are reproached of should be taken into account and should be in the "best interest of those children" (Amnesty International 2000).
- Child soldiers must not be prosecuted; they should always be considered as victims. The responsibility for alleged crimes and atrocities committed by them lies upon adults who enlist them, train them to kill and get them to execute orders by coercive means and death threats (Popovski and Arts 2006: 7).
- Some child soldiers are praised as heroes and the "liberators" in Congo, such as those who participated in the military campaign that unseated the late President Mobutu Sese Seko of the DRC, in 1997's civil war.

Overemphasizing child soldiers' victimacy and criminalising the very act that makes them participate in hostilities, would suggest that they evade prosecution and then cannot be held accountable (Popovski and Arts 2006: 7). This assertion may create a condition, whereby children are used more by warlords to commit crimes because they cannot be convicted. In this way, it does not protect children but rather exposes them to more recruitment, so that they could perpetrate the crimes that adults would commit. The plausible approach supported by this research, is argued by Popovski and Arts (2006: 7).

The likely solution seems to rest in taking seriously the idea that accountability does not necessarily involve criminal responsibility and that holding children accountable therefore does not necessarily require criminal proceedings, and finally that a wide range of other options exist (Popovski and Arts 2006: 7)

In a final analysis, it should be noted that, while criminal accountability of children shows a lot of sensitivity and although it entails a lot of complications, it may become necessary to pursue justice for both child soldiering victims and all persons affected by their atrocious acts. In the same line of thought, Popovski and Arts (2006: 6) indicate that prosecution for children may rely on individual States' legislation. Nevertheless, any jurisdiction proceeding with juvenile trials should uphold the CRC' principles of "best interests and needs" of children and their

protection against any sort of discrimination (Coomaraswamy 2010: 544). The main prosecution argument, regarding child soldiers, is a preventive measure.

Many scholars argue that should child perpetrators not be prosecuted, this lenience will set a precedence that will be exploited by warlords and adult recruiters to leave the commitment of crimes to children, so that the adults will evade criminal responsibility for atrocious acts committed by children under their command, which children did at leisure or for survival (Coomaraswamy 2010: 544). It follows that neglecting accountability procedures for child soldiers accused of perpetrating heinous atrocities, in spite of overwhelming evidence suggesting that many of them voluntarily enlist to become soldiers and commit grave violations of international law, would appear as condoning if impunity.

The fear of children being used intentionally to commit crimes, by being ordered to do so, in order to spare the commander from direct responsibility, is a foreseeable danger that Popovski and Arts (2006: 7) single out:

[...] such impunity may encourage military commanders to delegate the “dirtiest” orders to child soldiers. In that way, a decision not to prosecute child perpetrators would indirectly expose child soldiers to more risks rather than protecting them from the same risks (Popovski and Arts 2006: 7).

However, holding to accountability, as part of the plausible solution to the child soldiering phenomenon, may require exploring mechanisms of accountability other than those that refer to criminal proceedings; making juvenile perpetrators account for their crimes does not only rely on criminal justice as the sole means to achieve accountability (Popovski and Arts 2006: 7). Following on this argument, amidst uncertainties and complications that arise in the application of criminal conventional justice, in the delivery of juvenile justice in the context of armed conflict, RJ presents the best chance of overcoming the limitations of criminal justice, in the case of child soldiering. This stance could avert the cycle of re-recruitment and enlistment of children by fighting groups in the future.

In this study, the researcher looked beyond legal controversies, by proposing a model of justice that perceives crime as a breach of people and interpersonal relationships, acknowledging that these violations engender obligations and liabilities, which requires RJ to heal and restore harmony by putting “right the wrongs” (Zehr and Mika 2003: 41,42).

5.8.2 Child Wellbeing and education

Viable alternatives to enhance child wellbeing¹¹⁵ need to be available and accessible, in order to strengthen the judicial response. This is a recommendation of the Paris Principles, which states that, this process “will include educational and vocational programmes, income generating activities, and access to livelihood opportunities”.¹¹⁶

Savage and Vanspauwen (2008) aver that young people who voluntarily decide to join armed factions, are more vulnerable to revert to hostilities, should the circumstances that led them to join for the first time persist, even after demobilisation. It is a condition that needs to be taken considered when attempts are made to secure successful reintegration that will prevent re-recruitment.

The Paris Principles includes, among other protective mechanisms, awareness campaigns on child rights, and enrolling children, especially girls, to minimise their vulnerability for recruitment when, for instance, they do other domestic work that requires walking long distances.¹¹⁷ There is, however, the issue of social justice that needs to also be taken into consideration; a society that rests on social and economic inequalities is likely to explode, as a result of dissatisfaction and marginalisation of minorities, who are denied economic advantages and other opportunities. For this category of people, violence becomes the means to exert pressure on their governments, in order to break with unfavourable and unjust treatment, as well as inequitable social and economic conditions.

Prevention of child soldiering should also include the provision of education:

Education provides opportunities to learn and, when effective, gives children the skills and competence to meet their needs, protect themselves and build hope for the future. Access to education, including appropriate education for older children, life skills and relevant vocational training should be promoted for all boys and girls, including returnees and stateless, refugee and internally displaced children.¹¹⁸

Many children who become soldiers survive under precarious living conditions. They are haunted by chronic and structural violence, alongside a non-existent and ineffective, juvenile justice system. This can impact negatively on the practice of child soldiering.

¹¹⁵ The Paris Principles, Paragraph 1(10).

¹¹⁶ The Paris Principles, Paragraph 6(3).

¹¹⁷ The Paris Principles, Paragraph 6 (3).

¹¹⁸ The Paris Principles, Paragraph 6 (26); Paragraph 7(77)(78)(79)(80)(81)(82)(83).

5.9 DRC legislation and complementarity with international law

This section explores the DRC legislation on juvenile offenders and includes a discussion on the principles of complementarity, with international law. Sometimes it is difficult to argue on these two matters separately because they are not mutually exclusive. In most cases, the domestic law abides by international law, since the DRC is a state signatory of several international human instruments pertaining to human rights violations. In addition, the DRC is one such country, where gross human rights abuses have been carried out. An overview of international law and how that is adopted and applied to DRC legislation follows.

5.9.1 The principle of complementarity

The principle of complementarity that governs the Rome Statute of the ICC, recognises the right of domestic jurisdiction to primarily investigate the gravest and mass violations of IHL and IHRL, including the conscription of child soldiers. International legal instruments complement domestic jurisdictions in several countries and allows for the establishment of special tribunals. In order to illustrate this point, it is noted: “The ICC’s attempts to build close working relations with domestic governments highlight the unavoidable challenges of delivering international justice in the midst of ongoing conflict” (Clark and Waddell 2008: 44).

The ICC has targeted war crimes, genocide and crimes against humanity in Uganda, DRC and Central African Republic, by applying the Principle of Complementarity in judicial cases in this region, where violent conflict has been ongoing (Clark and Waddell 2008: 7). War crimes and sexual violence perpetrated by security service agents, militias and army officers are prosecuted according to international law adapted to domestic legislation (Davis and Hayner 2009; Lake 2014).

The competence of domestic jurisdiction to prosecute crimes of violations of such international laws, is conferred by the Rome Statute:

The Rome Statute’s principle of complementarity governs ICC decisions about which criminal situations to investigate and which cases to prosecute [...] complementarity holds that states have the primary responsibility to prosecute serious crimes – genocide, war crimes and crimes against humanity (Clark and Waddell 2008: 37).

According to REDRESS (2006: 27), there have been particular provisions that reconcile the DRC’s law and the Rome Statute. This refers to the law ratified on 30 March 2002: “Law

Modifying and Completing Certain Provisions of the Criminal Code, Code on the Organisation and Competence of the Judiciary, of the Military Criminal Code and Judicial Military Code, in Accordance with the International Criminal Court Statute” (REDRESS 2006: 27). From the same source, this legal formulation reflects Article 8 of the Rome Statute and this “draft provisions on war crimes are very similar in structure and wording to Article 8 of the Rome Statute, however, they go further, rendering conscripting, enlisting or using children under the age of *eighteen* a war crime, both in internal and international armed conflict” (REDRESS 2006: 27).

It further appears, in some instances, that the ICC has also violated the principle of complementarity. The ICC’s strategy is to select cases to prosecute and even though it conforms to “the strict legal interpretation of complementarity in the Rome Statute”, it violates the Statute at the same time, through broadening its policy of complementarity (Clark and Waddell 2008: 44). This is observed to have undermined the legitimacy of local courts to investigate and prosecute grave crimes of government atrocities, among victims affected by war in the DRC and Uganda (Clark and Waddell 2008).

To make domestic jurisdiction more responsive, the ICC should observe the principle of complementarity, so that national courts may proceed with legal processes against individuals and groups of people suspected of committing atrocities,¹¹⁹ which would bring relief to victims. Pragmatically, the ICC cannot prosecute all war crimes, genocide and crimes against humanity in war-torn countries. Such a venture is financially unsustainable and erodes its relationship with Party States that are autonomous and self-determining, in the administration of justice. This is the case with juvenile justice in the DRC.

Since the establishment of the ICC, some prosecutions of war crimes in the DRC are done by local military tribunal, to prosecute adult leaders implicated in violations of international laws, notably in the towns of Bukavu, Mbandaka and Kindu (REDRESS 2006: 28). This stands as part of efforts by the DRC to protect children while collaboration with the UN.¹²⁰

¹¹⁹ The Rome Statute of the ICC, Article 1.

¹²⁰ See Action plan for the fight against the recruitment and use of children and other grave violations of the Child’s rights by the armed forces and security services of the Democratic Republic of Congo between the Government of the Democratic Republic of Congo and the United Nations Special Task Team on Children and armed conflicts], signed on 4 October 2013.

In 2014 another military tribunal in Goma tried human rights violations perpetrated by the Government soldiers at Minova (Lake 2014). Though these proceedings do not implicate child soldiers directly, it helps understand the DRC justice system's capacity to prosecute international crimes.

In addressing child soldiering prevention from a legal perspective, a careful enforcement and implementation of international law is needed. According to the Annual Report of the Special Representative of the Secretary General for the plight of children in armed conflict, Leila Zerrougui, the DRC's authorities were encouraged to continue supporting the international community and the UN system, in their efforts to improve procedures for checking age and birth registration, as well as taking actions to fight against impunity (Zerrougui 2013).

This report expresses concerns over the cases of children detained by national security forces, without guarantees of respect to due process because of their alleged association with rebel movements. The Special Representative was concerned about the continued threat always posed by groups active on the ground in the DRC and the general number of children still serving in their ranks (Zerrougui 2013). Whilst global efforts are needed to help tackle the child soldiering phenomenon, implementing international law and making the DRC juvenile justice system conform to international standards, need particular attention.

5.9.2 The DRC juvenile legislation

The DRC has shown its determination to conform to UN standards pertaining to the preservation of Child Rights. As illustration, it has ratified several legal instruments. These include The CRC (21 August 1990); The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (12 November 2001); the ACRWC (28 March 2001); ILO convention 138 concerning the minimum age for admission to employment (28 March 2001); ILO Convention 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour (28 March 2001); the Rome Statute of the ICC (30 March 2002); the World Health Organization (WHO) Framework Convention on Tobacco Control (26 October 2005).¹²¹

¹²¹ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Paragraph 30.

The ratification of OPAC in November 2001 is stated as follows:

Pursuant to Article 3, paragraph 2, of the Protocol, the Democratic Republic of the Congo undertakes to implement the principle of prohibiting the recruitment of children into the armed forces, in accordance with Decree-Law No. 066 of 9 June 2000 on the demobilization and rehabilitation of vulnerable groups on active service in the armed forces, and to take all feasible measures to ensure that persons who have not yet attained the age of 18 years are not recruited in any way into the Congolese armed forces or into any other public or private armed group throughout the territory of the Democratic Republic of the Congo.¹²²

The practice of Child soldiering is prohibited by OPAC.¹²³ Unfortunately, this international legal norm that aims to prevent child recruitment and facilitate their demobilisation and reintegration into society, is not reinforced.

REDRESS (2006: 28) recapitulates the close link that has developed between the penal and military legislation of the DRC and the customary international law, with regard to child protection and prevention of children's recruitment and use in armed conflict. For instance, Article 184 of the Transitional Constitution of 1 April 2003 prohibits recruitment of persons below the age of 18 and their participation in hostilities (Congo Zaire 2011).

The Actual Constitution, adopted on 19 February 2006, does not specifically prohibit the use of children under 18 in armed forces.¹²⁴ It stipulates that this class of persons must be protected by their family, the State and public powers. All sorts of abuses and exploitation of minor children constitute a criminal offence and must be prosecuted and punished by law. In addition, the Labour Code interdicts child labour (DR Congo 2006; REDRESS 2006: 28); and Law No 023/2002 of the Military Justice Code of 18 November 2002, describes the recruitment of persons below the age of 18 as a crime of war, according to its Article 173; and it further bans children under the age of 18 from appearing before military courts (REDRESS 2006: 28).

The prohibition of the child soldiering practice is assumed, by the fact that the DRC has signed and ratified an international UN legal framework inherent to this matter. The minimum age for

¹²² OPAC, Article 12.

¹²³ OPAC, Article 1 & 2.

¹²⁴ The Constitution of the Democratic Republic of Congo does not use the word child soldiers, but rather state in generic concepts the protections of children against abuses such as pedophilia, inhumane treatment, accusing children of practicing sorcery; and it states the responsibility of the state to protect such children in difficult situations (Article 41).

voluntary recruitment into the armed forces was 18 years when the DRC signed OPAC on 28 March 2001.¹²⁵ It implies that recruitment of persons aged below 18 years is not compulsory under the terms of Article 3 of OPAC. At the same time, there was disagreement about voluntary enrolment of person below 18 into national armed forces, though the Protocol suggested to state members to raise the age for voluntary enlistment above 15 and put safeguards in place, to ensure that the terms of voluntary enlistment are observed and such recruitment is legitimate (Coomaraswamy 2010).

The final development of these provisions in the DRC is stipulated as follow:

With regard to the minimum safeguards that the State is to maintain concerning the voluntary recruitment of persons under 18 years of age, there is no voluntary recruitment of such persons in DRC, in accordance with Act No. 04/023 of 12 December 2004 concerning the general organization of defence and the armed forces of the Democratic Republic of the Congo.¹²⁶

Although the interdiction of the use of child soldiers does not feature explicitly in the DRC Constitution, Article 7 of Law no. 04/023 of 12 November 2004, related to the Organisation of Defence and Armed Forces, outlaws enrolment of persons under 18, when recruiting people for military service or during a call to take up arms (REDRESS 2006: 28). The adoption of UN standards that prohibit recruitment and use of children as soldiers by the DRC¹²⁷ is justified by the fact that the DRC uses a “monist legal regime” system, whereby ratified treaties take precedence over domestic laws.¹²⁸

These protective provisions are enshrined in: Act No. 023/2002 of 18 November 2002, concerning the Military Judicial Code; Act No. 015/2002 of 16 October 2002, concerning the

¹²⁵ Convention on the Rights of the Child. Consideration of reports submitted by States parties under Article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Democratic Republic of the Congo. 2011. (online). UN Committee on the Rights of the Child. UN Security Council. Document CRC/C/OPAC/COD/1, Distr.: General 18 April 2011. Available: http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.COD.1_en.pdf (Accessed 23 August 2014), Article 3, paragraph 65; The Rome Statute of the ICC, Article 1.

¹²⁶ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 3, paragraph 70.

¹²⁷ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, paragraph 30; The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (12 November 2001); The ACRWC, ILO the Rome Statute of the ICC, The World Health Organization (WHO) Framework Convention on Tobacco Control (26 October 2005).

¹²⁸ Article 215 of the DRC Constitution of 18 February 2006 provides: “*Les traités et accords internationaux régulièrement conclus ont, dès leur publication, une autorité supérieure à celle des lois, sous réserve pour chaque traité ou accord, de son application par l'autre partie*” [“Lawfully concluded treaties and agreements have, when published, an authority superior to that of the law, subject for each treaty and agreement to the application by the other party”].

Labour Code; Act No. 04/024 of 12 November 2004, concerning nationality; Act No. 04/023 of 12 December 2004, concerning the general organisation of defence and of the Congolese armed forces; Act No. 06/018 of 20 July 2006, amending and supplementing the Decree of 30 January 1940, concerning the Penal Code; Act No. 06/019 of 20 July 2006, amending and supplementing the Decree of 6 August 1959, concerning the Code of Criminal Procedure.¹²⁹ Finally, it is reflected in the Child Protection Law 09/001 of 10 January 2009 (DR Congo 2009b, 2009a).

There are also supplementary legal acts, national criminal codes, and the United Nations Guidelines, rules and principles, regarding the protection and the rights of the child.¹³⁰ Other than these legal means, the UN observes that the DRC has made progress, by initiating the National Human Rights Monitoring Centre, under Article 154 of the transitional constitution of 4 April 2003,¹³¹ and organised by Act No. 04/019 of 30 July 2004, the Ministry of Human Rights and the National Council for Children.¹³²

These structures are tasked with the mission to promote and protect the rights of the child.¹³³ One of the missions of the Ministry of Justice and Human Rights is:

To examine, through appropriate mechanisms, cases of flagrant violations of human rights, without displacing the role of courts and tribunals or administrative procedures instituted by law; it intercedes with administrative and judicial authorities with a view to redressing injuries to rights of citizens.¹³⁴

The law further requires that children and other non-military personnel, who are serving in armed groups, be demobilised and reintegrated into society. The emphasis is put on the prohibition of recruitment and use of children in armed groups and forces.¹³⁵ One may, nevertheless, argue that the massive recruitment of children during the First Congo War in 1996, by both the Government forces and the AFDL, could have been explained by prior legal provisions:

¹²⁹ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, paragraph 31.

¹³⁰ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, paragraphs 31, 33, 34, 35.

¹³¹ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, Paragraph 36.

¹³² UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, Paragraph 36.

¹³³ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, Paragraph 36.

¹³⁴ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Chapter IV, paragraph 39.

¹³⁵ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 1, paragraph 42.

It should be highlighted that before 1996, recruitment into the armed forces was already conducted in accordance with the provisions of Law No. 81-003 of 17 July 1981 on the staff regulations for State public service personnel and the provisions of Ordinance No. 72/060 of 25 September 1972, instituting the military code of justice, both of which establish the age of recruitment as 16 years.¹³⁶

The new legal provisions, however, abrogated the previous ones adopted by the General Staff of the Congolese Armed Forces in 1999, in collaboration with the Ministry of Human Rights, of the administrative dispositions in the National Human Rights Action Plan. These measures included the banning of child recruitment, proscription of sending children to the frontlines in times of renewed hostilities and allocating tasks to children, other than those involving the use of weapons.¹³⁷ Subsequently, the new legal provisions required stopping the recruitment of children under 18 into armed forces, as well as their direct participation in hostilities.¹³⁸ The concept of direct participation is explained as follows:

Under Congolese legislation, direct participation is understood to be action comprising the deployment and engagement of units, particularly in the theatre of operations (Article 2 (15) of Act No. 04/023 of 12 November 2004, concerning the general organization of defence and the armed forces, published in a special edition of the Official Gazette on 13 November 2004).¹³⁹

The DRC had made some efforts in preventing children's participation in hostilities and assisting in DDR programmes, as discussed in the previous sections of this study, especially through The BUNADER, by Decree No. 001/2001 of 13 January 2001; The Inter-Ministerial Committee to Develop Proposals and Provide Guidance, in regard to Disarmament, Demobilization and Reintegration, put in place under Decree No. 03/041 of 18 December 2003; the creation of The CONADER set by Decree No. 03/042 of 18 December 2003; and the creation of The National Implementation Unit for the UEPNDDR, created by Ordinance No. 07/057 of 14 July 2007.¹⁴⁰

The Government has maintained the age of 18 years for voluntary recruitment into armed forces, in accordance with the binding declaration of the United Nations General Secretary.¹⁴¹ Under the implementation of OPAC, the following provisions supersede all previous measures:

¹³⁶ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 1, paragraph 43.

¹³⁷ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 1, paragraph 44.

¹³⁸ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 1, paragraph 45.

¹³⁹ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 1, paragraph 47.

¹⁴⁰ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 1, paragraph 49.

¹⁴¹ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 3, paragraph 65.

Article 1 prohibits the direct participation of minors (children under 18) in hostilities; Article 2 prohibits compulsory recruitment of minors; Article 3 sets 18 as a minimum age for voluntary recruitment; Article 4 prohibits the recruitment of persons under 18 years of age into armed groups; Article 5 consists of a Saving clause that demands a number of national standards are provided and taken into consideration, which is more conducive to the realisation of the rights of the child, with regard to prohibiting the recruitment of children into armed forces and armed groups;¹⁴² Article 6 states the obligation, to take measures in order to ensure the implementation and dissemination of the Protocol and the demobilisation of children is effective; Article 7 refers to the cooperation of the States parties, in the implementation of Protocol 120.¹⁴³ In this regard, the DDR/Child programme that was put in place in 2001, has received technical cooperation and financial assistance from several organisations, in order to respond to these demands.¹⁴⁴

Additional legal provisions of the DRC aimed at protecting children include several documents, such as The Child Protection Act¹⁴⁵ and agreements. It affirms the responsibility of the Government to dissociate children from armed forces and groups, by assisting them to reintegrate with society and ensuring that they are protected and provided with education and care (CSCS 2010: 12). In addition, Militia and armed groups are subversive groups of young fighters, which is proscribed by DRC Legislation (CSCS 2010: 12). Transgressors are prosecuted.

Nonetheless, the DRC Child Protection Law 09/001 of 2009 refers matters pertaining to judicial procedures for minors to “peace tribunal and high courts” or Magistrates courts: “Magistrates' courts and high courts are competent to hear first and second respectively from the cases that fall under the jurisdiction of the juvenile courts will be installed and will work no later than two years after the enactment of this law”.¹⁴⁶

This legal disposition was used as a transitional measure, pending the establishment of tribunals for minors. The launching of official tribunals for children (TPE) in the DRC took

¹⁴² UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 5, paragraph 85.

¹⁴³ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 5, paragraph 85.

¹⁴⁴ UN Security Council Document CRC/C/OPAC/COD/1 of 18 April 2011, Article 7, paragraph 120.

¹⁴⁵ The Child Protection Act (CPA) of January 2009 ; the 2004 Defense and Armed Forces Law No. 04/023 and the 2002 Labour Code (CSCS 2010:11,12); the Child Protection Law No. 09/001 of 25 May 2009; the Constitution of the DRC of February 2006.

¹⁴⁶ Article 200 of the Child Protection Law of 09/001 of January 2009.

place on 23 March 2011 in Kinshasa, after a 14-day training session that benefited 12 magistrates (Afrique Rédaction 2011). This training was conducted by the Service of Documentation and Studies of the Ministry of Justice and Human Rights, with the support of UNICEF and UNESCO, based on the decision of the First President of the Supreme Court of Justice and Chairman of the Supreme Judicial Council No. 004 / CSM / P / 2011 (Afrique Rédaction 2011). Seven of these trainees had to work as TPEs' presidents in Kinshasa, Goma, Kikwit, Mbandaka, Matadi, Bunia and Lubumbashi, and were to be assisted by the other judges for children, while other parts of the Country had to wait (Afrique Rédaction 2011).

For a country of 2.5 million square meters, this good initiative was quite insignificant. Consequently, several criminal cases involving minors in the DRC, have been handled by magistrate courts and high courts. Reports suggest that a good number of child perpetrators have been denied their rights and subsequently, justice also. IRIN (2011) notes that an estimate of 3,000 children remain in penitentiary houses, boys separated from adults, but girls are kept in the same facilities with adult females. The same press release observes that children are generally detained in very precarious conditions of prisons in the DRC, often without water or with little food.

In the same vein, Jarvis (2011) observes that unfair treatment of minors jailed, actually shows a great breach of the CRC and the DRC Law of Child Protection of 2009, which outlaw such illegal detentions. Some of these unjust treatments include depriving a child of freedom, unlawfully or arbitrarily arresting a child or detaining them. Any of these measures, including internment, must be the last resort, not decided in disregard of the child's rights and for the shortest possible duration: "No child shall be deprived of liberty unlawfully or arbitrarily. The arrest, detention or internment of a child may be decided in accordance with the law, the ultimate measure and for as short a time as possible".¹⁴⁷

DRC Child protection also stipulates that every child, put in conditions of such deprivation of liberty, shall be treated with humanity, their needs must be taken into consideration; and this facility should be separated from adults, unless it is considered better not to, in the best interest

¹⁴⁷ Article 10 of Child Protection Law of 09/001 of January 2009.

of that child. The child placed in such detention has the right to stay in touch with their family through correspondence and visits, save in exceptional circumstances.¹⁴⁸

Unfortunately, in several circumstances, even persons who are above 18 years of age may still be considered as child soldiers in both armed forces and groups. In this context, such young adults escape justice, even for crimes committed as young-adult soldiers. This debate has been prompted by the revision of age for criminal responsibility that should be stipulated by states. Other measures, to ensure that children's jurisdictions respect the rights of the child, according to the UN Standards and Security Documents Council's guidelines, such as the Rome Statute of the ICC, which stipulates that the Court should protect children's wellbeing, dignity and privacy.¹⁴⁹ Additionally, the right of the child to be heard should be upheld.

The CRC demands that, in matters that affect children, they should be given the chance to be heard: "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law".¹⁵⁰

Furthermore, it is recommended that children in conflict with the law, who are lawfully arrested, are placed in specialised institutions for care or rehabilitation and they should enjoy the right to health, physical, moral, mental and psychological protection, in accordance with the DRC Law: "The child placed in an institution of custody or rehabilitation is entitled to health protection, physical, moral, mental and psychological. He has the right to social and educational assistance adapted to his /her age, gender, abilities and personality".¹⁵¹ These children are to be placed under supervision of social workers, tasked with looking into psychological issues pertaining to the child and gathering information on the offence committed by that child.

¹⁴⁸ Article 11 of Child Protection Law of 09/001 of January 2009 states : "Every child deprived of liberty is treated with humanity taking into account the needs of persons of his/her age. [He/she] is separated from adults unless it is considered preferable not to do in his best interest. He has the right to stay in contact with her/her family through correspondence and visits, except in exceptional circumstances".

¹⁴⁹ *The Rome Statute of the ICC* stipulates, Article 68 (1).

¹⁵⁰ CRC, Article 12(2).

¹⁵¹ Article 40 of the Child Protection Law 09/001 of January 2009.

The challenges of juvenile justice are multi-dimensional. Lack of facilities, infrastructure, limited numbers of centres where the TPEs are operational, and scarcity of judicial personnel, as well as financial resources, pose serious problems to the maintenance and running of centres for juvenile offenders. The size of the DRC, along with the excessive numbers of child soldiers and other delinquent youths, make the success of the justice system to ensure child protection illusory. There is a great need to consider alternatives for child accountability, other than the one that exists via the mainstream justice system and the TPEs.

It is urgent to address a total exit of children from rebel and militia groups and take them through justice and reconciliation processes, to ensure they are meaningfully reintegrated into society. It is maintained by the researcher that reintegration and reconciliation definitely require a full understanding of how child soldiers become involved in hostilities and what the overall environmental condition of the society is, with which they reintegrated after exiting fighting forces.

The plight of child soldiers in the DRC remains a serious concern that needs to be addressed by dealing with the root-causes of the problem (chronic and structural violence), the justice system, and conflict prevention, as well as enforcing international normative instruments and ensuring that the DRC goes through some mechanisms of TJ, without ignoring social justice issues.

5.10 Conclusion

This chapter explored several issues pertaining to accountability and justice for child soldiers. It demonstrated that there are normative, legal, protective instruments that suggest the proceedings to establish justice for child soldiers accused of war violence. This legal framework conforms to international legislation regarding children in armed conflicts. Although their criminal responsibility is arguable, it is not absent in the crimes they commit in time of war.

From the perspective of a “circumscribed model”, children associated with armed forces and groups should be taken through accountability processes. It is the way to protect them from the nasty image that society uses to portray them, even though they are not always innocent, passive victims. At times, they command troops and operations, during which they commit atrocious acts.

Their accountability should, however, be balanced under the principle of *actus reus* and *means rea*, under which their capacity, to fully discern the consequences of their acts, is blurred by their own victimisation and the use of sedatives and narcotic substances, given to them by their superiors. These substances take away and destroy humane feelings in children and leave them with less mental, psychological and emotional appreciation of life and human dignity. Nonetheless, the legal framework does not show significant deterrent effects on the child soldiering phenomenon that is ongoing. This situation prompted this inquiry, to explore other accountability and justice processes, adapted to child soldiers' circumstances, namely RJ. The following chapter focuses on RJ.

CHAPTER SIX

RJ IN THEORY

6.1 Introduction

The concept of justice covers a broad spectrum of human existence issues and is defined according to established relationships that always put the human person as reference. The web of rapports that creates the condition for the existence of justice, involves the notion of law and rights that makes justice so diverse. RJ and peacemaking circles are framed within the classical theories of justice, namely positive law theory, social good theory and natural right (Noll 2003: 263). This chapter consists of two main points, namely the three theories of justice and RJ (programmes, accountability and sanctions, peacemaking theory, contrasting the mainstream justice theory and RJ, RJ circles, and critics of peacemaking circles. Three theories of justice and the objectives and praxis of RJ are explored the following section.

6.2 Three theories of justice

The effectiveness of justice is measured by its practicability and ability to mould people's attitudes and enable them to distinguish what is right, from what benefits only an individual. This implies that justice should encourage individuals and groups to embrace the decisions and efforts, even when those decisions do not respond to individual desires or self-interest of a particular group (Noll 2003: 263). The law intervenes as a parameter that prevents individualistic, selfish and forcible attempts to achieve self-directed goals and ambitions, at the expense of other people's rights.

Thus, "justice sets forth a standard of conduct or behaviour, such that a person, act, or decision may be called just" (Noll 2003: 264). In order to better understand the notion of justice, in its rapport to rights and law, three classical theories are discussed that lead to a better grasp of conventional justice, RJ and the community-based paradigm of justice. This conceptualisation of justice will be further expounded, with a particular focus of RJ theory and African contextualised RJ. A definition of justice, emerging from the three different theories, can only be complex, as it reflects the views supported by different theories, each setting its own bases and ethical values.

Regarding Positive Law theory, proponents of this theory equate justice and legality, they concur that humans' behaviour must be regulated by law and even enforced or coercive law used, in order to keep them under control so that peace may prevail amongst them. Accordingly, "punishment becomes necessary to enforce the social contract because without punishment, the power of the Leviathan is non-existent" (Noll 2003: 266). It follows that "positive law theory of justice is concerned with order, not with fairness. Justice is measured by obedience to the law, which is presumed to be objectively determined by judges" (Noll 2003: 268). This theory, according to Noll, is the "narrowest view of justice" (2003:268).

As far as Social Good theory is concerned, advocates of this theory measure justice on its capacity to attain social needs, and justice is grounded on laws that are sanctioned just or unjust, not on conformity to law, as supported by theorists of positive law (Noll 2003: 269). This implies that "firstly, not all violations of law are unjust. Secondly, law does not completely create justice. [...] Finally, some conduct lies outside the law, but nevertheless measured by justice" (Noll 2003: 269). Social good theory is utilitarian, since justice is declared on the basis of the social utility of laws, which implies that the origin of justice is the good of society, while the criteria of correctness of laws is their ability to promote social good, which is greater than individual and private bodies, and attainable by a communal body (Noll 2003: 269).

Finally, Natural Rights theory defines justice as the observance of individual rights and interests, and its supporters object to the idea of justice exclusively defined on the basis of law and social good, they instead observe that justice must support the interests of humanity (Noll 2003: 272). The author argues: "Justice, under natural rights theory, is an objective norm of human action. Not all justice may be reduced to natural right, but nothing can be just that goes against a natural right" (Noll 2003:272).

Three patterns that help identify Natural Rights theory are singled out by Noll (2003): It refuses to recognise that justice is similar to legality; it repudiates the notion of justice described according to the good of society; it holds that justice is founded in human nature (Noll 2003: 270). The three concepts of justice explored the previous lines represent a communal view of justice. Peacemaking circles underline people and their needs, while accentuating sociability, from where morals originate, and is destined to create conditions for better living with one another, after the original harmony has been affected by harm. The

utilitarian characteristic of justice, held by Social Good theorists, are contested by Natural Rights supporters.

However, the commonality of the three trends are their altruist dimension, and the obligations that justice entails, namely observing the law, enhancing social good and giving to each person what is required by their natural right (Noll 2003: 273). These propositions justify why justice is the foundation of society. It helps regulate interpersonal relationships, whether this concerns individuals or groups of people, and brings specific and reasonable solutions to conflicts that may arise between peoples, by attempting to coordinate their values and conducts (Noll 2003: 264).

Rawls understands justice, as a structural organisation of society or a kind of contract whereby “[...] the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls 2009: 6). The author draws further from Aristotle’s definition that obviously presupposes what “[...] properly belongs to a person and of what is due to him” (Rawls 2009: 7).

It is observed by Rawls (2009) that this understanding of justice suggests some entitlements and the expectations that come from that which he develops, using the social contract with John Locke, Jean Jacques Rousseau and Emmanuel Kant (Rawls 1985, 2009). He refers to the notion of justice as fairness that suggests equality as being consistent with the state of nature, embodied in the traditional idea of social contract (Rawls 1985: 654).

Rawls (1985) points to two key principles of justice, namely (1) “Each person is to have an equal right to the most extensive basic liberty compatible with similar liberty of other”, and (2) “Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to position and offices open to all...” (Rawls 1985: 660). Thus, drawing from Rawls,

[...] Social justice is about assuring the protection of equal access to liberties, rights, and opportunities, as well as taking care of the least advantaged members of society. Thus, whether something is just or unjust depends on whether it promotes or hinders equality of access to civil liberties, human rights, opportunities for healthy and fulfilling lives, as well as whether it allocates a fair share of benefits to the least advantaged members of society (Appalachian State University 2015)

This understanding of justice justifies the claims made by Crawford and Clear (2003), regarding the role of the state in compensating victims individually and making public reparation to transform society. From the perspective of social philosophies, whose proponents are named above, justice is defined as fairness, and it operates within contractual obligation. Rawls (2009: 11) argues: “In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract”. The author further contends that the situation, whereby justice is explained as fairness, supposes that people’s position in society, their status, their fortune in natural assets distribution, and their abilities, as well as their understanding of good or the psychological propensities, are beyond their knowledge, in the sense that nobody would advance their own advantages or disadvantages, based on the principles guiding their choices (Rawls 1985, 2009).

Opportunities or misfortunes are therefore, ensured to not be contingent on their freedom to choose their values or occurring as a result of contingent social circumstances, because they hold an equal situation that would neither favour one nor disadvantage the other, for the reason that “justice are the result of a fair agreement or bargain” (Rawls 1985, 2009). This contractual understanding of justice would ensure that the social institution guarantees fair and equal treatment of its members. In the same way, instances of inhumanities, along with social and economic disparities, would be contrary to justice.

Without engaging in critics and pro-Rawls’ arguments, the notion is limited by the researcher, to the context of the state’s responsibility to ensure that all its citizens enjoy social, economic, institutional, and political rights, as well as share equal opportunities. Violence often erupts as a result of the state failing to secure these entitlements of its citizens. Narrative of revolts, rebellions, protests, and civil wars, including the use of children as soldiers, are the corollaries of manifest, chronic and structural injustices.

This situation is evident in several countries and describes what Rotberg (2003) calls “failed state, collapsed state and weak state”. When a state has lapsed from its obligations, it is therefore, entitled to make reparation to those who have been victimised, as a consequence of not taking its legitimate and expected role to attain the aspiration of its citizens. This becomes manifest in the suffering of children enrolled by armed forces and armed groups. By taking the question to the foundational principles of human dignity, one understands social reality from the angle of the principle of common good, which prompts the praxis of social justice.

6.3 Restorative justice in theory: objectives and praxis

RJ was developed in the mid-70s and early 80s and was used to investigate the outcomes of mediations between victims and offenders, following criminal acts. It works on the principles of the restoration of individuals involved in a venture, by dealing with the underlying causes and consequences of conflict, promoting individual rights and repairing the harm, as part of justice to the affected parties. It originates in indigenous, traditional and customary responses to criminal acts, and evolved into a modern practice in the mid-70s in Canada, as a response to victim-offender mediation (Van Ness, Morris and Maxwell 2003: 4; Johnstone and Van Ness 2011).

RJ started as a preferred trial for young offenders and was broadened to pre-sentence, whereby an offender and a victim could formulate a proposed sentence for the judge to deliberate upon (Van Ness, Morris and Maxwell 2003: 4). This model of justice has evolved as a social movement, with the ambition to “...transform the way contemporary societies view and respond to crime and related forms of troublesome behaviour” (Johnstone and Van Ness 2011: 5; Johnstone 2013a: 13).

Zehr (2002: 19) affirms that RJ is not new as practice, rather, it is utilising an old wisdom, of understanding wrongdoing that takes different shapes in different contexts, cultures and traditions, where it has generally existed. It is based on a trilogy: “crime is violation of interpersonal relationships; violations create obligations; the central obligation is to put right the wrongs” (2002:19).

Other concepts, used to describe this model of justice, include communitarian justice, making amends, peacemaking, and positive justice, along with reconciliation, redress, relational justice, and reparative justice, as well as restitution (Miers 2001: 88). RJ has evolved as part of criminology and it is being advocated and used as a preferred option to conventional justice in several countries (Latimer, Dowden and Muise 2005; Van Ness 2005).

Its flexibility makes RJ a paradigm, whose time has come for complex situations, such as juvenile justice, justice for inmates (prisons), justice for pupils and students, and justice in the aftermath of bloody conflict. RJ is being implemented worldwide in Australia, Canada, England and Wales, New Zealand, USA and many other countries (Van Ness, Morris and Maxwell 2003; Latimer, Dowden and Muise 2005; Van Ness 2005).

One item of RJ's agenda, is moving from the traditional understanding of justice, based on punishment, to a civilised model that emphasises restoration of affected parties and the community. Taking into account the diversity of circumstances, cultures and contexts, where RJ practices are required, makes it hard to frame an ultimate and categorical definition of RJ (Shapland, Robinson and Sorsby 2011: 4). However, several definitions are attempted, though they do not exhaust the underscoring principles and objectives of this paradigm of justice.

To illustrate this point, Marshall and Britain (1999: 5) define RJ as a problem-solving procedure to crime, in which affected parties are themselves involved, with the community, in attempting to resolve the problem using "their active relationship with statutory agencies", and dealing with the aftermath of a specific offence and its consequences for the future (Marshall and Britain 1999: 5).

The United Nations Office on Drugs and Crime (United Nations 2006: 11) describes RJ as "a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders". According to Zehr (2002:37), "[...] restorative justice is a process to involve, to the greatest extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible" (Zehr 2002: 37). It springs from these definitions that the needs of victims, offenders and the community are seriously taken into account, in remedial steps to address the consequences of a crime. This approach eventually leads all parties affected to healing.

It follows that, compared to the traditional mainstream justice system, RJ's central focus remains the needs of victims and the responsibility taken by the offender to make reparation, whereas the former emphasises a retribution that is proportionate to the crime (Zehr 2002: 21). The punitive approach, as seen in most court cases through judges' ruling/verdict and sentencing, leaves an abyss between disputants. In several instances, genuine forgiveness and reconciliation linger in the gulf of new enmity.

The criminal justice system has forged human imagination, in understanding accountability as punishment, creating the perception of justice as a triumphalist pursuit, creating a net antagonism between parties having a stake in a crime, with the justice outcome viewed as loss/defeat for the perpetrator, and win and vindication for the offended party. This understanding of accountability has engulfed hope and the prospects of transformation in the

perpetrator. At times, harsh treatment of perpetrators, exacerbated by the feeling of defeat, rejection, condemnation and exclusion, has also failed to deter criminal behaviour.

As an illustration of this point, crimes remain ever rampant in the world and more penitentiary facilities are built, alongside maximal security prisons for adult and juvenile offenders, which are often overcrowded. These are indications of the pitfalls of the criminal justice system. In the same perspective, “RJ empowers disputants, offenders, and their communities to assume central roles in recognizing harm, repairing damages, and creating a safe and civil future” (Noll 2003: 284,285). The revolution pursued by RJ is to give new identities to victims and perpetrators, namely being partners in addressing a crime and its aftermath, in a non-confrontational manner, where all parties emerge satisfied and relieved.

RJ programmes set up the condition for accountability and prevention of criminal behaviour by creating a viable environment where, in concerted efforts, the community, offenders and victims come together, to look into past crimes and resort to transforming relations and society, while healing individuals who have been wounded, as result of a crime. These processes bring about a safe society, in which each member plays a role in addressing injustices and bringing about societal changes.

In order to achieve this, RJ proceeds by acknowledging the existence of conflict or harm, making reparation for the damage (physical and relational) at a maximum level and initiating plans for future accountability and agreements that will avert recurrence of the same harm (Noll 2003: 284). The goals of RJ resonate with the primary role of justice, which according to Noll (2003: 284), is the restoration of relationships. Retribution is not the objective of RJ because punished criminals resort to revenge, witch-hunts, and feelings of injustice experienced by the court’s punitive verdicts.

While RJ excludes retributive sanctions, in contexts whereby juveniles are involved in serious offences, it combines reparative, rehabilitative and punitive elements, designed to deter the juvenile’s offending conduct (Dignan 2011: 276,279). However, even when sanction denotes retributive tendencies, the aim is to produce restorative outcomes, not to humiliate the offender but rather to help them change their attitude or behaviour (Dignan 2011: 275; Walgrave 2011b: 15). To avoid recidivism, RJ programmes help create an environment where offenders and victims can live together again with respect for each other.

Retribution neither pursues, nor attains the restorative goal of justice. However, RJ can potentially achieve this objective. RJ arranges an alternative to the settlement of an old score, by finding a way to meet the needs of the victim, in order to guarantee that the offenders become fully knowledgeable of the harm they have caused and the obligations that arise for them to make reparations (Johnstone 2013b: 1). Some scholars press even further, by demanding that the state actions its responsibility to compensate victims and that reparation should go beyond recompensing individual victims for the harm they suffer (Crawford and Clear 2003: 215). The authors argue that, “Public forms of restoration and redress should not be substituted merely with private restoration”. This kind of restoration is necessary for community transformation through community justice (Crawford and Clear 2003).

Restoration can benefit individuals, as well as the community, when states work towards uplifting the lives of people, facilitating service delivery, promoting social and economic justice, and stimulating economic growth. In addition, restoration ensures founding a society that respects the rule of law, while creating propitious conditions for “democracy, good governance, peace, security, stability and justice that are necessary to create socio-economic development” (Villa-Vicencio 2008: 395).

Economic growth is further found to neither constitute the remedy of past suffering nor provide automatic healing or restoration of victims. However, adequate provision of psychological services, skills training, job creation and the restoration of human dignity, is dependent on the availability of economic resources that enable a society to deliver such services and resources, on a long-term basis (Villa-Vicencio 2008: 395). Material restoration may be limited due to economic constraints, nonetheless, moral and psychological restoration is possible without material help. Accompanying justice with opportunities, livelihoods and services would likely create a propitious environment for lasting peace, especially in a transitional context, after large human violations. Since RJ justice is context-based, it adopts various programmes to address justice. However, all these programmes intend to achieve a common objective and their outcomes are closely linked to the programmes themselves and the perplexity of the issues they try to resolve.

6.3.1 RJ programmes

RJ applies a number of programmes, such as victim offender mediation, community and family group conferencing, sentencing circles, and peacemaking circles, along with reparation

probation and community boards panels (United Nations 2006: 11). These processes are gaining ground in criminology and are being used as a preferred option to conventional, criminal justice proceedings.

Consequently, RJ is seen as a flexible paradigm whose time has come for complex situations, such as juvenile justice, justice for inmates (prisoners), justice for pupils and students, and justice in the aftermath of bloody conflict. Other procedures of RJ include victim-offender reconciliation, negotiated restitution, community justice conferencing, and the reintegrative shaming theory of shame management (Ahmed *et al.* 2001; Morrison 2011; Sherman, Strang and Woods 2000).

Karp (2004a) discusses four main practices of RJ being implemented in colleges and campuses:

- RJ Conferences: this model emphasises dialogue between offender and hurt parties. After discussion, both parties decide the course of action to be taken by the offender to repair the harm.
- RJ Circles: the objective of RJ conferences or RJ circles is similar, but circles use a “talking piece” to keep a peaceful and harmonious climate during the discussion.
- RJ Boards: these are structured as a panel, comprising members taken from the faculty, staff and students. The board may proceed without disputant parties, and make a sentencing statement. It is, however, advised that offenders and victims get on board to enhance their active participation.
- RJ Administrative Hearings: these incorporate RJ principles in administrative hearings, with the aim at uncovering the consequences of an offense and exploring the way an offender could make reparation for harm caused to the harmed person (Karp 2004a).
- Reintegrative shaming theory consists of healing shame to avert recidivism (Sherman, Strang and Woods 2000).

These programmes involve a range of sanctions that are not determined by objective norms but rather by deliberation among people with a stake in the crime. Participation in these procedures is voluntary, based on free interaction and active participation of all stakeholders, with outcomes democratically agreed upon. These include that participants should feel they

benefited from the proceedings, the problem between victim and offender should, to some extent, be settled, reparation should be made to victims, and offenders should be provided with the opportunity to deal with issues related to their offenses, while offenders should also be empowered to refrain from re-offending, and in diversionary cases, fewer offenders should serve severe sentences (Shapland, Robinson and Sorsby 2011: 32-33). The role of outsiders to assist in achieving these outcomes is a legitimate aspect of RJ (Shapland, Robinson and Sorsby 2011).

6.3.2 Restorative accountability and sanctions

Four kinds of sanctions are commonly used, namely apology, restitution, changed behaviour and generosity (Centre for Justice and Reconciliation 2008). This approach contributes in limiting recurring, anti-social behaviour and inhumane conduct; it encourages change in individual offenders, and facilitates offender's reintegration into the community (United Nations 2006: 11). These are the objectives pursued by RJ, and the focus is on restoration, transformation, healing and prevention of further harm (Umbreit *et al.* 2002).

In the same vein, Braithwaite (2002a: 3) asserts that RJ embraces a multi-dimensional transformation of society, targeting the entire legal system, lives in our families, our behaviour at the workplace and the way we engage in politics. Injustice reduction also remains the main target of RJ, as stated here: "so conceived, it targets injustice; to see the goal simply as crime reduction impoverishes its mission" (Braithwaite 2002a: 1).

While the mainstream justice system uses retribution as the main form of accountability, RJ's accountability is based on restoration. Additionally, Noll (2003: 284) states: "RJ includes recognizing the conflict or harm, repairing the damage (physical and relational) as much as possible, and creating future accountability plans and agreements that will prevent the same thing from happening again". Subsequently, when applying RJ, law-breakers and rule-breakers do not get away with their anti-social behaviour but the sentence passed on them is utilised as a means of repairing harm, restoring and reintegrating them into the community. Karp (2004b: 8) argues that "accountability is demonstrated through expression of remorse and commitment and through the completion of tasks negotiated as part of the sanctioning process".

According to the South African Department of Justice and Constitutional Development (2011), RJ presents several benefits, such as preventing re-offending (resolution by offenders not to

repeat offenses committed), victim empowerment (it is accessible and affordable to victims without legal costs), benefiting criminal justice agencies (it reduces “case back log” and “delay in justice” and avoidance of “overcrowding in prisons”, while enhancing community involvement in the dispute resolution process (inclusion and participation of victims and offenders in the process) (Republic of South Africa 2011). This is an indication that RJ is cost-effective and gives the opportunity to attain justice for all indiscriminately. It improves interpersonal relationships, reduces victimisation and makes human communities a safe and empathic environment. The researcher concurs that violent behaviour in society can be reduced, when RJ practise prevails (Kiyala 2013).

Considering the three parties involved in RJ, namely victims, perpetrators and the community, it is important to explore the extent to which RJ, influences restoration of primary and secondary victims, reconciliation, rehabilitation of perpetrators, and accountability, as well as transformation of relationships and societal harmony (Kiyala 2013). This thesis will deal extensively with an empirical evaluation of peacemaking circles. Let us examine what peacemaking practice entails.

6.3.3. Peacemaking theory

The concept of peacemaking is intricate. Noll (2003: 51) argues that peacemaking does not imply a passive acceptance of injustices, the suffering and pains inflicted by others or being submissive to abuses without resisting. Instead, it is a dynamic and weighty concept that generates “relational and structural justice that allows for social and personal well-being”. This process helps address the underscoring causes of harm and its consequences, in a non-coercive way.

Since the process diverges from prosecutorial processes, by the fact that peacemaking processes deal with the problem and open a new opportunity, while the former leaves the problem unresolved (Noll 2003: 51). As a result, the offender relapses into violence and re-offending. This scenario can be curbed by peacemaking practices because these explore the extent to which relationships are distorted and how forgiveness, reconciliation, empowerment and recognition can contribute to rebuilding peace and repairing the offense (Noll 2003: 273).

Contrary to the mainstream justice system that uses retribution as a means of deterring criminal behaviour, peacemaking circles promote the good of the community and prevent the cycle of

revenge, along with protracted hatred, animosity, exclusion, and rejection, as well as the recurrence of anti-social behaviours.

Sheffer (2004), reviewing the book “peacemaking circles: from crime to community”, underlines two properties of RJ circles, namely prevention of further harm and healing of disputant parties. The materials developed by Pranis *et al.* (2003) provide a comprehensive explanation of RJ circles in theory and practice, demonstrating the potentialities of peacemaking circles to reintegrate those who have carried out violent acts against society.

Bradshaw and Roseborough (2005: 16) affirm: “The primary goal of peacemaking circles is to promote accountability, healing, and compassion, through community participation in resolving conflicts. Lanni (2005: 394-395) argues that RJ is adaptable to complex circumstances and is more assertive in achieving justice where rigorous legal frameworks face challenges, due to the intricacy of criminal proceedings.

It is important to observe that justice and peacemaking processes carry a spiritual dimension. Understood from the ancient Hebrew word “Shalom”, peacemaking embraces a broader meaning that defines human interrelations, whose essence and purpose are peace (Noll 2003: 273). On the same note, Zehr (2002: 19) explains that, “Shalom” implies “all-rightness” with each other, with the creator and with the environment”. Restoration implies “all-rightness” in a cosmological way. RJ peacemaking processes seek to create a space for meeting between victim and offender after a crime, by using acknowledgement of the harm inflicted and offering reparation, instead of punishing the offender.

Peacemaking is also related to the theory of shame and shame management that requires reintegrative shaming processes, along with stigmatisation (Ahmed *et al.* 2001). It is argued that stigmatisation increases the possibility of offending by the stigmatised (Ahmed *et al.* 2001). According to reintegrative shaming theory – “communicating disapproval of an *act* with respect, with special effort to avert outcast identities and to terminate disapproval with rituals of forgiveness or reconciliation” (Ahmed *et al.* 2001: 39) - stigmatisation and shaming can occasion crimes.

When one that has been stigmatised is reintegrated, disapproval of her/him is done with respect, when offenders are treated with dignity, the likelihood of them committing offenses is

minimised. One of the approaches that help manage shame and reintegration, is peacemaking. Ahmed *et al.* (2001: 3) argue: “Peacemaking at all levels must be about restoring dignity and learning shame management lessons from micro arenas such as [...] school bullying and criminal justice”.

In the same perspective, writing in the context of “restorative justice in schools”, Morrison (2011: 49) avers that RJ and “responsive regulation” enhance resilience and responsibility for regulation of relationships, by means of managing shame and identity. Since the failure to exonerate shame may cause breakage of “social bonds and social marginalisation”, which could result in a cycle of harmful conduct directed not only against others, but also turned against the self, as has been experienced through rampage shooting at schools, ending in suicide (Morrison 2011: 49). Peacemaking has restorative effects in shame and stigmatisation management, inasmuch as this process can help reintegrate offenders into either a school community or a particular part of society.

It follows that restoration helps break the cycle of alienation, stigmatisation and shame associated with an offence/crime and empowers offenders to amend relationships, through practices that can deal with deleterious behaviour (Morrison 2011: 49). The same principles have been applied to juvenile offenders, implicated in criminal offenses not involving direct victims, such as drunk-driving, and the category of offenders that participated in the Cambera Reintegrative Shaming Experiments (RISE) (Shapland, Robinson and Sorsby 2011: 24).

The theory of reintegrative shaming is argued to have the potential to reduce offending better than the criminal justice system that causes stigmatisation in offenders, making it difficult to abide by good citizenship and live a normal social life (Shapland, Robinson and Sorsby 2011:25). The same view is held by Roach (1999a: 29), crediting RJ and its approaches, such as reintegrative shaming, as viable and more successful crime prevention measures than criminal processes.

It is evident to conclude that peacemaking theory and reintegrative shaming theory aim at restoring relationships, empowering offenders and restoring them to dignity. This step is necessary to encourage resilience, curtail the cycle of crime, and promote reinsertion of offenders into the community. These outcomes from the RJ agenda are far beyond the interests

pursued by the mainstream criminal justice system. This gap is explored further in the following section.

6.3.4 Contrasting the mainstream justice system with RJ

In contrast to a retributive criminal justice system that intends to punish offenders, in order to deter criminal conduct, RJ has come forth as a new model that emphasises restoration, as well as the reintegration of offenders into the community. This is achieved by addressing the issues at stake in a way that takes the needs and interests of all the parties that are affected by the offence into account, namely the offender, victim and community.

Several scholars, such as and Dignan (2011); and Walgrave (2003b, 2003a, 2011b, 2011a), Skelton (2005 and 2013a), have taken an integrationist approach and argue on the compatibility of retributive sanctions within restorative practices. Incorporating retribution in restorative practices has been advocated, not as not intending to humiliate and punish offender, but rather as a process of deterring criminal behaviour. For instance, Walgrave (2011b: 4) sustains that voluntary processes are highly regarded because of their potential restorative impact on parties involved and the restorative results these processes may generate.

Nonetheless, in circumstances “when voluntary processes cannot be achieved or judged to be sufficient, pressure or force must be considered” (Walgrave 2011b: 4), yet, even coercion applied here must serve restoration. “Restorative retributivism” diverges from “punitive retributivism” in the fact that RJ confronts the offender with his/her responsibility for the offence committed, whereas in “punitive retributivism”, “the offender is confronted with his responsibility by others, and must submit to the consequences imposed by the criminal justice system” (Walgrave 2011b: 14).

A balance therefore, needs to, by implication, be stricken between “voluntary deliberation” and “coercion”, in such a way that “restorative retributivism” will seek to bring about restorative outcomes or even just results, in order to avoid the negative impact of unfair procedures that, instead of leading to restoration, breed inimical attitudes. In this regard, Walgrave (2011a: 561) argues that, “if the power balance is unequal – the offender is not cooperative, the victim is too revengeful, the community is too exclusionary and/or the facilitator is too interventionist – restorative justice processes may yield very unjust outcomes”.

In the same vein, Zehr (2002: 16) notes: “The criminal justice system is concerned about holding offenders accountable, but that means making sure offenders get the punishment they deserve.” The danger of not leading offenders to be aware of the consequences of their acts, and not providing them with sufficient space to show empathy to victims is that offenders may get discouraged and feel alienated by society. And this situation is exacerbated by legal proceedings and imprisonment experienced by offenders (Zehr 2002: 16).

RJ takes a more creative approach to dealing with crimes, criminals, victims and society. It brings to light the negative effects of punishment that certainly is not a true accountability (Zehr 2002: 16). Whereas the mainstream justice system considers crime as a transgression of law, a violation against the state and the constitution, RJ perceives crime as violations against individuals that prompt liabilities and obligations (Zehr and Mika 2003: 41).

Establishing a rapport between criminal justice and RJ, Zehr (2002: 21) notes that CJ conceives crime as a breach of the law and state; violations engender guilt; and the objective of justice is that the state determines guilt and inflicts appropriate punishment. While RJ views crime as a transgression of people and relations, and these create obligations so that justice will bring victims, offenders and community members together, in an attempt to put things right (Zehr 2002: 21).

Healing both affected parties and relations is not the goal of the mainstream criminal justice system. On the contrary, RJ aims at healing persons involved in a specific stake and the community (Zehr 2002: 37; Zehr and Mika 2003: 42). It is concerned with healing victims’ wounds, restoring offenders to law-abiding lives, and repairing harm done to interpersonal relationships and the community. This process takes place face-to-face, when one is able to face up to what he/she has done, leading offenders to acknowledge the impact of their wrongdoings and taking as much responsibility as possible, to rectify the wrongs by putting them right (Zehr 2002: 16). This is argued by Zehr (2002: 16), as a genuine accountability.

This thesis diverges from the Western legal system that Stauffer (2013: 196) describes in the following terms: “It is based on the notion that punishment results in individual rehabilitation and collective deterrence”. In reality, it has been evidenced that punishment is at odds with the rehabilitation of offenders.

To further support this argument, Van Wormer and Walker (2012: xi) state: “[...] the present system of criminal justice, with its heavy emphasis on standardized harsh forms of punishment and scant attention to the personal dimension, is flawed”. They ascertain that RJ is a viable justice option for its flexibility (Van Wormer and Walker 2012: 31) and its adaptability to complex circumstances (Lanni 2005: 394,395).

The purpose of modern RJ is to prevent harm, by creating an environment for reconciliation where offenders take the responsibility for their crime (Van Wormer and Walker 2012: 35). In this process, Walgrave (2011a: 561) asserts that: “Restorative justice thus cannot simply rule out criminal [justice]: a number of principles, models and concerns within criminal justice must be taken seriously”. In addition, the principles of criminal justice can prompt a sustainable model of rights and liberties that can protect RJ from power abuses (Walgrave 2011a: 561).

Making the wrong right implies mending broken relationships, healing wounded histories, recreating societal harmony, and providing opportunities, whereby former enemies can meet again, and shake each other’s hand. This is possible when the offender is put face-to-face with their victim and looks back on the consequences of the crime he/they committed. Unfortunately, criminal retributive justice causes offenders to feel rejected, marginalised and shamed by incarceration, penal servitude, and some are even denied justice. In the mainstream, criminal justice system, perpetrators are denied the chance to allow their crimes to touch their inmost being, by the fact that they are isolated and confined in jail cells. They are deprived of the opportunity to grieve for their past aggressive acts.

On the preoccupying “punishment paradigm”, Walgrave (2003b: 27) argues: “(1) the wilful infliction of pain is not justified ethically, and (2) the a priori position that offenders suffer is destructive of social life”. These two concerns show the negative impact of the criminal justice system on the offender’s life. By ostracising offenders and inflicting punishment as a consequence of crime, offenders are condemned by society and its laws, destroying their hope and the prospect of redemption. Restoring the offender without humiliating them/her would lead to social catharsis. It can transform society more than retribution would.

A new methodological approach and strategy need to be systematically and critically explored that could balance child soldiering culpability and their vulnerability, while at the same time,

being mindful of the community's needs for justice that serves the interests of all parties; the community, the victims and offending child soldiers. The severity of the crime in which children soldiering are involved demands some accountability, if society is interested in helping perpetrators to mature in responsibility and curb the cycle of interminable participation of the underage in hostilities. Having said that, let us turn to one of the restorative practices that are extensively investigated in this inquiry, namely RJ circles, particularly peacemaking and/or healing circles.

6.3.5 Restorative justice circles

Peacemaking as a restorative process denotes the understanding of peace, as developed by Galtung (1969), which originates from three principles:

The term 'peace' shall be used for social goals at least verbally agreed to by many, if not necessarily by most; (2) These social goals may be complex and difficult, but not impossible, to attain; (3) The statement peace is absence of violence that shall be retained as valid (Galtung 1969: 167)

It is a process that entails sacrifice, being essentially difficult but yet achievable. The fact that violence causes hurt and suffering, dictates that a process of peacemaking include eradication of multiple forms of violence, whether direct or indirect (Galtung 1969; Schirch 2004) or political, structural, symbolic, and interpersonal, embed war-time and apparent peace-time, or that accompanies revolutions (Bourgois 2001); or chronic (Bourgois 2001; Seymour 2011; Adams 2012).

An RJ circle is a programme that provides a respectful space, where offender and victim meet to address the hurt caused by an offense. Peace-building is therefore, set as a transformational process, which restores interpersonal relations, and identities the environment where violence has caused distortions of harmony that existed. Thus, peacemaking and peacebuilding present the same teleological agenda that can be defined as transformational justice. Building peace entails transforming individuals and communities, as well as economic and political institutions, and driving them away from the “destructive expression of conflict” and leading them toward “constructive growth and development” (Schirch 2004: 45).

The concept of peacemaking circles and restoration has developed from a background of providing society with alternatives, leading to healing and reducing violence in society. Peacemaking circles therefore, consist of three types: healing circles, peacemaking circles and

sentencing circles (McCold 2008: 28-29). In this research, RJ circles refer mainly to peacemaking and healing circles. These procedures reflect the various ways human communities act, in response to crimes or wrongdoings, by considering the needs and interests of affected parties, namely victims, offenders, their acquaintances, their families and the community at large (Pranis *et al.* 2003).

Peacemaking or healing circles provide offenders with the opportunity to share the pains of their victims. By taking responsibility for past wrongdoing, an offender is led to reform their life, and healing is enhanced (Pranis 1997: 73). This approach contributes to limiting recurring anti-social behaviour and inhumane conduct. It also encourages change in individual offenders. During the circle meeting, a talking piece is used, in order to maintain a mutual listening atmosphere: “the talking peace is an object with meaning to the group that is circulated around. Only the person holding the talking peace may talk” (Pranis *et al.* 2003: 125).

McCold (2003: 50) states that, “A sentencing circle is a community directed process, in partnership with the criminal justice system, for developing consensus on an appropriate sentencing plan, which addresses the concerns of all interested parties”. This procedure is used as a part of criminology and involves the presence of judicial officers, who sanction the processes (Lilles 2003: 162). The proceedings adopt some principles of conventional criminal justice, such as pleading guilty and taking full responsibility for the offense.

Parker (2001) argues that the process of decision-making should create a peaceful and safe environment for an encounter between victim and offender, by bringing the community on board, in transacting the most acceptable sanctions. The author further affirms that, what makes circles a more desirable practice, is its applicability to intricate situations and the way in which it is delineated to enhance healing and bring understanding to both victim and offender. In addition, circles emphasise healing, and empower the community to discern and decide on the course of action to follow, in addressing a particular problem, its causes and consequences (Parker 2001).

Peacemaking circles have been introduced in criminal justice system in Canada and the US, as a creative approach to justice that involves disputants in decision-making processes concerning the sentencing of criminal cases (Stuart and Pranis 2008: 125). Peacemaking circles are used in various levels of the criminal justice system, for young and adult offenders, from lowly rated to

grave crimes; they facilitate reintegration of offenders into the community and help break the cycle of violent and deleterious behaviour (Stuart and Pranis 2008: 125).

According to Stuart and Pranis (2008: 125), some provisions of peacemaking circles include that:

- an environment for safe and respectful dialogue is created, with the cooperation of all parties involved;
- attempts are made to amend relationships, during the actual interface between parties having a stake in a crime;
- an invitation to attend the discussion emphasises moral, mental, emotional, spiritual and physical preparedness;
- the use of a talking peace to maintain safety of the environment and freedom to interact;
- protection of space for truth-telling is purposefully created and accompanied with a ceremony in the opening and in the closing;
- prevention and intervention are composite parts of the process;
- ability to handle situations, whereby a clear victim or perpetrator does not emerge clearly;
- dealing with the underlying causes of conflict should retain good attention; and finally,
- a member of the group is entrusted with facilitation (Stuart and Pranis 2008: 126-127; Pranis 2013).

Peacemaking circles rely largely on consensus, cooperation, and active participation of each member to maintain an atmosphere conducive to mutual listening, while it is also self-governing in the process of making decisions, and focuses on building relationships (Stuart and Pranis 2008: 127). Decisions of sentencing that emerge from circles are less threatening and better acknowledged, than punitive sanctions imposed on offenders. In circles, parties affected develop understanding and empathy that lead to complying with agreements reached in a non-coercive manner, according to Stuart and Pranis (2008: 125).

Consideration should be given to the following elements that Stuart and Pranis (2008) include in the evaluation of RJ circles' outcomes:

- change in behaviour and attitudes, with regard to issues that called for circles;
- agreements reached on critical issues that participants in the circle were involved with;
- the extent to which circles have built relationships, healing the wounded ones;
- the role of prime victims and offenders, in helping others disputants through their own experience.

Contrasting RJ circles, with the traditional, mainstream justice system, it is noted that punitive sanctions take away empathy from offenders, who resort to further violent behaviour. Reduction of recidivism, found across a number of sites and settings in offenders who participate in circles, suggests that RJ approaches denote more viable principles to enhance individual transformation. In many instances, youths going through conferencing programmes actually improve their conduct (Umbreit *et al. et al.* 2002: 8). Peacemaking circles can thus help curb the adversities of the State's legal apparatus and institutional adjudications.

Circles encourage empathy, which is rarely seen in sentenced offenders. Pepinsky (2008: 190) argues: "the major challenge of institutionalising peacemaking or mediation is to build relationships in which empathy is reciprocated and balanced rather than one-sided". For that to take place, mediation and the interface between victim and offender are paramount. Often, the outcome of prosecutorial processes reflects a decision that does neither address the problem nor open a new opportunity because "[...] the underlying causes of conflict are left unresolved" (Noll 2003: 51). The immediate consequence of these lacunae is a relapse into violence and recidivism.

6.3.6 Critics of peacemaking theory

Although peacemaking is considered as the more plausible and dynamic alternative to justice and peacebuilding, these processes are confronted by the complexities of different theories of justice, from which justice, peace and rights are comprehended. While advocates of peacemaking assert that it is a peace tool, other views diverge from this consideration. Some even critique the potentiality of peacemaking process to bring justice, as observed by the "Alternative Dispute Resolution" (ADR) (Noll 2003: 278). Peacemaking as justice tool is criticised for its "informalism" (Noll 2003: 278).

Among scholars who charge peacekeeping theories are Richard Abel, Owen Fiss and Richard Delgado (Noll 2003: 281). For instance, Abel, (cited in Noll 2003) argues: "[I]nformalism"

takes away people's power, leading disputants to abandon their grievances for the sake of cooperation and peace, so it inhibits changes and denies the existence of conflicts that is important for those who are oppressed (Noll 2003: 278-279). Fiss ascertains (cited in Noll 2003) that, "[I]nformalism" promotes the interests of individuals while ignoring public needs, and thus hurts disadvantaged groups such as minorities, the poor and women (Noll 2003: 280).

Finally, Richard Delgado sustains the view held by positive law theorists, according to whom judicial processes minimise bias and prejudice because it is objective that these may arise when disputants confront each other and when one of the party is more powerful or has a higher status (Noll 2003: 281). The social position of the mediator may also have a negative impact on non-judicial proceedings and put the weakly positioned party in a condition to accept the outcome, argues Delgado.

The innovative idea that Delgado will advance later, is his recommendation to set the rules that would exonerate the peacemaking proceeding from prejudice, by determining the purview and boundaries of the procedures, subjecting proceedings to higher review, considering a facilitator or mediator who is consented by disputing parties, and finally, the necessity to bring in a representative or an attorney (Noll 2003: 281).

The presence of an attorney, however, intends to confine dispute resolution only to cases that do not have a larger social dimension, otherwise they should be referred to court for adequate handling (Noll 2003: 282). This observation denotes the integrationist model furthered by scholars, who consider that some principles of the mainstream criminal justice may enrich the outcomes of RJ. This view is held by Dignan (2011) and Walgrave (2011a). Nonetheless, incorporating the concepts of criminal justice into RJ should always aim at restoration, as opposed to retribution and humiliation.

Responding to the objections mentioned above, Noll (2003: 282) argues that critiques against informal approaches to justice have vanished from the academic realm, since the mid-1990s. The concerns, raised by those who oppose informal justice procedures, have not been real in the face of growing alternatives of dispute resolution, which ensure satisfaction and "with little complaints about unfairness or disenfranchisement of the disempowered" (Noll 2003: 282). The growing interest in informal justice mechanisms and locally-based efforts to deal with injustices caused by crimes and the aftermath of that, suggest that using "informalism" as

argument to discard peacemaking as a justice tool, would be anachronic, in a time where emerging and ongoing restorative and transformative justice procedures have become in vogue and have been experimented with, with success.

Peacemaking and the entire range of restorative practices have gained impetus in transitional societies, after war and gross human rights violations. In several contexts, these approaches have yielded recommendable results. The researcher sustains that the criticisms, levelled against RJ and peacemaking theory, are based on a narrow conceptualisation of justice that often relies on sets of rules and does not take certain predicaments, such as holding minors accountable for the crimes they might have committed, into consideration. The following section looks into the rapport between RJ and TJ.

6.4 Conclusion

This chapter firstly explored the concept of RJ and its theoretical development. Secondly, it overviewed the praxis of RJ worldwide and analysed its outcomes. It follows from the discussions that RJ fits within the overall conceptualisation of justice theory, especially connecting with the constructivist approach that contrasts with the positivist approach, based on measurable predetermined rules, upon which justice is evaluated.

The discrepancies between different theories are situated on the level of principles and aims. RJ programmes and sanctions are varied, contextualised and adapted to various circumstances. The outcomes of this model of justice are widened to a larger society because of the underlying assumptions of the justice pursuit. The main programmes explored include, victim-offender mediation, peacemaking circles, conferencing and reintegrative shaming experiments.

Overall outcomes of these programmes sustain that RJ leads to self-regulated behaviour, reduction of recidivism, rehabilitation and restoration of victims and offenders, as well as satisfaction and deterrence of antisocial behaviour, and it is cost-effective. This praxis has contributed to the development of meta-analysis research in RJ, and is supported by the theory of democratic experimentalism.

CHAPTER SEVEN

RJ IN PRACTICE AND RELATION TO TRANSITIONAL AND SOCIAL JUSTICE

7.1 Introduction

Restorative practices are gaining ground in theoretical reflections and in grounded practices, where victims and offenders are brought together in ways that provide them the opportunity to address the needs of the victim; leading offenders to account to the victim and the community. These practices have become the thinking framework, with the ambition to “civilize” the Western, criminal legal system, by substituting guilt and punishment through responsive responsibility and by replacing the adversarial principles of the criminal justice system, with systemic restorative practices that emphasise reparation, restitution and reintegration (Zehr 1990; Skelton 2002, 2005).

This approach helps repair the wrong done to neighbourhoods and restores relationships (Umbreit *et al.* 2002: 1). It rebuilds relationships and creates a safer and healthier environment, while empowering communities to be agents of peace:

[...] restorative justice processes encourage community participation and involvement in all conflicts affecting the community and its members. Restorative justice empowers disputants, offenders, and their communities to assume central roles in recognizing harm, repairing damages, and creating a safe and civil future (Noll 2003: 284-285).

Various practices of RJ are surveyed to sustain its preference to the mainstream justice system. Different implementations of this justice paradigm reveal that it has worked in various contexts, generating viable outcomes, such as leading offenders to self-regulating behaviour, achieving reconciliation between victims and offenders, administering justice to victims, offenders and community at low costs, and enhancing behaviour patterns changes, as well as reducing recidivism.

The key experimental studies on RJ overviewed here, revolve around the concepts of “self-regulating conduct”, recidivism, “democratic experimentalism”, and cost-effectiveness, in addition to deterrence and rehabilitation on reduction of recidivism, restorative outcomes, RJ

accountability, and evaluation of outcomes, as well as RJ and TJ, RJ and social justice, and finally, the rationale for adopting RJ as intervention programme in this inquiry.

7.2 RJ and self-regulating behaviour

Tyler (2006: 307) studied three models of dealing with rule-breaking, namely procedural justice, RJ and a study of moral development, with the purpose of establishing the one that makes rule-breakers become “self-regulating in their conduct in the future”. It was proved that punitive justice defeats this goal and sanctions neither transform society nor wrongdoers. With this argument, it was necessary to promote an approach that leads individual offenders to a self-discovery of interior values that transform them in such a way that they become legislators of moral norms and their executors. This aims at creating a societal condition that enhances “self-regulating law-related behaviour in the future” (Tyler 2006: 307).

According to reintegrative shaming theory, self-regulating conduct can also be enhanced by acknowledgment of shame, as argued by Ahmed *et al.* (2001: 233): “Acknowledging shame thereby provides an opportunity for wrongdoers to put the shameful event behind them, to mend relationships and be restored to a state of psychosocial well-being”. The process of shame acknowledging involves: “(a) admission of feelings of shame over wrongdoing; (b) willingness to take responsibility for the wrongdoing; and (c) a desire for making amends for what happened” (Ahmed *et al.* 2001: 233).

Research has demonstrated that reintegrative shaming theory relies on participatory and deliberative restorative practices. This strategy is not implemented in the mainstream criminal justice, which overburdens offenders with shame detention and sentencing, making them vulnerable. Reoffending becomes the means of discharging their shame. This quandary can be averted, by reintegrating offenders into society. Reintegration here, according to Ahmed *et al.* (2001: 256) implies: “[...] an extended process through which the individual acquires self-regulatory strategies in the form of conscience”. This consciousness is encouraged by RJ proceedings.

Furthermore, Tyler (2009) argues on the viability and desirability of mechanisms that contrast with the traditional, dominant, legal approaches that involve high costs, yet producing minimal effects. Added to this, those approaches leading to self-regulation are based on individual

assent to values that they consider as motivations for complying and accepting the decisions encapsulated in the normal legal frameworks.

These mechanisms are participatory and deliberative, as they concentrate on involving people's standards as the foundation that encourages a deliberate yielding to the law (Tyler 2009). The author contends: "[...] this approach is particularly important when the goal is voluntary compliance with the law and/or willing cooperation with legal authorities" (Tyler 2009: 306). Implementing deliberative and participatory approaches are significant, in that the procedures involved focus on rehabilitation: "This is a core goal of restorative justice, which is an alternative to traditional adjudication, and which argues that it is important to reconnect offenders to their values, as an approach to lowering the rate of recidivism" (Tyler 2009: 325).

In addition, this process offers sources of legal legitimacy of justice proceedings: (1) socially value-based or community-oriented (people-community) and (2) procedural legitimacy (established legal normative precepts). Tyler further points out that both are necessary and connected to the same types of fairness in case processing (Tyler 2009: 332l).

In the same vein, Braithwaite (2002a) sees RJ as a model that diverges from the traditional understanding of the components of justice, such as deterrence, incapacitation, rehabilitation, and crime prevention. The argument put forward by Braithwaite (2002a), is that it is evolving as a new trend that revolutionises the notion of freedom, community and democracy, not a new practice, because it has been the governing model of criminal justice among many peoples (Braithwaite 2002a: 4-5). The communitarian dimension of RJ is emphasised by Braithwaite (2002a), Lanni (2005) and Tyler (2009). A link can thus be established between community justice and reoffending, which can be reduced when injustices, resulting from offending, are dealt with. Studies sustain that RJ can help reduce recidivism.

7.3 RJ and recidivism

Latimer, Dowden and Muise (2005: 136-137) applied control group experimental design, using a meta-analysis method, in a study that involved victim-offender programmes, in order to evaluate the effectiveness of RJ, by comparing it to non-restorative approaches. According to their results, there was victim satisfaction, offender satisfaction, restitution compliance; and they argue: "[R]estorative justice programs, on average, yielded reductions in recidivism, compared to non-restorative approaches to criminal behaviour" (Latimer, Dowden and Muise

2005: 142). At the same time, the authors acknowledge that the outcome of their investigation might have been tempered by “self-selection bias”.

Another study, conducted by Sherman and Strang (2013), based on a methodical review of the tests and hypotheses of RJ as a better practice to deal with reoffending. That investigation revealed progressive and promising results on the effectiveness of RJ, to yielding satisfaction in victims and offenders, more so than with the criminal justice system. That evaluation was based on experiments gathered from the UK and internationally and was carried out by “The Jerry Lee Center of Criminology at the University of Pennsylvania for the Smith Institute in London” (Sherman and Strang 2013: 292).

To add to this, Gabbay (2005) discusses four traditional RJ programmes used in the USA, namely victim-offender mediation or reconciliation, group conferencing and circles, and the author introduces an innovative model, called democratic experimentalism. The aim of this comparative study, was to establish the extent to which these practices are credible and accountable. The analyses were based on each programme’s case study, indicating that, in most cases, these programmes do not account for the methods employed and the results generated (Gabbay 2005).

The general effects of the programmes on participants were positive, in the sense that victims and offenders emerged satisfied from the processes, which they considered effective, and they indicated that their needs were met. Some limitations of the evaluation reside in the uncertainty of the instruments and methods employed, and whether these could help establish the accountability of the programmes and whether they attained their important goals. In addition, there are also the inability of practitioners to make self-assessments to uncover their own limitations, and the incapacity to identify where the programmes need to be improved (Gabbay 2005). Generally, these three studies give ground to accept that RJ could lead to reducing recidivism. One aspect of the practices that is explored further in this section, is the concept of “democratic experimentalism”.

7.4 “Democratic experimentalism” and RJ

The “democratic experimentalism” model introduced here is novelty in governance systems, where citizens, institutions, and facilitating and monitoring organs are empowered to select

their own goals and define the procedures to reach the outcomes corresponding to the intended set objectives intended (Dorf and Sabel 1998, 2000).

This paradigm of governance is inspired by the “Drug Treatment Courts and Emergent Experimentalist Government”, whereby the central authority is provided with necessary information for the evaluation of the performance of monitoring agents (Dorf and Sabel 2000: 833). In addition, sets of these principles are used to implement the democratic experimentalist model of RJ. These include self-determination and the availability of decentralised agents to account for the process and imperatively provide the central authority with sufficient and detailed information, to allow evaluation of performance and improvement of local experimentation (Dorf and Sabel 1998).

In this model, RJ accountability is attainable through the ability of parties, entangled by urgent problems, to explore feasible ways of handling the problem, even if they are not certain of what the result could be if such a transaction occurs, but agree that this primary attempt to resolve the problem, is better than doing nothing (Dorf and Sabel 1998: 322).

RJ is congruous with democratic experimentalism and is based on non-domineering principles strengthened by self-organisation, evaluation and accountability measures (Dorf and Sabel 1998). These assumptions are supported by Braithwaite (2002a: 533), who validates the “bottom-up” justice approach, by contextualising the processes in a way that respects human rights, with the processes embodied in local standards that make the whole justice movement a significant engagement. The author observes that the way to prevent domination in justice processes, is to allow free participation of all parties with a stake in a crime/offense and providing support mechanisms for both “just victims” and “just offenders”.

Programme convenors should intervene immediately a participant attempts to dominate others. Braithwaite notes: “A programme cannot be restorative if it fails to be active in preventing domination” (Braithwaite 2002b: 565). The democratic experimentalist perspective attempts to control domination, in the pursuit of justice.

A number of RJ programmes that use the democratic experimentalism theory have been investigated by Gabbay (2005). Among these is criminal delinquency, in which juvenile and adult offenders were implicated in the USA. These programmes run within the criminal justice

system. The strategy utilised in this inquiry consisted of interviewing programme directors and coordinators of juvenile justice proceedings. Other data were obtained through live observations. Four programmes provided investigators with both qualitative and quantitative mechanisms of their assessment (Gabbay 2005: 100).

The four case studies included: “the Milwaukee County District Attorney’s Office” (the community conferencing programme and the neighbourhood initiative); “the RJ Center of the Polk County (victim-offender reconciliation meeting and other RJ programmes operated by the Polk County Attorney’s Office)”; “the RJ program, the 31st Judicial District Circuit Court, Office of Dispute Resolution, Prince William County, Manassas, Virginia”; and the “Community Impact Panels at the Midtown Community Court, New York, NY) (Gabbay 2005: 363-365). The author observes that the programmes were short of accountability processes and they used inappropriate means of evaluation (Gabbay 2005: 372-385).

By employing democratic experimentalism as an approach to ensure accountability of the programmes, Gabbay (2005: 372-385) notes the following pitfalls:

- Accountability of restorative programmes conducted could not be established because of the inability of the programmes’ facilitators to use appropriate evaluation mechanisms to appraise whether those programmes achieved the goals set out and met the expectations; and the lack of necessary information on the methods and the results achieved, which the person who assess the overall programmes did not have at hand.
- Lack of interest and incapacity of institutions, namely courts and prosecutorial offices that support these programmes, to evaluate restorative programmes.

In spite of these shortfalls of the democratic experimentalism theory, RJ is granted the latitude to set out its goals and define its proper methods, and RJ programme facilitators are requested to furnish detailed information on the methods they use and the results they achieve, so that the evaluators can compare the available data with similar programme evaluations, in order to help improve the practice of the RJ programme (Gabbay 2005).

The uniqueness of “democratic experimentalism”, notes Gabbay (2006), is the freedom it provides for assessing accountability, and at the same time, it promotes constant re-assessment

of techniques and the evaluation of outcomes. The author asserts: “Through this regime, RJ programmes are held accountable, thus acquiring the much needed credibility necessary for their successful inclusion within the criminal justice system” (Gabbay 2006:140-141).

7.5 Cost-effectiveness of RJ programmes

The cost of keeping criminals in jail has started raising concerns, in countries such as South Africa (Merten 2012). It is also discussed extensively by Lanni (2005), who advocates for this model of justice because of its flexible nature to adapt to circumstances and its participatory way of achieving justice, where a rigorous legal frame face challenges inherent to the intricacy of criminal proceedings.

A study of “cost-benefit” was done, through the practice of restorative circles’ programmes, in an analysis conducted by the “Native Counselling Services of Alberta study of the Hollow Water's Community Holistic Circle Healing Process” (Umbreit *et al.* 2002: 12). The assessment aimed at evaluating what could have been the cost of 94 “victimizers”, who were diverted to RJ circles, should they have gone to the provincial or federal justice system.

The estimation indicated the following: “[T]he total costs to provincial and federal governments, without CHCH in place, would have ranged from \$6,212,732 to \$15,902,885” (Umbreit *et al.* 2002: 12). Lanni (2005) supports this approach, arguing that it would alleviate some of the distortions in the current process, of generating sentencing laws and law enforcement policies, and would permit local communities, particularly those that suffer from high crime rates, to strike their own balance between security and the social costs of stringent sentencing laws.

7.6 “Deterrence and rehabilitation on reduction of recidivism”

Bonta *et al.* (2008) examine an all-inclusive literature, to measure the effects of RJ in causing “deterrence and rehabilitation on reduction of recidivism”. They use a case study of the US, as a country where offenders are severely punished to deter antisocial behaviour, as in any industrialised world. According to Glaze and Palla (2004), “the number of adult men and women in the United States who were being supervised on probation or parole at the end of 2004 reach a new high of 4,916,480”.

The high rate of incarceration with capital punishment does not deter offenders from criminal behaviour (Noll 2003: 284; Bonta *et al.* 2008: 109). The conclusions reached by Bonta *et al.* (2008: 112) are as follows: (1) RJ programmes lead significantly to the reduction of recidivism though at first it has showed “relatively small effects”. But newer investigations are showing bigger effects; (2) RJ programmes based on a “court-order” produce lesser effects than those conducted in a “non-coercive” way, seeking cooperation of victims and community members; (3) RJ approaches show a significant impact on “Low-risk offenders”; and (4) RJ interventions may have less effect in reducing recidivism of “high-risk offenders”.

Furthermore, Umbreit *et al.* (2002) conducted RJ conferencing in 63 countries, mainly focusing on victim-offender mediation, family group conferencing, and peacemaking circles. They summarise the outcome of their study under the following descriptions: client satisfaction, fairness, restitution, and diversion, as well as recidivism, and cost-effectiveness.

In family group conferencing, Participants expressed their satisfaction with the programme. “These positive satisfaction and fairness experiences have generated support for VOM as a criminal justice option” (Umbreit *et al.* 2002: 6). Nonetheless, few evaluations of peacemaking circles have been conducted. Umbreit *et al.* (2002) report that early studies have shown that participants in circles, especially in the Hollow Water aborigine community in Canada, were satisfied with the process of addressing sexual assaults. Participants reported that they were treated with fairness. Restitution or other reparations were made.

According to a study by Native Counselling Services of Alberta (2001), among the Hollow Water residents, based on restorative circles, “one hundred and one individuals were diverted from the provincial or federal justice system” (Umbreit *et al.* 2002:8). With regard to Victim-offender Mediation (VOM), participants in the same investigation described the overall processes of mediations as fair and satisfactory and in many cases, compliance with restitution was upheld.

Diversion of offenders, to less costly and fast processes, was agreed upon, mainly from prosecution to non-prosecutorial jurisdiction. “Today, some jurisdictions see VOM as a promising major vehicle for achieving restitution for the victim. The meeting is necessary to establish appropriate restitution amounts and garner the commitment of the offender to honour a contract” (Umbreit *et al.* 2002: 6).

7.7 Restorative outcomes through action research and meta-analysis

Vanfraechem (2005) conducted a study on conferencing (New Zealand model) for serious juvenile offenders using action research, based on data gathered from the judicial files of crimes, in which 53 offenders were involved, including their parents, victims and judicial officers, during a period of 30 months, in Belgium. The programme was evaluated and participants expressed their satisfaction with the programme. The outcome of this study could serve as “legal foundation that may lead to an expansion of the practice throughout Belgium” (Vanfraechem 2005: 292).

The overall results of this inquiry, using meta-analyses, control groups and experimental designs, where participants were followed and tracked for a substantial period of time, indicated that RJ programmes yielded satisfaction for victims and offenders, compliance with restitution, diversion to less costly jurisdiction, and reduction of recidivism, while leading offenders to become self-regulating in their behaviour. From these conclusions, it can be attested that RJ is more effective than non-restorative approaches to justice.

Another experimental study directed by Sherman, Strang and Woods (2000), applies randomisation under the programme called “Reintegrative Shaming Experiments” (RISE) in Australia. This strategy was developed and is in use in the Australian Capital Territory, since 1995. It explores conferencing in Canberra, which is inspired by the “Wagga model”, a type of conferencing used by the police.

RISE employed data from about 1,300 offenders and spotlighted four targets, namely “violent offenders, drunk drivers, juvenile property offenders, and shoplifters” (Sherman, Strang and Woods 2000). This investigation establishes a comparison between these cases and those dealt with by regular courting procedures. Participant offenders concerned in this analysis were assigned randomly, either to courts or conferencing, after which they were tracked, following a period between one to two years.

The investigation reveals that diversion to conferences led to a drop in violent offenses and drunk-driving. Nonetheless, there was no significant difference observed, with regard to juvenile property offenses and shoplifters. Concluding remarks of the analysis affirms the usefulness of several randomised experiments for assessing a new model of justice and from this angle, RJ was found effective. The study could not affirm the generalisability of these

findings and effectiveness of RJ conferencing to all types of offenses examined (Sherman, Strang and Woods 2000).

In addition, Strang (2003) explores RISE on victims of young offenders. The “RISE” offered the opportunity to investigate “emotional harm” and “restoration” experienced by victims of the offences used in the study experiments (Sherman, Strang and Woods 2000), along with the extent to which the conferencing programme was a success in providing “emotional recovery” to victims who aspired to that (Strang 2003: 187). The programme was applied to young offenders, comparing conference groups and criminal court processes for certain kinds of offences, to measure the effects of each model in generating emotional rehabilitation. A total of 169 victims were involved.

Emotional rehabilitation of victims touched on the following aspects: fear of re-victimisation, fear of the offender, anger and sympathy towards their offender, as well as anxiety, sense of security, closure, apology and forgiveness (Strang 2003:187-190). It follows that emotional restoration generated by courts was minimal, while crediting “restorative alternative with credentials” to expose victims to a greater possibility of experiencing emotional restoration, which criminal courts had not been able to offer (Strang 2003:192).

Moreover, Umbreit *et al.* (2002) find that RJ presents better advantages as a justice tool when compared to conventional criminal justice. Restorative results to ascertain this finding encompass the feeling of satisfaction and fair-treatment between victims and offenders, reduction in recidivism, compliance and restitution, as well as diversion to less costly and less time-consuming processes, and increasing meta-analytical studies in the field of RJ. The outcomes reached after conducting RJ programmes, substantially attest to its effectiveness both economically and in improving interpersonal relationships and creating a re-making of communities. Affected communities show resiliency in healing past wounds.

7.8 RJ and accountability

One of the concerns arising from social injustices, human rights violations and any atrocity, is the fate of victims. In societies where human rights are not respected and the criminal justice system is paralysed and does not function adequately, victims and/or their acquaintances end up retaliating and thus becoming entangled in a cycle of violence. Accountability, for the advocates of punitive legislation and law enforcing agencies, consists of inflicting severe

punishment on offenders to deter criminal behaviour. This presumption aims to avert disenfranchisement of victims by holding offenders accountable. However, this does not work all the time, especially when authors of crimes are not apprehended, and when the shame created by victimisation hinders victims from reporting their ordeals.

In this regard, Dignan (2005: 62) finds that only 90 percent of crimes are reported to the police, while 10 percent go unreported, and even those reported in time see perpetrators pleading not guilty to the extent of being acquitted. In some instances, prosecutors can only rely on the cooperation and honesty of offenders, who are called to testify against themselves about facts for which they are reproached.

Many cases are thwarted with counter arguments, mounted by astute defence lawyers who manage to save perpetrators. Incidents deemed as travesty of justice translate the disapproval of certain court proceedings and verdicts. Victims, in such circumstances are neglected and are deprived of power, rights and privileges and their interests are undermined (Dignan 2005: 63).

Establishing accountability and leading perpetrators to answer for their misdeeds is not always evident within the conventional criminal justice tradition. Dignan (2005: 65) underlines the failures of conventional justice on three bases: (1) the “special status of victims” as persons emerging wounded after suffering from harm caused by a particular crime that has been ignored; (2) denial of victims from playing a formal role in the court proceedings, except when called on to testify, in order for justice to attain its goals; and (3) failure to give material compensation to victims for “the personal harm” they have suffered, as a result of crime.

Under these conditions, victims have gone through unpleasant experiences for many years, such as being left out, let down, being deprived of their rights and left traumatised (Dignan 2005: 65). Accountability is needed to remedy this situation. Proponents of RJ situate accountability at two levels: the levels of “obligations and liabilities” and the level of “justice practice”.

On the first level, “offenders are to make things right as much as possible” as described in the following obligations (Zehr and Mika 2003: 41):

- RJ enables victims to participate in active ways in determining obligations, since the primary obligation falls on them;
- RJ gives offenders the chance and the needed support to comprehend the effects of harm they have caused to victims and the community; and lead them to make plans to assume responsibility for their acts;
- RJ encourages full voluntary participation of offenders, who may be led to accept their obligations when they are not apt to assume that voluntarily;
- RJ ensures that obligations caused by crime, will consist in “making things right”;
- Obligations to be assumed by offenders may be received with pains; the primary intention is, however, not vindication or pain as an end in itself but rather directed towards rehabilitation and restoration;
- RJ ensures that obligations to victims are firstly understood as restorative sanctions and not fines;
- RJ empowers offenders to participate in the process that is expected to bring answers to their own needs.

On the level of “justice practice”, the community owns the justice process through active and full participation of community members, providing resources for strengthening and building the community, while the justice process endeavours to transform the community, by preventing recurrence of the same harm and addressing the needs of victims and accountability of offenders (Zehr and Mika 2003: 43). On the other hand, “justice practice” implies that it takes a diversity of outcomes into account; the intended and the unintended, and the responses of justice to crime and victimisation (Zehr and Mika 2003: 43).

It is necessary that parties embarking on RJ practices are cognisant of the fact that accountability does not imply developing triumphalist sentiment and treating perpetrators as losers. That is often the experience of people who take the route of criminal retributive justice. To avert such a negative perception of accountability, RJ promotes active participation of all parties in the processes that determine obligations arising from an offense and the necessity to address the needs created. Referring to this principle, Zehr and Mika (2003) assert that the community plays its role in “redefining community accountability to both victims and offender and the local role in preventing and intervening in those conditions that precipitate conflict and impede its productive resolution” (Zehr and Mika 2003: 43).

Restoration of all parties affected by a crime and its consequences is paramount in efforts to prevent recurrence of the same offence. RJ is thus the approach that can help respond to this concern because it “makes things as right to as possible for all affected” (Noll 2003: 284). In addition, restoration is preferred to punishment because it has a transformative impact on both victim and offender, and helps both parties heal from the hurt.

Villa-Vicencio (2008: 397) argues: “[...] recidivism rates indicate that criminal justice that focuses primarily on punishment offers neither an adequate means of rehabilitation nor a form of effect deterrence”. In restorative processes, offenders are held accountable, led to take responsibility for the offence committed and they accept to make reparation, amend their conduct, and refrain to relapse into the same reprehensible behaviour, subsequently being reintegrated in the community. The end of the proceeding is to discourage further harm, by making “accountability plans and agreements that will prevent the same thing from happening again” (Noll 2003: 284). It is a fact that even sentence remission, within the criminal justice stream, does not prevent re-conviction because convicted inmates are not usually exposed to the RJ programmes.

A case in point, is the remission of sentence of inmates by President Jacob Zuma on 27 April 2012 in South Africa, for sentences in the specific categories of probationers and parolees, excluding those convicted for aggressive, sexual, firearm, and drug-related offences, as well as notorious criminals still at large. Merten (2012) maintains that clemency, aimed at reducing overcrowding conditions of prisons in South Africa¹⁵², still sees “jails carrying 135 percent more prisoners than they were designed to, according to the Judicial Inspectorate for Correctional Services’ 2011 annual report” (Merten 2012). This argument in itself indicates that the existence of penitentiary facilities does not prevent crimes and reconviction (Kiyala 2013).

To illustrate this point, a news item on IOL News on 13 September 2012, states that a 94-year old lady in KwaZulu-Natal was sexually abused and raped by a parolee, who had been released from prison under the special remission programme initiated by President Zuma. The same source also reveals alarming, preliminary statistics, showing that the Correctional Services Department tabled at least 114 cases of inmates released under the programme of sentence

¹⁵² This report was given by IOL (a South African News Agency) of 28 April 2012 and the South African Government News of 28 April 2012 in Weekend Argus by Merten (2012).

remission, who were re-arrested and incarcerated (Merten 2012). This is evidence that conventional justice and jailing do not transform individual offenders.

In RJ, victims and offenders are partners in an accountability endeavour, by negotiating sanctions or sentencing agreements that are implemented with the support of the community, whereas in traditional punitive criminal justice, affected parties are locked in enmity and outbursts of fury that often become ingredients for retaliation and further harm.

Commenting on the decision by President Jacob Zuma to remit sentences for certain categories of crimes for inmates, Mr Nathi Mthethwa, the minister of Police remarks:

It is important to reiterate that breaking the cycle of crime is a societal responsibility involving partnerships between government and the communities in crime prevention, in rehabilitation of those who have contravened the law, and partnerships in the reintegration of such offenders back into society (Merten 2012).

This statement reflects the communitarian dimension of RJ, its agenda of offenders' habitation and reintegration into society. Unfortunately, the traditional criminal justice system falls short in achieving this social expectation from justice. The vision of RJ, to redress injury caused to interpersonal relationships, should be conducted by acknowledging that such violations engender obligations and liabilities that open the way to healing and restoring harmony, by correcting the wrong and creating future accountability plans and agreements that will prevent further, reprehensible acts (Zehr and Mika 2003: 41,42).

When applying RJ, law-breakers and rule-breakers do not get away with their anti-social behaviour but the sentence passed on them is utilised as a means of repairing harm, restoring and reintegrating them into the community, for "RJ holds disputants and offenders accountable to recognise the harm they have caused and to repair damages as much as possible" (Noll 2003: 285). The concept of justice and reintegration are seen here as key elements of the RJ process because a crime causes alienation and estrangement that can be broken only when justice is done and a community member, alienated by the offence that he/she authors, is restored into community membership.

7.9 Evaluating the outcomes of RJ

Any programme set to bring transformation requires an assessment of its practicability and the outcomes yielded. Previous studies have been conducted to measure the level of victim-offender satisfaction, restitution and reducing recidivism (Latimer, Dowden and Muise 2005); leading to self-regulating behaviour (Tyler 2006); increasing school attendance where it drops as a result of school-related violence (The Youth Justice Board 2003?); satisfaction and fairness, restitution, diversion, cost effectiveness, reduction of recidivism, cost-effectiveness and meta-analyses (Umbreit *et al.* 2002); and attaining justice without cooperation and participation of offenders (Walker 2013). In the same vein, Shapland, Robinson and Sorsby (2011) conducted an evaluation of a number of RJ practices and the extent to which these programmes impact on victims and offenders.

There has been a general agreement among scholars that RJ presents better advantages to redress injustices resulting from crimes and reoffending, than the conventional criminal justice system (Umbreit *et al.* 2002; Latimer, Dowden and Muise 2005; Tyler 2006). The results from studies conducted by these scholars encompass the feeling of satisfaction and fair-treatment between victims and offenders, reduction in recidivism, compliance and restitution, the diversion to less costly and less time-consuming processes. Additionally, an increase in meta-analytical studies in the field of RJ has been seen as a contribution of RJ. The outcomes that are reached after conducting restorative programmes include improvement of interpersonal relationships and re-making communities. Finally, RJ has been established as a cost-effective process, which leads affected communities to resiliency and healing of past wounds.

Noll (2003: 285) asserts that RJ is measured by its results, contrary to classical theories of justice, which hold that justice is determined by intentions. The positivist view of justice differs from the constructivist worldview of justice. Predefined rules, laws and regulations determine the effectiveness of justice from a positivist theory point of view. On the other hand, the constructivist view supports that society and individuals entangled in a conflict determine the way and means to unravel their differences and move on in a cooperative and compassionate manner. This implies that the process is socially-built and dynamic because it requires cooperation, negotiation and compromise, for the sake of healing affected parties and reintegrating offenders into the community. It is not static but dynamic and its objective is progressively defined through interpersonal engagement that excludes coercion.

As it progresses, new identities emerge, a new understanding of interpersonal relations and the concept of community surface. This approach opens the way to forgiveness, reconciliation and mutual acceptance. It is not based on pre-established sets of objective rules. It is flexible and progressive. The effects of RJ are measured by a posteriori dialogical engagement between parties with a stake in a crime and their community. Non-coercion, voluntary deliberation and flexibility inform the settlement process, rather than the a priori objective principles. Inter-subjectivity, informality and voluntary cooperation are the basis of RJ evaluation, by examining how this practice allows victims and offenders to deal with the aftermath of the crime, its consequences and how they emerge after the process. The variety of outcomes that RJ programmes generate takes the form of apology, showing generosity, making restitution, compensations and other sorts of reparations. Monetary indemnification and apology constitute the most used practices to restore victims.

7.9.1 Meeting the needs of victims and offenders

It is a difficult undertaking to meet the needs of victims and offenders. Several evaluations of RJ programmes, such as VOM and the Canberra Reintegrative Shaming Experiments, as well as youth conferences conducted among young and adult offenders, led to satisfaction of victims and offenders (Shapland, Robinson and Sorsby 2011). While reaching full restoration or satisfaction remains the ideal of RJ, in practice, immediate relief of secondary victims, in case of loss of life of primary victims, may be a slow process that may require longer time.

Under this category are family members, relatives, children, wives, husbands, parents of the primary victims who might have been killed or incapacitated to make claims for justice, and the rest of the community. There is neither monetary compensation that can bring life back nor claim full satisfaction. The grief may not be eliminated but the effects of fair and carefully planned RJ may alleviate attrition and enhance healing. In the words of Villa-Vicencio (2008: 394): “The death of a child, the rape of a spouse, the destruction of a family home, a business, a community is irreparable”. Nonetheless, genuine apology, remorse and acts of generosity may prove more effective than simply prosecuting and jailing perpetrators, who sometimes show no remorse for their odious acts.

On the other hand, addressing the needs of offenders is a necessary step towards prevention of re-offending. This move can allow them voice the reasons for their antisocial conduct. The community should allow this process and consider redress by means of addressing those needs.

In the context where victimisation and deprivations justify offending, the root causes of offending need to be dealt with and be included in the search for harmonious relationships and satisfaction of both victim and perpetrator.

7.9.2 Rehabilitation of perpetrators

As discussed earlier, crime has ambivalent ramifications. It affects victims, society and perpetrators paradoxically. The process of reintegrating perpetrators into society demands that offenders are rehabilitated, to ensure that a new society is regenerated, where victims and offenders no longer engage each other as enemies but rather as partners. From that encounter they emerge as co-actors in rebuilding societal harmony.

Ostracising offenders can cause resumption of conflict and further violence. The feeling of being unfairly treated is likely to cause a surge of vindication that could resort in either party taking the law into their own hands, which is what happens when offenders are pushed too far. They could also claim their way back into the community by rebellious or terrorist means, by which they destabilise society. This state of affairs can be averted only by empowering offenders and helping them understand the horror of their acts, the need to reform their lives and the necessity to participate in the process that will correct the wrongdoings. It is essential to include them in healing and reconciliation, as they are also a wounded part of the community.

It follows, argues Villa-Vicencio (2008: 395), that sustainable peace is genuinely achieved in the context whereby victim restoration is made possible, and it is critical for perpetrators to be included into the new society emerging from violence. Victims and perpetrators are actors of society reconstruction or nation-building. They are partners. Acknowledging this aphorism helps disarm former offenders of feeling vengeance, anger, the desire for vindication and the intention of reoffending.

The cooperation that is established by RJ, through the mediation of the community, has proved worthwhile in waging conflict restoratively. It is mapping out a principled society that had turned former perpetrators into associates, in efforts to move the community forward. However, the dilemma that faces rehabilitation of offenders, in the context of armed conflict, needs to be considered. Villa-Vicencio (2008: 396) notes that, “the process of drawing former combatants into rehabilitation programs and motivating them to be reintegrated into civilian

society – from which some have never gainfully benefitted – is more difficult”. Nevertheless, this challenge can be overcome, should RJ processes be carefully planned and balance the needs of victims and perpetrators.

Other RJ programmes may be considered, instead of truth and reconciliation commissions, which in the case of South Africa, created the perception of perpetrators called “killers and torturers”, who have been portrayed as “psychopaths, aberrations and misfits” (Villa-Vicencio 2008: 396-397). This emotion-driven name-calling reflects the outrage of victims and families who had suffered unprecedented cruelties of “chemical and biological warfare”, besides other visible gruesome brutalities by the dehumanising Apartheid machinery. The author remarks that transformation of society begins by refocusing on perpetrators from the perspective of reconciliation and nation-building, not just considering them as evil-doers because of the horror of their barbaric acts. Such efforts require a deep understanding of their motivations and their perspectives, as a starting point for their rehabilitation.

Restitution to victims depends on re-establishing peace, as well as creating a stable social environment (Villa-Vicencio 2008: 397). Offenders’ rehabilitation and restoration are prerequisites to their incorporation into society. Prosecutions and court sentencing that isolate and confine perpetrators into houses where they serve their punishment, do not make them better. In this regard, Villa-Vicencio (2008: 397) observes: “Trials, the removal of habitual perpetrators from society and appropriate punishment, are often necessary but essentially insufficient to deal effectively with crime”.

Thus, engaging victims and perpetrators in dialogue, by providing a safe and respectful platform where both parties share their tears for the pains and injuries of the past, can become a social catharsis. Healing comes forth when this commitment denotes unmasked empathy and reveals a genuine desire to move forward, no longer as enemies, but as partners. Rehabilitation of victims and perpetrators creates the condition for emergence of a new society, where past experiences become the ruling principles that regulate interpersonal relationships in the future.

7.9.3 Spectrum of RJ outcomes evaluation

RJ justice outcomes are to be seen in a spectrum (Zehr 2002: 55), a “restorative continuum”, whereby the effectiveness of RJ is measured on a scale of five degrees, namely “fully restorative, mostly restorative, partially restorative, potentially restorative and pseudo- or non-

restorative”. These outcomes depend on different restorative models adopted. In the same vein, Walgrave (2011b) argues that in some circumstances, restorative aspirations may be subservient to concerns of public safety; and even the quality and the opportunity of possible reparation will be reduced.

There are, nonetheless, complex contexts where RJ’s effectiveness is mitigated or limited, for example, in contexts where offenders refuse to take full responsibility for their acts (Zehr 2002: 55); or where victims refuse to take part in restorative processes or perpetrators are not apprehended (Walker 2013: 35); and when the victims do not encounter their offenders (Walker 2013:35). The ideal scenario would entail that in which all parties that have a stake in an offense (victims, perpetrators, family, acquaintances and other supporters) meet. This can lead to full restoration (Walker 2013: 35).

Alternatively, there could also be processes where only victim or offenders attend. This can result in partial restoration (Walker 2013: 35); an opinion well supported by Braithwaite.¹⁵³ The complexity of human tragedies and victimisation contexts has seen RJ develop into various programmes. The level of satisfaction its Outcomes of the level of satisfaction depend on its practicability and that it is placed within the continuum displayed by Zehr (2002: 55) These programmes do not, however, go unchallenged.

7.9.4 Critics of RJ processes

RJ is subject to criticisms, as with any value system. According to Ashworth and McLaughlin (2003), critical remarks against RJ are based on the constitutional responsibility of the state to handle justice, the potential of RJ to attain the ends of justice, the informal nature of its procedures, the claims of superiority of RJ over the mainstream justice system. A close look at these critics reveals the existing tensions between various schools, rather than a dichotomy or converging interests of both paradigms of justice. RJ advocates and those of the conventional justice system, attempt to present two tendencies that have the same ideal, namely management and administration of justice.

The contrasts between these schools are perceived in the means and methods used to pursue justice. In conventional justice, the individual agency prevails, whereby the offender solely faces prosecutorial proceedings, with little room of engaging with the victim; whereas RJ

¹⁵³ Personal correspondence between Braithwaite and Warmer, cited in Walker 2013:35

provides the grounds that facilitate victim-offender interface, through the mediation of the community. This encounter breaks the barriers that could nurture the feeling of revenge and the cycle of violence, as it takes place under the patronage of the community, also unaffected by harm, and is a voluntary or deliberative process.

In the context of England and Wales, Ashworth and McLaughlin (2003) present three main counter-arguments to support RJ programmes, referring to the constitutional mandate of states to serve justice, to rights of victims and offenders enshrined in the European Convention on Human Rights, and finally, the claims regarding the superiority of RJ vis-à-vis conventional justice.

i. Constitutional responsibility of states for justice and redressing injustices

The first objection concerns the responsibility to define the response for offenders that are moved from the hands of the state and to others, namely victims and supporters, offenders and supporters, as well as mandated people from the community. When emphasising the full responsibility to protect victim members of the community and hold perpetrators accountable, it is first and foremost, the prerogative of the state. Ashworth and McLaughlin (2003: 169) argue that the state can decide to transfer some of its prerogatives to render justice to the community and private structures, though the decision to proceed with that remains with the state.

To this criticism, it is observed that RJ is conducted in a transparent manner and with impartiality, looking into each case and its merits and determining sentences that should be proportionate to crimes, by preventing judges and tribunals to take advantage of their influence to purposely use their theories and preferences on cases (Ashworth and McLaughlin 2003: 169).

Additionally, it is observed that there are RJ programmes, such as sentencing circles that involve the presence of justice officials but the essence is pursuing restoration of victims and offenders. This approach creates a balance between the constitutional prerogative of the state to protect citizen victims and hold offenders accountable, with partial delegation of this mandate to the community. This approach has been used in Uganda, through Mato Oput – locally-based transitional RJ in a post-war context that involved victimised communities and former combatants of the LRA (Negara 2012).

ii. Objections to informal settlements of criminal cases

Informalism is one of the characteristics of RJ that is commonly criticised. According to Ashworth and McLaughlin (2003: 170-171), this objection suggests that justice should not be based on “variable standards”, applied according to locations and circumstances. Additionally, RJ processes seem to be of a fluid nature, which lacks clarity, impartiality, and objectivity in sentencing. This may result in gender, race and class prejudice. In addition, this flexibility creates inconsistency in a community-based model of justice that promotes restoration in a creative way, by adapting sentencing to circumstances and negotiations between all parties with a stake in an offense (Ashworth and McLaughlin 2003: 170-171). This criticism explains the multiplicity of complementary and divergent approaches of justice, non-punitive and punitive, with different focuses, based on the various ways victims relate the intention of justice to their rights (Packer 1964; Roach 1999b, 1999a).

Packer (1964) discusses two models of criminal process, namely the “Crime Control Model” (CCM) and the “Due process Model” (DPM) (Packer 1964: 6). The CCM sustains that the function of criminal process is to repress criminal behaviour to the greatest extent possible, as failure to do so will lead to breakdown of public order and a significant condition of human freedom will disappear (Packer 1964: 9).

On the other hand, the DPM objects to the systemic and normative or “formal, adjudicative, adversary fact-finding” processes, characteristic of prosecutorial proceedings, by substituting them for an “informal and non-adjudicative fact-finding” notion that emphasises the possibility of error (Packer 1964: 14). He argues:

People are notoriously poor observers of disturbing events - the more emotion-arousing the context, the greater the possibility that recollection will be incorrect; confessions and admissions by persons in police custody may be induced by physical or psychological coercion, so that the police end up hearing what the suspect thinks they want to hear rather than the truth; witnesses may be animated by a bias or interest that no one would trouble to discover except one specially charged with protecting the interests of the accused - which the police are not (Packer 1964: 14)

A sustained debate on these competing views is beyond the scope of this inquiry. Packer (1964: 67) advocates a jurisprudence that will require setting some criteria for criminal sanctions that could separate “the ‘mandatory’ uses of the criminal sanction from the ‘optional’

ones” (Packer 1964: 67). This has been an existing development of criminology over the last ten years.

A new trend that emerged from Roach’s work on Packer’s “Two models of criminal process” support the recent development of RJ sanctions, namely restorative retributivism and punitive retributivism, however, these should be based on sanctions that aim at restoration. Roach (1999b: 713-714) observes: “There will be a continued need for punishment and incapacitation in the worst cases and continued conflict between due process and victims' rights”; with much being contingent on the acceptability of RJ, when punitive responses are regarded as a necessity and as a model of crime prevention and its responses to crime are legitimate (Roach 1999b: 714)

Informalism in criminology, using a RJ approach, has helped achieve both the goals of justice and reduce and prevent reoffending. It is important to note that RJ has developed towards a more conciliatory approach and it is viewed as more promising and all-embracing than the prosecutorial approach is to criminal process. For instance, the non-punitive victims' rights model attempts to reduce the pain of both victimization and punishment, by putting emphasis on crime prevention and RJ; while the punitive victims’ rights approach concentrates on criminal justice and administration of punishment; yet both models have as its aim the pursuit of crime prevention and respect of victims (Roach 1999b: 673). None of the justice processes can work in isolation to achieve the finality of justice, nonetheless, using the elements of criminal justice can be liberating, when its values are appreciated, and by balancing the strength of each model with the contingency of particular contexts and time (Roach 1999b: 673).

RJ on its own could be insufficient to achieve the ends of justice, if it does not satisfy its principled sanctions. It is a promising and holistic approach, when it gives particular consideration to issues of social justice, health and well-being (Roach 1999a: 29). Evidence supports that RJ achieves the goals of justice through restitution, repair, and curbing reoffending and reconviction, leading to satisfaction and closure, fulfilment of expectations (Shapland, Robinson and Sorsby 2011).

Added to this, much will depend on redefining the global context of social security, providing support to public health, protecting the outcasts and marginalised or disadvantaged social

groups that cannot benefit from the promises of security that criminal justice sets out. Restorative accountability goes beyond objective measurements of accountability based on rigorous application of the law and the correctness of sentencing of criminals.

It is important to note that scholars, such as Dignan (2011), Walgrave (2011a) and Shapland, Robinson and Sorsby (2011) have seen the need to incorporate a statutory and regulatory dimension in RJ, so as to give it legitimacy. For example, Dignan (2011) remarks that RJ processes do not provide instruments to determine guilt or innocence, since it falls short of the normative, procedural safeguards related to conventional, controversial, criminal trials.

RJ relies on referrals from the mainstream justice system, due to the existing number of conventional sentencing measures that offer the possibility for RJ to function in conjunction with the traditional criminal sentencing. The mainstream justice system also depends on offenders' acquiescence of responsibility for the hurt and damages they have caused (Dignan 2011: 279). On the other hand, Shapland, Robinson and Sorsby (2011: 68) also acknowledge the need to incorporate elements of regulation, in order to improve the praxis of RJ, avoid some prejudices of any party and enhance accountability of relevant disputants.

It has further been found that RJ justice could be run as a parallel approach to the mainstream, rather than the diversionary institution it has been operating as (Dignan 2011; Shapland, Robinson and Sorsby 2011). This will give more legitimacy to RJ and prevent risks attached to informalism, which does not mean that RJ outcomes are invalid or do not warrant legitimate consideration. These outcomes remain within the standards of justice achievements and the worldwide tradition of peaceful handling of conflicts and its destructive consequences that have led to redress of crimes and prevention of further harm. In the case of RJ, its programmes follow certain standards that ensure justice is attained in a non-coercive way.

iii. “Rights-based objection”

Ashworth and McLaughlin (2003: 171) assert that “rights-based objections” are grounded on three principles: the “principle of independency and impartiality”, the “principle of proportionality” and the principle of “compensation of wrongs”. The authors argue that the role of victims, in engaging them directly in the process of determining the response to the harm caused to them, is likely to affect the independence of tribunals, as their voice diverts impartiality of criminal proceedings, as expressed in the following assertion: “[victims' voice]

is not a judicial or quasi-judicial one, nor can it be expected to be informed by available range of sentences and principles for the dispositions of criminal cases” (Ashworth and McLaughlin 2003: 171).

It is contended that restorative processes (sentencing and circles) lack the capacity to achieve the fundamental standards of fair hearing (Ashworth and McLaughlin 2003: 171). To respond to these critics, the use of circles by Pranis *et al.* (2003), Stuart and Pranis (2008), and Pranis (2013); as well as the theory of Reintegrative Shaming Experiments (Ahmed *et al.* 2001; Morrison 2011), as restorative programmes, have been tested and showed promising results that could only be possible in the context of fair hearing and impartial treatment of disputants with a stake in the harm caused. Thus, it is evident that RJ practices are based on the respect of rights that supports impartiality, proportionality and the guarantee of compensating wrongdoings by repair and restitution.

iv. Objection to claims of superior efficiency of RJ processes

Ashworth and McLaughlin (2003: 175) discuss the objection against the claim that RJ is more effective than criminal justice, in terms of preventing social offending. Proponents of RJ suggest that, instead of conducting more evaluative studies to support efforts to advance RJ, the agenda should focus on its potential to enhance desired changes, especially regarding victim satisfaction (Ashworth and McLaughlin 2003: 175). It should be noted that prevention of reoffending also depends on other factors that include social justice and pursuing individual restoration and public restoration, to ensure that RJ is effective.

Significantly, Ashworth’s argument is framed in the context of England and Wales. These are old democratic states that enjoy a well-established justice system and the rule of law. A contextualisation of theories is necessary to determine how they work and in which environment they need adaptation or improvement. There are, certainly, universal principles that govern international justice, nonetheless, the whole world is not bound by the same condition. This is why the variety of circumstance demands adaptation of approaches, without alteration of international standards. Especially in societies in transition, TJ has been an option.

7.10 Restorative justice and transitional justice

RJ is sometimes referred to as a component of TJ, which will be discussed in this chapter, with the debate later on taken in the context of African transitional soldiers, where a variety of

approaches have integrated RJ in TJ, in what has developed as community or locally-based transitional RJ paradigms. These have emerged as contemporary ways of dealing with atrocities, in the aftermath of decadent, oppressive political rules and large-scale human rights violations and are referred to as TJ.

This justice model is traced back to post World War II trials at Nuremberg, where the International Military Tribunal set to prosecute the remnants of Nazi officials for war atrocities that took place between 1945 and 1946. The Nuremberg military court dealt with unprecedented crimes committed by the Hitler's Nazi (Musila 2005; Taylor 2012; Andreevska 2013). TJ evolved into a pragmatic field and a domain of scholarly study around 1980 and 1990 (Andreevska 2013), becoming widespread because of the magnitude of violence in the post-1980 era.

7.10.1 Objective and contexts of TJ

The escalation of widespread inhumanities reached a climax in the 1990s, with the ethnic cleansing in Bosnia and Herzegovina (Orentlicher 2007: 15), the Rwandan Genocide (Schabas 2005; Urusaro Karekezi 2012); the Liberian and Sierra Leonean civil wars (James-Allen, Weah and Goodfriend 2010); the Congo African War I and II and protracted armed conflicts (Stearns 2012; Stearns 2014); along with other civil wars in Angola, Uganda, Mozambique, Congo Brazzaville, Soudan, Ivory Coast, Libya, and so on. Beyond African boundaries, in the post 1980's era, several countries experienced dictatorial and brutal regimes, marked by gross human rights violations, namely Iraq, Syria, Chile, Argentina, and so forth. The unspeakable proportions of suffering and serious violations of human rights and dignity have given TJ more ground to expand its theoretic principles and practices.

The goals of TJ can be attained by employing judicial or non-judicial mechanisms or a combination of both. Paragraph eight of the UN Security Council Document S/2004/616, stipulates that these mechanisms may involve both judicial and non-judicial mechanisms, with the implication of the international community at different levels or none at all, and may include "individual prosecutions, reparations, truth-seeking, institutional reforms, vetting and dismissals, or a combination thereof" (United Nations 2004).

For a better understanding of what TJ justice entails, Davis notes:

Transitional justice aims to deal with the legacy of systematic and massive human rights abuse, recognising and acknowledging victims, and contributing to the processes of peacebuilding and democratisation. It is not in itself a special form of justice, but a set of approaches that seek to bring about justice in extraordinary conditions, usually in transitions from authoritarianism and/or violent conflict, to democracy and peace (Davis 2009: 24).

Apart from these measures, Vinck and Pham (2008: 399) additionally affirm that TJ contributes to bringing healing to victims and their families, enhancing peaceful coexistence, and sustaining the rule of law and social justice. TJ seeks justice for victims, in the aftermath of heinous atrocities perpetrated on a large scale, through criminal process and informal consensual processes. The prosecutorial approach is supported by The Security Council, which creates special courts and tribunals to prevent the recurrence of large scale atrocities, by holding perpetrators to account through criminal proceedings.

Some examples include the Sierra Leonean, the Rwandan, and the Yugoslavian international criminal courts and tribunals. This was done under the assumption that: “[...] If societies have to prevent recurrences of past atrocities and to cleanse themselves of corrosives, enduring effects of massive injuries to individuals and whole groups, societies must understand – at the deepest possible levels – what occurred and why” (Rotberg 2000: 3). This proposition responds to the imperative of the UN Declaration on Victims’ Rights (United Nations 1985).

Non-criminal mechanisms of TJ take place through commissions, invested with the power to examine crimes and its consequences, within a certain time frame. It involves truth telling and holding perpetrators responsible, and establishing a new order, through which victims and perpetrators agree on a settlement that regulates their future relationships. Villa-Vicencio (2008: 390) describes this agreement as “a social contract between former enemies that results in principles of transition and law that are less than perfect when measured against the judicial and constitutional ideals espoused by human rights purists” (Villa-Vicencio 2008: 390).

TJ is neither a perfect deal nor the highest standard of accountability but rather an accommodative, cooperative and contractual resolution. It works on the principles that a society that has undergone violence, needs be reconstructed after its past experience of mass atrocities (Stauffer 2013: 196).

Transitional processes comprise a range of procedures that include; trials and prosecutorial proceedings; truth and reconciliation commissions; “lustration or vetting”; and making reparations; as well as facilitating reintegration of ex-combatants and populations affected by war, and reforming of institutions (Stauffer 2013: 196). These approaches rely on the notion that embraces a number of strategies used by the State, in order to deal with past human violations.

TJ objectives, however, encompass: truth-telling, accountability, restitution and reparation, and advocacy for institutional reforms, in order to prevent the recurrence of the same atrocities (Stauffer 2013: 196). In some countries, TJ has also taken the form of national conferences.¹⁵⁴ The context, in which TJ is demanded, includes “ethnic cleansing and displacement, the reintegration of ex-combatants, reconciliation among communities and the role of justice in peace-building [which] have become important new issues” (Andreevska 2013: 63). The aim is to prevent the recurrence of human rights violations.

Among other situations that call for TJ, Quin (2008: 364) includes “genocide, civil conflict, racism, forced slavery, community violence, man-made famine and gross violations of human rights”. The author further avers that TJ implies three approaches, namely retributive justice (legal prosecutions and the rule of law), RJ programmes that also include truth commissions (Quin 2008: 368), and reparative justice that consists of “making right the things that went wrong”, in the form of apology and restitution. Quin (2008: 371) seems to disassemble RJ into two distinct paradigms, notably restorative and reparative justice. In essence, both approaches cover one paradigm of justice and have the same objective. The author also includes retributive justice in TJ.

This understanding of TJ follows the integrated retributive principle into restorative/reparative justice, which is a reflection of how justice has been handled in transitional societies. Should truth and reconciliation commissions not be envisioned, former perpetrators are held accountable by being directly prosecuted. It is important to discuss what the prospect of sustainable peace is, where retributive justice has been used in a transitional period, as RJ is related to TJ, in the sense that both work on the same principles. These principles are mainly comprised of rendering justice, after mass atrocities have been carried out, using non-

¹⁵⁴ This refers the Benin, Togo, Republic of Congo and Zaire (DRC) in the 1990s.

conventional approaches, which employ extra-judicial settings, such as commissions, inspired by the desire to heal, promote reconciliation and make parties involved in the issues affecting them, move forward.

7.10.2 Prosecutorial transitional approaches

The judicial approach has been adopted by the United Nations, setting the legal framework, based on the Geneva Convention and its Additional Protocols (1949), the Convention of the Rights of the Child (1989) and its OPAC, and other legal instruments that have culminated in the Rome Statute of the ICC (2002). Andreevska (2013: 58) asserts: “To comply with these international legal obligations, TJ processes should seek to ensure that States undertake investigations and prosecutions of gross violations of human rights and serious violations of international humanitarian law, including sexual violence”.

Judicial transitional institutions in recent years include the ICTY established by Resolution 827 of the Security Council, to try persons responsible for serious violations of the IHL, committed in the territory of the former Yugoslavia, since 1991; The SCSL, established in 2002 by the Government of Sierra Leone and the United Nations, to prosecute alleged perpetrators of gross violations of IHL law and Sierra Leonean law, within the national, Sierra Leonean territory, since 30 November 1996; the International Criminal Tribunal for Rwanda (ICTR), established by Security Council Resolution 955 and 977, in November 1994, to try genocide, crimes against humanity and war crimes perpetrated during the 1994 Rwandan Genocide.

It is important to note here that the SCSL was the first to the debate and considered summoning former child soldiers in its jurisdiction. This issue was so controversial and finally, the prosecutor was more interested in adults who abducted and used them as soldiers (Amann 2001; Park 2010: 100), added to this, “defendant children” accused of war crimes had to be handled according to international legal standards, without recourse to punitive sanctions, rather taking them through truth and reconciliation processes (Amann 2001: 173). Though TJ has emerged in the last three decades, war crimes, traced back to the Second World War, were handled by the Nuremberg trial between 1945 and 1946, for genocide and war crimes committed by Hitler’s Nazi (Taylor 2012).

Orentlicher (1991, 2007) argues that this prosecution is an obligation of transitional societies as elaborated in an earlier article entitled “Settling Accounts: The Duty to Prosecute Human

Rights Violations of a Prior Regime”. The author revisited the topic 16 years later, as she explains: “‘Settling Accounts’ found that States that had adhered to certain human rights treaties were generally required to ensure that criminal proceedings were instituted against those suspected of specified violations of human rights, such as genocide and torture” (Orentlicher 2007: 13).

It is affirmed by Orentlicher (2007) that impunity may result in further atrocities, in societies that have neglected justice for past brutalities, and they may be rescued from the abyss of structured depravations, should there be systematic prosecutions for past crimes (Orentlicher 2007: 15). The author contends further against impunity that may result from the neglect of past atrocities: “I concluded that States’ general obligation to ensure the enjoyment of fundamental rights was incompatible with wholesale impunity for atrocious crimes but did not require prosecution of every offense” (Orentlicher 2007: 13).

When states function under the constraints of political transition, facing the difficulties of succeeding a military rule, a certain level of caution is required to not insist on applying the normative obligations of international law, in holding perpetrators accountable, should such a venture end in the collapse of both state and transitional processes (Orentlicher 1991, 2007).

However, this strategic approach does not constitute an abjuration of internationally subscribed regulation, in the matter of gross human rights violations, which require that prosecutorial measures are applied to deter future barbaric acts, resulting in egregious crimes against humanity, as confirmed by Orentlicher (2007). At the same time, the author recognises the impact that non-judicial mechanisms can have, in enhancing social and political transformation: “But an effective truth commission can engage society in an inclusive process of reckoning and repair. Truth commissions can, moreover, speak to the future through their recommendations for institutional reform” (Orentlicher 2007: 16).

Though the significance of various measures of accountability, such as truth and reconciliation commissions, prosecutions, institutional reforms, reparations programmes and social and economic transformation, is admitted by Orentlicher. The author notes: “the expressive function of prosecutions will surely be undermined in the absence of public measures that institutionalize a government’s commitment to fundamental rights” (Orentlicher 2007: 16).

This view is shared by Fletcher and Weinstein, who argue that criminal trials help single out the mastermind of atrocities and their actual executors, while considering the rule of law and other undertakings, such as humanitarian assistance, democracy building, and economic development, as part of the obligations to heal and redeem a wounded society. The authors also insist on the necessity to implement trials, to make the transition process effective: “We argue that such an approach that does not integrate trials with these other capacity-building measures is insufficient to attend to social repair” (Fletcher and Weinstein 2002: 580).

7.10.3 Non-adjudicative TJ approach

The non-prosecutorial model of TJ seeks reconciliation and applies restorative sanctions that are negotiated and agreed upon, in a process that involves disputing parties. This approach is based on informal settlement of justice demands, in a context where normative legal procedures may hamper the objectives of justice in transition, namely truth-telling, holding perpetrators accountable and acknowledging victims and survivors, making reparation and substitution, as well as institutional reforms and nation-building (Quinn 2005; Villa-Vicencio 2008; Stauffer 2013).

These processes aim at averting the adversarial principles of mainstream legal practices, which fail to promote reconciliation and mend the political agenda of nation reconstruction. For instance, Villa-Vicencio (2008: 387) argues: “[...] in most transitional societies, the existing justice system is not able to sustain a comprehensible program of retribution and the political cost of sustainable prosecutions is not a viable option”.

As asserted earlier, TJ depends on the concepts of restoration that is paramount in transforming offenders, restoring victims and survivors to dignity, preventing recurrence of inhumanities, paving the way to reconciliation and rebuilding society. Reconciliation, according to information gathered by Quinn (2005), in the context of post-war Uganda, denotes complex issues which comprise: “the actual resolution of conflict, or bringing the war to an end; building a lasting peace; reintegrating rebel soldiers and child abductees; amnesty; reconstruction of the physical property damaged in the conflict; compensation; and repaired relationships”.

While reconciliation is an important component of the TJ process, the variety of contexts and actors involved in the process makes it a dynamic justice and peacebuilding project. The

narratives of children as soldiers, their accountability and the prevention of child soldiering itself, fall into the large spectrum of TJ objectives. According to a Global report, issued by the CSCS (2008: 33-34), truth commissions are platforms whereby accountability, in the transition of former child soldiers, can be addressed.

Conceived as non-judicial mechanisms, truth commissions do not substitute criminal processes but rather, provide former child soldiers with a participatory and less formal forum, suitable to examine their involvement in hostilities; its consequences and the remedial approach to adopt, in order to secure their reintegration into society. It has been found that, “The courtroom can be an intimidating forum for children and few can participate in formal justice processes. Their stories are frequently not told, at least not in their own words, and their experiences are often not well documented or understood” (CSCS 2008: 33.34). For this reason, advocacy for informal accountability processes, including restorative practices, would better serve the interests of justice in matters that implicate children as soldiers, their victims and war-torn communities.

Objecting to retributive justice that pursues punitive and humiliating sanctions as response to past crimes, through objective legal processes, Villa-Vicencio (2008: 390) observes: “[retributive justice] can produce a level of emotional appeasement and re-establishment of the dignity for the victims, made possible because the state is seen to have acknowledged and responded to their abuse and suffering”.

On the other hand, supporters of RJ contend that prosecution is insufficient to restore the dignity of victims: “[T]he anger and loss of dignity of victims can also, perhaps more efficiently, be redressed through the implementation of substitute measures that offset retributive demands” (Villa-Vicencio 2008: 390).

A study conducted by Gibson (2002: 554) on the majority of black South Africans, most of whom were victims of Apartheid, shows that many suggested a means of compensating victimised black communities that diverges from prosecution and imprisonment. The justice theory, underlying the truth and reconciliation commission, goes beyond distributive and retributive justice. What matters more, was “a sincere apology and providing victims with the opportunity to tell their stories” (Gibson 2002: 554). Nonetheless, it yielded transformation that

has made South Africa a rainbow nation, hailed worldwide for the spirit of Ubuntu that was the guiding principle of the TRC.

Reconciliation between former child soldiers, including child ex-combatants with their communities, is deemed necessary to prevent further engagement of children with the militias and prevent their re-recruitment. It is also a responsive endeavour to the demands of justice that any society that has experienced large scale human atrocities should deal with its past, in view of transforming distorted relationships and rebuilding a new society. Though being a difficult and painful step to move into, reconciliation is foundational in healing memories and redeeming the past (De Gruchy 2002: 178-179). Other advantages of truth-telling include looking into the root causes of abuses, their aftermath and taking recommendations that can lead reforms, which would touch the economic and social wellbeing of affected communities and help repair the damages by broadly dealing with the concepts of justice (CSCS 2008: 34).

As far as the child soldiering problem is concerned, the truth-telling and reconciliation approach has been used. Nonetheless, accountability of former combatants has raised questions and poses many challenges, when using prosecutorial proceedings. It is noted:

TJ mechanisms, from truth and reconciliation processes to special courts and tribunals, have had to grapple with the challenges of respecting children's rights, well-being and social reintegration while seeking to involve them in proceedings, listen to them and give due weight to their experiences (Parmar *et al.* 2010: 160).

It should be acknowledged that, even international law, through the ICC and other jurisdictions (local and international), is faced with enormous challenges, in dealing with criminal cases related to the paradox of child soldiers and to uphold children's rights and address their specific needs (economic, educational and protection) (Parmar *et al.* 2010: 190). Though criminal accountability of former child soldiers is an important fact and interest of TJ, when it cannot be handled by criminal process, the non-prosecutorial approach, such as RJ, could yield better results in terms of accountability, reintegration and deterrence of the use of children as soldiers.

During the campaign to overthrow Mobutu, known as the First Congo War (1996-1997) and the Second War, known as the War of Aggression (1998-2002), enormous international human rights law and humanitarian law violations were perpetrated by various fighting forces, namely

by the troops loyal to Mobutu, those of the revolution, led by Laurent Désiré Kabila, and later on, those of the proxy armed groups and militias (Andreevska 2013).

The complexities of war affected communities and the fragility of the peace process makes TJ a much debated model of justice because it becomes flexible, blending mainstream and RJ approaches. In extremely difficult transitional societies, prosecutorial justice (special criminal courts) runs concurrently with community-based TJ mechanisms (Gacaca, Fambul Tok). This was the case in Rwanda, with the SCTR and the Gacaca (Musila 2005: 333); and Sierra Leone, with the ICSL and the Fambul Tok (Taylor-Smith 2009; Park 2010).

The community-based transitional RJ models explore more customary principles of community forgiveness and reconciliation that are developed and taken up by truth and reconciliation commissions. This approach is shaped by social and cultural practices, whereas special criminal courts/tribunals are guided by international and domestic legal frameworks. Both approaches attempt to deter criminal conduct that leads to human tragedies. Over the last three decades, these mechanisms have not been completed, in spite of a long past history of brutalities and human rights transgressions in the DRC.

To avert the cycle of violence and the ongoing child soldiering practice, it is necessary to institute TJ. Nevertheless, this approach cannot solely address the complexities of the child soldiering practice, unless it is given holistic attention. That would mean linking TJ and RJ with social justice. The following section will examine the relationship between RJ and social justice and will further be exploited to address child ex-combatants and non-combatants' wellbeing.

7.11 RJ and social justice

Social justice, according to Robinson, is defined as "...promoting a just society by challenging injustice and valuing diversity" (Appalachian State University 2015). It exists when "all people share a common humanity and therefore have a right to equitable treatment, support for their human rights, and a fair allocation of community resources". This understanding of social justice echoes the thinking of Tyler *et al.* (1997), who view social justice as a collective engagement, in the sense that "[...] individuals do care about issues of fairness in their interactions with others, with groups, and with institutions they support or oppose" (Tyler *et al.* 1997).

Social justice is Associated with conditions of poverty, relative deprivation, distributive justice, procedural justice, and retributive justice, social justice addresses issues pertaining to interpersonal relations and requires negotiations, especially when the issues had resulted in conflicts involving different social groups, and so on. (Braithwaite 2003b). The objective of social justice is the pursuit of fair trade, breaking the chain of discrimination, providing fair education, breaking gender and socio-economic disparities, as well as protecting the rights of minorities (Braithwaite 2003b). Structural and chronic violence springs from the disintegration of social justice, in which event, children become vulnerable to recruitments.

In the same perspective, Theissen (2004) ascertains that the failure to address injustices explains why societies and countries are torn apart by wars, to the extent of suffering large-scale atrocities. It is a requirement of justice that victims of injustices are recognised and restored to their dignity. This is where the interconnectedness of social justice and RJ are noted.

RJ is a component of social justice because it aims at re-establishing social harmony that has been affected by a hurt or a crime or where people have suffered terrible injustices. This condition is perceptible in societies where state protective structures have degraded, causing moral subversion that is experienced in the change of roles in society, whereby children (boys and girls) take up adult responsibility to protect and safeguard society. This reversal is perceptible in child soldiers' narratives and denotes a social crisis (Honwana 2006).

Braithwaite asserts that RJ circles stimulate optimism, in promoting social justice (Braithwaite 2003b: 158-161), while restoration allows for community transformation when social justice is achieved (Crawford and Clear 2003). At times, the young soldiers of the Mai-Mai have justified their involvement in militia warfare, as a result of lack of access to opportunities; a responsive action to the threats of being pushed to the margins of society (Jourdan 2011: 97, 101).

Insecurity and the breakdown of institutional protective structures, political instability, socio-economic issues, and the collapse of social justice through land distribution, have fuelled conflict and leads children and young people to join armed groups (Jourdan 2011: 95). This situation has further repercussions, in the demilitarisation and reintegration of ex-combatants, as long as it persists (Thakur 2008; Baaz and Verweijen 2013).

In the absence of social justice, and when communities and their members feel marginalised, violence is resorted to, as it has been evidenced by a militia constitution in the DRC, especially with the Mayi-Mayi (Vlassenroot 2001). RJ, in the context where social justice needs to be pursued, requires the full responsibility of the state, through what has been identified by Crawford and Clear (2003) as TJ, whereby communities are transformed by a public form of restoration that embraces economic and political reforms aimed at addressing social and economic inequalities.

Over and above this, Wessells writes: “[S]tructural injustice is a prominent source of nearly all the conflicts discussed in [his book – *child soldiers: from violence to protection*]”. Structural injustice takes the form of unemployment, poor housing, discrimination, domination of one religion by another, one ethnic group by another, and other shaming and humiliating treatment inflicted on a class or group of persons (Wessells 2006: 241). As far as the juvenile population is concerned, the feeling of being disenfranchised and grieving exposes them to “radicalist” movements and ideologies that could captivate them with promises of a better future. Unfortunately, the way to these prospects include war (Wessells 2006: 242).

And in these context, poverty is often identified as one of the factors that sustain child soldiering practice and one of the causes of child disaffection along with social marginalisation and exclusion (Wessells 2006: 242). That is expressed in the following lines: “These sources of disaffection add up to hopelessness about their current state of life and inability to find meaning within the existing system. When this occurs, youths are more likely to find meaning in revolution and violence” (Wessells 2006: 243). The profound aspirations of youths are that they be associated with economic and political discourse for integral development, welfare and wellbeing. These entitlements can assist so that, instead of becoming soldiers, they would contribute to the destiny of their respective communities as dignified and “promising” citizens” (Wessells 2006: 243).

Furthermore, social justice demands that victims are empowered to avert social injustices, which can be achieved through the use of RJ, where people who have suffered grave injustices are acknowledged and restored to their dignity (Braithwaite 2003b: 159; Quinn 2005). Other issues that require social justice are the “breakdown of state structures”, “non-observance of normative frameworks and value system” (Honwana 2006: 157) that have degraded causing

moral subversion. The changes of roles in society, whereby children (boys and girls) take up adult responsibility to protect and safeguard their communities, reflects this status.

This moral subversion is perceptible in child soldiers' narratives and denotes a social crisis (Honwana 2006: 157), and is evident in several studies on child soldiers. Socio-economic inequalities, lack of adequate justice system and impunity, as determining elements that perpetuate enrolment and recruitment of child soldiers (Brett and Specht 2004; Honwana 2006; Wessells 2006).

In the same vein, Wessells (2006: 240,244,248) suggests that the combat against child soldiers needs to be broadened to "Conflict Prevention", "Addressing Structural Injustice and Youth Disaffection", "Ending Normalised Violence", making "Youths as Peacebuilders" and launching a "Systematic Prevention Strategy". Each of these themes is worth being explored. Nonetheless, structural injustices and youth disaffection with society can be established as a consequence of social injustice. By the concept of structural injustice, Wessells (2006: 241) refers to a condition "in which a category of people are denied their rights and suffer discrimination and inability to meet their basic needs". To avert this situation, social justice should feature in the agenda of RJ, as the catalyst of social change is justice.

As far as the DRC is concerned, at the genesis of its protracted conflict, there was the issue of identity and nationality that was denied to the Banyamulenge, (Congolese of Tutsi descent from Rwanda). This deprivation caused conflict of a national magnitude, resulting in regional conflict and precipitating the overthrow of President Mobutu Sese Seko.

Applying social justice and addressing structural injustices, in a sense, deters structural violence, which often degenerates into civil war or other forms of violent and bloody conflict. On the same note, Wessells (2006: 224) identifies local processes of justice as an area for further studies, and he establishes how it could endorse and sustain the reintegration of former child soldiers.

This research partly addresses this concern, while focussing on the effects of RJ, in preventing the enrolment of young people as soldiers, by pursuing social justice. The complexity of the problem and factors that contribute to the participation of children in armed conflict, require a

holistic approach to resolve the problem (Drumbl 2012); social justice is perceived as one of the important aspects of the solution to the problem.

According to Machel's study, the child soldiering practice could be contained, when wars are prevented by means of "equitable development" (United Nations 2009a) and conflicts resolved peacefully. This is a reasonable wish that suggests social justice and distributive justice, as the means of ending wars. However, it is immediately difficult to foresee these wishes materialise, and in the meantime, children continue to be enrolled in militias and armed groups.

A holistic response to this complex problem demands that structural causes of the child soldiering phenomenon are addressed, as with "structural injustice and Youth Disaffection" (Wessells 2006: 241). Social justice is a model that can be used to break social and economic inequalities, eradicate discrimination, and create opportunities for youngsters. The root causes of the child soldiering phenomenon reside in socially unjust structures that make children and adolescents vulnerable.

It is important to reckon numerable efforts that aim to address the complex phenomenon of children soldiering worldwide. RJ seems to be best adapted to address child soldiers' complexities. A combination of studies, based on meta-analytic surveys of RJ programmes compared to conventional criminal justice, shows the ineffectiveness of punitive justice is becoming more and more evident (Noll 2003; Latimer, Dowden and Muise 2005; Bonta *et al.* 2008). The following section examines the practicability of RJ programmes and the extent to which it could be applied to child soldiers.

7.12 Rationale for the use of RJ in child soldiering prevention

It may not be easy to end war, as long as conflict persists. War creates insecurity, makes children vulnerable, by increasing the likelihood of their involvement with the militaries and militias, however, participation of children in armed conflict can be prevented (Brett and Specht 2004:40). Efforts to resolve the child soldiering practice may be counter-productive, if children and adolescents are side-lined when society seeks solutions to their problems. This is evident, especially in situations where children can play a strong agency, as acknowledged by Parmar *et al.* (2010: "It has been found that children play an important role in rebuilding their communities because they understand well their communities and their own needs and the types of actions that can improve their lives, especially in post-conflict transition" (Parmar *et*

al. 2010: xxiv). However, they must be accepted as partners in collaborative efforts in all aspects including TJ.

Children who have carried lethal weapons and have been indoctrinated to kill constitute a danger and are a long-term concern for security, peace and stability of any human community. Lasting peace and societal harmony remain contingent, not only on the rehabilitation of ex-fighters' children and healing of the community, but above all, upon preventing recurrence of this reprehensible practice, which consists of using children as soldiers.

Taking the vulnerability of ex-combatant children into consideration and their inability to rationalise their criminal acts, more adapted tactics are required to deal with both the vulnerable underage and the communities to which they belong. By taking responsibility for their past crimes, the underage could be dissuaded from further engagement with the militaries. Broken relationships need to be healed in the aftermath of bloody conflicts, when a society wants to circumvent the cycle of violence and move forward harmoniously.

RJ justice can facilitate the reintegration of former belligerent children into society. Nonetheless, previous and current interventions (criminal justice, TJ, demobilisation, disarmament and reintegration processes), aimed at addressing the problem of children associated with armed forces and groups, show a number of limitations. These include the complex criminal responsibility of child ex-soldiers and their psychosocial wellbeing, after exiting fighting forces.

Prosecutorial/criminal justice, application of non-judicial mechanisms, namely TJ, demobilisation, disarmament, reinsertion and reintegration programmes, using humanitarian and philanthropic approaches (material assistance and economic reinsertion), are met with challenges. For instance, Waddel and Clark (2008:7) acknowledge that the ICC undertakings have met with enormous difficulties, in the context of ongoing conflict and violence in Africa. At times, has been feared that the ICC action could endanger peace and prolong conflict.

In this regard, Waddel and Clark (2008:7) argue: "While the work of the Court has taken concrete shape, so have its challenges". From the literature reviewed, it appears that there is no evidence of any in-depth study on the use of RJ circles, as a means of building local capacity, to prevent the participation of children in armed conflicts. This study provides an alternative

way of remaking peace between children soldiering and the victims of their brutal acts, while it also covers the gaps left by previous studies in the global debate on child soldiers.

Different factors that lead the underage to join armed groups are based on personal and ecological factors, which need to be dealt with, in order to create a peaceful and safe environment that will keep children away from hostilities. The researcher surmises that a combination of interventions and the application of systematic strategies, to prevent children from becoming soldiers, should consider addressing justice for victims of children soldiers' acts. This approach is necessary for the safety and protection of children, so that they do not return to an environment hostile to them.

Studies on children's participation in hostilities single out poverty and a lack of basic needs, as well as the lack of means for survival, make children vulnerable and they become the authors of heinous atrocities against others. When social and economic justice is non-existent, the likelihood of rebellion, protest, civil unrest, strikes and even civil wars, is high. The risk for violence can be minimised by improving people's living conditions. Where people are deprived of these services, revolts, and civil disobedience erupt.

Generally, "[d]eprivation creates a deep sadness and hopelessness stemming from the belief that one will never be understood or cared for. People with schemas often feel angry about their needs being ignored" (Noll 2003: 290). This feeling can also be experienced by perpetrators, who are deprived of liberty by courts, as a result of their criminal acts.

The mainstream criminal justice system is not a positive strand in the effort to transform individual offenders. The peculiarity of RJ is that it deals with conflict in a cooperative way, involving all parties at stake; it prevents actualisation of violence imbedded in struggle, disagreements and contests, which can be dealt with at an early stage to avert violence that may result from these potentially, perilous situations: "RJ prefers to deal cooperatively and constructively with conflicts, disputes, and offenses at the earliest possible time and before they escalate" (Noll 2003: 285).

Justice, understood as the restoration of broken interpersonal relations, which requires mending and repair, as held by RJ proponents, is not measured by sets of rules but rather, by its capability to see victims restored to dignity in a way that they choose, with the cooperation of

the community and the offender taking responsibility for the harm they have caused. In this sense, RJ encourages the process to achieve this end, apart from which it explores the reasons behind the offending and provides an option to crime control with adequate processes (Roach 1999a: 35).

In the context of child soldiering, the preventive principles of RJ may well work, since a non-punitive approach is deemed necessary in crime prevention and control of unruly conduct. Above all, UN legal instruments support non-adjudicative and non-adversary procedures, with which to address the accountability of children in armed conflict.

Considering that some children venture into soldiering voluntarily (Wessells 2006; Schmidt 2007; Drumbl 2012), and the lack of accountability for their past crimes exacerbates their condition, by leaving them vulnerable to re-recruitment, a certain form of accountability is necessary, in order to halt this practice. It has been noted that the non-punitive approach, through family and community building and RJ mechanisms, namely reintegrative shaming and healing, have been successful in crime prevention (Roach 1999a: 29).

RJ as a component of a non-punitive criminal process is deemed as a more holistic approach that takes issues of social justice into account and social security is a better alternative than the punitive model, which encourages the “criminalisation and legalisation” of social justice and social security problems (Roach 1999a: 29). The fact that criminal justice causes a high level of criminalisation that discourages victims from reporting their hurts because of unfair treatment they receive, there has been a demand for its reform, opening the way for a more restorative approach (Roach 1999a: 29).

On the grounds of this proposition, it is safe to sustain that child soldiering can be prevented, by means of using non-punitive mechanisms to address their past acts of violence when soldiering and assist them to be reintegrated into the community. This step could prevent victimisation, criminalisation, and attrition that create the condition of vulnerability and return into armed groups, where child soldiers escape brutalisation and name-calling by society.

7.13 Conclusion

This chapter explored various experimental studies in RJ. In spite of several objections directed against RJ, it has been evidenced that RJ practices also embrace the theoretical regulatory mechanisms and achieve better results than the traditional criminal justice. In addition, the programme concerned with the most in this study, namely peacemaking circles, constitutes one of the RJ practices used efficiently in several countries, such as the USA, England and Australia.

The humanistic and participatory characteristics of RJ are more privileged. Besides delivering justice, RJ transforms relations between victims and perpetrators, it is cost-effective, reduces recidivism, leads offenders to become self-regulating, and enhances reconciliation as well as builds peace. The adaptability of RJ, to complex and unpredictable circumstances, makes it a preferable and viable approach to deal with justice issues related to the intricate child soldiering phenomenon.

The notion of “democratic experimentalism” introduced in this study, is really a novelty that gives citizens and institutions the latitude to choose their objectives and determine the approaches they need themselves. This system of governance makes RJ flexible to suit the pursuit of justice and discourage young people from becoming soldiers. It is an empowerment tool for communities that struggle to bring about changes and societal transformation amidst troubling events, such as the child soldiering practice and other recurring crimes.

RJ as an emerging paradigm of justice, may not be the ultimate solution against violence, nor is it a panacea to antisocial behaviour, however, implementing it whenever the need arises could bring substantial transformation. While retributive justice waits for crime to be committed in order to intervene, RJ deals with conflict before it becomes violent. In most cases, mishandling of conflicts permits its degeneration of destructive violent acts, which even punitive justice cannot redeem, such as the loss of human lives.

From a contractual view of justice, it is the responsibility of the state to guarantee and respect individuals’ rights and liberties, and pursue the common good, by creating opportunities and making them accessible to all equally, and delegating some of its prerogative, to maintain peace and redress injustices, to lower organised institutions.

This approach may be pragmatic and adaptable to the context of the tumultuous history of the DRC, marked by violence of all sorts of civil wars, culminating in the ongoing recruitment and re-recruitment of child soldiers, RJ is needed to redress this situation. The desirability of RJ in complex contexts, such as the DRC's volatile North Kivu region, is sustained by the African worldview of justice being rooted in the humanitarian and communitarian African philosophies. The following chapter examines RJ from an African perspective.

CHAPTER EIGHT

RJ FROM AN AFRICAN PERSPECTIVE

8.1 Introduction

African traditional society has used several approaches of conflict resolution that have combined the customary tribunal, elders' councils, family amicable arrangement, tribal courts and intercommunity tribunals. These strategies have been marked with humanism and solidarity. In recent years, the impetus of community-based justice has increased because of large scale violence in many parts of Africa. These include domestic civil wars and transnational or regional wars, involving several countries fighting inside another country.

The recrudescence of inter-ethnic violence and civil wars have become a clear indication of a widespread erosion of African traditional values, for which several scholars have blamed globalisation and colonialism. In this new development, traditional customary models of justice and conflict settlement have evolved into new jurisprudence, to address human rights violations and massive inhumanities that have affected several African Countries.

The need for justice has been obvious, as several countries are moving from past, brutal political rules, while others are emerging from civil wars and genocide. In adaptation of these complex situations, TJ has become the way forward. These approaches have included TRCs and other community-based justice mechanisms. In most of the cases, TJ in Africa has been imbued by RJ, using the principles of conflict resolution in traditional Africa.

8.2 African sociability, accountability and justice

African sociability that characterises African societies has prompted communities to own the process of justice, by intervening where individuals are entangled in conflict. This obligation that gets the community involved is not impartial; it is created by the need of the affected community to also be healed. For this reason, many approaches of justice have been developed, as a new way of rendering justice, under the initiative and sponsorship of the community. Once people have been victims of gross human rights violations, feelings of anger, resentment, revenge, vindictiveness and retaliation remain ingredients for further conflicts and brutalities. Both victims and perpetrators are affected by crimes.

When criminals re-offend, it is not because there are new needs or issues. They do so because they feel that they have not processed their anger. Moreover, in the case of those who have been punished because of past crime, they believe their fate was unfairly decided. So, they re-offend, by taking the law into their own hands because they do not trust that the legal justice system treated them fairly.

TJ could be used as a realistic approach to facilitate truth-telling and reconciliation between ex-underage combatants and their respective communities (Clark and Waddell 2008; Servaes and Birtsch 2008; Harris 2010; Parmar *et al.* 2010). This model of peacebuilding and conflict transformation has generated outstanding outcomes, when utilised in the aftermath of gross human rights violations and large-scale oppression, such as Apartheid in South Africa.

In circumstances, whereby conventional criminal justice may jeopardise the pursuit of justice and fail to uncover the truth about heinous crimes, perpetrated by individuals or organised groups, TJ and RJ may substitute criminal proceedings because these are models that are flexible, designed and adapted for such intricate situations as justice for children who have committed atrocities. Transition includes both restorative and punitive justice. As far as a child soldier's criminal responsibility is concerned, TJ applied to their context needs to be restorative, while the approach of the mainstream justice system could be used for rebel commanders and leaders, who use these minors.

The TJ approach presents more advantages than retributive justice and it can cause deterrence of criminal behaviour. This is shown by the high rating of recidivism, even in countries with extremely severe punishment, including the death penalty, as in the USA (Noll 2003:284). The option for non-retributive justice appears as a more effective approach of justice, to surmount the insufficiencies of retributive justice. "Recidivism rates world-wide indicate that criminal justice, focusing primarily on punishment, has not been an adequate means of deterrence or rehabilitation" (Villa-Vicencio 2008:388).

Transitional societies, in the aftermath of unjust, brutal and barbaric rules and in post armed conflict violence, often strive to find mechanisms susceptible of transforming both intergroup and interpersonal relationships, affected by experiences of atrocities that have disrupted societal harmony. In order to ensure a harmonious transition from past, hurtful conditions, societies affected by political upheaval and bloody hostilities attempt to use contemporary

models of transition (SNC and TRC), while some others refer to indigenous approaches of dealing with the past, through indigenous or traditional institutions. These institutions include local tribal councils, for instance, Kgotla (A Traditional Conflict Resolution Institution) among the Batswana (Moumakwa 2008); Baraza (communitarian institution of conflict resolution) in the DRC (Aertsen *et al.* 2008; Kamwimbi 2008), Fambul Tok (Hoffman 2008; Taylor-Smith 2009; Graybill 2010). Ka Pahla in Mozambique, Gacaca in Rwanda, and Mato Oput in Uganda (Bangura 2008), Ubuntu RJ in South Africa (Gade 2013), and so on.

Ignoring justice for numerable survivors of wars, as well as ethnic violence, constitutes a stunning injustice that leaves victims in a state of perpetual victimhood and victimisation. The practice of child soldiers is sustained by failures of TJ, which remains a stumbling block to sustainable peace and nation-building in the DRC. This is a point that requires urgent attention and honest efforts need to be made to prevent children's involvement in hostilities. The voice of former child soldiers calling for reconciliation needs to be heard.

It is also important to note that social reconciliation does not necessarily imply modern practices and reference to criminal justice for perpetrators. Nonetheless, their appearance in tribal structures may deter armed groups' proliferation. Offenders need to face their victims and put them before their conscience when hearing the horror of atrocities perpetrated on innocent civilians. This may simultaneously dissuade child soldiers from joining fighting forces. The failure of all appeals for a TRC does explain why a locally-based approach, such as Baraza, can be practical and beneficial to the eastern Congo Communities.

Recurrence of crimes could be attributed to the fact that retributive justice lacks the capacity to lead offenders to acknowledge the injustice involved in their barbaric acts in a non-coercive way, which addresses them in a cooperative manner and leaves them with the understanding that their acts have violated others and the community. This is what has prompted African scholars to return to the communitarian justice model in Africa, rooted in the African worldview that situates a human person within a framework called society.

In communitarianism, conceived as African socio-ethical thought, a human person is defined as an intrinsically communal being, living in interdependency vis-à-vis others, thus precluding the idea of a person as an isolated atom but rather, a being in a society. The researcher sees

perpetrators as members of the community that they have hurt, by carrying out atrocious actions against it; they need to be reintegrated.

It is essential that perpetrators are given an equal chance, as for victims, to explain their motivations for carrying out antisocial actions, and at the same time, provide them with the opportunity to listen to their victims. New meanings emerge from this interface that create the needs for both victims and offenders, to adopt a new way of life that is informed by the hurt sustained by the victim and the new understanding gained by the offender, of the consequences of crime. This journey makes both parties embrace a new agreement.

The peculiarity of RJ touches on the unknown world of offenders, which receives light and is uncovered by the restorative processes, from which they are not excluded. The concern of justice then considers the needs and interests of all the parties at stake and moreover, the demands of victims that need to be attended to.

According to Villa-Vicencio (2008: 391), RJ processes aim at rehabilitating victims and perpetrators, restoring the relationships between them, in trying to encourage societal harmony. This enterprise proves fruitful only if victims are satisfied, and their cry for justice is heard. In this way, the community is relieved from the enormity of evil that it is experiencing. This could be a result of political upheavals or other inhumanities that have brought society down, as well as, in response to outcries and outrage (Villa-Vicencio 2008: 391).

Community-based justice attempts to silence those feelings and desires to vindicate, to revenge and to claim justice, by individuals or groups of people because of the failure by society to intervene. Society does not intervene as disinterested agent, but as an affected, and victim of injustices that require redress. When individual victims suffer, it is the whole community that cries, which is why criminal acts and other forms of offenses, are called antisocial. When the interests of society are at stake, this same body takes the initiative to bring back harmony and peace, through healing and reconciliation, by engaging victims and perpetrators.

Attempts to address post conflict, human rights violations, include TJ. This approach has also been tried in addressing atrocities committed by underage fighters. Other than the TRC, more traditionally or locally based approaches have been used in Africa, such as the Mato Oput Process in Uganda (Institute for Global Leadership 2009), the Fambul-Tok community

initiative for truth-telling, reconciliation and forgiveness in Sierra Leone (Hoffman 2008) and the Gacaca people's courts in Rwanda (Haile 2008). These approaches promote accountability for past crimes and masses' participation in the peacemaking programmes; they touch on forgiveness, reparation and reconciliation.

On the same note, Graybill (2004) discusses three approaches that have emerged in post-conflict Africa. These are "pardon, punishment and amnesia". These three routes have been taken by South Africa through Ubuntu-reconciliation, and in Mozambique and Rwanda, through Gacaca. Graybill (2004: 1117) argues that truth-reconciliation is a more effective way of dealing with the past, than court trials. These community-based approaches to justice are sustained by the sociability that characterises humans and their primacy of the community, in handling conflict and post-conflicts consequences.

The need for TJ in the DRC, along with truth and reconciliation and recognition of victims' rights, are imperative to resolve the DRC crisis, where relying on the justice system is counterproductive. In this complicated situation, Savage and wa Kambala (2008) advocate for restorative sanctions, such as apology and legislative preventive measures that could curb the cycle of egregious breaches of human rights. Interethnic Baraza should be envisaged as a way of resolving land issues, and threats of hegemony posed by one social group over the other.

While a TRC epitomises modern TJ in the aftermath of brutal arbitrary and despotic rules and large scale atrocities, contemporary African post-conflict societies have experienced the emergence of contextual TJ mechanisms. This new model denotes a symbiosis of TRC principles and the African ethos. Fambul Tok in Sierra Leone, Gacaca in Rwanda, Mato Oput in Uganda, and Ka Phahla in Mozambique are discussed as stories of the African move towards TJ. So far, little study has been made of the inter-community Baraza, as an institution that disposes of the principles and practical potentials to achieve the agenda of local TJ. Fambul Tok in Sierra Leone used the traditional family and community approach to resolve conflict affecting these institutions (Graybill 2010).

Following 11 years of civil war, characterised by gruesome brutality, the Lome Peace Accord, which secured the end of hostilities between the Sierra Leone Government and RUF, also recommended a TRC (Hoffman 2008; Graybill 2010). During Fambul Tok, ethnic groups

involved in harm against each other meet under a mediator, who demands that perpetrators make reparation according to their traditional way of resolving conflict (Graybill 2010).

The traditional family and community approach used in Sierra Leone, is “rooted in African sensibilities emphasising the need for communities to become whole – rather than in western traditions of crime and punishment – Fambul Tok is designed to address conflict at a local level and to encourage each person to contribute towards peace” (Graybill 2010: 43). It also promotes peace and nation-building after admission of guilt and restitution by perpetrators and forgiveness by victims. After reparation, the offender is cleansed through rituals to keep them safe from the anger of the ancestors (Graybill 2010: 44). Unfortunately, such an experiment is still to be tested and evaluated in the DRC.

The emergence of contextualised justice approaches, moulded from the traditional concept of justice that is rooted in traditional and cultural beliefs, gives rise to a multi-faceted justice theory, which appears as a symbiosis of more than one theory. The Mato Oput insists on compensation as a requirement of justice. The Gacaca draws its proceedings from traditional tribunals but reformed into prosecutorial courts, to the extent of using retribution, which Haile (2008: 44,45) defines in a broader sense “[...] as a set of theories that aim at providing a deontological moral justification for the infliction of punishment by looking at the offender’s conduct and his culpability rather than the socially beneficial consequences that may ensue from them”.

Haile (2008: 45) objects to the use of retributive justice, as a “non-utilitarian moral duty to punish wrongdoers”, the practice of detaining as many suspects as possible and prosecuting them to cause deterrence for further genocide; and the final objection concerns the way that justice is administered, selectively and insistently, casting doubts on the real motivations by the Rwandan authorities to pursue the rights of victims (Haile 2008: 45).

There are also questions with regard to the way Gacaca courts implement international obligations. Rettig (2008: 44) reports a couple of incidents where and when secondary victims reject reconciliation and refuse to forgive during interviews conducted with genocide survivors in Rwanda.

While the Gacaca is perceived as a necessity by the government, basing its rationale on purported objectives to bring reconciliation in a profoundly divided community, the practice of Gacaca tribunals prompts doubts on the prospect of achieving national reconciliation and healing the wounds of the past because of the politicisation of its legal proceedings. In illustration of this point, Haile (2008) states:

Tackling the legacy of atrocities committed by all sides through a combination of prosecution, amnesty, and truth commissions, and recognizing the losses that Rwandans have suffered as a society can significantly contribute to the building of a new vision for a new Rwanda (Haile 2008: 50).

The reason for such doubts is the retributive, underlying rationale of its creation that implies punishing the *genocidaires*; its selective prosecutions targeting mainly the Hutu suspects, ignoring to address the issues that triggered the 1994 genocide, and the failure to deal with the causes of divisions that have become manifest in the country (Haile 2008: 48).

The Gacaca courting mechanisms, as a means of pursuing justice and preventing further *genocidal* crimes, is critiqued to be counter-productive, as Haile (2008: 49) argues: “By contrast, the strategy is counter-productive for divided societies, such as Rwanda, where the composite groups have divergent claims of victimization and are, at the same time, destined to live together”. The way forward for Rwanda should commence by truth-telling and reconciliation, to ensure that societal harmony is returned, healing has taken place and all former enemies are again brother and sister to each other.

The impetus for African traditional practice that uses medicine to resolve conflict, as is the case in Uganda, is buttressed by an unsuccessful approach based on limited Western understanding of the underlying factors and consequences of conflicts in Africa and the means to resolve these. This situation has prompted some scholars, practitioners and policy makers to revive their interest in traditional African techniques of conflict settlement (Bangura 2008: 176).

8.2.1 Truth and Reconciliation Commission

The South African TRC was challenged by amnesty grant, much focus on victims and ignoring heroes who made the Apartheid regime collapse, as well as insufficiency of funds to make financial reparations to many victims of past injustices and brutalities (Verwoerd 2000: 156).

As in Sierra Leone, the slogan “forgive and forget” has become the leitmotiv of post war and dictatorial transitional societies, where the populations do not expect full accountability and reparations for their past suffering (Gibson 2002; Shaw 2005).

This state of affairs has prompted more societies to go beyond the TRC and even using traditional ways of dealing with the aftermath of bloody conflict and experiences of past injustices and atrocities committed by a political system. This step is taken when society discovers the insufficiencies of the TRC’s mechanisms. The South African TRC’s proceedings were based on Ubuntu, which Archbishop Tutu considers as the pillar of the Constitution and the guiding principle of justice for past injustice in South Africa (Verwoerd 2000; Van Niekerk 2013). Ubuntu does not preclude accountability for past atrocities. Certainly “[...] associating the term in the public imagination with that commission’s emphasis on RJ; forgiveness; and amnesty for wrongdoers on condition that they account for their actions to their victims” (Van Niekerk 2013: 3).

In the previous chapter, truth and reconciliation as a TJ approach was discussed, along with other models rooted in African traditional or customary justice systems and conflict resolution institutions. One of the weaknesses of TRC has been identified as its selective approach to include victims and perpetrators. This narrow outlook leaves many cases of past injustices unattended, according to Verwoerd (2000: 164), quoting Jeremy Cronin’s report that focuses on perpetrators. He refers to humanism, the Ubuntu’s essence of “crossing the bridge” instead of focussing on the perpetrator. In the final analysis, the author suggests that more engagement efforts be made, to include more victims of past injustices beyond the TRC (Verwoerd 2000: 165). Another challenge of TRCs is the grant of amnesty to perpetrators (Gibson 2002).

In spite of its insufficiencies, the TRC approach presents more advantages than a full retributive justice approach and it can cause deterrence. It prevented civil war in post-Apartheid South Africa, though racial, economic and social disparities remain widespread. At the same time, certain organised murders and the machinery of death used by the Apartheid regime have been dismantled. It appears from these examples that truth-telling and reconciliation have the potential to transform relationships and reduce large-scale recidivism.

The option for non-retributive justice appears as a more effective approach of justice, to surmount the insufficiencies of retributive justice. Because recidivism rates have remained

widespread, in spite of retributive sanctions used by criminal justice that concentrates primarily on punishment, this has failed to be a means of deterrence or rehabilitation (Villa-Vicencio 2008: 388).

The TRC approach is limited in addressing the needs of the plethoric number of victims and justice, in the context of large scale atrocities in complex transitional processes, as noted in the *TRC Report: What Kind of History? What Kind of Truth? (A preliminary exploration)*:

The TRC was to initiate processes of individual, interpersonal and collective 'healing', through the catharsis of finally expunging the truth about gross human rights violations previously hidden. Here, reconciliation was to be an affirmation of 'ubuntu', a 'recognition of the humanity of the other' (Posel 1999: 4).

Reconciliation was taken as an act of compromise, generated by a negotiated transition by the South African Country and “it was seen as a crucial vehicle in attempts to stabilise and reproduce the politics of transitional justice” (Posel 1999: 5). As noted by Verwoerd (2000: 165), the TRC was the beginning of a process that has to evolve further, in order to reach out to the non-participants at the TRC, namely several victims who were concerned about the real progress of justice, accountability and reconciliation. The author suggests that TRC-like initiatives need to continue on local community level, to encourage and empower members to handle justice and peace processes (Verwoerd 2000: 165). This could be attained by referring to customary institutions or using the traditional indigenous jurisprudence, such as in the cases to be discussed in the subsequent sections.

Post-conflict societies endeavour to engage in reconciliation and forgiveness. Justice here may include recognition and remembrance of victims. This is an alternative that RJ can achieve, by providing victims with the platform where they can share their ordeal and also know the truth about abuses they have suffered, while expressing their rights, in expectation of restoration, forgiveness and reconciliation.

8.2.2 Ubuntu and juvenile justice in South Africa

In this section the focus is on the works of Ann Skelton, who explores different schools of RJ, based on the “possibilities” emanating from Zehr’s thought, and the implementation of RJ and application of juvenile justice to the South African Child Bill (Skelton 2005: 132).

Drawing from *Changing lenses* (Zehr 1990; Skelton 2002, 2005), Skelton discusses three different possibilities, namely (1) civilising criminal justice by replacing guilt and punishment with responsibility and restitution, and finally substituting the adversarial criminal justice with a system more in line with a civil justice system; (2) separating the parallel track mainstream justice system and RJ; and (3) considering the interlink track (acknowledging a Child Justice Bill that encompasses a parallel but independent track of justice) (Skelton 2005: 132). To illustrate this enterprise, Skelton alludes to Walgrave's approach, of dealing with both victim and offender, by using RJ that encompasses "coercive sanctions and voluntary processes".

When an RJ approach is not possible, formal regulation may be considered that should aim at producing RJ outcomes (Skelton 2005: 133; Dignan 2011; Walgrave 2011a, 2011b). In addition, the Child Justice Bill has an Ubuntu dimension and allows for RJ approaches, such as a diversion option, sentencing and family group conferences (Skelton 2005: 130-131). To conclude, Skelton writes:

Although the Child Justice Bill is not a purely restorative model, it contains many elements of restorative justice. Most importantly, ubuntu and restorative justice are built into the objectives clause, and, in this way, set the purpose and the tone of the entire child justice system (Skelton 2005: 134).

The spirit of Ubuntu continues to be evoked in the constitutional and judicial language of South Africa (Republic of South Africa 1993; Makgoro 1998; Skelton 2002, 2005, 2013b). Laid in the post-amble of the Constitution of the Republic of South Africa Act 1993, Ubuntu diffuses the normative legal instrument under the following constitutional inspiration: "These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization".¹⁵⁵ During TJ in South Africa, the TRC's discourse was imbued with the spirit of Ubuntu (Verwoerd 2000: 164; Skelton 2002: 498).

The researcher understands the application of Ubuntu in TJ context, and juvenile justice as an acknowledgment of the humanness in every person, which can prompt forgiveness and reconciliation for the harm caused, by the same people with whom we share the same

¹⁵⁵ Constitution of the Republic of South Africa No 200 of 1993 [Assented to 25 January 1994] [Dated of Commencement: 27 APRIL, 1994] (except ss. 248 and 249 on 28 January, 1994 and ss. 6, 40, 42, 127, 132, 143 (1) and Schedule 2 on 9 March, 1994).

humanity. Ubuntu is reminiscent of the African traditional wisdom of conflict resolution and it is the sustainable ground for societal harmony (Skelton 2002: 490).

8.2.3 Gacaca justice experiment

Gacaca tribunals were developed under the Rwandan organic law, promulgated in 2006, which aimed at prosecuting perpetrators of the Rwandan genocide, in order to eradicate impunity (Arzoumanian and Pizzutelli 2003: 347). In addition, a new organic law superseded the previous in 2001, by establishing the Gacaca jurisdiction, in each of the 19 administrative entities, to accelerate hearing and court proceedings on the contentious genocide, at law and high level of provinces (Arzoumanian and Pizzutelli 2003: 348). this consisted of a communal model of arbitrations and rendering of justice in Rwanda, following the 1994 Genocide.

The impasse, caused by the inability of the justice system to deal with large-scale trials involving the greater majority of the population, who had to testify or admit having killed or atrociously harmed fellow country men and women, gave rise to popular courts being established in different districts. “The Gacaca tribunals are special tribunals set up to handle specific categories of suspects, displace the jurisdiction of the ordinary courts and apply exceptional procedures” (Haile 2008: 23).

Many arguments surround the functioning of the Gacaca, both positive and negative criticisms. According to Haile (2008: 23), serious concerns are raised about the Gacaca jurisdictions, such as being established on constitutional principles contrary to fair trial, being in contravention of the Rwandan international treaty obligations and in violation of The African Charter. Most of the accusations levelled against the Gacaca law and its *modus operandi* involved lacking fairness or guaranteeing fair trials (Haile 2008: 23).

However, some scholars view this contextualised approach of justice a useful and a necessary initiative that has allowed several trials, which could not be possible through conventional justice mechanisms (Bangura 2008; Haile 2008: 43). The argument in support of the Gacaca is not grounded on what is observed, such as the delay in prosecuting detainees who languish in detention facilities, but rather the intention that led to designing this model of people’s courts and the lack of a viable alternative to remedy the situation (Haile 2008: 43). The debatable issue related to the Gacaca jurisdiction is the sentencing, described by some observers as reverberating punitive justice.

Haile (2008: 44) sustains that the Gacaca communal courts operate according to the constitutional principles that led to their and the government's policies that govern their functioning. Prosecutorial sentencing appears to be justified on the moral ground that past crimes must be punished, "prosecutions are chiefly motivated by the said moral imperative" and finally, "the massive prolong pre-trial detentions and the irregularities in the judicial process that have allegedly necessitated the adoption of Gacaca were the unavoidable consequences of the pursuit of such a moral imperative" (Haile 2008: 44).

8.2.4 Ka Pahla rituals: healing, restoration and reintegration

Miers (2001: 88) uses the concept of communitarian justice to describe RJ. This trend alludes to the role that community plays in bringing victim and offender together. Crime has humanitarian, communitarian and ecological ramifications. When crime is committed, it affects parties in conflict, their community and ecology. This is the reason why, in the Jewish tradition and African culture, rituals of purification are performed to cleanse a place from the effects of a murder and other atrocities that have been committed. In this perspective, Parker (2012) writes extensively on the reconciliation of people and healing of places that have been affected because the wounded history of people needs integral healing.

Healey and Sybertz (1996: 324) write about the bond that exists between African people and the land. This entails responsibility, expressed through blessings and purification of the land. Several studies have also been conducted to either appraise how the model of community justice, rooted in the African worldview, works to build peace in the aftermath of crime and armed conflict or adapts traditional justice to fit a successful and sensitive pursuit of justice, peace, reconciliation and nation-building.

In African cosmology, there exists a hierarchy of beings, organised into the visible and the invisible. The invisible world is inhabited by the Supreme Being (creator) and the spirits (intermediaries between the Supreme Being and the living). The spirits are subdivided into two categories, namely the spirits of the ancestors (the living dead) and the spirits of the dead (contrary to the ancestral spirits). Ancestral spirits work in conformity with the supreme beings, to protect the living and ensure their safety and peace, as well as social and economic progress. The spirits of the dead are dangerous and emanate from different circumstances surrounding the death and the burial of a person. The living connect with the invisible world through rituals, such as *ku pahla* (invocation and veneration) of the Supreme Being known in

Southern Mozambique, among the Tsonga, as *Xikwembu* or *Nkulukumba, the Creator* (Honwana 1997: 296).

Worship of God and veneration of ancestors and beliefs in spiritual beings, spirits and the living-dead are important components of African traditional religions (Mbiti 1990: 58, 59, 74). Social relations are interwoven between the invisible and visible world, in the sense that the invisible beings control and determine events that occur to the living beings, such as health, crops, and happiness. Sacrificial rituals and the veneration of the ancestors ensure harmony between the two worlds and peace. These rituals are performed by *tinynaga (medicine men)*, who are believed to have the capacity to capture, cast out or appease the dangerous spirits of the dead (Honwana 1997: 298).

In addition, when soldiers, children, or refugees return to their homes and families after war, they are supposedly seen as potential contaminators, who put the community at risk of being polluted after war, during which the returnees might have been in contact with death or bloodshed (Honwana 1997: 299). In case of unsuccessful appeasement of the spirits, who may be upset, the role of *tinyanga* is precisely to attempt to mediate, by linking between the dead and the living (Honwana 1997: 299).

The bond between the living and ancestral spirits, and the exertion of malefic attacks on the community by the spirits of the dead (*Mpfhukwa or ndau*) suggest that the living must respect social norms and values inherited from the ancestors, which have been passed on from generation to generation. Killing and inflicting harsh treatment on other beings are perceived as serious violations that can harm the community or individual offenders, in the African worldview. In other words, any antisocial behaviour would be seen as a breach of the spirit of Ubuntu, but also with the ancestors. Added to this, the wrath of the hostile spirits can be overcome through appropriate rituals, such as the *timhamba* or *ku pahla*, during which the ancestors are honoured and encouraged to stand against malefic spirits in protection of the living, through *gandzelo* place (tree of the ancestral cemetery) (Honwana 1997: 302).

Why should *ku pahla* take place and how restorative is this practice? Participation in war involves killing and other antisocial behaviours that are reprimanded by the ancestors and makes a person unclean, from an African cosmological perspective, as experienced among war affected communities in Southern Mozambique, following more than 15 years of civil war

(Honwana 1997: 293). Beliefs exist that some specific cleansing rituals are to be performed to reintegrate people who have been exposed to the pollution caused by war, such as coming into contact with dead bodies and the unrested spirits of the persons whose bodies never received proper burial (Honwana 1997: 296,298).

Spiritual cleansing rituals of young soldiers were believed to restore harmony between child perpetrators and the ancestors and heal them (Schotsmans 2012: 220; Wessells 2012: 59). Some rituals are to be performed by an *inyanga* (*a traditional healer*) to protect the living from dangerous spirits, such as the *Mpfhukwa* (“spirit of the dead who did not have proper ritual burial”) or the *Ndau* (“spirits of the dead”) that are perceived as dangerous to the health, progress and peace of the community, in the context of post-war reconstruction (Honwana 1997: 298).

Some appropriate rites are performed, through which intermediaries called *tinyanga* perform the rituals to cleanse ex-combatants, including child soldiers or to vaccinate them (*ku thlavela*), so that they are healed and purified of the consequences of participating in armed conflict (Honwana 1997: 301). In order to understand the importance of allowing the Spirit to take possession of adversarial forces that haunt the living after their traumatic experiences of war and the impact of adversarial spirits, Honwana (1997: 304) contends:

Spirit possession is clearly a stabilising factor in social relations; it is by no means a static regulator of human endeavour and identity. On the contrary, it is precisely its capacity for allowing individual changes of identity that explains much of its ontological force and persistence (Honwana 1997: 304).

The reason for cleansing and healing rituals in a post-war context, is that combatants, in times of war, use means of protection that they believe would confer them invulnerability. The Mai-Mai in the DRC are the best-known example of these practices (CSCS 2010). The same belief existed and was practised by RENAMO and some of the militants of FRELIMO, during the Mozambican civil war (Honwana 1997: 298). The ritual is deemed necessary for reconciliation and reconstruction of society (Honwana 1997: 298; Bangura 2008: 175). Honwana (1997: 304) asserts: “It is by means of the ancestral spiritual powers that people can restore balance and peace in their lives. As [it] has been argued, the spirit world also plays a key role in the resolution of the residue of conflict after war”.

In African cosmology, mending relationships is vital for good health, development, and societal harmony. Crime affects the relationships between the living and the dead, and the living and the Supreme Being. Western categories that consist more of rationalising, miss the psycho-social dimension of conflict and the spiritual aspect of peace processes and conflict resolution. The African continent has cultural and traditional patrimonies that can be utilised to resolve conflict and prevent further perpetrations of crimes.

8.2.5 Fambul Tok: Community forgiveness and reconciliation processes

In Sierra Leone, following decades of war, the Fambul Tok initiative was developed to respond to the need to deepen sustainable peace from village-level to a higher level. Fambul Tok, from Krio means family talk and was started as a three-to five-year programme, building on traditional methods of reconciliation at community level. It represents a way of drawing all members of Sierra Leone – whether victims, offenders, or witnesses - back into the Sierra Leonean family (Hoffman 2008: 132).

This approach to justice, healing, reconciliation and peace-building cross-cuts those mentioned earlier and differs from the Western conceptualisation of justice and law (Hoffman 2008: 130). The author points to the teleological orientation of the Fambul Tok, by asserting that it prioritises reintegration instead of alienation and retribution of perpetrators: “The predominant characteristic of these traditions and practices was an orientation toward reintegrating perpetrators into the community, instead of alienating them through punishment or retribution” (Hoffman 2008: 132).

Justice in this context and other traditionally-based approaches, seeks restoration of both victims and perpetrators, instead of retribution. The following are the main focal points of Fambul Tok, according to Hoffman (2008: 135): Truth-telling, individuals taking responsibility for their crimes, apologising and asking for forgiveness for offenses committed, community and victims granting forgiveness to perpetrators and the whole community engaging with one another in collective activities, to re-establish societal values and re-affirm their “common humanity”.

This process intends to generate a new identity for both victims and offenders, after fraternal and social cohesion amongst them has been distorted and shattered, as a result of violent and bloody conflict. The original affinities and bonds can be mended and destroy estrangement and

alienation caused by offenses, which have created a rift in interpersonal relationships. Healing that takes place in this engagement is essentially for former disputants to be transformed and commit themselves to contribute to lasting peace and nation-building (Hoffman 2008: 135).

The effectiveness of Fambul tok to enhance forgiveness and social reconciliation is supported by scholars such as Park (2010); Bangura (2008); and Graybill (2010). The relevance of this community justice and reconciliation approach was “to overcome the incompleteness of earlier justice and reconciliation processes in Sierra Leone” (Hoffman 2008: 136), and its transformative power creates a new society that would prevent former offenders to inflict further suffering on the community.

8.2.6 Mato Oput: traditional reparative and restorative process

Mato Oput originates from the Acholi religious, cultural and traditional approach to Justice in Uganda. In mid-1990, local government officials, religious and traditional leaders in Uganda advocated for the application of this model of justice and its ritual processes, to the context of War-related crimes, reconciliation and the reintegration of former belligerents.

After more than two decades of civil war that affected mostly Northern Uganda, where the LRA were engaged with government troops, many families and clans were affected and properties destroyed. When the returnee former soldiers were demobilised, some rituals based on Mato Oput were used to cleanse former child soldiers and other belligerents who had committed atrocities and were implicated in much killing (Bangura 2008; Institute for Global Leadership 2009; Negara 2012). The process involved government officials, local and traditional leaders, as well as family members of both victims and perpetrators who suffered the consequences of hostilities. Many children were abducted by the LRA from schools, dormitories, and different locations, where they could be found to join their military campaign.

The Institute for Peace and Strategic Studies at Gulu University, in partnership with the Collaborative Transitions Africa and the Institute for Global Leadership at Tufts University in Uganda, collaborated in the Mato Oput Project, which conducted a study of the adaptation of Mato Oput traditional justice, to war-related offenses in four districts in Uganda, namely Gulu, Amuru, Pader and Kitgum (Institute for Global Leadership 2009: 5, 38). Participants were involved and participated in a total of 101 focus groups and interactive interviews. The findings of this study are as follows (Institute for Global Leadership 2009: 6):

- The Mato Oput process intends to attain forgiveness, justice, and healing, at the same time as trying to reconcile parties in conflict and restoring relationships broken because of killing.
- 90 percent of participants supported the use of the Mato Oput process to settle war-related offenses.
- Participants showed awareness of some difficulties with the process, such as inability to offer compensation to identify victims and perpetrators, and the fact that the conflict was ongoing.
- To remedy these problems, the process included some traditional rituals as alternatives and suggested that third party actors or an external institution be involved in the process.
- A variety of rituals were to be applied, according to the kind of offence committed, whether it was murder, rape, mutilation, while rituals were also to be performed for the reintegration of former belligerents into society.
- The need to adapt the tradition to circumstances made the process flexible.

According to the same study, participants were supportive of the process and found that compensation was essential for reconciliation and justice, and some cases needed to be referred to the criminal justice system, while others required a seizure of property of the perpetrators' clan or seeking assistance from NGOs to provide compensation. In addition, trial or state justice was perceived by many participants as a means to support the relationship between traditional justice and criminal justice (Institute for Global Leadership 2009: 7). This aspect of the Mato Oput is in line with the version of RJ that allows for sequential justice processes, sanctioned by criminal justice officers and the community, through people directly having a stake in a crime; the outcomes ought to, however, be restorative (Skelton 2005):

Such a system would include both coercive sanctions and voluntary processes. While such a restorative justice system should prioritise the voluntary processes that involve face-to-face meetings between offenders and victims, if these are not possible or appropriate then the formal criminal justice system would need to take over, but should still aim for restorative justice outcomes (Skelton 2005: 133).

Another study on juvenile offending based on Mato Oput, was conducted by Bangura (2008), who explores the tensions between two worldviews of justice and their proponents. On one side there are “Westerners”, who support the legal framework to address conflict in Uganda,

and on the other side are Ugandans, who hold that the Mato Oput process is their preferred alternative. It is the ICC indictments vs. the Mato Oput traditional justice paradigm, or the Western legal approach and the TJ approach in vogue in many African societies.

The question that heats up the debate, is the ability of Western legal standards to cause deterrence to criminal acts. Bangura (2008: 144) asserts that the Western legal approach lacks deterrent power to reduce crimes. The author argues on the basis of crimes seldom being thought and revolved in the mind beforehand, prior to execution, “punishments as less swift or certain”, victims do not seek justice for social, economic or cultural goals, and in most cases, court verdicts are not directed at deterrence, instead, they are designed and conceived as a means to punish wrongdoers for their antisocial conduct (Bangura 2008: 144). It is about retribution and revenge.

8.2.7 What African transitional justice model for the DRC?

Davis and Hayner (2009: 25) describe the situation of the justice system and the rule of law in the DRC as a total collapse, including its infrastructure, as they assert: “In general the Congolese justice sector is unable to deliver day-to-day rule of law for the population, let alone tackle massive rights abuses. The infrastructure of the justice system has collapsed almost completely...” (Davis and Hayner 2009: 25). In this environment, where the administration of justice is problematic, less is expected of TJ based on criminal accountability. A researcher contends that the RJ approach can enhance TJ in a local community, where this justice has been held by indigenous populations according to their tradition. The Baraza institution presents the advantages to achieve both justice and reconciliation.

The complexity and volatility of the North Kivu had endangered the lives of the populations in this war-stricken province of the DRC. This situation has caused security to deteriorate and instability to increase. In spite of the two phases of disarmament, demobilisation and reintegration processes that have subsequently followed over 10 years, armed groups and militias remain engaged in hostilities. Peace processes that followed the 2002 Sun City Global and Inclusive Peace accord have not managed to deal with critical issues of interior security and stability of the DRC eastern provinces, in the aftermath of systematic armed conflicts (1996-1997 and 1998-2002).

The DDR programmes have been challenged by a resumption of hostilities, sustained by deep-seated ethnic and land conflict that sporadically turns violent. The impact of conflict across the border of the DRC in Rwanda and Uganda have exacerbated the already insecure eastern part of Congo, to the extent of leaving the country in a condition of “no war-no peace”. In the meantime, the two processes, DDR and DDRRR, including the two required reforms of the Security Sector and that of the FARDC have been lagging, causing serious problems of protection and safety. Apparently this status quo has also contributed to the proliferation of armed groups and community or ethnic armies.

In this global anarchy, children entangled in armed groups and militias have resorted to the self-disarmament and self-demobilisation phenomenon. The role of NGOs is laudable in this new trend, as they provide returnee child soldiers with structures for psycho-social accompaniment, nurturing the love for one’s neighbour and restoring a sense of dignity in these youngsters. NGOs such as Caritas Goma, UPEDECO, CAJED, APROJED, PAMI and others supported by UNICEF and foreign donors are credited for supporting child care and protection. These are humanitarian structures that have been instrumental and indispensable for self-disarmament and self-demobilisation of these children.

The increasing number of self-demobilised children is sustained by these structures that provide them with shelter, initial basic needs and, finally, return them to the love of their families. These NGOs are so fundamental and crucial in creating the condition of self-disarmament and self-demobilisation because children exiting armed groups often face a society hostile to their past misdeeds. NGOs’ protective structures finally see children return to their communities, with the most cherished document that children value more than anything, their *Kibali* (certificate of disarmament, demobilization and reintegration) that ensures they are safe to return to society.

The traditional and customary model of accountability, conflict prevention and resolution that has existed among many populations of the eastern DRC is known as Baraza. The following section investigates this model.

8.2.8 Baraza: prevention, reparation and reintegration

The concept of Baraza has been used with many variations and by several communities, including those in the eastern Congo. It stands for a customary platform, where issues

triggering conflicts are discussed; at the same time, it is also used as a forum of accountability for violations of social norms and resolution of interpersonal and inter-community conflict. Baraza also deals with inter-family disputes, contentions over land, and other tribal/ethnic-related issues.

i. Historical perspectives of Baraza

As stated in the Baraza document, the turmoil caused by recurring, armed conflict massacres and bloody interethnic clashes, since 1993 in North Kivu, prompted local communities to reflect on a way to bring lasting peace and development. They found that sustainable peace was contingent on interethnic cohesion and peaceful cohabitation among all ethnic groups of this province.

Following days of reflection on peace initiated by public authorities and civil society in late 1998 in North Kivu, the Pacification and Concord Commission, churches and NGOs came up with a resolution to put in place a structure for peace, reconciliation, social reintegration and development. This structure was named *Baraza Intercommunautaire* [Intercommunity Council] of North Kivu, which is known today as *Baraza La Wazee Intercommunautaire* (BWI) [Intercommunity Council of Elders/notables] (The Intercommunity Council of Elders of North-Kivu 2014). This was inspired by the traditional Baraza that existed before the eruption of armed conflict and interethnic violence.

The traditional Baraza worked as a customary tribunal, where people who violated ancestral norms and customs were summoned. It has now been revived and set up also on provincial level, under *Baraza la Wazee Intercommunautaire* [Intercommunity Council of Notables/Elders] (BWI). This means that BWI is a revival of a traditional council that existed among several communities in the eastern DRC. At present, this platform serves as an organ of consultation among diverse ethnic communities of North Kivu, mainly the Hutu, the Kano, the Kumu, the Nande, the Nyanga, the Tembo, the Tutsi and the CAP (fellow country men and women from provinces other than North Kivu). The ethnic diversity of North Kivu province, with immigrant settlers from Rwanda, created the need for a more inclusive platform that is not discriminatory. This forum works on a threefold principle: prevent-manage-resolve conflict (The Intercommunity Council of Elders of North-Kivu 2014).

Baraza is mentioned in several studies as a platform of conflict prevention and resolution. According to several authors (Aertsen 2008; Kamwimbi 2008; Savage and Vanspauwen 2008; Savage and wa Kambala 2008) the justice system in the DRC has been incapable both in administering justice and settling conflict. Local tribal and area (locality) leaders have taken initiatives to deal with past conflict and prevent their resumption and degeneration into violence. Baraza has been identified as one of these traditional institutions among many ethnic groups in the eastern Congo, and the *Kyaghanda* traditional model of settling social conflicts between different social groups, particularly among the Nande ethnic group (Aertsen 2008).

In 2008 the DRC *Baraza Intercommunautaire* received funds from the government and was supported by the UN, yet it lacks legitimacy. In addition, there is coexistence between the formal judicial and administrative procedures of handling justice and dealing with conflict, implementing administrative norms and the informal approach (Aertsen 2008: 64).

According to Jourdan (2011: 101), Baraza also designates a space in the military camp where the Mai-Mai war laboratory works, a restricted place that is accessible only to doctors or medicine men, who prepare the medicine out of herbs mixed with water; the medicine called “dawa” is to be carried during war. It is prepared by very young doctors taken from among the Mai-Mai children. Seemingly, the Mai-Mai medicine men and child soldiers are also instructed in the Baraza by elderly people (Jourdan 2011: 101). However, in this section, Baraza refers to a platform that tried to pursue justice, as well as prevent and resolve conflict at the level of families and communities.

ii. Baraza and African palaver

The Baraza concept is rooted in the principle of the African Palaver. Palaver is here understood as a “dialoguing institution of unlimited domain” (Ngoyi 2006: 173). Dialogue was a principal instrument of negotiation, conflict resolution, and peacebuilding that was so privileged that peace and societal harmony was maintained among ethnic groups and community in the same neighbourhood. Ngoyi notes that the Palaver was an institution by reason of its own ability, a transitory commitment: “It [the Palaver] was, and still is, a stable institution with its own rules, one of which, dialogue, is essential. Every participant is a dialoguing partner with full powers to demand to speak and to do so for as long as is necessary” (Ngoyi 2006: 173).

The collective approach to resolving a crisis in African traditional society was based on the importance given the body society and community, to the extent that there was no religion, no economic or judicial institution, and no educational institution or moral authority that was autonomous (Ngoyi 2006: 173). The Baraza reflects this dialoguing institution. From this assertion, it is contended that the communitarian Baraza in the DRC has the potential to achieve community TJ.

iii. The call to adopt Baraza model

Several studies have revealed that the criminal justice system in the DRC is not functioning, it has never been possible to prosecute perpetrators, with some military courts that have condemned national government and ordered financial compensation to survivors (Aertsen 2008: 57). In some instances, colonial state law has been blended with African customary law and local practices through ‘Informal accountability mechanisms’, such as Customary courts that are still widespread and available (Aertsen 2008: 57), though they remained subject to criticisms around “discrimination towards women, noncompliance with international justice standards, no legal competence for serious crime” (Aertsen 2008: 57).

The most popular customary court has been the *Baraza Intercommunautaire*, a step taken by local community leaders to resolve conflict by means of “dialogue and ritual” for any type of conflict. In addition, the sanctions that have prevailed here are “acknowledgment of guilt, requests for forgiveness, promises, rituals of purification” and the focal point has not been the perpetrators, but rather the sources of conflict (Aertsen 2008: 60). The author adds that there have been complementary systems, such as “mobilising informal and formal mechanisms at the same time”, which “is easier in communal societies” and also notes that the DRC customary courts have been characterised by “conditional autonomy (judicial or state control regarding issues of written law, universal public order, human rights... Thus supervisory or corrective mechanism by state law...” (Aertsen 2008: 64).

Community-based justice models function on the basis of RJ principles, which also aims at achieving fairness for two parties entangled in a stake, in which one bears the identity of offender and the other as victim (Braithwaite 2013: 271). As a result of fairness, Braithwaite avers that victims and offenders emerged satisfied with RJ processes, more so than the conventional justice practice (Braithwaite 2013: 271).

As far as accountability is concerned, justice for child soldiers is faced with the challenges of prosecutorial process, due to the limited existence of Peace Tribunals and their target groups, namely, under 18-year old juveniles in conflict with the law, which do not assure children in armed groups of fair justice and fair treatment.

The Paris Principles proscribe incarceration and hard treatment against former child soldiers under the Rome Statute of the ICC.¹⁵⁶ For instance Article 8(8), stipulates: “Children accused of crimes under international or national law allegedly committed while associated with armed forces or armed groups are entitled to be treated in accordance with international standards for juvenile justice”.¹⁵⁷ Article 8(6) states: “The Rome Statute of the ICC states that the Court shall have no jurisdiction over any person who was under 18 at the time of the alleged commission of a crime. Children should not be prosecuted by an international court or tribunal”.¹⁵⁸

It appears that Baraza could provide former child combatants with a safer environment to account for their past brutalities. Furthermore, it can help manage conflict that creates vulnerability of both children and the larger civilian populations. Finally, this process can help children who exit armed conflicts and inter-ethnic violence resettle in the community.

8.3 Philosophical assumptions of African community-based TJ

African transitional RJ approaches are rooted in the African humanitarianism that evolves as a recognition of the shared humanity and the humanness of each member of the community, which gives meaning to interpersonal relationships and mutual relations between individuals and the community they belong to and the larger community described, is understood as the universal human family. This social ethos is rooted in the philosophy of Ujamaa and Ubuntu. Each person is treated with dignity, respect and they are considered having equal worth.

Although Nyerere does not mention RJ explicitly, the underpinnings of the social ethos make Ujamaa reflect the idea of a fair and just society that prevents any instance of violence against one another. When these relations are broken by unresolved conflicts, the mechanisms of restoring relations should be modelled to the family approach of conflict resolution, when members of the same family are involved in a dispute or have hurt each other. It is thought to

¹⁵⁶ The Paris Principles, Articles 3, paragraph 9; Article 8, paragraphs 6, 7 & 8; CRC, Article 37; the Rome Statute of the ICC, Article 8 (b) (xxvi).

¹⁵⁷ The Paris Principles, Article 8, paragraph 8.

¹⁵⁸ The Paris Principles, Article 8, paragraph 6.

be restorative not retributive. Reconciliation and forgiveness becomes an imperative, as the offender member remains part and parcel of the family-society.

Nyerere (1987: 10) points out:

The foundation, and the objective, of African socialism is the extended family. The true African socialist does not look on one class of men as his brethren and another as his natural enemies. He does not form an alliance with the 'brethren' for the extermination of the 'non-brethren' (Nyerere 1987: 10)

The implications of this statement include genocide, crimes against humanity, ethnic cleansing, xenophobia, and nepotism, as well as regionalism, tribalism and other forms of human atrocities, which are inconceivable and intolerable in a society founded on the principles of Ujamaa. The concept of Ujamaa denotes equality of all the people and distributive justice. *Ujamaa* is based on equal distribution of wealth, establishment of a society without discrimination or social classes, where people relate with each other as members of one family; as brothers and sisters, father and mother, parents and children.

The concept of Ubuntu that defines "humanity", "humanness" or even "humaneness" is also called "African humanism" (Louw 2008: 166). This principle laid the foundation for the 1997 South African Government White Paper for Social Welfare that invites all South Africans to hold mutual responsibility in the process of achieving social and common good, in order to promote the "wellbeing" of every individual member of society (Louw 2008: 161). In addition, the Constitution of the Republic of South Africa also supports the principle of understanding instead of violence. It perceives reparation as a better alternative to retaliation, and it finally promotes a spirit of Ubuntu instead of victimisation (Louw 2008: 161). The author singles out three main aspects of Ubuntu that crosscut RJ approaches, namely agreement, consensus and dialogue.

Commitment to restore justice implies that victims and offenders find a common ground for understanding an offence, its aftermath and the needs to address it (Louw 2008: 162-163). The dialogic dimension of Ubuntu is comprehended as "restorative communication", which deepens interpersonal reconciliation between parties entangled in a stake and enhances social reconciliation between victims, offenders and the community (Louw 2008: 167). And from the point of view of communitarianism, Louw (2008: 163) remarks that African philosophers

exhibit the necessity to protect individual rights and the protection of minority groups against the exploitation by groups.

While contemporary TJ justice approaches combine restoration justice principles and mainstream criminal sanctions, African traditional mechanisms are more inclined towards the underlying principles of African social ethos, such as African Communitarianism (Gyekye 1998); Ubuntu (Ramose 2002); Ujamaa (Onwubiko 2001), and *Bisoity* (Ngoyi 2006).

The success of TJ has been enhanced for the sake of peace which, in Sierra Leone, was characterised by “forgive and forget” (Shaw 2005). This move has been motivated by elements, contingent upon the political contexture and lack of safety guarantee for witnesses, that made Sierra Leoneans perceive their TRC as a less attractive process. It appeared to the Sierra Leone people that the international Community and the TRC neither deal with the crucial issues nor acknowledged them (Shaw 2005). Additionally, other contributors included: “fear of retaliation by perpetrators; fear of government reprisals; and concerns arising from the concurrent operation of different TJ mechanisms (in this case, the TRC and the Special Court for Sierra Leone)” (Shaw 2005: 4).

Two different slogans emerged from two TRC processes in two different contexts namely “Revealing is healing” (the South African TRC), and “Forgive and Forget” (The Sierra Leone context) (Shaw 2005). A critical question is raised here about the viability and desirability of contemporary TRCs vis-à-vis the contextualised approaches that are rooted in indigenous cultures of reconciliation, in the aftermath of violent conflict. Shaw (2005) and other scholars, such as Bangura (2008), point out that TJ, inspired by African traditional and cultural ethos, needs some consideration.

8.4 Challenges of community-based TJ approaches

For example: the erosion of traditional values and customary structures caused by war, displacement of people and destruction of etiquette by armed conflict; the difficulty to hold community leaders accountable for their role during and after conflict has also been a serious concern (Schotsmans, 2012, p. 217); as well as their alleged support of local militia. These are some concerns that need to be addressed by Baraza. The BWI can exert a global influence on local leaders and tribal authorities to achieve a real transformation of this important traditional institution.

Baraza should also conform to international legal provisions, in matters pertaining to the child soldiers' accountability and reintegration process; at the same time it should also remain sensitive to the child soldiers' circumstances. To support the role that Baraza can play in the general context of community-based reintegration and reconciliation, international actors and scholars maintain that the adoption of tradition-based strategies, to reintegrate young ex-combatants, need to be encouraged, inasmuch as they conform to international standards pertaining to children involved in armed conflict (Schotsmans, 2012). A restorative approach encourages the pursuit of social reconciliation, which is not the concern of the mainstream justice system.

8.5 Conclusion

RJ in Africa is not a new practice but rather an old means of conflict settlement of scores. It is based on African worldviews and social ethos, whereby interrelations are nurtured by the conviviality and mutual acceptance of each other's humaneness. The concept of African communitarianism, Ubuntu, Ujamaa and *Bisoity* are the underlying social and philosophical principles that diffuse RJ and its adaptability and flexibility, to the context of African large scale, gross human rights violations.

Crime in traditional African society is also conceived as a violation of ancestral norms and the community, with rituals performed to reintegrate the transgressor into the community. Based on this understanding of harm, reconciliation, change of behaviour, and reduction of recidivism, the transformation of victim-offender's relations and healing are deemed imperative to sustain societal harmony.

The African palaver was driven by solidarity and the desire not to hurt even the perpetrator. The models of RJ developed in the African context are not free from criticisms, but they are realistic ways of handling justice in societies that have emerged from civil wars, ethnic violence and where peace remains fragile because of young democratisation processes and the existence of chronic and structural violence. These observations sustain the need to take RJ forward, to handle the issues of justice and participation of children in hostilities and the ongoing practice of child soldiers.

The previous chapters extensively introduced the problem and its context, and an all-inclusive review of literature was presented. This sustained the existence of the child soldiering practice, which remains a serious conundrum to child wellbeing and rights in the DRC and other world regions. These literary findings laid the groundwork for an experimental search of the solution to the problem. For this reason, it was crucial to define the type of inquiry and the methods that would be used to deal with the problem. The two subsequent chapters will outline the overall design and methodology adopted to conduct this inquiry.

PART THREE: RESEARCH DESIGN AND METHODOLOGY

At the heart of research is the question of methodology that needs to be set out. A well-designed research and clear methodology, as well as methods to be used in undertaking a scientific inquiry, make the process of generating knowledge easy. Nonetheless, the multiplicity of definitions and semantic attributions to research components need to be clarified.

The concept of research design describes an interactive and systemic process, namely “the activities of collecting and analysing data, developing and modifying theory, elaborating or refocusing the research questions, and identifying and addressing validity threats are usually all going on more or less simultaneously, each influencing all the others” (Maxwell 2005:2). Research design is highlighted as having five main components, comprising research goals, a conceptual framework (theories, beliefs, preliminary studies, etc.), research questions, and methods (approaches and techniques of data collection and analysis), as well as validity (reliability of conclusions and alternative interpretations and validity threats) (Maxwell 2005:4).

On the other hand, research methodology is defined as a “branch of science concerned with methods and techniques of scientific enquiry; in particular, with investigating the potential and limitations of particular techniques or procedures” (Grix 2004:32-33). Research methodology is referred to as a strategy that consists of the following constituents: ontological and epistemological assumptions of the study, research questions/hypotheses, conceptual approach to the topic, methods to use in the study (limitations and potentials) and their justification, as well as data sources, the research paradigm, and sources to be consulted (Grix 2004:32,33).

Drawing from these two scholars, the main components of design and methodology, for this inquiry, comprised research design (PAR and experimental design) and methodology (a pluralist methodology, combining sequential mixed methods and multi-methodology - a combination of methods, incorporating different paradigms, developed specially for the specific task of the inquiry and its objectives) (Mingers 2001:252).

CHAPTER NINE

RESEARCH DESIGN

9.1 Introduction

This research combines action research (AR) and experimental research. AR involves a pluralist approach, required by the cyclic dynamic of the process, which demands mixed methods (Christ 2010). The interesting aspect of this argument, is that an AR researcher, after identifying a problem, develops questions and objectives, consults relevant sources that elucidate the issues, identifies theoretical frameworks that pertain to the questions and objectives of the project till, finally, a relevant theoretical framework is embraced for investigation of “research interest” (McKay and Marshall 2001: 51). This chapter deals with the two modes of inquiry adopted in this study and explain the different proceedings involved. The main units to be explained here are AR, experimental designs, and the research paradigm.

9.2 Action research

Different components of AR, the rationale for adopting that as mode of inquiry, techniques of data collection and the criteria for recruitment of participants are the main components of this section.

9.2.1 Introductory background and definitions

AR is a mode of inquiry that has evolved since the 1920s in a critical context, when several mutations were taking place in the aftermath of World Wars I and II and in the emergence of “globalisation and rapid technological and socio-economic change” that required a response in recent years to deal with those emerging issues, as well with the consequences of World Wars (Zuber-Skerritt 2001: 7).

In the late 1940s, AR received another endorsement with Kurt Lewin, (“a German social and experimental psychologist”), considered as the “father” of AR:

[Lewin] was concerned with social problems, and focused on participative group processes for addressing conflict, crises, and change, generally within organizations. Initially, he was associated with the Center for Group Dynamics at MIT in Boston, but soon went on to establish his own National Training Laboratories (O'Brien 2001: 6)

AR has developed into several related models, such as participatory action research (PAR), participatory rural appraisal (PRA), and participatory learning and action (PLA), which are

used in various disciplines (Chevalier and Buckes 2013: 22). Within this development, two types of participatory PAR have been studied, namely community-based participatory action research (CBAR) (Stringer 1999) and contextual participatory action research (CEPAR) (O'Brien 2001).

The variety of problems that call for responses opens AR to several definitions that resonate with the socio-ecological issues that require a global answer to address.

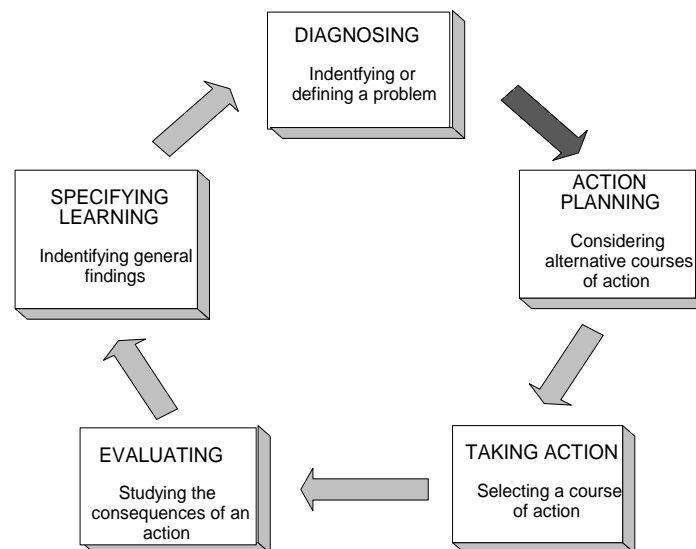


Figure 4: Action research graphic¹⁵⁹

McKay and Marshall (2001: 47) define AR as “[...] a juxtaposition of action and research or, in other words, of practice and theory.” This implies an approach that is engaged in producing new knowledge, through the seeking of solutions or trying to ameliorate conditions of ‘real-life’ or generating practical problem situations. However, this process of solving problems is peculiar in its own rights, “for the action researcher is working from within a conceptual framework” (Checkland 1991 and Baskerville and Wood-Harper 1996, cited in McKay and Marshall 2001: 47).

¹⁵⁹ Diagram of action research model from Gerald I. Susman, "Action Research: A Sociotechnical Systems Perspective," ed. G. Morgan (London: Sage Publications, 1983) 102, adapted by O'Brien, R. 2001. Um exame da abordagem metodológica da pesquisa ação [An Overview of the Methodological Approach of Action Research]. In: Richardson, R. ed. Teoria e Prática da Pesquisa Ação [Theory and Practice of Action Research] (online). João Pessoa, Brazil: Universidade Federal da Paraíba (English version) Available: <http://www.web.ca/~robrien/papers/arfinal.html> (Accessed 20 January 2002).

AR has evolved as a collaborative approach of inquiry, in which people concerned with the problem are equal participants in the investigation process, aimed at resolving the problem (Stringer 1999: 9). Its purpose, “is to assist people in extending their understanding of their situation and thus resolving problems that confront them” (Stringer 1999: 10). This process is *democratic, equitable, liberating and life enhancing*, for it affords equal rights to participants in adopting emerging solutions to their problems and provides freedom, while taking the expression of participants’ full potential into consideration (Stringer 1999: 10).

Members of the concerned community participate fully on different levels of the process (data collection, analysis, theorising, action and evaluation) (Stringer 1999: 10). It follows that, in this process and context, the role of the researcher is more that of a facilitator than director or decider (Stringer 1999: 11). Moreover, it is important to note that AR is a cyclical process of action and reflection, integrated in action (Zuber-Skerritt 2001: 2).

The “basic routine” of AR is its spiral process that consists of a threefold process (look-think-act) (Stringer 2007: 9); or fivefold process (diagnosing - action planning - taking action – evaluating – specifying learning) (McKay and Marshall 2001: 49; O'Brien 2001: 4). Nonetheless, it also works on the basis of one cycle, as affirmed by McKay and Marshall (2001: 49): “The usual representation of the AR process is as a single cycle (with possible iterations), no matter which depiction of AR is used”. Otherwise it goes on additional cycles or “it can be repeated in the same context until satisfactory outcomes have been achieved, or a similar process can be applied in a number of different sites” (McKay and Marshall 2001: 49).

Importantly, AR has a dual aim: “[...] the researcher must aim to bring about improvements through making changes in a problematic situation, and must also aim to generate new knowledge and new insights as a result of his/her activities” (McKay and Marshall 2001: 50).

AR is also associated with learning. However, Zuber-Skerritt (2001) distinguishes “action learning from action research”, as expressed in the following terms: “[...] ‘Action Learning’ means learning from action or concrete experience, as well as taking action as a result of this learning” (Zuber-Skerritt 2001: 18). The author asserts that “action learning” and “action research” are used interchangeably, though AR uses a more systematic and rigorous methodology.

According to O'Brien (2001: 7), CEPAR is also referred to as action learning. This array of interpretations explains one reality but the difference resides in the objectives to be achieved that are embedded in the action. Action can either be a learning process or have a transformative ambition. In the context of this inquiry, participatory action was adopted as both a learning and an empowerment tool, in view of transformative action.

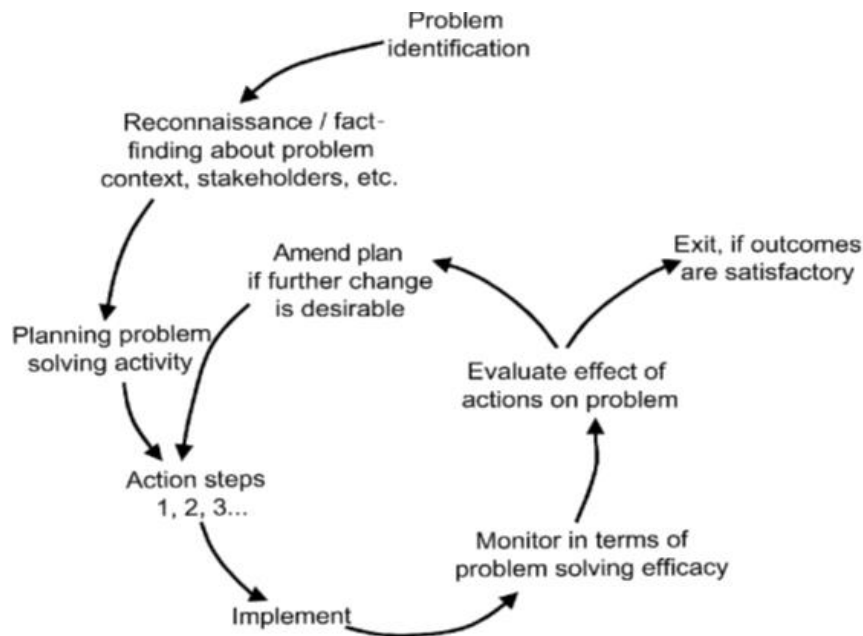


Figure 5: Problem solving in AR (McKay and Marshall 2001:50)

AR is being given wide consideration, due to its collective and collaborative reporting and democratic adoption of emerging outcomes of the search for a problem solution. Stringer (2007: 115) describes this process as follows: “Research facilitators help participants engage in meaning-making discussion and dialogue – hermeneutic dialectic processes – with the intent of developing mutually acceptable accounts of the issues and problems they are investigating”. In conducting AR, it is essential to create an environment that is conducive to open dialogue, mutual understanding and acceptance, as well as tolerance and humility in valuing opinions of others, in order to provide solutions that represent the views of the participants.

An in-depth discussion on various types of AR is beyond the scope of this study. However, this study succinctly deals with the main sub-models, with a particularly focus on CEPAR, adopted for this inquiry. On the one hand, O'Brien (2001: 7) expounds four main “streams”, developed in the mid-1970s, namely traditional action research, contextual action research (action learning), radical action research and educational action research. All these models could be

subject to extensive discussions and are well elaborated in Berg, Lune and Lune (2004) and O'Brien (2001). All AR have a common denominator called action that implies the agency of participants, whether this action is learning, emancipatory, transformative, or participatory appraisal. The praxis of AR research aims at addressing the concerns of human communities facing intricate problems, to which a collaborative, participatory response is needed.

9.2.2 Underlying reasons for adopting CEPAR

Child soldiering has been identified as a critical problem for many children all over the world and North and South Kivu, in the DRC, is no exception. O'Brien¹⁶⁰ explains "Contextual Research" by possible affiliations with the term "contexture". This suggests that all research is essentially "contextural", as networking art.¹⁶¹ This description explains why a complex issue, such as the prevention of child soldiering requires a spectrum of strategies, approaches, methods, and the involvement of various stakeholders, on different levels.

The need to find solutions to this phenomenon has not involved concerned children in a systematic way, whereby they are directly and actively involved in decision-making processes, to critically investigate the underlying causes of the child soldiering problem, while searching for resources that will empower local communities to address those causes. Berg, Lune and Lune (2004: 197) aver that AR stimulates people to frame the narratives of their circumstances and develop strategies that may help remedy their situation. In this process, ethical rules to engage participants were observed, as far as the relationship between the researcher, co-researchers and participants is concerned.

In reference to *Canada's Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans*, published in 2010, Chevalier and Buckes (2013: 171) underline the ethical principles, based on "the respect for persons, concern for welfare and justice". More explicitly, with regard to respect for people, their dignity, autonomy and freedom of individuals, it is imperative to obtain "free, informed consent and ongoing consent of all those participating in research". The principle of welfare demands that confidentiality be kept, all participants in the study, therefore, remain anonymous; and the principle of justice requires that all efforts ought to be made to ensure fair criteria for participants' inclusion (Chevalier and Buckes 2013: 171-173).

¹⁶⁰ Email communication with Rory O'Brien (18 October 2014).

¹⁶¹ Email communication with Rory O'Brien (18 October 2014).

Thus, AR was taken on because of its participatory, collaborative, emancipatory, learning in action learning and its “contextual” characteristics (O'Brien 2001: 2). This was suitable to carry out this inquiry, also because,

Action research is used in real situations, since its primary focus is on solving real problems... Mostly, though, in accordance with its principles, it is chosen when circumstances require flexibility, the involvement of the people in the research, or change must take place quickly or holistically (O'Brien 2001: 6).

The paradigm of praxis is thus appropriate to this design, as an AR approach suits the main objective of this study, which is interventionist. Due the aim being that of empowering local communities to plan, implement and evaluate the effects of action taken to resolve the problem being studied. In this process, adults and children, victims and perpetrators are involved to voice their wishes and apply their knowledge, to critically address the needs created by conflict and the damages caused by the involvement of children in hostilities. All become involved in searching for the best alternative to discontinue this reprehensible practice.

9.2.3 Critics of action research

As with any methodological approach, AR has strengths and weaknesses. Its proponents defend its desirability and ability to generate scientifically valid knowledge, such as objective sciences and finally, the objection that AR could produce results (McKay and Marshall 2001: 48-49). To respond to these critics, McKay and Marshall (2001) develop a dual argument to sustain AR's epistemological values. This argument is based on “juxtaposition of action-research, theory-practice and practical problem solving interest - research interest” (McKay and Marshall 2001: 50-52).

The core of the argument lies in the fact that AR has dual aims: amelioration through transformation in a problematic context and new knowledge generation and gaining new insights, as a result of the researcher's activities (McKay and Marshall 2001: 50). The interesting aspect of this argument is that the AR researcher, after identifying a problem, develops questions and objectives, consults relevant sources that elucidates the issues, identifying theoretical frameworks that pertain to the questions and objectives of the project till, finally, a relevant theoretical framework is embraced for investigation of “research interest” (McKay and Marshall 2001: 51).

To overcome the simple consultancy critic, McKay and Marshall (2001: 52) aver that AR evolves in dual circles; one intends to solve the problem and the other pursues research interest. In addition, the conceptualisation of research hypotheses, objectives, paradigmatic and theoretical frameworks, as well as methodological procedures, make AR accede the circle of research approaches and designs that claim their own validity and reliability, to the extent that knowledge generating processes are duly followed.

These procedures include identification of issues, collecting data and consolidating the existence of the problem from relevant literature, identifying the methodological approach, as well as theoretical and paradigmatic frameworks, planning intervention, setting mechanisms and modes of evaluating outcomes, and remaining within framed ethical norms, relevant to both AR and other research components.

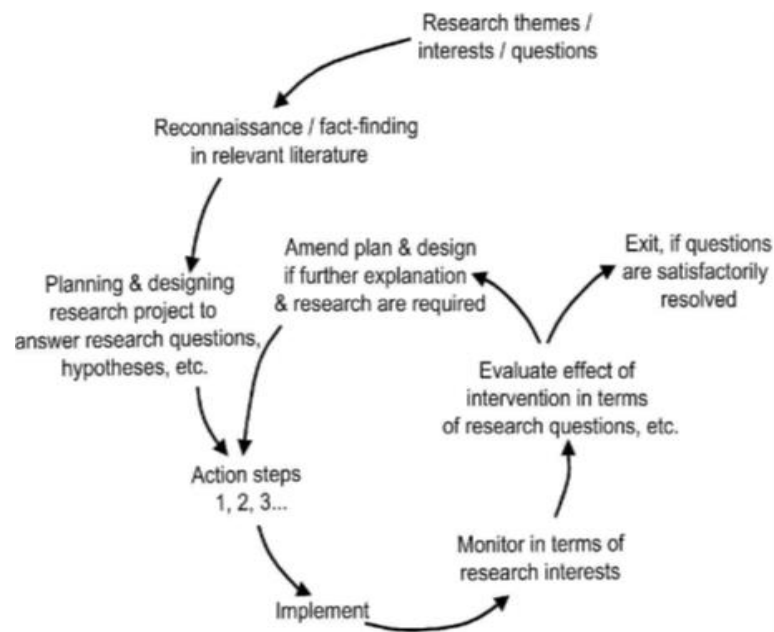


Figure 6: Action research viewed as a dual cycle¹⁶²

McKay and Marshall (2001: 57) argue that such conceptualisation of an AR project may ameliorate the rigour of AR because it demands that researchers focus considerably on “research interests and responsibilities”, which is not common to many of the AR traditional models. The authors’ argument fits the context of this study, and in exploring the overall setting, design and planning of this inquiry, all the required steps were followed to make AR a knowledge generating approach.

¹⁶² Action research cycle from McKay and Marshall (2001:51).

The cycle of research knowledge, according to McKay and Marshall (2001: 51), starts with identifying research themes (interests/questions), followed by fact-finding in relevant literature, after which research is planned and designed and answers (assumptions) projected, to respond to questions and validate hypotheses. The first action step is then taken, through the implementation of an intervention programme, monitoring action with a close look at research interest and subsequently, proceeding to the evaluation of the effects of the treatment, based on research questions. At that stage, the researcher may exit the cycle, should the questions have been successfully answered and the problem resolved or they can proceed to amend the original plan and design, should further research clarifications be needed and fall back on the action step (McKay and Marshall 2001: 51).

There is a variety of diagrams and graphics, through which scholars present their cyclical or spiral processes, with one or the other used to conceptualise and proceed with intervention and evaluation of the action adopted and implemented. One model, borrowed from O'Brien (2001: 4), is presented. It is important to note that the diagrams presented by McKay and Marshall (2001: 50,51) furnish a provision for the researcher to exit the cycle, should the problem be resolved after the evaluation step, or carry on with renovated design or amended planning, to continue further actions.

9.2.4 Underlying argument for adopting AR in this inquiry

AR was the appropriate approach to conduct this inquiry because of the need to involve different stakeholders affected by the child soldiering phenomenon, while not leaving child ex-combatants out of the solution finding process. Empowering participants to take the necessary action, in order to bring about a desirable social transformation, was possible through their full participation in this process. Participants need to deepen their understanding of the problem and become aware of its consequences, so that their actions would be motivated by their consciousness. In this regard, Reason and Bradbury (2001) note that participation in AR is a conscientising process and an educative imperative.

9.2.5 Action research data collection

<i>Pre-conference process</i>	<ul style="list-style-type: none"> <input type="checkbox"/> An advisory Group was set up made of local child soldiers representatives <input type="checkbox"/> Participants agreed on the process of pre-circles inquiry <input type="checkbox"/> Interviews, focus groups and survey questionnaires were used to gather in-depth information of the phenomenon of child soldiers on the ground. <input type="checkbox"/> Invitations were sent and introductory materials were distributed to interested parties (school principals, NGOs members and humanitarian agents, and local leaders. They gave their views and wishes on ways to prevent children from soldiering.
<i>Introductory plenary</i>	<p>Introductions, review objectives, outline process, introduce first stage: the objectives of the inquiry and the main features of peacemaking circles were explained and discussed in plenary with all stakeholders.</p> <p>SCANNING THE ISSUE</p>
<i>Small group session 1</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Past and present context of child soldiers practice: what is being done? <input type="checkbox"/> Assessment of current situation: ongoing enrolment and recruitments. <input type="checkbox"/> Outline probable futures: preventive measures using RJ circles.
<i>Presentation plenary</i>	<p>reports from small groups, discuss directions, introduce second stage</p> <p>DESIRED FUTURE</p>
<i>Small group session 2</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Long-range visions: empowerment of communities to use RJC's. <input type="checkbox"/> Alternative / preferred futures: resuscitation of the communitarian Baraza.
<i>Presentation plenary</i>	<p>reports, review progress, introduction to third stage</p> <p>OPTIONS FOR CHANGE</p>
<i>Small group session 3</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Constraints and opportunities: existing Baraza structure. <input type="checkbox"/> Possible futures: Adopting RJC' principles in Baraza.
<i>Presentation plenary</i>	<p>Reports, define strategic tasks / actions, select key tasks, form task groups: contacts with schools, contact with victims, contact with child soldiers, securing halls for the RJC programmes.</p> <p>TASK GROUP MEETINGS</p>
<i>Task Group sessions</i>	<p>Task Group reports, discuss future contacts, create new Advisory Group</p>
<i>Final plenary</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Reports were distributed to co-facilitators and school principals. <input type="checkbox"/> A follow-up was done to collect co-researchers' contacts. <input type="checkbox"/> Advisory Group facilitated meetings of Task Groups.
<i>Post-conference process</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Feedback on proposed actions was given by a chosen member of the team. <input type="checkbox"/> Further search conferences were planned. <input type="checkbox"/> The network was widened to local tribal authorities and local NGOs. <input type="checkbox"/> The local co-researchers were tasked to conduct more RJC's and evaluation of outcomes.

Figure 7: Action research tool (search conference chart) (Obrien 2001)

Search conference reports were used as sources of data and were taken from focus group discussions, interviews and research team reports. Search conference was developed by Eric Trist and Fred Emery and it consists of five steps, namely setting the pre-conference process, small group session 1, small group session 2, small group session 3, task group sessions and post-conference process (O'Brien 2001: 8).

In this process, preliminary insights on the problem were listed in the first instance, without criticism, in the plenary session. The identified items were discussed in greater depth in small groups and the composite picture checked out in plenary. The group next examined its composition and broadened the picture to a search for a desirable future, after which action steps were taken.¹⁶³ This approach was used during implementation and evaluation of peacemaking circles. Regarding this procedure, Rehm and Cebula (1996) assert:

The Search Conference is useful for setting new policy directions, and strategies in any sector, public or private; for finding common ground on difficult social conflicts; for developing or reforming communities, organisations, or industries. It works for any system coming together around a common purpose and looking for a desirable future (Rehm and Cebula 1996)

The main components of participatory AR research are: exploration (diagnosis/identification of the problem), description (current approaches to deal with the problem – first evaluation), intervention (planning and acting, in this case, the use of RJ circles), and evaluation (the outcome of the intervention for participants). These processes involve people affected by child soldiering, in a democratic, collective and participatory way (O'Brien 2001). The investigation observed the consensual, democratic, and participatory principles of AR, to encourage examination by the most possible people and reflectively, the child soldiering problem, how that affected them and how they could be involved to deal with it.

Searching was carried out in groups made of the relevant stakeholders that met in Goma for three days, prior to embarking on the intervention. The opening sessions helped elucidate the factors operating in the wider contextual environment - those producing the meta-problems and likely to affect the future.

¹⁶³ Eric Trist's summary of search conference copied from ABL Group, Future Search Process Design (Toronto: York University, 1997 cited in O'Brien 2001:8).

CPAR presented broader advantages for this research, as the intent is to mend relationships, broken as a result of armed conflict, and participants, namely victims, perpetrators and communities' members, needed to be involved as partners in the problem solving. The first intervention took place at Kiwanja Centre, followed by Rutshuru, then Goma and Masisi Centre.

The same people trained as co-researchers were used for planning, implementing, evaluating and reporting the research outcomes.¹⁶⁴ Their input was extensive and ongoing, and each component of the final report was discussed and democratically adopted, with each member's view given special consideration. Participatory activities that encouraged productive interactions and commitment, as well as a responsive, accommodative and respectful attitude towards children involved, were emphasised.

Sample one:

Annotations:

K = Interval

N = size population (total number of units) = 1900

n = sample size (number of units in the sample) = 282

r = Randomly chosen number where the count began (8)

$$K = \frac{N \text{ (size of population)}}{n \text{ (size of sample)}} = \frac{1900}{282} = 6 \text{ (Interval)}$$

Sample two:

The sample was increased from 282 to 1,447 participants, by including 1,165 in the follow up phase of the study that was randomly included from a population of 3495. They were selected using 3 interval (K), N (3495), n (1165).¹⁶⁵ New recruits were selected by means of non-probability techniques (convenience and snowballing sampling). By randomly assigning units

¹⁶⁴ Three co-researchers who assisted in this inquiry were Mr Patrick Kibonza (a trained lawyer and lecturer at one local college in Goma), Ms. Sandrine Kayandi (a law student in tone University at Goma), and Julien Bisimwa (a high school teacher). There were also two circles co-facilitators involved. These were Mr. Adolphe Kahatwa (Principal at a local high school in Rutshuru) and Mr Mamert Muzige (a public servant and humanitarian worker involved in peace negotiations among rival ethnic groups in Rutshuru).

¹⁶⁵ See sampling model one above.

of analysis, the research intended to avert the effects of history and sensitivity of participants to the instruments, in addition to which it was also necessary for internal validity of the study (Bless, Higson-Smith and Kagee 2006: 91). In addition, by limiting data collection to only two rounds with the same subjects, within a period of seven months for the pre-test/post-test CG, the sources of invalidity were restrained.

Reliability of the study was sustained by the fact that the sampling was based on the variability, heterogeneity of groups and diversity of the study population and by examining variables simultaneously in the data analysis (Bless *et al.* 2006: 108). Another reason for applying randomisation was to ensure that all the groups were identical, so that “any subject in the study had equal chance of being assigned to any of the groups” (Bless *et al.* 2006: 83). This process started with identifying the whole sampling frame, drawn by non-probability sampling, before randomly assigning them to CG and EG. The CG group remained intact, not being exposed to the RJ intervention programmes.

9.2.6 Inclusion and exclusion criteria

Participants were included in the sample based on the condition of being exposed to armed conflicts and having knowledge on the child soldiering phenomenon. Non-combatant persons were included either as victims, members of war-torn communities, or officials, public servants and members of NGOs. Those involved in peacemaking circles were invited either as supporters, friends or family members or people directly involved as offenders or victims. However, all former children, weakened by their participation in hostilities and those not physically, emotionally, psychologically and mentally strong, were excluded from the sample. Only those who signed consent forms were assigned to the sample.

The inclusion of participants below the age of 18 was guided by the ethical norms pertaining to participation of children under 18 in policymaking decisions. Their inclusion is justified by Article 12 of the CRC, which states: “The views expressed by children may add relevant perspectives and experience and should be considered in decision-making, policymaking and preparation of laws and/or measures, as well as their evaluation”.¹⁶⁶ Morgan *et al.* (2002: 5), citing the same convention, used it as basis for qualitative research methodology assessment, in conducting focus groups with children aged between seven and 11 year old. The authors note: “children and young people have a right to be involved in decisions that affect them. This right

¹⁶⁶ CRC, Article 12.

extends from decisions affecting them as individuals, to decisions that affect them as a collectivity” (Morgan *et al.* 2002: 5).

While public opinion shows reservations regarding the association of children with research, either as co-researchers or source of data, some scholars have sustained that children should not be excluded in search of viable solutions to issues of their interests. They can provide a viable contribution to improve their condition, should they be treated with fairness and dignity. Scott (2000: 99) argues that, “the best people to provide information on the child’s perspective, actions and attitudes are children themselves. Children provide reliable responses if questioned about events that are meaningful to their lives”. The author found unquestionably that, it is only by interviewing children directly, that their social worlds can be understood. It is further argued that general population surveys that do not include children’s own narratives, would come up with a “biased estimate of many important variables” (Scott 2000: 115). The importance, of the methodological approach should be cognisant of the environment, the social position of the researcher and the techniques of data collection (structured questions or face-to-face interviews), as it may negatively impact the outcomes, as observed by Scott (2000).

While researching with children as sources of data, it is fair to use focus groups as the most advantageous strategy (Scott 2000: 115; Morgan *et al.* 2002). Self-structured questions are not considered appropriate for children because of their “cognitive and language limitations”, nonetheless, they are useful to supply valuable insights, while meaningful information can be provided by adolescent children (Scott 2000: 115). Finally, it is maintained that focus groups with children proved a very successful way of diagnosing pertinent questions and gaining sensitive information (Scott 2005: 115).

Taking into consideration that the objective of the study was to prevent children from participating in hostilities, it was important that child ex-combatants and others be given the opportunity to contribute to solving a problem that affects them and their community, establishing to what extent they could use their agency to minimise or to eradicate it, and how they see the role of society in coming to their rescue. At the same time, AR using RJ peacemaking circles, was a pedagogic tool in helping child soldiers learn about social values and other implications of violence perpetrated by minors, especially child soldiers and other children in conflict with the law.

Child participants in the study were involved in focus groups and personal interviews were occasionally conducted when necessary and willed by children who desired to share their experiences. The interviews took place in parish halls of the Roma Catholic church in Goma (for former child soldiers already inserted into society) and in interim centres in Masisi district and Rutshuru district (Kiwanja and Nyahanga village), for those who awaited tracing of their families and family reinsertion.

9.3 Experimental designs

Pre-test/post-test design was used. This consists of randomly assigning units to two groups, namely an experimental group (EG) and a control group (CG), with the intervention applied to the experimental group only, after which both groups are compared, before and after intervention, to establish whether the scores from both groups show a difference that could be attributed to the intervention factor (Bless *et al.* 2006: 87).

In the same vein, Babbie (2013: 273) describes pre-testing and post-testing as a design, in which “subjects are measured in terms of a dependable variable (pre-testing), exposed to a stimulus representing an independent variable, and then measured in terms of the dependent variable (post-testing)”. The approach is used to measure the effect of a treatment or remedial intervention, in such a way that “any differences between the first and the last measurements on the dependent variable are then attributed to the independent variable” (Babbie 2013: 272).

There are several types of experimental designs and their application in social sciences is part of the large scholastic work (Campbell *et al.* 1963; Babbie 2013; Bless, Higson-Smith and Sithole 2013). While implementing RJPCs experiment to the EG, the experimenter also observed the CG, which did not receive any experimental stimulus (Babbie 2013: 273). Campbell *et al.* (1963) expound largely on these issues and their diverse implications in the use of various experimental and quasi-experimental research designs.

Babbie (2013: 273) affirms: “[U]sing a control group allows the researcher to detect any effects of the experiment itself”. The pre-test/post-test research design has been extensively used, with the finality of “comparing groups and/or measuring change resulting from experimental treatments” (Dimitrov and Rumrill 2003: 159) in behavioural research. This design was suitable to achieve the objectives set by this inquiry. The instrument used to measure the change was survey questionnaires, with nominal scales (classification of

information into categories or groups) and ordinal scales (comparison and establishment of rank-order between different variables”) (Bless *et al.* 2006: 113).

Peacemaking circles were conducted under the following assumptions: (a) That the response to crime should repair, as much as possible, the harm suffered by the victims; (b) that offenders should be brought to understand that their behaviour is not acceptable, with some consequences for the victim and community; (c) that offenders can and should accept responsibility for their action; (d) that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and (e) that the community has a responsibility to contribute to this process (United Nations 2006: 8). These principles guide the evaluation process to establish the impact of RJPC on participants.

The use of CG design, after randomly selecting units of analysis, allowed the experimenter to draw inferences based on the difference observed between the mean of two groups and different variables, after exposition of EG to the intervention, while other units remained intact (CG). Bless *et al.* (2006) explain: “If only one group is subjected to the treatment, the researcher can be reasonably sure that any difference between the groups thereafter is due to the effects of the treatment and nothing else” (Bless *et al.* 2006: 84). The difference helped to establish how effective the programmes have been and to what extent it can be generalised.

Procedure of experimental design:

X (Stimulus/intervention), O (Observation), R1 (EG), R2 (CG) NX (No intervention) experimental treatment), PTO1 (Pre-test observation-EG), PTO2 (Pre-test observation CG), PTT01 (Post-test observation-EG), PTT02 (Post-test observation of CG), PTT03 (Compared observations of PTT01 and PTT02).

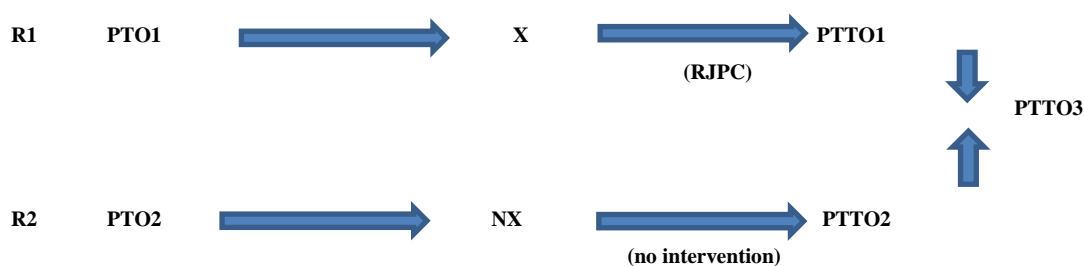


Figure 8: Pre-test post-test observations process

The expected outcomes of RJPC are measured by testing hypotheses. In order to establish the effectiveness of RJPC, three comparisons were made: comparison of pre-test of EG and CG, comparison of pre-test and post-test EG and comparison of post-test observations of the EG and CG (Bless *et al.* 2013). Pre-test/post-test CG design was utilised to measure the effects of the intervention. Both groups (EG and CG) were measured at the start of the inquiry and intervention was applied to the EG.

Following the intervention, a second measurement was carried out. The instrument used for pre-test and post-test was a survey questionnaire based on nominal and ordinal scales. Data were checked at different steps of testing and during statistical analyses. Maturation and testing effects were controlled by checking for presence in both EG and CG (Campbell *et al.* 1963). The subjects were randomly assigned to both CG and EG. The effects of history were controlled, by confining the research to a period of seven months.

In order to measure the effects of peacemaking circles, the following questions served as a guideline proposition:

Do participants emerge from the RJ response feeling respected and safe? Are they motivated and empowered to live constructive and civil lives? Are they living in the community in a way that demonstrates an acceptable balance of freedom and responsibility? Are responses by authorities, community, and individuals respectful, reasonable, and restorative for everyone? (Noll 2003: 285).

These interrogations were tested and expressed by participants through their rating of the level of satisfaction stages and approaches of data collection, intervention and evaluation. The chapter on findings deals entirely with these questions.

A good range of instruments commonly used in qualitative research were considered, including quantitative surveys methods. Research team members assisted participants to respond to questions, with structured and contingency questions. In order to ensure that questions were open-ended, a provision was made to allow participants to give their opinions/answers that are not suggested in the framed questions, so they could freely provide descriptions of the phenomenon. This helped to gain an in-depth understanding of the problem from focus group discussions and interviews. There were also closed questions, whereby respondents had to choose from the proposed possibilities, particularly in questionnaires for the post-test CGs.

Voice recording was also a useful instrument for analysis of interviews, focus groups and search conferences.

Post-testing data was collected by means of questionnaires that were cross-examined with interviews and focus groups that involve all former child soldiers and non-combatant child participants. These instruments were required by the nature of data needed to address the challenge this study was investigating. They provided extensive explanations and descriptions of the context, attitudes, behavioural patterns of the populations being studied, and led to a better evaluation of the theory being tested. The overall span of time for the administration of the survey was seven months. In addition, the peculiar nature of AR as problem solving, namely the use of a theoretical framework (McKay and Marshall 2001: 47) provided the ground to test RJ peacemaking circles as the conceptual framework of the inquiry.

9.4 Research paradigmatic orientation

AR is guided by the following principles: (1) “reflexive critique” (narration of a situation); (2) “dialectical critique” (validation of social reality dialogical expression); (3) “collaborative resource” (participants take part in a research project as co-researchers); (4) “risk” (AR involves a change process of engaging that, at times, creates “psychic fears among the practitioners”); (5) “plural structure” (by nature AR embodies increasing opinions, commentaries and critiques that lead to a variety of possible actions and interpretations); (6) “theory, practice, transformation” (action researchers regard theory as informing practice, and practice as refining theory, and all this implies an ongoing transformation) (O'Brien 2001). These assumptions provide AR with a pluralistic paradigmatic orientation.

The debate is focused on three main paradigms, based on positivist, post-modernist/constructivist and pragmatic models. This study was explorative, interventionist and evaluative, combining constructivist realism (Cupchik 2001) and a praxis paradigm (O'Brien 2001).

The positivist philosophy was developed by August Comte and from 1830 onwards distinguishes itself from theology and metaphysics, by accepting only positive facts and observable phenomena with objective correlation between these phenomena and laws determining them, as knowledge (Comte 1975: xiv). In its later development, this philosophical

school has been associated with knowledge inquiry using quantitative data, in determining cause-and-effect or deducing knowledge from detailed observations and measures of variables (Creswell and Clark 2011: 40).

When a researcher proceeds with quantitative methods, such as surveys and experiments, based on some determined theories in advance that guide the process, they are then working within the post-positivist worldview that guides the study, starting with particular variables, using empirical measures, set within an existing theory that is being tested and described by the survey project (Creswell and Clark 2011: 45). This approach was one component of this study as well.

Social constructivists maintain the assumptions that individuals seek understanding of the environment in which they live and work. Thus, individuals develop subjective meanings regarding their experiences, providing meanings to things and objects that surround them (Creswell 2009: 8). The constructivist perspective, in addition, follows the postmodernist trend, as paradigm. It is associated with qualitative inquiry, according to which knowledge emerges from different, subjective understandings or views of reality (Creswell and Clark 2011: 40).

From this point of view, knowledge is socially constructed, shaped by social and historical meaning provided by participants in their interaction with observed phenomena (Creswell and Clark 2011: 40). This implies that reality is social construct and is bound to ecological and social conditions that are carried by the “knowing subject”, who gives descriptions and vest it with interpretive meanings.¹⁶⁷ When an investigator proceeds with qualitative methods, such as focus group discussions in a later phase of an inquiry or its follow-up stage and expound on the survey findings, they are working from a constructivist point of view (Creswell and Clark 2011: 46).

This method was used, following the first survey before the intervention and after the intervention, and finally after the follow-up survey. It was carried out through AR search conferences, focus group discussions and interviews. The two methods were sequentially

¹⁶⁷ This framing of knowledge process reflects my personal experiences on the field through several interactions with diverse populations and varied locations. Individuals bear the “known object” that they explain according to experiences attached to the object and how that affects the subject that narrates it. But this “constructivist ontology” may be insufficient to define reality. This point is explained further in this section.

integrated in the peacemaking circle praxis. Incorporating quantitative and qualitative methods was suggested by the pragmatic approach adopted in AR.

The “paradigm of praxis is seen as where the main affinities lie” in AR (O'Brien 2001: 6). Praxis is understood as a creative use of human experience and as the basis that leads to commitment in transforming social reality. Finally, O'Brien (2001: 6) avers: “[...] knowledge derived from practice, and practice informed by knowledge, in an ongoing process, is a cornerstone of action research”. Additionally, a praxis paradigm, or pragmatism, befits the assumptions of AR.

This argument is supported by scholars, such as O'Brien (2001), Zuber-Skerritt (2001: 22) and (Christ 2010). It is affirmed that the ontological and epistemological assumptions underpinning AR lie in praxis, in the sense that “[t]here is no learning/research without action to follow, and no action without a knowledge foundation based on prior learning/research” (Zuber-Skerritt 2001: 15). In the same vein, O'Brien (2001: 6) supports that praxis is the epistemological and theoretical preference used to conduct AR. To expound the concept of praxis, it is understood as a creative use of human experience, as the basis that leads to commitment in transforming reality through reflective action, in the sense that praxis becomes the goals of theory, more meaningfully through social praxis, such as justice, and so on (Lane 1984: 795).

Constructivist realism, used as the main research paradigm, argues that positivism and constructivism are complementary, in the sense that a qualitative method provides an in-depth description of social phenomena and a quantitative method brings precision from the meanings that emerge from statistical inferences of initial data, gathered through qualitative methods (Cupchik 2001). The author notes that his complementary view substitutes the notion of two approaches “qualitative-quantitative sequence” because it is recursive, in the sense that it can repeat itself indefinitely in a way that “one approach feeds back into the other” and be able to determine how solid conclusions are deduced from qualitative data.

Together, qualitative and quantitative methods provide complementary views of the phenomena and efforts at achieving their reconciliation can elucidate processes underlying them. Constructivist realism is an ontological position that accommodates the best of positivism and interpretivism (Cupchik 2001).

The use of “multiple worldviews in mixed methods” or a combination of paradigms, is supported by several scholars, such as (Mingers 2001; Christ 2010; Creswell and Clark 2011). Creswell and Clark (2011) remark that multiple paradigms may be applied to mixed methods, provided that researchers strive to be specific about their use.

This inquiry started with a post-positivist worldview, by collecting surveys on participants’ opinions, regarding existing intervention measures to prevent children’s participation in armed conflict. A constructivist worldview guided the PAR and the collection of data by means of focus groups and interviews. Constructivist realism was the summative paradigmatic framework because AR has developed into an inquiry, conducted with the lens of critical realism and pragmatism (Christ 2010). Critical realism is explained as an incorporation of realist ontology and constructivist epistemology. It is described ‘[...] as an integration of realist ontology (there is a real world that exists independently of our perceptions, theories, and constructions) with a constructivist epistemology (our understanding of point)” (Creswell and Clark 2011). Constructivist realism or critical realism defines, in the best way possible, the paradigmatic framework of this research.

The rationale for combining two paradigms (constructivist realism and praxis) was justified by the complexity of worldviews and mixed methods approaches used to conduct this search of knowledge. Mixed methods give an inquirer the latitude to deduce from both qualitative and quantitative assumptions, within worldviews that are appropriate to reach the goals of the study (Creswell 2009: 10). Constructivist realism is an integration of both worldviews combined with pragmatism. A study of a complex phenomenon, such as the child soldiering practice, requires a comprehensive, methodological strategy and design that can help uncover the meaning of the problem, in order to adequately solve it. This fact made this inquiry exciting, in the sense that it approaches the questions it raises, in a more dynamic and pluralist way.

9.5 Conclusion

This chapter discussed the overall research design, starting with AR, particularly CPAR and issues pertaining to this design, namely different concepts used to describe AR, and the underlying reasons that informed opting for this mode of inquiry. The pluralist paradigm was based on post-positivist and constructivist worldviews, integrated into critical realism or constructivist realism. A combination of these approaches was informed by the nature of data demanded by the complex nature of the issues, which needed a harmonious mixing of the

research components to attain the research objectives. In many parts of the eastern DRC, the ravaging consequences of protracted armed conflict are such that affected communities have been helpless to prevent participation to of children in armed conflict, or address the need for accountability that arises thereafter. In this context, AR is a more adequate research type to engage society in a transformative project.

CHAPTER TEN

RESEARCH METHODS AND DATA COLLECTION

10.1 Introduction

Action research has evolved as a mixed methods mode of inquiry, using the lens of critical realism as its theoretical framework and pragmatism as the paradigmatic orientation for both mixed methods and AR (Christ 2010). Mixed methods research is an inquiry, whereby analyses of data and the findings are integrated, and conclusions are deduced from both qualitative and quantitative data techniques, in a single study (Christ 2010: 644).

Concurrent, sequential mixed methods and multi-methodology were the desirable approach to conduct this AR and experimental study. This approach responds better to an investigation of a multi-layered and complex phenomenon, such as child soldiering, which required a more global understanding of its underpinnings, in order to come up with a sustainable strategy to deal with it. Research method components to be examined here, include the rationale for mixed methods, data collection, data analysis and interpretation, limitations of the study, validity and reliability, as well as ethical considerations.

10.2 Rationale for mixed methods

The philosophical and epistemological assumptions underlying this investigation demand a combination of qualitative and quantitative methods. This is justified by the exploratory, interventionist and evaluative objectives set to investigate the research problem. Though the main approach is a concurrent transformative strategy, at an initial stage, this study evolved as a sequential mixed method, starting with qualitative data collection, through a literature review and pilot testing, followed by a quantitative phase at its evaluative stage (Creswell 2009: 122).

Concurrent, mixed methods or the combination of both quantitative and qualitative data collection and analysis, within a chosen theoretical framework, was useful to reach conclusions that could bring transformation in the subjects of study and address their particular needs (Creswell 2009: 15,123). Mixed methods are useful in social sciences, when investigating a complex social phenomenon, in a process that requires experimentation and evaluation. The use of AR further supports this methodological strategy.

Exogenous variables to uncover, are factors that allow the ongoing use of children as soldiers. The reason for collecting qualitative data initially, was to lay the groundwork for PAR. In the post-test phase of the inquiry, an analytical survey was used to determine how participants' opinions changed, after going through restorative circles processes. This method is similarly suggested and supported by Mingers (2001: 252), for it provides the best grounds for exploration of the phenomenon, planning intervention to resolve the problem.

A longitudinal strategy was used to allow a span of time elapse before the evaluative phase. The purpose of the two phases, sequential mixed methods study and concurrent transformative strategy was to explore the potential of restorative peacemaking circles and establish its effectiveness. This combined approach helped to appraise the effectiveness of this approach to justice, in resolving the problem being studied. This approach was capable of generating generalisable outcomes because it used quantitative strategy (survey and experimental design) and qualitative strategy (interviews, focus groups and literary research).

10.2.1 Mixed methods

A combination of both qualitative and quantitative approaches was used to help achieve the goals of this study. Trochim (2003) asserts “[...] qualitative and quantitative data are intimately related to each other. All quantitative data is [are] based upon qualitative judgments; and all qualitative data can be described and manipulated numerically”. Statistical surveys conducted by early research were consulted and supported the existence of the problem being investigated. Johnson and Onwuegbuzie (2004: 17) define mixed methods research “as the class of research where the researcher mixes or combines quantitative and qualitative research techniques, methods, approaches, concepts or language into a single study”.

According to Mingers (2001: 252), mixed methods comprise the following types: sequential, parallel, dominant (imperialist), multi-methodology and multilevel. This inquiry employed mainly three approaches to mixed methods that are not exclusive of each other but rather complementary:

- **Sequential Methods:** This approach consists of using qualitative and quantitative methods in a sequence, with findings from one method feeding into the other later (Mingers 2001: 252). For instance: a researcher starts with statistical analysis of a questionnaire, then follows up with some in-depth interview findings, to enhance a

better understanding of the results (Mingers 2001: 252). This strategy is also identified as convergent design that merges analysis of quantitative findings with qualitative themes (Creswell and Clark 2011: 244)

- Multi-methodology: This procedure implies combining methods, “embodying different paradigms, developed specifically for the task” (Mingers 2001: 252). This was done by employing interview data analysis and questionnaire findings, in such a way that they resonated with problem definitions and conceptual models underscoring the study.
- Sequential transformative mixed methods: This strategy combines both quantitative and qualitative data, collected at the same time, in a sequential manner. The two types of data are gathered in phases, by integrating a stimulus-strategy, with the intent to deal with an issue essential to “underrepresented or marginalized groups or individuals” (Creswell 2009: 212).

The transformative and intervention nature of this inquiry reflected these three types of mixed methods. The desirability of this design is explained by Creswell (2009: 71): “The outcome of such a study is to advocate for the needs of these groups or individuals, and this information is included in the purpose statement”. The “transformative design” merges sequential analysis, by means of a presentation that compares the approaches in a call for action, with the support of statistical findings of qualitative themes or a combination of both (Creswell and Clark 2011: 247). Multi-methodology, in the context of this inquiry, is at the same time transformative (in the sense that it applies sequential qualitative and quantitative methods), while adopting an interventionist strategy (peacemaking circles programmes), with the purpose of bringing some transformation that consists of bringing participation of children in armed conflict to a halt.

The use of sequential and converging mixed methods in PAR and the experimental dimension of this inquiry, to evaluate the intervention, required the use of constructivist realism as a model to frame the methodological approach. This involved sequencing, with qualitative data analysis feeding into quantitative analysis and vice-versa. Interview, focus groups, discussions and search conference reports’ data were analysed through discourse analysis and content analysis.

The first phase of the inquiry consisted of a qualitative exploration of critical issues and ongoing intervention programmes, as well as unaddressed “criminal responsibility” of former child soldiers and the impact of this on their reintegration. This sequence of data collection focused on qualitative textual data (literature consulted, videos, online posted studies, published books, and peer-reviewed journal articles), as well as empirical data (interviews, focus groups and search conference data) obtained from ex-belligerents and non-belligerents, victims and non-victim members of the community, along with child care and protection actors in North Kivu Province. The findings from this qualitative phase were then used to plan AR by conducting restorative peacemaking circles in four centres in the North Kivu. In this process, the phenomenological study approach was applied.

10.2.2 Phenomenological reduction method (*Epoche*)

Phenomenology is a 20th century philosophical movement, which in this study, is understood as “a scientific study of the appearance of things, of phenomena just as we see them and as they appear to us in our consciousness” (Moustakas 1994: 103); and empirical phenomenology. The latter proceeds as follows: “First the original data is comprised of ‘naïve’ descriptions obtained through open-ended questions and dialogue. Then the researcher describes the structure of the experience based on reflection and interpretation of the research participant’s story” (Moustakas 1994: 103).

The aim of this process was to determine what child soldiering experience meant to the populations affected by armed groups/ forces and children themselves. It was necessary to use hermeneutical phenomenology, supporting that “human existence is interpretive” (Embree 1997).

As part of the transcendental phenomenology as research approach, the following steps were followed, as explained by Moustakas (1994: 103):

- Finding a topic and questions rooted in social meanings and significance;
- Running a comprehensive review of the research literature and the professional;
- Organising a set of standards to find appropriate co-researchers;
- Instructing co-researchers on the nature and purpose of the inquiry, and developing an agreement to satisfy ethical principles, such as informed consent, confidentiality,

delineating the responsibilities of the main researcher, research assistants, research participants that conform to ethical principles;

- Inventing a set of questions or topics to direct the interview procedure;
- Running and reporting a lengthy face-to-face interview “that focuses on a bracketed topic and question”, and conducting a follow-up interview in case it is needed; and finally,
- Structuring data and analysing that, along with facilitating the development “of individual textural and structural descriptions, a composite textural description, a composite structural description, and a synthesis of textural and structural meanings and essences” (Moustakas 1994: 103).

In conducting phenomenological reduction (*epoche*), the investigator proceeds in setting aside everything that arises as a prejudgement or presupposition during data collection, regarding the phenomena of child soldiers, by making an effort to describe interrelated facts on the study and understanding them. This is done through applying an intuitive mind and personal reasoning, in order to obtain the real meaning of the issue being investigated.

In this regard, Moustakas (1994: 27) affirms that creation of meaning begins when the object appears in our consciousness and is directed to the perceived object or object in nature: “What appears in consciousness is an absolute reality while what appears to the world is a product of learning”. The author adduces that “the act of consciousness and the object of consciousness are intentionally related. Intuition is therefore essential in describing whatever presents itself and in his transcendental philosophy, Husserl preferred using intuition over deduction” (Moustakas 1994: 27).

The child soldiering practice, though rooted in social ecologies, belongs to the realm of human experience. For this reason, a phenomenological method was appropriate to reduce the bias of interpreting qualitative empirical data on the basis of prejudices. In support of this approach, Moustakas (1994: 180-182) offers that a phenomenological method is a valid process of studying human experience. The following techniques are presented as necessary steps, in pursuing scientific knowledge of a phenomenon: “*epoche*”, “phenomenological reduction”, and “imaginative variation and synthesis”. These components are not meant for extended discussion in this inquiry but were applied accordingly.

The necessity to avoid biased conclusions and fallacious interpretations of the phenomenon being studied, demanded that the *Epoche* (bracketing personal experience) is applied to the knowledge acquisition process. In the same vein, Nieswiadomy (1993, cited in Creswell 1994: 12) indicates that, when using phenomenology as research method, the researcher “brackets” their own experiences, so that they can understand the collected information, through the experiences of the informants (Creswell 1994: 12).

Aware of this fact, with co-researchers, the research team strived to grasp the significance of the data, by relying on the knowledge of informants, in setting aside personal views and prejudgments. An attempt was made to understand the problem without the thinking from own personal experiences, emotions, thoughts, perceptions, feelings, beliefs and opinions. This stand helped to present the findings in an objective way.

10.3 Data collection and treatment

With regard to data collection and analysis, Grix (2004) suggests a variety of techniques and procedures to achieve this. The author states: “There is a wide variety of methods, ranging from discourse analysis, archival retrieval of data, interviews, direct observation, comparisons of data, and documentary analysis to surveys, questionnaires and statistics” Grix (2004: 170). Thematic, discourse and context analysis methods were used in this inquiry. The literature consulted suggested there are many studies on child soldiers.

A longitudinal approach of data collection was used. This means the first set of data were collected through interviews and focus groups, before intervention programmes, with a second round of data collection obtained after intervention programmes, to evaluate the effects of the programmes on participants. A third phase, set as follow-up, was included to deepen the understanding of the key themes that emerge in the two first phases. Longitudinal study consists of using the same population as the units of analysis, on a number of occasions, over a period of time (Bless *et al.* 2006: 75).

As an evaluative and interventionist research, this inquiry was also a cohort study (Bless *et al.* 2006: 75), interested in tracking participants to collect new data, for measuring the effects of RJ programmes and their deterrent effects on the child soldiering phenomenon. Primary data was gathered by means of quantitative methods (descriptive statistics and bivariate correlations

using cross-tabulations and Chi-Square tests of significance) and drawing statistical inferences; from qualitative techniques (focus groups, discussions, interviews and search conferences).

Secondary data were mainly textual (documentary sources and audio-visual materials), while the secondary survey source consists of statistical data, based on random sampling from an initial cluster sampling among the populations of the Northern Kivu. The use of survey is explained as follows: “A survey provides quantitative or numeric description of trends, attitudes or behaviour or opinion of a population by studying a sample of that population” (Creswell 2009: 145).

Over the three phases of the inquiry, 46 focus groups were conducted (31 in phase I, 13 in phase II and 3 in phase III); 105 structured and semi-structures were administered in three phases; and 17 RJPC programmes were run (5 peacemaking circles in phase one and 12 RJPC workshops in phase III and part of the follow up study). It was noted that between 10 and 20 participants took part in peacemaking circles while an average of 68 participated in RJPC circles during which Baraza was discussed and evaluated. Educators/teachers and NGO members in CTOs assisted in creating an atmosphere of sharing and linking the research team to participants.

10.3.1 Interviews

The use of interviews in qualitative research is one of the techniques to collect information from interviewees, who verbally express their experiences of the phenomenon. This gives the researcher access to primary sources that constitute in-depth descriptions and explanations of the phenomenon being reported. Non-scheduled, non-structured interviews and interactive interviews were combined.

Non-scheduled interviews consisted of asking participants to give broad comments on issues of the inquiry (Bless *et al.* 2006: 116), which in this research, concerned the prevention of the child soldiering practice. Scheduled interviews were based on a list of issues and interview protocol that were handed to participants prior to meeting them. All participants in the study were taken from the sample of 1,447. Interviews took place either in the interviewee's place in private, at the Roman Catholic Church premises, at schools and at CTOs at Goma, Rutshusu, Kiwanja, Masisi centre, Mutiri village and Kitchanga (North Kivu).

Non-scheduled interviews were interactive. Participants were asked to verbally describe their experiences of the child soldiering phenomenon, either as a soldier or a member of the community. The discussions focussed on what participants suggested would halt the child soldiering practice. This approach gives the latitude to respondents, to elaborate and express their full understanding of the phenomenon (Neill 2000). Only questions listed in the protocol were asked and a probing technique was used to deepen the understanding of respondents' descriptions of the phenomenon. Permission was granted by participants to record the conversations. Each interview lasted between 30 and 45 minutes.

10.3.2 Focus groups

A focus group, as a data collection strategy, gives the researcher the opportunity to prompt group members to discuss and deliberate on questions that need answers, capable of creating an analytical framework, to enable a better grasp of the problem and a possible solution (Davies 2001:202).

With participants below 18 years of age, interactive discussions were prioritised, and embraced thematic questions that were factual, opinion-based and dependent (Bless *et al.* 2006: 117,128-131). These themes were developed prior to the discussions. The rationale for using focus group was the latitude to gain deep insights into questions of interest, as group members share their feelings and express their desires about issues tabled by the researcher. Bless *et al.* (2006: 122) assert: "[...] focus group is very useful in action-research where [a] part of the researcher's goal is to help address a particular problem facing a particular group of people".

In order to avoid a biased outcome, domineering tendencies were restrained, those who could not communicate were encouraged to express themselves, and groups' composition was based on the criteria of gender, age, level of education, and social status, as well as language (Bless *et al.* 2006: 123), and past experience and knowledge, with regard to the issues to be discussed.

The criteria of homogeneity were used for practical reasons. It aimed to ensure that group members were free and could interact freely with one another, in a natural and friendly environment, without fear of being threatened by other participant's backgrounds. All recruits were regrouped under geographical origin and language criteria, in order to avoid travelling from one place to another and using interpreters. All participants were taken from the same sample throughout the study, to ensure familiarity and save time that would require re-

recruiting and proceeding with all the sampling work all over again. The recruitment took place at the start of the inquiry and at the last step of following up on the key findings of the study, while the discussions were held in the same locations where participants come from.

10.3.3. Empirical study using focus group with children

Morgan *et al.* (2002) conducted a study that was interested in methodological issues pertaining to leading focus groups with children, between seven and 11 year old, as research participants. The authors aver that children have become increasingly active contributors to knowledge, by their rights to be involved in decision-making processes that concern issues affecting their lives (Morgan *et al.* 2002: 5).

The same view is held by Schmidt (2007: 61) and Wessells (2006: 229), who discuss child soldiering agency in a post-conflict war context, whereby children are called to participate in determining decisions that would impact them. This study by Morgan *et al.* (2002) was focused on the therapeutic experiences of children living with asthma. Eleven focus groups were conducted, in which a total of 42 children participated, with the sample drawn from a mixture of children, originating from different socio-economic and ethnic backgrounds, in urban areas.

“Child-friendly techniques” were used to motivate children’s participation in the discussions, led by an experienced facilitator and co-facilitator. Data were collected on a tape recorder and group dynamic was also under observation (Morgan *et al.* 2002: 6-7). It was found that children provided new insights into their experiences that were different from adults’ priorities (Morgan *et al.* 2002: 16). Children’s views contributed to finding a therapeutic model that suits them best.

Focus group discussions present a number of advantages for research with children. They address the concern of justice and objectivity in any inquiry that attempts to address children’s wellbeing. Children’s involvement, in the process of finding solutions to a problem that affect them most, is paramount (Scott 2000: 99, 115). Focus groups are also very plausible and adapted to children because, in focus groups, participants can discuss problems with one another, and in case of disagreement, a much deeper understanding of the issues can emerge.

This approach offers an opportunity to participants to learn from one another; and it is worthwhile in action-research, where a specific problem, concerning a particular community, is

addressed (Bless *et al.* 2006: 122). It was noted that children interacted well among themselves and took an interest in discussion when they had to describe their afflictions, suffering and the need for healing.

10.4 Data analysis and interpretation

Analysis and interpretation of qualitative data followed an interpretive paradigm, based on a phenomenological method, discourse and content analytical methods. Quantitative analysis was done by means of the Statistical Package for the Social Sciences (SPSS). Qualitative data analysis relied on an interpretive paradigm. Myers and Avison (1997) aver: “Interpretive research does not predefine dependent and independent variables, but focuses on the full complexity of human sense making as the situation emerges” (Myers and Avison 1997).

This method presents some advantages, such as helping the researcher to grasp the real meanings and sense of events, experiences and information embodied in textual data, as they come to hand. Quantitative and qualitative methods were combined and understood with the lens of constructivist realism (Cupchik 2001). AR and experimental design, adopted here as mode of inquiry, developed as critical realism, is a paradigm that suits these combined designs (Christ 2010: 644). Such an approach is called multi-methodology, a composite of methods and paradigms suitable to the objectives of an inquiry (Mingers 2001).

10.4.1 Discourse analysis

Discourse analysis employs the constructivist method of interpretation that allows handling interview talk with various expectations that are based on our way of learning; through analysis and interpretation or from people’s daily verbal language. Talja (1999: 2) explains: “Participants’ accounts, or verbal expressions, are not treated as descriptions of actual processes, behaviour, or mental events. Interview talk is by nature a cultural and collective phenomenon”.

The aim of discourse analysis is to generate interpretations that are “intrinsically macro-sociological”, which does not imply that research data should be voluminous, but even a single interview can be enough to show diverse possibilities of interpretations (Talja 1999: 3). The basic components of analytic discourse methods concerned with this inquiry are “context-dependent variation in interview talk”, “participant’s interpretation work”, “identification of

interpretive repertoires”, and “statements and absences”, along with “interviews as social texts” (Talja 1999: 3).

An additional aspect that needs to be highlighted is “Context-dependent variation in interview talk”, consisting of selecting some portions of participants’ records that were meaningful to the research questions and leaving out the parts of their discourses that were not relevant. This selective approach was necessary to include only useful and relevant data in the study and applied to interviews and focus group discussions.

Another advantage that discourse analysis provides is enabling an investigator to consider “participant’s interpretation work”. This implies that the researcher “abandons the acception that there is only one truly accurate version of participants’ action and belief. [Because] interview talk is, by nature, interpretation work concerning the topic in question” (Talja 1999: 3). This was taken into consideration when analysing focus groups and individual interviews. A distinction was made between the real fact or point that participants put across and what emerged from their own interpretation of the questions, due to interview talk being “reflexive, theoretical, contextual and textual, because the objects of the talk (e.g., the library) are not abstract, ideal entities everyone sees in the same way” (Talja 1999: 3).

Identification of interpretive repertoires is one more component of an analytical discourse method, whereby “all the accounts produced by the participants are taken into consideration and analysed in order to identify significant patterns of consistency and variation in them” (Talja 1999: 8). After identifying these patterns, the researcher asks the following questions: “What is the starting point behind this account? On what kinds of limitations of perspective is this particular description based? What other statements in participants’ interview talk are based on the same perspective?” (Talja 1999: 8).

This process ends with systematic connections between the descriptions, the narrated facts, the arguments and the perspective from which they were generated, mentioning the diverse “interpretive repertoires” by ideas or concepts that recur in participants’ expressions and which are often used when the subject is viewed from a certain point of view (Talja 1999: 8).

Statements and absences are also an important component of discourse analysis; this refers to the “non-said” meanings of a specific discourse type (Talja 1999: 9). In addition, absences

refer to parts of the discourse, especially those missed, such as probable interpretations and explanations, which have not been uttered or even thought of, then the topic is looked into from a particular perspective (Talja 1999: 9).

When analysis is done on verbal expressions of participants, it is crucial to note statements and absences, so that a full interpretation is done, in order to gain the real meaning of the topic being studied. Talja (1999: 10) argues: “Discourses are not individuals’ creations: they have taken their shape with the passage of time, they reflect the whole history of the societal form, and they have effects which no one has consciously meant”. A study based on gathering data through interviews can miss a great deal of meanings, should it remain confined to spoken words only. Respondents’ answers were understood alongside their gestures and body language. Many victims and child soldiers never said a word, but their facial expressions explain their state of mind and translated their experiences, from which meanings emerged.

Interviews as social texts were looked into, while conducting discourse analysis. Considered as social texts imbedded in verbal language, yet carrying social meanings of events, this phenomenon lies far beyond the mind of interviewees. In this sense, “discourse analysts are not interested in processes taking place either in individuals’ minds or in reality” (Talja 1999: 11). This trend means that answers produced by interview are contingent upon the social reality interviewees carry in their historicity, temporality and locality. Interpretation of interviews was context-based. Apart from discourse analysis, content analysis was also applied to textual data.

10.4.2 Content analysis

Content analysis is one of the methods of data analysis that was primarily used in quantitative research and it is used in vogue in qualitative research, for analysis of text data (Hsieh and Shannon 2005: 1278). The adoption of this technique was guided by the need to gather explorative and descriptive knowledge of the problem being studied. It is suggested: “If data are collected primarily through interviews, open-ended questions will be used. Probes also tend to be open-ended or specific to the participant’s comments rather than to a pre-existing theory, such as ‘Can you tell me more about that?’” (Hsieh and Shannon 2005: 1278). This approach helped deepen the knowledge and understanding of the practice of child soldiering from the community point of view.

10.4.3 Search conference reports data analysis (action research)

Data were analysed by participant co-researchers, while the researchers focused on the investigation of the information provided in search conference data, a procedure suggested by Berg *et al.* (2004: 199): “Data analysis, from the AR perspective, involves examination of the data in relation to potential solutions to the questions or problems identified during the first stage of the research processes”.

The following questions guided the analysis of interviews and focus groups “why, what, how, where, when?” (Berg *et al.* 2004: 200). The question why?, referred to the focus of the study, and the other questions assisted co-researchers to stick to patterns, associated with the implications of findings on people affected by the problem.

10.4.4 SPSS analysis

SPSS helped to establish frequency distributions. Cross-tabulations were performed to examine the patterns of behaviour among different variables, female and male participants, non-combatants and ex-combatants, victims-perpetrators, participants below 18 year old and those above 18, EG -CG, pre-test-post-test, and so forth. Spearman’s rho test was also used to determine the preferred model of accountability between three emerged tracks, notably RJ, the mainstream criminal justice system and Baraza.

Spearman's rho is a statistical test used to measure the relationship between two ordinal variables.¹⁶⁸ The row is matched with the column in the correlations table, between the two ordinal variables. In this test, “The Correlation Coefficient is your actual correlation value that denotes magnitude and direction, the Sig. (2-tailed) is the p-value that you will interpret, and the N is the number of observations that were correlated”.¹⁶⁹

Should the probability value be inferior to 0.05, then there is evidence of a statistically significant bivariate combination between the two ordinal variables. When the probability value is superior to 0.05, it is evident there is not a statistically significant relation between the two ordinal variables. It is important to note that higher rho coefficients imply a stronger magnitude of relationship between variables, while smaller rho coefficients signify weaker relationships. Furthermore, positive correlations imply a relationship that travels on the same trajectory. This means that, if one value goes up, then the other value goes up. Similarly, as one

¹⁶⁸ See Spearman's rho Statistical test, <http://www.scalelive.com/spearmans-rho.html> (accessed 26 March 2015).

¹⁶⁹ See Spearman's rho Statistical test, <http://www.scalelive.com/spearmans-rho.html> (accessed 26 March 2015).

value goes down, the other value goes down too. In addition, negative correlations indicate a relationship that travels into opposing directions.¹⁷⁰

Survey questionnaires were based on nominal and ordinal scales. Respondents were provided with a scale, where their opinions were to be selected from 1 to 5, with 1 representing strongly disagree and 5, strongly agree, while 3 suggested neutrality/no opinion. Data was analysed with SPSS version 22.0 and 23.0. Reliability statistics were computed by taking several measurements on the same subjects. A reliability coefficient of 0.70 or higher is considered as “acceptable” and the overall reliability score for survey questionnaires closely approximated the recommended value of a 0.70 Cronbach’s alpha score, for all the items that constituted the questionnaire. This indicates an overall high degree of acceptable, consistent scoring for the research.

The level of significance was established by testing hypotheses. The null hypothesis states that there is no association between the two variables. The alternate hypothesis indicates that there is an association. Creswell (2009: 76) asserts: “A null hypothesis represents the traditional approach: it makes a prediction that in the general population, no relationship or no significant difference exists between groups on a variable”. The wording is, “There is no difference (or relationship)” between the groups.

Trochim (2003) defines a hypothesis as “a specific statement of prediction. It describes in concrete (rather than theoretical) terms what you expect will happen in your study”. The hypothesis that supports the researcher’s prediction is called an alternative hypothesis, while the null hypothesis is that which describes the remaining probable outcomes (Trochim 2003).

Similarly, when a study consists of comparing two samples, of a sample drawn from a population, the aim of hypothesis testing is to establish whether the differences observed between the sampled groups occur by chance factors of sampling variability, or whether these are caused by the action of a certain independent variable on a dependent variable (Bless *et al.* 2013).

¹⁷⁰ See Spearman's rho Statistical test, <http://www.scalelive.com/spearman's-rho.html> (accessed 26 March 2015).

10.4.5 Non-parametric tests

Non-parametric tests for dependent samples were performed, namely the Wilcoxon test that can be juxtaposed to *t*-test for dependent groups (Bless *et al.* 2013: 305). The Wilcoxon Signed-Ranks Test refers to dependent groups, whereby the scores of the two groups may be related in some ways (Bless *et al.* 2013: 305). This test is used to compare two sets of scores originating from the same participants. This happens when one wishes to investigate any change in scores from one point in time to another, or when individuals are exposed to more than one condition (Laerd Statistics n.d.).

The computations regarding the ranking were done directly, using the SPSS statistical tool. Data to be measured passed the assumptions required to conduct a Wilcoxon Signed-Rank Test. These include dependent variables measured at ordinal scale, independent variables consisting of two categorically related groups and the distribution of the differences between the two related groups being symmetrical in shape.¹⁷¹

The decision rules were as follows: if the probability value is larger than a comparison, then the null hypothesis is not rejected; and if the probability value is equal or smaller than (a), that implies there is sufficient evidence to reject the null hypothesis (Bless *et al.* 2013: 307). The first point helped established whether child participants exposed to RJPCs changed their opinion. After cross-tabulating the scores of their views, before and after RJPCs, a Signed-Ranks Test was applied to determine the degree of significance.

A Chi-square test was then used to test the hypotheses between coupled categorical variables, whether they were independent of each other (Gaur and Gaur 2006: 92). The dependent/paired *t*-tests helped towards observing the same sample size at both phases (times of observations) (Gaur and Gaur 2006: 54), namely before and after intervention programmes.

Subsequently, an examination of the bivariate correlations is done. This test consists of testing the “strength of the relationship between two variables without giving any consideration to the inference some variables might cause to the relationship between the two variables being tested” (Gaur and Gaur 2006: 100). In applying the Wilcoxon test, the difference between each

¹⁷¹ See Laerd Statistics. n.d. Wilcoxon Signed-Rank Test using SPSS Statistics (online). Available: <https://statistics.laerd.com/spss-tutorials/wilcoxon-signed-rank-test-using-spss-statistics.php> (Accessed 25 November 2015). See Table 24 and 25.

combination of scores of the paired off groups are achieved and then the differentiations are ranked, leading to positive or negative ranks, which is contingent on the signs of differences (Bless *et al.* 2013: 306).

It is important to note that, in applying this procedure, the test takes the directions and the sizes of the differences between the scores into consideration as well (Bless *et al.* 2013: 306). The Wilcoxon Signed-Rank Test was useful to establish the differences between paired populations aged below 18 and those who were 18 and above, regarding their intention to join armed groups before being exposed to the intervention programmes, namely RJPCs.

Bivariate correlation analyses were executed to establish the significance of the relationships between coupled variables, after which testing of the hypotheses proceeded for the first phase on data collection, as far as preventing children's recruitment for soldiering was concerned. This was followed by the second testing, regarding the stated null hypothesis that the children who are exposed to RJPCs are dissuaded to join armed forces and groups.

It should be observed that the project focuses more on participants' opinions, without measuring each programme on which respondent expressed their views. The Chi-Square test of association assists to determine whether there is correlation between exogenous variables (assumptions to child soldiers) and the actual child soldiering practice. The use of the independent *t*-test was useful to establish whether exposing combatants to restorative circles has deterrent effects on their involvement in armed conflict and whether it can prevent further participation of civilians in militarised engagement.

10.4.6 Hypotheses

Hypotheses are tested in order to respond to research questions and the relationships among variables, while the formulated hypotheses serve as "tentative, concrete and testable answers to the questions" (Bless *et al.* 2013: 82). Seven hypotheses were tested to answer the research problem and following several SPSS tests, inferences were drawn at the end.

The following hypotheses were posited:

- (1) Null hypothesis one (H_{01}) states that the communities of North Kivu do not lack the means to prevent child soldiers.

- (2) Null hypothesis two (H_02) states that the juvenile justice system in the DRC is not failing to protect children and prevent their participation in armed conflict.
- (3) Null hypothesis three (H_03) states that not only a single factor prompts children to join fighting forces.
- (4) Null hypothesis four (H_04) states that there is no statistical significance regarding forgiveness of child soldiers for Experimental and Control Groups or before and after the intervention.
- (5) Null hypothesis five (H_05) states that there is no statistical significance regarding opinions of participants, with regard to support for prosecution of child soldiers through criminal justice before and after RJPCs.
- (6) Null hypothesis six (H_06) states that the mean of scores of pre-test and post-test, regarding the intention to join armed groups by participants below 18-year olds, equalled zero. The null hypothesis was rejected for the p-value of the Wilcoxon Signed-Rank Test was .000 (Table 26).
- (7) Null hypothesis seven (H_07) states that the mean of post-test and post-test of the overall sample (282 participants), with regard to the intention to join armed groups, equals zero (Table 24).
- (8) Null hypothesis eight (H_08) states that the difference between pretest and post-test of the EG and CG is attributed to factors other than the intervention.

It is important to note that: “The hypothesis to be tested is *always* the null hypothesis H_0 , that is, H_0 is the hypothesis, which is tentatively held to be true until it is rejected. The alternative hypothesis, H_1 , indicates whether the test is directional or non-directional” (Bless *et al.* 2013: 279), while “the null hypothesis is rejected if the outcome of the test does not satisfy the rule” (Bless *et al.* 2013: 278). This means that, if the probability value is larger than the expected $p < 0.05$ (chosen level of significance), then the null hypothesis is not rejected. In the same way, the null hypothesis is rejected if the p-value is equal or smaller than the expected 0.050. The null hypothesis is represented by H_0 and the experimental or alternative hypothesis by H_1 .

In addition, bivariate correlations are helpful to reject or not to reject a hypothesis. At various levels of comparisons between EG and CG in the pre-test and post-test, the null hypotheses were stated and tested, followed by analytical inferences drawn from the outcomes of the tests. Another technique used was factor analysis.

10.4.7 Factor Analysis

SPSS analysis uses several components, such as principal component analysis and factor analysis. “Factor analysis is a form of exploratory multivariate analysis that is used to either reduce the number of variables in a model or detect relationships among variables”.¹⁷² To further expand the understanding of factor analysis in exploratory statistical analysis, Landau and Everitt (2004) affirm:

Factor analysis (more properly exploratory factor analysis) is concerned with whether the co-variances or correlations between a set of observed variables can be explained in terms of a smaller number of unobservable constructs known either as latent variables or common factors (Landau and Everitt 2004: 288).

In a much simpler way, Sapsford and Jupp (2006: 121) define factor analysis as “a technique, based on assessing correlation between variables, for simplifying data by looking for groups of variables which are highly correlated and so may be regarded as aspects of a single factor”. This statistical technique has, as main goal, data reduction.

A typical use of factor analysis is in survey research, where a researcher wishes to represent a number of questions with a small number of hypothetical factors. For example, as part of a national survey on political opinions, participants may answer three separate questions regarding environmental policy, reflecting issues at the local, state and national level. Each question, by itself, would be an inadequate measure of attitude towards environmental policy, but *together* they may provide a better measure of the attitude.

Factor analysis can be used to establish whether the three measures do, in fact, measure the same thing. Should this be the case, they can then be combined to create a new variable, a factor score variable that contains a score for each respondent in the factor. Factor techniques are applicable to a variety of situations. A researcher may want to know whether the skills required to be a decathlete are as varied as the ten events, or if a small number of core skills are needed to be successful in a decathlon. The belief that factors actually exist is not a prerequisite, in order to perform a factor analysis, however, in practice the factors are usually interpreted, given names, and spoken of as real things.

¹⁷² *Statistical Tests in SPSS*, available at <http://ats.ucla.edu/stat/spss/whatstat.whatstat.htm> (accessed 11 August 2013).

In this model of analysis, each matrix table is preceded by a table that reflects the results of KMO and Bartlett's Test. The requirement is that the Kaiser-Meyer-Olkin (KMO) Measure of Sampling Adequacy should be greater than 0.50 and Bartlett's Test of Sphericity, less than 0.05. In all instances, the conditions were satisfied, which allowed for the factor analysis procedure.

10.5 Limitations of the study

There were three areas of limitation. These include socio-ecological constraints, methodological constraints and design constraints.

10.5.1 Socio-ecological constraints

The volatility and the climate of insecurity restrained the study to accessible and secured areas only. Armed groups leaders and militia commanders could not be reached; their views could have added up to enrich this inquiry. Nonetheless, several organisations that work with children and the information provided by the UN Mission in the DRC proved useful because these institutions have direct contact with rebel movement leaders. Several empirical scholarly studies and UN Documents (Letters and reports) provide ample information to support these findings, as some of the sources expose views collected directly for armed groups (Dagne 2011; Stearns and Verweijen 2013; Stearns 2014).

The sampling should have included unoccupied youths who are most vulnerable to join armed forces/groups, although the difference between school-going youths who enrol or are recruited and the unoccupied youths is negligible, about 4.3 percent. The female child soldiers were not accessible, only one girl was found in CTO. The opinion of girl soldiers is not heard in this inquiry. However, the study relies on an extensive literature review, apart from primary data analysed here. Female participation in the study was 26.6 percent, with 1.5 percent direct association with armed groups, while male participants represented 73.4 percent, with 98.5 percent direct involvement in hostilities.

10.5.2 Methodological constraints

The term 'limitations' in research, clarifies what the researcher identifies as potential weaknesses of the study (Creswell 1994: 147). With regard to AR, its critics argue that it lacks neutrality, since action researchers are part of problem solving. To which O'Brien (2001) responds, noting that AR's ethical standards help minimise any potential bias and threat to external validity. Its guiding principles include freedom of all participants to work on solutions

to the problem and the collective nature of all decisions taken about the orientation and outcomes of the research (O'Brien 2001: 10).

Another issue of concern was the limitations of multiple methods. Multiple-methods research is critiqued to be “illogical” and “incoherent” because each method uses a particular paradigm, while it is also said that paradigms are “incommensurable” (Mingers 2001: 243). However, proponents of pluralist methodology defend the desirability and feasibility of a combined methods approach. For instance, Mingers (2001: 243-244) argues that the world is complex and, for this reason, researchers should use paradigms critically and possibly develop new ones with their own assumptions, drawing from existing paradigms and taking the diversity and plurality of the world’s reality into consideration.

Some scholars find a close link between qualitative and quantitative methods that can be used interactively (Trochim 2003). Considering these arguments and the assumptive proximity of AR to mixed methods (Christ 2010), a pluralist approach and multi-methodology were found useful and pragmatic to conduct this inquiry. The rationale for such a combination was the necessity to obtain a holistic grasp of the complex, multilayered and multi-dimensional child soldiering phenomenon, in order to address its underscoring roots. This was possible by unpacking all aspects of the problem, using appropriate combined procedures, with each paradigm focusing on one layer of reality. This approach is suggested by Mingers (2001: 243) as a way of handling complex human experiences.

As explained earlier, an AR that aims at diagnosing a problem, developing an intervention, planning and evaluating the outcomes, relies on a pluralist methodological approach. The main reasons that support desirability of multi-methodology, applied to this inquiry, is that this strategy is the complexity of the research problem, the different stages involved in the collection and analysis of data, and the fact that the inquiry deals with the real world, as explained in the following citation:

A research study is not usually a single, discrete event but a process that typically proceeds through a number of phases. These phases pose different tasks and problems for the researcher. However, research methods tend to be useful in relation to some phases than others, so the prospect of combining them has immediate appeal. Even where methods do perform similar functions, combining a range of approaches may well yield a better result (Mingers 2001: 243).

Finally, Mingers (2001:244) points out that pluralistic methodology allows triangulation, through “seeking to validate data and results by combining a range of data sources, methods, or observers”, it enhances creativity, by means of “discovering fresh or paradoxical factors that stimulate further work”, and supports expansion by “widening the scope of the study to take in wider aspects of the situation” (Mingers 2001: 244).

Each research methodology and design presents certain advantages and at the same time, also denotes intrinsic weaknesses. A pluralist methodological approach was designed to pursue a study that would generate generalisable findings by a combination of AR and experimental CG design.

10.5.3 Design constraints

Design limitations consist of anticipating what could eventually be the weaknesses of the design and methodology used in a study. Looking into this issue, “[a]ction researchers also reject the notion of researcher neutrality, understanding that the most active researcher is often one who has most at stake in resolving a problematic situation” (O'Brien 2001: 6).

However, the availability of techniques used in scientific inquiry, to determine the accuracy of the information and validity of conclusions resulting from the collected data were adequately applied. This can be done by triangulating the sources of data and the methods of analysis and interpretation (phenomenological and hermeneutical techniques). In addition to these limitations, are the concerns regarding conducting public hearings in war-torn zones, while peace and security have not been guaranteed (Appendix 14 – Search conference reports).

10.6 Validity and reliability

Validity and reliability are two concepts that help determine the epistemological value of knowledge. Scientific knowledge ought to stand several tests, such as verifiability, falsifiability, validity, and reliability, as well as generalisability. Morse *et al.* (2008: 14) note: “without rigor, research is worthless, becomes fiction, and loses its utility. Hence, a great deal of attention is applied to reliability and validity in all research methods”. It was necessary to deal with two important research components in this study. This section discusses validity and reliability in AR, in pluralist methodology, in discourse analysis, in phenomenological study, and in experimental designs, along with triangulation.

10.6.1 Validity and reliability

The legitimisation of research outcomes is conducted through different phases of the inquiry, starting from epistemological and philosophical assumptions, to conclusions and relevance and usefulness of what it concludes (Creswell 2009: 115). Verification of results, according to Grix (2004: 176), is based on “internal validity” and “external validity”. Internal validity “refers to the extent to which researchers can demonstrate that they have evidence for statements and descriptions they make” (Grix 2004: 176-177), while external validity establishes the extent to which the inquiry is generalisable (Grix 2004:177).

Creswell (2009: 120) explains that external validity threats arise, when researchers or experimenters draw incorrect conclusions from the sample data to other persons, other settings, and past or future situations. In addition, Bless *et al.* (2006: 93) assert that internal validity establishes the rapport between the alterations linking the dependent and independent variables, in the sense that the focus of the inquiry is on the relation between various variables, by excluding all other hypotheses that could possibly explain independent variables.

Additional explanations are given by Babbie (2013: 277), according to whom internal validity is “the possibility that the conclusions drawn from experimental results may not accurately reflect what has gone on in the experiment itself”. This implies that the likelihood of a present threat, which could be any external factor to the experiment itself, could affect the dependent variable and subsequently, jeopardize internal validity (Babbie 2013: 279-280).

These elements were considered and internal validity was addressed, by applying the techniques appropriate to qualitative study for qualitative data, namely a phenomenological method; content analysis and discourse analysis were both applied in analysing primary and secondary sources. For quantitative methods, applying the power of statistical tests, described as the probability of attaining adequate statistical inferences (Sapsford and Jupp 2006: 215) was necessary, to ensure the outcomes stood the test of internal validity.

External validity is concerned with whether the results obtained from the sample are applicable to the whole population and ensures the outcomes are generalisable in two ways: “sample must be representative of the population in question” and “researcher ensure[s] that [the] study simulates reality as closely as possible” (Bless *et al.* 2006: 93). In pre-testing and post-testing experimental research, “external validity is the degree to which the treatment effect can be

generalized across populations, settings, treatment variables, and measurement instruments” (Dimitrov and Rumrill 2003: 159).

With regard to the representativity of the sample, 1,447 participants were included, and the sample was characterised by heterogeneity of the research population and the diversity of locations where they come from (42 rural communities and one urban location).

10.6.2 Reliability and generalisability

It is noted that AR, conducted on a small-scale and those undertaken within the academic context, as a part of undergraduate and postgraduate courses, have no ground for generalisation beyond their individual set-ups (Costello 2003: 46). However, this does not preclude the possibility for AR to generate generalisable results, while using a representative sample.

In experimental and quasi-experimental research, Campbell *et al.* (1963: 17) maintain: “Generalisability always turns out to involve extrapolation into a realm not represented in one’s sample. Such extrapolation is made by assuming one knows the relevant laws”. These parameters were taken into account during different phases of the study. It is observed that to achieve this, an inquirer should ensure the experiments combine multiple sources during data collection, continual testing of research assumptions, and “seeking exceptions in cases of apparent disagreement and explanations in cases of apparent disagreement, and being willing to challenge your own ideas” (Costello 2003: 47).

Therefore, reliability is based on the ability of the researcher to demonstrate the accuracy of the accounts, the generalisability of the outcome of the investigation and the possibilities of its replicability (Creswell 2009: 94). This was accomplished through the combination of methods and triangulating sources of data and methods used.

10.6.3 Validity and reliability of discourse analysis

Considerations of validity and reliability are vital in all research. In ethnological research the researcher relies on the subjective interpretation of the various sources of data. In this study, the interpretations were checked by ongoing discussions with members of the research team. For the quantitative data components of the research the use of randomised control testing helped ensure validity (Dimitrov and Rumrill 2003). Alasuutari (1995: 54) differentiates between two models in the analysis of interview data, namely the factist and the specimen approaches.

In the factist approach, researchers are interested in uncovering the real conduct or attitudes of participants. The analysis focuses on the contents of the interview answers, from which an understanding of the phenomena emerges, allowing the researcher to establish whether the processes reveal the actual object of realities or is located in external reality (Talja 1999: 12). It appears here that “the reliability of research results depends on how unbiased and accurate information the interview answers provide about the phenomenon studied” (Talja 1999: 13).

In a specimen approach, Talja (1999: 13) asserts that answers provided by interviews are analysed as “linguistic expressions”, not as concrete facts describing thinking and behavioural patterns of participants. The utterances are dissected not only from the angle of their content and significance, but also examined from the point of view of their content and meaning, as well as what they imply and what their effects are, in building diverse versions of reality (Talja 1999: 13).

It is quite significant to note that “research data do not describe the reality, but are specimens of interpretative practices... [and] the reliability of findings depends on the verifiability of the researcher’s interpretations” (Talja 1999: 13). Nonetheless, research outcome is an exemplification, and in this case, “the question of generalizability is approached from a different direction: a key concept is possibility” (Talja 1999: 13). An inclusion of a large quantity of qualitative interviews and focus groups discussions, along with a follow-up study with a larger number of participants, were purposively projected and achieved, in order to avert the sources of invalidity in discourse analysis.

10.6.4 Validity of phenomenological study

In phenomenological research, internal validity is contingent on the intuitive mind of the researcher that relates ‘intentional objects’ to ‘real objects’, perceived and described as experiences embodied in textual data or empirical materials, written or verbal. It is by intuiting that one can point to truth, from a personal perception. Such knowledge is scientifically valid. The phenomenological method has become popular as empirical study in human science, using statistics. The trend is also used to overcome the limitations of “logical positivism” in scientific inquiry in human sciences (Dukes 1984: 197).

Human experience cannot be fully understood by employing the positivist worldview that limits the knowledge of human phenomena. The validity and desirability of phenomenological

research was determined by the field of this research, namely human sciences because the problem being reported is that of child soldiers, which is a human existential phenomenon. An explosion of meanings was uncovered from interactive discussions that allow a careful analysis of various responses and comments of the research problem.

10.6.5 Validity and reliability of mixed methods

In mixed methods, validity is explained by Creswell and Clark (2011: 239): “[...] as employing strategies that address potential issues in data collection, data analysis, and the interpretations that might compromise the merging or connecting of the quantitative and qualitative stands of the study and the conclusions drawn from the combination”. This concern can be addressed by following certain guidelines, as proposed by Creswell and Clark (2011: 201,240,243,244):

- Qualitative and quantitative samples were taken from the same research population to allow comparison;
- The sample frame from quantitative data (survey questionnaires) exceeded the qualitative data (interviews, focus groups and search conferences);
- Data were collected by employing four different instruments;
- Sets of the same data were used at the end of the experiment to collect qualitative and quantitative analyses;
- The methods used for the convergence of data were thematisation or codification of respondents’ views on questions/questionnaires, with these merged together at analysis and discussion level.

Descriptive statistical analyses of data that were fed by qualitative data, from interviews, focus groups and search conferences, are utilised in this research. One more means of addressing a validity threat in a mixed methods study, is the democratic and collaborative nature of research involving a team. Creswell and Clark (2011: 241) aver that researchers working in a team should ensure they evaluate the overall project objectives by harmonising philosophical and methodological differences. This was achieved through AR search conference reports.

O'Brien (2001) underlines the participatory, collaborative, emancipatory, action learning, and contextural characteristics of AR as mode of inquiry. The search for a solution to prevent a complex problem, such as child soldiers, was not limited to learning but rather engaging participants into transformative action in a democratic way. This approach also provides the

grounds for reliable outcomes that do not emanate from a single person's interpretation of reality.

10.6.6 Validation of pre-test/post-test control group designs

Campbell *et al.* (1963: 6-7) describe the sources of invalidity of “experimental and quasi-experimental designs for research” in terms of history, maturation, testing, and instrumentation, along with regression, selection, and mortality, as well as the interaction of selection and maturation that may jeopardise internal validity; and interaction of testing and X, interaction of selection and X, reactive arrangements, and multiple-X interference that may endanger external validity. X represents a stimulus or intervention variable.

Dimitrov and Rumrill (2003: 160) argue: “*Maturation and history* are major problems for internal validity in this design, whereas the *interaction of pretesting and treatment* is a major threat to external validity”. In the same perspective, Babbie (2013: 282) asserts that other sources of invalidity such as causal time order, diffusion or imitation of treatments, compensation, and compensatory rivalry and demoralisation, are averted “through the careful administration of a controlled experimental design” (Babbie 2013: 282). It was necessary to deal with the sources of “internal invalidity” and “external invalidity”.

10.6.7 Threats of internal validity

The threats of internal invalidity were investigated. Campbell *et al.* (1963: 16) aver that “factors of internal invalidity” impact observations’ scores directly. They are described as “factors which by themselves could produce changes which might be mistaken for the results of X, in other words, factors which, once the control group was added, would produce effects manifested by themselves in the experimental group” (Campbell *et al.* 1963: 16). These dangers are also called “interaction effects, involving X and some other variable” (Campbell *et al.* 1963: 16). Notwithstanding the pertinence of these factors, it is also noted that the pre-test/post-test control group design “...controls the seven rival hypotheses” (Campbell *et al.* 1963: 13).

In this inquiry, the “rival hypotheses” were controlled at different steps of testing, during and after statistical analysis. For instance, it is averred that “maturation and testing are controlled in that they should be manifested equally in experimental and control groups” (Campbell *et al.* 1963: 14). To address this, the outcomes of the research for prosecution of child soldiers showed a statistical significance that suggests maturation effects were not manifested in the

CG. The effects of history were controlled, in the sense that historical factors during the period of four months were not observed and the subjects were randomly assigned to both control and experimental groups, in addition to which the X was applied to experimental groups only.

Moreover, statistical reliability was tested using Cronbach's alpha. Explaining statistical reliability, in reference to confidence about the replicability of the same value, when the same instrument is used to measure the same object, Gaur and Gaur (2006: 31) elucidate by pointing out: "Some of the commonly used techniques for assessing reliability include Cohen's *kappa* coefficient for categorical data and Cronbach's alpha for internal reliability of a set of questions (scales)" (Gaur and Gaur 2006: 32). This coefficient of all statistical tests approximated the acceptable value of 0.70, which was applied to the study.

Finally, cross-examining interviews, focus group discussions and questionnaires helped generate valid outcomes presented thematically and explained in qualitative concepts. The integration of randomised experiments and qualitative results produced corporate themes that reflect the summative conclusions of the overall inquiry. The use of recording of qualitative interviews was necessary for proper transcriptions and their adequate analysis and interpretations. This strategy helped address the threat that might have resulted in instrumentation.

The sampling techniques and random assignment of units in both EGs and CGs, the use of interviews, focus groups and questionnaires, as well as the summative modes of data analysis and interpretation, when pulled together, assisted in minimising the risks of "internal invalidity".

10.6.8 Threats to external validity

After discussing the sources of "internal invalidity", it is also important to examine the factors that could threaten external validity and so jeopardise the generalisability of the research outcomes (Campbell *et al.* 1963: 16; Babbie 2013: 283). These threatening elements comprise interaction of testing and X, interaction of selection and X, reactive arrangements and multiple-X interference (Campbell *et al.* 1963: 8). To overcome this threat, the choice of pre-testing and post-testing used in this inquiry, is noted to have the potential to generate valid knowledge. Furthermore, this process was strengthened by performing appropriate randomisation and using statistical tests that ensured the internal and external validity of the research outcomes.

Acknowledging that pre-testing often impacts on subjects, logical generalisation cannot, in science, be done beyond the limits of conditions and categories, where experimental and CGs show commonalities after pre-testing. Nevertheless, attempts are made to generalise “by guessing at laws and checking out some of these generalizations in other equally specific but different conditions” (Campbell *et al.* 1963: 17). In order to avert the sources of “external invalidity”, the randomised assignment of subjects in the EG and CG in a large number and the repeated tests through the four cycles of AR, in different conditions and environments, provide the grounds to establish the generalisability of the research findings.

This sampling strategy for experimental inquiry has been tested by Campbell *et al.* (1963: 22) through randomisation of the levels of classroom, constructing experimental CGs of several classrooms, assigned at random. The test concerned research on the changing of attitudes in education. This approach was one equally applicable to PAR, in peacemaking circles in the current research. The support for pre-test/post-test CG designs is also given by Dimitrov and Rumrill (2003: 163), who assert that these designs adequately restrain the risks of internal and external validity. Furthermore, Campbell *et al.* (1963: 13) argue that pre-test/post-test control design “controls all the seven rival hypotheses” that can endanger internal validity.

In this inquiry, external validity was guaranteed by triangulating sources, methods and paradigms. The use of mixed methods (data collection, methodologies, paradigms and sampling techniques) is, in essence, designed to enhance the reliability and validity of the research findings. During the first two observations, the most common “rival hypotheses” to internal validity were curbed, namely the effects of history and maturation.

According to Campbell *et al.* (1963: 7-8), the effects of history refer to “change-producing events” that may have taken place, in addition to the stimulus/intervention/treatment during the time that may have elapsed, should the pre-test and post-test be done on different days, while maturation defines the “class of variables”, including “biological and psychological processes which systematically vary with the passage of time, independent of specific external events” (Campbell *et al.* 1963: 7).

These threats were not experienced or observed because nearly all participants were tracked for the post-test observation. The limited time span of seven months was sufficient to evaluate the

intervention, taking the volatility of research sites, marked by ongoing military operations and entrenched active armed groups and militias, into account.

10.6.9 Reliability, validity and triangulation

The randomised sample was intended to avert the effects of history and sensitivity of participants to the instruments, while it was also necessary for internal validity of the study (Bless *et al.* 2006: 91). This implied limiting data collection to only two rounds over the same subjects, within a period of seven months. Several instruments were used to ensure the reliability of the study.

Sampling techniques were based on variability and heterogeneity of groups. The sample size was determined by “the degree of accuracy, the degree of variability or diversity in population, and the number of different variables examined simultaneously in data analysis” (Bless *et al.* 2006: 108). The characteristics of the sample increased the validity and reliability of the findings.

The generalisability of scientifically generated knowledge is achievable by triangulating the various sources of data, methods and paradigms. Grix (2004: 176) expounds: “The term triangulation has come to be associated with the practice of drawing on a variety of data sources, which are cross-checked with one another to limit the chances of bias in the methods or sources employed”. As far as qualitative data is concerned, Talja (1999: 14) contends that, although the interpretation of interview data is “macro-sociological”, the reliability of research results in the factist approach, can be consolidated by applying “methodological triangulation” and using multiple techniques of data-collection, even applying contextual triangulation.

A full extrapolation of research findings based on interviews is achievable, when there is a cross-examination of, not only data-gathering methods, but also the time content, socio-cultural environment, and the geographical location. Then a study is no longer just a case study with limited generalisability because it can establish “explicit comparisons” between different contexts of the discussion, through expanded discourse analysis (Talja 1999: 14).

In the same perspective, Berg *et al.* (2004: 199) maintain that, “some investigators may choose to triangulate their studies in an effort to strengthen their findings and potentially enrich the eventual analysis and understandings”. This procedure is justified because of the criticism that

some scholars have levelled against AR, which are nonetheless castigated by McKay and Marshall (2001). Final analysis and discussion of findings were achieved by cross-examining different sources of data, methods and worldviews, to ensure that the research outputs were valid, reliable, replicable and generalisable.

10.7 Ethical considerations

A scientific inquiry that deals with human beings requires a setting of ethical norms, which aim at guiding the study and ensuring the norms comply with accepted standards of knowledge generating, without infringing the rights of participants. Moustakas (1994: 103) suggests: “Ethical principles of human science research should be taken into account, and participants should be fully informed and respected in their privacy. Also data can be validated by participants”. These requirements were fulfilled to the greater extent possible.

Ethical considerations in this study were based on the “key phrases that describe the system of ethical protections that the contemporary social and medical research establishment has created to try to protect better the rights of their research participants” (Trochim 2003). These are mainly voluntary (participants should not be compelled to give any information needed by the researcher); informed consent (inform prospective research participants about the procedures and risks that could be involved in research and they should be advised to give their consent to participate freely); risk of harm (avoid putting participants in situations, whereby they might be at risk of being harmed [physically or psychologically] as a result of their participation); the privacy of participants must be preserved by observing two standards of ethics, namely the guarantee of confidentiality (informants are not to be identified); and anonymity, “which essentially means that the participant will remain anonymous throughout the study - even to the researchers themselves” (Trochim 2003).

These factors were taken into account throughout the process of gathering data and analysis. Interview protocols were followed and permission was granted to access sources of information, such as CTOs and school institutions, and so forth. Participants signed informed consent forms and agreements to participate in peacemaking circles.

With regard to AR, O'Brien (2001) avers that ethical considerations should be taken into account when conducting this type of research because of several interactions that take place among people in that process. Provision of full information to all parties concerned and

obtained agreement from them; allowing all participants to give direction to the work and take into account, with all due respect, the wishes of persons showing an unwillingness to take part in the work; freedom to make suggestions needed for work progress; and taking responsibility for confidential information.

Additionally, collective decisions were taken concerning “the direction of the research and the probable outcomes”; while a clear definition of the “research process” was made available to co-researchers, and participants provided with the reports of peacemaking circles; with a greater involvement of participants encouraged and achieved (O'Brien 2001: 10).

All participants in the study were rewarded with skills because of the interventionist, participatory and empowering assumptions of this study. Participants recruited played different roles in providing data. These are mainly through scheduled, structured, non-structured and interactive interviews, focus groups, participation in peacemaking circles and search conference (AR instrument). All participants received a token of appreciation, in the form of reasonable remuneration, for participating in the inquiry.

Particular considerations were given to participants aged below 17 years. Recruitment of children between seven and 17 was done with written permission from parents and legitimate guardians (school principals, directors and managers of CTOs). All children were provided with an explanation and full information was also given to them by parents and legitimate tutors in the local language (Kiswahili). Children show great interest in participating and expressing their assent to be part of the study, which granted formal permission to parents and tutors to also sign the consent forms as their witnesses.

Focus groups were co-facilitated by co-researchers, teachers (in schools) and care-providers, along with psychologists (in child soldiers' transit centres/ CTOs). This was done in conformity with ethical norms guiding social empirical research with children. In this regard, Morrow and Richards (1996) explain:

In practice, researchers usually obtain consent from a wide range of adult keepers (parents, school teachers, head-school teachers, school educational authority officers and so on in the case of school based research) before they are allowed anywhere near children explicitly for their “informed consent” (Morrow and Richards 1996: 95).

The main issues that are critical in dealing with children as a source of information are their vulnerability, incompetence and powerlessness, which need to be taken into account when considering children as relevant “social actors in their rights” and “sources of valid data” (Morrow and Richards 1996: 95). Intrusive, offensive and confrontational approaches were experienced. A participatory approach that strengthens children to give their own interpretation of the research questions was emphasised. This was necessary to avert the negativity of a disproportional power rapport between the researcher and the object of study, at the moment of gathering and interpreting data (Morrow and Richards 1996: 100).

To obtain informed consent, children recruited and relevant people to grant permission for their participation, were provided with full information about the objectives of the study and the rationale for conducting this inquiry. It was ensured that data obtained were solely used for the purpose of the study and that the data are well preserved. There no risk, harm or danger threatening the wellbeing of child participants. All children informants receive a small remuneration for providing/ contributing to knowledge generation. This was done to comply with ethical recommendations of minimising child attrition. It is suggested that “the researcher might provide transport and child-care for subjects and even pay them to participate in the study. This will ensure compliance with treatment and reduce attrition rates” (Bless *et al.* 2006: 94).

Remuneration was demanded by the condition of vulnerability, extreme poverty and starvation, caused by over a decade of war in research sites. It would have been unethical working with children and adults who did not have a meal and letting them return without alleviating their material needs. It was thus fair to organise meals and transportation for those who participated in the study and had to travel a long distance. To guarantee privacy and confidentiality, a system of codification, and pseudonyms was used.

Certain dispositions about language and recording interviews were agreed upon with participants. The official language (French) and the local language (Kiswahili) of the DRC were the main media employed during fieldwork. All research instruments were translated into French and Kiswahili, adopting a simple and unambiguous language for question formulations. Permission was always solicited and obtained to record focus group discussions and face-to-face interviews. When this was not granted it was observed and there was recording.

Benefits of the study to participants included, monetary gratification for sharing their knowledge as co-researchers (in action research), imparting skills to them on how to deal with and heal “wounded history”, protect vulnerable community members against military engagement, and empower them to continue the process of healing and reconciliation, while also preventing children from becoming soldiers. There was a high level of satisfaction with no report of re-traumatisation (92 %).

10.8 Conclusion

This chapter overviewed different research methodological components. The main themes covered comprise research methods and a rationale for applying mixed methods, specifically multi-methodology, sequential transformational mixed methods, different techniques of data collections, particularly for literary data, along with interviews, focus groups, search conference reports and survey data, in addition to pre-test and post-test CGs and experimental observations and quantitative data.

Subsequently, data analysis and interpretation were dealt with, using interpretive, phenomenological, discourse analysis and content analysis for qualitative data. All these approaches were relevant to qualitative research, which is interpretive in nature. Quantitative data were obtained and treated through an analytical survey method and experimental methods, with replicated observations that were analysed and interpreted, by means of SPSS.

The rationale for combining both quantitative and qualitative data, is to better understand the research problem, by merging quantitative (broad statistical trends) and qualitative (in-depth description of the phenomenon) data, to advocate for transformation in children’s attitudes towards armed conflict, and eventually restrain their involvement. Adopting AR and experimental designs were, in addition, only possible by means of mixed methods research.

The main limitations of the study were dealt with by triangulating different sources, paradigms and methods, according to “multi-methodical principles”. The threats of validity and reliability were addressed to ensure research outcomes were generalisable and replicable. The findings of the study are deemed to have passed the test of internal and external validity, through overcoming the possible “sources of invalidity”. Validity and reliability of a study also comprise the considerations for ethical norms, and the media of fieldwork that allowed, to a

great extent, fluidity in communication and plausible interactions, as revealed by the survey on the level of satisfaction in the inquiry.

SUMMARY OF THE PREVIOUS CHAPTERS

The flow chart explains what was done previously and that which led to the field study.

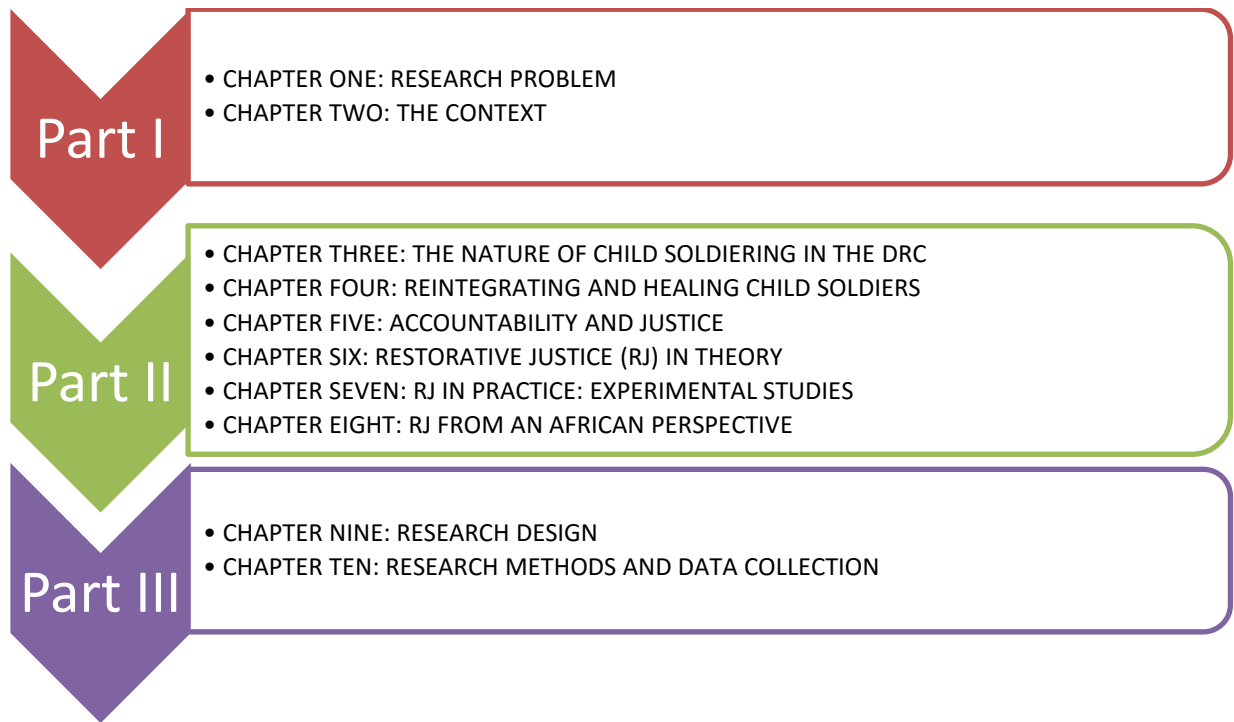


Figure 9: Summary of previous chapters

The following chapter will consist of fieldwork – data collection, analysis and discussion.

PART IV: FIELDWORK: DATA COLLECTION AND ANALYSIS

Part Four of this inquiry consists of two main components, namely the research results and the discussion. Findings are presented according to the three phases during which the study was conducted. Discussion comprises the following five sections: introduction, challenges of reintegrating former child soldiers, preventing child soldiering using the RJ argument, and prevention via collateral strategies, culminating in the conclusion. All field data were generated through PAR processes. An evaluation of this intervention included the follow-up of emerging key findings.

CHAPTER ELEVEN

DIAGNOSING THE PROBLEM

11.1 Introduction

Action research begins with an identification and setting of the problem (O'Brien 2001). Literature on the problem under study was reviewed, followed by a simultaneous collection of empirical data through interviews, focus groups, search conference reports and survey questionnaires. Inductive and deductive methods, combining interpretive paradigm and statistical techniques of descriptive and analytical surveys were employed. The interpretation of data conformed to an interpretive paradigm, with SPSS techniques explained under research design and methodology. The findings were generated to answer research objectives and aims, establishing whether there are correlations between the dependent and independent variables.

The following citation explains the process of data analysis and interpretation: “[t]he final step in an experiment is to interpret the findings in light of the hypotheses or research questions set forth in the beginning. In this interpretation, address whether the hypotheses or questions were supported or whether they were refuted” (Creswell 2009: 167). Qualitative data, namely interviews, focus group discussions and search conference reports were analysed and interpreted, using interpretive models combining content, discourse analytical methods.¹⁷³

¹⁷³ See chapters on research designs and methods.

This section covers the preliminary findings on the various characteristics of the sample (participants' features), where they came from, and armed groups with which children have been associated. It explores the problem and presents the existing mechanisms of preventing children to join armed groups, the context of self-demobilisation of young soldiers, and the multidimensional implications of the child soldiering phenomenon. It then explores the concept of Baraza and tries to implement peacemaking circles. Prior to implementing peacemaking circles as intervention, the sample of 282 was divided into EG and CG. Only EG was exposed to the intervention.

The results are presented thematically and using tables and graphs for descriptive statistics. Inferential techniques included the several statistical analyses are combined to supply statistical inferences.

11.2 Phase 1 - Diagnosing the problem, planning and implementing intervention

This section discusses the major findings that served as the basis of this inquiry.

11.2.1 Participants' features and characteristics of samples

The main characteristics of participants include their gender, age, occupation and locations.

Table 2: Characteristics of the sample three phase of the inquiry

	<i>Phase one and phase two</i>		<i>Phase three</i>	
	<i>Frequency</i>	<i>%</i>	<i>Frequency</i>	<i>%</i>
<i>Occupation of participants</i>				
Self-demobilised child soldiers	73	25.9	48	4.1
Students	157	55.7	921	79.1
Educators	15	5.3	148	12.7
Soldiers	1	.4	1	.1
Unemployed	3	1.1	9	.8
Public servants	33	11.7	38	3.3
Total	282	100.0	1165	100.0
<i>Status of participants</i>				
	<i>Frequency</i>	<i>%</i>	<i>Frequency</i>	<i>%</i>
Victim	109	38.7	258	22.1
Community member	138	48.9	853	73.2
Official (local tribal/community leaders)	5	1.8	21	1.8
NGO's member	30	10.6	33	2.8
Total	282	100.0	1165	100.0

The overall study sought to prevent youngsters from joining armed groups and the subsequent necessity of opening them up to RJ approaches. For this reason, the highest rate of participants was that of learners and students (55.7 %); RJ implies involving victims, perpetrators and community members. Former child soldiers represent offenders in the process (25.9 %). Other categories of participants provided insights that assisted in dealing with issues inherent to the child soldiering phenomenon.

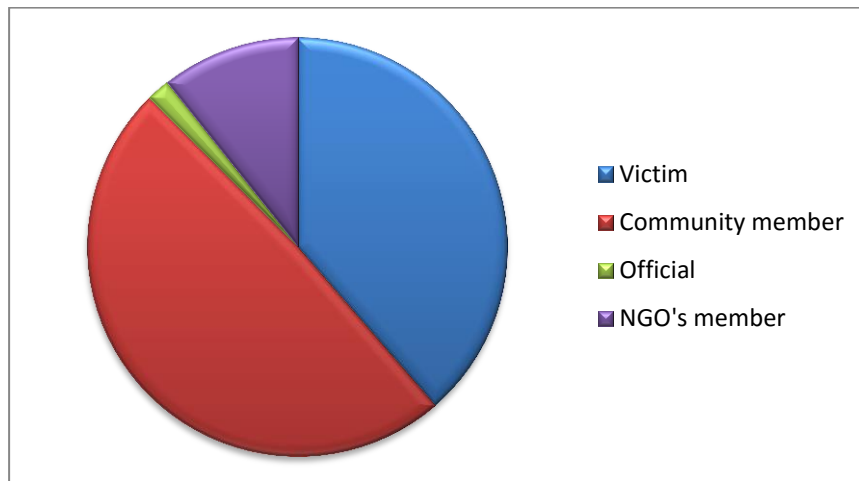


Figure 10: Status of participants in this study

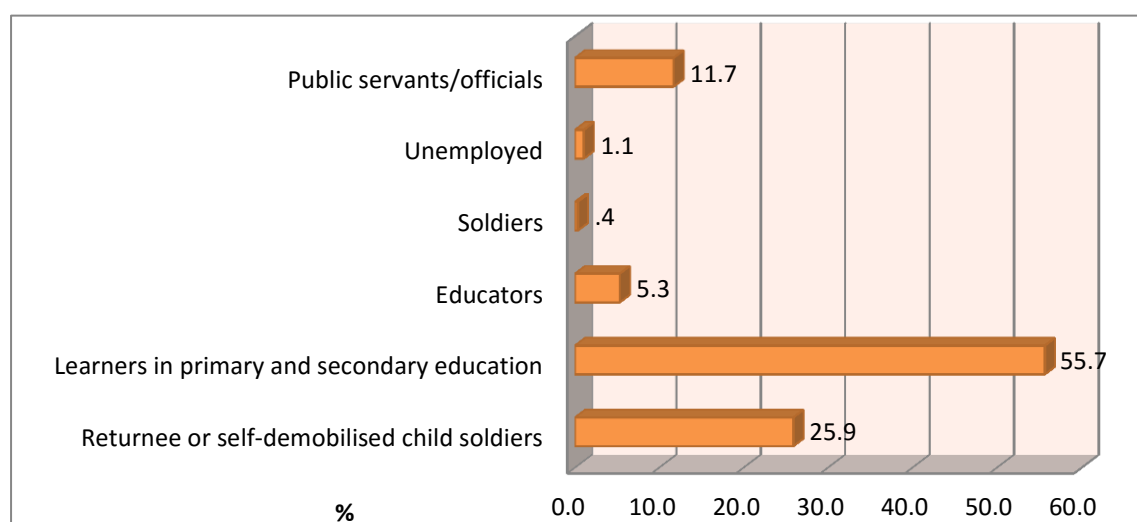
Victim populations included direct and indirect victims. These are people who were directly subjected to human right abuses, as well as those who lost properties and family members, or where the house was attacked by rockets. Several child soldiers identified themselves as victims. Officials include lawyers, local traditional leaders, public servants and members of the security services. Members of the community were mostly learners, educators, parents and relatives of child soldiers, in addition to other victims and students. Members of NGOs consisted of humanitarian agents working for child protection in their various capacities (counsellors, instructors, cooks, funding agencies and caretakers).

It is important to note that the majority of participants are both indirect and direct victims, although separated into four distinct categories. They are all inhabitants of four centres that are under constant attack and violence by armed groups and unidentified militiamen.

Table 3: Age categorisation of all participants

<i>Age category (under 18 and 18 and above)</i>					
		Frequency	%	Valid %	Cumulative %
Valid	below 18 year of age	195	69.1	69.1	69.1
	18 year old and above	87	30.9	30.9	100.0
	Total	282	100.0	100.0	

The results reflect a higher participation of persons below the age of 18 years (more than two-thirds) that was identified as the target population, through which the effectiveness of the intervention programmes was measured, and the extent to which it could help this category of respondents refrain from joining armed groups and forces; they are the most vulnerable to recruitments.

**Figure 11: Representation of respondents' occupation**

The high rate of learners and students was purposively included in the sample, as the intervention targeted persons below 18 years and evaluated whether this category of persons was affected by the programme that aimed at dissuading them from joining armed groups and militias. The under 18s were also targeted because this generation is the most vulnerable in time of armed conflict and often they become victims of war atrocities.

Table 4: Gender composition of the sample by age

			Gender identification		Total
			Male	Female	
Age – Grouped (years)	10 - < 20	Count	144	64	208
		% within Age - Grouped	69.2%	30.8%	100.0%
		% within Gender identification	69.6%	85.3%	73.8%
		% of Total	51.1%	22.7%	73.8%
	20 - < 30	Count	43	11	54
		% within Age - Grouped	79.6%	20.4%	100.0%
		% within Gender identification	20.8%	14.7%	19.1%
		% of Total	15.2%	3.9%	19.1%
	30 - < 40	Count	13	0	13
		% within Age - Grouped	100.0%	0.0%	100.0%
		% within Gender identification	6.3%	0.0%	4.6%
		% of Total	4.6%	0.0%	4.6%
	40 - < 50	Count	3	0	3
		% within Age - Grouped	100.0%	0.0%	100.0%
		% within Gender identification	1.4%	0.0%	1.1%
		% of Total	1.1%	0.0%	1.1%
	50 - < 60	Count	4	0	4
		% within Age - Grouped	100.0%	0.0%	100.0%
		% within Gender identification	1.9%	0.0%	1.4%
		% of Total	1.4%	0.0%	1.4%
Total		Count	207	75	282
		% within Age - Grouped	73.4%	26.6%	100.0%
		% within Gender identification	100.0%	100.0%	100.0%
		% of Total	73.4%	26.6%	100.0%

The ratio of males to females is approximately 3:1 (73.4%: 26.6%).

Within the age category of 20 to 29 years, 79.6 percent were male. Within the category of males (only), 20.8 percent were between the ages of 20 to 29 years. This category of males, between the ages of 20 to 29 years, formed 15.2 percent of the total sample. The trends shown here were influenced by the unavailability of female child soldiers in interim centres (only one girl), where the study was conducted. Female soldiers could not be identified to reveal their past soldiering identity, supposedly because of stigmas attached to female past life in armed groups, which is a repugnant experience (Table 4).

The majority of the respondents were learners (55.7 %), with only 0.4 percent being soldiers. Participants raised the matter of learners who still abandon their education in the district of

Rutshuru, to enrol with militias.¹⁷⁴ The fact that 12.45 percent of former child soldiers were recruited when they were learners and 16.75 percent were unoccupied, sustained the practicality and relevance of the inquiry to children and adolescents.

Targeting learners and child soldiers' CTOs was done on purpose for two main reasons: (1) the high probability to track them back for the evaluation phase; and (2) they are the main targets of armed groups and militias. Other youths in the communities could not be included because of the volatility of the research sites, where armed groups are active and the possibility of unoccupied youngsters to join is optimal, in North Kivu province.

Of the respondents who were involved, 12.4 percent were students at the time of their recruitment and 16.7 percent were unoccupied. The remaining 70.9 percent represent the population that never soldiered. These patterns show that unoccupied children are the most vulnerable to recruitment. A total of 29.1 percent of the sample had been directly involved in hostilities, whereas 70.9 percent had not.

Among ex-combatants, the results of the inquiry indicate that the majority of child soldiers were recruited when they were below the age of 18 (28percent) and only 1.1 percent were above the age of 18. This outcome substantiates the prevalence of child recruitment in the North Kivu Province. It should also be noted that the majority of those who took part in hostilities, were coerced to join fighting forces (15.6percent) and 13.5 percent enrolled voluntarily. Among ex-combatants, 16.3 percent participated once in hostilities, whereas 12.4 percent participated more than once. This explains the frequencies of re-recruitment or re-enrolments that are common practices in war-affected areas.

¹⁷⁴ Focus groups with high school children, Rutshuru, 23 May 2014.

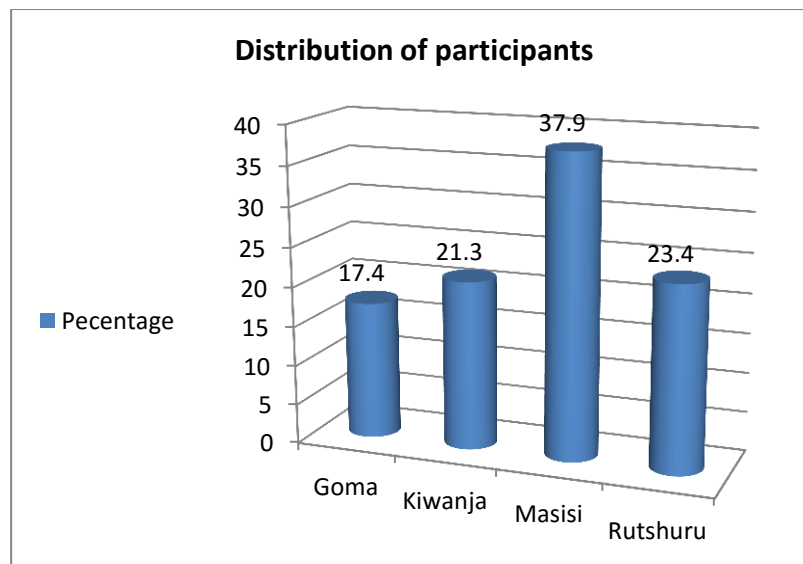


Figure 12: Participants' distribution per site

The centres (Figure 12) represent the groupings of 43 communities/villages in the same surrounding or neighbourhood and the Town of Goma (City Capital of the North Kivu Province). These were the sources of empirical data. Approximately 70 percent of the respondents were non-combatants. The aim of including a substantial number of communities was needed to obtain broader views on their perception of the child soldiering practice and how these populations intend to respond to the child soldiering challenges. Their inclusion was sustained by the fact that, in AR, the people affected by a situation that requires redress are given more voice in exploring lasting solutions to their condition.

These are the four research centres: Goma, Kiwanja, Rutshuru and Masisi. Kitchanga was included in the third phase. Several other participants came from Walikale, Nyanzale, Kanyabayonga and Walungu, which were not visited during the inquiry. They were merged among these four main groups, from which they participated at the time of data collection. The choice for more participants from rural districts (Kiwanja, Masisi, Rutshuru, Walikale, Nyanzale, Kanyabayonga, Walungu and Kitchanga) helped to rate participation in armed groups by urban and rural recruits. The increasing rates of child recruitments in these rural areas, where armed groups and militias are active, provided the insight that rural areas have precarious conditions that are also propitious to the use of children as soldiers.

11.2.2 Armed groups' identification

The highest rate of recruitments was attributed to armed groups of foreign origin (Rwanda). The FDLR with 22.8 percent (Rwandan Hutu); the APCLS with 16.5 percent (Congolese

nationals); the Insurrectionist M23 with 16.5 percent (mixed nationalities); the NYATURA with 10.1 percent (Rwandan Hutus), the PARECO with 8.9 percent (Congolese nationals); the CNDP with 5.1 percent (Rwandan and Congolese Tutsis); the Mai Mai with 3.8 percent (local militias); and Other (small militias and undefined armed groups) at 16.5 percent

The figure above presents the rate of victimisation by different armed groups, and the category of populations that had suffered atrocities by these armed groups and militias. The FDLR, the APCLS, the M23, the Nyatura and PARECO and other armed factions have made the most victims among local people and officials in the communities.

Table 5: Armed groups

<i>Armed groups and militias child soldiers were associated with</i>					
		Frequency	%	Valid %	Cumulative %
Valid	AFDC GIDE	3	1.1	3.8	3.8
	APCLS	13	4.6	16.5	20.3
	CNDP	4	1.4	5.1	25.3
	NON IDENTIFIED	7	2.5	8.9	34.2
	FDLR	18	6.4	22.8	57.0
	FPD	1	.4	1.3	58.2
	M23	13	4.6	16.5	74.7
	MAI MAI	3	1.1	3.8	78.5
	NDC	1	.4	1.3	79.7
	NYATURA	8	2.8	10.1	89.9
	PARECO	7	2.5	8.9	98.7
	UPC	1	.4	1.3	100.0
	Total	79	28.0	100.0	
Missing	System	203	72.0		
Total		282	100.0		

The findings of this study show a significant shift regarding armed groups' recruiters from the Mai Mai in the past, to the foreign armed group (the FDLR) currently at the top of the list, followed by the insurrectionists M23 and emerging community self-defence groups. The last category, identified as 'others', represents the FDC Gide, FPD, NDC, UPC and other groups that bear the names of their commanders. Many child participants could not even explain what some acronyms of the group they were associated with stood for.

The significance of Kiwanja, Rutshuru, Masisi and Kitchangain in the study, is that these centres have been the theatres of bloody battles, opposing different armed groups and the DRC Government forces; ethnicised armed conflict, whereby local ethnic groups fight against foreign settlers from Rwanda (the Hutus and the Tutsis). These locations continue to house active armed groups: Masisi (APCLS, PARECO, NDF, Mai Mai, Nyatura, etc.), Kiwanja and Rutshuru (Mai Mai, FDLR, Nyatura, M23, etc.), Kitchanga (APCLS, Nyatura, FDLR, Mai Mai, etc). In these localities, child soldiers are subject to the above mentioned major armed groups. Nevertheless, the majority of enrolment is conducted by unidentified armed groups and militias also.

The section that follows analyses the scoring patterns of the respondents, per variable, per section.

11.2.3 Appraisal of existing mechanisms of accountability, reintegration and prevention

Table 6: Summarised results

	Disagree	No opinion	Agree
1. Since the last two wars began in 1996, there are children who continue to enroll because belligerent children do not account for their past brutal actions.	22.5	12.6	64.9
2. Demobilization, disarmament and reintegration/reinsertion programmes are failing to prevent new enrolment of children in armed forces and groups.	25.7	4.5	69.8
3. The local criminal justice system in place is not preventing the involvement of children in armed conflict.	21.6	7.7	70.7
4. Traditional justice is failing to stop children to participate in armed conflicts.	19.4	4.1	76.6
5. Impunity and lack of accountability for previous atrocities encourage greater involvement of children in hostilities.	6.8	4.5	88.7
6. The communities in Northern Kivu Province do have sufficient and efficient means to intervene against participation of children in armed conflict.	17.1	5.0	77.9
7. Children associated with armed forces and groups who are responsible for war crimes and human rights violations must be prosecuted and punished?	32.4	4.1	63.5

Levels of disagreement (negative statements) were collapsed to show a single category of “Disagree”. A similar procedure was followed for the levels of agreement (positive statements). This is allowed due to the acceptable levels of reliability. The results are first presented using a summarised percentage for the variables that constitute each section and are further analysed according to the importance of the statements. This section was answered by both CGs and EGs. It aimed to collect and measure their views regarding factors that are possible causes of ongoing participation. These are presented as assumptions, to be established

as independent variables, after analysis, and later determine the correlation with the dependent variable namely child soldiering practice.

The analysis of these patterns are furthered and combined with qualitative data, in order to support the significance of observations made by respondents, interviewees and what emerged from focus group discussions. It is noticeable that very few respondents (for most statements) have “No opinion”. This reflects the effect this situation has on respondents (as they are all directly affected).

11.2.4 Statistics reliability and factor analysis

Bless *et al.* (2013: 222) assert: “[...], the reliability of measurement is the degree to which that instrument produces equivalent results for repeated trials”. The two most important aspects of precision in research are reliability and validity. Reliability was computed by taking several measurements on the same subjects. A reliability coefficient of 0.70 or higher is considered as “acceptable”. To achieve this, Cronbach’s Alpha was calculated.

Sapsford and Jupp (2006: 121) explain Cronbach’s Alpha as: “a statistic calculated to access the extent to which items in the scale are correlated with each other; they should be highly correlated if they all measure that same thing”. Table 7 reflects the summary and reliability of score for all the items that constituted the questionnaire.

Table 7: Case processing summary

Case Processing Summary			
		N	%
Cases	Valid	220	78.0
	Excluded ^a	62	22.0
	Total	282	100.0

a. Listwise deletion based on all variables in the procedure.

Table 8: Reliability Statistics

Cronbach's Alpha	N of Items
.646	10

The overall reliability score for diagnosis of the problem and appraisal of existing mechanisms to prevent the use of child soldiers, closely approximates the recommended value of 0.70. This

indicates a high (overall) degree of acceptable, consistent scoring for the research. Each matrix table is preceded by a table that reflects the results of KMO and Bartlett's Test. The requirement is that the KMO Measure of Sampling Adequacy should be greater than 0.50 and Bartlett's Test of Sphericity less than 0.05. In all instances, the conditions are satisfied, which allows for the factor analysis procedure (Kiyala 2015)

Table 9: KMO and Bartlett's Test

Kaiser-Meyer-Olkin Measure of Sampling Adequacy.		.734
Bartlett's Test of Sphericity	Approx. Chi-Square	373.838
	Df	45
	Sig.	.000

- The principle component analysis was used as the extraction method, and the rotation method was Varimax with Kaiser Normalization. This is an orthogonal rotation method that minimises the number of variables that have high loadings on each factor. It simplifies the interpretation of the factors (Table 10) (Kiyala 2015).
- Factor analysis/loading show inter-correlations between variables (Table 10).
- Items of questions that loaded similarly imply measurement along a similar factor. An examination of the content of items loading at or above 0.5 (and using the higher or highest loading in instances where items cross-loaded at greater than this value) effectively measured along the various components (Table 10) (Kiyala 2015).

Table 10: Rotated Component Matrix^a

	Component	
	1	2
Lack of accountability		.528
Inefficiency of DDR programmes to prevent child soldier practice		.724
Inefficiency of the local justice system	.544	
Inefficiency of the traditional justice system	.569	
Impunity for past atrocities committed by child soldiers encourage child soldiers' recruitments	.543	
Incapacity of the community to prevent child soldiering	.588	
support for prosecution of child soldiers	.613	
Status of juvenile justice		.721
Instability marked by war, ethnic tensions and poverty causes child soldiering	.564	
Extraction Method: Principal Component Analysis. Rotation Method: Varimax with Kaiser Normalization.		
a. Rotation converged in 3 iterations.		

It is noted that the variables that constituted the diagnosis and appraisal section loaded along two components. This implies that respondents identified certain aspects of the sub-themes as belonging to other sub-sections. These are the level and status of accountability, juvenile justice and DDR programmes, as well as the ineffectiveness of existing preventive structures (Kiyala 2015)

Table 11: Influencing factors to soldiering choice

Chi-Square Tests						
	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	21.102 ^a	5	.001	.001		
Likelihood Ratio	22.033	5	.001	.001		
Fisher's Exact Test	21.592			.000		
Linear-by-Linear Association	1.675 ^b	1	.196	.202	.105	.013
N of Valid Cases	222					
a. 3 cells (25.0%) have expected count less than 5. The minimum expected count is 3.14.						
8. The standardized statistic is -1.294.						

There is a significant relationship between 'Factors that can cause participants to join armed groups' and 'Age' (Fisher p = 0.000). The traditional approach to reporting a result requires a

statement of statistical significance. A p-value is generated from a test statistic. A significant result is indicated with " $p < 0.05$ ". The null hypothesis states that there is no association between the two. The alternate hypothesis indicates that there is an association. The table summarises the results of the chi square tests.

For example: The p-value between “Demobilization, disarmament and reintegration/reinsertion programmes are failing to prevent new enrolment of children in armed forces and groups” and “Gender” was 0.005. This implies that the gender of the respondent did play a role in terms of how the statement was answered. An inspection of the frequency table indicates that males agreed more with the statement than females (on the DDR issue). Most of the participants said that the DDR programmes are ineffective to prevent the child soldiering practice (Kiyala 2015).

This trend is explained by the fact that the involvement of the State to fund the project is minimal, which justifies both self-demobilisation and several instances of re-recruitment or re-enrolment. The DDR is too short and not fully monitored or supported by collateral projects of economic (projects of subsistence) and social reinsertion (support groups, counselling, psychological and trauma healing facilities) (Kiyala 2015).

11.2.5 Evaluation of current preventive efforts

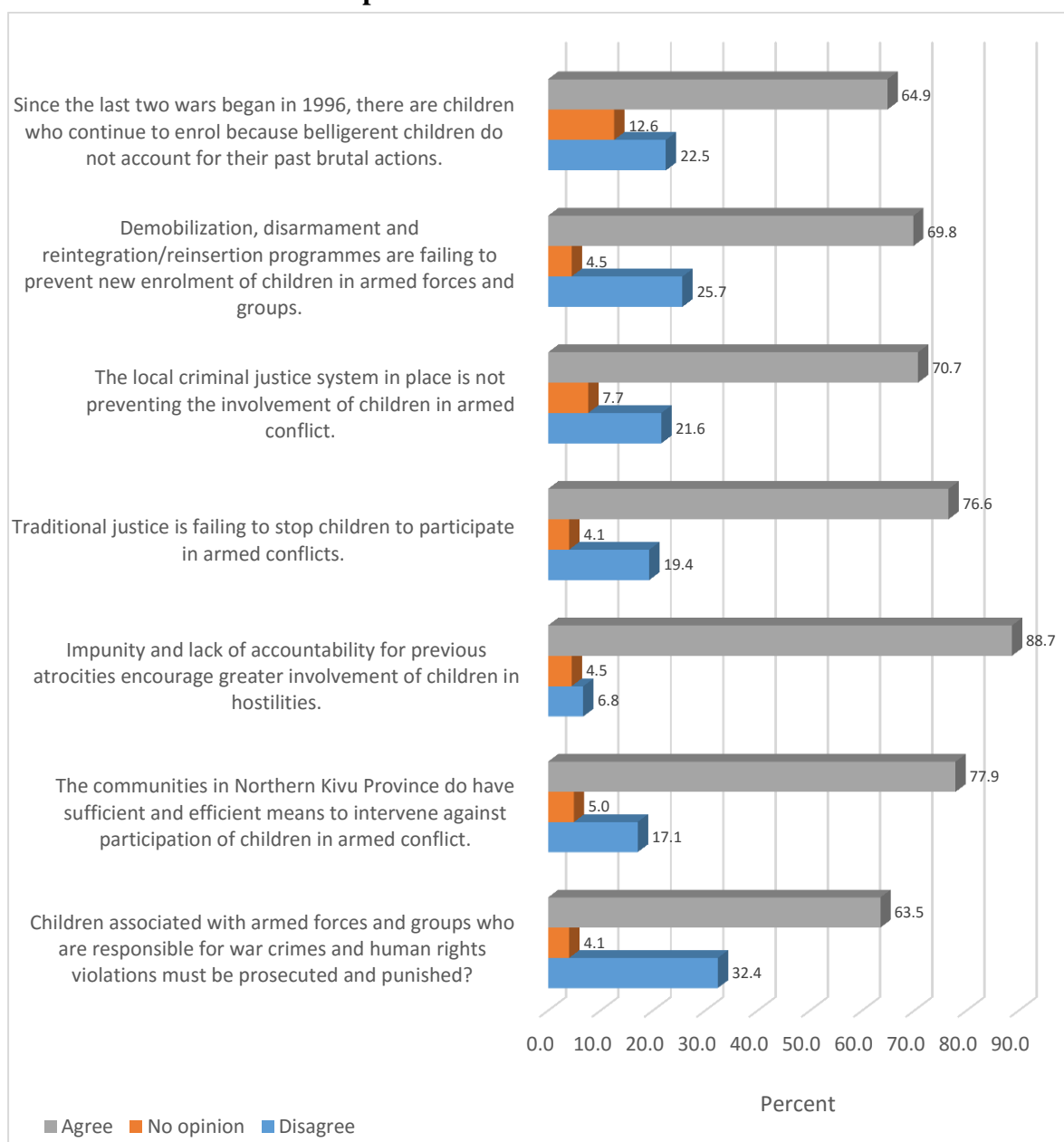


Figure 13: Appraisal of accountability and preventive measures

The average level of agreement in this section is 73.2 percent ranging from a high of 88.7 percent to a low of 63.5 percent. Nearly two-thirds of the respondents (63.5percent) favour prosecution and punishment for children involved in war crimes (Kiyala 2015).

Bivariate correlation was also performed on the (ordinal) data. The results indicate the following patterns. Positive values indicate a directly proportional relationship between the variables and a negative value indicates an inverse relationship. There was significant correlation between variables.

Table 12: Correlations of factors responsible for child soldiering

Correlations													
			Since the last two wars began in 1996, there are children who continue to enrol because belligerent children do not account for their past brutal actions.	Demobilization, disarmament and reintegration/insertion programmes are failing to prevent new enrolment of children in armed forces and groups.	The local criminal justice system in place is not preventing the involvement of children in armed conflict.	Traditional justice is failing to stop children to participate in armed conflicts.	Impunity and lack of accountability for previous atrocities encourage greater involvement of children in hostilities.	The communities in Northern Kivu Province do have sufficient and efficient means to intervene against participation of children in armed conflict.	Children associated with armed forces and groups who are responsible for war crimes and human rights violations must be prosecuted and punished?	Status of juvenile justice	When the need arises to prevent children from joining armed forces and groups, what is the community's stance?	Instability marked by war, ethnic tensions and poverty causes child soldiering	Do you intend to join armed groups or become soldier?
Spearman's rho	Lack of accountability by child soldiers	Correlation Coefficient	1.000										
		Sig. (2-tailed)											
		N	222										
	Inefficiency of DDR programmes to prevent child soldiering	Correlation Coefficient	.439**	1.000									
		Sig. (2-tailed)	.000										
		N	222	222									
	Inefficiency of the local justice system	Correlation Coefficient	.304**	.421**	1.000								
		Sig. (2-tailed)	.000	.000									
		N	222	222	222								
	Inefficiency of the traditional justice system	Correlation Coefficient	.183**	.183**	.364**	1.000							
		Sig. (2-tailed)	.006	.006	.000								
		N	222	222	222	222							
	Impunity for past atrocities by child soldiers	Correlation Coefficient	.175**	.128	.161*	.123	1.000						
		Sig. (2-tailed)	.009	.057	.016	.068							
		N	222	222	222	222	222						
	Incapacity of the community to prevent child soldiering	Correlation Coefficient	.283**	.268**	.269**	.317**	.211**	1.000					
		Sig. (2-tailed)	.000	.000	.000	.000	.002						
		N	222	222	222	222	222	222					
	Support for prosecution of child soldiers	Correlation Coefficient	-.039	-.157*	.022	.098	.112	.062	1.000				
		Sig. (2-tailed)	.562	.020	.744	.145	.096	.357					
		N	222	222	222	222	222	222	222				
	Status of juvenile justice	Correlation Coefficient	.259**	.355**	.270**	.156*	.057	.274**	-.240**	1.000			
		Sig. (2-tailed)	.000	.000	.000	.020	.399	.000	.000				
		N	221	221	221	221	221	221	221	221			
	Role of the community in preventing child soldiering	Correlation Coefficient	-.165*	-.033	-.186**	-.188**	.017	-.023	-.146*	-.086	1.000		
		Sig. (2-tailed)	.014	.621	.006	.005	.805	.735	.031	.202			
		N	220	220	220	220	220	220	220	220	220		
	Instability marked by war, ethnic tensions and poverty	Correlation Coefficient	.167*	.247**	.132*	.057	.138*	.191**	.105	.146*	.080	1.000	
		Sig. (2-tailed)	.013	.000	.050	.400	.040	.004	.120	.030	.240		
		N	222	222	222	222	222	222	222	221	220	222	
	Intention to join armed groups or join soldiering	Correlation Coefficient	-.021	.024	-.013	-.296**	.043	.011	-.130	-.074	.178**	.108	1.000
		Sig. (2-tailed)	.751	.722	.846	.000	.522	.874	.054	.274	.008	.108	
		N	222	222	222	222	222	222	222	221	220	222	222

** . Correlation is significant at the 0.01 level (2-tailed).

*. Correlation is significant at the 0.05 level (2-tailed).

Spearman's rho analyses of correlations were conducted (Table 12). For example, the correlation value between "Demobilization, disarmament and reintegration/reinsertion programmes are failing to prevent new enrolment of children in armed forces and groups" and "The local criminal justice system in place is not preventing the involvement of children in armed conflict" is 0.421. This is directly related proportionality.

For example, correlation value between "Do you intend to join armed groups or become soldier?" and "Traditional justice is failing to stop children to participate in armed conflicts." is -0.296 (Table 12). Respondents indicate that the failure of traditional justice leads to a greater likelihood of children joining the armed forces, and vice versa (Kiyala 2015). Respondents agree that the more effective the criminal justice system, the more likely children would be prevented from joining the armed forces, and vice versa. Negative values imply an inverse relationship. That is, the variables have an opposite effect on each other. From Table 12, $p < 0.01$ and $p < 0.50$ shows significant correlations between the intention to join armed groups and failure to hold child soldiers accountably (-0.21), the limitations of DDR programmes (-0.024), inefficiency of the criminal justice system (0.024), failure of the traditional justice system (-0.013), impunity (0.043), inability of the community to prevent children from joining armed groups (0.011), inefficiency/inexistence of juvenile justice system (-0.074).

This component was adopted, in order to identify different factors that underpin the variables, so as to establish the correlation between them. The study clearly shows that sets of independent variables are strongly related and all influence the problem of the study. This procedure helped determine the causality effects of independent variables (accountability, justice system, impunity, role of the community) and the dependent variable (child soldiering practice). Several variables are linked to justice and some are correlated to social and economic security (poverty and interethnic tensions). These sets of factors strongly cause the existing child soldiering phenomenon and its complexities.

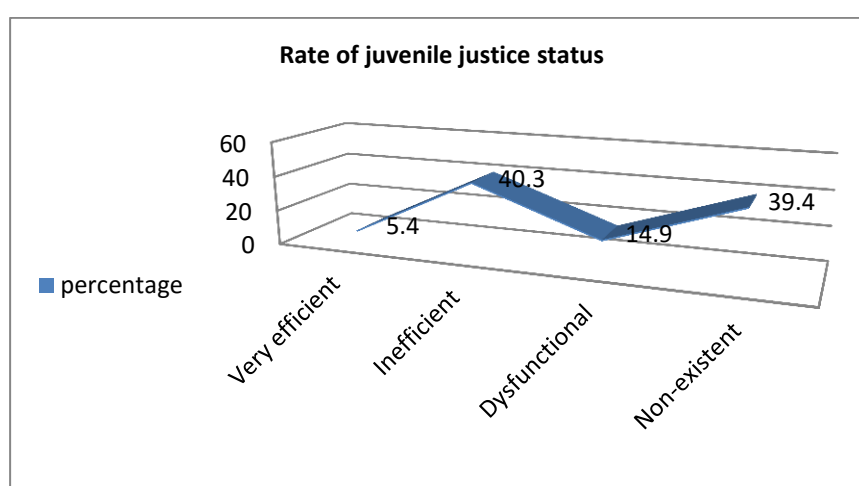
Table 13: Views that RJPC can prevent child soldiering practice

		Frequency	%	Valid %	Cumulative %
Valid	Strongly disagree	3	1.1	5.8	5.8
	Disagree	2	.7	3.8	9.6
	No opinion	1	.4	1.9	11.5
	Agree	15	5.3	28.8	40.4
	Strongly agree	31	11.0	59.6	100.0
	Total	52	18.4	100.0	
Missing	System	230	81.6		
Total		282	100.0		

Following the peace circles, participants provided their opinion regarding the usefulness of RJ Circles in child soldiering prevention. The table below reveals that the majority considered RJPCs as a helpful tool in efforts to halt the use of children as soldiers (Kiyala 2015). Table 13 shows a high level of agreement that applying RJPCs in war-affected communities may dissuade children from participating in armed conflicts. This conclusion is drawn from the survey generated by the total sample, in the first phase of the inquiry.

11.2.6 Status of juvenile justice

It is noted that only 5.4 percent of the respondents believed that juvenile justice was being done efficiently. Similar numbers of respondents rated the service as being Inefficient or Non-existent (40.3 and 39.4percent, respectively). This explains why child soldiers struggle to settle in a community that cannot protect them and help them deal with their past.

**Figure 14: Participants' views on the state of juvenile justice**

The Chi-Square test result (Table 14) confirms that the distribution was skewed in terms of the scoring patterns per option ($p = 0.000$).

Table 14: Test statistics of Juvenile justice

Test Statistics	
	Status of juvenile justice
Chi-Square	81.679 ^a
df	3
Asymp. Sig.	.000

a. 0 cells (0.0%) have expected frequencies less than 5. The minimum expected cell frequency is 55.3.

There was a significant statistical difference regarding the status of juvenile justice between ‘very efficient’ represented by 5.4 percent of support by participants and ‘inefficient’ supported by 40.3 percent of participants, while 39.4 percent also expressed that juvenile justice is non-existent, especially in areas where young people exit armed conflict (Kiyala 2015). The Chi-Square result shows a significant relation between the lack of juvenile justice and participation of children in armed conflict.

11.2.7 Local justice system as challenge to child soldiers’ reintegration

The majority of participants noted that the local justice system is either inefficient or non-existent (Kiyala 2015). Delphin (a 19year-old former child soldier, from Nyanga) observes: “The justice system is failing to prevent child soldiering practice because so many children continue to be recruited and enrol”.

Tyty Byandi (a 16year-old school girl, from Goma) acknowledges that the DRC’s justice system is neither strong nor efficient to address justice issue. She argues: “It is compelling to find another justice system like RJ. One must meet the perpetrator or the victim and ask for forgiveness. Many people offend others... they go to jail and later on are released from prison without saying sorry”. She finally remarks that the local justice system is not adequate.

Al (a 17year-old school boy from Goma) notes:

The justice system in Goma... I see that they don’t handle minors, only adults from 18year-old upwards. It doesn’t prevent child soldiers because up to now children continue to enrol and to be recruited... there is no justice... Child soldiers are criminals... they are like street children... the Government doesn’t do anything for children... The local justice system doesn’t prevent child soldiering practice. The

customary and traditional justice exists but it is powerless... the Government must empower traditional leaders to enforce justice...

CBK (a 31year-old man, humanitarian agent from Goma) remarks that there is a tribunal for children... but it doesn't prevent children from becoming soldiers. He further acknowledges that traditional justice is incapable of administering justice, suggesting that the Government should hand over some of its power to local traditional leaders to deal with justice on a local level.

However, he cautions against the ambiguous responsibility of the Government that is also involved in recruiting children as soldiers. In the same perspective, Diana (a 17year-old school girl from Goma) concurs: "There must be justice for children who commit crimes... if nothing is done, others will do the same... they must be prosecuted and imprisoned... build their prisons... there must be justice... they are criminals... they loot, they rape, and they steal".

In addition, Kalunga (a 25year-old student from Goma) narrates the story of child soldiers' recruiters who are at large with impunity:

There is no justice...here recently... I heard from the radio that children were kidnapped and taken to join the AFD-NALU in the Great North. Those recruiters who were arrested cheated children that they will be paid 500\$ as pocket money. Children were impressed and went. These cheaters were arrested and released... Traditional justice is not effective because local leaders encourage children to join... sometimes they are forced to join.¹⁷⁵

Among several cases of impunity noted by participants, they pointed to the Mai Mai armed fights. It was often said that the Mai Mai and many so-called, say they protect their territories.¹⁷⁶ They don't want the balkanisation of the DRC and have as precise objectives: the protection of their land and their interests. For this reason, they organise ethnic group armies that go to prepare themselves to fight any group that comes to trouble their communities.

Kalunga narrates that the community sensitised children by telling their children that your life is short if you don't join. And often children who were not schooling did join. He avers: "They paid us 100\$ per week after killing enemies. The community use to bring us food in the

¹⁷⁵ Personal interview with Kalunga (former child soldier), Goma, 7 June 2014.

¹⁷⁶ Focus groups with humanitarian agents, Kiwanja, 22 May 2015.

forest... at the level of the village there is no justice. Because the traditional leader remains in the capital village and doesn't move everywhere"¹⁷⁷

Patient (humanitarian agent from Rutshuru) supports the view emitted above on the local justice system standard. He notes: "Justice does not work as it should. A child who has committed an offense is incarcerated in the same cell with adults, even girls. Secondly they have to be transferred to the provincial jurisdiction".¹⁷⁸ He comments further: "There are insufficient structures and lack of good conditions to detain child criminals. There is no just justice. Appeals are insufficiently attended... for us when a child has committed of offense; he/she has raped, stolen, we look for the victims".¹⁷⁹

Several children are kidnapped by rebel groups on their way to or from school, as well as in the forest, when they go to fetch water or firewood. Nosta (a 23year-old student from Goma) maintains: "No police presence, no security service in the village... there is a total absence of the State". Serious participants concurred that there was no security and the police presence was non-existent in villages that are left at the mercy of rebels.

It came out during interviews with humanitarian agents, working in transit and orientation centres that they often used RJ VOM to address violence perpetrated by a child, in their respective centres, before family reinsertion.¹⁸⁰ When there was a claim that a child had perpetrated crimes and the victim identified and located him, they will approach the caretakers in the centre. The process of tracing the family will begin and the centre will engage with the child offender's family and the victim's, to negotiate for forgiveness and reparation. The mediation takes place in the community where the damage was done. Should the mediation prove successful, the family of the child offender and the family of the victim agree on the nature of reparation or restitution to be done.

The centre will ensure that transformation of relation has taken place and the situation has improved, before the child is returned to their family. In the case where the child soldier's family cannot afford the price of the restitution and should this be indispensable for a safe

¹⁷⁷ Personal interview with Kalunga (former child soldier), Goma, 7 June 2014.

¹⁷⁸ Personal interview with Patient, (humanitarian agent), Rutshuru, 25 June 2014.

¹⁷⁹ Personal interview with Patient, 26 May 2014, Rutshuru, North Kivu.

¹⁸⁰ Personal interview with Patient, 26 May 2014, Rutshuru, North Kivu.

reintegration, the institution that received the child after exiting armed groups, has to step in and take responsibility.¹⁸¹

11.2.8 Impunity

Impunity and erosion of traditional protective values and institutional structures constitute the main concerns in efforts to end the use of children as soldiers. Several participants identified impunity as one of the most prominent factors sustaining the practice of child soldiers. Kingombe, a 17year-old former child soldier from Masisi, says: “It is a disaster to have children in armed forces and groups. The Government must fight against impunity”. Kiki (a 28year-old student from Goma) maintains: “Those who were in the CNDP got promoted to good positions in the government and those were in the M23 have been granted amnesty after committing war crimes. How come that people who recruited children as soldiers can be granted amnesty?...” he also doubted the role of the Government: “many of these people are supported by the Government”.

On the other hand, Ngandu (a 42year-old humanitarian agent from Walikale) identifies several incidents of impunity, involving the security services and armed groups’ commanders, and remarks: “you will see a person who has killed people. They take him under the pretext that he is arrested but when he arrives here [in Goma] he gets promoted to the rank of colonel”. He continues: “They [Government officials] give him arms and he goes to exterminate other people again... a person who commits crimes is gratified with promotion to higher rank instead of putting him in jail or punishing him... you see such things”. Ngandu strongly emphasised that this impunity is the cause of armed groups mushrooming: “Now if a person commits crimes he goes to the bush to form his armed group and name himself captain, colonel, without formation... ‘that everybody will be afraid of me’ ... who will say something against him”.

The case of the M23 came also on the spot as he comments:

After committing crimes... you can take here the example with the M23. You see what is happening with the Government of national unity... they want to bring in all those who have committed crimes and those who have raped like around Kanyaruchinya and Mujda in the territory of Rutshuru... at Ntoto... like the RCD [People’s Rally for Democracy] did... all those who committed crimes in the RCD were taken in the Government of 1+4 in Kinshasa.¹⁸²

¹⁸¹ Personal interview with Patient, 26 May 2014, Rutshuru, North Kivu.

¹⁸² Personal interview with Ngandu, Goma, 7 June 2014.

Furthermore, Ngandu sustains that impunity and self-enrichment by armed groups encourage the use of children as soldiers.¹⁸³ A close link is apparent between impunity and the proliferations of armed groups. Apart from this, there is a common view that people have started forming their private militias, as a means of obtaining a post in the government. ‘Everybody says to obtain a government position in the Congo, one has to take up arms and also call yourself a colonel; 20 young men are recruited and armed.

This is an opinion supported by Ngandu, who illustrates his point as follows:

Like the MP Katshaba. He was taken here. When the M23 arrived here [Goma] he was facilitating the transfer of ammunitions from Rwanda to Congo through the airport of Goma. They took him from here to the airport and transferred him to Kinshasa and put him in jail. He has returned here.¹⁸⁴

Some participants were apprehensive that the delay in announcing the New Cabinet, following the negotiations with the M23 rebels, was a way of bringing some of their leaders into the Government of national unity or to put cohesion in place.¹⁸⁵ They argued the DRC Government should hold perpetrators of humanitarian and human rights law violations accountable: “Bringing criminal armed rebel to justice would, there would be less active armed groups in the region”.¹⁸⁶

An interviewee referred to several cases of impunity that include alleged human rights violations perpetrated by, among others, Bertran Bisimwa, who was spokesperson of the M23, General Mayanga, who was a colonel, now he is a General in the Congolese armed forces and Colonel Etienne Bintu of Walikale, who has been promoted as General in the DRC army because he helped the RCD and the M23.¹⁸⁷ Another rebel commander mentioned was the chief commander of the Mai Mai, Cheka at Binyampuri, who had been harassing people collecting taxes. He killed two Colonels namely Chuma and Pili-Pili and the Government has done nothing to prosecute or arrest him... No justice was done for this crime. Cheka was a mines trader and went to recruit children and made them soldiers... he remains at large and continues with his business with impunity. He is seen around Goma and in Goma.¹⁸⁸

¹⁸³ Personal interview with Ngandu, Goma, 7 June 2014.

¹⁸⁴ Personal interview with Ngandu, Goma, 7 June 2014.

¹⁸⁵ Personal interview with Ngandu, Goma, 7 June 2014.

¹⁸⁶ Personal interview with Ngandu, Goma, 7 June 2014.

¹⁸⁷ Personal interview with Ngandu, Goma, 7 June 2014.

¹⁸⁸ Personal interview with Ngandu, Goma, 7 June 2014.

The interviewee finally concludes with this striking anecdote, on a very sad note: “There is no justice ... if a person looks for a lost chicken he/she can ask the neighbour who has seen it... but if a person kills another, they cannot ask who killed this one”.¹⁸⁹ The total insecurity and impunity have worsened violence and people fear each other because of settling scores and unaccounted murder. Several of those who commit crimes join armed groups, gangs and militias to evade arrests, including child soldiers.¹⁹⁰

11.2.9 The role of community to prevent child soldiering

A little less than a fifth (18.2%) of the respondents indicated that the community was actively involved in dissuading children from militias. Nonetheless, a combination of “indifferent” and “inactive” responses describes the role played by the community as not significant to protect children. Some participants in focus groups explained the weakness of various communities to campaign against child soldiers, as due to the fact that they are militarised and surrounded by armed groups that may retaliate against them, by invading them or targeting campaigners who try to dissuade children from joining them. The most serious reason is the emergence of community self-defence armies.¹⁹¹

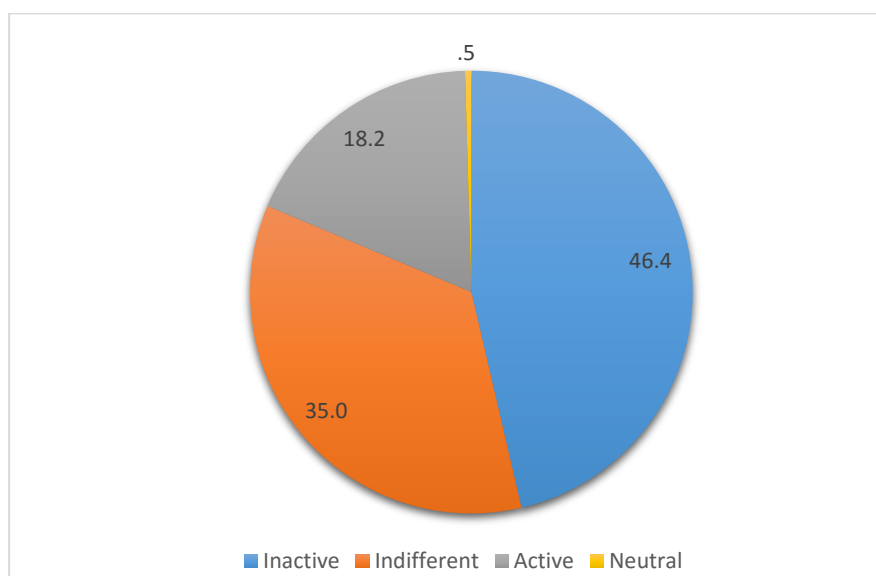


Figure 15: The role of communities to prevent child soldiering practice

¹⁸⁹ Personal interview with Ngandu, Goma, 7 June 2014.

¹⁹⁰ Focus group with humanitarian workers, Kiwanja, 27 May 2014. This situation exploded the increasing rates of criminality and kidnapping by the Manoti groups, who ask ransoms before releasing the kidnapped. Mostly humanitarians, medical doctors, business people and high profiles members of the community are the targets.

¹⁹¹ Focus group with teachers at Bustani High School, and ex-combatant children at St Damian High School in Masisi, 10 June 2014.

The Chi-square test (Table 15) indicates a difference in the scoring patterns, supporting that the community was not able to prevent children from joining hostilities.

Table 15: Test statistics of community role to prevent child soldiers

Test Statistics	
	The role of community to prevent child soldiering
Chi-Square	106.073 ^a
df	3
Asymp. Sig.	.000
a. 0 cells (0.0%) have expected frequencies less than 5. The minimum expected cell frequency is 55.0.	

A significant relation between the inability of the community to prevent the use of child soldiers is revealed (Table 15), when in fact, many communities are being assisted by NGOs. These include Caritas Congo, Caritas Goma, the Union for Peace and Child Rights' Promotion in Congo (UPEDECO), and the Concert of Action for Disadvantaged Youths and Children (CAJED), along with the Programme of Fight against extreme Poverty and Misery (PAMI), and Actions and Projects of Sustainable Development (APROJED), a Partner of Save the Children in North Kivu. Most of these institutions receive funding from UNICEF that provides support for the immediate release of children from armed conflict, while it also provides initial assistance needed by belligerent children.¹⁹² These are the organisations involved in child DDR programmes, which the community cannot undertake. Funding post-demobilisation programmes has been a serious challenge that needs to be considered to prevent re-recruitment.¹⁹³

¹⁹² Focus group with humanitarian workers, Goma, 28 May 2014.

¹⁹³ Focus group with humanitarian workers, Kiwanja, 27 May 2014.

11.2.10 Expressed intention to join armed groups before RJPCs

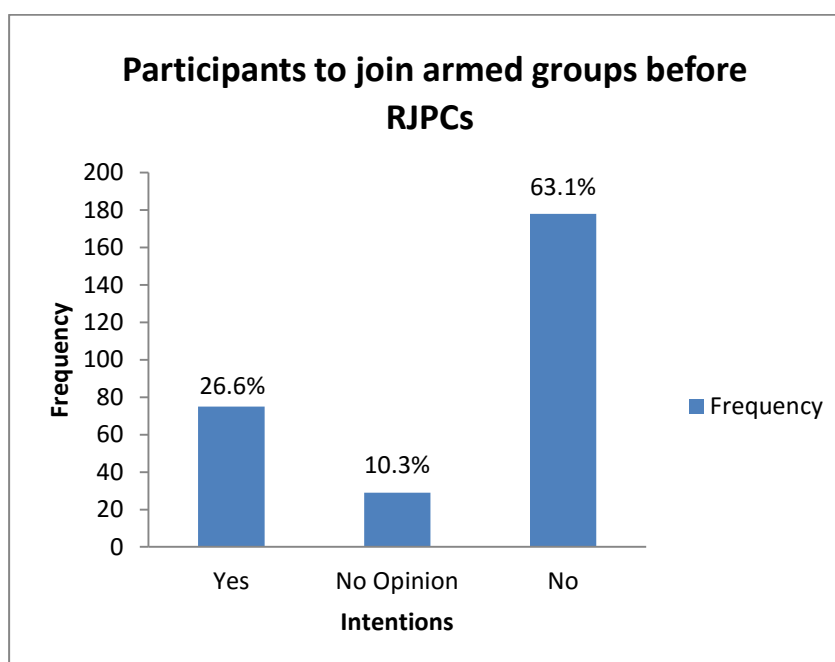


Figure 16: Intention to join armed groups before intervention

The majority of participants object to joining armed forces of groups for several reasons (63.1%). Apart from the traumatic experiences of those who have participated, there was a general understanding that soldiering was not a favourable activity, in the views of those who had participated and those who had not.

The following section elaborates more on the circumstances that push children to join armed groups.

11.3 Circumstances of joining armed groups and militias

Table 16: Factors that can make participants join armed groups

			Age categorised into two (under 18 and 18 and above)		Total	
			Below 18 year of age	18 year old and above		
Factors that can cause participants to join armed groups	War and loss of parents	Count	3	5	8	
		% of Total	1.4 %	2.3 %	3.6 %	
	War and protection of community	Count	31	10	41	
		% of Total	14.0 %	4.5 %	18.5 %	
	Unemployment	Count	13	15	28	
		% of Total	5.9 %	6.8 %	12.6 %	
	Lack of education opportunity	Count	7	5	12	
		% of Total	3.2 %	2.3 %	5.4 %	
	No opinion/nothing	Count	42	43	85	
		% of Total	18.9 %	19.4 %	38.3 %	
	All factors combined	Count	39	9	48	
		% of Total	17.6 %	4.1 %	21.6 %	
	Total		Count	135	87	222
			% of Total	60.8 %	39.2 %	100.0 %

Focus group discussions also reveal that many participants aged 18 years and above, were not interested in joining the national army because of the precarious living condition of armed officers and security services personnel. These conditions include a lack of social advantages, medical care, insignificant salary, and the despising criticism directed at them because of their involvement in human rights violations (looting, raping and harassing civilian populations).¹⁹⁴

Factor analysis was used, in order to identify different factors that underpin the variables, so as to establish the correlation between them. It was clearly demonstrated that these sets of independent variables are strongly related and all influence the conditions that neither sustain

¹⁹⁴ Focus group with humanitarian workers, Kiwanja, 27 May 2014.

the reintegration of child soldiers nor prevent new recruitment and enrolments. This procedure assisted to determine the causality effects of independent variables (accountability, justice system, impunity, role of the community) and the dependent variable (child soldiering practice).

Several variables are linked to justice and some are correlated to social and economic security (poverty and inter-ethnic tensions). These sets of factors have been shown to cause the existing child soldiering phenomenon and its complexities and are symptomatic of a hostile environment for the reintegration of young soldiers who have exited conflicts and are attempting to find their feet back in the community.

The decision by children below the age of 18 to become a soldier is motivated by a combination of factors (Table 16), followed by ongoing war, the need to protect families, unemployment, and the lack of education opportunities. It is not a single factor that prompts a child to join belligerents, but rather an amalgam of complex issues. The high rate of no opinion (18.9% for participants below 18; 19.4% for those above 18, summed up to 38.3% for the total of the sample) is a clear indication of uncertainties that prevail in many of the populations in war-torn areas.

Table 17: Chi-Square Tests of factors correlation

	<i>Value</i>	<i>df</i>	<i>Asymp. Sig. (2-sided)</i>	<i>Exact Sig. (2-sided)</i>	<i>Exact Sig. (1-sided)</i>	<i>Point Probability</i>
Pearson Chi-Square	21.102 ^a	5	.001	.001		
Likelihood Ratio	22.033	5	.001	.001		
Fisher's Exact Test	21.592			.000		
Linear-by-Linear Association	1.675 ^b	1	.196	.202	.105	.013
N of Valid Cases	222					

a. 3 cells (25.0%) have expected count less than 5. The minimum expected count is 3.14.

b. The standardized statistic is -1.294.

There is a significant relationship between 'Factors that can cause participants to join armed groups' and 'Age' (Fisher $p = 0.000$). It is a combination of factors that, to a great extent, push children to become soldiers.

11.3.1 Adversities inside armed groups and militias

Underage soldiers confirm that extreme suffering, beating and being on guard for several days without sleep, push them to desert. Refusal or resistance to take a commanders' orders, delaying the execution of orders, such as killing innocent people, executing those who loot without permission, cruel training by burying them alive, and suffocating them to death with their head wrapped in plastic bags, are among the motivations of these young soldiers to exit armed groups and militia.¹⁹⁵ Immediately they find themselves out of armed groups, they search for a temporary home that would provide them with security and facilitate their return home (Kiyala 2015).

Unbearable suffering encourages them to self-disarm, as reported by Kinige, a 14-year-old, self-demobilised child soldier from Bukombo. He notes: "the M23 are the most violent because they rape girls, women and loot... they kill men without reason. They are found in Kiwanja, Rutshuru, Bunagana, etc."¹⁹⁶ He also pleaded that their families help them by sending them to school and providing them with the means to practice economic and commercial activities.

Akiza (an 11-year-old, self-demobilised child soldier from Bambo, now under care at a CTO) was abducted by the FDLR when he was nine and later joined the M23. He reports: "I was taken by the FRDLR from our house... I ran away from the FDLR and joined again the M23... the M23 threatened to kill me because I refused to kill... I decided to run for my life and my brother PTK [pseudonym] brought me to the CTO". Debandes (a 12-year-old self-demobilised child soldier from Chengerero, now at a CTO), narrates: "I was taken by the M23 in our house while my parents had gone to Uganda... they killed those [who] were with us... I ran to Uganda... afterwards I came back home... my parents welcomed me and took me to CTO".

Sertwe-Kahanda (a 17-year-old, self-demobilised child soldier from Bambu village) recounts his tale:

I was taken at home by the FDLR who use to come in the neighbourhood to loot in Kibirizi... they send us to kill someone who attempted to escape... they ask us to kill a person alive... they show us how to bury a person alive... they show us all sorts of evil things... I escaped... I can't return in armed group... my mother brought me to CTO.¹⁹⁷

¹⁹⁵ These revelations were made during focus groups and interviews with several child soldiers at CTOs of Masisi and Rutshuru, between 3 May and 22 June 2014.

¹⁹⁶ Personal interview with Kinige (self-demobilised child soldier), Masisi centre, 11 June 2014

¹⁹⁷ Personal interview with Sertwe-Kahanda, Nyahanga, 25 May 2014.

Extreme methods of torture was also reported as a reason for self-disarmament and self-demobilisation, as reported by Kadogo (a 17 year-old, self-demobilised soldier from Chanza), was abducted by the M23 when he was 12 on his way back from school. He narrates:

Beating us all the time... once you are sent if you waste a minute, they tie your hands and legs and throw you in a trench of 1,5m / 200m about 1m deep... You could spend two to three nights in it... with food or without... it depended on those who went to loot food whether they succeeded... they were putting us in front line to fight the Government forces (DRC)... and I escaped and ran away.¹⁹⁸

In spite of having access to good food and drink from looting, there is no joy, no peace and no freedom in armed groups for these young combatants. Suffering and the horror of killing are unbearable. Several prefer poverty and the lack of necessities, to life in the armed groups and militias. This is again supported by Patient (a 32year-old NGO agent working with child protection in a CTO): “Children attempt to escape when they realise that the sufferings are unbearable, they come back to their conscience, they listen to news in the camps... they hear that there are CTOs and they will be safe and well-treated”. The CTO has played a key role in encouraging the decision to self-disarm and self-demobilise. When these child soldiers come out of the “defence” (rebel headquarters), they immediately ask where there is a CTO (Kiyala 2015).

Sartwe Kahuna (a 17year-old, self-demobilised child soldier from Mondo) was abducted by the FDLR, he reports: “... I ran away and my mother brought me to CTO which is she said there is a fence of the Caritas where I can hide”. Kabudogo (a 17 year-old self-demobilised from Mutiri village) joined the Nyatura at the age of 15, he narrates: ‘My parents paid a lump sum of money to our commander and he released me. When I got home I was very happy’. Joel Hirondele (an 18year-old young man from Mutiri village) was in the UPC of Thomas Lubanga, he reports: “I escaped... one day my friend wanted to adjust his arm, but he didn’t know how to do it. I offered to help him and suddenly a bullet went... they scourged me severely and put me in jail in the defence. At night the guards were sleeping and I managed to run away”.¹⁹⁹

Rudugiri (a 13year-old, self-demobilised child soldier from Mondo village) was abducted by the FDLR, he reports: “They sent me to fetch water and I ran away because they kill people

¹⁹⁸ Personal interview with Kadogo child soldier, Nyahanga, 25 May 2014.

¹⁹⁹ Personal interview with Hirondele, Masisi, 11 June 2014.

and they cut his head... I was afraid to see that...". Blaise (a 16 year-old, from Nyamilima village) was abducted by the FDP, he tells: "When we were fighting the M23, they sent us to loot... I threw away my arm and uniform and ran away." Kadogo_1 (a 13 year-old from Bambu village) was abducted by the FDLR in the field when he was nine. He recounts: "I used to stay at the defence... they sent me to wash their clothes... I ran away tracing and following the path they used to take me in their camp. I met my friend Patrick who was also escaping... and we ran together till we reached Bambu."

Kiwede (a 16 year-old from Chengerere village) was abducted by the M23, he reports:

The M23 were beating us, killing people, raping women and children... One day they gave a gun and sent me to kill my father and my mother. Then they will give a 1000USD and I would be going to Uganda to buy supplies for them... I left and went home... because of fear that they will want me, I decided to join the Nyatura. When I arrived in their camp they took my gun and they gave me another one.²⁰⁰

This is quite an extreme case, where rebels intend to assassinate the innocent parents of the abducted children, yet this kind of incident happens often in areas controlled by armed groups. Rebel commanders use children after they have been paid to kill certain people. This is a way of settling scores. Sometimes, they abduct members of the targeted families and threaten to kill them if the child refuses the orders to carry out the mission. People in conflict use armed groups to wipe out old scores and child soldiers are used to fulfil that role.

Along the same vein, Neri (a 15year-old, self-demobilised child soldier from Cheya) joined the CNDP and was then abducted by the M23. He narrates:

I was a friend of one armed group commander. Then he took me there. Life was difficult. One day they sent me to buy maize and I escaped... But the M23 abducted me again when I was returning from school. Life was tough. I killed a guy who went to loot without permission... There was another guy who stole a cow in the village... they brought him to our commander by co-villagers. He asked me to shoot him and I did. One day my friend told me to run away. We threw our ammunitions and we ran away. My friend has gone to join the Armed Forces of the Democratic Republic of Congo before they were threatening to kill us (FARDC).²⁰¹

²⁰⁰ Personal interview with Kiwede, Nyahanga, 6 May 2014.

²⁰¹ Personal interview with Cheya (self-demobilised child soldier), Masisi Centre, 11 June 2014.

Kadogo G (a 13-year-old, girl child soldier from Mondo village, who stayed with the Nyatura for six years) reports: ‘after killing my grand-father, the commander of the Nyatura, I left and went back home.’ Rushati (a 16 year-old from Chengerere) was abducted by the M23 when he was 14. He reports:

we escaped... one younger boy whose uncle was a Colonel [high ranking army officer]... he told him to go home when we were about to get to the front line... the colonel told his nephew to remain behind... This young boy also warned me and we remained... this is how we escaped.²⁰²

The young soldiers’ strategies vary from opportunities to initiatives. Opportunities come their way, such as the death of the commander that precipitates exit from the jungle and at times, the end of the group. Sometimes the group is defeated, such as the M23, and the end of hostilities offer opportunities to leave. There are, nonetheless, also other occasions that offer opportunities for escape, such as when one boy is asked to take another wounded friend to the hospital; when they are sent to loot or to fetch water; even when they go on a mission to recruit other young boys or to spy or to kill targeted persons. This is because armed groups hold lists of people they target for execution.

11.3.2 Lack of adequate juvenile justice for child soldier perpetrators

Kamundala (a 15 year-old self-demobilised child soldier from Masisi) reports:

I joined the APCLS at the age of 12 to fight the Government soldiers. Because of suffering ‘fimbo kila siku ukikosa’ [being scourged everyday if you make a mistake]; I left and went back to the village. I had a miserable life... one day I raped a girl. I was arrested and detained. Because of this situation, I escaped and joined the Nyatura. Life was again tough and I managed to escape and was brought to the CTO.²⁰³

Several children who enrol, do so because of an inadequate justice system that does not look into the vulnerability of young offenders. Incarceration conditions, very often with adults, revolts them and this becomes a stimulus for them to return to the bush. Mudimbe (a 16 year-old, self-demobilised child soldier from Masisi) reports: “I was in the army of the APCLS. Due to unbearable sufferings I left the armed group and returned to school as grade four in primary school. When playing soccer, I broke a friend’s leg. They wanted to arrest me. I preferred going back and re-joined the APCLS”.

²⁰² Personal interview with Rushati, Nyahanga village, 26 May 2014.

²⁰³ Personal interview with Kamundala, Masisi Centre, 11 June 2014.

This is one of the rare cases that a child soldier re-enrols in the same, armed group. Often, they switch between different armed groups because their commanders become suspicious, as many children are used as spies against rival armed groups. The less fortunate are killed, survivors will continue until they escape again. These two incidents demonstrate the extent to which the non-existence of adequate juvenile justice contributes to children re-joining armed groups. Executions and severe punishment of returnee child soldiers are widely used by armed groups' commanders to dissuade the remaining child soldiers from escaping. These facts were reported by several child soldiers who joined or/and were abducted by the FDLR and the M23.

Kamukongoto (a 14 year-old, self-demobilised child soldier from Masisi) voluntarily joined the APCLS, and he tells: "What can lead us to return to armed group is... for example, when we stole somebody's chicken. When the owner sees us she/he wants our death as punishment. And we are afraid of such severe punishment." The same story is also told by Buffalo (a 13 year-old, self-demobilised child soldier who voluntarily joined the APCLS): "there are mothers in the village with whom we live who do not like us... they look badly at child soldiers".

Francois (an 18year-old young man from Goma) explains: "Communities create armed groups to defend themselves because the Government is not doing it... this facilitates the child soldiering phenomenon... there is no justice... people are jailed... there is no trial... They are enrolled assuming they will be heroes to fight for their communities... they are victims". Unfortunately, this dream turns into nightmare in armed groups and militias.

11.3.3 Return into unsafe and hostile environment

Child soldiers return to a hostile environment after escaping soldiering life. They are subject to verbal abuse and criminalisation of their actions. Katamasoko (a 17 year-old, self-demobilised soldier from Lushebere village) joined the APCLS and moved to the Nyatura. He narrates:

I was in the APCLS and I ran away... But my fellow-child soldiers in the APCLS were coming to look for me to return in the bush but I was refusing. I felt I was wanted and my life was in danger. I decided to go and join the Nyatura to protect myself... We prefer going to other groups because there is no justice... and they can kill you.²⁰⁴

The same view was shared by Kasole (a 13 year-old from Miandja, who was abducted by the FDLR), who narrates: "what pushes me to go to the bush is suffering... when I returned to the

²⁰⁴ Personal interview with Katamasoko, Nyahanga village, 25 May 2014.

community, I was hiding because they wanted to kill me... our community cannot protect children who were in the bush... it is good to have the 'Baraza' [customary justice council] to educate children".

Without doubt, insecurity, a lack of welcoming attitudes from some families and antipathy from certain members of the community become setbacks to re-immersion in their peaceful life once back in the community.

Kiriboli (a 16 year-old self-demobilised child soldier from Masisi) joined the PARECO at the age of 15 and moved to the Nyatura. He reports: "There are so many issues that cause demobilised children [to] return to army... incriminations, tortures by the militaries". Eh-Litien (a 14 year-old, self-demobilised child soldier from Masisi) joined the PARECO and enrolled again with the Nyatura. He tells: "After leaving the bush... there are rebels who come nightly knocking on the door... you think it is a neighbour... after opening the door... you realise it is a rebel... he can kill you... better stay in the bush". The whole climate of insecurity is a nightmare for former child soldiers, especially around Masisi, in Rutshuru, Walikale and along the road to Kanyabayonga. Former child soldiers are always targeted by armed groups because of their expertise and are used to obtain information about rival armed groups.

When asked what attracts children to return to the bush, they point to four main reasons. These constitute the pull factors for re-recruitment: a free meal, money, drinks and women. Life of the armed groups, who are entrenched in the mountains, the jungle and national parks of the North Kivu Province, is sustained by looting crops, livestock, shops, vehicles and passengers. Child soldiers are mostly those involved in "road-blockings".

Kavuno (a 16 year-old from Rubona) narrates:

I was in the Group of Manoti²⁰⁵, the chief of an armed group called IDIPC [unidentified armed group]... I had a panga. We didn't have ammunitions. When we were looting, whoever resisted I hit him with the panga at his... when we looting if I got 200USD, I hid 5USD. And you hide all... they find you... they kill you. Any amount I confiscated I slid it in my boots.²⁰⁶

²⁰⁵ *Manoti* is an armed group leader well-known for kidnappings and asking for ransom. He operates around Kiwanja, Rutshuru and Rubaya. *Manoti*, from Kiswahili word "notes" refers to US Dollar notes that victims pay for their released once kidnapped by *Manoti* group.

²⁰⁶ Personal interview with Kavuno, Nyahanga village, 25 May 2014.

Debandes (a 14 year-old, abducted by the M23 in Kiwanja) reports: “what I found good...cow meat... drinking alcohol, sleeping with women... they gave us women to sleep with them... if you refuse they beat you severely.... No, I didn’t do this act (raping)”. Blaise (a 26 year-old who joined the FPD) narrates: “What was good! ... stealing... eating... looting”. Kadogo G (a 13 year-old, the only girl associated with armed groups found in the CTOs, joined the Nyatura as cook and housekeeper of her grandfather NDJ, who was a Nyatura commander). She reports: “What was good... to eat... and get money freely without efforts... my grandfather used to send me to buy drinks for him... I was eating the change... he was killed and I went back home”. Actually, Kadogo G’s grandfather was the leader of the Nyatura. He was shot during the operations against the M23 for also being accused of practicing witchcraft. They tracked him down to their headquarters and shot him. The entire movement of the Nyatura was dispersed and the combatants returned to the communities. Kadogo_1 (a 16 year-old from Chanza) was abducted on his way back from school by the M23 at the age of 14. He reports: “what was good... I was eating well, and looting, you find money without a problem, you rape, I took a woman by force... she was afraid of me and I slept with her. We looted hospital and shops”.

11.3.4 Insufficiencies of DDR programmes

Patient (a 32year-old agent of an NGO working for child care and protection in Rutshuru) reports: “there are groups of militaries who were awaiting their reintegration into the FARDC... those who are not supported by the “‘brassage’, because they wanted to remain close to their families that lacked care... Eventually they returned to fighting... especially those who were in the centres like one colonel [unnamed] who evaded from Kitona centre. He hid his ammunitions... He came back and started recruiting child soldiers in his militia...”²⁰⁷

Several focus groups identify national reconciliation as the way to end the proliferation of armed groups. However, the presence of armed groups remains the main obstacle that causes local populations to take up arms to protect themselves against their attacks, especially the FDLR; they have surrounded Rutshuru. Patient and other NGO agents express that the majority of returnee children in CTOs were abducted by rebel groups (41 abducted and 37 voluntary

²⁰⁷ Personal interview with Patient, Rutshuru, 26 May 2014.

enlisted with these insurgents).²⁰⁸ The FDLR continue their looting and their attacks on villages where the security situation is precarious.

The process of “brassage” has been beset by challenges, to the extent that former combatants that expected to integrate into the national army, have deserted this project and returned to their bases to form their own groups. Many former child soldiers are also attracted by these militias, who lure them with false promises and use their own difficulties of reintegration into Government forces, in order to discourage young soldiers and eventually rally behind them for the purpose of looting, to make a living or enrich themselves.

The DDR programmes cannot work without reinsertion or family reunification. Unfortunately, this aspect of the DDR programmes is the least funded or not supported at all. Children are not sufficiently taken care of in foster family and interim centres.

Search conference reports²⁰⁹ noted the following: “Their various needs (feeding, clothing, and social re-education) cannot be met due to the lack of resources. In the context of self-demobilised child soldiers, they return home without a re-unification kit (clothes, shoes, tools and training). They have to deal with insulting words from community members, preferential treatment vis-à-vis other family members and other injustices become the challenges of family reinsertion. Some families reject those who return empty-handed after spending time in armed groups. They consider soldiering as lucrative activities, forgetting the suffering that children undergo in the hands of armed groups and militiamen. At times, children get discouraged and return to armed groups.”²¹⁰

To prevent resumption of violence and re-recruitment, NGOs need to be empowered and work in collaboration with the Government that should support the process of family re-unification, to aver incidents of remobilisation by young soldiers.

²⁰⁸ Personal interview with Patient, Nyahanga village, Rutshuru, 26 May 2014.

²⁰⁹ Search conference, Goma, 14 June and 17 December 2014.

²¹⁰ Interview with Patient, Nyahanga village, Rutshuru, 26 May 2014.

11.3.5 Socio-economic constraints: Ill-treatment, poverty and starvation

The majority of returnee child soldiers identify suffering as the main reason for their desertion because of the threat posed by returning to the same fighting force one has just left. Nevertheless, defection is the result of insufficient measures to protect former child soldiers, after their reinsertion into the community. They are caught between hardships in armed groups and rejection by society, which opens the way to several defections and switching between different armed groups. Funding of post-demobilisation programmes has been a serious challenge for children entangled in armed groups, after the primary efforts that provided demobilised combatants with skills and toolkits to allow their socio-economic reinsertion.

Kinige (a 14 year-old, self-demobilised child soldier from Masisi) reports: “I was in the APCLS. I was ill-treated, I decided to reintegrate and joined the GIDE of the Nyanga and Hunde communities. But children of other communities were also welcome”. The same problem was confirmed by Kasongo (a 16 year-old, self-demobilised child soldier from Katoyi village, who was abducted by the FDLR and joined the Nyatura). He explains:

Our people do not want us to live in this world when we leave the bush [armed groups] after looting and stealing chickens, goats... They want our death. This threat leads us to return to the bush... say that I deserve death penalty as punishment for looting... this is what drives me back to the bush because people bother me and I have no peace in the community.²¹¹

Child soldiers need to be exposed to accountability processes, in order to protect them and to minimise their re-enrolment and re-recruitment. Shetani (an 18 year-old, young man from Mutiri village) first joined the CNDP at the age of 12, then moved to the APCLS, and finally joined the Forces of the DRC, before he decided to leave the armed forces and military groups. He is now in grade 11 at a local, secondary school. He reports:

I was jobless when I joined. I fought several times in different armed groups, including in the Government forces. I had to return in armed groups and forces because there was too much suffering in the armed groups and in the community. I was treated like an animal... the Congolese government does not like people who have stayed in armed groups in the forest.²¹²

²¹¹ Personal interview with Kasongo, Masisi centre, 11 June 2014.

²¹² Personal interview with Shetani, Masisi centre, 11 June 2014.

When persisting insecurity hinders their resettling process, armed groups remain the last refuge for child soldiers. Armed groups are perceived as a safe haven for perpetrators of crimes, looters, thieves and those involved in antisocial acts (impregnating a girl, causing injury to a person, escaping justice, and so on).²¹³ There are circumstances so complex they become even more problematic, especially when child soldiers are caught between violence in both the armed groups and in the community. Suffering in the bush and violence by the security services and the police worsen the prospect of living in the community. This is a very dangerous situation that can become suicidal. In this context, it is extremely difficult for child soldiers to escape from soldiering life.

11.3.6 Social and criminal offences

Leaving in an environment, where juvenile offences are not handled adequately, poses a serious threat to young offenders' security and safety. Participants in interviews and focus groups who have exited armed groups and militia are concerned because they do not feel safe in their communities. Whatever injury they cause to others, even accidentally, is perceived as a criminal act. Society fails to disassociate children's past, of association with fighting forces, from their post-soldiering reality, namely the transition to civilian life.

Children who exit armed groups' image has been tainted by past anti-social behaviour, through their actions that reflect the past, which becomes a setback for their acceptance. Some members of their communities treat them like unrepentant 'bandits' and try to get rid of them. This resuscitates the idea of going back to armed groups and militias. Nevertheless, the risk of execution and being subjected to severe punishment causes them to be vagabond soldiers and they drift from one armed group to another or roam between several rival fighting factions.

Cameleon noir (a 22 year-old, former child soldier from Mutiri) reports: "What can lead me to return? It is for example, if I was in armed group and I desert. Because of fear to be tracked down by fellow-soldiers... one prefers going into another group, more seriously... because there is no justice". Farao (a 16 year-old, self-demobilised former child soldier from Rwindi) tells: "if I don't study and I am mistreated I can rejoin armed forces". Simba (a 24-year-old former child soldier, now living in Goma), narrates: "if, after the first family reintegration, I find the community is marginalising me". Other child soldiers refer to extreme suffering and lack of adequate procedures to address their actions, as causes of their "vagabondism".

²¹³ Focus groups with child self-demobilised child soldiers, Masisi centre, 11 June 2014.

Patient comments: “It happens that children change armed groups... there are armed groups commanders who fight over looted goods that were not well shared... the defecting party also leave his children he recruited to go and form another armed group”.²¹⁴

“Vagabondism” is the result of broken protective structures in society and failure to take children through an adapted and appropriate accountability system. Several returnee child soldiers are involved in antisocial behaviour after exiting soldiering life. They fear jail and do not like to hear about justice or punishment. This is due to the difficult shift of identity, from being a soldier to being handled by civilians, who many children see as incompetent to sort their offenses. They often regard themselves as soldiers and this mentality needs to be broken, through a sustainable education process, which transit and orientation centres cannot complete during the six months that children spend in their care.

11.3.7 Suspicions of spying and insecurity

Returnee young soldiers are often subject to verbal abuse and their community is sceptical that they are real converts, who need to be welcomed in society. The spying activity, in which some returnee child soldiers are notoriously involved, prompts suspicions from their fellow community members, who suspect that they are temporarily back in the community to gather information that they will go and sell to the rebels.

These young ex-combatants are also subject to being tracked down by rival rebels, to abduct them with the belief that they hold information that can be used to attack the opposing groups they have deserted. Sometimes, fellow child soldiers are sent by rebel commanders to track exited child-soldiers down and recapture them, for fear that they may trade war plans and important information that will endanger the group from which they have defected.

Without doubt, the insecurity and lack of welcoming and re-integrative structures, to reconcile returnee child-soldiers with their families and respective communities, is a real setback to preventing re-recruitment. Child soldiers need to be exposed to RJ programmes, such as peacemaking circles or VOM, to repair the harm caused to the community and negotiate reconciliation and healing that can open the way for a more meaningful coexistence of returnee child soldiers and their victims.

²¹⁴ Personal interview with Patient, Nyahanga village (Rutshuru), 26 May 2014.

Child soldiers need to be exposed to accountability processes, in order to protect them and minimise their re-enrolment and re-recruitment.

Lack of direction and unemployment are the circumstances the majority of child soldiers find themselves in, before joining up. Kiriboli (a 16 year-old, self-demobilised child soldier from Masisi) joined the PARECO at the age of 15 and moved to the Nyatura. He reports: ‘There are so many issues that cause demobilised children return to army... incriminations, tortures by the militaries’.

The whole climate of insecurity is a nightmare for former child soldiers, especially around Masisi, in Rutshuru, Walikale and along the road to Kanyabayonga, as they are always targeted by armed groups because of their expertise and to obtain information about rival armed groups. When the condition of insecurity provides the grounds for such recruitment, armed groups remain the last resort where they can feel protected. Armed groups are perceived as a safe haven for perpetrators of crimes, looters, thieves and those involved in antisocial acts (impregnating a girl, causing injury to a person, escaping justice, and so forth).

The fact is that these returnee child soldiers were exposed to certain opportunities, which society does not offer. Caught up in the suffering and starvation in the community, they would rather return to a stressful life, where they can eat. Remaining in society deprives them of food, besides other hardships and rejection they have to deal with. Life in the bush consists of stealing and taking people’s purses and anything valuable they could lay their hands on. A reversal of values is noted by the researcher, which consists of considering immoral acts (stealing, looting, raping, and so on) as what is good. It appears that immorality is instilled in these children and they turn the situation around, seeing evil as good, so that they can carry out violence, without allowing it to touch their conscience.

During focus groups with these returnee child soldiers, many reported reprisals, ethnic tensions and rivalries as contexts dictating re-recruitment. Some of the rebels identify people who do not belong to their tribes, then kidnap and kill them or force them to join their ethnic armies. Most community self-defence armies use children from other ethnic groups in the frontlines. When rebels from one ethnic affiliation kill members of another ethnic group, the victims’ family organise themselves by withdrawing to the bush to arm themselves and prepare to enact

revenge. Rivalries are deep-seated among the Bakumu, the Hunde, the Nande, the Tusti, the Hutu, and the Nyanga. Rival armed groups identify themselves with these ethnic groups, from which they protect themselves by means of organising armed self-defense.²¹⁵

These armed groups exist in order to neutralise certain tribes and take their land by force. The APCLS (Hunde and Nyhanga), the FDLR (Hutu), the NYATURA (Hutu) fight against all Tutsi-led armed groups. The Mai Mai (natives in all districts) fight all foreign aggression and rebel groups, such as the Hutu-FDLR, the Nyatura, and so forth. This is due to the Mai Mai considering themselves as owners of the land of the DRC, they do not tolerate foreign occupants or settlers, for fear of being dispossessed of their ancestral patrimony. Re-recruitment is the *modus operandi* of the Mai Mai soldiers. They are found in remote forests where they train, as well as in town amongst the civilian population. When the community is attacked, they withdraw to their rituals and shrines in the bush, to perform fighting rituals and take up their arms to engage in battle against the invaders.

The name of the group called Mai Mai Rahiya Mutomboki, describes the community that rises up against evil, meaning the presence of foreign aggressors. The group Mai Mai kifuwa-fuwa, on the other hand, engages their rivals in face-to-face battle with pangas and spears.²¹⁶ Re-recruitment of child soldiers among the Mai Mai is a long-standing problem. They reject all demobilisation and disarmament efforts by the Government. Child soldiers identify the Mai Mai Cheka and M23, as the most brutal and cruel armed groups. Children report that they kill anybody, even babies, they rape children, girls, mothers and grand-mothers and they slaughter people (Kitchwa Drogue, a 15 year-old, child soldier who fought in the APCLS).

This is an indication of the multi-faceted nature of armed groups, referred to as self-defence community armies. When children are abducted to join an armed group that is not of their ethnic group, they undergo harsh treatment. When they leave, they re-join their respective ethnic-community army. For instance, in the Masisi, children identify eight active, armed groups. These groups know how to localise, even where their “defences” (headquarters) are situated through the jungle, in the mountains or in the national parks.

²¹⁵ Focus groups with returnee child soldiers, Masisi centre and Mutiti village (North Kivu), 16 June 2014.

²¹⁶ Personal interview with Ngandu, Goma, 7 June 2014.

The children mention GIDE or AFDC of Chief Mapenzi, APCLS of Chief Janvier Karahib, Mai Mai Cheka of General Cheka, Nyatura of commanders Kayeye and Habarugira, M23, Mai Mai Rahiya Mutomboki, Nduna Defence of Congo, FDLR of Memukane, and so on. The main tribes that arm and sponsor armed groups around Masisi are the Hutu (Nyatura, FDLR), Nyanga and Hunde (GIDE, APCLS), and the Mai Mai (focus groups with returnee child soldiers at CTO Masisi, 16 June 2014).

The situation of child soldiering presents a multiplicity of contradictions and complexities that cannot be dealt with here. However, the context of their abduction and enrolment suggests some security breakdown and lack of justice. Apart from hunger and starvation, unemployment and a lack of direction, the presence of armed groups surrounding communities is worrying. What happens to those individuals and communities that arm rebels or their self-defence armies and finally, what is the DRC and its Government doing to remedy this situation? Several studies and reports decry impunity and some scholars consider this disaster as the cause of the child soldiering practice.

While children are not released by armed groups and militias, they desert because they are subjected to severe punishment by their superiors. The trend to drift between several armed groups is a critical issue that requires empowerment of local communities, by making them agents of local justice and the engine of transformation, to discourage this practice. Among other roles local communities can play, they should champion peaceful mechanisms of conflict resolution and create structures to welcome children who exit armed conflict. There is an ever-growing need to sensitise people about traditional values that show consideration for children, especially in an environment of protracted and intractable conflicts, as it prevails in eastern DRC. National reconciliation is a vital need to overcome inter-ethnic conflicts.

11.4 Desertion and defections

While the child soldiering practice has decreased in several countries around the globe, this phenomenon remains entrenched in the North Kivu province of the DRC. Although there is no broadcast of war in this country, fighting continues to be waged at the frontlines of struggle for survival, ethnicity and land conflict, and the ownership of mines. At the same time, child soldiers increasingly desert military positions, but sooner or later re-enrol or are re-recruited. Many others switch between different armed groups, a behaviour pattern the researcher terms ‘soldiering vagabondism’.

Sertwe Kahanda (a 17 year-old, self-demobilised child soldier from Mondo) was abducted by the FDLR, he reports:

I was influenced by a young man who came to our place with a gun, he intimidated me... forcing me in their armed group. Following this menace I was compelled to join them... if I refused they were going to kill me. The young man was sent by his superiors, who told him that I am a good man. I deserve to be a soldier... I ran away and my mother brought me to CTO which is she said there is a fence of the Caritas where I can hide.²¹⁷

Kingombe (a 17 year-old, self-demobilised child soldier from Mutiri) accounts: “I was in the group of the RCD. I had the opportunity when I killed somebody and they put me in jail. I caused troubles when I was there and my friends helped to evade”. And Django_Meshak (a 17 year-old, self-demobilised child soldier from Mutiri) tells: “I escaped one day after meeting a friend who showed me the way...”. Bakatakingo (a 17 year-old, self-demobilised child soldier from Mutiri) narrates: “I escaped when I realised that I was still small and nobody on the way will prevent me from passing... I realised the suffering of soldiering life... when I arrived home, I was welcomed and sent back to school”.

Rudugiri (a 13 year-old, self-demobilised child soldier from Mondo village) was abducted by the FDLR, he reports: ‘They sent me to fetch water and I ran away because they kill people and they cut his head... I was afraid to see that...’ Blaise (a 16 years-old, from Nyamilima village) was abducted by the FDP, he tells: ‘When we were fighting the M23, they sent us to loot... I threw away my arm and uniform and ran away’. Kadogo 1 (a 13 year-old, from Bambu village) was abducted by the FDLR in the field when he was nine. He recounts: ‘I used to stay at the defense... they sent me to wash their clothes... I ran away tracing and following the path they used to take me in their camp. I met my friend Patrick who was also escaping... and we ran together till we reached Bambu’.

Running away with a gun, is considered by armed groups, as an extremely serious crime. Blaise (a 16 year-old, former child soldier from Nyamilina) narrates: “if you flee with ammunition, they will search you till they find you. Otherwise they kill your family”. The two most important things the CTOs are responsible for, when a child arrives are firstly,

²¹⁷ Personal interview with Sertwe-Kahanda, Nyahanga village (Rutshuru), 25 June 2014.

confiscating their telephones to prevent them from communicating with their superiors in the jungle and inquiring where they have put their weapon.

Rebels always follow children who have left with ammunition and should the children still be in possession of the arms, mediation is required between MONUSCO and the rebel commander, who is known to them. A letter is delivered to the child to show that he has been disarmed. In this case, the CTO has to pay the equivalent of 100USD or more, so that the life of the child and other children at the centre, are not endangered. This step is taken, to prevent spying and reduce the possibility of returnee child soldiers joining other armed groups. The CTO is the second safe haven for children, before they are reintegrated into the community.

There are several reasons that explain the switching from one armed group to another. These can be classified into push factors and pull factors. As explained earlier, push factors are situations and conditions that children try to evade by joining armed groups, while pull factors consist of the sum of advantages, benefits, and favours that children dream of finding in armed groups. In the context of returnee or self-demobilised child soldiers, who switch from one armed group to another, demobilised push factors include persistent threats to be arrested and jailed by the security services or the police, a lack of direction, crimes previously committed (rape, impregnating a girl, hurting someone, causing injury to someone, and so on), lack of justice, feeling of rejection or being undermined, as well as a lack of trust in the security services and the police.

It appears that children are misled and underestimate the consequences of their decision to join up. Even those who enrol voluntarily share the same painful experience. The question that should follow at this juncture, is why they then continue to enrol? The following section will deal with this.

11.5 Advocacy for non-adjudicative accountability processes

A strong advocacy emerged from the study that children should go to school and those who have committed crimes should go through RJ processes, such as the Baraza. Josephkinois (a 29-year-old student from Goma) supports this:

Children should be sent to school to prevent them from becoming soldiers, and educators should show children the bad consequences of war and of becoming a child

soldiers.... RJ should take place in public and children should be invited even those who are in primary school to listen to the sufferings of the victims.²¹⁸

He argues that this kind of public hearing will dissuade others from becoming soldiers, otherwise they will be taken to public justice. In the context of his culture, Josephkinois explains: “This model of justice is called *Bunvikane* (in local Kihavu language) which means reconciliation”.²¹⁹

MMC Arlone (a 24year-old lady from Goma) agrees with the idea of RJ and she highlights the steps to be taken, namely:

Approach the victim first because he/she needs psychological preparation before meeting the perpetrator. Then invite a person of different tribe to mediate between the child offender and victims separately before bringing them together... Children must take a commitment not to return to the bush (armed groups). She imagines that this is how the problem can be resolved.²²⁰

Kalunga (a 25 year-old, former child soldier, now law student in Goma) also supports the use of a RJ approach, insisting on forgiveness, believing that it can change things:

If you desert an armed group you can go and ask for forgiveness, then rerun to school... otherwise people will continue to say this is a militiaman who did this and that... if children see justice they will say: ‘let us stay at homes with our parents’.²²¹

Karlos (a 15year-old school boy) noted that there was no justice for victims.²²² Alpha Delta (a 35 year-old, civil servant in Rutshuru), remarks, with regard to juvenile justice:

In fact, justice in the DRC does answer this problem. In the Constitution of the DRC, a child is under the responsibility of his/her parents. Often, children are abandoned and don’t receive advice... since they put in place peace tribunals, this reform eliminated the local customary tribunals. It is a problem because concerned families must take matters in hand and the Baraza has no power.²²³

²¹⁸ Personal interview with Joseph Kinois, Goma, 14 May 2014.

²¹⁹ Personal interview with Joseph Kinois, Goma, 14 May 2014.

²²⁰ Personal interview with MMC Arlone, Goma, 14 May 2014.

²²¹ Personal interview with Kalunga, Goma, 14 May 2014.

²²² Personal interview with Karlos, Goma, 14 May 2014.

²²³ Personal interview with Alpha Delta, Rutshuru, 24 May 2014.

Alpha Delta suggests:

If the *kadogo* cannot be punished, there should be another form of justice for them because these are young people who are taught [to] kill and there should be a law that will punish minors... justice is necessary to prevent what happened in Rwanda, where they taught children to kill fellow children, and adults to kill fellow adults, as part of the initiation to the genocide. This increased crime inside the community...inside the country...there should be a law to hold children accountable because a lot of them continue committing crimes... Such juvenile justice will resolve the problem of minors arrested but released with no sanction.²²⁴

The overall outcry on increasing impunity is another indication of the poor justice situation in the DRC. These were acknowledged by several participants, as expressed in the next section. An evaluation of the processes of data collection was done at the end of the first phase.

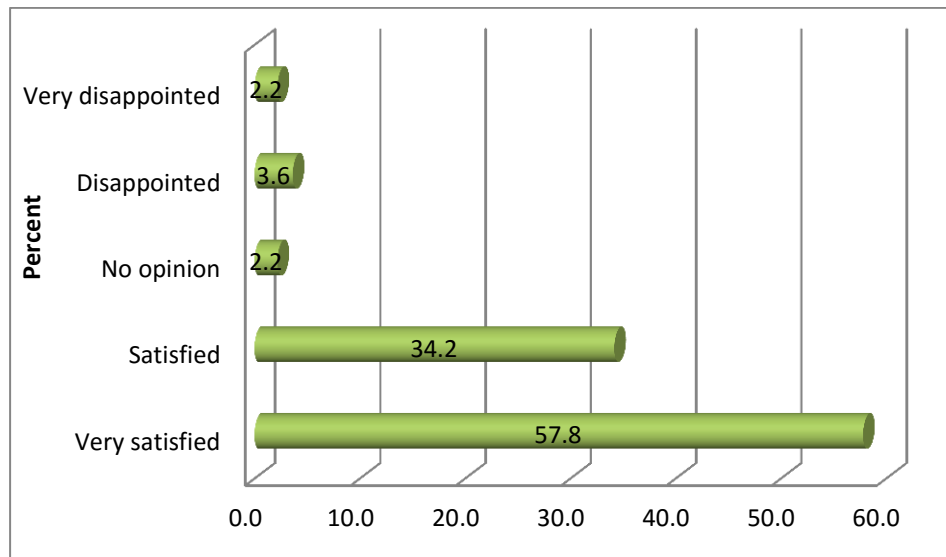


Figure 17: Evaluation of focus groups, interviews and RJPCs

The majority (92.0%) of the respondents felt satisfied that they were involved.

Another emerging theme of the study was Baraza, a traditional forum that seeks to prevent and resolve conflict. This platform was investigated further, with the following section setting out an examination of participants' perception and understanding of Baraza and the extent to which this institution is relevant, in addressing the child soldiering problem.

²²⁴ Personal Interview with Alpha Delta, Rutshuru, 26 May 2014.

11.6 Baraza

Participants were asked to present their views on the way the impasse of the justice system could be addressed, and how protracted conflict that makes children become soldiers could be resolved, without resorting to violent means. They suggested the customary Baraza, as a space to deal with child soldiers. The local Baraza still exists today, as traditional jurisprudence. However, its authority has been lessened, with the reform of the judiciary and the suspension of traditional tribal courts. Apart from this, local justice is confronted with enormous difficulties, discussed later in the chapter.

11.6.1 Baraza history and structure

Baraza is a Kiswahili word that describes a veranda, living room or council, where the old, wise members of the village/community meet every evening, to debate questions/problems that concern their people.²²⁵ The concept of Baraza denotes two meanings, namely the physical location where elders meet, and the institution made of the notables of a community. This institution has the potential to address accountability for crimes committed in the community, especially where inter-tribal animosity is high.

An attempt was made to explore further what the Baraza is and to what extent informants believed this customary council of elders could help minimise violence and reduce the use of children as soldiers. Different views were gathered from demobilised child soldiers and from members of the community. Child soldiers suggested that the community, through the elders, could assist them in the process of social reintegration.

An elderly man, from the Shi community in North Kivu, explains that among the Shi ethnic group, Baraza exists in each village to settle inter-family contentions. It was a pedagogic and restorative tool, and it achieved reconciliation and cohesion between disputing parties.²²⁶ Often, its settling of conflict ended with strict commitment by the offending party, to refrain from further provocations and harming the hurt party.²²⁷

While the main objective of Baraza is to maintain peace, by preventing and resolving conflict, it also works as a judicial platform. Justice is dealt with by seeking healing and reconciliation

²²⁵ Personal interview with the President of the Provincial Baraza, Goma, 16 December 2014.

²²⁶ Personal interview with Mzee S, Goma, 20 June 2014.

²²⁷ Personal interview with Mzee S, Goma, 20 June 2014.

through rituals, performed to cleanse and rehabilitate perpetrators and restore victims to their dignity.

Ngandu explains this process among the Nyanga:

Serious crimes committed in the community such as a lady who insults her husband in public, incestuous relations between parents and children, and the killing of a community member required cleansing rituals that were performed in the Baraza. These were accompanied by a fine. Other sanctions comprised transporting a girl victim at the back by a parent in case of incestuous relations... The value of *kikumi* [a girl] being equated between 12 and 24 goats was paid to a victim's family in case of a murder... These reparations were necessary as part of the cleansing ritual. Additionally, stakeholders in a crime were invited to partake of [a] reconciliation meal. Sometimes, community service, restitution, reparation and correctional measures were imposed on offenders. Though the responsibility for child offenses had to be shouldered by their parents/guardians, children could also be summoned for serious, scandalous conduct that worried the community. Generally, sanctions were negotiated between notables in Baraza and the family of the offending child and aimed at restoration of both victims and perpetrators, and also the whole affected community.²²⁸

At present, a Provincial Baraza has been established in Goma, the capital city of North Kivu province and is known as *Baraza la Wazee Intercommunautaire* [Intercommunity Baraza of Elders] (BWI). It oversees the functioning of locally-based Baraza. During a meeting with its president in Goma in December 2014, he explained the leading role that BWI has taken to resolve civil and military disputes in the province, with the support of the DRC Government. It was affirmed that the elders in the Baraza are supposed to have a profound knowledge of customs and traditions of their own people and other people they engage with in this Council.

Among the Lega ethnic group, Baraza is made up of two representatives from each district, and each clan is represented by two wise men, who have a profound understanding of customary rights and the proscription of each custom.²²⁹ The Lega people consider child soldiering as thuggery and delinquency that Baraza combats by instilling moral principles in children.²³⁰

This makes it plausible to deal with interethnic and intercommunity conflict, as Ngandu observes:

²²⁸ Personal interview with Ngandu, Goma, 7 June 2014.

²²⁹ Personal interview with Mzee L, Goma, 20 June 2014.

²³⁰ Personal interview with Mzee L, Goma, 20 June 2014.

The purpose of this institution is to handle inter-family, inter-clan, inter-community, inter-ethnic conflicts by addressing the deviations that have caused tensions in order to preventing them from becoming violent. Members of Baraza are selected under the criteria of having profound knowledge of customs and ancestral interdicts among the ethnic groups of the region. They are the custodians of local communities' traditions and customs.²³¹

For instance, it has intervened several times by meeting local ethnic group leaders, as well as rebel leaders, in order to negotiate peace and halt interethnic and intercommunity conflicts.²³² In 2007, the entire BWI convened a meeting with Laurent Nkunda²³³ in his stronghold in the Masisi, in an attempt to persuade him to end his rebellion. This kind of meeting was organised three times with Nkunda, who was finally persuaded not to attack the city of Goma.²³⁴ In 2009, the BWI sent a delegation to discuss with local leaders in Rutshuru, to campaign against ethnic manipulations by rebel leaders who were instigating inter-ethnic massacres.

The BWI worked closely with local leaders in helping local populations distance themselves from those ill-intentioned militiamen.²³⁵ The president of the Provincial Baraza affirms:

In 2010, the BWI met local leaders of Walikale district at Pinga, North Kivu, where violent confrontations opposed local armed groups, namely the FDLR and the PARECO, causing thousands of people to flee their homes. A joint meeting between the Baraza and MONUSCO delegations helped resolve the conflict between local communities and the Rwandan rebels perceived as invaders. Between 2013 and 2014, the BWI sent a delegation to Kitchanga, where ethnic violence between the Hunde and the Hutu left approximately 1,000 people dead and thousands of people homeless after more than 500 houses were burnt. Thousands of natives abandoned their home and fled to Goma. Many of them have never returned since then. The BWI set up a Nucleus of Baraza in which all local ethnic groups are represented.²³⁶

This forum helps address grievances from various social groups to prevent the resumption of bloody violence. Ethnic rivalries have been based on three elements mentioned earlier (power, identity/ethnicity and land issues) and greed of rebel commanders.

²³¹ Personal interview with Ngandu, Goma, 7 June 2014.

²³² Personal interview with the President of the Provincial Baraza, Goma, 15 December 2014,

²³³ Gen. Laurent Nkunda was an official of the DRC forces and the leader of the Tutsi-dominated rebel group known as the CNDP, a Tutsi-dominated armed group that operated in the district of Masisi and Rutshuru in North Kivu before being put under house arrest in Rwanda in January 2009.

²³⁴ Personal interview with the President of the Provincial Baraza, Goma, 15 December 2014.

²³⁵ Personal interview with the President of the Provincial Baraza, Goma, 15 December 2014.

²³⁶ Personal interview with the President of the Provincial Baraza, Goma, 15 December 2014.

The rotatory circles of the main conflict factors that trigger each other to provoke a sustained movement of violent conflicts are explained in Figure 18. At times, it becomes even more difficult to identify which one goes in motion first to cause others to move. There is an external agent, notably the human element that decides to use any of this, with ethnicity most probably the cause of prejudice over power and land. Ethnicity becomes a subterfuge to justifying selfish, greedy ambitions and manipulations of the less-informed members of a particular ethnic group that is not capable of rationalising their resolve to adhere to such manipulations. In most cases, opportunist and ill-intentioned leaders or groups of individuals, motivated by selfish gains, drag their tribes and children into unnecessary fighting.

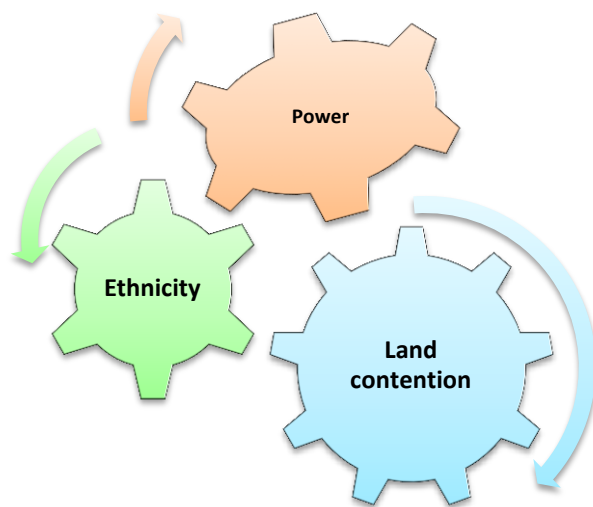


Figure 18: Rotatory cycle of conflict factors

Although there is widespread understanding that hostilities in North Kivu Province are partly fuelled by ethnicity, a senior member of the Provincial Baraza notes:

Rebel leaders or armed group commanders do not have the mandate of their people to start rebellions... they kill their own people, rape their mothers, sisters, burn villages, loot houses and shops, abduct children and force them to soldier... Is that what the way an ethnicised armed group should treat their own?... it is greed and propensity to violence that cause such destruction... not people meeting and deciding to protect their own by turning violent against the same people.²³⁷

²³⁷ Personal interview with JPK Lot, a senior member of the BWI, Kitchanga, 7 December 2014. He is a survivor of the Kitchanga massacre during which all his family was killed and his house burnt. He miraculously escaped with his wounds and broken hand. He has committed himself to non-violent conflict resolution in the region.

The concept of a community self-defence army was firmly rejected because of the scale of violence perpetrated by local militias against their own people and indiscriminate massacre of innocent populations. Efforts by this senior member of the Provincial Baraza, in bringing leaders across all ethnic groups to negotiate peace in Masisi, Kitchanga, Rutshuru and other localities, involving the security services, the army and local traditional leaders, gives some hope that the Baraza could minimise bloody conflict.²³⁸

The conflict into which children are dragged and used as soldiers, involves four categories of people, namely the majority of the populations (subject to ethnic manipulations), key people (local and foreign community leaders), social groups (political parties) and public affairs managers (state and non-state actors, including business people and war lords).²³⁹ The majority of foreign settlers have been dissatisfied with local power structures accused of ostracising these new settlers of Rwandan descent. This perception has often triggered violence, as a strategy for compelling native leaders to share customary power with the increasing Hutu and Tutsi populations that fled to the DRC, following the 1994 Rwandan genocide.

Ethnic manipulation has been used as a catalyst for power struggle, land ownership (by forcible appropriation or expropriation), and the control of rich mineral reserves. These conflict factors often occasion the resumption of hostilities in which child soldiers are involved. To overcome these challenges, the BWI has shown its determination to facilitate peaceful inter-ethnic cohabitation. It also strives to deal with power abuses by certain local leaders; it directly negotiates with armed groups' commanders to dissuade them from invading villages and towns and it pleads with them for the release of child soldiers. This is an indication that the BWI has taken the route of reconciling communities and dissuading rebel commanders from recruiting and using minors as soldiers.

Generally, the structure of Baraza follows the same pattern among the communities of the eastern DRC. Depending on the scale of the matter, it can be either presided on by the area chief (*chef de localité*) for intercommunity conflict, or the village chief for interfamily conflict. In both cases, the chief presider is surrounded by a council of wise men, also known as *notables*.

²³⁸ Personal interview with JPK Lot, Kitchanga, 7 December 2014.

²³⁹ Explanation of the conflict from the perspective of a senior member of the provincial Baraza. Personal interview with JPK Lot, Kitchanga, 7 December 2014.

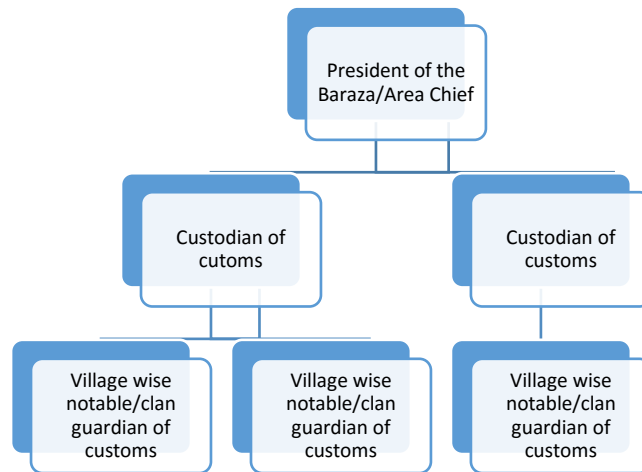


Figure 19: Structure of the Lega Baraza

The procedure for becoming the president of Baraza conforms to customs and it is said it was restricted to members of certain clans, who ascended to the head of this institution, according to ancestral norms.²⁴⁰ Nowadays, as a result of inter-ethnic violence and the influx of Rwandan war refugees, people are calling for a more representative Baraza. A high school teacher from Rwandan descent argues that the absence in this forum, of members belonging to the Hutu ethnic group in Masisi, where 100,000s live, was not acceptable.²⁴¹ On the other hand, the BWI is comprised of members from all ethnic groups that make up the population of North-Kivu and one member, who represents all the non-native people of North Kivu. It has an executive committee comprised of 10 members that form a steering committee.²⁴²

The interest shown in the Baraza institution indicates that holding child ex-soldiers accountable is seen as a necessity for their reintegration into society, which was suggested as a viable forum to achieve reintegration. What do child soldiers think of Baraza?

11.6.2 Views from child soldiers²⁴³

Buffalo (a 17year-old, former child soldier from Kalembe) says: “It is better to have Baraza to reconcile the *kadogo* [child soldiers] and people they hurt or stole from in their communities. It is better for the perpetrator to implement the punishment from Baraza than returning in armed

²⁴⁰ Personal interview with Ngandu, Goma, 7 June 2014.

²⁴¹ Personal interview with Nduyesu, Kitchanga, 7 December 2014.

²⁴² Personal interview with the President of the Provincial Baraza, Goma, 15 Dember 2014.

²⁴³ Views from child soldiers were gathered during interactive interviews in Masisi Centre (CTO) and Mutiri village (St Damian and Bustani high schools) between 10 and 12 June in North Kivu. Former child soldiers and self-demobilised soldiers shared their views during focus group discussions.

groups”. In addition, Makofi (a 17year-old, former child soldier from Kahanga) concurs: “Baraza can prevent the recurring recruitments of child soldiers by armed groups”. Rambo (a 15year-old, from Kabasanza) also comments: “Baraza can give advice that children should not enrol with armed groups. Once the problem is dealt with in the Baraza, the conflicts will end”. Farao (a 16year-old, former child soldier from Rwindi) further asserts: “Baraza will sit to deal with all the problems and one will no longer have the intention to return into armed groups”. Katamasoko (a 17year-old boy and former child soldier from Lushebere) remarks: “If there is the Baraza, this injustice of the Government soldiers will end”. Karaduma (a 14year-old from Bukombo) observes: “The Baraza has as advantage to reduce wide injustices and end the system of lack of justice.”

Kadogo 4 (a 16year-old, former child soldier from Chengerero) states: “Looking into the testimonies that the demobilised children will give in Baraza, it can influence positively other children not to enrol in armed conflicts”. Another view from Biamikiro (a 13year-old, former child soldier) is expressed as follows: “The demobilised children will go and see the village chief, and tell him all the treatments that they underwent... This will help other children refrain from going into the bush”.

Baraza is regarded as a valuable source of advice by former child soldiers. A 13year-old child soldier from Kahanga sees it as “... a place where children get advice... Instead of incarceration it is better that children make reparations for their offenses to the community”. He suggests the following sanction from child soldiers’ brutalities against the civilian populations: “In Baraza, they can ask you to fetch water every day to work around the house where Baraza meets...” Inoja (a 12year-old, former child soldier from Busihe) concurs with others, saying: “It is better to implant Baraza in the community... because... instead of incriminating somebody it would be better if the matter is resolved in Baraza”. Alinon (a 14year-old, former child soldier from Kaandja) also notes: “Baraza can give advice to armed groups’ commanders not to recruit children”. Another child soldier, Kinigie (a 14year-old from Bukombo) states: “Baraza can give me advice so that I don’t return to armed groups”. Foka-Foka (a 14year-old, former child soldier from Busoro) expresses appreciation as he said: “It is good to have Baraza”. Kasongo Mbo (a 28year-old caretaker, from Kiwanja) affirms: “what is important is to give advice”. Pachanga (a 13year-old, child soldier from Kahanga) also agrees: “I appreciate that Baraza is there in case of a problem it can be dealt with by the elders in Baraza”.

Kasole (a 13year-old, child soldier from Miandja who was abducted by the FDLR in Masisi) narrates: “What pushes me to go to the bush is suffering... when I returned to the community, I was hiding because they wanted to kill me... our community cannot protect children who were in the bush [with armed groups]... it is good to have the Baraza to educate children”. Former child soldiers from a Rwandan background identified the Baraza as the *Humurigyango* (the Kinyarwanda word for Baraza). They also said, in focus groups, that the Baraza is good because if a child has stolen, instead of putting him in jail, they should send him to the Baraza.²⁴⁴

11.6.3 Views from the community

MT (a child soldier caretaker in the CTO-Masisi) contends: “When other children participates in the proceedings of Baraza and listen to advice given to demobilised soldiers... this will dissuade other children to enrol in armed groups”. Local Baraza used to summon child offenders and their parents, whenever a child’s misdeeds disrupt the harmonious relations among members of the community and the child involved.

For example: Ngandu explains how children were summoned by Baraza:

I participated in Baraza. A 12 year-old girl, a daughter of my brother, was found to be sexually involved with a 16 year old boy. It is now two years since this happened... a daughter of my brother. The parents were asking themselves where to send them. They decided to take them to Baraza. After listening to them the elders gave them a few lashes each. Baraza wanted to show them that the act they committed was not good. They took the female child and handed her back to her parents and warned the boy that they should never do it again. Even the parents of both youths also were warned by the elders that they should watch over their children to prevent this kind of behaviour to happen again... They said: “not this kind of marriage again”.²⁴⁵

Furthermore, some local Baraza interdict children from joining armed groups. This was reported by Ngandu: “Baraza stated that any person below the age of 18 was ruled out for soldiering service. The underage and those who did not pass the test of age and weight could not be recruited”.²⁴⁶ A senior member of the Lega ethnic group observes: “Baraza stepped in to prevent enrolment of minors and youths in the Rahiya Mutomboki rebel group around Walikale. Baraza can prevent child soldiers by summoning parents whose children have joined

²⁴⁴ Focus groups with self-demobilised child soldiers of Rwandan descent, Masisi centre, 10 June 2014.

²⁴⁵ Personal interview with Ngandu, Goma, 7 June 2014.

²⁴⁶ Personal interview with Ngandu, Goma, 7 June 2014.

or intend to join armed groups”.²⁴⁷ He adds: “The use of children as soldiers is not recognised by Lega customs”. This phenomenon is perceived as delinquency or banditry among the Shi ethnic group.²⁴⁸

Baraza instead instils morale in children and in the case of child soldiers, it can impart social and traditional values to them that are contrary to delinquency. Unlike in the Mai Mai community, where the use of children as soldiers is quite common. Jourdan (2011) comments that the Baraza was the elders’ space, where war-medicine was prepared before handing that to child soldier medicine men, who carried the product to ensure that the Mai Mai fighters were invulnerable: “Water is put in plastic tanks kept in a *Baraza*, a hut in the middle of the military camp accessible only by *docteurs* [doctors]” (Jourdan 2011: 100).

Ngandu remarks:

Baraza could judge returnee child soldiers... but interdicted these children from taking arms that killed people... Baraza used ritual restorative approaches and sometimes punitive sanctions was also used in order to achieve restitution and reconciliation... Child soldiers do not like to hear about justice.²⁴⁹

Children also join armed groups to enact revenge against their teachers. They are able to join armed groups that are still active, from where such threats to the teacher may be directed against members of Baraza.²⁵⁰ Focus groups and interview findings allude to the militarisation of the eastern DRC.²⁵¹ This has been a serious concern for the functioning of Baraza. MT, a 24year-old lady, caring for child soldiers at Masisi remarks: “The DDR programmes will come to an end one day because of lack of funding... there are more and more children demobilising... who will take care of them... Baraza could play that role”.

MT suggests that the Government uses the Baraza structure to facilitate the exit of children from armed groups. Moreover, among the Lega, Baraza imposed sanctions that included community service. For example: cultivating a field for the community, building a hut in the

²⁴⁷ Personal interview with Mzee L, and elder man from the Lega Community, Goma, 20 June 2014.

²⁴⁸ Personal interview with Mzee S., Goma, 20 June 2014.

²⁴⁹ Personal interview with Ngandu, Goma, 7 June 2014.

²⁵⁰ Incident reported by learners at one primary school in Rutshuru where a learner joined militias and returned to school in an attempt to kill his teacher for harshly handling that learner. Focus group, Rutshuru, 21 May 2014.

²⁵¹ Focus groups with teachers and ex-combatant learners in Mutiri village (10 June 2014); interview with Ngandu, Goma, 7 June 2014; Personal interview, Alpha Delta, Rutshuru, 26 May 2014.

chief's courtyard, where Baraza meet, paying fines (goats, *mizaba* [pearls], and so on) If a person didn't have the means to make reparation, his/her family could step in and assist. An offender could also be restricted in travelling out of his/her community or village for a certain period. Penal sanctions, such as imprisonment, do not exist.²⁵²

11.6.4. Challenges facing Baraza

The challenges faced by Baraza are multiple, when communities are armed and the wise, who are supposed to sit in, may be involved in a community self-defence armed organisation. Members of Baraza may also become the target of militias when they advise their people against sending children in armed groups.

Participants singled out three main difficulties to the effective functioning of Baraza, namely the presence of armed groups, the lack of credibility and impartiality when handling inter-ethnic conflict, and the lack of constitutional statutory mandate that recognises its power and regulates the relationship between Baraza and courts. Some participants claimed that the involvement of village/community leaders in community self-defence armies erodes the integrity of the Baraza which is, in essence, a conflict prevention and resolution institution. Some of these leaders have, allegedly, maintained regular contacts with rebel leaders belonging to their ethnic groups.²⁵³

GB (a 48 year-old, humanitarian worker in Goma) objects to the trustworthiness of Baraza to hold child soldiers and militiamen accountable. He observes:

Each tribe or ethnic group is represented in Baraza. At the same time, they are fighting each other... however, Baraza should promote reparation because social reinsertion alone does not solve the problem of accountability... it is imperative to have structures that reconcile child soldiers and their parents... and Baraza needs to acquire its legitimacy to play this role.²⁵⁴

²⁵² Personal interview with Mzee Lega, Goma, 19 June 2014

²⁵³ Personal interview with a local traditional leader in Kitchanga, 8 December 2014. He also remarked that local people don't have sufficient power to convince militia commanders not to recruit children. Local leaders try to negotiate that militias do not recruit children nor attack communities. He also expressed that they have limited power over militiamen of their own ethnic group. He suggested that the Government should initiate frank talks and respond to the rebels demands so that there could be peace. Traditional leaders may assist in that process.

²⁵⁴ Personal interview with GB, Goma, 13 June 2014.

A different view was held by Mzee Lega, who contends that local Baraza proscribed the use of children as fighters.²⁵⁵ It still holds that children's home is the community not armed groups. Furthermore, he argued that the child soldiering practice is a new phenomenon that never existed in traditional societies among the Lega people, who continue to denounce the presence of children in the *rahiya mutomboki* [community uprising] (an armed group operating in Walikale district). He remarks:

[...] but because of the presence of the Interamwe on the Congolese soil Lega children and adolescents enrol with armed groups such as “rahiya motomboki” under the pretext to assure people self-defence, but in reality they enrol them to fulfil their dreams of self-enrichment. However, certain traditional leaders got involved in Baraza to proscribe the child soldiering practice.²⁵⁶

Mzee Lega associates the ongoing participation of children in hostilities, to the presence of foreign armed groups and militias. Ngandu suggested that the challenges faced by the Baraza institution need to be addressed. The way forward, will be that the DRC legislation recognises Baraza; and empowers it to resolve intercommunity conflict, so that this institution can confront armed populations through dialogue and negotiations.

The solution proposed is: “... people who go sensitising community members from village to village making them aware of traditional values of cohesion, peace and harmony”²⁵⁷ Baraza could also be involved in DDR programmes and demilitarising efforts. This prospect of Baraza success, in the context of insecurity and heavily militarised communities, is limited. Though this institution has been successful in resolving conflict, it may not yield more viable results if it does not operate on the basis of a constitutional or legal statutory mandate.

11.7 Conclusion

This chapter explored the existing mechanisms aimed at preventing the use of children as soldiers. The results prove that there has been no systematic intervention programmes to prevent children from joining armed groups locally, except the DDR programmes that have also been ineffective. Additionally, impunity was also found to be encouraging the use of child soldiers because the local justice system is ineffective. The lack of protective social and judicial structures were the greatest challenges faced by child soldiers and non-soldiers. A

²⁵⁵ Personal interview with Mzee L, Goma, 19 June 2014.

²⁵⁶ Personal interview with Mzee Lega, Goma, 19 June 2014.

²⁵⁷ Personal interview with Ngandu, Goma, 7 June 2014.

combination of factors, such as the loss of parents, unemployment, the lack of education opportunity, and arbitrary arrests make children in armed conflict more vulnerable.

The overall objectives of this inquiry were reached and the study generated new insights. Firstly, accountability and reintegration of child soldiers are important factors to prevent re-recruitments and re-enrolments. This can, nonetheless, be impeded in the absence of proper accountability measures, reconciliation and where chronic and structural violence persist. Secondly, RJ was found to impact positively on war-torn community members, as a response to the insufficient and non-existent accountability measured where the child soldiering practice is so entrenched. Thirdly, the Baraza institution has longstanding potential to prevent conflict and deal with the root causes of conflict before it results in large scale violence.

Lastly, the practicability of RJ and Baraza can be sustainable, should those interventions be accompanied by the elimination of socio-economic constraints, political and socio-economic disparities and the pursuit of psychosocial welfare of both child soldiers and other members of the community. In that sense, individual and collective resilience can enhance healing and transformation of identities, where former combatants are accepted as partners in the rebuilding of society, destroyed by violence resulting from ethnicity and armed conflict. This is a project that needs to involve actors from various strata of the community, locally, nationally and internationally because of the local, national and transnational dimensions of children's involvement in hostilities.

Following these findings, RJPCs were planned, implemented and evaluated. The following chapter looks into these processes.

CHAPTER TWELVE

PLANNING, IMPLEMENTING AND EVALUATING RJPCs

12.1 Introduction

In order to plan and implement an intervention, a diagnosis of the problem was conducted and showed a strong correlation between sets of independent variables, grouped under justice issues, and social and economic security (poverty and interethnic conflicts) that cause the perpetuation of the child soldiering practice (dependent variable). The research team adopted RJ, which emerged from the search conference report, supporting an earlier study conducted by Juma (2012), who suggested this restorative approach to address the need of accountability for former child soldiers. This should be incorporated into community-based reintegration programmes in North Kivu (Juma 2012).

A survey of participants was taken prior to the intervention. The type of questionnaire used was purposely designed to test the directional hypotheses posited. Comparisons of scores of pre-test and post-test were done, EGs and CGs were formed and monitored, while several SPSS tests were employed to establish the statistical significance of differences between variables in different phases of testing.

In terms of accountability, the cases of former child soldiers are referred to peace tribunals and high courts, since formal justice mechanisms for them are non-existent. It came out clearly through interviews and focus groups that former child soldiers were concerned about the harsh way the local criminal justice system deals with them. This is known among child soldiers as *kufunga* (a Kiswahili word used for incarceration). They detest these structures.²⁵⁸

Hence, the RJ intervention was measured to see how effective it was, as a means of holding child soldiers accountable and preventing participation of children in armed groups. Furthermore, some community members interviewed and who met in focus group discussions, stated that child soldiers needed to account for their alleged crimes through Baraza structures.²⁵⁹ Child soldiers declared that they preferred justice approaches that do not treat

²⁵⁸ Focus groups with former child soldiers in Rutshuru, 25 May 2014; and in Masisi, 10 June 2014 (North Kivu).

²⁵⁹ Baraza is a traditional jurisprudence and conflict prevention and resolution forum that use restorative approaches to hold accountable any member of the community that transgress customs or social norms. It also helps resolve interpersonal, interfamily and intercommunity conflict.

them as accused or criminals but rather as partners in solving the problem. Finally, RJ was consistent with conflict resolution approaches in the African worldview. Countries such as Uganda, South Arica, Namibia, Ghana and Lesotho have given particular consideration to RJ in the transformation of their juvenile systems (Skelton 2011).

The theory of ‘acknowledgement’ (Quinn 2005) that imbues the principles of RJ, is also anchored in the African social ethos. The DRC has yet to try such experiments. Using a RJ intervention was a first attempt to apply this justice paradigm in the context of the DRC, and also as an alternative to existing, coercive, juvenile justice, associated with court proceedings and harsh punishment.

Institutions and communities where peacemaking circles were conducted	Number of peacemaking conducted	Average Number of participants per circle (10-20)²⁶⁰
Goma 1	1	12
Goma 2	1	17
Rutshutu 1	1	12
Masisi 1	1	18
Kiwanja 1	1	15
Mont Carmel parish	1	12
Kiwanja 2	1	14
Rutshuru 2	1	12
Kiwanja 3	1	12
Jikaze High school/Goma	1	12
Kitchanga-St Augustine High School	1	12
Mont Carmel High School/Goma	1	12
Mwanga High School/Goma	1	16
Lycee Shemshem (Girl High School)/Goma	1	16
Lycee Amani (Girl High School)/Goma.	1	12
Bakanja High School/Goma	1	15
Masisi 2	1	12
Total	17	219

Table 18: Randomised sample of participation in peacemaking circles (three phases)

²⁶⁰ Participants in the circles were child soldiers, victims of child soldiers’ acts, child soldiers and victims’ relatives, and teachers directly affected by war brutalities. Student observers were included in actual RJPC and workshops where RJPC were enacted in role-playing sessions to learn about its mechanisms and outcomes. All participants took part in the survey that aimed at evaluating the effects of peacemaking circles on child soldiers, victims, and the communities to which they belonged. The greater participation of children and adolescents were purposively designed to measure the potential of peacemaking circle to preventing children from joining armed factions. An average of 68 students and teachers per institution participated in RJPC workshops.

Participation in the RJPC processes was voluntary and those who desired to be involved signed an agreement form. Preliminary contacts were made with victims and child soldiers. Each of them was accompanied by their supporters (family members and parents/guardians). Prior to participation in circles, separated meetings took place, on the one hand with primary victims, and with their supporters; and on the other hand, with child perpetrators and their supporters. The main researcher met again with victims and perpetrators three days before actual circles took place.

During circles, child soldiers went first, narrating the circumstances of their recruitment, and the condition of living in armed groups. In particular, they explained the crimes they had committed and the circumstances that led to perpetrating such atrocities. Then victims expressed their anguish and pain, mostly women who were abducted and raped in the bush and men who were abducted and coerced to transport looted properties by the armed groups. Other victims included those who had lost homes and personal belongings or were injured as a result of armed conflict. There were also indirect victims, whose relatives were killed or injured and houses that were hit by rockets or burnt.

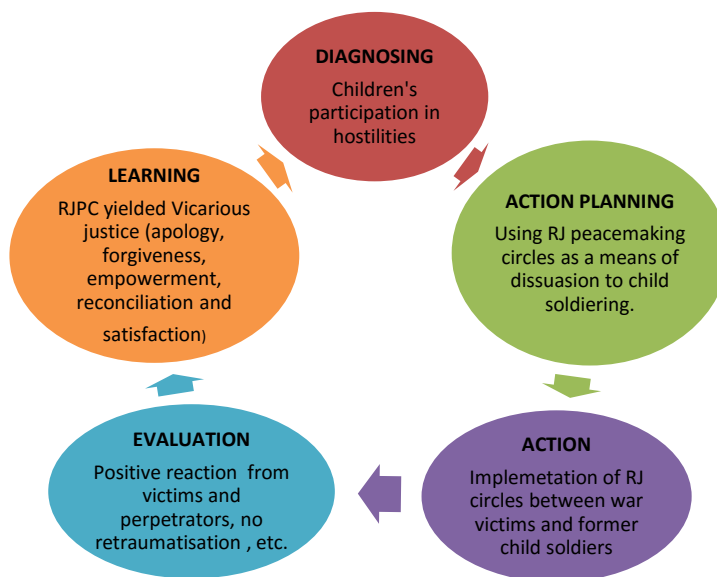


Figure 20: Peacemaking circle cycle 1 (adapted from O'Brien 2001)

Not all former child soldiers chose to speak. Others listened, while surrounded by relatives, victims and their supporters and many school-going children and youths. Fellow children, learners/students and other war survivors present, showed much support to the peacemaking circle processes, as they listened with passion and compassion the traumatic experiences of both victims and child soldiers. It emerged from the circles that these processes could be the

way of resolving some aspects of the child soldiering problem, particularly accountability and reintegration. After each circle, the research team met and evaluated the process and planned the next action in a democratic fashion.

Peacemaking circles were conducted in each of the four communities: Kiwanja, Rutshuru, Goma and Masisi Centre with child soldiers, victims, child soldiers' family members and victims' relatives, and members of these communities have experienced ongoing armed conflict, as well as violent, bloody, inter-ethnic confrontations, since the mid-1990s. There was a very high level of satisfaction with the process (92 % for the 282 participants in the first phase). A total of 4 circles were conducted in phase one and two, and 13 RJPC workshops were achieved in phase three of the inquiry. A total of 629 people were involved in all the three phases.

The words of child soldiers tell their stories and their desire to receive forgiveness.

12.2 Voice of child soldiers²⁶¹

Child soldier A:

One day, in 2009... I arrived around Kiwanja and found boys picking up ammunitions abandoned in the bush and I joined the Mai Mai soldiers... I joined the armed group because of the influence of fellow young people I met during war... I spent three months in the bush where I got involved in criminal acts such as killing and raping. I escaped and I am back to school. I ask you to forgive me... (What about children who are not here?)... I ask forgiveness from all victims present in this circle... the persons I hurt are not here... I cannot remember them... from other villages.... I ask you to forgive also other child soldiers with whom we carried out these odious acts.²⁶²

Child soldier B:

I joined the Nyatura militia to fight the M23 rebels who abducted my elder brother and my young brother... We escaped after the M23 [a major rebel group] were defeated by the DRC forces... I ask for forgiveness to victims who are present. I don't remember the people I killed and their families because we were at war and operated at night... I also ask forgiveness in the name of other child soldiers who have died yet they also

²⁶¹ These transcripts from peacemaking circles were translated from Kiswahili local language into French by the research team (co- researchers) and into English by the principal researcher.

²⁶² Reported by a former child soldier during RJPC Kiwanja, 22 May 2014.

committed crimes, and in the name of those who are still living, yet are not attending peacemaking circles.²⁶³

Child soldier C:

I was a driver and commander in the Mai Mai movement. I regret the crimes I committed and asked for forgiveness from the victims who are participating in this programme. I joined the Mai Mai to defend my community against the evil acts of the M23. Several times we were bound by strict rules not to commit crimes such as looting and raping... But there were times when we lapsed into killing as part soldiering service demands. I feel sorry for my friends... This week some of them here in Rutshuru have gone to the bush to join one armed group (unnamed).²⁶⁴

Child soldier D was a soccer player. As they played the Mai Mai team, violence broke out and, some village people were killed in Rutshuru. He decided to join the Nyatura so that he could fight against the Mai Mai. He narrated that:

...death was always close at hand... they could die at any instance, concluding “Adventurers join armed groups. But if I am interested in this life [soldiering] I would rather join government forces... there is a lot of suffering in armed groups... I am sorry for my misdeeds. I ask you to forgive me”.²⁶⁵

After child soldiers finished telling their stories, it was the opportunity for victims to share their pains and how their lives have been affected, as a result of atrocities they suffered.

12.3 Voice of victims

Survivors reported that militiamen who kidnapped them were often youngsters. In the bush adult men carried out sexual assaults but even young soldiers did the same. Participants did not object to granting forgiveness to child soldiers. They instead, blamed insecurity and the incapacity of the Government to protect people in war zones.

Victim A:

I was kidnapped from our home and taken to the bush by militiamen where I was systematically raped ... tied with ropes for five days... the militiamen brought me back and damped me at our placed in the middle of the night... then they ran back into the

²⁶³ Reported by a former child soldier reports during RJPC at Kiwanja, 22 May 2014.

²⁶⁴ Reported by a former child soldier commander reports during RJPC at Kiwanja, 22 May 2014.

²⁶⁵ Reported by a former child soldier states at RJPC at Rutshuru, 22 May 2014.

bush. No arrest has been made... I don't know who those armed men were [Face down, not looking at the audience]... I have received no help... I don't know how to survive.²⁶⁶

Victim B:

I was kidnapped by child soldiers on my way from school. I was taken to the bush where I was several times beaten... my right hand becomes paralysed from time to time... one day I was beaten severely and was left half-dead. I was miraculously released by another soldier and came back home... I have never received any help²⁶⁷

Victim C: "My grandmother was raped and killed in the field. She was found dead. We never knew who killed her. But for sure she was murdered by militiamen who operate around our town. No arrest has been made since this happened in 2009".²⁶⁸

Victim D (indirect victim) reported that her two daughters were kidnapped by armed boys for seven days, where both girls were systematically abused and raped. One was present at the circle but could not talk about her ordeal, listening instead, to her father's statement of forgiveness.²⁶⁹

Victim E explained that he was in his house when a girl soldier made her way inside and forced him to carry looted goods to their camp in the jungle:

With other soldiers and abducted civilians, we walked a long distance towards Busanza village at gunpoint. When we arrived at Katunduwe village, just close to their camp, another soldier released me after beating me... I constantly feared for my life, not knowing what my end will be.²⁷⁰

After listening to victims, the members of the community, including learners and supporters of victims and child soldiers, expressed their views in different ways.

²⁶⁶ A female rape survivor reports during peacemaking circles at Kiwanja, 22 May 2014. During the follow-up study in December, the same lady fell victims again while working in the field and suffered the same atrocities (interview with her nephew, a former child soldier, Rutshuru, 5 December 2014).

²⁶⁷ A teacher survivor of kidnapping and beating, reports during peacemaking circles at Kiwanja, 22 May 2014.

²⁶⁸ A learner girl participant in RJPC narrated the killing of her grand-mother by non-identified armed men.

²⁶⁹ Alpha Delta was one of the facilitators of peacemaking circles. He works as a humanitarian agent who helps survivors of armed conflict. He agreed to co-research with the team and co-facilitated peacemaking circles. He encouraged victims and their supporters to forgive child soldiers and using his family ordeal to illustrate the power of forgiveness that has helped the family heal.

²⁷⁰ A teacher, forced by a girl soldier to transport her looted goods, statement taken during RJPC at Rutshuru, 22 May 2014.

12.4 Voice of the community

The mother of one former child soldier remarks:

The government is responsible for allowing children to participate in armed groups and in combat operations. It has neglected the population. Even when civilians find rebels in the bush and they report this, no action is taken. On the contrary, the person who informs the security services, this person gets into trouble; to the extent of being killed by the rebels...children must be forgiven.²⁷¹

A father, whose two teenage daughters were abducted from their home by young soldiers, who held them in the bush for a week, stated that he has forgiven his daughters' abductors and aggressors. The audience was very moved as this father offered forgiveness to those soldiers who abused his daughters. He also said that his family has come to terms with their tragic experience and there was not much he could expect from justice or from the perpetrators:

I met one of the boys at the court while the other had been on the run. Their family was to pay the monetary reparation demanded by the court amounted to 10,000 Congolese Francs, approximately 1000 USD. When I looked at this poverty-stricken family I wondered whether they should sell their fields and house to compensate my family... we decided to forget about seeking money and getting the perpetrators jailed. Our daughter is relieved and I appeal to other youngsters present here to refrain from joining armed groups. It was very bad what we experienced. But we can forgive these child soldiers.²⁷²

To sum up, victims, child soldiers and their supporters and community members, expressed their satisfaction with the circles. At this time, deeply moved with emotion and pain, the audience showed empathy towards both child soldiers and victims and pleaded that child soldiers may be forgiven.

According to another participant, Patient (a member of one Child Care and Protection NGO in Rutshuru) narrates:

They (child soldiers) are not heroes... they are victims... but they have a criminal tone when addressing each other... not heroes because they come to loot the community they are supposed to protect. They like eating meat... they are there to make road-blocks. They don't protect their communities. They are there to take by force what they community can use for its development.²⁷³

²⁷¹ Voice a former child soldier's mother. Her reaction during RJPC at Rutshuru where she accompanied her son who has exited armed groups, 22 May 2014.

²⁷² Alpha Delta's report during RJPC at Rutshuru, 22 May 2014.

²⁷³ Personal interview with Patient (member of one NGO), Rutshuru, 25 May 2014.

François (an 18-year old, young man from Goma) explains:

Our communities create armed groups to defend themselves because the Government is not doing it... this occasions child soldiering phenomenon... there is no justice... people are jailed... there is no trial... They are enrolled assuming they will be heroes to fight for their communities... they are victims.²⁷⁴

Patient comments:

There is no public hearing of child soldiers... If this kind of justice was taking place, it could have discouraged other children from joining armed groups. Alternatively, children who have been reinserted into community could be invited in a big hall where they meet with victims and their supporters. These forums could be facilitated by community members who are in charge of youths under 18 years. This public hearing could have the effect to bring awareness among ignorant children and shame rebels who recruit them... Children are perpetrators but not deciders. So it is important to uncover adults' lies and immoral techniques that they ruthlessly employ to lure children. Some of these public hearing programmes could be carefully chosen and broadcast on radios. So far "Peace Radio", owned by the Mission of the United Nations for Stabilisation of Congo, has been encouraging children to defect armed groups and proceed to CTOs where they will be secured and taken care of. This broadcasting station can be used during public hearing of child soldiers and their victims.²⁷⁵

Other views reported during peacemaking circles included ending armed conflicts, as well as using local resources and traditional structures to bring peace. This view concurs with other participants, who link prevention to the end of armed groups and militias. They also see the presence of active armed groups in North Kivu as an impediment to the reintegration of child soldiers.

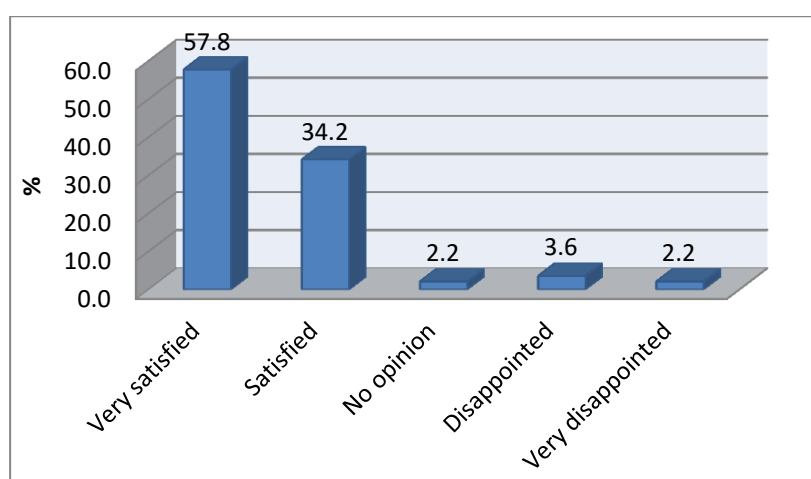


Figure 21: Respondents' evaluation of peacemaking circles

²⁷⁴ Statement by a François during peacemaking circles at Goma, 2 June 2014.

²⁷⁵ Personal interview with Patient, Rutshuru, 26 May 2014.

The majority of participants (92%-93.5%) expressed their satisfaction after participating in peacemaking circles. Their sentiment can be interpreted as the great desire for transformation that needs to take place in their unfavourable condition.

Table 19: Level of satisfaction after participating in healing circles

			<i>Child soldiers</i>	<i>Learners</i>	<i>Educators</i>	<i>Unemployed</i>	<i>Public servants</i>
Total	Level of	Yes	67	143	11	3	29
	satisfaction for		91.8%	93.5%	73.3%	100.0%	93.5%
	participating in	No	3	3	0	0	0
	healing circles	opinion	4.1%	2.0%	0.0%	0.0%	0.0%
		No	3	7	4	0	2
			4.1%	4.6%	26.7%	0.0%	6.5%

It emerged that armed conflict causes injury to the populations, children and survivors of war-torn areas. There is a need to heal these communities. Several aspects of healing were examined.

Healing effects of restorative programmes were investigated, in order to assert how these could impact war affected communities. The following section examines integrative treatment of children affected by armed conflicts, child soldiers and non-soldiers, in an attempt to prevent re-recruitment, enrolment and participation in hostilities.

12.5 Healing mechanisms: Integrative treatment²⁷⁶

Several young soldiers show PTSD, including nightmares, shouting during sleep or being haunted by the spirits of the persons they have killed. The researcher met with children who display terrible mental problems, ranging from loss of memory to dispersion of thoughts, as well as a lack of logic in telling their stories.²⁷⁷ From 2004 to 2013, a total of 1,000 child soldiers exited armed groups and forces via the Caritas CTOs, and 984 were reintegrated into their families. Child soldiers present different healing needs, from relational and physical to mental and psychological. In every respect, these need to be handled appropriately.

²⁷⁶ The findings are based on search conference reports at various levels of the intervention (conception, implementation, and evaluation).

²⁷⁷ Report form the psychologist who handle mental and psychological wellbeing of released young soldiers, Nyahanga, 26 May 2014.

The results of circles developed from search conference reports, revolve around the following questions: poverty eradication, security and justice, psychosocial support, forgiveness and reconciliation. At the centre of healing and restoration are restorative circles (Appendix 14).



Figure 22: Strategic treatment process – psychosocial wellbeing

Some participants used their faith background, arguing that we should love both victims and perpetrators, in spite of what happened because Jesus is merciful. A primary school boy attending the circle said that only reconciliation could help from a Christian ethical point of view because it was too difficult to forget what happened, especially the brutal acts by child soldiers and other militaries.²⁷⁸ There was a plea that children who have exited armed forces and groups be pardoned and accepted back into social life and be provided education opportunity. Affected parties (survivors) accepted to forgive child soldiers. Moreover, it was suggested that the process of reinsertion (family tracing and reunification) needed to be accelerated.²⁷⁹

Vicarious justice emerged as a dimension of RJ healing processes, where forgiveness and reconciliation could be asked and granted, on behalf of absent interested parties (victims and perpetrators). This was experienced when child soldiers asked for forgiveness on behalf of deceased fellow soldiers and those who never had the opportunity to ask for forgiveness for their atrocious acts in time of hostilities.²⁸⁰

²⁷⁸ Reaction by a school boy during peacemaking circles, Rutshuru, 22 May 2014.

²⁷⁹ Search Conference report, Rutshuru, 20 May 2014.

²⁸⁰ Search Conference report, Rutshuru, 20 May 2014.

In the context where victims and former child soldiers have no opportunity for counselling, participants suggested that the Government create structures of recuperation of war survivors, especially former child soldiers, where they can be re-educated and rehabilitated. The following narrative reveals the need for psycho-social support. Apha Delta reports:

Detraumatization is an urgent need of victims who suffered war atrocities and violent acts by young soldiers. Children used as soldiers suffer equally the violations of their rights making them vulnerable to commit inhumane acts that infringed the rights of others in different communities.²⁸¹

Trauma treatment of war-affected populations is a neglected issue in North Kivu. It is hard to find Government-owned facilities that provide psychological support to war survivors who show PTSD. Victims of rapes and other war-atrocities are abandoned to themselves. One psychologist takes care on five CTOs run by CARITAS-Goma. There may be a few more psychologists to work for other child transit centres, however, the DRC does not assist victims to cope with the devastating effects of war on their mental and moral condition.²⁸² Even the socio-economic dimension of support received by those populations was investigated.

Other than the psycho-social needs, there was also the concern for socio-economic reinsertion, identified as a treatment of wounded communities by armed conflict.²⁸³ This encompasses providing victims with the means to survive socially and economically (business, productive activities, and so forth), for those who cannot go back to school, which was suggested as a way of enhancing the mental and psychological wellbeing of both children affected by armed conflict and other victims.²⁸⁴ Creating occupational and recreational activities for the child soldiers who return home was deemed as a significant intervention to dissuade them from returning to armed groups.

Furthermore, this was seen as a means of curbing juvenile delinquency, banditry, early/teen pregnancies and undesirable pregnancies, while especially preventing re-recruitment. “People need to participate in prayer groups, to love work and participate in cultural activities. They

²⁸¹ Reported by Alpha Delta, a father whose two daughters were abducted by young soldiers and taken to the bush where they were systematically abused and raped for seven days before they were released. He co-facilitated healing circles with one of the girl survivor. He expressed that the family had forgiven the aggressor and was not intending to pursue the matter in criminal court. Healing circle in Rutshuru, 22 May 2014.

²⁸² Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

²⁸³ Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

²⁸⁴ Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

should abandon the lifestyle of drinking, especially youngsters who spend their evenings in association with alcohol.”²⁸⁵

The need for justice and security was also expressed by participants, who called for the DRC Government to take action regarding its responsibility to neutralise and eliminate different groups and militiamen that are still actively operating in the provinces of North Kivu, South-Kivu and the Ituri district.²⁸⁶ Peaceful negotiations should be promoted to neutralise cross-border armed groups that continue terrorising local populations and creating panic that keeps children vulnerable. More engagement between the Government and local community leaders was also called for, to end hostilities sustained by ethnic rivalries and foreign forces that have established their bases in the eastern DRC.

The DRC must put in place programmes of poverty eradication, create jobs, develop education infrastructure (building schools and higher education institutions), in order to eliminate juvenile delinquency and unemployment that cause vulnerability and prompt youngsters to become soldiers.²⁸⁷ There is a great need for infrastructural development (for commerce, agriculture, fishery and livestock development). Creating structures of formation to crafting for former child soldiers and other vulnerable children, so as to prevent them from voluntarily enrolling as soldiers or being recruited by armed groups and non-identified armed gangs.²⁸⁸

Some participants consider social reparation (providing free education to war victims and former children associated with armed forces and groups) a compound need of victims.²⁸⁹ This could be carried out through local structures supported by the Government. A certain balance is necessary, to break social and economic inequalities that likely cause an explosion of violence when some social groups feel marginalised and are denied economic advantages and other opportunities. For this category of people, violence becomes the means to exert pressure on their governments, in order to break with unfavourable and unjust treatment and inequitable social and economic conditions.

²⁸⁵ Statement by a high school girl participating in healing circles, Rutshuru, 22 May 2014.

²⁸⁶ Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

²⁸⁷ Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

²⁸⁸ Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

²⁸⁹ Search conference report, approved, Rutshuru, 20 June 2014, appendix 14,

12.6 Phase 2 - Evaluating peacemaking circles

The section is sub-divided into four main themes: (1) the comparisons of CG and EG before and after the intervention (exposure to RJPCs); (2) participants' views about forgiving child soldiers; (3) participants' views about accountability of child soldiers accused of carrying out war crimes and crimes against humanity; and finally (4) comparison of scores of participants below the age of 18 years, before and after RJPCs, regarding their intention to join armed groups.

Cross-tabulations were drawn that revealed the similarity between EG and CG before the intervention (Table 20 - support for forgiveness; Table 21 - support for prosecution of child soldiers), as well as before and after RJPCs. For instance, the pre-test support for prosecution of child soldiers was 51.1 percent for the EG and 48.2 percent for the CG; similar results were observed forgiving child soldiers, 51.4 percent for EG and 50.7 percent for CG; and participants' intention to join armed groups, 27.0 percent for EG and 26.2 percent for CG. Randomised pre-testing was needed to determine whether EG and CG were identical prior to exposing EG to RJPCs. The inference suggests that the EG and CG were identical before intervention. This implies that the assumption to conduct pre-test/post-test control group designs was satisfied.

Table 20: Forgiving child soldiers before and after RJPC (EG and CG)

	<i>PRE-TEST</i>			<i>POST-TEST</i>		
	Experimental group	Control group	Total	Experimental group	Control group	Total
Yes	72 51.4%	71 50.7%	143 51.1%	134 95.0%	129 91.5%	263 93.3 %
No opinion	14 10.0%	14 10.0%	28 10.0%	2 1.4%	6 4.3%	8 2.8%
No	54 38.6%	55 39.3%	109 38.9%	5 3.5%	6 4.3%	11 3.9%
	140 100.0%	140 100.0%	280 100.0%	141 100.0%	141 100.0%	282 100.0%

Forgiveness is one of the RJ outcomes that was measured. Participants' stand, regarding forgiving child soldiers, increased by 42.6 percent, showing a 3.5 percent difference, compared

to the CG (Table 20). The fact that support for forgiveness of child soldiers increased in almost equal proportions in the post-test of EG and CG, prompted whether the change in the same direction of the post-test of the EG and CG, could be attributed to factors other than the intervention. This will be discussed later.

There was no statistical significant difference between the post-test of EC and CG. The support for prosecution of child soldiers dropped for both EG and CG after the intervention (Table 21). That again prompted further investigation as to whether there could have been other factors that influenced the CG's response. Chi-square was performed on this table. The pre-test gives $p < .992$ and post-test gives $p < .335$. The probability values are not less than 0.5. The sum value of pre-test and post-test is $p < .369$. The tests fail to reject the null hypothesis. Should the intervention have been effective, the difference between pre-test and post-test of EG and CG should have been significant. Nonetheless, the increase in support for forgiving child soldiers in both groups is noted. What could be responsible for this simultaneous change? Could there have been interaction between EG and CG or other factors that played to influence both groups in the same direction? That will be discussed later.

Table 21: Support for prosecution of child soldiers - pre-test/post-test

	<i>PRE-TEST</i>			<i>POST-TEST</i>		
	Experimental groups	Control groups	Total	Experimental groups	Control groups	Total
Yes	72	68	140	46	47	93
	51.1%	48.2%	49.6%	32.6%	33.6%	33.1%
No opinion	6	4	10	8	6	14
	4.3%	2.8%	3.5%	5.7%	4.3%	5.0%
No	63	69	132	87	87	174
	44.7%	48.9%	46.8%	61.7%	62.1%	61.9%
	141	141	282	141	140	281
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Furthermore, EG and CG participants' views about accountability of child soldiers were measured. The overall support for prosecution of child soldiers dropped by 16.5 percent following the intervention, which shows a significant statistical difference (Table 22). Chi-

square tests were applied to cross-tabulations of Table 21 and showed $p < .675$ for each pre-test and post-test. The sum probability value is not less than 0.5, but $p < .864$. However, the sum values of pre-test and post-test is $p < 0.000$ (Table 22). The test succeeded to reject the null hypothesis, which implies that there is sufficient evidence to conclude that the EG and the CG were significantly different in the pre-test and the post-test.

However, the difference moved in the same direction, which was not expected of the intervention. There was no significant difference between EG and CG of post-test after intervention. The changes in EG and CG of the post-test may raise questions on the effectiveness of the intervention, since both groups show similar scores. One would expect the CG to remain intact before and after the test if the intervention was going to influence the EG. How can these concomitant changes be explained? We shall discuss that later.

Table 22: Support for prosecution of child soldiers' pre-test/post-test

Chi-Square Tests				
Experimental groups and control groups		Value	df	Asymp. Sig. (2-sided)
Experimental groups and control groups	Pearson Chi-Square	53.101 ^b	4	.000
	Likelihood Ratio	60.228	4	.000
	Linear-by-Linear Association	37.905	1	.000
	N of Valid Cases	141		
Control groups	Pearson Chi-Square	41.659 ^c	4	.000
	Likelihood Ratio	43.299	4	.000
	Linear-by-Linear Association	33.095	1	.000
	N of Valid Cases	140		
Total	Pearson Chi-Square	89.523 ^a	4	.000
	Likelihood Ratio	98.971	4	.000
	Linear-by-Linear Association	71.087	1	.000
	N of Valid Cases	281		
a. 2 cells (22.2%) have expected count less than 5. The minimum expected count is .50.				
b. 5 cells (55.6%) have expected count less than 5. The minimum expected count is .34.				
c. 5 cells (55.6%) have expected count less than 5. The minimum expected count is .17.				

Table 22 illustrates the results of examining participants' view regarding the impact of the intervention, when it could lead war affected communities to adopt a restorative approach towards the accountability of child soldiers. Nevertheless, the fact that both EG and CG changed simultaneously in the post-test creates an opportunity for more research about other

factors that could have caused the CG to be similar to the EG after the intervention. The two groups show a negligible difference of 2.9%. This needs further explanations in the discussion chapter.

Finally, the intention to join armed groups after RJPCs was measured. A set of three procedures were used to measure the intention to join armed groups. The first one compared the intention of adults (aged 18 and above) and minor (aged below 18). Cross-tabulation was applied using a Chi-Square test to establish the difference in the intention of participants to join armed groups, for both adult and child populations. The results showed that 69.1 percent of children intended to join armed groups compared to 30.9 percent of adults, who expressed that they intended to join armed groups. The Chi-square test results indicate that there was a statistical significance for $p < 0.000$ between participants in age categories; those below the age of 18 years and those aged 18 years and above (Table 24).

Table 23: Intention to join armed groups – child/adult categories

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)	Point Probability
Pearson Chi-Square	26.045 ^a	2	.000	.000		
Likelihood Ratio	30.533	2	.000	.000		
Fisher's Exact Test	29.643			.000		
Linear-by-Linear Association	25.401 ^b	1	.000	.000	.000	.000
N of Valid Cases	282					

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 8.95.

b. The standardized statistic is 5.040.

The volatility of the North Kivu and the failure of existing mechanisms to prevent children from joining armed groups are explained in 22. Children remain vulnerable to recruitment and enrolments as soldiers.

Secondly, a Wilcoxon Signed Rank Test was used to compare the difference between the mean of the pre-test and post-test for the sample of 282. The test hypothesised that the mean difference of pre-test and post-test = 0 (Null hypothesis). This is the p-value for the test. The Wilcoxon Signed-Ranks Test is reported using Z statistics (Laerd Statistics n.d.; Grande 2015). The test was performed using SPSS version 23.

Table 24: Descriptive Statistics of the total sample

	N	Mean	Std. Deviation	Minimum	Maximum
Expressed intention of participants to join armed groups or forces before RJPCs	282	2.37	.875	1	3
Expressed intention to join armed groups after RJPCs	282	2.98	.196	1	3

The descriptive statistics of the total sample (282) show a significant difference in their means, namely 2.37 of the pre-test and 2.98 for the post-test, with regard to joining armed groups (Table 25).

Table 25: Wilcoxon Signed Ranks Test of the total sample (282)

Ranks		N	Mean Rank	Sum of Ranks
Expressed intention to join armed groups after RJPCs - Expressed intention of participants to join armed groups or forces before RJPCs	Negative Ranks	4 ^a	42.25	169.00
	Positive Ranks	103 ^b	54.46	5609.00
	Ties	175 ^c		
	Total	282		

a. Expressed intention to join armed groups after RJPCs < Expressed intention of participants to join armed groups or forces before RJPCs

b. Expressed intention to join armed groups after RJPCs > Expressed intention of participants to join armed groups or forces before RJPCs

c. Expressed intention to join armed groups after RJPCs = Expressed intention of participants to join armed groups or forces before RJPCs

The negative ranks show that four participants had lower post-test scores than their pre-, with regard to the intention to join armed groups and militias; 103 participants had higher post-test scores than their pre-test; and 175 remained neutral or did not show a difference in the scores of their pre-test and post-test.

Table 26: Test Statistics^a for the inclusive sample (282)

	Expressed intention to join armed groups after RJPCs - Expressed intention of participants to join armed groups or forces before RJPCs
Z	-8.898 ^b
Asymp. Sig. (2-tailed)	.000

a. Wilcoxon Signed Ranks Test

b. Based on negative ranks.

A Wilcoxon signed-rank test showed that the exposure to RJPCs elicited a statistically significance change by the total sample of 282 ($Z = -8.898$ $p = 0.000$) in pre-test and post-test, regarding the intention to join armed groups and militias. The inference to draw is that the intervention succeeded to dissuade the high majority of participants to join armed groups (103 cases showed that the pre-test scores to join armed groups and militias were higher than the pre-test). The null hypothesis was rejected because the means of pre-test and post-test were not equal. There is sufficient evidence to conclude that the intervention impacted positively on both child soldiers and the majority of the sample.

Thirdly, participants below 18 year old were isolated, separated from those aged 18 years and above, and a Wilcoxon Signed-Ranks Test was applied to analyse the scores of their pre-test and post-test. The isolation was necessary to respond to the objective of the inquiry, namely the prevention of children from becoming soldiers. The population below 18 years was the most concerned in this regard.

The rationale for separating the two groups was to establish how the intervention impacted on children exclusively. However, the trends from the inclusive sample needed to be taken into account, in order to firmly ascertain the effectiveness of the intervention. In this case, the exposure to RJPCs elicited positive and expected changes in respondents below 18 years and those aged 18 years and above.

Table 27: Ranks of Wilcoxon Signed Test for participants below 18

	N	Mean Rank	Sum of Ranks
Expressed intention to join armed groups after RJPCs - Expressed intention of participants to join armed groups or forces before RJPCs	3 ^a	26.83	80.50
Negative Ranks			
Positive Ranks	89 ^b	47.16	4197.50
Ties	103 ^c		
Total	195		

a. Expressed intention to join armed groups after RJPCs < Expressed intention of participants to join armed groups or forces before RJPCs

b. Expressed intention to join armed groups after RJPCs > Expressed intention of participants to join armed groups or forces before RJPCs.

c. Expressed intention to join armed groups after RJPCs = Expressed intention of participants to join armed groups or forces before RJPCs.

The Ranks table provides some interesting data on the comparison of pre-test and post-test scores, with regard to the intention to join armed groups by children below 18 years. A total of three children show lower post-test scores in the post-test than in the pre-test; 89 children show a higher post-test score than pre-test scores; while 103 children show no difference in their intention to join armed groups (Table 28).

Table 28: Test Statistics^a for participants below 18

	Expressed intention to join armed groups after RJPCs - Expressed intention of participants to join armed groups or forces before RJPCs
Z	-8.505 ^b
Asymp. Sig. (2-tailed)	.000

a. Wilcoxon Signed-Ranks Test

b. Based on negative ranks.

By examining the final test statistics table, it can be discovered whether these changes, due to exposure to RJPCs, led overall to a statistical significance in the intention to join armed groups. What is sought, is the “Assymp. Sig. (2-tailed)” value, which in this case is $p < 0.000$ (Table 29).

Reporting the outputs:

Based on the results above (Table 28), a Wilcoxon Signed-Rank Test showed that the exposure to RJPCs elicited a statistically significant change in the intention of children below the age of 18 years to join armed groups and militias ($Z = -8.505$, $p = 0.000$). The inference to draw is that the intervention succeeded to dissuade children from becoming soldiers. The null hypothesis

was rejected. There is sufficient evidence to conclude that the intervention impacted positively on children below 18 years, in dissuading them from joining armed groups.

Other patterns of RJPCs were further examined, alongside the potential of Baraza to achieve accountability of child soldiers and prevent the recruitment of children for military objectives.

The post-test scores of participants below the age of 18 years were compared with the post-test scores of the overall sample (Tables 27 and 28 vs. Figure 23).

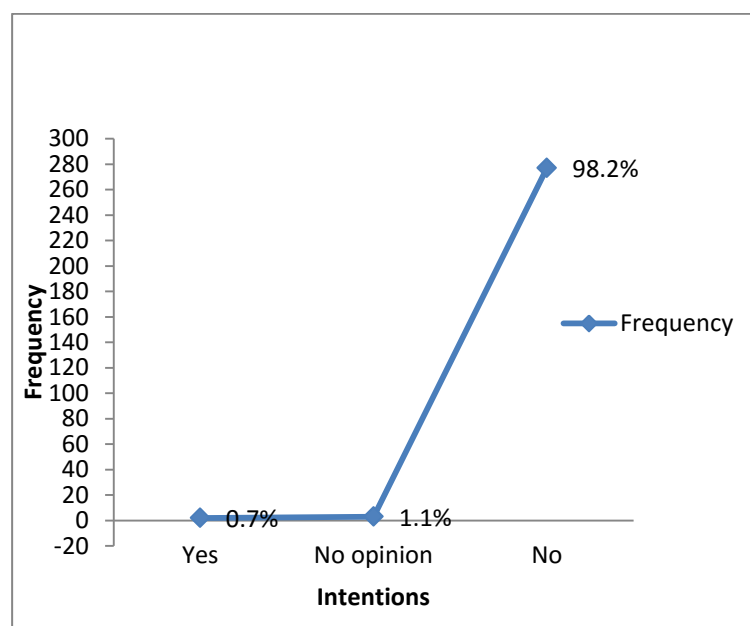


Figure 23: Intention to join armed groups of the overall sample

The “yes” scores decreased by 25.9 percent the “no opinion scores” dropped by 9.2 percent, while the “no” scores increased by 35.1 percent. The significant alterations of the scores from respondents reveal the overall impact of the intervention for all age groups and occupation of participants. In addition, a Wilcoxon Signed-Rank Test of the overall sample was performed. It was cross-examined with that of the under 18 year-old children, with regard to the intention to join armed groups. This helped affirm the effectiveness of the intervention that impacted positively on participants both below 18 years and above.

12.7 Phase 3 - Follow-up study on Baraza and restorative justice

A follow-up study on the emerging results of RJPCs was conducted on 1,165 respondents, including child soldiers, war-victims, learners and students and community members (Table 2). The main component of this search was planning and implementing training participants on

RJPCs, using a workshop format and role-play among child soldiers, victims and community members. Training programmes included RJ peacemaking and healing circles, based on materials from the Campus Community of San Francisco and the University of Oregon.²⁹⁰ The training was on materials adapted from Pranis (1997, 2013); Stuart and Pranis (2008), with training sessions followed by participant evaluation.

The results are based on descriptive statistics derived from a survey, in order to evaluate participants' opinions about the programmes and how it affected them. Former child soldiers and non-soldiers exchanged role-play, while other learners participated. Of the total of the additional sample (1,165), 257 participants (22.1%) were direct victims (Table 2), while the majority of learners and other community members 73.2 percent of the sample participated as a neutral party in the programme, although a part of them (908) had been indirect victims (77.9 %). Child soldiers represented 4.1 percent and identified themselves as direct victims.

All participants gave their views on an RJ approach, as a model of accountability for child soldiers and a way of preventing other children from joining armed groups. It is important to note that, at all stages of the programme, there was no re-traumatisation incident reported, according to observations made by the psychologist who followed-up with victims in private post-RJPC sessions.

Since Baraza emerged as another means of accountability, conflict prevention and resolution, this customary forum was also subject to a follow-up study. No input was necessary because the majority of participants were aware of what Baraza means and how it works.

Prior to analysing and interpreting data, reliability statistics were examined by applying a Cronbach's alpha test on variables pertaining to Baraza and RJPC.

i Reliability statistics

A reliability coefficient of 0.70 or higher is considered as “acceptable”.

²⁹⁰ Adapted from materials in William C. Warters, *Mediation in the Campus Community*. San Francisco: Jossey-Bass, 2000) and from materials developed by the Campus RJ Program, University of Oregon) (appendixes 8 and 13).

ii Participants' views on Baraza

Table 29: Cronbach's alpha test case processing for Baraza variables

Case Processing Summary			
		N	%
Cases	Valid	1156	99.2
	Excluded ^a	9	.8
	Total	1165	100.0

a. Listwise deletion based on all variables in the procedure.

Table 30: Reliability Statistics

Reliability Statistics	
Cronbach's Alpha	N of Items
.697	6

Table 31: Cronbach's Alpha for data processed regarding Baraza

	Item-Total Statistics			
	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Participants' view on dropping prosecution of former child soldiers	19.05	20.952	-.066	.697
Participants' view on child soldiers' accountability via BWI	17.79	17.094	.250	.596
Participants' personal experience of the Baraza	19.50	21.891	-.037	.630
Participants' view on the effectiveness of the Baraza to address the impasse of juvenile justice	17.81	14.822	.546	.481
Participants' view on the potentials of the Baraza to prevent child soldiering practice	17.73	15.013	.524	.490
Participants' view on the potentials of the Baraza to end the phenomenon of community self-defence armies	17.78	14.573	.572	.470
Participants' view on the superiority of the Baraza to conventional criminal justice system for juveniles in conflict with the law and child soldiers	18.22	15.739	.434	.525

The case process generated 0.697, which approximates the accepted Cronbach's alpha, of 0.70 coefficient value of acceptability. This test ensured that the statistical reliability of the variables computed, satisfied the criteria of validity of statistical data and analysis.

iii. Participants' views on RJPC

Table 32: Cronbach's alpha test case processing for RJPC variables

Case Processing Summary			
		N	%
Cases	Valid	1159	99.5
	Excluded ^a	6	.5
	Total	1165	100.0

a. Listwise deletion based on all variables in the procedure.

Table 33: Reliability Statistics

Reliability Statistics	
Cronbach's Alpha	N of Items
.778	9

Table 34: Cronbach's Alpha value for peacepeacemaking circles

	Item-Total Statistics			
	Scale Mean if Item Deleted	Scale Variance if Item Deleted	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Participants' view on the impact of RJPC on justice for child soldiers and war victims	32.89	25.205	.290	.681
Participants' view on the impact of RJPC on reconciliation between war victims and child soldiers	32.81	24.469	.472	.649
Participants' view on the impact of RJPC on peace between victims and perpetrators (former child soldiers)	32.98	23.465	.549	.634
Participants' view on the impact of RJPC on justice	33.17	23.469	.478	.645
Participants' view on the impact of RJPC on enhancement of mutual forgiveness between child soldiers and community, child soldiers and victims	32.91	23.676	.565	.633
Participants' view of the impact of RJPC to dissuade children from joining armed groups	33.02	23.592	.401	.659
Participants' view on the impact of RJPC on healing victims, community and child soldiers	33.12	23.155	.470	.645
Participants' view on the ineffectiveness	35.23	33.788	-.442	.778

of RJPC to yield tangible results				
Participants view on the impact of RJPC to lead former child soldiers to regret their past antisocial acts	32.80	25.417	.337	.672
Participants' view on the effects of RJPC to cause satisfaction to participants	33.00	24.216	.471	.648

The case process generated an accepted Cronbach's Alpha approximating the 0.70 coefficient value of acceptability for the Cronbach's Alpha value of peacemaking circles of 0.778 (Table 32). The test ensured that the statistical reliability of the variables computed, satisfied the criteria of validity of statistical data and analysis.

iv. Participants rate according to research sites

Although questionnaires were dispatched to be completed and returned the next day, some participants preferred answering and handing them back on the same day.

Table 35: Participants' location in the follow-up study

		Frequency	%	Valid %	Cumulative %
Valid	Busihe	1	.1	.1	.1
	Goma	806	69.2	69.2	69.3
	Kahusa	1	.1	.1	69.4
	Karisimbi	1	.1	.1	69.4
	Kiwanja	127	10.9	10.9	80.3
	Masisi	5	.4	.4	80.8
	Mutiri	12	1.0	1.0	81.8
	Nyahanga	1	.1	.1	81.9
	Nyanzale	1	.1	.1	82.0
	Rutshuru	144	12.4	12.4	94.3
	Walikale	2	.2	.2	94.5
	Bugara	1	.1	.1	94.6
	Nyanga	1	.1	.1	94.7
	Kitchanga	62	5.3	5.3	100.0
	Total	1165	100.0	100.0	

The overall effects of RJPCs, after engaging victims and child soldiers and war-stricken communities in training programmes, show positive results. These include a high level of agreement for a feeling of relief by all participants (72.8%); for holding child soldiers by RJ, rather than the conventional criminal justice (75.95%); for child soldiers expressing remorse

for their reprehensible brutalities carried out while soldering (82.7%); for enhancing peaceful cohabitation between former child soldier, their victims and respective communities (75.4%). The rate of satisfaction, for participating in the restorative programmes and healing circles, approximated 74.8 percent. Among participants in Phase 3, 41 had been in armed groups once (3.5%), whereas 19 (1.6%) of the sample had participated more than once in fighting.

Table 36: Frequency of participation in hostilities

		Frequency	%	Valid %	Cumulative %
Valid	Once	41	3.5	3.5	3.5
	more than once	19	1.6	1.6	5.2
	Never participated	1101	94.5	94.8	100.0
	Total	1161	99.7	100.0	
Missing	System	4	.3		
Total		1165	100.0		

The predominant number of learners (79.1%) was intended to involve as many juveniles as possible in RJ programmes, in order to obtain their perception of ex-combatant soldiers, their accountability and reintegration; and eventually, to establish whether the programme could help dissuade children from joining armed groups and militias.

Table 37: Status before joining armed groups or forces

		Frequency	%	Valid %	Cumulative %
Valid	Student	38	3.3	3.3	3.3
	Unoccupied	21	1.8	1.8	5.1
	Never participated	1103	94.7	94.9	100.0
	Total	1162	99.7	100.0	
Missing	System	3	.3		
Total		1165	100.0		

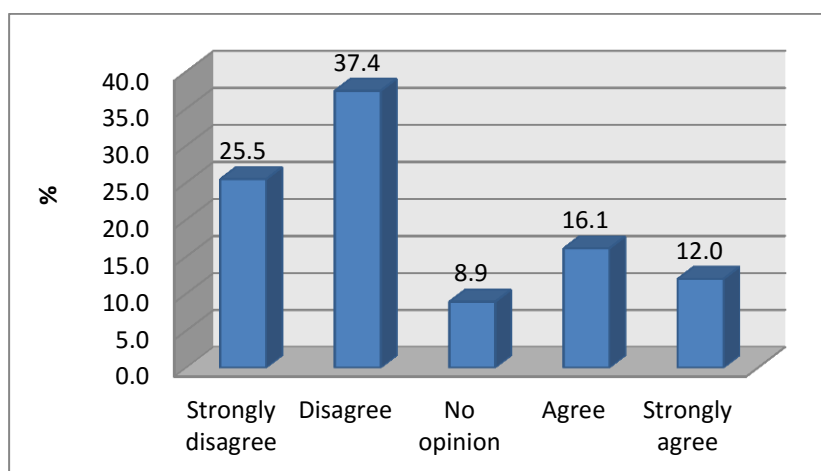
The pedagogic aim of the programme was also to discourage young people from joining armed groups and militias. It was difficult to separate child soldier victims and perpetrators from the community, although the majority were found in interim centres. Over the course of both phases of the study, 80 self-demobilised child soldiers were below the age of 18 year old, while 41 were older than 18 years (Table 2).

Table 38: Age of joining armed groups or forces

		<i>Frequency</i>	<i>%</i>	<i>Valid %</i>	<i>Cumulative %</i>
Valid	Bellow 18 years	41	3.5	3.5	3.5
	18 years and above	23	2.0	2.0	5.5
	Never participated	1098	94.2	94.5	100.0
	Total	1162	99.7	100.0	
Missing	System	3	.3		
Total		1165	100.0		

During the first phase of data collection, search conferences suggested that Baraza that functions as a restorative platform could be a viable approach to ensure accountability and reconciliation of child soldiers. RJ and Baraza were examined in the second phase.

v. Acceptance of child soldiers in the community without accounting for their past alleged crimes as soldiers

**Figure 24: Accepting child soldiers without accountability**

Respondents shared their views, as to whether alleged charges of criminal acts by former child soldiers should be dropped or ignored, before they reintegrate society. A total of 62.9 percent of the participants disagreed that former child soldiers should not be accountable for their past crimes. The high number of non-soldiers in this phase was used to gain an in-depth perception from various populations on child soldiering accountability via RJ while, at the same time, instructing younger participants in ways of building peace and addressing the rights of victims and communities, who are affected by wars and violence related to ethnicity.

vi. **Attaining justice through RJ for child soldiers and community members**

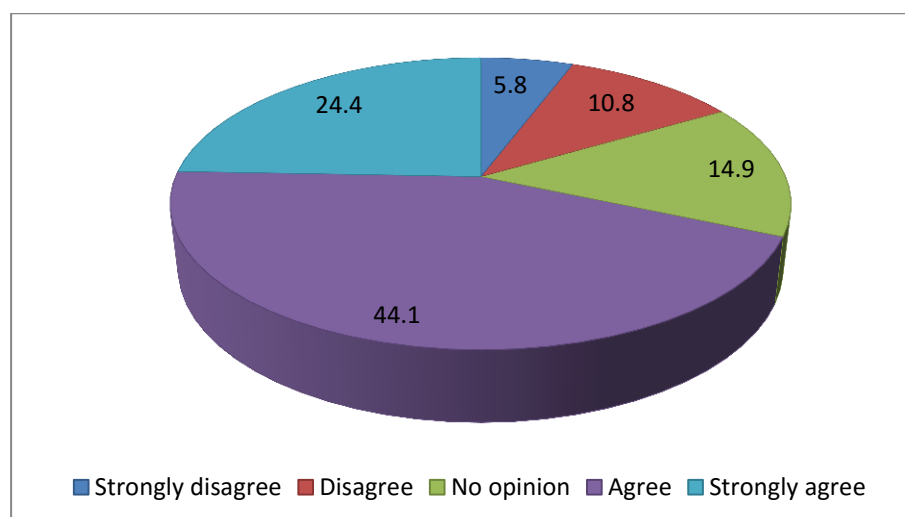


Figure 25: Participants' view on the impact of RJPC on justice

It appears that 68.5 percent of the respondents agree that RJ attained justice. Participants' views on the potential of RJPC to lead to reconciliation between war victims and child soldiers were rated at 83.4 percent level of agreement. The level of agreement, regarding the potential of RJ to prevent children from joining armed groups was 74.9 percent. The overall level of participation, in peacemaking circle programmes and subsequent focus group discussions, was 73.8 percent of the respondents. And a total of 72.8 percent of participants agreed that RJPC lead to healing (Figure 26).

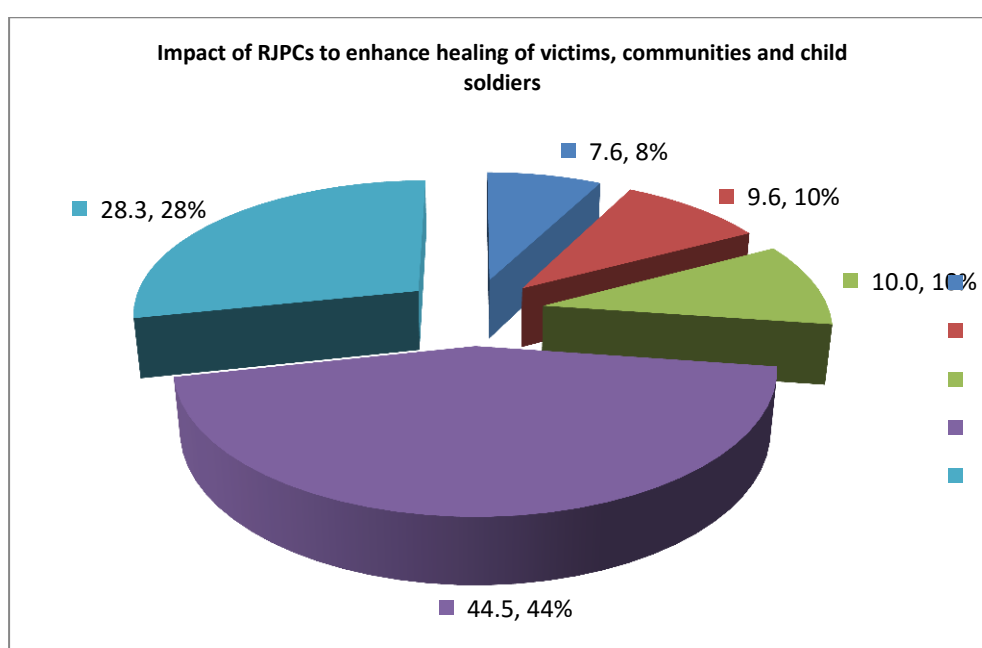


Figure 26: Agreement to the potential of RJPC to enhance healing

A total of 75.4 percent of the participants agreed that RJ could enhance peaceful cohabitation between former child soldiers and their victims and respective communities. For holding child soldiers accountable by RJ rather than conventional justice (76.0%). The majority (82.7%) of participants indicated that child soldiers expressed remorse for the brutalities they carried out while soldiering (Figure 27).

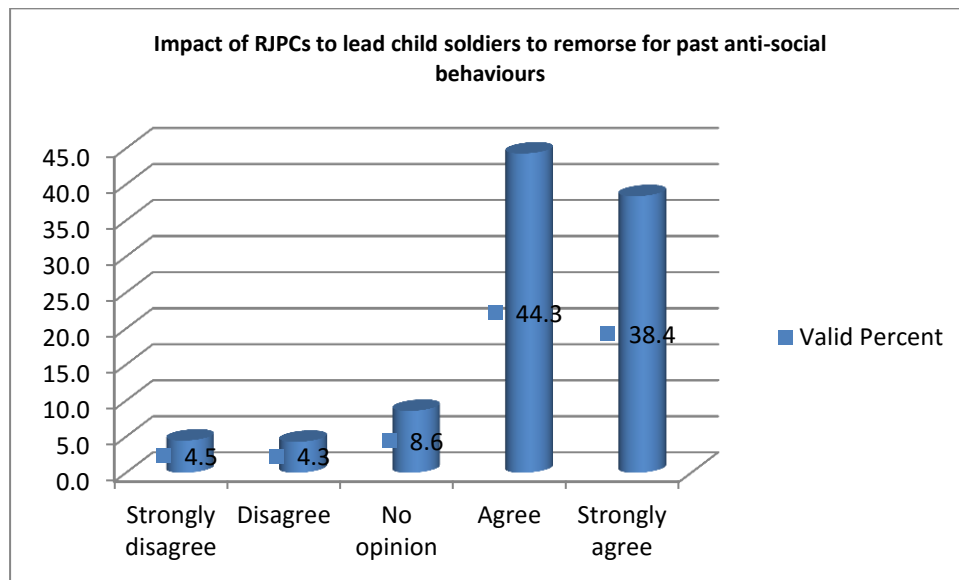


Figure 27: expression of remorse by child soldiers for their actions

Remorse for wrongful actions is one of the expected outcomes of RJ. When child soldiers regret their past actions, the community shows empathy towards them and that led participants in RJPCs to forgive their past brutal behaviours. Similarly, reconciliation and healing are the positive, expected outcomes of RJ. This was achieved through interaction between victims and child soldiers, both in role-playing workshops and in RJPCs.

There was no significant difference in the respondents' views on applying conventional criminal justice as a model of accountability for self-demobilised child soldiers. This split in opinion shows that holding former child soldiers accountable, is a great desire of war-affected communities in the eastern Congo. The study revealed strong disagreement among participants about accepting former child soldiers into the community without any process of accountability (Kiyala 2015).

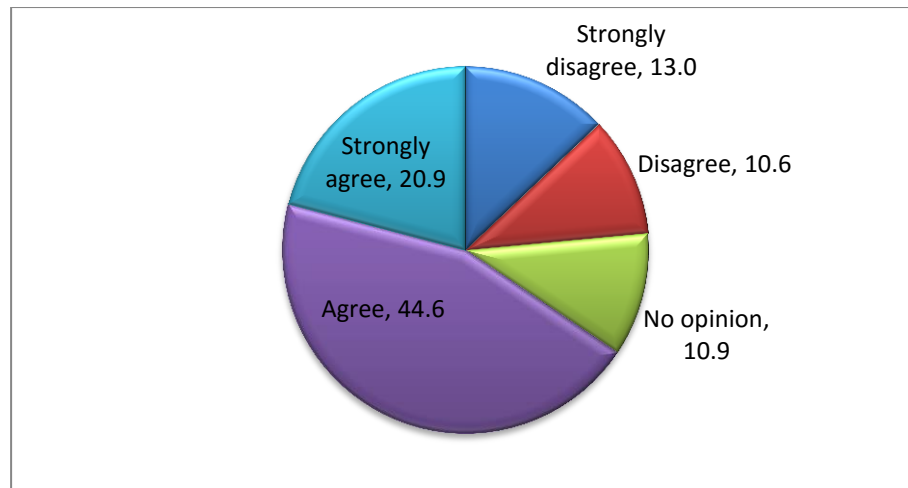


Figure 28: Effectiveness of the Baraza to handle juvenile justice

While respondents approved Baraza as a forum for child soldiers' accountability (75%), several (23.6%) rejected this platform's potential to handle juveniles, other than child soldiers. In spite of child soldiers' vulnerability, it emerged that there was a need to account for their past aggressive acts, so they could be accepted by their communities. A substantial percentage (62.3%) of the participants acquiesced that Baraza can help halt the phenomenon of community self-defense armies, while slightly more (65.2%) participants submitted that Baraza can help prevent the child soldiering practice, with the largest percentage (65.5%), agreeing that Baraza can help address the impasse of juvenile justice.

vii Preferred model of justice for child soldiers

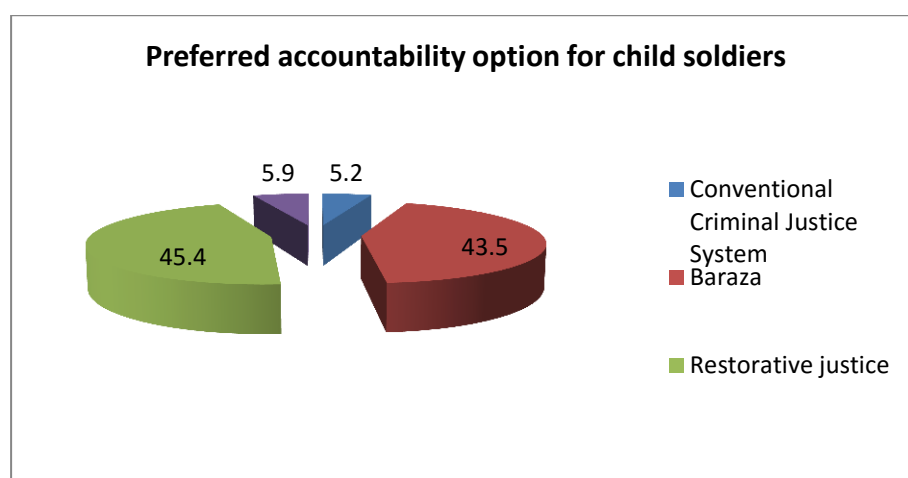
Following interviews and focus discussions, the follow-up survey also included a comparison between three models of justice, namely the conventional criminal justice system, restorative justice and Baraza. Spearman's rho statistical test was used to assess the relationship between these models, with the results revealing that participants prefer Baraza to conventional criminal justice, as a means of holding child soldier perpetrators accountable.

The general form of a null hypothesis for a Spearman correlation is: H_0 : There is no association between the two variables [in the population]. $N=1165$. A Spearman's rank-order correlation was run to determine the relationship between child soldiers' accountability through Baraza and the conventional criminal justice (CCJ) system, for 1,165 respondents, with heterogeneous characteristics. Spearman's rho ρ correlation coefficient was -.217. This implies a strong, positive correlation between Baraza and CCJ, which was statistically significant ($p=0.000$).

Table 39: Preferred model of accountability for former child soldiers

Correlations				
			Child soldiers' accountability via Baraza	Child soldiers' accountability via conventional criminal justice
Spearman's rho	Child soldiers' accountability via Baraza	Correlation Coefficient	1.000	-.217**
		Sig. (2-tailed)		.000
		N	1159	1159
	Child soldiers' accountability via conventional criminal justice	Correlation Coefficient	-.217**	1.000
		Sig. (2-tailed)	.000	
		N	1159	1165
**. Correlation is significant at the 0.01 level (2-tailed).				

The negative correlations show that the relationships go in opposite directions. Several respondents favoured Baraza (63.3% agreed and 28.3% disagreed), compared to CCJ (48.5% agreed and 44.1% disagreed). The missing percentage represents respondents who had no opinion.

**Figure 29: Preferred accountability option**

A Spearman's rank-order correlation was run, to determine the relationship between child soldiers' accountability via the conventional criminal justice system and the RJ track, for 1,165 respondents. Spearman's rho test helped establish the preferred model of accountability for child soldiers.

The general form of a null hypothesis for a Spearman correlation is: H_0 : There is no association between the two variables [in the population]. $N=1165$. Spearman's rho ρ correlation coefficient was $-.069$. This implies a strong, positive correlation between the two types of accountability, which was statistically significant ($p=0.018$).²⁹¹ The negative correlations show that the relationships go in opposite directions with greater inclination towards RJPC.

Table 40: Preferred option for child soldiers' accountability

<i>Correlations</i>				
			Child soldiers' accountability via conventional criminal justice	Child soldiers' Accountability via RJPC and potential to attain justice
Spearman's rho	Accountability via conventional criminal justice	Correlation Coefficient	1.000	-.069*
		Sig. (2-tailed)		.018
		N	1165	1163
	Impact of RJPC on justice	Correlation Coefficient	-.069*	1.000
		Sig. (2-tailed)	.018	
		N	1163	1163
*. Correlation is significant at the 0.05 level (2-tailed).				

The negative correlations show that the relationships go in opposite directions with a greater inclination towards RJPC. This was supported by subsequent descriptive statistics that revealed the following: 45.4 percent of respondents preferred RJPC; 43.6 percent opted for Baraza; 5.2 percent for the conventional criminal justice system, while 5.9 percent were undecided.

Table 41: Healing effects of RJPCs

<i>Participants' view on the impact of RJPC on healing victims, community and child soldiers</i>					
		Frequency	%	Valid %	Cumulative %
Valid	Strongly disagree	89	7.6	7.6	7.6
	Disagree	112	9.6	9.6	17.3
	No opinion	116	10.0	10.0	27.2
	Agree	518	44.5	44.5	71.7
	Strongly agree	330	28.3	28.3	100.0
	Total	1165	100.0	100.0	

²⁹¹ See table 39.

The results show that 72.8 percent of participants expressed a sentiment of relief for participating in peacemaking circles, supposedly bringing them healing. It was also found that 83.4 percent of participants acquiesced that RJPCs have healing effects that could help reconcile child soldiers and victims of their war brutalities; and 78.1 percent agreed that healing processes could lead to mutual forgiveness between child soldiers and victims, and community members.

12.8 Conclusion

The threefold objective of this chapter consisted of planning, implementing and evaluating RJPCs. For experimental design, the following variables were measured: participants' views about forgiving child soldiers, the level of support for prosecution of child soldiers via the mainstream justice system, as well as the stand of participants to join armed groups, after being exposed to RJPCs, especially participants aged below 18 years. Alongside that, a few more variables were measured, namely participants' views regarding accepting child soldiers into the community without accounting for their crimes, the level of satisfaction after participating in armed conflict and the preferred model for child soldiering accountability. This was cross-examined with the intention of participants to join armed groups, for the entire sample.

The findings indicate that there is an amalgam of factors that sustain the use of children as soldiers. These encompass the lack of accountability, impunity, the inability of the community and non-functional local criminal justice system, as well as the ineffective and dysfunctional juvenile justice system, and hostile environment where children exit armed groups, which is marked by lawlessness, insecurity, and the lack of livelihood and child protection. These situations have posed serious challenges to child soldiers' accountability and reintegration, as some eventually remobilise for soldiering.

Following these preliminary outcomes, Baraza and RJ approaches emerged as another alternative to punitive criminal processes to hold former child soldiers, accused of gross human violations, accountable. In order to avert this conundrum, peacemaking circles were used as a mode of intervention, to solve the problem.

Four variables were measured for both the EG and the CG. These are: the level of satisfaction for participating in peacemaking circles, support for prosecuting child soldiers through the criminal justice system, and support for forgiving child soldiers and participants' intention to

join armed groups. In the evaluative phase, the results of pre-test and post-test suggest promising effects of RJPCs on the complete sample. The same positive outcomes were also shown in the follow-up study that involved an appraisal of the Baraza institution and RJ, in comparison with the mainstream justice system. These findings are discussed in the following chapter.

CHAPTER THIRTEEN

PREVENTING CHILD SOLDIERING

13.1 Introduction

This chapter discusses the main findings, subdivided into three themes, pertaining to the prevention of child soldiering, as they emerged from the study. The themes comprise the challenges of reintegrating child soldiers into society, restorative preventive measures, and child soldiering prevention by collateral interventions or strategies. These suggest that a comprehensive preventive strategy is needed to halt the child soldiering practice. The concept of self-demobilisation of ex-child combatants, an experimental evaluation of peacemaking circles as a means of averting ongoing recruitment and use of minors as soldiers, as well as the prospects of Baraza to deter this practice, and the notion of vicarious justice, are the major contributions of this inquiry to the body of knowledge.

13.2 Challenges of reintegration

The study provides a global understanding of the extent to which the lack of protective structures to support reintegration of former child soldiers, can become a stumbling block to the prevention of child soldiering. Some of the issues that surfaced encompass the challenges posed by a hostile environment, where child soldiers exit armed groups and militias, the use of stereotypes to label child soldiers, and mixed reactions of recipient communities towards them, along with the failure of adult DDR programmes and the lack of appropriate processes of child DDR.

Additional issues incorporate the threat posed by the existence of foreign armed groups, as well as insufficient implementation of national and international legal measures to prevent children's involvement in armed conflict, and the lack of accountability by belligerents, including child soldiers, to account for war crimes and crimes against humanity. Other issues involve the slow implementation of the security sector reforms; suspicious attitudes towards self-demobilised child soldiers, and finally, structural and chronic violence.

13.2.1 Environment where child soldiers exit armed groups

The environment where children join fighting forces is characterised by war, ethnic tensions, poverty, and the lack of security, which impacts very negatively on the prospect of eradicating

the child soldiering phenomenon. On the contrary, it contributes to increasing the conscription of child soldiers, enlistment and re-recruitment, as a way of self-protection and community-self-defence.

The same conditions prevail when these child soldiers are released from soldiering. Socio-economic constraints (poverty, lack of employment and educational opportunity) become an additional obstacle to the reintegration of former child soldiers. However, it should be noted that using these circumstances to justify or explain why children become soldiers in the DRC, may be misleading. The same situation prevails all over the country, where children and youths lack education and occupational opportunities; and poverty is endemic and life conditions are precarious.

During the researcher's visit to Masisi, former child soldiers confirmed that they knew where the main armed groups, such as the APCLS, the Nyatura, AFDC-Gide²⁹² and so many unidentified groups, have their headquarters. The Security Services of the DRC know where to find them.

During focus groups with high school learners in Kiwanja, they told that rebels are just close behind their schools, in the bush and in the fields. Kiwanja is seen as one of the Mai Mai strongholds and is surrounded by several armed groups, such as the Mai Mai, the FDLR, the Nyatura, and the APCLS. Some have their bases as close as 40km from Kiwanja, at Binza, and they come to town and return to their bases.²⁹³

Participants said that because of the "Rusha" (corruption in Kiswahili) the justice system is inefficient. This is the area where there are many hurdles when travelling from Goma to Kanyabayonga or to the border of the DRC and Uganda. Travellers are kidnapped and trucks are looted. The FDLR clusters are spread all over, as are the Mai Mai.

Exiting hostilities, in an environment characterised by lawlessness, has been a serious impediment to the reintegration of child soldiers (Kiyala 2015). Child ex-combatants, who attempt to go back home, where they are harassed and illegally incarcerated, remonstrate and

²⁹² AFDC is armed group commanded by Chief GIDE Mapenzi which is mainly joined by the Hunde and Nyanga ethnic groups. Participants could not describe what this abbreviation stands for. (Focus groups with child soldiers at CTO Masisi, 10 June 2014).

²⁹³ Focus groups with high schools boys and girls aged between 14 and 17 in Kiwanja, 19 May 2014..

are presented with few alternatives besides re-mobilising. Such has been the case of many other youths, who find armed groups a safe haven for their own criminal acts and those of senior members of the police and security services, even the armed forces. Lawlessness is experienced through multi-level human rights violations. The rights of child soldiers and non-soldiers, and those of civilian populations, are continuously violated.

Finally, it is necessary to disillusion children and demystify the existing belief among the Mai Mai communities, according to which children possess supernatural power that confers invulnerability when they are used as medicine-men in war. From interviews, former child soldiers confided that many children are killed on the front line. Though that would be justified by the Mai Mai, as resulting from negligence, by not strictly following the interdicts associated with the rituals of warfare. Kalunga (a former child soldier of the Mai Mai) reported that he lost his brother in battle because of this.²⁹⁴

The belief that child soldiers of the Mai Mai are bullet-proofed by their “chemistry”, needs to be considered with caution. Demystifying social taboos that portray children as bearers of supernatural powers and that puts them on the front line, is a step towards preventing the Mai Mai child soldiers. The bullet-proofing effects of the Mai Mai “dawa” have been contested, yet that is the stimulus of children heroism. Society should consider positive, traditional values, in order to enhance peace and protect children, instead of condoning barbaric acts and exposing them to being killed.

Another important issue to debate is the mixed reaction shown by communities into which children need to be reintegrated, namely antipathy, hostility and rivalry. The hostility of victims and rivalry of the Security Services and the FARDC members, who engage with child soldiers when these minors fight in non-States’ forces, leave self-demobilised child soldiers vulnerable.

The unconventional and informal ways through which child soldiers exit hostilities, explains some of the challenges they face. It is necessary to isolate the circumstances of each child soldier and deal with each one separately, in order to better understand their individual circumstances. RJ achieved this objective and appeared as a better alternative for

²⁹⁴ Personal interview with Kalunga, Goma, 10 May 2014.

accountability and reconciliation of child soldiers, helping to transform identities and bringing about new meaning to the life of victims and young ex-soldiers.

13.2.2 Suspicious attitudes towards self-disarmament

Several child soldiers said that their respective communities are apprehensive about their return home. Young people who self-disarm and self-demobilise are welcomed with suspicion and scepticism because the community they return to, doubts whether they would stay or return to armed groups. There are two reasons that support this uncertainty: criminal portrayal bestowed on child soldiers; and spying activities they are involved in.

Participants in the study showed mixed feelings about the real identity of the EAFGA. Returnee child soldiers consider themselves as heroes and victims. However, communities and fellow children look at some as victims (the abducted) or the “Maibobo”²⁹⁵ (delinquent-criminals) and spies. Young non-soldiers, who have faced them in arms, see in them criminals and brigands. Those who have been street children or delinquent continue to commit crimes as child soldiers. For some people, children are victims and vulnerable. One child soldier describes his friends as spies who change camps, switching from one group to another, selling information, plans and positions of the groups which they represent. This is the reason why armed group and militias execute or severely punish deserters who return to them and who come from other rival groups.²⁹⁶

13.2.3 Structural and chronic violence

The findings of this inquiry substantiate the existence of structural violence and chronic violence. This conundrum poses a serious dilemma to end the child soldiering practice in the North Kivu province. Moreover, the active presence of entrenched armed groups and militias is still active reality in the North Kivu. Criminal activities are prominent among people who live in abject poverty, deprived of basic needs and opportunities; those who have been subjected to humiliations and inhuman conditions. These categories of people turn violent in the attempt to reclaim justice and their rights. Violence here originates from social, cultural, and economic disparities, with these inequalities being perceptible in the unequal distribution of wealth, alongside the discrepancies in salaries between the wealthy and the poor (Schirch 2004: 23).

²⁹⁵ “Maibobo” in Kiswahili local language refers to street children, delinquents and thugs. Interview with Chimene, a 15 year-old school girl interviewed in Goma, 11 May 2014.

²⁹⁶ Personal interview, Rushati, Nyahanga village, 24 May 2014.

Youngsters who re-join armed groups are often jobless. They feel insecure and are frequently subject to arrests and being tracked down by the Security Services, especially when they do not have a certificate of exit from armed groups. Sometimes petty crimes, such as breaking someone's leg during a soccer game, impregnating a woman, as well as being attacked and abused for having been a child soldier, prompt many that have been demobilised, to re-enlistment. Any effort to curb the cycle of structural and chronic violence that engenders the child soldiering practise, is compelled to consider the ethnic and economic interest, land issue, and the presence of foreign forces in the North Kivu.

13.2.4 Threats posed by armed groups

The results show that many children had joined more than one armed group that confront each other. The APCLS and the Mai Mai Cluster attack the Hutu Cluster, namely, the FDLR and the Nyatura. In addition, the Government forces fight all these groups, though some would rally to them and attack their rivals.

These armed factions are spoilers to peace because most of them lack clear objectives and a long-term political agenda. They are opportunists who cannot convince adult populations to join them. So they take advantage of children, who cannot rationalise their decisions to join these ruthless rebels and militias. Rebel factions, such as the FDLR and the Rwandan Armed groups opposed to the Tutsi Government in Kigali, have also been operating in the DRC. The Child Soldiers' Global Report indicates that the FDLR has been involved in recruiting child soldiers, committing atrocities and extorting civilians (CSCS 2008: 108).

Entrenchment of these fighting forces in the jungle of the Congo and its national parks may require an optimal, robust military engagement, in order to neutralise these negative forces and even dislodge foreign fighters from the Congo. A humanitarian worker at their office at Goma, identified six branches within the Mai Mai Cluster, namely, Mai Mai - Rahiya Mutomboki (Community Up-rise), Mai Mai Kifuwa-fuwa (face-to-face combatants), Mai Mai Simba (they become enraged like lions), Mai Mai Burondo, the Mai Mai Nyatura, and Mai Mai Sheka.²⁹⁷

Employing a coercive strategy against these negative forces may not be advisable. The researcher can support this statement with three reasons: (1) the length of time foreign armed

²⁹⁷ Personal interview, Ngandu, Goma, 7 June 2014.

groups have been active on DRC soil (11 years since the Rwandan genocide), associated with intermarriages between the Hutu FDLR, the *Interamwe* and the Congolese; (2) the simulation tactics used by those militias by leaving with civilians, while pursuing military objectives and remaining armed; and finally (3) the line cannot be drawn between civilians and soldiers.

This is the context of Rutshuru and Masisi district. Especially in the Masisi, where there is a heavy presence of the Rwandophones in nearly each village along the road from Goma to Masisi, and Goma to Kitchanga, as well as Rutshuru to Kanyabayonga, where the FDLR and the CNDP are deep-seated and assimilated to local populations. They live in militarised villages and camps that are heavily armed and ready for confrontation, keeping weapons in their homes and in the bush.

The same reality is common among the Mai Mai Cluster. They remained armed around Kiwanja and on alert against aggression by foreign armed groups. Using force to dislodge these forces may be fatal, due to their dual identity as civilians and soldiers creating a serious quandary in pursuing their demilitarisation by force. Moreover, the “politicisation of ethnic” (Thakur 2008) constitutes a serious challenge of DDR-DDRRR and demilitarisation.

The role of international custodians may be substantial in accelerating the DDRRR project, to negotiate the peaceful return of these renegades and their re-integration with their families. Their presence has been a great challenge for child DDR. When conflict persists, in the absence of political will to disarm armed groups, militias and foreign armed groups continue to use children as soldiers.

The main groups still active in the province were identified as the Mai Mai Cluster, the Hutu Cluster that consists of foreign armed groups, mainly the FDLR, the *Interamwe* and the Nyatura, the cluster of Ugandan renegades, namely, the ADF-NALU militias and the LRA. Neutralisation of these armed groups, including the Allied Democratic Forces (ADF) and the Front for Patriotic Resistance of Ituri (FRPI), is supported by the Security Council that sees this step as of utmost importance (UN News Centre 2015). Other than these armed groups, there are about 40 identified and unknown armed groups that are well-rooted in the provinces of North and South Kivu and Ituri district.

All these fighting forces are involved in child soldier recruitments. In order to illustrate this point, children participating in this study came from 14 different armed groups, identified and non-identified. The main recruiters were the Mai Mai Cluster, the M23, and the Hutu Cluster, followed by APCLS and the CNDP. There is, however, a lack of a robust strategy domestically, regionally and internationally that can help carry out and achieve the mission of neutralising all negative forces. The MONUSCO and the Security Council have laid this proposal that remains a dream, in the absence of effective commitment from all stakeholders.

13.2.5 Insufficient implementation of national and international law

The dominant preventive measures, to end the use of minors as soldiers, have focused on domestic and international legal instruments, and the DDR processes. Nonetheless, impunity has been singled out as one of the factors that sustain the use of child soldiers. It emerged from this inquiry that child perpetrators and armed groups' commanders, who are accused of human rights violations, are not all apprehended. Turning a blind eye to child soldiers' misdeeds may endanger children, as well as the community. Harris (2010) notes: "dictating to ex-fighters that they are not at fault for their actions may seriously exacerbate the situation" (Harris 2010). This situation perpetuates children's re-recruitment and voluntary enrolment.

The domestic justice and the juvenile justice systems are inefficient and dysfunctional. A lack of accountability for non-observance of children's rights and rights of victims, whose rights have been violated by child soldiers, is characteristic of the North Kivu Province. Notwithstanding the circumstances of child recruitment and the hardships they suffer in armed forces and groups, they cannot all be innocent and bluntly disassociate themselves from their antisocial acts. Generally, a community affected by armed conflict demands punishment for all war criminals. This was established through a study by Vinck and Pham (2008: 404,405), in which they examined accountability and justice, which were finally found to be key elements in transitional communities in North Kivu, South-Kivu and Ituri, in the DRC, in the aftermath of bloody armed conflict.

Child soldiers must account for their actions in processes that are just and adapted to their circumstances. Their dual identity, as victims and perpetrators, needs to be considered as an important determinant in addressing their accountability and also in fighting the child soldiering practice. UN standards should be applied to processes aiming at holding child soldiers accountable.

Another issue of significant importance, in implementing the law concerning child protection, is that children in conflict with the Law are supposed to be summoned and taken to structures of child protection. For this category of offenders, a judge for children, accompanied by a social worker, investigates the crime committed by the child below the age of 18 years. Among these children are those commonly known as the “maibobo” [delinquents]. They are not adults. They are not normally put in jail but rather kept in structures of safety and education, created for children.

It is the judge for children who decides where to place the child suspected of breaking the law. Unfortunately, self-demobilised child soldiers told their accounts of unjust treatment and abuse by the police and Security Services. The rule of law should prevail when children are accused of gross human rights violations and they should be dealt with according to International UN Standards, as should adult perpetrators.

According to Chapter two of the Child Protection Act of 2009, inherent to special protection, children are not supposed to be detained with adults. The law also acknowledges that there are children with greater propensity to cause nuisance, who need to be kept in child protection structures, in order to prevent them from harming the community. Child tribunals exist separately from Peace Tribunals. While Peace Tribunals fall under the common law, a child tribunal is a special jurisdiction for children in conflict with the law. Where there is no child tribunal, minor offenders may, however, appear before a judge of peace tribunal or high courts. In addition, children would not be held criminally responsible for their acts.

The DRC has a monist legal system that gives precedence to international law, policies and treaties, to which it adheres and is a signatory, as stipulated in Article 215 of the Constitution of 18 February 2006, which provides: “All duly concluded treaties and agreements shall, upon publication, take precedence over legislation subject, in the case of each treaty or agreement, to its implementation by the other party”.²⁹⁸ All sorts of exploitation and abuses against a child are prohibited.²⁹⁹ Unfortunately this act is not enforced to protect children. Besides, Part two of the CRC on Implementation of the Protocol Article 1(42), with regard to Prohibition of the direct participation of minors in hostilities, states: “The Decree-Law No. 066 of 9 June 2000 providing for the demobilization and reintegration of vulnerable groups present within fighting

²⁹⁸ Democratic Republic of the Congo, UN Security Council. Document CRC/C/OPAC/COD/1, 18 April 2011.

²⁹⁹ Article 58 of the Child Protection Law N° 09/001 of 10 January 2009.

forces prohibits the recruitment or use of children in armed forces or groups”.³⁰⁰ The DRC has adopted some measures to prevent exploitation of children below 18 years, in armed forces.

It is regrettable to note the increasing threat to child soldiers’ security, after exiting hostilities. Constant harassment by the police and Security Services cause young ex-combatants to live in fear. Walking from Mutiri village to Masisi centre with four demobilised young soldiers after the interview, they pleaded that we don’t discuss any soldiering matters, to avoid attracting the attention of the community, for fear of being arrested.³⁰¹ The phobia of being thrown in jail without justice, in inhumane conditions, discourages many former child soldiers from appearing in public and seeking reconciliation with victims.

Child soldiering self-disarmament and self-demobilisation show that these young combatants are wearied, and feel the fatigue of being with armed forces that have no clear mission and no targeted objectives to end their campaigns. The paralysis of judicial institutions characterised the failure to enforce domestic and international protective measures in war zones. This has been evidenced as one of the factors that sustain the child soldiering practice, which needs to be overcome, in order to dissuade children from becoming soldiers.

13.2.6 Delay of implementing reforms armed forces and security services

According to Boshoff (2010: 6), there has been a delay in implementing the reforms of the Security Sector and the National Forces of the DRC that were presented to the International Community by Mr Charles Mwendo Nsimba, on 26 January 2010. The reforms are comprised of three phases: (1) “stability and internal reform of FARDC (2009–2011)”; (2) “Capacity building, territorial forces, Rapid Reaction Force, logistics (2011–2016)”; (3) “To develop the military and return to normal military routine, with their envisaged participation in peace support operations involving the AU and the UN (2016–2024)” (Boshoff 2010: 6). As a result of the slow implementation of the suggested reforms, the fragile and unsustainable peace agreement, and the lack of nationally, regionally and internationally coordinated efforts to support all programmes of demobilisation and reintegration, children fall prey to active armed groups who lure and enrol them as fighters.

³⁰⁰ Democratic Republic of the Congo, UN Security Council. Document CRC/C/OPAC/COD/1, 18 April 2011.

³⁰¹ Experienced shared by child soldiers during focus group discussions, Masisi 10 June 2014.

Two forms of these violations can be distinguished, namely inter-Congolese or domestic human rights violations and those committed by cross-border armies and militias or regional human rights violations. Domestic human rights violations range from arbitrary arrests, extra-judicial executions, inter-ethnic violence and massacres, and rape, to summary executions for the control of mineral resource reserves, violence perpetrated by security agents, and deprivations of rights to fair trial, as well as inaccessibility to justice. Abuses committed by security agents have prompted a dynamic plan for reforms in this domain. Davis suggests that the process of “Justice-Sensitive Security System Reform in the DRC” should embody initiatives to deal with “the legacy of impunity for human rights violations and the ongoing human rights violations committed by elements within the security forces” (Davis 2009: 7).

13.2.7 Impunity

Impunity emerged in this inquiry, as another challenge to DDR processes, with this situation also affecting the reintegration of former child soldiers who are re-recruited. Unfortunately, local and international legislation do not reinforce legal instruments to hold child soldiers’ recruiters sufficiently accountable. This is the case with the M23 and those who committed crimes in Kanyaruchinya, Rudja, and Rutshuru, along with those who belonged to the RCD-Goma, those involved in war crimes in Masisi, who belonged to the RDC-Goma before moving to M23, and those commanding the Mai Mai in the chieftaincies of Walowa Lowanda in Walikale and others around Walikale.³⁰²

Unfortunately, several of these renegades are not even listed among individuals and entities that should be summoned under the Security Council Resolution 1596 (2005), as renewed by paragraph 3 of Security Council Resolution 2078 (2018), with sanctions including asset freezes, under paragraphs 13 and 15 (MONUSCO 2013). This situation reflects the scale of impunity in the DRC; and it is a hindrance to successful self-disarmament and self-demobilisation, since children who have exited militias and armed groups remain at high risk of being re-recruited. In addition, Goodman (2010: 2) contends that accountability and “puncturing the armour of impunity”, for atrocious acts that the population of the eastern Congo are victims of, constitutes a step towards building a sustainable peace and would deter fighting forces in the region.

³⁰² Personal interview with Ngandu, Goma, 7 June 2014.

The widespread Mai Mai fighters are those who benefit from impunity and they continue to gain ground in the situation of “entrenched ethnic polarization, endemic insecurity and widespread human rights abuses against civilians, an absence of rule of law and a fear of ‘foreign invaders’” (CSCS 2010: 2). Failure to critically address this concern negates the success of any intervention. This is a characteristic of a “failed state” (Rotberg 2003). When a state cannot sufficiently take up its responsibility, by engaging in its legitimate responsibility to deal with impunity, recurrence of violence, including the use of child soldiers, becomes obvious. The need to address this crisis demands institutional reforms, including the Security Service, the police and the armed forces.

13.2.8 Illegal inflow of light weapons

It was observed that several children join the Mai Mai and other militias groups, after finding abandoned weapons around Rutshuru.³⁰³ They collected them and joined the Mai Mai without any question. The fact that several child soldiers couldn’t name armed groups with which they were associated, shows that a good number of unidentified groups exist that have been responsible for abducting and conscripting children, to be used as “militia youths”. They purchase light weapons easily and distribute that to children.

It is even more complicated to disarm armed groups because nobody provides information concerning the amount of weapons held by individuals and armed groups, which is exacerbated by cross-border traders and officials who have important connections with politicians and are well-positioned to continue exerting their influence on their local communities. Uncountable numbers of arms are in the hands of local populations, in their houses or in hidden places in the bush, which is as a result of the uncontrolled influx of light machine guns. This fluidity of the DRC borders and illegal trading along the Congo-Ugandan frontiers has been noted by Marks and Mash (2007). This is also related to the illegal trading of mineral resources of war-stricken communities (Marks and Mash 2007).

Though the conflict is also ethnicised because of ethnic hegemony and the fight to control rich mineral reserves (Human Rights Watch 2005), the use of light ammunitions has transformed this kind of conflict into the bloodiest one. The case of Masisi and Rutshuru, where the uptake of children soldiers’ is very high, serves as an illustration of this finding.

³⁰³ Child soldiers’ testimonies during peacemaking circles at Kiwanja and Rutshuru, May 2014.

13.2.9 Insufficiencies of the mainstream justice system approach

In this context, former child soldiers see criminalisation of their actions and their prosecution, as a rejection from society. They perceive being marginalised as injustice, which can only lead them to fight back and continue fighting (Wessells 2006: 220). The complexity of the child soldiering phenomenon calls for intervention programmes that include the justice approach. The question remains as to how effective they are.

A critical investigation of this aspect of child soldiers opens the floor to seek a model of justice that is adapted to their circumstances and realistic in dissuading them from further involvement with armed forces and groups. This is an essential assumption, suggesting that children implicated in violations of IHL and IHRL must also answer for their acts through appropriate justice mechanisms. Former child soldiers are sensitive to the word ‘justice’, which they associate with incarceration and torture. This is what prompts them to run into the bush and join armed groups.

It appears that the conventional justice system is less favoured, both to encourage the exit of children from armed groups and to lead them into accountability processes. It fosters The perception of child soldiers as rebels, looters, and criminals is thereby fostered, while they themselves hold that they are manipulated and execute their superiors’ commands. The RJ paradigm appears the one that presents the best chance to deal with the accountability of former child soldiers and pursuing justice for victims of their outrageous actions, which DDR programmes have failed to address.

13.2.10 Difficult reintegration

Poverty, the lack of job and schooling opportunities, and the lack of basic needs are identified by several children as the reason for their voluntary decision to join armed groups. Why then is child soldiering only entrenched in North Kivu and not in other provinces? There are more factors that contribute to child soldiering, which impedes the process of reintegration, such as the lack of accountability by child soldiers for their past crimes, the failure of DDR programmes, the lack of an adequate justice system and impunity, as well as insufficient structures for juveniles and the incapacity of the community to protect children. These are the main challenges to reintegration of former child soldiers.

Reinserting them into society requires a long-term strategy and should remain a part of the global child soldiering prevention policies. Young soldiers unfortunately return to communities still affected by unresolved issues that prompted them to become soldiers. The expectations of a better future are shattered by a society that is presented as hostile to them. Acknowledging their resilience and agency, a propitious environment that provides them with opportunities can be instrumental in deterring inner violence, while at the same time healing their relationships with their respective communities. It is necessary to break the chain of frustrations, of being exposed to a brutal life and of living in a less amicable society, where they are rejected and marginalised.

Former belligerent children, who reintegrate in a society where protective structures, such as the justice system, are operational and effective, and where schools, vocational and occupational training centres are available, could emerge as partners in the reconstruction of society. Efforts to secure the fruitful reintegration of returnee child soldiers into society should substantially address accountability and reconciliation.

Having interpreted the overall challenges of the reintegration of former child soldiers, a number of factors were linked to the failure of enabling ex-combatants to resettle in the community, especially when they return into an environment where the first motives for joining armed groups and forces have not been eradicated. Very often, prevention is illusive in a context of structural violence and chronic violence, as experienced in North Kivu Province. After reviewing the obstacles to the prevention of the child soldiering practice, the two last sections of this chapter explore the prospects of minimising, if not ending, the use of children in hostilities. The findings to be discussed concern some strategies that involve the direct collaboration of war-affected children; and the responsibility of the rest of society. Firstly, an argument will be presented on the viability and potential of RJ, followed by strategic collateral interventions.

13.3 Child soldiering prevention: Argument on restorative justice

The main findings can be summarised as follows: evidence of RJ as a means of holding child soldiers accountable; RJ justice as adjunct to the DRC Child Protection Act; RJ yielded vicarious justice; child soldiering public hearing was encouraged; and psychosocial support of both child soldiers and their victims was necessary in transitional justice.

13.3.1 Statistical inferences

Statistical inferences were drawn for both descriptive and analytical surveys.

- (1) H₀₁ stated that the communities of North Kivu do not lack the means to prevent child soldiers, which was rejected for $p < 0.000$. It implies that there is sufficient evidence to conclude that the community of North Kivu is failing to prevent children from joining armed groups (Table 15). The analysis of the scoring patterns of the respondents per variable per section, with regard to the levels of disagreement (negative statements) was collapsed to show a single category of “Disagree”. A similar procedure was followed for the levels of agreement (positive statements). This was allowed due to the acceptable levels of reliability.
- (2) H₀₂ stated that the juvenile justice system in the DRC is not failing to protect children and prevent their participation in armed conflict and was rejected as $p < 0.000$ (Table 14). This results from the same nature of analysis of the scoring patterns of the respondents per variable per section, as applied to H₀₁. It leads to conclude that the lack of juvenile justice encourages children to become soldiers.
- (3) H₀₃ stated that there is no correlation between factors that prompts children to join fighting forces per age category; it was rejected with $p < 0.000$. There is a significant relationship between ‘Factors that can cause participants to join armed groups’ and ‘Age’ (Fisher $p = 0.000$). The combination of factors contributes greatly to children becoming soldiers (Table 9 and 10).
- (4) H₀₄ stated that there is no statistical significance regarding forgiveness of child soldiers for EC and CG or before and after the intervention, which was not rejected as $p < 0.369$. It appears that the intervention did cause a significant difference between EC and CG after the intervention, with regard to forgiving child soldiers (extracted from Table 20).
- (5) H₀₅ stated that there is no statistical significance regarding prosecution of child soldiers through criminal justice before and after RJPCs and was rejected with $p < 0.000$ (Table 21 and 22). This suggests that there is sufficient evidence to conclude that the intervention impacted participants, as the difference between EG and CG was statistically significant, with regard to using prosecutorial justice as a model of accountability for child soldiers, for EC and CG of pre-test and post-test. Nonetheless, there was no significant difference between post-test of EG and post-test of CG. How to explain this result? Ongoing interactions between the two groups that are evident could certainly also be responsible for this similarity.

- (6) H₀₆ stated that the mean of scores of pre-test and post-test, regarding the intention to join armed groups by participants below 18 years, equalled zero. The null hypothesis was rejected as the Wilcoxon Signed-Rank Test was $p < 0.000$ (Table 28). The conclusion is that both groups are not equal after RJPCs, and do significantly differ. Thus, the intervention was effective in dissuading participants below 18 year old from joining armed groups.
- (7) H₀₇ stated that the difference between the mean of pre-test and post-test, with regard to the intention to join armed groups, of the overall sample (282 cases) was zero. The null hypothesis was rejected, as test statistics of Wilcoxon Signed-Rank shows $p < .000$ (Table 26). This was sufficient evidence that the programme positively impacted the overall population of 282 of the sample, leading participants to change their opinion about joining armed groups (Table 26).
- (8) H₀₈ stated that the difference between pre-test and post-test of the EG and CG is attributed to factors other than the intervention and was not rejected because, should the intervention be totally responsible for the changes reported above in the EG, then it is expected that no such changes would be found in the CG; their post-test scores would be close to their pre-test scores. However, Table 20 and 21 indicate that changes, of a similar proportion and in the same direction, also occurred in the CG. For example, those willing to forgive child soldiers rose from 51.4 percent to 95.0 percent for the EG and from 50.7 percent to 91.5 percent for the CG. How can this be explained?

The findings related to H₀₄ and H₀₈ suggest that there could have been some other factors at work, apart from the RJPCs, during the seven months between the pre and post-tests. The question that may be asked is: what could have been responsible to influence such changes in the CG? The apparent explanation to this occurrence is that there were interactions between the CG and EG, as they stayed together and the EG most certainly shared the effects of intervention on them, with the EG. The curiosity of the CG and vice-versa for isolating these units (CG) or the others (EG), should have caused the unit of analyses to investigate and share what RJPCs were about. It is quite evident and undeniable that the EG shared the benefits of this intervention with the CG during their long-stay together.

As far as preventing child soldiering among children under 18 years, there was sufficient evidence to conclude that the intervention was successful in dissuading the population below the age of 18 years from joining armed groups (Tables 25, 26, and 27). The non-parametric

equivalent of the paired sample T-test verified the hypothesis, showing the Wilcoxon Signed-Rank $p < 0.000$. This was statistically significant, as far as the main objective of the study, of dissuading children from becoming soldiers, was concerned.

13.3.2 Evidence of restorative justice effectiveness

The intervention was successful, in terms of qualitative and quantitative outcomes, generating vicarious justice, empathy for child soldiers and leading participants to embrace RJ as a model for the accountability of child soldiers accused of human atrocities, with a substantial drop in the intention expressed by participants below the age of 18 years, to join armed groups. There was also sufficient evidence to assert that the RJPCs programmes yielded promising results. This was very important, suggesting unequivocally that the main objective of the inquiry – preventing children from joining armed groups by means of exposing them to RJ - was achieved.

Measuring the impact of the intervention, according to transitional RJ sanctions and outcomes, including forgiveness, reconciliation, restitution, and satisfaction of victims and perpetrators, with non-prosecutorial procedures, was fundamental to accepting the effectiveness of RJPCs. This confirms the view that child offenders need to be dealt with via sanctions that offer an alternative to deprivation of liberty (Hatt *et al.* 2008). In the same vein, Servaes and Birtsch (2008) note that restorative sanctions are necessary and can be in the form of “rehabilitation, compensation, restitution, official apologies, memorials and commemoration” (Servaes and Birtsch 2008: 3).

Furthermore, Zehr and Mika (2003) observe that, restorative approaches should ensure that obligations entailed by crime consist of “making things right”; obligations to be assumed by offenders may be received with pains; the primary intention is not vindication or pain as an end in itself but rather directed towards rehabilitation and restoration; and that obligations to victims are firstly understood as restorative sanctions and not fines; as well as that the process should empower offenders to participate in and bring answers to their own needs (Zehr and Mika 2003).

With regard to forgiving child soldiers, it appears that there was a negligible margin of difference between the post-test observations of EG and CG. A few arguments can help explain that: firstly, ongoing interaction between EG and CG during the seven months prior to

collecting post-test data, secondly, there has been a parallel concept of accountability rooted in the local cultural mind, known as Baraza that uses restorative principles. And finally, the child soldiering prevention programmes in research sites were conducted by NGOs that welcome children who exit armed groups and militias.

All participants (both EG and CG) were in contact from the time the intervention took place. The obvious interactions took place in schools, in CTOs where child soldiers undergo rehabilitation programmes and in their communities, as well as in institutions that take care of children who are released from armed groups. This kind of interactions between the EG and the CG in their usual environment and exchanges concerning peacemaking circles was neither preventable nor deniable, that it almost certainly occurred. Schools, interim centres, workplace, parishes, and NGOs offices are not environments where the CG could remain neutral, uninterested or unaffected by the intervention programmes and these are likely to have influenced the responses of the CG in the post-test. Curiosity regarding what happened to the EG almost certainly indirectly exposed the CG to the dynamics of peacemaking circles and very likely influenced their answers in the post-test observations.

Ongoing interactions between EG and CG may have “contaminated” the purity of the randomised control testing, with regard to respondents’ views about forgiving child soldiers and prosecuting them. It is observed from Table 20 that 72 respondents (51.4%) of the EG, before intervention, agreed to forgive child soldiers, and 134 (95.0%) of the EG expressed that they forgave child soldiers after the intervention. The “yes” answer increased by 44.4 percent, roughly the same average for the CG, while objection to forgiving child soldiers dropped by 35.1 percent for the EG after RJPCs. This is within approximately the same proportions for the CG.

Transitional restorative accountability in this inquiry focused on the following: forgiving child soldiers after they have shown remorse and apologised for their crimes, and dissuading children under the age of 18 years from joining armed groups. Following the inferences drawn from Chi-square tests and Wilcoxon Signed-Ranks Test (Table 26 and 28), it is evident to conclude that the overall findings of the inquiry provided sustainable, positive support for RJ as a model of accountability for child soldiers.

It can also be contended that independent programmes of prevention and rehabilitation, to which both the EG and CG were exposed (for example, campaigns in schools against the participation of children in armed groups) would have likely influenced the CG. Indeed, these campaigns were probably encouraged by the peacemaking circles, which put RJ strongly on the local agenda. Other interventions, along the same line, include the work of NGOs in negotiating family reunification and the social reintegration of child soldiers. Mediations were also conducted by some NGOs between child soldiers and victim families, in the process of assisting children to reintegrate the community. One NGO had to make restitution, when the family of the child that had acknowledged their wrongdoing, was unable to afford the required restitution symbols or objects.³⁰⁴

Nonetheless, the other influences mentioned had been able to have their effect before the intervention was measured, from the pre-test responses (for example, Table 20). RJPCs had been investigated for a period of seven months, and during the timeframe of tracking participants for post-testing observations.

Comparing the results of pre-tests and post-tests of the CG and the EG, it is observed that circles have stimulated other positive movements, such as an upsurge in attitudes favouring RJ rather than criminal justice, granting forgiveness to child soldiers and dissuading participants below the age of 18 years from joining armed groups. It is reasonable to attribute this change to the circles. For participants below the age of 18 years, RJPC helped reduce their intention to become child soldiers, according to the results produced by a Wilcoxon Signed-Ranks Test.

The results presented directly concern child participants and capture significant differentiations, before and after RJPCs. This sustains the effectiveness of the intervention for the prevention of child soldiering. They indicate that the intervention is seen as effective, in minimising children's intention to join armed groups and participants' approval of RJPC, as a model of accountability for children who exit armed conflicts.

³⁰⁴ For instance, one NGO leads mediations between child soldiers in CTOs and victims, and also with armed groups. Monetary reparation has been paid to victims; and to armed groups in case of child soldiers who exit fighting forces with ammunitions. Though arms are returned to the UN Mission for the stabilisation of the Congo (MONUSCO), for the safety of child soldiers, the NGO has to negotiate with armed groups and restitution amounted to 100 USD has to be paid for each AK 47 taken by child soldiers (pre-circle personal interview with a member of Child Protection NGO in Rutshuru, 25 May 2014).

13.3.3 Restorative justice as adjunct to the DRC Child Protection Law

The study identified four main reasons for supporting restorative approaches to child soldiering accountability. Firstly, the existing legal instrument that regulates juvenile criminal matters in the DRC, is the Child Protection Law 09/001 of 2009³⁰⁵, which refers juveniles in conflict with the law to “peace tribunals and high courts” or magistrate’s courts. As a result, some child soldiers have been denied justice and in certain instances, have been illegally arrested and detained in prisons, which are not adapted to their circumstances (Human Rights Watch 2008).

Secondly, the retributive justice apparatus fosters the perception of child soldiers as rebels, looters, and blood-thirsty criminals; and they are regarded as “pawns rather as wilful perpetrators” (Wessells 2006: 219). Thirdly, RJ allows victims’ concerns to be heard, without which the prospects of reintegrating ex-combatants may be jeopardised. Lastly, child soldiers are also seen as victims who execute their superiors’ orders so as to survive.

It is through a justice process that stereotypes and their biased portrayal as criminals can be balanced with their victimhood. Accountability for child soldiers is imperative. Honwana contends that “[a]lthough the moral responsibility of individual soldiers may be severely limited by the constraints under which they fought, it is not entirely absent” (Honwana 2006: 50). In the same perspective, Drumbl asserts that accountability for child soldiers’ crimes can be carried out in structures other than courts and prisons, “such as truth commissions and traditional ceremonies [which] may facilitate reintegration, rehabilitation, restoration, and reparation” (Drumbl 2012: 2). Applying RJ to child soldiers is an appropriate and recommended approach, as “criminal trials are ill-fitting in this regard” (Drumbl 2012: 2).

13.3.4 Vicarious justice

This concept emerged from the study during RJPCs. Child soldiers, victims and community members pleaded for absent and deceased victims and child perpetrators. Vicarious justice was understood as a paradigm of justice that arises when people, who are not the immediate perpetrators or victims, enact as the real victims and perpetrators during accountability processes. Such representation, on behalf of the real victims and offenders, includes participating fully, using all kinds of expressions, verbal, and symbolic, as well as actions that could have been undertaken by those they stand for.

³⁰⁵ Democratic Republic of the Congo, *Loi N° 09/001 Portant Protection de l’Enfant* [Child Protection Law 09/001] of 10 January 2009.

This aspect of accountability resonates with what is known as “RJ without offender participation” (Walker 2013). Justice can still be pursued without the physical presence of deceased child soldiers or direct victims. Running peacemaking circles with child soldiers, was a case in point. Enacting on account of victims and child soldiers, their associates (family members, friends, entourage, and so on) expressed that they felt relieved and forgave child soldiers, present and absent. This was typical of vicarious actions, responsibility and sentiments that fostered reconciliation. This pattern of accountability touches the life of disputing parties, in their absence.

Vicarious justice is restorative when restitution and reparative measures are impossible, especially in the context of large-scale armed conflict, such as the DRC, with the death toll exceeding five million since 1998, where people have been killed by machetes, some at the hands of armed groups and militias (Mayeba 2012). This is an unprecedented human tragedy, since the end of World War II in 1945. Apologies asked by child soldiers, forgiveness granted by victims and associates, reparation and restitution made, and the resolve by children not to remobilise or re-enrol, were significant. Deterrence was perceived through a substantial drop in the intention to join armed groups, following exposure to RJPCs.

To sum up, vicarious justice, as an emerging paradigm of justice during RJPCs, is more adapted to war crimes and child soldiers’ circumstances, in situations where victims have died or child soldier perpetrators can no longer identify them. Atrocities are perpetrated in other communities, far away from where children reintegrate in society. Wars cause the displacement of people and the destruction of villages, which begs the question of how to trace victims for restitution or “pay-back” in these conditions.

Vicarious justice may be more appropriate where other transitional accountability models, especially the mainstream justice system, are ineffective to hold child soldiers accountable. Vicarious accountability is workable when material reparation (monetary compensation, restitution and community service) may not be possible. In addition, reparative measures are not always the determinants of justice, especially in situations where reparations are illusive (Dignan 2011). In such intricate contexts as the North Kivu province, this inquiry suggested that vicarious justice may be applied. This does not preclude other material reparations and restitution.

13.3.5 Public hearing and prevention

Public hearings of children involved in armed conflict were another aspect of accountability that emerged from the inquiry. Since child combatants detest punitive justice, coercive sanctions and the violent conditions of detention, peacemaking circles came forth as an alternative to coercive justice mechanisms. Also, children who exit armed conflicts expressed rejection at being identified with criminals and should rather be seen as victims and partners, in searching for appropriate sanctions to respond to the need for justice.

The public nature of peacemaking circles was commended by the participants, both as a means of dealing with human rights abuses carried out by young soldiers, and as a way of dissuading other young people from joining armed groups. Such public hearings have strong precedents in African traditions of palaver, where all stakeholders involved in a conflict have an opportunity to be heard, and where settlements are publicly reached collaboratively through negotiation and compromises.

The disruption caused by armed conflict to community life in the eastern DRC, has meant that public hearings have fallen into disuse. Participants in RJPCs supported the reintroduction of such public events and suggested that more similar initiatives could bring awareness of the realities of life in armed groups and shame rebel commanders who lure children into soldiering campaigns.

One suggestion that surfaced was to record some public hearings and broadcast some versions of that on radio.³⁰⁶ Participants argued that exposing the suffering of children, who were exploited and abused in armed groups, was an important dimension of justice, and could dissuade other young people from joining up.

13.3.6 Psycho-social and economic wellbeing of child soldiers

Several scholars use an integrative conceptualisation of peacemaking circles and healing circles, perceived as one process. This restorative programme provides a forum, whereby offenders share the pains of the victims, and take responsibility for the hurt caused by their

³⁰⁶ Patient suggested this procedure because several child soldiers, even in the bush listen to news in camps. That has been profitable even in making children aware that out there are structures that welcome children who leave armed groups, especially Radio Okapi set by MONUSCO. Personal interview with Patient, Rutshuru, 26 May 2014.

wrongful actions; and an offender accepts to reform their life (Pranis 1997: 73; Umbreit *et al.* 2003).

It is believed that restorative approaches enhance healing (Consedine 1995; Sullivan and Tifft 2008; Republic of South Africa 2011), which was explored in this study, through the use of healing circles. Participants expressed that they felt healed and acknowledge the potential of RJPCs to bring about the healing of child soldiers and victims. This kind of restoration was also measured, with regard to its capacity to prevent voluntary enrolment of youngsters with armed groups and to dissuade former child soldiers from returning to armed groups.

Providing vulnerable and wounded abducted child soldiers, as well as victims with occupational activities, and mental and psycho-social support, as well as livelihoods, were suggested as mechanisms of restoration. The fact that the greatest majority of child soldiers come from poverty-stricken areas, though North Kivu province is home to several mineral deposits, indicates how much economic disadvantages make children weak and liable to recruitment. The CSCS highlights poverty as one of the elements that creates vulnerability of children, exposing them to recruitment, as stated: “With few prospects, association with Mai Mai is seen by some young people as a means of enhancing their status within their community, or simply to provide a way out of poverty and hunger” (CSCS 20010: 8).

A high unemployment rate worsens the situation. For instance, young people with some education and skills do not find employment, and there seems to be no prospects to change this situation, especially in the east and northeast, which is extremely militarised, making these regions less attractive to investors. The Machel study sustains that unemployment among many young people has engendered vulnerability, to the extent of finding themselves recruited in violent conflict and perpetrating atrocities against others, instead of contributing positively to the development of their communities (United Nations 2009a: 14).

According to Estandards Forum (2009), “the DRC ranks fifth of the 177 nations in the Fund Peace Failed State Index, which indicates a very high level of economic and political dysfunction and a country that is not capable of providing for the basic needs of its people” (EStandards Forum Report 2009: 1).

This state of affairs explains violence that becomes manifest in civil wars, insurrections, criminal acts, domestic violence, and substance abuse, as well as suicide (Schirch 2004: 23). The people of the Congo continue to suffer this kind of structural violence.

Re-education and rehabilitation centres for war-survivors are an urgent concern and seen as part of the transitional process. This kind of assistance is also considered part of restoration, in as much as it reaches child offenders and victims, in the context of restorative practice (Walgrave 2011b, 2011a).

A number of other elements became evident during the research: These include a general feeling of relief from survivors, who felt that their ordeals were acknowledged; recourse to religious practice and faith was also used as argument for forgiveness and reconciliation. Finally, community members clearly encouraged young people to reform their lifestyles, by abandoning their drinking habits and excessive ambition to become rich at an early age. Such a mind-set is detrimental to their wellbeing. Sporting activities were recommended, as was the importance of listening to advice from the elders.

13.3.7 Restorative transitional accountability model for child soldiers

Experience from the field shows that the DRC has not developed a formal TJ model for child ex-combatants, which actually was very much needed in the conditions they exit hostilities. That was so for the following reasons:

- Firstly, the fact that the majority of respondents called for accountability of child soldiers and expressed difficulty in accepting them into the community without justice, demonstrates the importance of accountability in the reintegration of ex-combatants;
- Secondly, the inadequacy of the conventional criminal justice system to hold former child soldiers accountable, has provided the grounds for exploring informal and non-judicial mechanisms of accountability;
- Thirdly, since the results of the study show that war-affected communities support RJ as a model of accountability for child ex-combatants, and that could be exploited and used as TJ approach for child soldiers because, both victims and child soldiers, who participated in RJ training programmes, expressed satisfaction with the programmes.

The viability of RJ to ensure the reintegration of child soldiers is sustained by two main facts:

- In the aftermath of bloody conflict and civil war, the pursuit of criminal justice may be illusive because of the devastating and protracted consequences of hostilities. These include the paralysis of the judicial system structure, killing of judges and members of the judicial system, and the dilapidated judicial infrastructures, as well as the lack of sufficient logistics able to prosecute criminals, and deal with anarchy and chaos. In this environment, reconciliation and accountability cannot be achieved through a prosecutorial justice.
- Taking the route of criminal accountability then requires that prosecutorial policies for child ex-combatants assess the intentionality and materiality of the crime, which is a difficult exercise, in order to establish child soldiers' culpability. This makes justice even more intricate.

In order to surmount these two predicaments, RJ tests produced positive perceptions regarding accountability, reconciliation and reintegration. Without reconciliation, accountability does not guarantee harmonious relations between child perpetrators and affected communities. Additionally, it is noted that global peace and healing of relations cannot be attained through prosecutorial justice. By advocating RJ, as the preferred model of accountability and social reintegration of child soldiers, the aim is the attainment of justice that enhances societal harmony. This gives hope to society and offenders to move on.

There were pertinent remarks by ex-child soldiers, pleading that their communities should change the way they perceive them. Treating them as criminals or spies destroys young ex-combatants' hope to resettle in the community. Displaying a hostile attitude towards them was seen as unwarranted. Such an attitude can only encourage them to return to the bush. Such a step, if taken by child soldiers, has been accompanied by revenge and retaliation. Braithwaite (2003) has expounded how the lack of restoration of offenders degenerates into shame and loss of empowerment: "Victim shame often triggers a shame-rage spiral wherein victims' reciprocal indignity through vengeance or by their own criminal acts" (Braithwaite 2003a: 56). The rage of child soldiers is justified by their own consideration of being primarily victims.

Throughout this inquiry, child soldiers identify themselves as victims. Their dual identity as victims and as perpetrators is socially constructed. These youths are enraged when they are treated as criminals and have expressed, during interviews and focus groups that they prefer a model of accountability that treats them as partners in solution-finding towards their past inhumane actions. This has justified the use of a restorative approach. It is deliberative. Braithwaite has described RJ as "...a deliberative justice; it is about people deliberating over the consequences of a crime, how to deal with them" (Braithwaite 2003a: 56). This is a suitable process for child soldiers, as restorative processes should aim to help them clear their wrong image, assisting them in taking responsibility for their wrongs, and reconciling them with their victims and the community.

13.3.8 Ending war

Ending war implies ending conflict. The existence of community self-defence armies, such as the Nyatura, the Mai Mai, the APCLS, the CNDP, and the Front of Resisting Patriots of Ituri (FRPI), along with the Nduma Defense of Congo/Cheka (NDC Cheka), the PARECO, and the Mai Mai Resisting Patriots, constitutes a serious quandary to ending hostilities. Other than this, the existence of foreign armed groups on the Congolese soil is another stumbling block to peace.

These armed groups are spoilers of peace. Armed factions, such as Democratic Forces for the Liberation of Rwanda-Abacunguzi Combatant Forces (FDLR FOCA), the ADF NALU, and the Democratic Forces for the Liberation of Rwanda-United Rally for Democracy (FDLR-RUD), as well as the FDLR, the Alliance for the Liberation of Rwanda (ALiR), and the LRA, pose a tremendous threat to security in the DRC's eastern and north-eastern regions. They often attack local communities, and are confronted by self-defence armies where communities are militarily organised. In this scenario, even demobilised child soldiers are pushed into hostilities to protect their communities against these groups that considered invaders. It is also evidenced that these negative forces inside the DRC proceed ruthlessly to recruit child soldiers. They use ethnic survival – protection of their interests to sustain fighting.

To illustrate the development of ethnicised armies in the North Kivu province, the researcher refers to the Hutus militias and armed groups (the FDLR, the *Interamwe* and the Nyatura), the Tutsi-led rebel movement known as the CNDP, and the Hunde and Nyanga led-armed group, known as APCLS. The existence of these insurgents derails peace processes and increases

child vulnerability, experienced through renewed recruitments and re-enrolment. In this regard, Drumbl (2012: 26) asserts: “former child soldiers may be susceptible to renewed recruitment by commanders who value their skills, knowledge, combat experience, and abilities”. Dismantling networks of armed groups and militias, by holding them accountable, may provide the grounds for freeing children entangled in armed conflict and prevent their further recruitment.

13.3.9 Healing and reconciliation

The findings show that healing a war affected community, including child soldiers, is a vital need that could enhance reconciliation and prevent further re-mobilisation by those young soldiers. As noted by Wessells (2012) and Braithwaite (2003a), restoration of victims and offenders is an important aspect of reintegration into the community. Restorative healing embraces the socio-economic wellbeing of children affected by armed conflict and long-term solutions to deal with the child soldiering practice.

Providing war-affected communities with psycho-social assistance, helping them to live a decent and dignified life, eradicating poverty, and making prosperity and education an opportunity for all, are included in these solutions. The creation of solidarity groups and training centres for young soldiers who exit fighting groups was deemed as a measure that will encourage their resettlement into society. Without attending to their psychosocial wellbeing, ex-combatant children will continue to carry the mental and psychological burden of their atrocious actions.

Healing achieved through peacemaking or healing circles reflects the “kinesthetic empathy” used to heal child soldiers in Sierra Leone and ease their reintegration into society. This strategy went beyond the “community-building and skills training”, which eschews the real questions pertaining to the wellbeing of former teenage soldiers (Harris 2010).

Healing circles work like truth-telling. Sesay (2007: 28) admits that truth-telling may have personal cathartic effects, although truth commissions in general do not constitute a therapy (Sesay 2007: 28). The support needed by former child soldiers consists of making job opportunities accessible, helping them achieve their education successfully and opening other future projects to them. This social support is instrumental in preventing reoffending (Braithwaite 2003a). The outcomes of healing circles translated these aspirations of young

combatants who reintegrated with society. Sustaining a healing process requires that the challenges of justice for victims are addressed and protective structures are maintained.

Moreover, healing rituals enhanced reconciliation and reintegration of child soldiers into the community in Uganda via Mato Oput traditional rituals, in Mozambique via Ka pahla, and in Sierra Leone via Fambul. This suggests that Baraza that has played the same role as a traditional mechanism for conflict resolution, prevention, and reconciliation, could be effectively used for the reintegration of child soldiers and prevent children's involvement in armed conflict.

13.4 Child soldiering prevention: collateral strategies

Investigation into Baraza showed that this forum could play multiple roles in addressing the child soldiering problem. Child soldiering prevention, conflict resolution, reconciliation, and child wellbeing, as well as security and accountability, are some of the assumed outcomes of Baraza processes.

13.4.1 Baraza and prevention

The main objectives of Baraza, as explained by participants, were to maintain peace by preventing and resolving conflict; and it also works as a judicial forum. Justice dealt with in Baraza includes healing and reconciliation, through rituals that were performed to cleanse and rehabilitate perpetrators and restore victims to their dignity. Serious crimes committed in the community, such as a wife insulting her husband in public, incestuous relations between parents and children, or the killing of a community member, required cleansing rituals that are performed in Baraza. These are accompanied by a fine. Other sanctions comprised transporting a girl victim of sexual abuse by the father on the father's back. People with a stake in a crime were invited to partake of a reconciliation meal after dealing with the causes of such crime, its consequences and making reparations. Sometimes community service, restitution, reparation and correctional measures were imposed on offenders.

Nonetheless, the responsibility for child offenses had to be shouldered by their parents/guardians. However, children could also be summoned for serious, scandalous conduct that worried the community. Generally, sanctions were negotiated between notables in Baraza

and the family of the offending party, which aimed at restoration of both victims and perpetrators, as well as the whole affected community.³⁰⁷

The fact that child soldiers from Rwanda and the DRC identified Baraza as an appropriate platform to address abuses they were accused of, means this institution needs particular attention and consideration, in attempts to hold child soldiers accountable and prevent their participation in hostilities. When comparing the scores of post-test of the EG and CG, it was noted that there was no statistical significant difference between the two groups for the total of the sample, although isolating children below the age of 18 years showed significant difference. The operation of Baraza might have influenced the CG, apart from their interactions with EG. This is all the more likely, given that Baraza is based on restorative principles and has been a platform to speak against the use of children as soldiers; it promotes forgiveness and reconciliation.

Viewed from a global context, Baraza falls into the category of community-based models of TJ justice that have emerged in the aftermath of violent conflict and civil wars in some African countries, namely Uganda, Rwanda, Mozambique and Sierra Leone. In spite of criticisms levelled against some locally-based TJ and approaches of reintegrating war-affected populations, these models have helped reintegrate not only ex-belligerents but young mothers as well, in post-war contexts (McKay and Banya 2010). The majority of participants (65%) suggested that a juvenile Baraza should be established in all the communities where there is no alternative form of justice for minor offenders. Added to this, the BWI should continue to foster inter-ethnic cohabitation and cohesion, in order to minimise interethnic violence.

This platform could also encourage armed groups and ethnic self-defence armies to move towards peaceful ways of conflict resolution, without resorting to taking up arms and killing each other. The BWI has been identified as an important forum for conflict resolution in North Kivu Province (Clark 2008; Kamwimbi 2008). This institution has proved effective and continues to be perceived as an instrument of justice in rural settlements, where criminal justice system structures are non-existent. Though the complexity of criminal offences may require their referral to conventional justice structures, reviving Baraza could make this customary

³⁰⁷ Personal interview with Ngandu, Goma, 7 June 2014.

council more productive. This will be an appropriate approach that conforms to the “best interest of the child” provision of the CRC.³⁰⁸

The mainstream justice approach often prevents children from joining armed groups because of the fear of punishment and incarceration. A community-based justice approach fits the condition of the DRC, where the judicial system lacks the means and logistics to address the needs of the excessive number of children who exit armed forces and groups. An adequate juvenile justice system, inspired by Baraza educative and restorative values in dealing with young offenders, could be critically important in the fight against the use of child soldiers.

The fact that Baraza functioned well among the Nyanga, Lega and Shi communities and many others, means this forum can be effective in dealing with the manipulations of the child soldiering practice.

Participants also said that giving the Baraza constitutional and legal statutory recognition will empower this institution to deal with child soldiers’ issues, in localities where most abuses are perpetrated by child soldiers and armed groups. It falls under the patterns of the native administrative tribal rule, which have become fragile, although they remain popular where there is no administration of justice. Mushi (2012: 28) has singled out this situation, especially in rebel controlled-areas, where justice is administered by warlords.

In some other areas, people take the law into their own hands by applying ‘mob-justice’; or faith-based organisations intervene to play the role of arbitrators, as a means of settling conflict by using forgiveness and reconciliation (Mushi 2012: 28-30). This judicial vacuum can be surmounted by empowering local Baraza to handle justice.

It is a fundamental right that victims be recognised and come to know the truth about abuses they have suffered, while expressing their rights to decide on alternatives, such as restoration, forgiveness and reconciliation (De Gruchy 2002; Servaes and Birtsch 2008; Parmar *et al.* 2010). In the context of the DRC, where the State cannot expand its authority over the entire national territory, and where there is no justice mechanism in place, the African model of

³⁰⁸ CRC Article 40 (2)(b)(iii).

justice, such as Baraza, can play the role of TJ for offenses committed by minors, as a result of their participation in hostilities.

13.4.2 The need for statutory mandate and constitutional recognition

The Baraza process needs to have a statutory mandate to fulfill its mission, which may require constitutional recognition as a legitimate empowerment. It is functioning as a cultural NGO though, and receives limited support from the Government. The fact that the traditional Baraza has helped hold transgressors of social and ancestral norms accountable, and its use of restorative sanctions, makes it a viable model for child soldiers' accountability. However, in contexts where it should use punishment, in order to deter antisocial behaviour, there would be serious concerns for child soldiers being opposed to punitive approaches that remind them of the hardships they experienced in armed groups. This could endanger the members of Baraza in heavily armed communities.

However, juvenile penal sanctions may be used as an alternative and last resort, provided that the aim is restoration, not humiliation. This strategy is known as the “three-tack youth justice model”, which consists of opting between the rehabilitative justice stream, penal sanctions and restorative or voluntary and deliberative processes, yet keeping restoration as its primary objective (Walgrave 2011b).

Adopting Baraza as a model of justice for child ex-combatants would require adapting it to child rights and international standards on children in armed conflict. Such refitting could make Baraza an interesting response to the UN call to consider “alternative diversionary measures away from the judicial system...”³⁰⁹ Elders in Baraza could adopt restorative approaches, such as forgiveness, restitution and public commitment (not to re-offend) to redress the injustices authored by child soldiers.

Alternative means for child soldiers' accountability should preclude retributive sanctions intending to cause suffering. Punitive retributivism can only exacerbate vulnerability and attrition of less resilient child soldiers. Accountability for child soldiers does not necessarily imply the use of criminal procedures but presupposes exploring existing alternatives (Popovski and Arts 2006: 7).

³⁰⁹ See the Convention on the Rights of the Child, articles 37 and 40; the Beijing Rules (adopted by General Assembly resolution 40/33 of 29 November 1985), Rule 5(1), Rule 11(3) and Rules 14(1).

The call for alternative models of accountability for child soldiers in the DRC was explained by the dysfunctional characteristic of the DRC juvenile justice system and its non-existence or limited accessibility, especially in war-stricken zones, which has been an ever increasing concern. To support this fact, child soldiers can only rely on the Child Protection Law 09/001 of 2009, which refers matters pertaining to judicial procedures for minors to ‘peace tribunals and high courts’ or magistrate courts.

The Child Protection Law stipulates: “‘Magistrates’ courts and high courts are competent to hear first and second respectively from the cases that fall under the jurisdiction of the juvenile courts will be installed and will work no later than two years after the enactment of this law.’³¹⁰ This legal provision was used as a transitional measure, until the establishment of the child tribunal.

Since the launching of the official TPEs in the DRC, on 23 March 2011 in Kinshasa, they have been scarce and most of the times child delinquents and child soldiers are referred to peace tribunals and high courts, which are hardly accessible and also very far from several communities where children exit armed groups and militias. By November 2013 six peace tribunals were established in the North Kivu.

In spite of the Child Protection Law, peace tribunals and TPEs, it is reported that an estimated 3,000 children remained in penitentiary houses in appalling conditions in North Kivu (IRIN 2011; Jarvis 2011). There are also reports of child soldiers incarcerated for being accused of committing war atrocities (Human Rights Watch 2008).

In this situation, Baraza can be an important platform for child accountability and in helping resolve the conflict between them and their communities, particularly the conflict that arises as a result of their participation in hostilities. Nevertheless, it needs to be revived, as suggested by earlier studies on dealing with conflicts in the eastern DRC (Aertsen *et al.* 2008; Kamwimbi 2008; Savage and Vanspauwen 2008; Savage and wa Kambala 2008). More importantly, participants suggested that Baraza could assist child soldiers by delivering the certificate of exit from armed forces and groups to them.

³¹⁰ See Article 200 of the DRC Child Protection Law 09/001 of 10 January 2009.

After spending a maximum of six months in an interim facility for psycho-social support and rehabilitation, young ex-combatants are released with a certificate, of a child exit from armed forces and groups, known as *Kibali* (written document, from Kiswahili local language). The certificate testifies that the child has exited armed groups and forces and is free to return home. *Kibali* is issued by a National Army Officer under the PNDDR, in partnership with the DRC Ministry of ex-Combatants and it spares young soldiers from harassment and being tracked down by the Security Services and the police. This document is handed to a child soldier after release from armed groups and forces, and on completing a maximum of six months in transit and orientation centres.

Until now, only NGOs have handled this process, however, in many communities where children exit armed groups, there are no facilities for processing *Kibali*. Considering that NGOs' activities are limited by time, local structures such as Baraza could own this project, to provide sustainable support to reintegration programmes for ex-child combatants.

Making Baraza a legitimate forum of child soldiers' accountability and reintegration is a challenge that needs to be taken forward. It can work concomitantly with TPEs and on the same principles: administering justice and addressing land disputes and other civilian matters. There is neither a legal discontinuity nor incompatibility between the two, except the fact that Baraza uses a participatory approach and aims at restorative outcomes.

13.4.3 Conflict resolution and child soldiering prevention via Baraza

In an environment characterised by deep-seated interethnic conflicts and where armed groups are active fighting each other, preventing children from becoming soldiers is challenged. Even those self-demobilise return to fighting groups when they feel that their communities are at imminent risks of attacks by rival ethnic groups and militias. Young people including children are mobilised to protect their own people against insurgents. Prevention of the child soldiering practice goes hand in hand with conflict prevention and resolution, and demilitarisation.

The Baraza role can be instrumental on several levels: it proscribes the use of children as soldiers and advises youngsters not to engage in soldiering activities, in accordance with traditional norms; it facilitates the process of social reintegration; it engages with armed group leaders to dissuade them from recruiting minors; it helps prevent and resolve inter-community discords and can halt the phenomenon of community-self-defence militias; it inhibits

interpersonal and community conflicts by addressing the root causes of hostilities and preventing their degeneration into bloody violence; and shows records of preventing the child soldiering practice and discouraging antisocial conduct by juveniles. Furthermore, Baraza curbs the recurrence of offending by promoting good community living; and finally, it also negotiates the release of child soldiers entangled in hostilities. The sum of these findings opens the way for a fair argument in favour of Baraza.

13.4.4 Reconciliation and prevention

Drumbl (2012: 1) points out that the returning home of former child soldiers is only the beginning, as there are other issues, such as incomplete reconciliation within communities affected by their violent acts and the ongoing restoration process.

When preventive measures are inappropriate, demobilised child soldiers face serious challenges in adjusting to civilian life (Drumbl 2012: 1). The narratives of self-demobilised soldiers in this inquiry revealed this dramatic reality that eventually causes them to become vagabonds or switch from one armed group to another. Reintegration is complex when reconciliation and forgiveness are not part of the process. Although respondents offered forgiveness to child soldiers, they still believed that such forgiveness should take place through a due process, such as formal RJ or informal mechanisms, such as Baraza.

Certainly, in an extremely difficult transitional context, reconciliation and justice are possible only when groups of people and their communities embark on non-retributive processes that can lead to healing. The rise in empathy and forgiveness following RJPC, prompted acceptance and reintegration of child soldiers who begged for forgiveness.

Story-telling transformed anger to relief and antipathy to empathy towards child soldiers; and remorse expressed by child soldiers generated new identity, changing the criminal image of child soldiers to fellow mourners and their recognition as wounded fellow community members. As they grieved over their past atrocities, child ex-combatants pleaded with other children not to join armed groups and forces. The sentiment of being forgiven and reconciled with the community prevented children enrolment with armed groups.

While RJ has emerged as an important alternative for child soldiers, the fact that a small minority of respondents still called for criminal prosecution of child soldiers, suggest that the

effects of RJ are not compelling and extendable to all victims. However, the sentiment of animosity or objection to forgiving child soldiers was not openly expressed during RJPCs proceedings. Due to former child soldiers in focus groups pleading for reconciliation between them and their respective communities, it appears that reconciliation impacted positively on social reintegration of former child belligerents. Nonetheless, this has been underestimated in the process of family-tracing and reunification, and in DDR programmes. Reconciliation can help prevent the return of children to hostilities.

13.4.5. Psychosocial wellbeing and prevention

Children living in unfriendly conditions of deprivations are often vulnerable to exploitation and abuse. In the context of child soldiering, poverty is a multiplier factor. Its indicators are lack of education opportunities, unemployment, and lack of social security, and these can cause children to join revolutions or be driven into violence. In addition, respondents identify this form of violence as a push factor to joining armed groups.

A study by War Child UK (2010) describes poverty as “the foundation of many child protection concerns” in northern and north-eastern Uganda and the DRC, where parents struggle to provide for basic needs of their children, who are left without positive livelihood alternatives. In this context, children adopt coping mechanisms, which time and again put them at greater risk of abuse and exploitation (War Child UK 2010: 4).

It is important to learn from this situation that, providing occupational activities to these returnee young ex-combatants, eradicating poverty, creating opportunities and providing them with livelihoods will reduce their enrolment in armed groups and militias. That was established for This inquiry shows the prevalence of unoccupied youths (16.7%) who joined armed groups, compared to 12.4 percent who were at school. The researcher maintains that efforts to combat the child soldiering practice should include fighting poverty as its manifestation, and looking after the child wellbeing. How to achieve that?

To answer this question, it is suggested to monitor the process of family reinsertion and social reintegration, and initiate support groups in communities that have come out of armed conflict and where child soldiers have perpetrated war atrocities. Restoration of perpetrators needs to be accompanied by social support. Braithwaite (2003a) similarly underlines the importance of such assistance because offenders also suffer the loss of dignity as a result of crimes. This

empowerment goes along with provision opportunities (securing jobs, achieving success in education, and in sporting); and success in any other sector of life (Braithwaite 2003a). These were the concerns raised during peacemaking circles.

Among other means of enhancing the wellbeing of child soldiers and victims, were the creations of “solidarity groups” and awareness campaigns. Alpha Delta (a 35-year-old civil servant from Rutshuru) supports the idea of creating groups where returnee child soldiers could meet regularly to share their stories, under the supervision of an elderly, wise person and educators.³¹¹ Children from destitute families could be initiated to vocational training (carpentry, gardening, and so on), in order to fight “vagabondism” and banditry.³¹²

Awareness campaigns are important in rural areas where the populations are ignorant of their rights. For instance, the communities in the research sites complained that former child soldiers were liable to pay school fees. That was by ignorance of certain reforms and advantages that the DRC Government has put in place to protect child soldiers and help them access some advantages. Article 6(88) of this document states: “Decision No. MINEDUC/CABMIN/EPSP/0252 of 22 April 2002, exempting demobilized child soldiers from the payment of school enrolment fees and other charges levied by the Ministry of National Education”.³¹³

Returnee child soldiers do not benefit from these dispensations either because neither local education leaders, nor the children are informed. It is the responsibility of the Government to ensure that child rights are upheld and all official regulations are properly implemented. It has been the responsibility of the UEPN-DDR to implement Government policies. Unfortunately, the study revealed that children who exit armed groups by themselves are, instead, helped by NGOs that trace their families and return them after psycho-traumatic rehabilitation.

There is still the need to monitor the post-reunification period, in order to ensure that child wellbeing is taken care of, which can be meaningful to enhance resilience and build them up. This was the opportunity provided to Beah (2007a, 2007b) and Jive (2006). Child soldiers need

³¹¹ Personal interview with Alpha Delta, Rutshuru, 26 May 2014.

³¹² Alpha Delta works as civil servant at Rutshuru, and at the same time as humanitarian agent. He worked as a co-facilitator of peacemaking circles as part of action research under my supervision, in a campaign to combat child soldiering practice between May and December 2014.

³¹³ Democratic Republic of the Congo, UN Security Council. Document CRC/C/OPAC/COD/1, 18 April 2011.

to be well treated and given space to debrief and embark into processes or programmes that lead them to assume responsibility and heal.

Several victims who participated in RJPCs expressed that they never had the opportunity of receiving counselling and access to justice, except one girl. Participants suggested that there should be centres where psychologists could provide sustainable mental and emotional therapy to victims and traumatised child soldiers. Thus far there was only one psychologist who was working for Caritas-sponsored centres, while there was no structure to support non-child soldier victims. Some participants also remarked that the lack of psychological support to returnee child soldiers was one of the causes for their re-enrolment and re-recruitment and this needed redress.

There was an appeal to the Government to combat impunity that perpetuates insecurity of war-affected communities and victims of war crimes. The DRC Government must protect its national space (along the eastern and north-eastern borders), its mountains, national parks that have become a safe haven for rebel groups, non-identified armed groups and armed gangs that terrorise innocent civilian populations that are violently affected by unceasing hostilities.

13.4.6 Security and prevention

Security is a vital human need in war-affected districts. Absence of security exposes communities to violence and children become the casualty. This captures the circumstances where children are abducted, namely in the field where they go to fetch water, or firewood; on their way to school through the bush, and inside their homes. This environment is conspicuously characterised by fear. There are reports of kidnappings and ransacking of travellers and humanitarian workers, as well as businessmen and high profile people in Rutshuru and Masisi. They are either killed or released for ransom.³¹⁴

In this atmosphere of insecurity, it is difficult to prevent children from becoming soldiers because communities remain armed to assure their own security. The plethora of armed groups, gangs and militias, and unidentified armed groups, challenges efforts to have children released and to discourage their association with these groups.

³¹⁴ Focus group with learners, and members of UPEDECO (Kiwanja, 20 May 2014); and Caritas CTO at Nyahanga village, 23 May 2014.

This total condition of insecurity reflects the findings by Vinck *et al.* (2008) and Yonekawa (2014), or a ‘climate of terror’, as portrayed by Stearns and Verweijen (2013). Actual syndromes of “Failed states, Collapsed states, and Weak states” (Rotberg 2003) are exhibited and manifest in the DRC. This is quite evident, when one considers the amount of ammunitions poured into war zones by fighting forces (non-government, and Government forces), and where there has been no arms-clean-up operation. It is total confusion.

Young soldiers shared their experiences of fighting in armed groups, supported by the DRC Government, against the M23. Allegations of the DRC Government supporting and arming certain armed groups against its rival are well documented. For example, the splitting of armed groups and the “brassage” (mixing of rebel forces with the government forces) explain this kind of support. A case in point is provided by Stearns (2014: 164), who alludes to Mugabo who split off from one of the PARECO branches to form his own militias that was integrated into the Congolese army in January 2009.

More of this kind of alliances are reported in Stearns (2013) and several other sources. These monstrous military marriages divide communities and have weakened them because of suspicions and fear of betrayals, as members may side with one armed faction against the other, which has thrown North Kivu into total insecurity. Elimination of the child soldiering practice is contingent upon bringing security and protecting these dark zones that are so badly affected by civil war and inter-ethnic violence.

13.4.7 The role of partners in reintegration and prevention

There are several NGOs involved in alleviating the plight of children in armed conflict. The main programmes are CTOs, APROJED, UPEDECO, CAJED, and so on. They receive any young persons who return from armed groups and other delinquent juveniles, by facilitating their contacts with MONUSCO, for those who exit with their ammunitions, which are surrendered to MONUSCO. In exchange, the returnee child soldier receives an acknowledgment letter of disarmament before being welcomed to a transit centre. Some are placed in families that welcome them and they stay, while the process of tracing their families gets underway. During this time, young child soldiers who are accepted in foster families report to the interim centre, where they attend lessons on peace education, promotion of love

for one's neighbour; and they are provided with information of the Rights of the Child, moral and civic education.³¹⁵

Children showing serious psychological problems are also assisted with psycho-traumatic care.³¹⁶ These centres protect children from re-recruitment by rebels, who track down those who escape with munitions. The responsible person at the CTO Nyahanga confided to the researcher that they are compelled to pay back an amount of money equivalent to the price of the arms, about 100USD for an AK 47, which is taken by the FARDC and MONUSCO.³¹⁷ Education to peace is an instrumental strategy to dissuade children from joining armed groups. Unfortunately, NGOs working rehabilitation and re-education of released young soldiers and their family reunification are under serious financial constraints.

For instance, the supervisor of Caritas CTOs outreach explained that from 2007 to 2008, Caritas ran short of funding and closed down two centres and operated with four.³¹⁸ In 2009, UNICEF intervened to fund the programmes of integrating armed groups into the national forces. In 2010, there were a few armed groups that were active in the Province. From 2011 to 2013, there was reinforcement of preventive measures that aimed at sensitising and campaigning for child protection. Workshops, training and the use of media, lobbying and advocacy were used to revive the dynamics of resolution 1612 of the Security Council that called for concrete action on the ground, to ensure children were protected. Furthermore, there were no violations without impunity of the international legal instruments pertaining to upholding the rights of the child and protection of children in armed conflict (United Nations 2005).

NGOs play a key role in ensuring the protection of child soldiers. Children who attempt to evade armed groups commit themselves to life or death. Initiatives to escape are coupled with risks and determination. Risk is involved because all recuperated escapees are punished severely or killed. Very often, a friend or family members tell the child soldiers the location of CTOs, where children are taken in and offered protection against the wrath of the community and that of their victims. Among the many NGOs are five existing CTOs at Walikale, Kariba,

³¹⁵ Interview with the president of UPEDECO, Kiwanja, 25 May 2014.

³¹⁶ These are activities promoted by UPEDECO. Information provided by the one NGO working with demobilised child soldiers at Kiwanja (25 May 2014).

³¹⁷ Interview with Patient, Nyahanga village, 20 May 2014.

³¹⁸ Personal interview with CTOs Outreach programme supervisor, Caritas-Goma, Office, 5 May 2014.

Masisi, Nyahanga and Kanyabayonga. These centres are run by the Catholic Caritas Goma, with funding from international donors.

Furthermore, NGOs have used the principles of RJ, such as VOM and Family Conferencing, to facilitate child social reintegration and family reunification. Patient explained that, during the mediation conducted by CARITAS personnel; sometimes survivors demand reparation from the child perpetrator's family. If the family cannot afford the restitution price, the facilitator has to step in: "there were cases where restitution was not possible, it was compulsory for reintegrating the child. So the institution (CARITAS) had to pay".³¹⁹

The most important role of the NGOs, besides providing returnee child soldiers with sheltering, food, and safety structures, is obtaining the famous *KIBALI* - Certificate of child exit from armed forces and groups. This is a very significant document that protects children when they return to their communities. With it, they are spared from being tracked down by security services and the police.

The first place where children who exit armed groups run to, is MONUSCO installations. From there they are taken to interim centres. MONUSCO has played several roles during peace negotiations, backing up the DDR programmes, and supporting post-NPDDR to stabilise the DRC. However, its key role, to prevent the child soldiering practice, has been manifest in cooperating with local NGOs to ensure former child soldiers are not tracked by armed groups once they have left the bush. MONUSCO has also facilitated the disarmament of children who exit with munitions, to prevent their re-recruitment and protect them from militias. The partnership between MONUSCO and NGOs is necessary to respond to child soldiers' demands, where the Government is not intervening.

13.5 Conclusion

Most importantly, different tests performed, to measure the impact of the intervention, reveal a significant impact of RJPCs in dissuading children from joining armed groups and leading the overall sample in all three phases, to adopt a more restorative approach towards accountability of child soldiers. Notwithstanding the contribution of collateral efforts to discourage children

³¹⁹ Personal interview with Patient, Nyahanga Centre, 23 May 2014.

from going into the bush (becoming soldiers), it is important to consider that participants below the age of 18 years refrain from joining armed groups after RJPC.

It is thus safe to state that, as far as the objective of the inquiry was concerned, assessing the effectiveness of RJPC in preventing children from joining armed groups, the intervention yielded promising results, especially regarding accountability, vicarious justice and the deterrence of soldiering ambitions among participants below 18 years of age. This project needs to be put forward as an intervention measure against the child soldiering practice, in context where other measures meet several obstacles.

SUMMARY OF FIELWORK AND CONCLUDING STRUCTURE

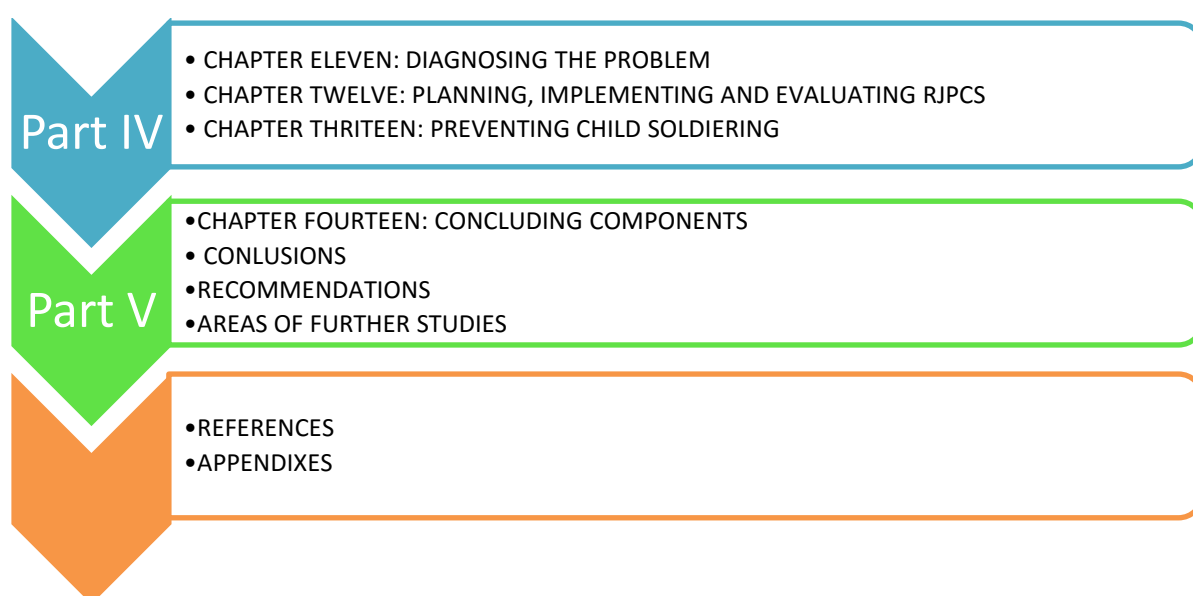


Figure 31: Summary of fieldwork and conclusion components

PART V: CONCLUDING COMPONENTS

The last part of this thesis deals with concluding remarks, recommendations, and suggested areas of further study, as well as references and appendices. References encompass journal articles, books, electronic journals and books, legal documents, conference papers, workshops, occasional papers, theses and web material.

CHAPTER FOURTEEN

CONCLUSIONS, RECOMMENDATIONS AND AREAS OF FURTHER STUDIES

14.1 Conclusions

The overall purpose of this research is to try to dissuade children from joining armed forces and groups, via the use of RJPCs. The specific aims of this study are the following:

- To investigate local communities' efforts to dissuade children from joining armed groups;
- To explore current intervention approaches to stop the practice of child soldiers;
- To examine how criminal justice and local justice systems are functioning to hold child soldiers accountable and stimulate deterrence of further engagement with armed forces and groups;
- To experiment with RJPC and evaluate the extent to which this justice paradigm can contribute to building local capacity to respond to the need for justice, for atrocities perpetrated by child soldiers and the extent to which these processes can lead to deterrence, promote reconciliation and sustainable peace.

The findings reveal three major impediments to the prevention of the child soldiering practice, namely:

- the persisting structural and chronic violence in an environment of ongoing conflict and entrenched armed groups and militias sustain the use of child soldiers;

- Impunity, coupled with an inefficient justice system and a dysfunctional justice system, impede efforts to prevent the child soldiering phenomenon by holding child perpetrators accountable;
- the incapacity of local communities, due to the presence of community self-defense armies that engage militarily with foreign armed groups and militias, creates more vulnerability for children who fall prey to recruitment, re-enrolments and re-recruitments;
- the challenges of reintegrating self-demobilised young soldiers into a hostile environment that demands their accountability, the lack of protective legal and customary protective structures push released child soldiers to return to the bush and remobilise;
- the slow implementation of the Security Service and the armed forces, ineffective implementation of domestic and international UN standards to hold all those accused of gross human rights and humanitarian rights accountable, to a greater extent sustain the use of child soldiers.

Besides these negative factors that pull and push children and adolescents to fight, there were promising mechanisms that emerged as realistic approaches to tackle the child soldiering problem. These include the praxis of RJ and the revival of Baraza - the traditional and customary forum of conflict prevention and resolution and local jurisprudence. The potential of RJ to hold child soldiers accountable and prevent involvement of children below 18 years in armed conflict was substantiated by the experiments of RJPCs. It is observed that psychosocial support of war affected children and their communities is a significant aspect of their recovery. This was demonstrated by the evidence of PAR outcomes and experimental evaluation, and the effects on the emerging, community-based, RJ tradition in post-war African societies.

Children's association with armed forces and groups in the DRC results from injustices inherent to an environment of global violence and deep-seated, unresolved, inter-ethnic tensions and the struggle, by different communities and proxy armed groups, to control mineral-rich areas. This situation can be redressed by structural peace that supposes a system of values anchored in social reality, where the government ensures justice at all levels of society.

14.1.1 Warding off structural and chronic violence

Structural and chronic violence can be averted when the government promotes an equal share of resources, and opens opportunities to all. Social and economic justice is paramount to eradicate violence that drags children into soldiering, which often results from the greed of rebel leaders, avidity of power by politicians, impunity, and lack of an adequate and viable justice system, as well as non-existent distributive justice, the absence of sustainable and reliable democratic institutions, and an unfinished democratisation process.

The situation is exacerbated by the lack of accountability and the failure to pursue the agenda of reconciliation, in the aftermath of consecutive and systematic armed conflicts. Without proper accountability measures, children remain vulnerable to soldiering. This argument was sustained by the voice of ex-child soldiers in the field.

The established premise is that war-affected participants disagreed strongly that child soldiers who have committed atrocities, should be returned to the community without any form of accountability. This strong objection was persistently found over the course of the two rounds of data collection. There was great desire shown by demobilised soldiers to go home. These were paradoxical to the assumption, according to which all ex-combatants are inclined to return home, which has been mitigated by previous studies, due to sociological and cultural factors causing the “no return home” or the “no reintegration” of child soldiers. This needs to be placed in context.

It was observed that the proportion of the “no return home” factor was very negligible among self-demobilised child soldiers in North Kivu. These young soldiers exit hostilities wounded, vulnerable and traumatised. There is no criminal justice system that can justify the prosecution of this category of minors, in the context of North Kivu. Through RJPCs, they can obtain a chance for peaceful reunification with their families, reconnection with their communities and finding a new identity in society. But persisting structural and chronic violence may impede the home return process. Violence needs to be tackled in order to prevent re-recruitment.

14.1.2 RJ impact on preventing child soldiering

Broken relationships between former child soldiers and their respective communities threaten their stay in such an environment, where they have to deal with malevolence of war survivors. It is sustained that taking the route of RJ, is a genuine path that can lessen the traumas of

rejection, marginalisation, and exclusion that can only worsen child soldiers' vulnerability and shatter their hope for the future. This implies empowering more community members in the use of RJ mechanisms. This is a challenge that the DRC Government and local NGOs can accept. The empowerment of local communities, to handle justice and build peace at grass-roots level, is an urgent matter in North Kivu.

RJ in the context of Africa is gaining ground and experience shows innovative mechanisms, namely community-based restorative transitional justice models. These are grounded in African worldviews and social ethos that emphasise conviviality and mutual acceptance of respect for the humanness of others. These principles are encapsulated in the spirit of Ubuntu, Ujamaa and African Communitarianism. The aftermath of large-scale, gross human rights violations has been dealt with passionately and aggressively, through various mechanisms, namely Mato Oput in Uganda, Gacaca in Rwanda, Fambul Tok in Sierra Leone, Ka pahla in Mozambique and Baraza in the DRC.

As with other accountability models, African restorative transitional justice mechanisms are not free from criticisms. They have both pitfalls and potentials. However, their communitarian, contextualised, cosmological and restorative dimension provides a better basis for a comprehensive understanding of reconciliation, forgiveness and the imperative need to foster restoration and healing. Broken interpersonal relationships and the role of the community in promoting social justice, distributive justice, communal cohesion, development and societal harmony, are greater when a society comes out of a large-scale armed conflict, such as civil wars, ethnic violence and where peace remains fragile.

African community-based RJ models may not be a panacea to antisocial behaviour, nevertheless, implementing them whenever the need arises could bring substantial transformation. While RJ waits for crime to be committed in order to intervene, the spirit of Ubuntu and Ujamaa helps deal with conflict before it becomes violent, and they prevent instances of inhumanities that de-sacralise life and violate the communitarian rules of decency.

Thus, the results produced by African transitional RJ practices, in post-war and conflict societies, are promising and denote viability and potentiality to prevent the child soldiering practice; this needs particular consideration. Nonetheless, in difficult transitional contexts,

reconciliation and justice are possible when groups of people and their communities embark on non-retributive processes, such as RJPCs.

The evidence from this study is that reconciliation and justice are within reach, when groups of people and their communities embark on RJ processes. The increase in empathy and forgiveness following RJPC prompted acceptance and reintegration of child soldiers, who had begged for forgiveness. Telling and listening to each other's stories helped transform anger into relief and empathy. The remorse expressed by child soldiers generated new identities, changed the criminal image of child soldiers and helped the communities see them as wounded, fellow community members. As they grieved over their past atrocities, ex-combatant children pleaded with other children not to join armed groups and forces.

The outcomes of the peacemaking circles suggested that the RJ model has the potential to hold child soldiers accountable, facilitate their social reintegration and prevent re-enrolments and re-recruitments, as well as deter the ambitions of other children to venture into soldiering life.

14.1.3 Utilising the Baraza platform

The prospect of Baraza, to hold child soldiers accountable for human rights violations, in the environment where they exit armed groups, without justice procedures and proper reintegration support, was an important finding. It was extended to the capacity of this traditional platform, to help resolve conflicts that cause the recruitment and enrolment of children used as soldiers. The resistance of war-affected communities to accept former child soldiers, without giving them the chance to account for their past atrocities, translates their great aspiration for justice and holding people, suspected of gross human rights violations, accountable.

The investigation of Baraza shows that this traditional forum has the potential to remedy the insufficiencies of the mainstream justice system in volatile communities, where conflict is never-ending. The fact that Baraza has a record of achieving justice, healing, reconciliation and curbing violent social disputes, means it can be a viable model of accountability for child ex-soldiers. As customary jurisprudence, based on traditional restorative mechanisms, it could also work as a diversionary and rehabilitating platform for child perpetrators; it would ease their reintegration into society.

Taking into consideration that the child soldiering practice is entrenched in North Kivu province, where Baraza has been functional, and this institution can be an effective response to the challenges of child soldiers' reintegration and a means of ending inter-community conflict. The complexity and consequences of atrocities in North Kivu demands a more adapted approach. However, Baraza needs to restore its credibility, especially in communities whose leaders have been accused of supporting the phenomenon of ethnic militias and community self-defense armed entities.

The revival of the traditional Baraza through the BWI can be instrumental to achieve the desired transformation of the old Baraza (local) and make it a useful instrument of child soldiering accountability and social reintegration. This would be a step towards preventing further enrolments and recruitment of children.

The Baraza institution also has the potential to minimise the ongoing phenomenon of community/ethnic self-defence armies. At the same time, it could empower local communities to become agents of child protection, by reviving traditional values and the African social ethos, regarding the role of society to protect children. These values have eroded, as a result of systematic and protracted armed conflicts and bloody ethnic disputes that have also swept through social and institutional legal structures. The communities that have been incapacitated to protect children need to play their traditional role to ensure safety and care of children.

RJ embraces the issues of child and victim wellbeing. Without addressing child wellbeing, the campaign to prevent child soldiering practice may prove counterproductive. The fact that several former child soldiers have returned to armed groups because of poverty, the lack of security and justice, the lack of psychosocial support, and forgiveness and reconciliation, as well as attempts to prevent new recruitments and re-recruitment, demands that these conditions are improved.

14.1.5 Healing child soldiers and preventing child soldiering

Over all the phases of the inquiry, child soldiers' healing and restoration was contingent upon opportunities, such as schooling, social security, job opportunities and reconciliation with their families and neighbourhoods. Their psychosocial wellbeing is beyond the limited assumptions of taking their situation for clinical or pathological emergencies. It includes social ecologies, livelihoods, opportunities, of course, in some individual cases, also attending to their mental

condition, especially for those who present with PTSDs. Addressing these elements will potentially enhance healing and restoration.

Child soldiers' healing, as it emerged from this study, has several sources. A combination of these various ontologies of healing, namely spiritual, "kinesthetic empathy", relational, mental, psychological and physical, are susceptible of guaranteeing optimism among those who exit armed conflict and could encourage them to settle back into the community. In this process, it is important to hear from children what their needs are and they should be involved in the preparatory stage that will lead to restorative outcomes.

Healing is emphasised because the prospect for harmonious reinsertion of former child soldiers into society would be unsuccessful, if they are not given the space and time to process their anger internally and externally and be reconciled with their respective communities. Healing has a transformative power to divert an offender from feelings of aversion to a sense of decency.

The likelihood of reoffending by victims, who have not been healed from their past experiences through retaliation, is a common occurrence in the context of unresolved conflict and lack of reconciliation and justice. Justice for affected persons and reconciliation between disputing parties can enhance healing, which is a necessity with child soldiers, to dissuade them from turning violent against the people who have no responsibility for their own suffering while soldiering.

14.1.6 Overcoming the challenges of the criminal justice system in prevention strategy

The challenges of the DRC judicial structures make RJ a model worth considering, when dealing with former human rights violations committed by child soldiers. Although peacemaking circles may not completely end the use of child soldiers, its implementation may bring about social transformation necessary in transitional societies and support lasting peace after reconciliation and mutual forgiveness. This transformation is necessary for both victims and child soldiers. It entails accepting child soldiers as something other than criminals, but also providing a way by which they are accountable for their actions.

RJ recognises the experiences and feelings of victims. Through its vicarious aspect, RJ has a peculiar incentive for justice and prevention of recidivism and further atrocities. It leads to self-

regulating conduct and victims are acknowledged and their pains are recognised, while attempting to bring justice to them. Vicarious justice suggests that indifference to injustices authored by child soldiers needs redress, so that war-affected communities can move towards healing, reconciliation and prevention of youngsters from becoming soldiers.

Fairness in transitional accountability, for both child perpetrators and victims, will be assertive if this process conforms to international law. UN standards on children in armed conflict support RJ, which definitely gives this approach the impetus to attain justice for child soldier perpetrators. RJ presents a positive agenda that the DRC Government and local actors need to pursue, as part of TJ pertaining to child soldiers.

14.2 Recommendations

While an experimental evaluation of RJPCs was an important step to assert the effectiveness of these processes, holding child soldiers accountable and preventing ongoing association of children with armed groups and forces, a comprehensive response to the child soldiering quandary should be seen as a long- and short-term project that has to be taken up at several levels, locally, nationally, regionally and internationally.

14.2.1 At local community level

In order to tackle the problem on local community level, the combination of RJ and Baraza is needed, as far as accountability, peacebuilding, conflict prevention and resolution are concerned. Land disputes, power struggles, and socio-economic inequalities that trigger violence, can be addressed through these peaceful mechanisms. The concern regarding the credibility of local Baraza could be handled by the BWI. This provincial Baraza structure is capable of restoring the dignity and reputation of traditional Baraza, which has often been accused of association with local militias. In order to be efficient, Baraza should show impartiality and neutrality, and eventually undertake the challenge of peace education and conflict resolution. Child soldiers should be held to account, through RJPCs and the Baraza structure, so as to avert the adversities of the mainstream justice system that cause more attrition and keep children more vulnerable.

The DRC Government is required to confer constitutional and legitimate statutory mandate to the functioning of Baraza. In the same way, RJ should be included in the legislation of the DRC, as a diversionary process. This will demand training of local community members and

national awareness on the viability of RJ and Baraza and how this should be incorporated into the legislation. The relation between the existing judicial system and these emerging models needs to be clearly defined.

There is a critical need to empower local communities, by making them agents of local justice and the engine of transformation that aims at dissuading the underage from joining armed conflict. This need is ever-growing, considering protracted and intractable conflicts prevailing, especially in the eastern and north-eastern DRC. These populations are yearning for justice and peace and need reconciliation to circumvent a recurrence of hostilities, into which the underage are dragged, making them perpetrators of horrendous crimes. Local efforts should also aim at overcoming the challenges of self-disarmament and self-demobilisation.

14.2.2 At national level

The experience of post-war African societies demonstrates the significance of non-adjudicative justice processes, as a means of dealing with past atrocities. RJ has never received attention in the legislation of the DRC. This practice is, however, worth being applied in the DRC because of the many challenges faced by the mainstream justice system and the juvenile justice system. RJ is a paradigm that is gaining ground, is adopted world-wide and shows positive results, which was the main finding of this inquiry as well.

The area of juvenile justice is a critical field, especially in war-torn zones. Restorative mechanisms need more experiments to give it more weight and incorporate it into the justice system of the DRC. This will require RJ practitioners, who could assist local communities and traditional leaders to facilitate the process of the reintegration of young ex-soldiers into the community, and eventually become involved in the processes of mediation. The DRC government and local NGOs should invest in training local people in RJ mechanisms.

An immediate action of DDR of child soldiers should be carried out, while encouraging self-demobilisation. The DRC Government should use peaceful avenues, such as negotiations and the use of diplomacy, with local tribal leaders, to enhance neutralisation of negative forces (native armed militias and foreign armed groups). The Government should also mobilise funds to support the reintegration of demobilised ex-combatants. This will require expanding projects of social and economic reinsertion, and contribute towards free education for all former child

soldiers and victims; as well as provide jobs and other activities to those who are no longer interested in studying.

Other actions required from the Government include:

- Mobilising national and international funding to speed up the DDR process of local armed groups and militia;
- Enforcing international legal norms and local legislation to deal with impunity and tighten security along the eastern borders;
- Passing a law that regards any illegal possession of munitions, by any individual and group of people, as a threat to state security and transgressors should be referred to Baraza and RJ diversionary structures;
- Accelerating the Security Sector Reform, as proposed by the Minister of Defence and Ex-combatants, Charles Mwando Nsimba, on 26 January 2010;
- Making social justice one of the priorities of the Government, by providing equal opportunities to all, creating jobs and offering education to vulnerable children in war-torn communities, as well as pursuing the common good of all, and providing children with livelihoods.

The DRC Government's intervention should ensure that social justice structures are in place and enforced to combat injustices, as well as economic and social disparities. An emergency plan to assure adequate administration of justice to curb insecurity; and a rigorous and systematic strategy to eradicate poverty, are urgent. In addition, the Government should take up its responsibility to ensure that its borders are secured and its citizens' rights are protected, as guaranteed by the law. Concerted efforts should also be made in the regions where non-state armed groups are repatriated to their homeland. Their presence in the DRC has been a setback, as militias and community self-defence armies justify their operation by evoking the threats posed to the security and safety of their people.

For victims, it was suggested that orphans who have lost their parents, as a result of armed conflict, be taken care of by the Government, through the community. Survivors of SGBV need appropriate medical and psychological care, in adequate centres, by professional personnel, who can help them with the de-traumatisation process. The Government should

create support centres and support NGOs that will purvey humanitarian assistance to victims; and returnee child soldiers should be sent back to school. Solidarity groups for female survivors are very much encouraged to enhance their selfhood and provided with a means to start a new life. These will include productive activities to keep them busy, in order to dissipate their traumatic experiences.

Psychosocial assistance was identified as a means of treatment and participants insisted that this intervention should consist of permanent programmes and should be monitored by local actors, with the sponsorship of the DRC Government and its Ministry of Family and Gender.

In addition, a further stipulation was that the intervention should include the following programmes: Firstly, the directing of victims to psychologists to treat them for PTSD, which manifests in nightmares, insomnia, loss of memory, inconsistency in reasoning, and other strange patterns of behaviour, observed in self-demobilised child soldiers; and secondly, the support structure of solidarity groups are tremendously needed to aid war-survivors, victims of SGBV, children used for military objectives and other members of war-affected communities, to meet under the guidance of professional psychologists, humanitarian agents, and social workers, to heal their memories.

14.2.3 Concomitant strategy

The peculiarity of the DRC context enjoins a concomitant strategy:

- Initiating an International Criminal Court for the DRC (ICC-DRC) to prosecute gross, international, human rights violations and international humanitarian crimes perpetrated in the DRC, involving state- and non-state perpetrators, foreign actors and proxy rebel commanders, since 1996;
- The Special Domestic Criminal Court for the DRC (SDCC-DRC) should be decreed by an organic law and established in the DRC, with jurisdiction over all violations of IHRL, with the referral power to hand high profile perpetrators to the ICC-DRC, which should operate within the Country, with provision of security by international custodians;
- Local Referral Restorative Transitional Justice structures (LRRTJ) should be decreed and established in war-affected zones, where cases from the ICC-DRC and the SDCC-

DRC for restorative mechanisms are heard, especially for crimes carried out by child soldiers; and some cases should be based on the principle of “restorative retributivism”, whereby coercion is employed to attain restorative outcomes.

The ICC-DRC should be based in either Goma or Ituri and Bukavu, where most war atrocities had been perpetrated. Such localisation of a justice instrument is symbolic and may have deterrent effects in the future. However, the SDCC-DRC should be established in the capital cities of the regions mostly affected by war-crimes namely, Province Orientale, Province Equatorial, Nord-Kivu, Sud-Kivu, Maniema, Katanga, Bas-Congo and Kinshasa, according to the existing nomenclature. This decentralising approach is seriously needed, when looking into the amplitude of victims and perpetrators and the density of the DRC territorial space.

These dynamics are relevant and should apply to these three jurisdictions because of the complexities of the DRC, the scale of human rights violations and the numerable perpetrators involved in the fatal statistics of a death toll approximating six million.

The LRTJ should follow the principles underlying the TRC and amnesty should follow the default legal framework normative instruments and be granted through legal procedure, as laid down in “The Rule of law” pertaining to amnesties. It implies that amnesty should be granted on condition of uncovering the truth.

The breaches of international law must be strongly prevented and the fundamental rights of victims recognised and upheld. They have the right to know the truth about abuses they have suffered and be involved in the process of deciding on alternatives, such as restoration, forgiveness and reconciliation. The International community should see to the application of the rule of law and fund the logistics of these proceedings, to add credibility to their outcomes.

The usefulness of cooperation between the referral and non-adjudicative process, is sustained by the lack of local capacity to plan and monitor RJ programmes. In addition, RJ would be practicable after the case has been adequately studied by the criminal justice structure and victims have agreed to diversionary procedures. Baraza and RJ should be given constitutional statutory mandate.

Baraza should be established as a parallel judicial structure to high courts, as a diversionary jurisprudence in all chieftaincies and villages in rural areas, because of the judicial vacuum created by the suspension and abolition of customary judicial mechanisms, known as *tribunaux coutumiers* [customary courts]. The *tribunaux de paix* [peace courts] that replaced the customary courts are too far away from each other. People cannot expect effective delivery of justice when they have to wait for an investigator travelling from far away, where the means of transportation are scarce and the roads are impractical.

The judicial service and the police do not have transport in rural areas, especially in villages, where many crimes are committed. This will remedy the conundrum posed by the non-existent and ineffective justice system in the DRC. While Baraza structures are found relevant in rural areas, RJ mechanisms should be used in both rural and urban areas. Creating a juvenile Baraza and supporting juvenile justice with RJ principles and a diversionary system, will definitely make the whole judicial apparatus more adequate and efficient. This is a great challenge that the DRC should handle and invest in as there is a tremendous need to train Baraza and RJ agents and provide the required logistics for them to operate.

14.2.4 At international level

The MONUSCO, in Partnership with the DRC Government, should play high diplomacy with neighbouring countries in the East and North-East that have armed renegades on Congolese soil, to facilitate their DDRRR process. It is noted that the volatility of North Kivu province limits claims that any study can make to be a panacea to the global issue of child soldiers and DDR, in such a complex environment as the DRC.

However, the researcher remains optimistic that this societal project is feasible, while also acknowledging that many attempts have been made to resolve the child soldiering problem; and this thesis adds insights to ongoing concerns to end child soldiering practices. International custodians, involved in securing peace processes in the DRC, should consider coercion and deliberative means to ensure that spoilers are contained and prevented from mass recruitment and use of children as fighters.

14.3 Areas of further studies

This study was limited by a short-term engagement with former and self-demobilised child soldiers, and war-affected communities. Yet, it sustains that further studies and experiments

need to be conducted on a prolonged basis, regarding RJ programmes, in order to ascertain assertively, the effectiveness of this justice paradigm to ease the reintegration of child soldiers into the community and prevent recruitment and the use of minors as soldiers. This is an area for further study.

Any further investigation, which attempts to explore the impact of RJPCs on preventing the child soldiering practice, should consider isolating the CG from the condition of consistent interactions with the EG, otherwise the CG could be contaminated by the EG. Such environmental synergy, marked by interactive exposure, would affect the purity of the test. For instance, conducting an intervention with a sample that includes independent or unrelated units, may bring a different outcome. To achieve that, non-parametric tests for independent samples could then be used, instead of the e-paired samples applied to the experiment in this inquiry, with Wilcoxon Signed-Ranks Test. Moreover, it would be better for further investigations to consider distinguishing the intention to join soldiering, between the government forces and armed groups and militias. This was not clearly defined in the questionnaire design and could have affected the outcomes.

This study has offered an entry point to efforts to resolve conflict involving child soldiers and their community, in view of facilitating their reintegration into the community. Further experimental research may, however, be vital, whereby war-affected communities could engage with child soldiers through Baraza, to ascertain the practicability and viability of this traditional accountability and conflict resolution forum.

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APPENDIXES

Appendix 1: Participant information letter



June 20th 2013

Dear participant,

RE: PARTICIPANT INFORMATION LETTER

I would like to thank you for showing interest in this research.

Title of the research study:

Effectiveness of restorative justice in preventing children's participation in armed conflict
in North Kivu Province, DRC

Principal Investigator/s/researcher: Fr. Jean Chrysostome Kiyala Kimbuku (Diploma in Philosophy, BA in Philosophy, Diploma in Theology, Diploma in Mission Studies, BA in Sacred Theology, BA of Arts in Religious Education and Master of Philosophy in Religious Education and Pastoral Theology)

Co-Investigator/s/supervisor/s: Prof G T Harris (BComm, DipEd, MEc, PhD)

Brief Introduction and purpose of the study: According to many reports, about 30,000 children and boys, some of them than 10 year old participated in armed conflicts in the DRC since 1996. Besides forced enrolment, many of them decide voluntarily to become soldiers.

The purpose of this study is to try to dissuade children and young people from joining armed forces and groups in the Northern Kivu Province, via the use of peacemaking circles.

Outline of the Procedures: Participation in this research is voluntary and any participant is free to withdraw at any time. Participants have the responsibility to respond to a questionnaire, and participate in interview and focus groups discussion. Sampling will be inclusive, considering age variables, gender variables and past experience. The whole duration of this study is one year.

Focus groups: Participants will be asked to share their views, opinions and wishes in groups about the way they see participation of children in wars and fighting. Each group will be made of ten members. Each participant will be free to withdraw from the discussion. They will be answering questions and speaking on themes related to the study. They will be allowed if the wish to consult each other when responding interacting and expressing their ideas and feelings in groups (a maximum of 2 hours to 3 hours will allocated to each focus group).

Interviews: This will consist in a face-to-face interview whereby the student (researcher) will be meeting people individually to ask them a few questions on the topics of the study. Each interview will last approximately 45 minutes.

Survey method: the respondents will be asked to answer a few questions about child soldiers, and give their opinion after participating in peacemaking circles (each survey questioning will take approximately 45 minutes).

Peacemaking circles: This is a programme of justice that consists in meeting between people who have been affected by wars (victims) and those who have been responsible for those inhuman actions. The objective of peacemaking circles is acknowledge the hurts caused, do justice, promote forgiveness and reconciliation so that the community can experience lasting peace.

Participant's recruitment: The recruitment of participants will be done by selection of people who qualify to give information about child selection, and those who have been victims. 282 people will be selected from a population of 1900 people aged 18 and above, made of (1) non-combatants people; (2) ex-combatants; (3) practitioners and NGOs working with former child soldiers, and (4) community members.

Dispositions about language and recording interviews: I will conduct field work mainly in the local language, namely Kiswahili, and instruments of research will also be translated in Kiswahili. Simple and unambiguous language will be used to formulate questions and to conduct the programmes. In some instances, I will use French and Kiswahili to explain some concepts and make the issues much clearer and intelligible. During interactive and one-on-one interviews, I will seek permission to record conversations and group discussion prior to having these done.

Instruments: I will use the following instruments: Survey questionnaire made of structured and contingency questions, face to face interviews and focus groups (see interview protocol), search conference journals for action research, document collection and analysis for action research, Recorded voice.

Gatekeeper's letters: Letters to access sources of information in institutions, letters to parents/guardians, headmasters (schools), priests (parishes), and tribal authorities will be obtained.

Risks or discomforts to the participant: There is minimal risk of discomfort as such because the research aims partly to bring healing while dealing with emotions, bitterness and processing anger for past painful memories and regrettable actions.

Benefits: All participants in this study will be learning peacemaking skills because they will be involved as co-researchers (in action research) so that they could continue the process of healing, reconciliation conflict transformation. Meals will be provided during the programmes.

Reason/s why the participant may be withdrawn from the study: these are people who have been through traumatic life experiences. It is possible, although my research focuses on the positives, healing, reconciliation and restoration, that "re-traumatisation" may be experienced. In such cases I have arranged for trained counselors from the *Amani* (Peace) center, specialised in counseling to be on hand to provide the support needed.

Remuneration: Monetary remuneration will be given to participants to encourage them to cooperate.

Costs of the Study: No participant will be asked to cover any cost towards the study.

Confidentiality: Privacy of participants is an important ethical norm in research. This include confidentiality (participants will not be identified) and anonymity (which implies that participants will remain anonymous throughout the study - even to the researchers themselves). Participants will be identified by aliases and places by pseudonyms. A separate list of names of participants will be kept separately.

Research-related Injury: Physical injury is excluded in this inquiry because it deals with interpersonal relationships.

Persons to Contact in the Event of Any Problems or Queries: Please contact the researcher: Jean Chrysostome Kiyala Kimbuku (tel no. 0810633298/ 0997468315 - Email: kljeanchrysostome@gmail.com), my supervisor: Prof GT Harris (tel no. 0312014079, email:geoffreyh@dut.ac.za) or the Institutional Research Ethics administrator on 031 373 2900. Complaints can be reported to the DVC: TIP, Prof F. Otieno on 031 373 2382 or dvctip@dut.ac.za.

Fraternally yours,

A large black rectangular box redacting the signature of Jean Chrysostome Kiyala Kimbuku.

Jean Chrysostome Kiyala Kimbuku

Appendix 2: Participant consent form

PARTICIPANT CONSENT FORM

Statement of Agreement to Participate in the Research Study:

I hereby confirm that I have been informed by the researcher, Fr. Jean Chrysostome Kiyala Kimbuku, about the nature, conduct, benefits and risks of this study - Research Ethics Clearance Number: FREC N0 32/14FREC, I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.

I am aware that the results of the study, including personal details regarding my sex, age, date of birth, initials and diagnosis will be anonymously processed into a study report.

In view of the requirements of research, I agree that the data collected during this study can be processed in a computerised system by the researcher.

I may, at any stage, without prejudice, withdraw my consent and participation in the study.

I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.

I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

Full Name of Participant Date Time Signature / Right Thumbprint

I, _____ (name of researcher) herewith confirm that the above participant has been fully informed about the nature, conduct and risks of the above study.

Full Name of Researcher Date Signature

Full Name of Witness (If applicable) Date Signature

Full Name of Legal Guardian (If applicable) Date Signature

Appendix 3: Letter for permission to access information site

Enq. Jean Chrysostome Kiyala Kimbuku
Durban University of Technology
ML Sultan Campus
P.O. Box 1334
Durban 4000

Cell. 00 27 710315471(South Africa)
00 243 816009819/0810633298 (RDC)

E-mail: kljeanchrysostome@gmail.com

Date: 20th June 2013

Dear Sir/Madam,

RE: REQUEST FOR PERMISSION TO ACCESS YOUR ARCHIVES

As the matter refers above, I would like to consult your archives and other information sources related to the phenomenon of child soldiers.

The phenomenon of child soldiers is seen as a disturbing problem that has affected numerable children, boys and girls under 15years-old, who have been abducted by armed groups, including the DRC Government, to fight bloody wars. Some of them have even joined armed groups voluntarily. Many of these belligerent children have suffered terrible consequences of war and abuses by adults who abduct them. In some instances, they have also turned to commit atrocities against others.

It is in our interest to look into this challenge very critically and look into ways that will help to prevent the continuation and perpetuation of this phenomenon.

Would you give authorization to consult your archives, in view of gathering some information concerning child soldiers, which your institution might have dealt with in the past?

I would like to assure you that I will observe the principles of confidentiality and anonymity that govern this kind of inquiry.

Sincerely yours,

A large black rectangular redaction box covering the signature and name of the sender.

Jean Chrysostome Kiyala Kimbuku

Appendix 4: Letter for arranging interview

Enq. Jean Chrysostome Kiyala Kimbuku
Durban University of Technology
ML Sultan Campus
P.O. Box 1334
Durban 4000

Cell. 00 27 710315471(South Africa)
00 243 816009819/0810633298 (RDC)

E-mail: kljeanchrysostome@gmail.com

Date: 20th June 2013

Dear Sir/Madam,

RE: REQUEST FOR YOUR PERMISSION TO BE INTERVIEWED

As the matter refers above, I would like to conduct an interactive conference with you on issues pertaining to child soldiers.

The phenomenon of child soldiers is seen as a disturbing problem that has affected numerable children, boys and girls under 15 year old, who have been abducted by armed groups, including the DRC Government, to fight bloody wars. Some of them have even joined armed groups voluntarily. Many of these belligerent children have suffered terrible consequences of war and abuses by adults who abduct them. in some instances, they have also turned to commit atrocities against others.

It is in our interest to look into this challenge very critically and look into ways that will help to prevent the continuation and perpetuation of this phenomenon.

Would you give me some time to answer a few questions? The interview could take place on (date) at (time) at (venue) and will last approximately 30 minutes.

I would like to assure you that I will observe the principles of confidentiality and anonymity that govern this kind of inquiry.

Kindly find enclosed a protocol of the interview process, including questions that will be asked.

Would you please allow me to record the conference, for the sake of accuracy when I will consider your contribution in the study I am are undertaking?

Sincerely yours,



Jean Chrysostome Kiyala Kimbuku

Appendix 5: Parent/guardian consent letter

Enq. Jean Chrysostome Kiyala Kimbuku
Durban University of Technology
ML Sultan Campus
P.O. Box 1334
Durban 4000

Cell. 00 27 710315471 (South Africa)
00 243 816009819/0810633298 (RDC)

E-mail: kljeanchrysostome@gmail.com

Date: 20th June 2013

Dear Parent/Guardian,

RE: CONSENT FOR YOU CHILDREN OR PERSON UNDER YOUR CARE TO PARTICIPATE IN PEACEMAKING PROGRAMMES

As the matter refers above, I am seeking your permission to allow your children or the children under your legitimate care, to participate in peacemaking circles. Their participation means they will be interviewed on issues of the participation of children in armed conflict and take part in restorative justice peacepeacemaking circles (programmes of sharing painful experiences of war atrocities, as a means of bringing justice and reconciliation to the community). They will also participate in focus group discussions with other children.

The phenomenon of child soldiers is seen as a disturbing problem that has affected numerable children, boys and girls under 15years-old, who are forcibly recruited or voluntarily joining armed groups and forced to fight bloody wars. It is in our interest to look into this challenge very critically and look into ways that will help prevent the perpetuation of this phenomenon.

Would you grant permission for your child to participate in this study? To confirm your consent, kindly sign the attached consent letter.

I would like to assure you that I will observe the principles of confidentiality and anonymity that govern this kind of inquiry with children and that they will never be harmed or injured for participating in this inquiry.

In case of re-traumatisation, I have arranged a special service of care and counselling, to attend to their psychological needs.

Sincerely yours,

A large black rectangular box redacting the signature of Jean Chrysostome Kiyala Kimbuku.

Jean Chrysostome Kiyala Kimbuku

Appendix 6: Letter for permission to associate your students in research

Enq. Jean Chrysostome Kiyala Kimbuku
Durban University of Technology
ML Sultan Campus
P.O. Box 1334
Durban 4000
SOUTH AFRICA

Cell. 00 27 710315471(South Africa)
00 243 816009819/0810633298 (RDC)

E-mail: kljeanchrysostome@gmail.com

20th June 2013

Dear Parent/Guardian,

RE: PERMISSION TO ASSOCIATE YOUR STUDENTS/LEARNERS IN RESEARCH

As the matter refers above, I am seeking your permission to associate pupils/learners from your institution peacemaking programmes. Their participation means that they will be interviewed on issues of children the participation of children in armed conflict and take part in restorative justice peacepeacemaking circles (programmes of sharing painful experiences of war atrocities, as a means of bringing justice and reconciliation to the community). They will also participate in focus group discussions with other children.

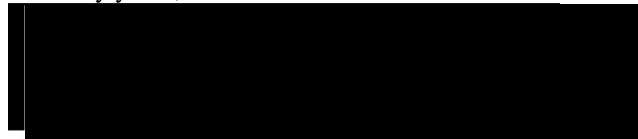
The phenomenon of child soldiers is seen as a disturbing problem that has affected numerable children, boys and girls under 15years-old, who are forcibly recruited or voluntarily join armed groups and forces, to fight bloody wars. It is in our interest to look into this challenge very critically and look into ways that will help prevent the perpetuation of this phenomenon.

Would you grant permission to your pupils/learners to participate in this study? To confirm your consent, kindly sign the attached consent letter.

I would like to assure you that I will observe the principles of confidentiality and anonymity that govern this kind of inquiry with children that they will never be harmed or injured for participating in this inquiry.

In case of re-traumatisation, I have arranged a special service of care and counselling to attend to their psychological needs.

Sincerely yours,

A large black rectangular box redacting the signature of Jean Chrysostome Kiyala Kimbuku.

Jean Chrysostome Kiyala Kimbuku

Appendix 7: Interview protocol

SCHEDULED STRUCTURED INTERVIEW PROTOCOL ADAPTED FROM CRESWELL (1994) AND LEEDY (1985)

Preventing children from participating in armed conflict

- a. Instruction to the Interviewee: The interviewer will ensure that a professional and friendly atmosphere prevails during the interview and will listen without unnecessary interruptions unless clarification would be needed. Assure the interviewee that confidentiality will be maintained, anonymity of informants will be preserved, the research will be used for the intended purpose, and information provided by the interviewee will be used for the purpose of the study with prior written permission of the respondent/informant. Typescript will be signed by the interviewee as a correct record of the interviewee. The interview will last approximately 45 minutes.
- b. Key research questions to be asked:
 1. What can you tell me about participation of children in armed conflict?
 2. What is your opinion about the local justice system and traditional justice's efforts to stop participation of children in armed conflict?
 3. What is your opinion concerning the efforts of local courts and tribunals to prevent children from participating in armed conflict?
 4. What should be done on community level to prevent children's engagement in hostilities?
 5. How can the community be empowered to prevent children from participating in hostilities? (Voluntary and forced recruitment)
 6. How do you view children soldiering? (Criminals, victims or heroes)
 7. RJ consists of addressing the needs/interests of the community, victims and perpetrators. The community/audience decides on the kind of sanction to be imposed on persons found responsible for crimes or other antisocial conduct. What can RJ circles produce in the encounter between former child soldiers and their victims in the context of armed conflict? What impact can this process have on other children and adolescents who participate?
 8. Have you ever participated in armed conflict? If no, why didn't you participate?
 9. Do you intend to participate or join armed forces or armed groups? What could make you change your mind and push you to become a soldier; in armed forces (government) / in armed groups (rebel movements)?
 10. Would you allow me to use all the information provided here in my study?
 11. Do you have any comments/thoughts?

.....
.....
.....
.....

- c. Probes to follow key questions: The interviewer will follow the questions forwarded to the respondent, and may ask additional questions for clarification.
- d. Transition messages for the interviewee: Any message from the interviewee to expound his understanding or knowledge of the issues will be well appreciated and even encouraged.
- e. Space for recording the interviewee's comments: with the permission of the interviewee, the interviewer will seek permission to record the answers for accuracy in analysing the discourse.
- f. Space in which the researcher records reflective notes: The Interviewer will use a notebook to record answers and important messages from the interviewee.

Appendix 8: Agreement to participate in peacemaking circles

RJ Circles (“Circles”) provide a safe, civil, educational venue for parties in conflict to engage in dialogue and to determine by consensus what can be done to repair the harm done.

I understand that...

- ☐ ...Participation in Circles is voluntary. I should not feel forced into making decisions while in a Circle, and I will always have the option to withdraw at any time.
- ☐ ...Circle Facilitators (“Facilitators”) will not make decisions for the participants, nor do they have a stake in any particular outcome. The Facilitators’ main objective is to support and assist all parties in:
 - feeling safe and respected,
 - telling their story well,
 - exploring the possibility of, and negotiating an Agreement
- ☐ ...Circles are intended to help parties to a dispute identify the harm that was caused and determine what must be done to repair the harm. Circles are educative in nature and not punitive and should not be a venue for belittling or shaming.
- ☐ ...Circles are a confidential process. Facilitators will not reveal anything that happens or that is said during the Circle to any other person. However, any risk of harm or danger threatening the wellbeing of children participants, which they reveal in this process, will be dealt with carefully and may need to be referred to a professional who can assist, protect the child concerned or other children, in an appropriate manner, within the National Children Bureau (NCB) guidelines for research (Morrow and Richards 1996:96 and NCB 2006).
- ☐ ...Likewise, participants themselves are asked to keep confidential everything that is communicated during the Circle, except as they agree otherwise or as permitted by law.
- ☐ ...For disputes that may also constitute human rights violations, successful resolution using RJ Circles means that there will be neither prosecution nor referral to local tribunals.

We, the undersigned...

- ...have read, understood, and agree to follow the principles related to Circles as described above.
- ...understand the limits of confidentiality as described.
- ---agree to keep confidential everything that is communicated at the Circle except as agreed to by the participants or as permitted by law.

signature/date
signature/date
signature/date

signature/date
signature/date
signature/date

Adapted from materials in William C. Warters, *Mediation in the Campus Community*. (San Francisco: Jossey-Bass, 2000) and from materials developed by the Campus RJ Program, University of Oregon.

Appendix 9: Participant enrolment and evaluation form

1. Participant code: _____

2. Alias: _____

3. Employment: (1) EAFGA (2) learner/student (3) Educator (4) Private
(5) Unemployed (6) official

4. Name of Community / Town: _____

5. Gender: (1) Male (2) Female

6. Category age of the participant: (1) below / under 18 (2) 18 and above

7. Real Age of participant: _____

8. Status of participants: (1) Soldier (2) non-soldier (3) Former soldier

9. State before joining the armed conflict: (1) pupil / student (2) unoccupied

10. Have you ever participated in hostilities (armed conflict): (1) yes (2) no

11. Age before joining the group: (1) age of 18 (2) 18 or above

12. Method of recruitment: (1) volunteer (2) forced

13. How many times? (1) once (2) more than once

14. What status do you participate in this survey:
(1) Victim (2) member of the community
(3) Civil servant (4) members of NGOs

15. How would you rate the discussion after participating in a panel discussion at the club?
(1) Very satisfied (2) Money (3) No opinion (3) Disappointed (4) (5) Very disappointed

Add comments if necessary:
.....
.....
.....

Enter the number corresponding to your opinion in the box provided.
(1) Strongly disagree (2) Disagree (3) no opinion (4) according to (5) strongly agree

15. The *kadogo* should be forgiven without any process.

16. The *kadogo* should be accepted in the community without going to court.

17. The *kadogo* and Victims must come together at the restorative justice.

Appendix 10: Survey questionnaire

Alias :

Write the number corresponding to your opinion in the provided box.

1 (strongly disagree), 2 (disagree), 3 (no opinion) 4 (agree), 5 (strongly agree)

18. Since the last two wars began in 1996, there are children who continue to enrol because belligerent children do not account for their past brutal actions.
19. Demobilization, disarmament and reintegration/reinsertion programmes are failing to prevent new enrolment of children in armed forces and groups.
20. The local criminal justice system in place is not preventing the involvement of children in armed conflict.
21. Traditional justice is failing to stop children to participate in armed conflicts.
22. Impunity and lack of accountability for previous atrocities encourage greater involvement of children in hostilities.
23. The communities in Northern Kivu Province do have sufficient and efficient means to intervene against participation of children in armed conflict.
24. Children associated with armed forces and groups who are responsible for war crimes and human rights violations must be prosecuted and punished?
25. Justice for children and young soldiers in this territory is:
- Very efficient (1) Inefficient (2) Dysfunctional (3) Inexistent (4)
26. When the need arises to prevent children from joining armed forces and groups, what is the community's stance?
- Inactive (1) Indifferent (2) Active (3) No opinion (4)
27. The current situation (instability, war, ethnic conflict, poverty) makes children vulnerable and they see soldiering as an acceptable alternative.
28. Do you intend to join armed groups or become soldier?
- Yes (1) no opinion (3) no (2)
29. What can make you change your mind and cause you to join?
- (1) If I lose my parents
- (2) If there is war and I want to protect my community
- (3) No opinion
- (4) Unemployment
- (5) Lack of education opportunity
- (6) All factors combined

Appendix 11: Survey questionnaire pre-test/post-test control groups

Appendix 11: Questionnaire survey pre-test / post-test groups control

Code: _____

Alias: _____

Enter the number corresponding to your opinion in the box provided.

(1) strongly disagree (2) Disagree (3) no opinion (4) according to (5) strongly agree

30. Children associated with armed forces and groups should be tried in court.
31. Children associated with armed forces and groups should be tried in the Baraza.
32. Child soldiers' accountability should be proceeded through: (1) Criminal justice system
(2) Baraza (3) Restorative justice (4) no opinion
33. Children associated with armed forces and groups should not be judged.
34. You participate in this survey as: (1) victim (2) perpetrator (3) other
35. Former child soldiers should be forgiven.
36. Restorative peacemaking circles lead to reconciliation.
37. Restorative peacemaking circles lead to the victim or aggressor with peace.
38. Restorative peacemaking circles renders justice.
39. Restorative peacemaking circles lead to mutual forgiveness.
40. Restorative peacemaking circles discourage children from joining armed groups.
41. Restorative peacemaking circles leads to healing.
42. Restorative peacemaking of circles achieved nothing.
43. I have no opinion / idea on the circle of restorative justice.
44. Restorative peacemaking circles lead children to regret their antisocial acts.
45. Restorative peacemaking circles give the feeling of satisfaction.
46. Add your comments about peacemaking circles.....
.....
.....
.....
47. Have you ever participated in a Baraza? (1) Yes (2) No opinion (3) No
48. The Baraza overcome the challenges of juvenile justice.
49. The Baraza can prevent the practice of child soldiers.
50. The Baraza can end the phenomenon of community self-defence armies.
51. The Baraza for young offenders (children in conflict with the law) can better serve the administration of justice that court and courts (traditional criminal justice).
52. Do you intend to join armed groups?
53. What is your opinion about the Baraza and the *kadogo*?.....
.....
.....
.....

Appendix 12: Focus group questions for CG and EG

1. Can you tell me what you think of children's participation in armed conflict?
2. Can you tell me if you have some interest to join fighting groups?
3. Why do children continue to join armed forces and groups?
4. How are local courts and tribunals dealing with victims and child soldiers' violence?
5. How are child soldiers viewed in the community?
6. How do you view the role played by communities to address justice for violations perpetrated by child soldiers?
7. What kind of actions the community should take to halt the implication of children in military operations or joining fighting forces?
8. How can the community address the needs of the victims of child soldiers?
9. Can you tell me your experience of being child soldiers?
10. What are your views about children who choose to become soldiers?

Appendix 13: RJ circle outline



1. **Caucus:** Impacted Parties are asked to arrive twenty (20) minutes prior to the formal start of the Circle. They are provided a final briefing on Circles, given the opportunity to ask any questions then decide among themselves who will speak first. While Responsible Parties typically tell their stories first, followed by Impacted Parties, the Impacted Parties can opt to go first if they so choose. Responsible Parties are also asked to arrive twenty (20) minutes early. They are provided with a private place to wait and given the opportunity to ask any questions before the Circle begins.
2. **Opening:** Each person in the Circle introduces themselves and their relationship to the circle. The facilitators will proceed to explain the process, and give the Circle participants all relevant information related to the process and the specific case. The facilitators will also introduce a set of proposed ground rules. Participants can agree to amend these rules if they wish. Expectations around confidentiality are also reviewed with all participants.
3. **Storytelling:** The facilitators will provide an environment for each person to tell the other members of the group their story including the actual incident, impacts, feelings, and questions. The facilitators will ask questions, provide minimal structure, and ensure that ground rules are respected.
4. **Brainstorming:** After each participant feels that they have had the opportunity to ask questions and tell their story, the group will brainstorm options for making things as possible again. The facilitators do not provide options, but can encourage the group to think creatively to address the most specific harms and issues.
5. **Agreement Writing:** This is the final stage. Here, the group collaboratively decides which items on the brainstorming list best repair the harms and address the important issues. They must be quantifiable, realistic, and hopefully provide a learning component. The facilitators will record the chosen options on an agreement form, which will be signed by all participants in the circle, including the responsible party. All participants (including the Responsible Parties) can choose to withdraw if they are unwilling to sign the Agreement or if Agreement does not appear possible.
6. **Humanistic mediation:** peacemaking circles is a humanistic mediation that implies transformative mediation. Circle process will remain grounded on the healing paradigm and peacemaking more than mere conflict resolution and solving issues. Maximum dialogue and communication emerge in storytelling and listening while each participant seeks wisdom in silence to attain the healing and peacemaking goal of the process.
7. **Recourse to professionals:** For disputes that may involve violations of children's rights or any conditions that suggest risk of harm or danger threatening the wellbeing of children participants, which they reveal in this process will be dealt with carefully and may need to be referred to professional who can assist, protect the child concerned or other children, in an appropriate manner.
8. **Typical circle ground rules:** Participants will treat one another with respect. No threatening behaviour or language. The Circle is a confidential process. Respect for silence and listening to each other is capital. Tapping in innate wisdom and strength of one another needs particular consideration. Participants will be sensitive to "touching", "religious rituals", language and assumptions that may hinder dialogue and safety of the environment. Speak from your own experience.
9. **Closure:** The facilitators will provide formal closure to the Circle. Copies of the signed Agreement are provided to all participants.

(Adapted from materials in William C. Warters, Mediation in the Campus Community. San Francisco: Jossey-Bass, 2000) and from materials developed by the Campus RJ Program, University of Oregon).

Appendix 14: Search conference report CPAR-RJPCs

A. Forgiveness and reconciliation

- Participants in RJC unanimously pleaded that children who have exited armed forces and groups be pardoned and accepted back into social life and be provided education opportunity.
- Affected parties (survivors) accepted the plea by former child soldiers to be forgiven and they pardoned them.
- Proposed strategies: (i) Accelerate social reinsertion; (ii) Create occupational activities (crafting, trades, jobs, etc.) to dissuade children young people from returning to armed groups; to prevent juvenile delinquency, “banditism”, early/teen pregnancies, undesirable pregnancies, especially preventing re-recruitment.

B. Restorative Justice

- The Government should consider RJ mechanisms, particularly RJC to accelerate justice for victims.
- RJ was recommended by participants as a meaningful approach to address the needs of justice for survivors in the context of instability caused by war.
- RJ should consider social reparation (provide free education to war victims and former children associated with armed forces and groups); these two categories of people must benefit moral, mental, and psychological support from their local communities through tangible acts of charity (school kits, etc.)
- The government should create local structures in war affected community to search children still in armed groups, identify the fighting forces where they are to negotiate their exit and facilitate their return to school.

C. Social and Psychosocial Support

- Detraumatization is an urgent need of victims who suffered war atrocities and violent acts by young soldiers. Children used as soldiers suffer equally the violations of their rights making them vulnerable to commit inhumane acts that infringed the rights of others in different communities. Psycho-social assistance must consist of permanent programmes and monitored by the Government institutions such as the Ministry of Family and Gender; and must include the following programmes:
 - Directing victims to psychologists to help them overcome post-traumatic syndrome disorders (PTSD) that is manifested in nightmares, insomnia, and loss of memory, inconsistent reasoning, and other strange patterns of behaviour observed in returnee child soldiers.
 - Creation of solidarity groups in which survivors of war crimes (sexually gender-based violence, mutilations, children used for military objectives) meet among themselves under the guidance of professional psychologists, humanitarian agents, social workers to heal their memories, especially rural areas in the North-Kivu province.
 - Creation of fraternity centres for children who have exited armed forces and groups and survivors of gruesome acts of human rights violation.
 - Providing victims with the means to survive socially and economically (business, productive activity, etc.) for those who cannot go back to school.

D. Justice and security

- The DRC Government must take its responsibility to neutralise and eliminate different groups and militias that are still actively operating in the provinces of North-Kivu, South-Kivu and the Ituri district.
- Peaceful negotiations should be promoted preconising reconciliation and eventually using coercive means to neutralise crossborder armed groups that continue terrorising local populations of the eastern and northeastern DRC.
- Government must end hostilities sustained by ethnic rivalries and foreign forces that have established their bases in the eastern and northeastern territories of the DRC (the FDLR, the LRA, etc.); and prosecute local rebel leaders who obstinately persist to fight war that has decimated the Congolese population in areas affected by ethnic tensions and continuing fighting.
- The Government must combat impunity that perpetuates insecurity to war-affected communities and victims of war crimes.

- The Government must protect its national space (along the eastern and northeastern borders), its mountains, national parks that have become safe haven for rebels groups, non-identified armed groups and armed gangs that terrorise innocent civilian populations violently affected by unceasing hostilities.

E. Poverty eradication

- The DRC must put in place programmes of poverty eradication, create jobs, develop education infrastructure (building schools and higher education institutions), to eliminate juvenile delinquency and unemployment that cause vulnerability and prompt youngsters to become soldiers.
- The DRC Government must promote infrastructural development (for commerce, agriculture, fishery and livestock development); create structures of formation to crafting for former child soldiers and other vulnerable children to prevent them from voluntarily enrolling as soldiers or being recruited by armed groups and non-identified armed gangs.
- The DRC Government should initiate the creation of recreational centres, sport and leisure centres for all youths, in urban areas, and especially in rural areas where child recruitment is stunningly widespread, and again where the youths are mostly vulnerable.

At the end of the two first RJPCs the team was reorganised to carry on with the next circles. A final evaluation was agreed to be carried out in December 2014, seven months following the first peacemaking circles. Participants in circles, who constituted experimental groups, were tracked down and a second survey were conducted on all participants to measure the effects of the intervention programme by comparing pre-test and post-test scores.

F. Evaluation

- All the four RJPCs were conducted in the same environment. The presence of the same armed groups surrounding the research sites made it difficult to learn new lessons from each circle processes. There was less representation of female child soldiers because of the stigma associated with female soldiers. That discourages most of them to appear in public processes. A few who were willing to participate told the same tragedies and expressed they pains and at the same time regretted the lack of protective structures and psycho-social structures that could assist war survivors, particularly females to process their grieves.
- The most serious problem noted during action research was the fear of participants to come on board in public processes of denouncing atrocities they suffer from armed groups that are still active. Fear of reprisal prevented other survivors to come in public. And the observation period had to be restrained to half a year in order to avoid the effects of history, and fear of resumption of hostilities that could disrupt the whole process of action research.

G. Lessons learned

- War-affected communities see justice and any form of accountability as a war to restore the dignity of those who have survived bloody conflict, and a sign of acknowledgment of the victims.
- The participatory, democratic and deliberative assumption of action research and its ethics allowed greater participation of the target population.
- We receive more demands to conduct more RJPCs and elderly women who had been abused offered their cooperation to testify about their war-ordeals.
- It is ethical to gratify vulnerable populations who participate in action research, at least paying their transport and given a reasonable amount of money to each contributor to the inquiry was the way of averting attrition.

H. Programme co-facilitated by:

1. Mr JC Kiyala Kimbuku (Main researcher)
2. Mr A. Kawate (+) , co-researcher (Rutshuru)
3. Mr M Muzige, co-researcher (Rutshuru)
4. Ms. S. Kayandi, co-researcher (Goma)
5. Mr. P. Kibonza, co-researcher (Goma)

Final adoption, Rutshuru on 17 December 2014,
The report was initially written in Frech and translated into English by the main researcher.

Appendix 15: Steps leading to the outcome of the study

2011-2012	Pilot testing and preliminary literature review
2012-2013	Literature review

FIELDWORK PHASE ONE

05/01/13	Study of concepts and writing research proposal
27/01/13	Departure for Kinshasa
02/05/14	Departure to Goma
03/05/14	Arrival in Goma
04/05/14	Meeting with the team of co-facilitators and co-researchers (research team), handing participant information letters, consent forms, interviews protocols, questionnaires, registration forms. Meeting and discussion with the parish youth members of St Tharcisse Choir and <i>Armée du Ciel</i> Choir. Handing out research materials.
05/05/14	Visit to CARITAS Goma and Save the Children, distribution of research materials.
06/05/14	Planning meeting with research team, giving inputs on research design, target population, drawing field study budget, discussing logistics, travels and risks assessments
07/05/14	Contact with the administrator of Save the Children, handing research letters to Caritas Goma, UNICEF Goma office. Discussion of preliminary strategies for participants' recruitment with research team. Distribution of research materials.
08/05/14	Meeting with former child soldiers in Goma. Handing over research materials.
09/05/14	printing and photocopying research materials. Handing research materials to CARITAS participants. Meeting the Caritas Regional Coordinator. Handing out research materials. Meeting with research team
10/05/14	Interviews with the youths at Mount Carmel-Goma
11/05/14	Interviews with the youths at Mount Carmel-Goma
12/05/14	Working meeting with research team and the responsible of transit and orientation centre of Kanyabayonga. Handing research materials to returnee child soldiers.
13/05/14	Working meeting with the team. Discussion focussed around focus group and interviews with young people below the age of 18 and above. Ethical and practical issues involved. Meeting with research team. Discussion on the preliminary findings and planning first step of action research.
14/05/14	Interviews with the youths at Mount Carmel. Interviews with lawyers working for child protection and responsible for communication in Caritas.
15/05/14	Interviews with the youths at the Holy Family Parish Community - Goma
16/05/14	Interviews with the youths at the Holy Family Parish Community - Goma.
17/05/14	Interviews with the youths at Holy Family Parish community - Goma. Followed by research team meeting.
18/05/14	Research Team meeting. Inputs on action research and RJ circles.
19/05/14	Travel to Kiwanja with research team. Research team meeting in the evening. Planning focus groups and interviews.
20/05/14	Meeting with the parish priest of Rutshuru to organise RJ circles. Meeting with the Curriculum advisor of Rutshuru district. Handing out research letters. Permission granted to conduct research with Rugabo and Bugana primary schools; and also with Rutshuru and Jikaze secondary schools. Focus groups with children at Rugabo primary school. survey questionnaires with children at Rugabo primary school with co-facilitation of teachers. Meeting with the coordinator of UPEDECO Kiwanja. Research team meeting. Evaluation of activities. Examination of reports (emerging themes in Interviews and focus groups). Planning the next day.
20/05/14	Meeting with the principle of Rutshuru secondary school. Private meetings with child soldiers and first contact with victims.
20/05/14	Private meetings with victims for their eventual participation in RJ circles.
21/05/14	Interviews and focus groups with learners at Rutshuru secondary school.
21/05/14	Second series of private contacts with victims and child soldiers for their eventual participation in RJ circles.
22/05/14	RJ circles at Kiwanja secondary school. Evaluation of RJ outcomes. Learned lessons and planning next action.

22/05/14 RJ circles at Rutshuru secondary school. Evaluation, examination of new lessons learned. Planning the way forward.

23/05/14 Focus groups with children at Bukoma primary schools.

23/05/14 Interviews and focus groups with child soldiers at Nyahanga CTO (Transit and Orientation Centre).

24/05/14 Interviews and focus groups with child soldiers at Nyahanga CTO (Transit and Orientation Centre).

24/05/14 Evaluation and reporting of RJ circles and handing out the resolutions.

25/05/14 Break

26/05/14 Interviews at Nyahanga CTO at Nyahanga

26/05/14 Interview at Rutshuru with officials at Rutshuru

26/05/14 Approval of statement of action research.

26/05/14 Signing RJ circles reports by the research team and co facilitators at Rutshuru

26/05/14 Setting the action research team to carry on with the programmes

26/05/14 Interviews and focus groups with former child soldiers at UPEDECO Centre at Kiwanja.

27/05/14 Interview with child soldiers' caretakers at UPEDECO.

28/05/14 Return to Goma with research team

28/05/14 Research Team meeting. Examination of reports.

28/05/14 Visit to CAJED, UNICEF GOMA, SAVE THE CHILDREN AND CARITAS GOMA.

29/05/14 Interviews former child soldiers - Goma

30/05/14 Break

31/05/14 Reports writing

01/06/14 Reports writing

02/06/14 Peacemaking at Goma

02/06/14 Consultation at DDR Goma, arranging interviews and focus groups with APROJED MEMBERS

03/06/14 Evaluation meeting with research team

04/06/14 Meeting at UNICEF - Goma

05/06/14 Meeting at Caritas Goma.

06/06/14 Planning the trip to Masisi

07/06/14 Interviews at Mont Carmel-Goma with Ngandu.

08/06/14 Conference a IHUSI Centre on National Cohesion by Prof. Kamana

09/06/14 Departure to Masisi

09/06/14 Meeting the Curriculum advisor, permission granted to interview former Child soldiers at Mutiri high school.

09/06/14 Permission granted to have focus groups with teachers at Bustani high school (Masisi)

09/06/14 First contact with the team in charge of the Masisi CTO. Preliminary arrangements for interviews and focus groups with former child soldiers in transit towards reintegration into their communities.

10/06/14 Focus group and interviews with former child soldiers at Mutiri village.

10/06/14 Focus group with teachers of Bustani high school at Mutiri village.

10/06/14 Focus groups with former child soldiers at CTO Masisi

10/06/14 Discussion with local tribal council of Masisi at CTO Masisi

11/06/14 Interview with former child soldiers at CTO Masisi

12/06/14 Interviews with former child soldiers at CTO Masisi

13/06/14 Return to Goma

13/06/14 Meeting with CARITAS Justice and peace commission to confirm interviews and focus group discussion.

14/06/14 Evaluation meeting with research team and examination of reports.

14/06/14 Peacemaking at Masisi

15/06/14 Break

16/06/14 Travel to Bukavu

16/06/14 Discussion with the Marines of the DRC Armed forces.

17/06/14 Interview with a high ranked officer of the Marines at Bukavu

18/06/14 Return to Goma

19/06/14 Focus group with members of the Justice and peace commission at Caritas Goma

19/06/14 Interviews with Mzee S and Mzee L

20/06/14 Final reports by research team

21/06/14 Last meeting with the team and planning for the next six months

21/06/14 Consultations with local partners (Caritas, Save the Children, CAJED, UPEDECO, and others.

22/06/14	Departure from Goma to Kigali
23/06/14	Arrival in Johannesburg via Kigali-Nairobi.
26/06/14 to 26/10/14	Fieldwork data analysis and reporting (phase one), publishing preliminary results.
20/11/14	RJPCs evaluation in Goma
22/11/14	RJPCs evaluation in Goma
25/11/14	RJPCs evaluation in Rutshutu
28/11/14	RJPCs evaluation at Masisi
26/11/14	RJPCs evaluation at Kiwanja

FIELDWORK PHASE TWO AND THREE: AVALUATION AND FOLLOW-UP

02/12/14	RJPCs workshop at Mont Carmel parish
03/12/14	RJPCs workshop at Kiwanja
03/12/14	RJPCs workshop at Rutshuru
04/12/14	RJPCs workshop at Kiwanja
05/12/14	Focus groups at Rutshuru
05/12/14	RJPCs workshop at Jikaze High school/Goma
06/12/14	Focus groups at Jikaze High School
07/12/14	Co-facilitation of “peaceful interethnic coexistence between natives and foreign settlers at Kishanga”. Worskshop co-facilitated with Caritas-Goma Justice and Peace Commission.
	Meeting with local traditional leaders at Kitchanga
	Interviews with local traditional leaders and members of the Baraza.
07/12/14	RJPCs workshop at Kitchanga-St Augustine High School
08/12/14	RJPCs workshop at Mont Carmel High School/Goma
09/12/14	RJPCs workshop at Mwanga High School/Goma
10/12/14	RJPCs workshop at Lycee Shemshem (Girl High School)/Goma
11/12/14	RJPCs workshop at Lycee Amani (Girl High School)/Goma.
12/12/14	RJPCs workshop at Bakanja High School/Goma
13/12/14	Reseacrh team mid-evaluation reports.
14/12/14	RJPCs workshop at Masisi
15/12/14	Focus group and interviews at the Intercommunity Baraza provincial office at Goma.
16/12/14	Research team evaluation
17/12/14	Research team report writing and adoption at Mont Carmel Parish/Goma
March 2015	Publication of first research outputs
1 March 2016	Thesis submission

Appendix 16: Sampling frame

	Institutions and communities	Randomised sample of phase one and two	Community /village	Number of participants randomly included in the study in phase three
1	Armée du Ciel Choir		Busihe	1
2	Bukoma Primary school		Goma	806
3	Bustani teachers		Kahusa	1
4	CARITAS		Karisimbi	1
5	CTO Masisi		Kiwanja	127
6	CTO Nyahanga		Masisi	5
7	Jikaze secondary school		Mutiri	12
8	Kiwanja Community		Nyahanga	1
9	Mutiri secondary school		Nyanzale	1
10	Our Lady of Mount Carmel		Rutshuru	144
11	Rugabo Primary school		Walikale	2
12	Rutshuru Secondary school		Bugara	1
13	Saint Tharcisse Choir		Nyanga	1
14	UPEDECO Center		Kitchanga	62
15	UPEDECO Center-Caregivers			
	Total former child soldiers	88		
	Total civilian population	194		
	Total	282		1165³²⁰

³²⁰ Randomised sample from 3495 population purposively selected in the third phase of the inquiry.

Appendix 17: Summary of instruments

	Questionnaires	Peacemaking circles phase one and two	RJPCs workshops follow up study – phase three
Total questionnaires pre-restorative justice circles responded	221		
Total evaluative questionnaires post-restorative justices	50		1165
Focus Groups phase one			
Bokoma Primary School	2		
Rugabo Primary school	3	RJPCs - Goma 1	
Jikaze secondary school	2	RJPCs - Goma 2	
Rutshuru secondary school	3	RJPCs - Rutshuru	
Centre Nyahanga (returnee child soldiers)	3	RJPCs - Masisi	
Centre UPEDECO (returnee child soldiers)	1	RJPCs - Kiwanja	
Mutiri Institute (Former child soldiers)	1		
Centre Masisi (returnee child soldiers)	3		
Bustani secondary school teachers (Masisi)	1		RJPCs workshop at Mont Carmel parish
Caritas child soldiers caretakers	2		RJPCs workshop at Kiwanja
Kitshanga Commuty	1		RJPCs workshop at Rutshuru
Kitshanga High School	1		RJPCs workshop at Kiwanja
Bukoma Primamy school/Kiwanja	1		RJPCs workshop at Jikaze High school/Goma
Jikaze High school/Kiwanja	1		RJPCs workshop at Kitchanga-St Augustine High School
Rutshru High School	1		RJPCs workshop at Mont Carmel High School/Goma
Amani Girl High School	1		RJPCs workshop at Mwanga High School/Goma
Chemchem Gilr High School	1		RJPCs workshop at Lycee Shemshem (Girl High School)/Goma
Bustani secondary school teachers (Masisi)	1		RJPCs workshop at Lycee Amani (Girl High School)/Goma.
St Damian High School	1		RJPCs workshop at Bakanja High School/Goma
Mwanga Hight School	1		RJPCs workshop at Masisi
Bakanja High School	1		
Mount Carmel High School	1		
Mount Carmel Youth Choir	1		
St Tharcisse Youth choir	1		
Total	31	5	12

Total interviews in phase one	100		
Focus groups phase two		Interviews phase three	Focus groups phase three
Rutshuru	2		
Kiwanja	2		
Goma(chem-chem, Amany, Mwanga, MC, Bakanja, St Tharcisse and Armée du ciel)	6		Focus groups at Rutshuru
Masisi (St Damien and Bustani high schools)	2		Focus groups at Jikaze High School
Kitchanga	1		Focus group and interviews at the Intercommunity Baraza provincial office at Goma.
Total	13	5	3

Appendix 18: Gatekeepers' and research letters



MANAGEMENT SCIENCES: FACULTY RESEARCH ETHICS COMMITTEE (FREC)

08 October 2014
Emmanuel Cathedral
46 Cathedral Road
Durban
4001
Student No: 21346772
FREC No: 32/14FREC

Dear Mr Kiyala Kimbuku

DOCTORATE DEGREE IN TECHNOLOGY: PUBLIC MANAGEMENT

TITLE: THE EFFECTIVENESS OF RESTORATIVE JUSTICE IN PREVENTING CHILDREN'S PARTICIPATION IN ARMED CONFLICT IN THE NORTHERN KIVU PROVINCE, DEMOCRATIC REPUBLIC OF CONGO

Please be advised that the FREC Committee has reviewed your proposal and the following decision was made: Ethical Level 1 -Full Approval

Approval has been granted for a period of one year, after which you are required to apply for safety monitoring and annual recertification. Please use the form located at the Faculty. This form must be submitted to the FREC at least 3 months before the ethics approval for the study expires.

Any adverse events [serious or minor] which occur in connection with this study and/or which may alter its ethical consideration must be reported to the FREC according to the FREC SOP's.

Please note that ANY amendments in the approved proposal require the approval of the FREC as outlined in the FREC SOP's.

Yours Sincerely


Prof N Dorasamy
FREC: Chairperson



3 November 2014

TO WHOM IT MAY CONCERN

I write to advise that Chrysostome Kiyala Kimbuku is a doctoral student at Durban University of Technology under my supervision. His topic concerns preventing boys becoming child soldiers.

I would be very grateful for any assistance you can provide him.

By all means contact me if you have any questions geoffreyh@dut.ac.za

Kind regards

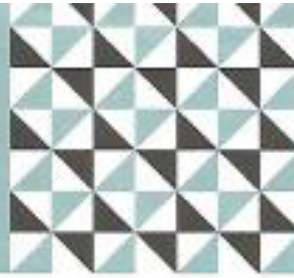


Geoff Hayfron

Professor

Peacebuilding Programme

PEACEBUILDING PROGRAMME
DURBAN UNIVERSITY OF TECHNOLOGY

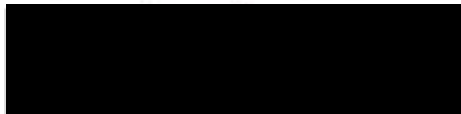


8 October 2013

TO WHOM IT MAY CONCERN

I write to advise that **Jean Chrysostome Kiyala Kimbuku** is a doctoral student in peacebuilding studying under my supervision. He is carrying out research on ways of preventing young people in the eastern DRC from becoming child soldiers. The project has been fully approved by the relevant university committees.

I would be very grateful for any assistance you can provide him, if you have any questions, by all means contact me geoffreyh@dut.ac.za tel (2731) 373 5609



Geoff Harris

Professor & Head, Peacebuilding Programme



DIOCESE DE GOMA
CARITAS - DEVELOPPEMENT GOMA

E-mail : caritasdev_bdd@yahoo.fr
B.P. 50 Goma / Nord - Kivu - RDC

C/o B.P. 12 Gisenyi / Rwanda

Goma, le 05 mai 2014

Réf. 244.../05-ADM/CADEGO/2014

Object: Permission de conduire les recherches
dans l'Organisation CARITAS-GOMA
Programme DDR

A Monsieur le Professeur Geoff Harris
Université de Technologie de Durban
Durban - RSA

Monsieur le Professeur,

Nous avons l'honneur de venir auprès de
votre haute personnalité vous présenter l'objet repris en marge.

Par la présente, nous confirmons avoir
autorisé le père Jean Chrysostome KIYALA KIMBUKU à conduire ses recherches au sein de
notre Institution dénommée CARITAS-GOMA, particulièrement dans le programme de
Désarmement, Démobilisation et Réintégration/Réinsertion.

Le père JC Kiyala a eu la permission
officielle de consulter nos archives et autres sources d'information valables à ses recherches et
il a aussi visité nos centres de transit et d'orientation (CTO) de Nyahanga et Masisi où il a eu
des interviews et « focus groups » avec les enfants sortis des forces et groupes armés. Le
consentement pour impliquer ces enfants et adolescents à la recherche était et signé par notre
personnel qualifié œuvrant dans ce domaine y compris notre psychologue clinicien qui
s'occupe de la santé mentale et psychologique de ces mineurs traumatisés par les événements
des guerres.

Nous osons espérer que ce programme de
justice réparatrice sera bénéfique pour notre pays dans la prévention du phénomène enfants
soldats surtout ici à l'Est où les enfants sont souvent vulnérables et victimes de conflits armés
répétitifs et des violences interethniques.

Veuillez agréer l'expression de nos
sentiments respectueux.

Abbé OSWALD MUSONI

CC :

- Abbé Administrateur Général
- Abbé Coordinateur de la CDJP
- Ressources humaines



**Paroisse Notre Dame du Mont Carmel
Katindo
B.P. 50 Goma
Province de Nord Kivu
République Démocratique du Congo**

Telephone: 00 243 970772373

Goma, le 5 mai 2014

A Monsieur le Professeur Geoff Harris
Université de Technologie de Durban
Durban - RSA

Objet: Permission de conduire les recherches
dans la Paroisse Notre Dame du Mont Carmel

Monsieur le Professeur,

Nous venons par la présente vous rassurer que nous avons autorisé le père Jean Chrysostome KIYALA KIMBUKU de conduire ses recherches au sein de notre paroisse Notre Dame du Mont Carmel et notre succursale de Sainte Famille ici à Goma dans la Province de Nord Kivu.

Le père JC Kiyala a eu la permission officielle d'interviewer les membres de notre communauté paroissiale et d'organiser les « focus groups » avec les ex-enfants soldats. Nous lui avons aussi accordé d'utiliser nos facilités et l'espace paroissial pour des fins de ses recherches. Le consentement pour impliquer les enfants et adolescents à la recherche était signé par les parents, pour enfants qui ont moins de 18 ans.

Nous espérons que ce programme de justice réparatrice sera bénéfique pour notre pays dans la prévention du phénomène enfants soldats surtout ici à l'Est où les enfants sont souvent vulnérables et victimes de conflits armés répétitifs et des violences interethniques.

Veillez agréer l'expression de nos sentiments respectueux.



Rév. Père Mukendi Jean XXIII, OCD

Curé de la Paroisse



Institut Rutshuru

Rutshuru, le 20/05/2014

B.P. 113 Rutshuru

B.P. 50 GOMA

R.D.C

Tél : 0976557116

Certification

Chers Confrères

Dans le cadre de la recherche sur le phénomène des enfants soldats et autres faits des groupes armés, nous avons autorisé au Père Jean Chrysostome de faire ses enquêtes et des échanges avec les élèves de l'Institut Rutshuru où nous assumons la charge de Directeur des études.

Nous retenons que nos entretiens avec lui ne nous laisseront pas ignorants et nous seront d'un grand apport sur le phénomène des enfants soldats et des groupes armés.

Avec notre franche collaboration

KAHATWA MAGHUMU Adolphe.

Directeur des Etudes

Institut RUTSHURU



PAROISSE DE NASINI
B. P. 5090MA.

Nasini, le 10 juin 2014

Monsieur Prof Geoff Harris

OBJET

Permission de conduire
les recherches dans nos
établissements scolaires

cher Prof,

Nous tenons à vous informer
que nous avons autorisé le Père Jean
Chrysostome Kiyala Kimbuka de conduire
ses enquêtes sur construction de la paix
et résolution des conflits dans nos écoles :
Institut GUSTANI et Institut Saint Damien.

La prévention du phénomène
enfants soldats (Kadogo) est notre préoccupation
parce que nos enfants sont souvent
victimes d'enrôlement par les groupes armés.
Ses études bénéficieraient à notre pays.

Veuillez agréer, Monsieur
le Professeur, l'expression de notre
entier dévouement.

Pour les écoles de la
Paroisse de Nasini,

Martin DATESS HANGI



Conseiller d'Enseignement

UPDECO a.s.b.l.
UNION POUR LA PAIX ET LA PROMOTION DES DROITS DE L'ENFANT AU CONGO



E-mail : updecoasbl@yahoo.fr
0811830787 ,0992091605

Kiwanja, le 27 Mai 2014,

N° *29* UPDECO/CD/MAI/2014

Objet : Permission de conduire les recherches
dans l'Organisation UPDECO asbl

A Monsieur le professeur GEOFF

Monsieur le professeur,

Nous avons l'honneur de venir auprès de
votre compétence vous présenter l'objet repris en marge de la présente

Nous avons autorisé le père Jean
Chrysostome KIYALA KIMBUKU de conduire les recherches dans notre organisation sur l'éducation
à la paix et résolution des conflits. Ce programme est bénéfique pour notre communauté souvent
victime de guerre en répétition et en conflits ethniques

Nous vous prions de croire Monsieur le
professeur à l'expression de nos sentiments associatifs.



Pour l'UPDECO asbl,

Stéphane Bujaleho Jacques

Cc : - Président du conseil d'administration UPDECO

NTAUMENYA RUTHARA
Directeur de l'EP RUGABO

Rutshuru, le 20/5/2014

objet

Permission de conduire
les recherches dans
notre école.

Cher Prof. Geoff,

Cette lettre sert de confirmation que nous
avons autorisé le Père Jean Chrysostome
Kiyala Kimbuku de conduire les
recherches dans notre école sur l'éducation
à la paix et résolution des conflits.
Nous avons trouvé ce programme
bénéfique pour notre communauté.
Souvent en proie aux guerres, et pour
empêcher les enfants à devenir des
soldats.

Fraternellement,

NTAUMENYA RUTHARA Faustin

Directeur de l'EP RUGABO



ECOLE CONVENTIONNEES
CATHOLIQUES
PAROISSE ST.ALOYS
BP.113 RUTSHURU

Rutshuru, le 05 décembre 2014

N° MINEPSP/CD/520/CEP-13/05-12/2014

TRANSMIS COPIE POUR INFORMATION AU :

- Révérend Père Curé de la Paroisse Saint Aloys
à Rutshuru.

Concerne : évaluation
du programme CONSTRUCTION
DE PAIX ET RESOLUTION DES
CONFLITS.

Chers Chefs d'Etablissements (EP, RUGABO, BUKOMA
INSTITUT RUTSHURU ET JIKAZE)

Dans le cadre du suivi du PROGRAMME CONSTRUCTION DE
PAIX ET RESOLUTION DES CONFLITS, le Père Jean CHRISOSTOME KIYALA KIMBUKU de l'Université de
Technology de Durban (AFRIQUE DU SUD) sera de passage dans vos écoles respectives.
Il aura à s'entretenir avec les élèves et les enseignants pour répondre à un questionnaire d'enquête.

Prière donc lui faciliter la tâche en collaborant positivement avec lui.

Avec nos sentiments dévoués en Christ .

EMENDEVE BAHATI Gashyamba

CONSEILLER D'ENSEIGNEMENT



REP. DEM. DU CONGO
PROVINCE DU NORD-KIVU
TERRITOIRE DE MASISI
COORDINATION DIOCESAINE
DES ECOLES CONY. CATHOLIQUES
INSTITUT ST AUGUSTIN
B. P. 50 GOMA

AUTORISATION DE RECHERCHE

Du 08 au 09 Décembre 2014, Monsieur Jean Chrysostome Kiyala KIMBUKU de l'Université de Technologie de Durban est autorisé de conduire des recherches sur la prévention du phénomène des enfants soldats au sein de l'Institut Saint Augustin de Kitchanga dont la responsabilité m'a été confiée.

En foi de quoi, nous lui délivrons la présente attestation pour servir de témoignage à qui de droit.

Fait à Kitchanga, le 07 Décembre 2014
Le chef d'établissement,
Abbé Emmanuel KAVUSA



REPUBLIQUE DEMOCRATIQUE DU CONGO

INSTITUT MWANGA

DIOCESE DE GOMA

BP : 160 GOMA

Attestation d'Enquêteur

Je soussigné, Abbé MALEMO KIHUO Floribert, Préfet des Etudes de l'Institut MWANGA, N° MATRICULE de l'Établissement : 4/15106 A N° SECOPE de l'Établissement : 6101662, Atteste par la présente que Monsieur **Jean Chrysostome KIYALA KIMBUKU**, chercheur à l'Université de Technologie de Durban en Afrique du Sud a mené des enquêtes dans notre Institution sur la Prévention du phénomène enfants soldats.

En foi de quoi nous lui délivrons la présente pour servir à qui de droit.

Fait à Goma, le 11/12/2014

Abbé Floribert MALEMO

Préfet des Etudes



HANGI Gabriel
Econome Institut Mwanga
+243 999920344

REPUBLIQUE DEMOCRATIQUE DU CONGO

PROVINCE DU NORD-KIVU
MINE PSP
PAROISSE BIENHEUREUSE ANUARITE
INSTITUT ISIDORE BAKANJA
MATRICULE SECOPE : 6129152
B.P. : 50 GOMA.-

ATTESTATION D'AUTORISATION DE FORMATION N° 001/2014-2015

Je soussigné Sœur **NANGWANABOSE BUSIMBA Stella**, Chef d'Etablissement et Préfet des études de l'Institut Isirode **BAKANJA**, autorise par la présente que Monsieur **Jean Chrysostome KIYALA KAMBUKU**, Chercheur à l'Université de Durban de Technologie fasse une formation avec nos élèves finalistes et pré-finalistes sur le thème « Preventing boys becoming child soldiers » ou « Prévenir les enfants à devenir des enfants soldats. »

Cette attestation lui est délivrée pour servir à toute fin utile.

Fait à Goma, le 11/12/2014

Sœur **NANGWANABOSE BUSIMBA Stella**



Préfet des études.-

REPUBLIQUE DEMOCRATIQUE DU CONGO
PROVINCE DU NORD -KIVU
ENSEIGNEMENT PRIMAIRE, SECONDAIRE
ET PROFESSIONNEL

PROVINCE DU NORD -KIVU
VILLE DE GOMA
COMMUNE DE KARISIMBI
LYCEE CHEMCHEN
MATRICULE : 0/150038
SECOPE : 6101646
ADRESSE : 01 AV. LUMUMBA

AUTORISATION DE FORMATION N° 001/2014-2015

Je soussignée **Sœur LULA DJOMBA Clémence**, Préfet du Lycée Chemchem autorise par la présente que **Monsieur Chrysostome KIYALA KIMBUKU**, Docteur à l'Université de Durban de Technologie fasse une formation avec nos élèves Finalistes et Pré-finalistes sur le thème « preventing boys becoming child soldiers » ou « prévenir les enfants à devenir des enfants soldats. »

En foi de quoi, nous lui délivrons la présente autorisation pour servir à toutes fins utiles.

Franche collaboration

Sceau de l'Etablissement



Fait à Goma, le 11/12/2014

P.O. St Marie Françoise d'Assise

Signature du Chef d'Etablissement



Attestation d'enquête

Nous attestons par la présente que
le Père KIYALA KINAKU Chipootsme
est passé dans notre Institut Mont Carmel
pour son questionnaire d'enquête auprès
du corps professoral et aux élèves.

Fait à Goma, le 10. Dec. 2014
le Chef d'établissement



POUR LE DROIT
Prof.

tel: +243999676377

REPUBLIQUE DEMOCRATIQUE DU CONGO
PROVINCE DU NORD-KIVU
E.P.S.P.
ECOLE CONVENTINNEE CATHOLIQUE
LYCEE AMANI
MATRICULE SECOPE/ 6101677
B.P. 50 GOMA

Goma, le 12/12/2014

N° MINEPSP/CD/520/521/0323/AS/30-12/2014

AU PROFESSEUR GEOFF HARRIS

Cher Professeur,

Nous avons bel et bien reçu votre recommandation concernant votre étudiant en doctorat, Monsieur Chrysostome KIYALA KIMBUKU.

Nous lui avons donné l'autorisation de faire la formation à nos élèves finalistes et pré-finalistes ainsi qu'à leurs enseignants sur le thème : « Preventing boys becoming child soldiers ».

Franche collaboration.

SR NTAMBABAZI N'MANA

[REDACTED]
Préfet des Etudes





PROVINCE DU NORD-KIVU
BARAZA LA WAZEE INTERCOMMUNAUTAIRE
TEL : (243)998395292; 0816374699 ; (243)998667768
E-MAIL : barazalawazeeinter2006@yahoo.fr

Goma le 15/ 12/2014

N/ Réf 021 BARWI/ 2014

A Monsieur GEOFF HARRIS
Professeur D.U.T
À DURBAN en
Afrique du Sud

Monsieur le Professeur,

En suite de votre lettre de recommandation du 8/10/2013, nous avons eu la joie de recevoir en nos installations M^r Jean Chrysostome KIYALA KIMBUKU, Chercheur à votre Université de Technologie de Durban.

Nous avons échangé avantageusement avec lui sur les points de ses préoccupations scientifiques.

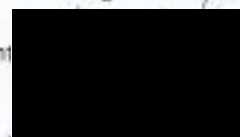
La présente vaut attestation à toutes fins utiles.

Intercommunautaires.

Pour le Baraza la Wazee

M^r Pierre – George FATAKILUHINDI

Président



	
<p align="center"> République Démocratique du Congo Programme National de Désarmement, Démobilisation et Réinsertion (PNDDR) Province de </p>	
<p align="center">Attestation de sortie d'un enfant des forces ou groupes armés</p>	
L'en deux mil	Le jour du mois de
Je, soussigné, (NOM Prénom)	(Fonction)
Atteste que (NOM)	(prénom) de nationalité
est certifiée comme étant mineur(e) d'âge et comme ayant été associée à une force ou groupe armé.	
<p> Les autorités politiques et militaires de la République Démocratique du Congo reconnaissent que cette personne a besoin de bénéficier de la protection qui lui est reconnue et due tel que stipulé dans la Convention relative aux droits de l'enfant et les autres Conventions Internationales ratifiées par le Gouvernement de la République Démocratique du Congo. De plus, l'article 190 de la Constitution de la République Démocratique du Congo stipule : « Nul ne peut, sous peine de haute trahison, organiser des formations militaires, para militaires ou des milices privées, ni entretenir une jeunesse armée » </p>	
Signature et tampon du commandant de la région militaire ou de son délégué	Code de vérification de l'agence de protection de l'enfance
Version adoptée par l'Unité d'Enregistrement du Programme National DDOR (UEPN-DDOR) le 5 février 2008	