Addressing the Legacy of Colonization in the Aftermath of the Armed Conflict: What Role for Transitional Justice

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Abstract: In the aftermath of armed conflicts, international law seeks to bring the child recruiters to justice. It pays no attention to the issues of colonialism at the root of child soldiering. We know today from political science research that the phenomenon of child soldiers is largely a legacy of colonization in many countries, such as the DRC. Indeed, the silence of the institutions with regard to the injustices suffered by populations during the colonial period is a major factor in the growth and persistence of this phenomenon in this country. However, this evidence is still ignored by international law when it comes to this issue. By ignoring this evidence, international law perpetuates the injustices of the colonial era. Furthermore, it fails to address the phenomenon and, as a result, children continue to join armed groups voluntarily. The objective of this research is to take a step forward by examining how international law can be redesigned to effectively achieve its purpose: to help countries build a new society after the end of a war. It does so by exploring the potential of transitional justice mechanisms to address these related issues and beyond, including the acknowledgement of the victims of child soldiers. For this research, as long as International Law and policy will keep ignoring the contexts and realities in which children come to fight, their responses in countries like the DRC will remain meaningless and ineffective. This research concludes that the extension of TJ mechanisms to injustices recorded during the colonial period could be an opportunity to access local truth to build genuine policies on child soldiering that would help restore broken societies.

Keywords: Child Soldiers, Reparative Justice, Multi Victimization, Accountability, Victims

1. Introduction

During the so-called 'New wars', we often observe the growth of a phenomenon of great concern for the international community, the child soldiering. The situation of the Democratic Republic of the Congo (DRC) is not an exception. Many children have participated in the various wars fought on its territory since 1996, as the Mapping Report published in 2010 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) reveals. To remedy this situation, the Mapping Report's drafters have provided the DRC government with several options through Transitional Justice (TJ). The Congolese civil society fully supported the OHCHR proposal and called for the material jurisdiction of TJ to be extended to human rights violations perpetrated during the dictatorship of former president Joseph-Désiré Mobutu and the colonial period [1].

The United Nations Security Council (UNSC) constructs the recruitment of children by non-state military groups as a violation of children's rights committed during armed conflicts [2], which means a phenomenon solely linked to the armed conflicts.[1] Numerous studies find this construction restrictive as the involvement of children in armed conflict can occur in the unseen part of the war, such as the state crisis [3] or injustices recorded during the colonial period [4], which is the case of the DRC. Studies conducted in its eastern part have evidenced a correlation between colonization's realities and legacy and children's participation in armed group activities [5]. These studies show that, in response to the harms suffered by communities during colonization, children showed some initiative in joining local militias as soon as the country gained independence in 1960 and during the Mobutu regime [6]. The child soldiering did not start with the first war in 1996.

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[1] In international law, child soldiers are also seen as a phenomenon that only occurs during armed conflict.

Alongside this restrictive international definition, there is a perception of the child soldier as a homogeneous category.

International law and policy (ILP) envision child soldiers as an unhistorical, neutral, and homogeneous group, facing similar problems and requiring identical responses. Consequently, they have been interested in prosecuting child soldier recruiters for years, believing their trials would act as a deterrent and end children's participation in warfare worldwide. That said, competent international and domestic courts do not have the jurisdiction to address the issues of colonialism at the child soldiering origin [7]. This limited approach to child soldiering appears counterproductive in contexts such as the DRC, as the conviction of warlords [8] does not stop this phenomenon. Children continue to be recruited to serve as soldiers in local militias in the eastern part of the country [9]. By addressing the issue of child soldiering outside of its socio-historical reality, this contribution argues that ILP reinforce the injustices that give rise to this phenomenon. Moreover, in so doing, they push children to continue participating in hostilities rather than prevent them from doing so. In other words, as long as ILP do not consider 'the contexts and realities in which children come to fight' [3], their responses will remain meaningless and ineffective.

Therefore, the Congolese civil society's singular proposal is an opportunity to question the potential of TJ to go beyond this limit and tackle the phenomenon of child soldiers by considering the injustices or human rights violations recorded during the colonial period at its origin. Indeed, what if TJ addresses the issue from a socio-historical-oriented perspective through a decentered 'victim-perpetrator' approach ? TJ is a non-rigid tool designed to promote the restoration of relationships in broken societies. Although it is based on a liability model, [2] its characteristics make it malleable enough to be deployed from a 'reparative justice' model that would give effect to this decentered 'victim-perpetrator' approach. I use this concept the way Mani Rama develops it, i.e. as 'a broader, flexible and sensitive concept, drawing its dual origin from both the legal practice and the psychological concept of reparation' [10]. For Mani Rama, reparative justice is

"[…] a response to the complex and shifting realities of societies torn apart by conflict, as well as the varied and often contradictory claims for justice that arise therein. It recognizes that categories such as 'victim' or 'perpetrator' are fluid in situations of dynamic conflict and can change over time. Victims can and do become aggressors and often have done so in the past, just as former perpetrators may become victimized […]".

In such a perspective, reparative justice is 'survivors' justice' rather than 'victors' justice' or 'victims' justice'. That said, restorative justice

"[…] does not isolate and further victimize, marginalize, objectify and render impotent the victim. It returns to victims their agency and does not cut them off from the rest of society. Consequently, while reparative justice places the needs and trauma of victims at the center of its concerns, it does not trap them in a passive role and in their past suffering, but rather helps them build a 'bridge' towards their future."

Furthermore,

"reparative justice does not just focus on victims to the exclusion of other groups – as truth commissions tend to do. Nor does it focus on perpetrators exclusively – as trials do. Rather, it extends to all parts of society. It includes neglected economic categories, such as beneficiaries, and structural categories, such as those suffering from systemic injustice like discrimination, in seeking therefore to address or redress not only the direct abuses perpetrated in conflict but also their social, economic and cultural consequences and ramifications and seeks to reintegrate them actively into society [10]."

In other words, the reparative justice model moves away from the victim/perpetrator dichotomy and embraces a vision of the war-torn society as a multi-victimized entity that seeks to realistically address its complex history - without blaming or exalting one group of people over another - in order to effectively rebuild itself. If TJ adopts such a perspective when dealing with child recruitment, it will be able to reconstruct the 'local truth' about child recruitment, align existing and future policies and mechanisms with this knowledge, and provide communities with realistic tools to help them rebuild and end the cycle of child recruitment. This contribution draws on this idea to explore to what extent responses emphasizing historical aspects of this phenomenon through a reparative justice model might realistically help TJ in addressing it. To this end, it develops its reflections from the transgenerational transmission of the psychosocial trauma (TTT) framework and uses biography as a research method.

2. The Transgenerational Transmission of Trauma as the Theoretical Framework

Legal doctrine routinely refers to the so-called *push and pull factors* [11] to explain the child soldiering. According to these factors, children may join armed forces and groups for a variety of reasons, including the insecurity in which they live, the lack of protection from their family and their community, and even the acquisition of some power by wearing military clothing and carrying weapons [12]. In their development, these factors follow the international pattern of child soldiering, i.e. the assumption that it only occurs after the war has started, not before. In this research I am interested in exploring child soldiering beyond the armed conflict and my interest goes to the pre-war period and how children's interaction with their communities during this time may play a role in their desire/refusal to participate in armed conflicts when they commence. Social sciences have already started to look at how the volatile pre-war situation can contribute to the

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2 TJ continues to draw on a victim/perpetrator framework to provide war-affected communities with resources to help them rebuild their community and repair the broken relationships.

'making'[3] of the child soldier [13]. Building on these studies, I am exploring the extent to which various traumatic family experiences may play a key role in children's decisions to participate in war or not, and how this may affect post-war responses to child soldiering. To do this, this research draws on TTT findings and use them as a framework.

The fields of psychology and medical health have been using the TTT since the 1980s to understand, *inter alia*, how grandchildren appropriate and respond to their grandparents' traumatic histories and how these histories shape their choices and behaviors in everyday life [14]. One suggestion from these studies that I found very informative for my research is that traumatic experiences often lead to a role reversal between parents and their children. These studies have found that when parents are stressed, they may become unable to meet the needs of their children. In turn, children may adopt an attitude of protection and concern towards their parents, trying to meet their expectations and achieve what they could not [15]. Thus, children may consciously or unconsciously develop 'reparative' strategies to cope with their grandparents' traumatic experiences and respond to them by following family values/expectations. They may also develop a sense of loyalty to their family, and this loyalty may structure their behavior and identity formation [16]. Applying these findings to my research, I suggest that the TTT may play a role in the making of child soldiers in some parts of the world, which is the case in Eastern DRC. Indeed, the narratives of four boys (three former child soldiers and a child whose parents was killed during an intra-community violence in the Rutshuru territory) collected during a fieldwork in Goma, North Kivu province, in 2016, show that children's decisions to join or to refuse to join armed groups in the region can be seen as reparative strategies to overcome traumatic family histories that pre-date the wars they became involved in.

3. Stories from Former Child Soldiers

These stories suggest that, in addition to the push and pull factors developed by academic research, the involvement of many children in the war in North Kivu has much to do with trauma inherited from their grandparents *via* their parents. The three former child soldiers I met belong to different local ethnic groups (Rwandophones and 'native' communities - communities that see themselves as the original landowners of North Kivu-) but share many similarities regarding their family history. They come from regions regularly affected by inter-community violence, the Masisi and Rutshuru territories. They decided to join local militias to protect their respective communities from abuses and violence by other communities. This choice is the result of an evolving process. Daniel, Jean-Paul, and Dieudonne[4] learned from their parents that

these abuses began long before their birth, during the colonial period. According to the story their grandparents told their parents, Rwandans migrated from Rwanda to North Kivu to work in the 1940s. After a few years, they decided to settle down. 'Native' communities forced them to leave, accusing them of stealing their land and making them homeless in their own land, but they resisted. In response, the natives began killing them. The Rwandan community, in turn, killed them. This inter-ethnic violence has made these areas unsafe and precarious places to live since the country's independence in 1960 and decades before the first armed conflict in 1996.

These stories shaped the behaviors and the daily lives of Daniel, Jean-Paul and Dieudonne. They grew up hearing from their parents that they were responsible for protecting their communities and fixing the injustice.[5] Through the 'ku gombola'[6] system, parents from their villages teach children at a young age that they must neutralize other communities to regain peace. When they are old enough, some decide to follow the values/expectations of their families and join armed groups. This is the case of those boys who freely chose to become soldiers to defend their communities. They joined local militias whose values echoed theirs. From the Rwandophones community, Daniel and Jean-Paul joined the Nyatura, a militia dedicated to protecting Rwandan Congolese, respectively at sixteen and fifteen years. Jean-Paul followed his father's path, himself a Nyatura member. At the end of our discussion at the Child soldier care center where I conducted the interview, he told me: 'Tant que mungini itakuwa inakufa, fasi yangu iko mu pori. Ndarudiyaka siku amani itakuwa'.[7] Daniel's parents discouraged him from going into the bush, but his determination to change his environment led him first to the Nyatura and then, a few years later, to the Interahamwe, a Hutu militia that had fled to the RDC after the 1994 genocide in Rwanda. Dieudonne is from a native community. He joined the Mayi-Mayi, a large group of native militias determined to drive Rwandophone communities out of the DRC. The fourth boy I met is from a native community. He grew up facing the same precariousness and listening to the same stories. But he took the decision not to join the violence and refused to become a Mayi-Mayi member or take part in hostilities, even when his parents were beheaded by child soldiers, arguing that killing people back is not the answer, even though the war left him orphaned and homeless.[8] After collecting the children's voices and capturing key aspects using the TTT framework, I mapped them to the international relations (IR) literature on the DRC to put them in their context.

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3 I borrow this concept from Denov Myriam. See Denov, Myriam and Maclure, Richard. Turnings and epiphanies: Militarization, life histories, and the making and unmaking of two child soldiers in Sierra Leone. *Journal of Youth Studies*. 2007, 10 (2), 243-261. doi.org/10.1080/13676260601120187

4 Personal interview, Goma, DRC, August-September 2016.They are fictional names.

5 They all talked about the situation created by the colonizers in North Kivu as an 'injustice'. For the children from the native communities, injustice means that the Rwandophones have stolen their land and the government is doing nothing to give it back to them. To fix this, they have to kill Rwandans living in the DRC. For the children of the Rwandan community, injustice refers to the fact that, as Congolese citizens, they should have the same rights and privileges on the land as the native communities. To redress this, they have to fight for their rights, even if it means taking up arms against other communities.

6 A Swahili term that means: to substitute.

7 As long as we live in insecurity, my place is in the bush. I will not return home until we achieve peace.

8 Personal interview, Goma, DRC, August-September 2016.

4. IR Studies on the DRC

The first time the child soldiers phenomenon was mentioned in the DRC context was during the war in 1996. Numerous studies suggest that this war marked its emergence in the country. IR studies have produced another types of elements demonstrating that it emerged decades earlier, shortly after the country's independence, as a response to injustices/human rights violations recorded during the colonial period. From 1928 to 1956, the Belgian colonizer brought workers from Rwanda to improve local production. About 200,000 people arrived in Masisi and Rutshuru [17]. They received many privileges from the Belgians, including the right to use the lands of native communities, and became demographically, economically and financially powerful. A reversal of the situation accompanied the independence: the native communities became poor, and the rwandophones rich and powerful. This led to tensions between both communities to the point that, a few years later, inter-ethnic killings started. Children and youth from the native communities were among the instigators of this violence and spearheaded the creation of local militias whose aim was to drive out the Rwandan occupiers [18]. In 1990, these local militias merged and became the 'Mayi-Mayi' [19], continuing to target rwandophones [20]. Approximately 50 Mayi-Mayi groups are currently active in North Kivu province. Today, parents continue using the 'Ku gombola' system to nurture their children's loyalty.[9] For this literature, there is a link between the colonial history of North Kivu province, the emergence and sustainability of local militias, and the presence of children and young people in local militias.

5. What the TTT Framework Informs About the Stories from Some Child Soldiers

According to IR studies, the way the colonizers ran the region during this period led to many injustices. And as these children's stories suggest, these injustices led to traumatic experiences for both Rwandophones and native communities, which they then passed on to their children and grandchildren. Applying the TTT framework to capture all these elements thus suggests the following. Traumas experienced by grandparents have shaped the everyday lives and behaviors of these child soldiers. Then, it led them to construct themselves as defenders of their community and exercise their agency, following that perception, by choosing to enter armed groups. Secondly, their involvement in armed groups is not only the consequence of precarity from war but also injustices recorded during the colonial period by their elders. Given these elements, it would be challenging to assume there is a 'culture of child soldiers' in the North Kivu. Instead, joining armed groups could be seen as a rational response to trauma inherited from grandparents or a manifestation of collective

psychosocial trauma; and child soldiering could be seen as one of the root causes of the armed conflicts, not its result. Therefore, the concept 'child soldier' as defined by ILP seems highly reductive and unrepresentative of the reality of the struggles of children in North Kivu.

6. The Incapacity of ILP to Capture These Elements

This evolving process of becoming a child soldier brings some nuances to push and pull factors academics mobilize to analyze why youth enlist and to suggest policies to address this situation. This process shows that the 'making' of child soldiers can start long before the war. Sometimes, it can occur along a violence-war-peace continuum or in a context of low violence until it reaches the required intensity to be legally called 'armed conflict'. Overall, the above evidence suggests that the child soldier phenomenon is not necessarily linked to armed conflict as ILP assume, nor is it always the immediate result/response to war. ILP ideally view child soldiering as a consequence of war (a serious violation of children's rights committed by adults exclusively during armed conflict) that deserves a unique response (Since it is elevated to a war crime by the Rome Statute, their violators should be prosecuted). In other words, ILP often disconnect this phenomenon from its socio-historical origins. This ideal definition is not relevant in the context of the DRC. It neglects the specificity of North Kivu, namely the structural aspect of the process [21] and its interconnection with the colonial history of this region. It disconnects children from their family history and makes them mere objects in the hands of evil idealized adults. It produces a truth that sustains the global discourse on child soldiers and ignores 'local truths'. Instead of tackling the problem, the current responses developed in the DRC (prosecution of warlords, demobilization and reintegration program of child soldiers) reinforce the injustices of the colonial period. Inter-ethnic massacres persist in the region. Furthermore, they encourage children to continue to join armed groups to defend their communities and fix the problem themselves. As Jean-Paul said, "Saa ONG itani reintegrer mu communauté, ndarudia mu pori. Tant que mungini itakuwa inakufa, fasi yangu iko mu pori. Ndarudiyaka siku amani itakuwa" (I will return to the bush as soon as the NGO reintegrates me into the community. As long as we live in insecurity, my place is in the bush. I will not return home until we achieve peace).[10]

7. Applying TTT Framework Through TJ Mechanisms: What Benefits

In a context similar to the DRC, TJ mechanisms designed to respond to child soldiering should incorporate a socio-historical perspective to be more effective. One way to do so is to 1) adopt a 'victim-perpetrator' decentered approach suggested by the reparative justice model, and 2) operate a

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paradigm shift. The social structure through which children form their decision to join armed groups does not make accountability mechanisms relevant or effective. Communities in North Kivu have faced multi-victimization since the colonial period, constantly navigating between victim and perpetrator status. Distinctions between the two statuses would be challenging to make. Moreover, the grandparents are the ones who were harmed, not the 'present' child trying to confront this past traumatic experience and its present consequence. In such a context, who will be the victim, and who will be the wrongdoers? Implementing TJ mechanisms centered on accountability seems practically untenable as it could inflict more harm and aggravate community tensions. A decentered approach might make more sense. To do this, TJ should incorporate a socio-historical perspective into its work, in addition to adopting a reparative justice model. Using TTT as a framework from which to deploy the restorative justice model could help to achieve this. A decentered 'victim-perpetrator' approach - one that moves away from the binary construction of ILP and focuses on strategies aimed at the social reconstruction of communities - could open up many avenues for exploration. Such a framework could help TJ develop an insightful understanding of the local production of child soldiers, the structural nature of children's involvement in violence, the nuanced role of the community in this process, and shed light on the elements that perpetuate this phenomenon. From this knowledge, TJ could then develop appropriate responses to some dilemmas, such as the crimes committed by child soldiers.

To access this 'local truth', TJ should operate a paradigm shift. It should depart from both 1) the idea of the 'child soldier victim' [11] (in this case, who is the victim: the 'past' child or the 'present' child?); and 2) the ILP view of the child soldier (the one that decontextualizes and idealizes children's actions). Instead, TJ should adopt a broader view of children's involvement in violence by putting children's political and moral agency at the center. This shift may enable TJ to stop reducing child combats to armed conflict. Second, it may enable TJ to address the injustices recorded during the colonial period that may undermine the resolution of this issue. The goal would not be to address the colonial past, but only situations at the origin of the involvement of children in armed conflicts which, we must admit, could include many colonial realities. Third, it may allow TJ to understand better the role of the family in the involvement of children in hostilities. Finally, it may allow TJ to consider the social reconstruction of broken societies beyond retribution or reparation. Similarly, it may allow TJ to consider the child soldier phenomenon beyond the 'victim-perpetrator' paradigm by replacing the reductive concept of child soldier with one that better represents the struggles children face in North Kivu. As the TTT framework suggests, instead of focusing on non-accountability tools, TJ should imagine 'soft' mechanisms that contribute to local truth-telling to be more effective. These soft mechanisms could play an unexpected role in reconfiguring current child soldier policies by broadening reflection to include interrelated social realities such as land and property policies in North Kivu, North Kivu's colonial history, and the voicing of communities victimized by child soldiers.

8. Conclusion

This case study suggests that TJ should reframe and expand its analysis to child combats beyond armed conflict to realistically address child soldiering and related issues like the accountability of child soldiers or the acknowledgement of their victims. Extending TJ mechanisms to injustices recorded during the colonial period could be an opportunity to access 'local truth' to build genuine policies on child soldiering that would not occasion new forms of trauma in communities and help restore broken societies. Using TTT as a framework from which the restorative justice model would be deployed can help achieve this goal, as it focuses on trauma from a socio-historical perspective rather than accountability, and it is much more concerned with children's agency.

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Fund

Conflicts of Interest

The author declares no conflicts of interest.

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[1] See «Les organisations de défense des droits humains de la RDC soutiennent l'effort de l'ONU de réhabiliter la mémoire collective congolaise et invitent le gouvernement à saisir l'occasion pour une réconciliation sincère», 2010.

[2] See UNSC Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005).

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