

Poor Children: Child “Witches” and Child Soldiers in Sub-Saharan Africa

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This article examines two different aspects of the accountability of children: those children who are thrown away by their families because they are “sorcerers,” and those children who become soldiers and, through their involvement in armed conflict, inflict violence and death on others, including children. Like all other children, both sets of children are especially vulnerable because of their developmental (im)maturity. Indeed, as policy-makers struggle to develop strategies for responding to the needs of these children, the new neuroscientific literature provides yet another basis for arguing that children must be treated differently from adults.

This article discusses the promises and limitations of concepts of children’s rights and the importance of creating local, national, and international responsibilities to care for the poor children in these contexts. The article suggests a conceptual shift in thinking about children in the international context. Rather than focus on the paradigmatic triangle of parents, children, and the state when considering rights and responsibilities, I argue that we must think of a rectangular pyramid that places children at the top, but has a base that includes family, state, international actors, and, as the final point, civil society and other non-governmental actors.

This article first explains the differing phenomena of child sorcerers and child soldiers. Next, the article turns to a brief survey of the neuroscientific literature on the development of children, which reinforces the vulnerable “nature” of children who become sorcerers and soldiers. The article argues that the neuroscientific literature provides two insights. First, it sheds light on concepts of culpability for children recruited as soldiers; second it provides additional support for responding to the nurturance needs of child sorcerers and highlights the particularly destructive nature of banishing them from their homes. Finally, the article provides specific recommendations for an approach that recognizes the developmental (im)maturity of children by placing both types of children within their social and community contexts.

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I. INTRODUCTION

While much of the United States embraced child witches like Harry Potter and Sabrina the Teen-Age Witch, in sub-Saharan Africa, children are being accused of sorcery and cast out of their homes only to become street children. In Kinshasa, Congo, for example, where an estimated 100,000 live as street children, perhaps as many as fifty percent of those children are accused sorcerers. Children are easy scapegoats for poor harvests, lost jobs, and other consequences of poverty. This growing problem has been compounded by two additional factors: family life has been disrupted in many countries because of conflict, and there has been an increasing number of revivalist churches, where preachers rail against Satan and witches. Traditionally, it has been primarily girls and women who were accused of witchcraft but, because of the social and economic disruptions in these countries, both boys and girls are now accused.

The process of accusing children generally begins when an important family member, such as the child's mother, dies or disappears. The father may take a new wife, or the children may be sent away to other family members. Because there are too many mouths to feed, the family may hire a "priest" to exorcise the household of the child sorcerer. After the exorcism, the child is sent from the home and is unable to return. Once outside of the home, the child may engage in criminal conduct, ranging from theft to rape, in order to survive life on the streets.

Other children take to the streets after they have become victims of conflict-based sexual violence or after they have fought in wars. Armies and militias recruit children through a variety of means, both voluntary and involuntary, and use children in various roles, ranging from soldier to porter to sexual slave. Because children are seen as ideologically malleable and highly adaptable, armed groups have intentionally recruited increasing numbers of children.

Even if child soldiers or child victims are able to return to their homes after they experience the violence of conflict, they are typically neglected in the process of post-conflict reconstruction. Most of the countries facing these issues have signed the United Nations Convention on the Rights of the Child and have ratified the Rome Statute establishing the International Criminal Court. The problem, then, is not the lack of legally acknowledged civil rights for these children, nor the unavailability of international criminal prosecutions for those who torture children, nor the fact that it is sometimes children themselves who have committed atrocities as soldiers. Instead, the difficulties lie in the implementation of these rights so that children may be protected or held accountable for their actions. Because children generally are unable to enforce any of these protections, the rhetoric of legal rights is of little comfort to them.

The primary focus of this article concerns the accountability of children who, because of their poverty and other lack of resources, become soldiers and, through their involvement in armed conflict, inflict violence and death on others, including children. As a second example of the accountability of children, the article briefly discusses children who are thrown away by their families because they are

"sorcerers."¹ Although the issues presented by these children may seem unrelated, they are not. Both develop from the same cultural context of poverty and conflict. Moreover, like all other children, both sets are especially vulnerable because of their developmental (im)maturity. Indeed, as policy-makers struggle to develop strategies for responding to the needs of these children, the emerging neuroscientific literature provides yet another basis for arguing that children must be treated differently from adults when it comes to their rehabilitation.

This article will discuss the promises and limitations of concepts of children's rights and the importance of creating local, national, and international responsibilities to care for the poor children in these contexts. Although the international conventions are often quite removed from the experiences of these children, it is nonetheless true that how we talk about children's rights profoundly affects the politics of helping children.² Instead of framing the issues solely in legal terms of culpability and responsibility, however, we must frame children's issues internationally in educational and health terms. Such a reframing recognizes that the focus cannot be placed solely on criminal prosecutions but on developing concrete practices that respond to the health and educational needs of children as well as their developmental needs for structured caring. Responding to the child soldier requires responding to the contexts in which they live: states with little means of providing protection and parents with limited means of doing so.³

This article suggests a conceptual shift in thinking about children in the international context. Rather than focus on the paradigmatic triangle of parents, children, and the state when considering rights and responsibilities, I argue that we must think of a rectangular pyramid that places children at the top, but has a base that includes family, state, international actors, and, as the final point, civil society and other non-governmental actors.⁴ Unlike the situation in most developed

¹ For further discussion of child sorcerers, see Naomi Cahn, *State Representation of Children's Interests*, 39 FAM. L.Q. (forthcoming 2006).

² See, e.g., JANICE M. IRVINE, TALK ABOUT SEX: THE BATTLES OVER SEX EDUCATION IN THE UNITED STATES 10 (2002) ("It matters how a social movement talks. In part, words, phrases, narratives, and symbols comprise the expressive elements of discursive politics."); GEORGE LAKOFF, DON'T THINK OF AN ELEPHANT 3 (2004); GEORGE LAKOFF, MORAL POLITICS: HOW LIBERALS AND CONSERVATIVES THINK 372-73 (2d ed. 2002).

³ See Naomi Cahn, *Pragmatic Questions about Parental Liability Statutes*, 1996 WIS. L. REV. 399, 432 ("[I]t seems appropriate to focus, instead, on the conditions in which the parents and children live, the contexts in which we hope to ascribe, and inscribe, agency and dependency.").

⁴ The paradigmatic triangle of parent, child, and state has certainly been questioned by others. In focusing on rights-holders within the dependency system, Professor Susan Mangold has called for attention to private, non-profit services provider agencies, and has suggested a model of concentric circles around a child, rather than the linear triangle. Susan Vivian Mangold, *Challenging the Parent-Child-State Triangle in Public Family Law: The Importance of Private Providers in the Dependency System*, 47 BUFF. L. REV. 1397, 1397-98 (1999). Professor Barbara Woodhouse has observed that "[T]he familiar triangle seen through a public/private prism no longer seemed to reflect reality. In its place, I saw a rapidly changing environment of intersecting forces, where new

countries, the main actor in developing countries is not the government. Instead non-governmental organizations⁵ and the aid community (including multilateral institutions like the World Bank and the International Monetary Fund (IMF)), are often significant players in advocating for reform.⁶

Civil society organizations are highly relevant to discussions of how to advance children's rights in developing countries. When governments are not democracies, and are not accountable to their citizens, non-governmental organizations (NGOs) and international, multilateral organizations and institutions represent possible sources of change because they function outside of the state bureaucracy.⁷ While states may be unable, or unwilling, to protect children, NGOs

technologies flooded our children" Barbara Bennett Woodhouse, *Reframing the Debate about the Socialization of Children: An Environmentalist Paradigm*, 2004 U. CHI. LEGAL F. 85, 91.

⁵ See Panel, *Plenary Theme Panel: The Challenge of Non-State Actors*, 92 AM. SOC'Y. INT'L. L. PROC. 20–21 (1998); Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT'L. L. REV. 1335, 1336 (1999) (discussing how non-state actors and transnational networks have begun to play a larger role in the protection of human rights and the resulting changes in governments); Peter Spiro, *The Democratic Accountability of Non-Governmental Organizations: Accounting for NGOs*, 3 CHI. J. INT'L. L. 161, 161 (2002); Steven C. Smith, *Governance of Nongovernmental Organizations: A Framework and Application to Poverty Programs in East Africa* (Nov. 10, 2003) (unpublished manuscript, on file with author), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=628684; GLOBAL CITIZEN ACTION 1, 3–4 (Michael Edwards & John Gaventa eds., Lynne Rienner Publishers 2001).

⁶ See generally JOSE ALVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS (2005). There are many articles that discuss the World Bank and the IMF as the catalysts of "development." See, e.g., Irene A. Belot, *The Role of the IMF and the World Bank in Rebuilding the CIS*, 9 TEMP. INT'L. & COMP. L.J. 83, 83–84 (1995); see also Sean D. Murphy, *Biotechnology and International Law*, 42 HARV. INT'L. L.J. 47, 49 (2001) ("[T]raditional methods of developing international law affecting private behavior must give way to newer approaches that recognize the indispensability of cooperation among non-governmental actors . . ."); Kim Reisman, Note, *The World Bank and the IMF: At the Forefront of World Transformation*, 60 FORDHAM L. REV. 349, 349–50 (1992); Jeremy J. Sanders, *The World Bank and the IMF: Fostering Growth in the Global Market*, 9 CURRENTS: INT'L. TRADE L.J. 37, 39 (Winter 2000); Vicki Wayne, *The Constituent Objectives of Development—Zimbabwe Case Study*, 28 INT'L. LAW. 385, 388 (1994) ("In sub-Saharan Africa . . . [the World Bank] has been the most significant player in setting the development agenda. . . . Twenty-four sub-Saharan African countries have recently or are currently embarking upon economic programs initiated by the World Bank and its sister institution, the International Monetary Fund . . ."). Donor countries can impose conditions on receipt of aid to influence governance structures. See Phillippe Le Billon, *Getting it Done: Instruments of Enforcement*, in NATURAL RESOURCES AND VIOLENT CONFLICT: OPTIONS AND ACTIONS 215, 250–51 (Ian Bannon & Paul Collier eds., World Bank 2003); James C. Owens, Note, *Government Failure in Sub-Saharan Africa: The International Community's Options*, 43 VA. J. INT'L. L. 1003, 1037–38 (2003) (discussing how donors can place conditions on their aid).

⁷ See Spiro, *supra* note 5, at 162 ("international law and international institutions, however, are still largely premised on a world in which states have the last word"). For a candid assessment of the delicate intergovernmental relationships between developing and developed countries see Daphne Eviatar, *Can Profits Promote Democracy in Africa?*, N.Y. TIMES, Dec. 4, 2003, at A39 (quoting an American Embassy official explaining the U.S. attitude towards influencing anti-corruption initiatives in oil-producing Angola: "It's more a process of persuasion, trying to defend a commonality of our relationship"); see also Fiona Fox, *Conditioning the right to Humanitarian Aid? Human Rights and the 'New Humanitarianism'*, in RETHINKING HUMAN RIGHTS: CRITICAL

have been successful in drawing attention to the problems facing children, and providing services to help them.⁸ NGOs also have been successful in fostering recognition of children's rights internationally and in pressuring countries to ratify the Convention on the Rights of the Child (CRC).⁹ Especially where government cannot protect children, civil society actors play an important role, but even in countries with stable governments, civil society has become more active in advocating and protecting children's rights. Civil society groups play multiple roles in both developed and developing countries: they may advocate on behalf of specific children or on behalf of groups of children, operate centers for children, or lobby for enactment of the CRC.

This article articulates principles for a child-centered approach to justice using what I have referred to as social services justice.¹⁰ "Social services justice" focuses not on punishment and retribution but rather on the social, economic, medical, and psychological components of providing justice.¹¹ The concept of social services justice can supplement more traditional forms of civil and criminal justice, and expand them. This approach is particularly well-suited to juveniles because it takes psychological and developmental needs into account and recognizes that the formal mechanisms of the legal system cannot fully provide justice on their own terms.

This article proceeds by discussing the differing phenomena of child sorcerers and child soldiers. Next, the article turns to a brief survey of the neuroscientific literature on the development of children, which reinforces the vulnerable "nature" of children who become sorcerers and soldiers. The article argues that the neuroscientific literature provides two insights. First, it sheds light on concepts of culpability for children recruited as soldiers; second it provides additional support for responding to the nurturance needs of child sorcerers and highlights the particularly destructive nature of banishing them from their homes. The article then provides a fuller discussion of the principles that should guide a response to these issues by surveying the possible approaches. Finally, the article provides specific recommendations for an approach that recognizes the developmental

APPROACHES TO INTERNATIONAL POLITICS 19 (David Chandler ed., 2002) (questioning the movement towards more politicized humanitarian interventions).

⁸ For thoughtful discussions of civil society, see, for example, Miriam Galston, *Civic Renewal and the Regulation of Nonprofits*, 13 CORNELL J. L. & PUB. POL'Y 289 (2004).

⁹ Jude L. Fernando, *Children's Rights: Beyond the Impasse*, 575 ANNALS 8, 13 (2001).

¹⁰ See Naomi Cahn, *Beyond Retribution and Impunity: Responding to War Crimes of Sexual Violence*, 1 STAN. J. CIV. RTS. & CIV. LIB. 217, 220 (2005).

¹¹ While this may be a component of restorative justice, which seeks reintegration of the perpetrator and victim into their communities, or of criminal justice, which provides accountability, social services justice is a broader concept. The standard dictionary definition of "justice" focuses on doing what is right and fair, and the administration of legal process is only one of multiple definitions. See also ROBIN WEST, *CARING FOR JUSTICE* 24 (1997) (suggesting that an ethic of care must be part of an ethic of justice).

(im)maturity of children by placing both types of children within their social and community contexts.

II. CHILD SOLDIERS AND CHILD SORCERERS

Poverty and conflict create the opportunities for recruiting children into militias and armies; they also create the context for accusing children of sorcery. While poverty and conflict have broad based effects in an entire society, they are particularly tragic for children. Indeed, the accounts of child sorcerers and child soldiers illustrate the malleability and susceptibility of children.

A. *Child Soldiers*

In its broadest definition, a child soldier is anyone under the age of eighteen who is associated with an armed group, including not just those who carry weapons but also cooks, porters, messengers, and prostitutes.¹² Between 2001 and 2004, child soldiers were involved in active conflict in twenty-eight countries, sometimes in official government forces, others in paramilitary and other armed groups.¹³ Both girls and boys are soldiers, although girls routinely face rape and other forms of sexual assaults, and their roles may include “wife,” cook, and housekeeper as well as fighter.

Children become soldiers in a variety of ways. They sometimes join armed groups voluntarily, including in countries where children younger than eighteen can legally join the armed forces. Indeed, the CRC allows for recruitment of children over the age of fifteen,¹⁴ and the Rome Statute of the International Criminal Court applies only to recruitment of children younger than fifteen. Child soldiers of any age may also be forcibly recruited.

¹² UNICEF, CAPE TOWN PRINCIPLES AND BEST PRACTICE ON THE PREVENTION OF RECRUITMENT OF CHILDREN INTO THE ARMED FORCES AND ON DEMOBILISATION AND SOCIAL REINTEGRATION OF CHILD SOLDIERS IN AFRICA 8 (1997), http://www.unicef.org/emerg/files/Cape_Town_Principles.pdf; SAVE THE CHILDREN, REACHING ALL: CORE PRINCIPLES FOR WORKING WITH CHILDREN ASSOCIATED WITH ARMED GROUPS AND FORCES 4 (2005), http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/2746_Reaching%20All%20-%20March%202005.pdf.

¹³ CHILD SOLDIERS, GLOBAL REPORT 2004 1 (2004), http://www.child-soldiers.org/document_get.php?id=966.

¹⁴ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. Even the 2000 Optional Protocol on the Involvement of Children in Armed Conflict simply requires that “State 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.” Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, U.N. GAOR, 54th Sess., Supp. No. 49 at 6, U.N. Doc. A/54/49, Vol. III (2000). As of 2004, it had been signed by 115 states, and 77 had ratified it. *Id.* at art. 38.

A recent study of child soldiers in Central Africa found that two-thirds of the children were recruited voluntarily.¹⁵ Most reports on child soldiers point to several different factors that influence children to join armed movements: the poverty in which they live, the conflict around them, and their families. Although not all poor children in conflict zones become soldiers, it is poverty and conflict that prevent them from attending school or that result in the death of family members who might otherwise provide counsel.¹⁶ One study found that nearly eighty percent of child soldier recruits, compared to twenty percent of a control group of children who had not become soldiers, observed conflict near their homes.¹⁷

Serving with an armed force also can be seen as providing various opportunities. Adolescents who are working or who are in school and doing well are much less likely sources of recruits than unemployed children with no opportunity for school.¹⁸ Joining an armed group provides adolescents with the potential for adventure.¹⁹ Children may also join to take revenge against other armed groups who have killed family members.²⁰ Additionally, both boys and girls may join to escape from oppressive home environments, although girls are far more likely than boys to claim that domestic violence or feelings of exploitation were their primary motivation for joining.²¹

In light of these various motivations for recruitment, many researchers question how freely adolescents actually "choose" to become soldiers²² and note

¹⁵ INTERNATIONAL LABOUR OFFICE, *WOUNDED CHILDHOOD: THE USE OF CHILDREN IN ARMED CONFLICT IN CENTRAL AFRICA* viii (2003), <http://www.ilo.org/public/english/standards/ipecc/publ/childsoldiers/woundedchild.htm>; see *infra* text at nn. 170–72 (further discussion of the correlation between poverty and conflict).

¹⁶ FRIENDS WORLD COMMITTEE FOR CONSULTATION, *CHILD SOLDIERS: WHY ADOLESCENTS VOLUNTEER 2* (2003), <http://www.quino.org/geneva/pdf/CHR60ChildSoldierswritten.pdf>.

¹⁷ INTERNATIONAL LABOUR OFFICE, *supra* note 15, at 10, 25.

¹⁸ See RACHEL BRETT & IRMA SPECHT, *YOUNG SOLDIERS: WHY THEY CHOOSE TO FIGHT* 80–81 (2004). The authors note that all of the factors are interrelated: "the existence and availability of school in practice; a family environment that enables the young person to attend and benefit from school; a school situation . . . that is relevant to future job prospects [which] implies the existence of a healthy economic environment." *Id.* at 81.

¹⁹ FRIENDS WORLD COMMITTEE FOR CONSULTATION, *supra* note 16, at 1–2. This research, undertaken by both the Quakers and the International Labor Organization, identified the interaction of war, poverty, education, employment, and family as the five reasons that children volunteer; the poor child who is out of school, not working, and without strong family members is most at risk. *Id.* at 1. They also found a significant correlation between domestic/sexual violence and the decision of girls to volunteer. *Id.* at 2–3.

²⁰ AMNESTY INTERNATIONAL, *DEMOCRATIC REPUBLIC OF CONGO: CHILDREN AT WAR 5* (2003), <http://web.amnesty.org/library/index/ENGAFR620342003>.

²¹ BRETT & SPECHT, *supra* note 18, at 89. They note that as many as forty percent of the girl recruits in Colombia may have joined because of domestic abuse. *Id.*

²² See, e.g., BRETT & SPECHT, *supra* note 18, at 83; Michael Wessells, *Recruitment of Children as Soldiers in Sub-Saharan Africa: An Ecological Analysis*, in *THE COMPARATIVE STUDY OF CONSCRIPTION IN THE ARMED FORCES* 237, 247 (Lars Mjøsset & Stephen van Holde eds., 2002).

that children are pushed into “forced labor.”²³ Children in conflict areas have few options when it comes to survival.

If a young boy were separated from his parents, lived in fear, and decided to join a military group for protection, this would be less a free choice than one dictated by harsh realities and survival needs. At best, the decisions of youth in war zones must be viewed as bounded and guided by the necessities of life and the fact that the conditions threaten the very right to survive.²⁴

Children can be easier to abduct and indoctrinate than adults, thus increasing their chances of involuntary recruitment.²⁵ Children may be kidnapped while they are walking home from school, from refugee camps, or from within their own homes.²⁶ In Uganda, children are called “night commuters,” because they sleep in populated towns at night in order to prevent abduction.²⁷ Once they arrive in military camps, these children may be given some training, which invariably includes forcing many (although not all) to overcome their repugnance at hurting and killing people.²⁸ Most girls, regardless of the capacity in which they serve, are raped or sexually exploited, as are some of the boy soldiers.²⁹ In its report on child soldiers in the Congo, Amnesty International found that virtually all girl soldiers had either been raped or otherwise sexually attacked by commanding officers or

²³ See BRETT & SPECHT, *supra* note 18, at 117. The International Labour Organization defines “forced or compulsory recruitment of children for use in armed conflict” as child labor, and “the only case that was clearly confirmed to be outside of the scope of the term was in respect of 16 and 17-year-olds that lawfully volunteer for service in the national armed forces. In respect of children recruited by forces distinct from the armed forces of a State . . . the circumstances of recruitment by such forces in almost all cases rule out the possibility that such recruitment was truly voluntary.” INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOUR, CHILD SOLDIERS 2 (2005), <http://www.ilo.org/public/english/standards/ipecc/themes/soldiers/interventions.htm>.

²⁴ Wessells, *supra* note 22, at 247. Moreover, he notes that the stresses related to a child’s existence during wartime challenge whether children who choose soldiering are engaging in a “rational calculus.” *Id.*

²⁵ SAVE THE CHILDREN, CHILD SOLDIERS: CARE AND PROTECTION OF CHILDREN IN EMERGENCIES: A FIELD GUIDE 3 (2001), <http://www.savethechildren.org/publications/ChildSoldiersFieldGuide.pdf>.

²⁶ AMNESTY INTERNATIONAL, *supra* note 20, at 4; HUMAN RIGHTS WATCH, STOLEN CHILDREN: ABDUCTION AND RECRUITMENT IN NORTHERN UGANDA 2 (2003), <http://www.hrw.org/reports/2003/uganda0303/uganda0403.pdf>; HUMAN RIGHTS WATCH, HOW TO FIGHT, HOW TO KILL: CHILD SOLDIERS IN LIBERIA 11–12 (2004) (discussing how both opposition and government armed forces kidnapped children from a displaced persons’ camp), <http://hrw.org/reports/2004/liberia0204/liberia0204.pdf>.

²⁷ HUMAN RIGHTS WATCH, STOLEN CHILDREN, *supra* note 26, at 6.

²⁸ P. W. SINGER, CHILDREN AT WAR 74–75 (2005); AMNESTY INTERNATIONAL, *supra* note 20, at 6.

²⁹ AMNESTY INTERNATIONAL, *supra* note 20, at 8; CHILD SOLDIERS, *supra* note 13, at 9.

others in their units.³⁰ In Sierra Leone, women and girls were forcefully abducted into combat, enduring repeated rape and forced sexual servitude (referred to as "AK-47 marriages").³¹

Although children have been involved in armed conflict for millennia, the widespread use of child soldiers is a comparatively new phenomenon.³² It results from technological innovations that have made weapons lighter, from the changing nature of conflict, and from massive social disruptions that have left millions of children homeless and thus vulnerable to involuntary recruitment practices.³³ "Small arms," such as grenades, light machine guns and mortars, and rifles, have caused almost ninety percent of all casualties during recent wars.³⁴

In the Congolese conflict, all sides have recruited children; numerical superiority is key and children may be comparatively easy to recruit for the reasons described above.³⁵ More than forty percent of the 15,000 soldiers in the Ituri area in northeastern Congo are children.³⁶ Commanders acknowledge and justify child recruitment, arguing that children benefit from education and employment opportunities.³⁷ Yet this is not reflected in children's health; more than three times as many children recruited to serve as soldiers reported nightmares, an inability to sleep, feeling threatened, and some form of mutism than did children who had not been recruited.³⁸ In a survey of child soldiers in four Central African countries, more than fifty percent of the children rated their food and housing as "bad," although they also rated the atmosphere of their armed group as "good."³⁹ Living with an armed group may provide children with a sense of connection and belonging, notwithstanding the physical conditions.⁴⁰

³⁰ AMNESTY INTERNATIONAL, *supra* note 20, at 4.

³¹ WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, DISARMAMENT, DEMOBILIZATION AND REINTEGRATION AND GENDER-BASED VIOLENCE IN SIERRA LEONE 4 (2002), http://www.womenscommission.org/pdf/sl_ddr03.pdf [hereinafter Perspectives].

³² See SINGER, *supra* note 28; Wessells, *supra* note 22, at 238 (noting the training of seven year olds in Sparta).

³³ SINGER, *supra* note 28, at 38.

³⁴ *Id.* at 46.

³⁵ AMNESTY INTERNATIONAL, *supra* note 20, at 2.

³⁶ REFUGEES INTERNATIONAL, REFUGEE VOICES: CHILD SOLDIERS IN THE DEMOCRATIC REPUBLIC OF CONGO 1 (2005), <http://www.refugeesinternational.org/content/article/detail/6174>. Children are a significant component of armed forces in other countries, as well. For example, more than twenty-five of the "irregular" combatants in the Colombian civil war are children under the age of eighteen. HUMAN RIGHTS WATCH, "YOU'LL LEARN NOT TO CRY": CHILD COMBATANTS IN COLOMBIA 4 (2003), <http://www.hrw.org/reports/2003/colombia0903/colombia0903.pdf>.

³⁷ AMNESTY INTERNATIONAL, *supra* note 20, at 9.

³⁸ INTERNATIONAL LABOUR OFFICE, *supra* note 15, at 51. Of the child soldiers, 40% could not sleep, 50% had nightmares, 27% felt threatened, and 24% remained silent, compared to 10%, 15%, 5% and 5% of the non-recruited children. *Id.*

³⁹ *Id.* at 42, 47.

⁴⁰ *Id.* at 47-48 (noting this as "one of the paradoxes of this study").

B. *Child Sorcerers*

As another example of children's vulnerability, some sub-Saharan African countries torn by conflict are faced with a new epidemic—"child witches."⁴¹ Witchcraft is not a new phenomenon, and, indeed, there is a rich anthropological literature on witchcraft in Africa.⁴² Witchcraft has been identified in these countries, predating colonial rule, and has taken a variety of different forms. Witchcraft is typically used to explain "evil" events,⁴³ such as loss of a job, a miscarriage, or other misfortune. When my family and I were in Tanzania, we were taken to see a few sacred caves, which had been used by "ngangas," traditional witch-doctors associated with a more positive form of witchcraft⁴⁴ (although we were assured that the caves had been dormant for decades). In the best-selling novel, *The No. 1 Ladies' Detective Agency*, the protagonist, Precious Ramotswe, investigates a boy's death. The death proves to be the result of witchcraft but Precious is fearful of turning to the police for help because some of the country's most prominent people believe in witchcraft.⁴⁵ Anthropologists have observed that witchcraft accusations are most active when poverty is endemic.⁴⁶

What is new is the accusations against children. Children are generally accused of witchcraft by two different groups: churches or the families of the children themselves. The increasing number of "revivalist" or "revelation" churches has coincided with the increasing numbers of "ndokis" or sorcerers. These new churches are not affiliated with larger religious movements which might provide oversight, and are generally started by preachers based on mystical

⁴¹ Because my experience is with the Congo, I will focus on reports from that country. For similar accounts from Angola, see Paul Salopek, *Children in Angola Tortured as Witches*, CHI. TRIB. Mar. 28, 2004, at C1; CHILD NETWORK, SUPPLEMENTARY REPORT BY NGOS ON THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD 11 (2004), http://www.crin.org/docs/resources/treaties/crc.37/Angola_ngo_report.pdf.

⁴² E.g., Jean Comaroff & John Comaroff, *Occult Economies and the Violence of Abstraction: Notes from the South African Postcolony*, 26 AM. ETHNOLOGIST 279 (1999); MAX GLUCKMAN, *CUSTOM AND CONFLICT IN AFRICA* (1966); Henrietta L. Moore & Todd Sanders, *Magical Interpretations and Material Realities: An Introduction*, in *MAGICAL INTERPRETATIONS, MATERIAL REALITIES: MODERNITY, WITCHCRAFT AND THE OCCULT IN POSTCOLONIAL AFRICA* 1, 3 (Henrietta L. Moore & Todd Sanders eds., 2001).

⁴³ Mohammed A. Diwan, *Conflict Between State Legal Norms and Norms Underlying Popular Beliefs: Witchcraft in Africa as a Case Study*, 14 DUKE J. COMP. & INT'L L. 351, 354-55 (2004).

⁴⁴ See Peter Geschiere, *Globalization and the Power of Indeterminate Meaning: Witchcraft and Spirit Cults in Africa and East Asia*, in *GLOBALIZATION AND IDENTITY: DIALECTS OF FLOW AND CLOSURE* 211, 221 (Birgit Meyer & Peter Geschiere, eds., 2001) (discussing traditional and modern "ngangas" in Cameroon).

⁴⁵ ALEXANDER MCCALL SMITH, *THE NO. 1 LADIES DETECTIVE AGENCY* 176 (2002).

⁴⁶ See Comaroff & Comaroff, *supra* note 42, at 288.

revelations.⁴⁷ The pastors generally believe that they have received a spiritual gift to understand these children, and have received a divine call. As one reporter noted, "[t]he pastors all proclaim evangelical Protestantism, though all seven churches that I visited were devoid of even one common Christian religious symbol, and promise 'deliverance,' the new name for exorcism."⁴⁸

Children may be labeled as sorcerers by the preachers themselves, who blame the failure of their prophecies on interference by a child sorcerer, or who, in attempting to explain a family's misfortune, blame a child. In doing so, they carefully choose a victim who is essentially powerless to fight against the church leader. For example, one woman visited a preacher for an explanation of why one of her daughters had experienced a miscarriage. In discussing the situation with another daughter, the girl allegedly confessed that it was her fault.⁴⁹

Families facing disruption also may scapegoat a child and use the revivalist churches in this effort.⁵⁰ As families move to the city, because they are displaced by conflict or poverty, their support structures are inevitably weakened. Divorce is easier in the somewhat more anonymous city, and polygamy (with earlier wives still living in the same home or not) is common.⁵¹ In one study in eastern Congo of 305 children, a psychologist found that virtually all (99%) "lived at home without their mothers, came from separated families, and were accused of witchcraft by the second wife who was trying to get rid of the child."⁵² In other cases, where the parents are dead or have been displaced by conflict, the child lives with other relatives who subsequently expel the child.

Because accusations of child witchcraft are normally sparked by a disruption in the family, a particular child may be singled out as an extra burden and accused as the cause of this disruption. If the child acts "abnormal" in any way (such as bed wetting or hyperactivity), then this can be interpreted as a sign that the child is a sorcerer.⁵³ Excuses like witchcraft are thus used as a means of ridding the family of unwanted children.⁵⁴ While families are able to use churches to rid themselves

⁴⁷ LYNN CRIPE ET AL., ABANDONMENT AND SEPARATION OF CHILDREN IN THE DEMOCRATIC REPUBLIC OF THE CONGO 16 (2002), http://www.dec.org/pdf_docs/pnacr086.pdf.

⁴⁸ Paul Hetherington, *Society Torn to Pieces*, MORNING STAR, July 7, 2003, at 7.

⁴⁹ Personal confidential communication to the author, May 2005.

⁵⁰ Child protection workers in the Congo blame the churches and family disruption for the increasing numbers of ndokis. *Congo-Kinshasa: Superstition Fuels Reports of Child Witches*, AFR. NEWS, Oct. 30, 2003 (citing Javier Aguila Molina, who works in Kinshasa with Save the Children [and whom I know]).

⁵¹ CRIPE, *supra* note 47, at 17.

⁵² *Id.*

⁵³ Email from Mary-Louise Eagleton, February 15, 2006; Javier Aguilar Molina, *Working with Separated Children and Children Victims of Violence in an Urban Environment: Save the Children's Experience in the Democratic Republic of Congo* 4 (March 2005) (on file with author).

⁵⁴ Raymond Thibodaux, *Child "Witches" Roam Congo's Capital: Kin Cite Evil Spirits as Poverty Spurs Desertions*, ATLANTA J. CONST., Nov. 16, 2003, at B6 (quoting Trish Hiddleston from UNICEF).

of these children, the parents do exhibit a genuine belief in the witchcraft. Parents explain that they bring their children to revivalist pastors because of their religious convictions and their faith in the pastors' ability to interpret the mystical world.

Following an accusation of witchcraft, children are often placed under the "care" of the pastor, who typically demands a sizeable payment for the exorcism. The exorcism can be a devastating experience, complete with beatings, starvation, and scalding.⁵⁵

Interestingly enough, while it seems utterly appropriate to condemn the "pastors" for their cruelty, it may be the pastors themselves who can help resolve the problem.⁵⁶ Some pastors engage in exorcisms without violence or physical harm to the child. Save the Children works with these "good" pastors to help change the behavior of other pastors who are practicing abusive exorcisms.⁵⁷ Because exorcism is an accepted part of some traditional African religions—and in those circumstances it has generally been implemented without violence⁵⁸—it can be used in a healing, peaceful manner.

III. NEUROSCIENCE

Both child soldiers and child sorcerers range in age from about six or seven to seventeen, and thus, while they are legally children, some of them are also experiencing adolescence. Children are especially vulnerable to family dynamics, in the case of the sorcerers, and to risk-taking behavior, in the case of soldiers, a vulnerability that has been confirmed by neuroscience. Studies on children's brains actually confirm much of how we already conceptualize children's rights: juveniles are not as responsible, nor mature as adults, although they are capable of rational decision making. The neuroscientific research on children supports existing approaches that acknowledge children's vulnerability and dependence on others, but may also suggest alternative approaches that provide for increasingly expedited and intensive interventions. This research can help us focus on which legal and social solutions will be most effective.

A. *The Research*

Although the study of adolescents has generally been seen as the study of either adult children or childish adults, there is a growing recognition that

⁵⁵ CRIPE ET AL., *supra* note 47, at 16.

⁵⁶ Diane Chesla, *D R Congo: Review of "Children, the Occult and the Street in Kinshasa,"* Feb. 2003, http://www.newsfromafrica.org/newsfromafrica/articles/art_537.html (review of lecture by Filip DeBoeck).

⁵⁷ Eagleton, *supra* note 53; Molina, *supra* note 53, at 14.

⁵⁸ Antoine Roger Lonkogo, *Beyond Belief*, NEWS AFR., <http://www.newsafrika.net/articles.php?action=view&id=325> (last visited Mar. 8, 2006).

adolescence is a defined developmental period.⁵⁹ Even within adolescence, there are varying levels of maturity and understanding, with eleven to thirteen year olds showing significantly poorer reasoning skills than sixteen to seventeen year olds.⁶⁰ Yet there is a general consensus, supported by neuroscientific research, as discussed by many other papers in this conference, that teenage brains respond differently to stimuli than do adult brains.⁶¹ Teenagers are more likely to be susceptible to influence from adults and peers, to engage in more dangerous risk-taking behavior, and to have less appreciation for long-term, rather than short-term outcomes.⁶²

1. Teenagers and Risk

Understanding how adolescent brains function provides insight into their actions. What makes a juvenile commit delinquent behavior is undoubtedly similar to what makes juveniles become prime recruits as soldiers. The developmental immaturity of U.S. adolescents helps explain why juvenile criminal behavior is different than adult criminal behavior, and why most juvenile delinquents do not become adult criminals.⁶³ Studies of juveniles from developed countries, which are based on neurological imaging, can be helpful to our understandings of juveniles in other countries and contexts.

In an important experiment by Abigail Baird and Jonathan Fugelsang, adults and teenagers were asked to decide if a particular scenario, such as eating a salad, was dangerous.⁶⁴ The parts of the brain that lit up were different; for adults, the rapid, automatic response part of the brain lit up, while for teenagers, the part of the brain that was associated with reasoning and judgment reacted. The authors explain that, contrary to one's initial assumptions, reflection by teenagers on the nature of a dangerous scenario did not indicate a higher level of maturity than

⁵⁹ Laurence Steinberg et al., *The Study of Developmental Psychopathology in Adolescence: Integrating Affective Neuroscience with the Study of Context*, in HANDBOOK OF DEVELOPMENTAL PSYCHOPATHOLOGY 1, 6–7 (D. Cicchetti ed., 2004), available at <http://www.nyas.org/ebriefreps/ebrief/000219/archives/DevelopmentalHandbook.pdf>.

⁶⁰ ELIZABETH S. SCOTT & THOMAS GRISSO, DEVELOPMENT INCOMPETENCE, DUE PROCESS AND JUVENILE JUSTICE POLICY 32–33 (2004), available at http://law.bepress.com/uvalwps/uva_publiclaw/art11.

⁶¹ Staci A. Gruber & Deborah A. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?*, 3 OHIO ST. J. OF CRIM. L. 321 (2006); James H. Fallon, *Neuroanatomical Background to Understanding the Brain of the Young Psychopath*, 3 OHIO ST. J. OF CRIM. L. 341 (2006).

⁶² See SCOTT & GRISSO, *supra* note 60, at 24–25.

⁶³ Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1015 (2003).

⁶⁴ Helen Phillips, *Teenagers Fail to See Consequences*, NEW SCIENTIST, Dec. 10, 2004, <http://www.newscientist.com/article.ns?id=dn6738> (last visited Mar. 8, 2006).

adults. Instead, the authors suggest, decisions about relatively dangerous scenarios should be almost instantaneous, rather than requiring reflection.

Adolescents may be more likely to engage in risky behavior because their brains are insufficiently developed to engage in counterfactual reasoning, that is, reasoning that requires imagining an alternative outcome based on a change in a critical earlier event.⁶⁵ In some ways, this argues for harsher penalties for juveniles because the consequences should be particularly severe so that they reflect on their actions more fully. On the other hand, the “growing evidence that patterns of brain change in adolescence are susceptible to environmental influence suggests that contextual factors undoubtedly play an important role in accounting for individual differences in patterns of normative and atypical development.”⁶⁶ Thus, because the brains of juveniles themselves are changing, juveniles are in a constant state of change. This argues for demobilizing children and rehabilitating child “sorcerers” as soon as feasible so that they can live in safer, less risky environments that will exert positive influences.

2. The Effect of Abuse and Neglect

Neuroscience explicates more fully the impact on children, such as child soldiers and sorcerers, when they are forced to leave their homes and families. Various studies show that early abuse and neglect can change the structure of children’s brains; the correlation between abuse and neglect and subsequent delinquent behavior has both a psychological and neurobiological explanation. Abused children are much more likely to develop psychological problems.⁶⁷ Martin Teicher suggests that human brains have adapted to experience and that experiences of abuse result in traits such as “the potential to mobilize an intense fight-or-flight response, to react aggressively to challenge without undue hesitation, to be at heightened alert for danger”⁶⁸

When children are abused or neglected, their brains may develop so that they overreact to situations that are threatening so that delinquent behavior results from the brain using these early lessons of fear to defend itself.⁶⁹ The neural pathways in abused and neglected children are those that prepare the child to cope with and respond to stressful, negative environments, while non-abused children are prepared to respond to more positive stimuli.⁷⁰ Earlier intervention results in

⁶⁵ Abigail A. Baird & Jonathan A. Fugelsang, *The Emergence of Consequential Thought: Evidence from Neuroscience*, 359 PHIL. TRANSACTIONS ROYAL SOC’Y B. 1797, 1802 (2004).

⁶⁶ Steinberg et al., *supra* note 59, at 16.

⁶⁷ Martin Teicher, *Scars that Won’t Heal: The Neurobiology of Child Abuse*, 286 SCI. AM. 68 (2002).

⁶⁸ *Id.* at 75.

⁶⁹ Henry R. Cellini, *Child Abuse, Neglect, and Delinquency: The Neurological Link*, 55 JUV. & FAM. CT. J. 1, 3 (2004).

⁷⁰ *Id.* at 6.

greater improvement to cognitive development.⁷¹ Notwithstanding this correlation, however, the neurobiological research still cannot predict how any specific abused child will react as she grows older.⁷² Early experiences of abandonment, conflict and starvation must have similar effects on children's brains. New studies have suggested that children may be biologically primed to create close attachments with other people and that without these connections, children may be more likely to experience depression and substance abuse.⁷³

3. Nature, Nurture, and the Brain

Brain development is mediated by experiences.⁷⁴ Some conditions, like addiction or depression, may involve both an initial predisposition governed by genes, and a priming of the underlying neurotransmitters by particular stresses or events. Neuroscientists suggest that environmental influences act in two ways to affect adolescent development. Initially, when children are exposed to normal stimuli, their brains develop normally; but when they are exposed to alternative stimuli, then their brains adapt to those experiences (for example, the part of the brain cortex that controls fingers on the left hand is larger for professional violin players).⁷⁵ As Laurence Steinberg points out, girls who reach physical maturity early are generally at a higher risk for developing emotional and behavioral problems, yet this risk can be influenced by the girl's family, school, culture, and peers.⁷⁶ A recent study concluded that IQ variations have different explanations depending on socioeconomic status.⁷⁷ IQ variations in children from lower socioeconomic groups are only marginally related to genes, while sixty percent results from their environment.⁷⁸ By contrast, sixty percent of the IQ variations in

⁷¹ *Id.* at 12.

⁷² *Id.*

⁷³ INSTITUTE FOR AMERICAN VALUES, *HARDWIRED TO CONNECT: THE NEW SCIENTIFIC CASE FOR AUTHORITARIAN COMMUNITIES* (2005).

⁷⁴ See, e.g., MATT RIDLEY, *NATURE VIA NURTURE: GENES, EXPERIENCE, & WHAT MAKES US HUMAN* 268–69 (2003); see also Owen D. Jones, *Evolutionary Analysis in Law: An Introduction and Application to Child Abuse*, 75 N.C. L. REV. 1117 (1997) (asking whether a particular behavior is the product of nature, genetic influences, or of nurture, environmental influences, is like asking whether the area of a field is determined by its length or by its width).

⁷⁵ BARBARA STRAUCH, *THE PRIMAL TEEN* 40 (2003) (reporting on work of William Greenough); see also C. A. Nelson, *Neural Plasticity and Human Development: The Role of Early Experience in Sculpting Memory Systems*, 3 DEVELOPMENTAL SCI. 115, 115–30 (2000).

⁷⁶ Steinberg et al., *supra* note 59, at 36 (the risk is greatest “in families that expose the adolescent to stressful life events, in school in which older boys are present, in communities in which students are especially body-conscious, and in cultures that place a premium on thinness”).

⁷⁷ Kimberly G. Noble et al., *Neuroscience Perspectives on Disparities in School Readiness and Cognitive Achievement*, 15 FUTURE CHILD. 71, 81 (2005), available at http://www.futureofchildren.org/usr_doc/pg_71_noble.pdf (quoting Eric Turkheimer et al., *Socioeconomic Status Modifies Heritability of IQ in Young Children*, 14 PSYCHOL. SCI. 6 (2003)).

⁷⁸ *Id.*

children of higher socioeconomic status can be explained by genes rather than environment.⁷⁹ (In other words, the importance of environmental influences on IQ is four times stronger in poor families than in wealthier families). Children who live in poverty, like those who are the subject of this article, are thus highly susceptible to their environmental context.

Another example involves the genetic link to criminality. One large study found that:

[B]eing adopted from an honest family into an honest family produced a child with a 13.5 percent probability of getting into trouble with the law; that figure increased only marginally, to 14.7 percent, if the adopting family included criminals. Being adopted from criminal parents to an honest family, however, caused the probability to jump to 20 percent. Where both adopting and biological parents were criminals, the rate was even higher—24.5 percent.⁸⁰

So, regardless of maturation of the brain, criminal behavior may have some genetic component as well. This leads to a critical question, given that the maturation process progresses similarly in most adolescents, what is different for those who commit violent acts? Taken together, these studies show that experience can have a significant impact on the developing brains of adolescents; the key is developing the appropriate experiences. Moreover, as the Supreme Court concluded in *Roper v. Simmons*, based on scientific studies, juveniles are more susceptible to peer influence.⁸¹

Studies of twins through the relatively new science of epigenetics have shown that environmental influences play a role in gene alteration. Epigenetics is the study of heritable changes in gene function that occur without any changes in the DNA sequence.⁸² Identical twins have the same DNA sequences at birth but

⁷⁹ The heritability of IQ is the degree to which genes can explain the differences in IQ scores.

⁸⁰ RIDLEY, *supra* note 74, at 253.

⁸¹ *Roper v. Simmons*, 543 U.S. 551, 568–70 (2005).

⁸² Genes carry the blueprints to make proteins in the cell Every cell in the body has the same genetic information; what makes cells, tissues and organs different is that different sets of genes are turned on or expressed.

Because they change how genes can interact with the cell's transcribing machinery, epigenetic modifications, or "marks," generally turn genes on or off, allowing or preventing the gene from being used to make a protein. On the other hand, mutations and bigger changes in the DNA sequence (like insertions or deletions) change not only the sequence of the DNA and RNA, but may affect the sequence of the protein as well

Backgrounder: Epigenetics and Inherited Genes, Nov. 15, 2002, <http://www.hopkinsmedicine.org/press/2002/November/epigenetics.htm>. But just as changes in DNA sequences can cause diseases such as cancer, gain or loss of epigenetic marks can, too. *Id.* The most significant forms of epigenetic change result from DNA methylation and histone (protein) processes. RT, Epigenetics, <http://www.wellcome.ac.uk/en/genome/thegenome/hg02b002.html>. The process of DNA methylation involves a chemical change to the DNA molecule. *Id.*

researchers have found that epigenetic profiles of twins who have been raised apart or who have had comparatively few of the same life experiences differ more than do the epigenetic profiles of twins who have experienced similar environments.⁸³ Consequently, environmental influences, ranging from diet to traumatic stress, may cause permanent alterations to a child's DNA.

B. *What Difference Does Neuroscience Make?*

In some ways, these new studies make no difference whatsoever; we have always known that childhood experiences have lifelong effects, and the new research simply supports this. The law has not historically depended on brain science.⁸⁴ On the other hand, the new research provides hard, biological support for the impact of these experiences and provides promising technologies that help in the administration of justice.⁸⁵ Biology helps us ask the right questions about influencing adolescent development and the malleability of human behavior and inclinations, thus providing an enticing response for grounding political and social approaches. The modern study of neuroscience offers the prospect of identifying more specific causes, rather than more speculative correlations.⁸⁶ It may be possible to show, for example, that a given brain chemistry corresponds to given gene sequences, and that this brain chemistry correlates with more feelings of responsibility, remorse or depression and feelings about lack of self-worth.⁸⁷ It also may be possible to show that given behaviors are associated with specific brain structures.⁸⁸ This is already happening in the United States with respect to

⁸³ Mario F. Fraga et al., *Epigenetic Differences Arise during the Lifetime of Monozygotic Twins*, 102 PROC. NAT'L ACAD. SCI. 10604, 10609 (2005) (The researchers found that epigenetic markers were "more distinct" in twins "who were older, had different lifestyles, and had spent less of their lives together, underlining the significant role of environmental factors in translating a common genotype into a different phenotype"); see Rick Weiss, *Twin Data Highlight Genetic Changes: Minor Differences Increase with Age*, WASH. POST, July 5, 2005, at A2.

⁸⁴ See Joshua Greene & Jonathan Cohen, *For the Law, Neuroscience Changes Nothing and Everything*, 359 PHIL. TRANSACTIONS ROYAL SOC'Y B 1775 (2004). They argue, however, that neuroscience has significant implications for the intuitive sense of justice that guides legal principles.

⁸⁵ See Erin O'Hara, *How Neuroscience Might Advance the Law*, 339 PHIL. TRANSACTIONS ROYAL SOC'Y B 1677 (2004); Owen Jones & Timothy Goldsmith, *Law and Behavioral Biology*, 105 COLUM. L. REV. 405, 459-65 (2005).

⁸⁶ See June Carbone & Naomi Cahn, *The Biological Basis of Commitment: Does One Size Fit All?*, 25 WOMEN'S RTS. L. REP. 223, 224 (2004).

⁸⁷ See Oliver R. Goodenough & Kristin Prehn, *A Neuroscientific Approach to Normative Judgment in Law and Justice*, 359 PHIL. TRANSACTIONS ROYAL SOC. LONDON B. 1709, 1720 (2004) (suggesting that improved neuroscientific understandings of emotion in cognitive decision-making can help in applying Federal Rule of Evidence 403, which excludes prejudicial, but probative evidence).

⁸⁸ Greene & Cohen, *supra* note 84, at 1779 ("Studying the adolescent brain is a highly *indirect* way of figuring out whether adolescents in general are rational. Indeed, the only way we neuroscientists can tell if a brain structure is important for rational judgment is to see if its activity or damage is correlated with (ir)rational *behavior*.").

attention deficit disorder (ADD). More than eighty percent of the users of Ritalin (or similar drugs) are boys, and CAT scans are capable of showing whether the ADD diagnosis is accurate or whether the boys would be better served by other forms of intervention.⁸⁹

Returning to the issues discussed in this article, if poverty is associated with children's susceptibility to soldier recruitment, are some children more resilient and less likely to be recruited? What is their brain structure? What chemicals are released in response to different stimuli? If some children cast out of their homes find new homes and restructure their lives, while others simply move to the streets, what (if anything) is different in their brains, and how can chemical or behavioral interventions influence their actions and reunification?⁹⁰

The implications of these discoveries are staggering. The most far reaching is the possibility that we can not only identify the biological roots of behavior, but change them through a combination of behavior modification and chemical interventions. Behavioral biology can, for example, aid in understanding the relationship between the occurrence of specific crimes and variations in the penalties for those crimes; in the future, it may be possible to calibrate penalties to encourage socially responsible behavior through neuroscientific imaging.⁹¹ Neuroscience can affect the manner in which we choose to punish child soldiers, or to the way in which we address the problems of children accused of sorcery. Neuroscience also provides insights into methods for helping children respond to these experiences so that they can become reintegrated into their families and communities. Yet these insights, powerful though they may be, will probably support existing criminal justice and rehabilitation programs which have treated juveniles differently from adults. The next section considers possible responses and how the new scientific studies might affect those responses.

IV. JUSTICE RESPONSES

In thinking about how to manage these phenomena, many of us are tempted to take a simple, direct approach: for child witches, we should prosecute the pastors, perhaps the relevant family members, and place the children into the abuse and

⁸⁹ MICHAEL GURIAN & KATHY STEVENS, *THE MINDS OF BOYS: SAVING OUR SONS FROM FALLING BEHIND IN SCHOOL AND LIFE* 22, 226–27 (2005).

⁹⁰ One could also ask if there are variations in brain structures that explain why family members are willing to believe that children have such power over them, or why some military commanders use child soldiers. Again, it is important to remember that cultural variables are also at play here.

⁹¹ See Jones & Goldsmith, *supra* note 85, at 460.

As Professor O'Hara notes, "if the law responds very dramatically to the problem, it risks triggering a fear response in potential defendants, and the law risks over deterring socially useful conduct in its efforts to promote care. . . . Any nuanced neuroscientific understanding of how legal responses might catch the attention of potential injurers without causing significant reaction in the amygdala could prove enormously helpful" O'Hara, *supra* note 85, at 1682.

neglect system of foster families. For child soldiers, we should prosecute the army commanders for recruiting children as well as for the crimes committed by their subordinates pursuant to the doctrine of command responsibility.⁹² We may even consider prosecuting the child soldiers, but provide for their rehabilitation. But given the particular vulnerability of children, the importance of assuring that children are reunified with their families in both cases, and a dysfunctional justice system, these may not be the appropriate responses. As this section discusses, traditional legal responses within the civil and criminal systems provide partial solutions to the problems of child soldiers and child witches. With the addition of neurological information, however, it is clear that the legal system must have a broader response.

A. Civil and Criminal Law

Law is critical to defining the illegality of the conduct, to holding accountable those who recruit child soldiers and the child soldiers themselves, and to protecting children from the excesses of exorcism ceremonies. There are multiple aspects of international law which are concerned with protecting children. The Rome Statute of the International Criminal Court (ICC) defines the recruitment of children under the age of fifteen as a war crime and provides for prosecution and punishment of offenders, and the ILO labels the forced recruitment of anyone under age eighteen for use in armed conflict as one of the worst forms of child labor.⁹³ In 2003, the Prosecutor of the Special Court for Sierra Leone, which has a similar jurisdictional statute to the ICC, issued its first indictments.⁹⁴ The Court's charges included recruiting children under the age of fifteen to participate in armed conflict (this was one of the charges in the indictment of former Liberian President Charles Taylor).⁹⁵ When the indictees challenged the classification of child recruitment as a war crime, rather than a crime of individual responsibility, the Special Court upheld the indictment.⁹⁶

⁹² For an overview of command responsibility in the context of gender-based crimes, see Sherrie Russell-Brown, *The Last Line of Defense: The Doctrine of Command Responsibility and Gender Crimes in Armed Conflict*, 22 WIS. INT'L. L.J. 125, 136–38 (2004).

⁹³ Rome Statute of the International Criminal Court, July 17, 1998, art. 8 2(b)(xxvi), 2187 U.N.T.S. 90.

⁹⁴ COAL. TO STOP THE USE OF CHILD SOLDIERS, CHILD SOLDIERS GLOBAL REPORT 25 (2004) (section on prosecution), http://www.child-soldiers.org/document_get.php?id=966.

⁹⁵ Jo Becker, *Child Soldiers: Changing a Culture of Violence*, HUM. RTS., Winter 2005, at 16, 18 (2005).

⁹⁶ PRESS RELEASE, COAL. TO STOP THE USE OF CHILD SOLDIERS, SIERRA LEONE: SPECIAL COURT AFFIRMS CHILD SOLDIER RECRUITMENT IS A CRIME (2004), <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SZIE-5ZJPVT?OpenDocument>.

The African Charter on the Rights and Welfare of the Child similarly requires that signatories prevent the recruitment of children under the age of eighteen.⁹⁷ The Convention on the Rights of the Child requires that governments implement measures to prevent children from being maltreated, including being subject to “mental violence.”⁹⁸ A recurring theme among NGOs and scholars is the need for increased ratification of the Optional Protocol to the Convention on the Rights of the Child, which requires signatories to set the minimum age of conscription at eighteen and ensure that under-age volunteers do not participate in direct hostilities. However, the ratification of the Optional Protocol does not always result in the cessation of child recruitment, as demonstrated in the Democratic Republic of Congo and Uganda which experience ongoing child recruitment.⁹⁹ The force of universal ratification is further undermined when considering that the near-universal ratification of the Convention (without the Optional Protocol) has hardly resulted in an increased standard of living for children or a greater recognition of rights by governments worldwide.

The national justice response to the situation of child witches illustrates a variety of approaches for protecting children. A few countries have statutes specifically regulating witchcraft. In South Africa and Zimbabwe, it is illegal to accuse someone of witchcraft. In Cameroon, Tanzania, and a few other countries, it is illegal to practice witchcraft.¹⁰⁰ One of the first legislative acts undertaken by the African National Congress in South Africa was to appoint a commission of inquiry into witchcraft;¹⁰¹ this, in turn, echoed the Suppression of Witchcraft Act No. 3 of 1957, which provided fines, whipping, and/or imprisonment for anyone who accused someone of being a witch or who practiced witchcraft.¹⁰² These statutes have not ended beliefs in, and accusations of, witchcraft, but they do offer official, if ineffective, sanctions.

Responses in other countries involve the child protective services system. In June, 2005, in London, two women and one man were convicted of abusing an eight-year-old Angolan child, whom the adults had accused of being a witch.¹⁰³

⁹⁷ The African Charter on the Rights and Welfare of the Child, July 11, 1990, art. 22, available at <http://www.africa-union.org/home/Welcome.htm> (follow “Official Documents” hyperlink; then follow “Treaties, Conventions, & Protocols” hyperlink; then follow “African Charter on the Rights and Welfare of the Child” hyperlink).

⁹⁸ Convention on the Rights of the Child, Nov. 20, 1989, art. 19(1), 1577 U.N.T.S. 43.

⁹⁹ See COAL. TO STOP THE USE OF CHILD SOLDIERS, *supra* note 96, at 26 (“A failure of will”).

¹⁰⁰ Diwan, *supra* note 43, at 352–53. “Whoever commits any act of witchcraft, magic or divination liable to disturb public order or tranquility . . . shall be punished with imprisonment . . . and with a fine . . .” *Id.* at 353 (citing Cameroon Penal Code §251).

¹⁰¹ Comaroff & Comaroff, *supra* note 42, at 282 (citing Ralushai report).

¹⁰² Isak Niehaus, *Witchcraft in the new South Africa: From Colonial Superstition to Postcolonial Reality?*, in *MAGICAL INTERPRETATIONS, MATERIAL REALITIES*, *supra* note 42, at 184, 186. There were even earlier witchcraft ordinances in the 1920s. *Id.* at 187.

¹⁰³ Andrew Alderson & Chris Johnston, *Dozens of African Children Beaten, Abused and Accused of Witchcraft, Say Detectives*, SUNDAY TELEGRAPH, June 5, 2005, at 6. Even after her

There are home-made "'deliverance' videos" on sale in London that show how children have been exorcised.¹⁰⁴ The British response has involved not just criminal prosecutions and child safety, but also a special Scotland Yard investigation of ritual, faith-based child abuse named "Project Violet"¹⁰⁵ and a summit on the problem called by the Home Office.¹⁰⁶

In the United States, there are estimates that, of the 1.3 million runaway youths, almost forty percent reported that they had been emotionally abused, and forty-six percent physically abused, by a family member.¹⁰⁷ Professor Gregory Loken argues that it is a "shockingly common" event even in the United States for parents to abandon or even exile their children.¹⁰⁸ The federal government has responded to this problem through legislation designed to provide emergency shelters, health care, transitional housing, employment training, education, and counseling.¹⁰⁹ In addition, to the extent that homelessness results from abuse and neglect, the civil and criminal child protection systems provide help to children and punishment for parents.¹¹⁰

The responses to abandoned and homeless children in the United States and England are not necessarily exemplary,¹¹¹ and certainly have significant problems, particularly with respect to older adolescents.¹¹² But they represent organized

conviction, one of the women—the child's aunt—persisted in her belief that the child was "kindoki." *Id.*

¹⁰⁴ Anthony France & Martin Phillips, 'Witch' Kids Abused in the Name of God, *THE SUN*, June 22, 2005, <http://www.thesun.co.uk/>.

¹⁰⁵ *See id.*; Alderson & Johnston, *supra* note 103.

¹⁰⁶ Andrew Woodcock, *Summit to Debate Ritual Exorcism Child Abuse*, *PRESS ASS'N*, July 11, 2005. The meeting involved community groups as well as governmental agencies concerned with abuse and neglect.

¹⁰⁷ John Wong et al., *The McKinney-Vento Homeless Assistance Act—Education for Homeless Children and Youths Program: Turning Good Law into Effective Education*, 11 *GEO. J. ON POVERTY L. & POL'Y* 283, 289 (2004).

¹⁰⁸ Gregory Loken, "Thrownaway" Children and Throwaway Parenthood, 68 *TEMP. L. REV.* 1715, 1718 (1995). He reports that most of these children come from single parent households and that the families are "frequently near breakdown." *Id.* at 1736–38.

¹⁰⁹ Wong et al., *supra* note 107, at 292–93.

¹¹⁰ *See, e.g.*, Naomi Cahn, *Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 *OHIO ST. L.J.* 1189, 1196 (1999).

¹¹¹ For a critique of the dominance of United States visions of human rights, see Deborah Weissman, *The Human Rights Dilemma: Rethinking the Humanitarian Project*, 35 *COLUM. HUM. RTS. L. REV.* 259, 295–314 (2004).

¹¹² *See, e.g.*, DOROTHY ROBERTS, *SHATTERED BONDS* (2002); Sarah Ramsey, *Fixing Foster Care or Reducing Child Poverty: The Pew Commission Recommendations and the Transracial Adoption Debate*, 66 *MONT. L. REV.* 22, 32 (2005); Loken, *supra* note 108, at 1756–57 (recommending changes in the law and funding to allow abandoned children to receive the support they need). Professor Loken notes that many adolescents who have been forced to leave their homes cannot access the long-term foster care system, but are instead placed in runaway shelters; that parents are not penalized for exiling their children; and that community members who help a thrown away child may face tort or criminal sanctions for doing so. *Id.* at 1751–56.

attempts by the legislative, executive, and judicial branches of government to take ameliorative actions after officially recognizing and investigating the issues involving protection of children from their families.

Such “rule of law” is highly questionable in transitional countries, which have none of the basic institutions that can help to establish and enforce the law. Even though these countries have generally ratified the relevant international documents, enforcing them is an altogether different matter. If the relevant laws are actually written—and these countries generally must develop more modern child protection legislation—the law as it appears in the courts can differ dramatically from the law on the streets.¹¹³ Throughout the reports on child soldiers and child witches is an acknowledgement of the lack of local authority to prevent the violence, and, as discussed earlier, the inability of the existing judicial system to adequately process the cases. Recourse to international law documents may provide some comfort to the international community, but may not directly serve the interests of the children themselves.¹¹⁴

The next sections examine a new kind of justice that goes beyond traditional civil and criminal responses, and provides the framework for responding to “poor children.” The article then turns to the particular needs of child soldiers and child witches before identifying cross-cutting issues that must be addressed in both contexts.

B. Social Services Justice

Criminal and restorative justice solutions provide significant responses, but they remain incomplete. A third kind of justice involves responding to the social, economic, and medical needs of the children. This alternative vision of justice is multisectoral,¹¹⁵ involving governments, families, communities, NGOs, and the children themselves. It is not simply focused on perpetrators, or on guilt or innocence, but on the actual circumstances in which children find themselves.

Establishing the procedures for restorative justice or for holding civil and criminal trials is time-consuming. Before these forms of justice arrive, children

¹¹³ This is certainly true in the Congo. See Stuart Cohn, *Teaching in a Developing Country: Mistakes Made and Lessons Learned in Uganda*, 48 J. LEGAL EDUC. 101 (1998). In preparing to teach a course on securities markets in Uganda, Professor Cohn discovered that “[n]othing existed except the laws, a Capital Markets Authority that had no capital markets to regulate, and a stock exchange devoid of stock.” *Id.* at 104. His advice to other teachers developing similar courses is not to assume that their students know the law. In Uganda, for example, copies of relevant statutes were simply not available in the numbers necessary for teaching in the classroom. *Id.* at 108.

¹¹⁴ Cf. Weissman, *supra* note 111, at 265 (“[I]t is also important to consider how ‘doing something’ may serve the national interests of the rescuer more than the interest of the victims.”).

¹¹⁵ REPROD. HEALTH RESPONSE IN CONFLICT CONSORTIUM, GENDER-BASED VIOLENCE TOOLS MANUAL FOR ASSESSMENT & PROGRAM DESIGN, MONITORING & EVALUATION IN CONFLICT-AFFECTED SETTINGS 37 (2004), http://www.rhrc.org/resources/gbv/gbv_tools/manual_toc.html (follow “Assessment Tools – II” link); Cahn, *supra* note 10, at 247.

may have grown up without an education. Social services justice focuses on the consequences and effects of a crime, such as those committed by the soldiers, their superiors, or the families and religious leaders responsible for the sorcery accusations. The social services may be provided by the community, the government, non-governmental organizations, multilateral institutions, or other donors. To achieve this justice requires a multisectoral approach that involves the community as well as health, legal, security, and social services actors.¹¹⁶

This is the fourth side of the pyramid base for children—the involvement of civil society actors, locally, nationally, and internationally, who can act on behalf of groups of children. For children whose education has been interrupted because their parents fear they will be attacked if they attend school,¹¹⁷ community watch committees can escort them to school. As such, social services justice refers to the range of potential services (social, economic, medical) that can be provided to victims, both short and long term, which go beyond attempts to measure the specific losses caused by the violence.

Going beyond traditional criminal and civil remedies provides a basis for responding to the particular situations of the soldiers and the sorcerers. This section discusses appropriate responses to each, drawing not just on various concepts of justice, but also on various levels of response from governments and non-governmental organizations.

C. Appropriate Responses to Child Soldiers

Two different sets of groups have focused on the issues of child soldiers. Some, such as Amnesty International, are primarily concerned with justice system responses, such as using the International Criminal Court, enforcement of the Convention on the Rights of the Child,¹¹⁸ or the United Nations. In February 2005, the United Nations in an effort to promote compliance with international standards concerning child soldiers issued a report on children and armed conflict that recommended monitoring and publicizing the armed forces which use children.¹¹⁹

¹¹⁶ See JEANNE WARD, IF NOT NOW, WHEN? ADDRESSING GENDER-BASED VIOLENCE IN REFUGEE, INTERNALLY DISPLACED, AND POST CONFLICT SETTINGS A GLOBAL OVERVIEW 11 (2002), available at <http://www.rhrc.org/pdf/gbvintro.pdf> ("best practices" for gender-based violence is now recognized as a "multisectoral model" which includes a variety of individuals, including teachers, traditional birth attendants, nurses, micro-credit banks, judges, police, and other military).

¹¹⁷ MARION PRATT & LEAH WERCHICK, U.S. AGENCY FOR INT'L DEV./BUREAU FOR DEMOCRACY, CONFLICT AND HUMANITARIAN ASSISTANCE ASSESSMENT REPORT: SEXUAL TERRORISM: RAPE AS A WEAPON OF WAR IN EASTERN DEMOCRATIC REPUBLIC OF CONGO 13 (2004), available at <http://www.peacewomen.org/resources/DRC/USAIDDCHADRC.pdf>.

¹¹⁸ E.g., AMNESTY INT'L, DEMOCRATIC REPUBLIC OF CONGO: CHILDREN AT WAR 36–37, 39–43, 49 (2003), <http://web.amnesty.org/library/Index/ENGAFR620342003?open&of=ENG-RWA>.

¹¹⁹ The Secretary-General, *Children and Armed Conflict: Report of the Secretary-General*, ¶ 65, delivered to the Security Council and the General Assembly, U.N. DOC. S/2005/72, A/59/695 (Feb. 2, 2005).

Other groups, such as Save the Children, focus on the process of easing children's transition into their communities after their return.¹²⁰ Any adequate approach, of course, must integrate both sets of recommendations. To end child soldiering involves removing and resettling children from the military, preventing new recruitment, and determining the appropriate justice system response.

1. Demobilization

As child soldiers go home in the Congo, as in other countries which have experienced internal wars, the international community and national government are involved in disarming, demobilizing, and rehabilitating (DDR) former combatants and reinserting and resettling any foreign combatants (DDRRR). There is general agreement among civil society actors, whether they are focused on democracy, sexual violence, or economic issues, that foreign troops must leave and not return, domestic troops must be resettled, and a democratic government must be elected.

Establishing a comprehensive list of best DDR practices for child soldiers is difficult because there are different social, historical, and political considerations to take into account. For instance, in 2001, the Mozambique government criticized U.N. programs as employing western psychological treatments that did not comport with a traditional African perspective on trauma, thereby resulting in the rejection or stigmatization of children by their families. As Beth Vann warns, "Western talk-therapy models of counseling are unfamiliar to clients in most displaced communities, and the appropriateness of using this type of service should be carefully examined"¹²¹ In addition, it is difficult to discern whether the practices endorsed by certain NGOs would be successful. For example, the United Nations, the primary provider of DDR programs, may lack the funds, staff, or governmental cooperation to put them into place. In countries where DDR programs are occurring simultaneously with fighting, such as Uganda, the problem of distinguishing between successful and unsuccessful DDR practices is compounded because children may be re-recruited.

¹²⁰ E.g., RATIBA TAOUTI-CHERIF & ABRAHAM SEWONET, SAVE THE CHILDREN, CROSSING THE BORDER: THE DEMOBILISATION AND REINTEGRATION OF RWANDAN BOYS AND GIRLS ASSOCIATED WITH ARMED GROUPS IN THE DEMOCRATIC REPUBLIC OF CONGO (2004), available at http://www.savethechildren.org.uk/temp/scuk/cache/cmsattach/1964_DDRRR_RwandaDRC_SCUK_Jul04.pdf.

¹²¹ BETH VANN, REPROD. HEALTH FOR REFUGEES CONSORTIUM, GENDER-BASED VIOLENCE: EMERGING ISSUES IN PROGRAMS SERVING DISPLACED POPULATIONS 72 (2002), available at http://www.rhrc.org/pdf/gbv_vann.pdf. A 2004 report, however, found that former child soldiers in Mozambique were accepted by their families and successfully integrated themselves in the family, and most reported never having seen a psychologist or social worker in the DDR process. CHILD SOLDIERS, *supra* note 13, at 85.

a. Reconceptualizing DDR Programs

Many children are left out of the DDR programs because their status excludes them. Whether or not a child has access to DDR benefits may depend on how a government or commander defined a "child," "soldier," or "child soldier." For instance, if a government defines "child soldiers" as "combatants," children who serve as cooks, lookouts, porters, and sex slaves are excluded even though they have experienced and witnessed conflict.¹²² In Sierra Leone, a child had to turn in a weapon in order to qualify for DDR benefits; since most girls did not fight, they had no weapons to turn in.¹²³ Authorities in Angola did not classify soldiers under eighteen as combatants, thus excluding them from the demobilization process entirely.¹²⁴

Even if the term "child soldiers" is defined loosely, a commander or government may find that it is advantageous to deny their existence. In Liberia, commanders from all military factions have denied the existence of children within their ranks and have reportedly instructed child soldiers to mask their ages.¹²⁵ In other countries, commanders say that the children are simply traveling with the armies or are children of soldiers.

Individuals who became soldiers as children but who have reached adulthood by the time of demobilization often do not receive the treatment that their experiences should justify. For instance, DDR programs in Sierra Leone demobilized former soldiers as adults, although they had been recruited as children ten years earlier. Thus, these fighters' special needs, including trauma suffered as children, were not addressed.¹²⁶

Evaluations of past DDR programs show that the failure to institute a separate DDR process for children has resulted in the abuse, exploitation, and re-recruitment of children.¹²⁷ DDR programs aimed at adults may fail to address the special needs of children, including the lack of education children have received as a result of the conflict or the sexual servitude endured by young girls. The U.N. Department of Peacekeeping Operations (DPKO) reports that the most efficient way to protect children from further abuses is to separate them from adult soldiers at the time of demobilization.¹²⁸

¹²² Beth Verhey, *Child Soldiers: Preventing, Demobilizing and Reintegrating* 6-7 (World Bank Group, Afr. Working Paper Series No. 23, 2001), available at <http://www.worldbank.org/afr/wps/wp23.pdf>.

¹²³ Michael Wessells, *Psychosocial Issues in Reintegrating Child Soldiers*, 37 CORNELL INT'L L.J. 513, 522 (2004).

¹²⁴ COAL. TO STOP THE USE OF CHILD SOLDIERS, *supra* note 96, at 33.

¹²⁵ *Id.* at 78.

¹²⁶ *Id.* at 97.

¹²⁷ Wessells, *supra* note 123, at 518.

¹²⁸ UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS, DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION OF EX-COMBATANTS IN A PEACEKEEPING ENVIRONMENT: PRINCIPLES AND GUIDELINES 86 (1999), available at <http://www.un.org/Depts/dpko/lessons/DD&R.pdf>.

There are a variety of ways to include a separate process for children in DDR programs. Case studies suggest that child soldiers should be specifically included in negotiations, peace agreements, and demobilization by ensuring that their interests are represented (by specifically designated child advocates) during these processes, and that the resulting programs address children's needs.¹²⁹ Child soldiers in El Salvador were excluded from the peace process, leaving them with bitterness and resentment that hindered their rehabilitation and reintegration into society.¹³⁰ Peace processes in Guatemala and Liberia similarly failed to take children into account, overlooking the war's impact on children and the benefits that including children can bring to the process.¹³¹

In 1999, the U.N. Security Council adopted its first resolution focusing exclusively on children in armed conflict, strongly condemning the targeting of children and declaring that it would "remain actively seized of the matter."¹³² The Council has accepted and encouraged the Secretary General's proposal to include child protection in peacekeeping mandates and to deploy child protection advisors (CPAs) with peacekeeping operations.¹³³ A U.N. inter-agency working group drafted guidelines that, among other things, proposed international verification and monitoring for compliance with child protection obligations and commitments at early stages of the peace process.¹³⁴

The U.N. has begun to put its guidelines and recommendations into practice. The U.N. mission in Liberia includes a mandate to ensure demobilization and reintegration of child soldiers.¹³⁵ CPAs have reported to the Security Council on the mutilation and sexual exploitation of children in Sierra Leone and forced recruitment in the Democratic Republic of Congo.¹³⁶ The U.N. can provide even more support for child soldiers, such as ensuring that member states and international financial institutions provide funds for child-specific provisions of peace agreements.¹³⁷

Part of the reconceptualization also involves reexamining the cash-for-weapon programs. In DDR programs in several countries, children receive cash as an incentive for turning in weapons. Although recognizing that the intent of these programs is good, scholars consistently criticize this practice. Some say that it results in children joining armed groups in hopes that they will receive cash during

¹²⁹ Verhey, *supra* note 122, at 6–13.

¹³⁰ *Id.*

¹³¹ Ilene Cohn, *U.N. Efforts to Promote Child-Conscious Peacemaking and Peacekeeping: A Step Towards Improving the Lives of War-Affected Children*, 20 OHIO ST. J. ON DISP. RESOL. 99, 99–100 (2005).

¹³² S.C. Res. 1261, ¶ 21, U.N. Doc. S/RES/1261 (Aug. 30, 1999).

¹³³ Cohn, *supra* note 131, at 100.

¹³⁴ *Id.* at 102 (citing The Secretary-General, *supra* note 119, ¶ 8).

¹³⁵ *Id.* at 107.

¹³⁶ *Id.* at 108.

¹³⁷ *Id.* at 109.

demobilization.¹³⁸ Others say that the cash is unlikely to be used for productive goals, such as education; rather, the money will likely be given to unscrupulous commanders.¹³⁹ This practice is also seen as rewarding children who take up arms.¹⁴⁰

b. Inclusion of Girls & Gender-Specific Initiatives

The exclusion of girls, either purposefully or inadvertently, is a consistent criticism of DDR programs, regardless of the size, time, or geographic location of the conflict.¹⁴¹ This is particularly disturbing since girls made up between thirty to forty percent of child soldiers in recent conflicts in Sierra Leone, El Salvador, Uganda and Ethiopia.¹⁴² One girl in Sierra Leone stated, "They came and took the boys and gave them food and kits but left us—the girls—in the road. I had to walk three days to get back to my village with not even a piece of cloth to cover me, and when I got there, I was not welcome."¹⁴³

i. Addressing Girls' Needs

When girls are included in DDR programs, the programs do not adequately address the special needs of females, who have often been sexually abused during war. This is most prevalent in the reintegration phase. In Angola, girls who were taken as "wives" by the armed opposition justifiably feared they would be shunned by their communities upon returning home.¹⁴⁴ In Sierra Leone, communities insisted that girls undergo female genital mutilation (FGM) as part of the reintegration process.¹⁴⁵

NGOs propose staffing more women in DDR programs, particularly ex-combatants, as they are more likely to understand the psychological needs of girl soldiers. This would appear to be particularly relevant in cultures where girls consider it taboo to express their feelings to male staff whom they do not know.

¹³⁸ Wessells, *supra* note 123, at 523.

¹³⁹ REFUGEES INT'L, DEMOBILIZATION IN LIBERIA: CASH PAYMENTS TO CHILD EX-COMBATANTS MISGUIDED (2004), <http://www.refugeesinternational.org/content/article/detail/959/>.

¹⁴⁰ *Id.*

¹⁴¹ See Cahn, *supra* note 10, at 253–54.

¹⁴² Kathleen Kostelny, *What About the Girls?* 37 CORNELL INT'L L.J. 505, 505 (2004); see also UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS, *supra* note 128, at 90–91.

¹⁴³ Kostelny, *supra* note 142, at 505.

¹⁴⁴ COAL. TO STOP THE USE OF CHILD SOLDIERS, *supra* note 96, at 22.

¹⁴⁵ *Id.* at 97.

DDR programs would also benefit from gender-sensitive training, verification units to avoid discrimination, and increased security in encampment areas.¹⁴⁶

ii. Changing Community Norms About Sexually Abused Girls

Female ex-combatants tend to have greater difficulty in reintegrating economically than their male counterparts.¹⁴⁷ Girls who have been sexually abused during war are often afraid to go back to their communities for fear that they will be shunned. In Sierra Leone, a project called Sealing the Past, Facing the Future (SEFAFU) was developed to assist girls in their reintegration into their communities.¹⁴⁸ One of the program's key components was to raise awareness of rape and sexual violence among communities.¹⁴⁹ SEFAFU accomplished this by organizing discussions on the effects of sexual violence at monthly community meetings, drafting bylaws to protect abducted girls from physical and verbal abuse, using radio broadcasts to publicize methods of helping girls, providing vocational training and recreational activities for the girls, and creating a micro-credit loan program for low-income girls.¹⁵⁰

SEFAFU has been successful in several respects, including sensitizing communities to the impact of sexual abuse.¹⁵¹ The bylaws they created, and resulting fines for violations, have been successful. After two individuals were fined for ridiculing girls in one village, the offensive behavior ceased.¹⁵²

c. Reintegration

Although reintegration in a post-conflict situation generally refers to returning former combatants to their home communities, it has a completely different meaning for child soldiers. For child soldiers, reintegration has two aspects: first, they must be accepted by their families, and second, they must feel safe in their families and communities to continue their lives as children. They want their parents, families, and neighbors to accept them, and for life to continue. They are often less concerned with issues of justice, retribution, and impunity, and more concerned with food, shelter, and school fees (particularly because an inability to pay for school means no education in the many countries which lack functioning public education systems). One successful effort in Eastern Congo to reintegrate

¹⁴⁶ Nathaile de Watteville, *Addressing Gender Issues in Demobilization and Reintegration Programs* 25 (World Bank Group, Afr. Working Paper Series No. 33, 2002), available at <http://www.worldbank.org/afr/wps/wp33.pdf>.

¹⁴⁷ UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS, *supra* note 128, at 91.

¹⁴⁸ Kostelny, *supra* note 142, at 507–08.

¹⁴⁹ *Id.* at 508.

¹⁵⁰ *Id.* at 509.

¹⁵¹ *Id.* at 511.

¹⁵² *Id.*

women has used mediation by a respected community member, who may be a village elder, another woman, or a family member. By discussing the issues together, with a trusted third person, family members can accept the victim. Such a process can also be tried with child soldiers.

i. Community and Family

DDR programs often focus on training, building skills for children such as carpentry and hairdressing. But such programs are ineffective unless they also focus on reintegrating children into their communities and families and preventing further recruitment.¹⁵³ In cases where there are no viable communities—often true in conflict-torn societies—outside organizations can implement projects in the short-term and can work to identify future coordinators within the community. If children have no family members who remain in their communities of origin, there may be informal systems of foster families willing to help.

Reintegrating child soldiers also involves distributing services to other vulnerable children within the conflict area, not just to prevent recruitment, but also to diffuse any tension over the “special treatment” that child soldiers receive.¹⁵⁴ Although the specific phase of arms collection is appropriately focused on combatants, all other aspects of the DDR process should be community focused.¹⁵⁵ Inherent in DDR programs is that former combatants are given privileged treatment over other victims of the conflict, including children who may not have been “officially” part of the armed forces, and other survivors of the armed conflict.¹⁵⁶ Children themselves can take a role in this by, for example, performing communal labor within their communities, like digging a well.¹⁵⁷

¹⁵³ Beth Verhey, Addressing the Needs of Orphans and Vulnerable Children in Conflict Situations: Child Soldiers, Address Before the Orphans and Vulnerable Children Thematic Group (May 12, 2004) (summary of address available at http://www1.worldbank.org/sp/safetynets/Training_Events/BBLs/OVC%20Child%20Soldiers%20Summary.pdf).

¹⁵⁴ EMMA VISMAN, SAVE THE CHILDREN, REACHING ALL: CORE PRINCIPLES FOR WORKING WITH CHILDREN ASSOCIATED WITH ARMED GROUPS AND FORCES 7 (2005), http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/2746_Reaching%20All%20-%20March%202005.pdf.

¹⁵⁵ See Kees Kingma, *The Role of Demobilisation in the Peace and Development Process in Sub-Saharan Africa: Conditions for Success*, 5 AFR. SECURITY REV. No. 6, 16–17 (1996), at <http://www.iss.co.za/Pubs/ASR/5No6/Kingma.html>.

¹⁵⁶ LOTTA HAGMAN & ZOE NIELSEN, INT’L PEACE ACAD., A FRAMEWORK FOR LASTING DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION OF FORMER COMBATANTS IN CRISIS SITUATIONS 4–5 (2002), http://www.ipacademy.org/PDF_Reports/FRAMEWORK_FOR_DDR.pdf; VISMAN, *supra* note 154, at 7.

¹⁵⁷ VISMAN, *supra* note 154, at 8; KRIJN PETERS & SOPHIE LAWS, SAVE THE CHILDREN, WHEN CHILDREN AFFECTED BY WAR GO HOME: LESSONS LEARNED FROM LIBERIA 97 (2003), http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/1619_ChildrenAffectedByWar.pdf.

While DDR is often measured by the number of children released from armed groups, or even entry into a resettlement camp, this tells us little. These statistics provide little insight into what happens to these children following their release and what support is available after the time in a transition center. Community integration and family reunification may provide more accurate measures of the success of a demobilization program.¹⁵⁸

Family reunification may even have biological effects. Living in a seriously deprived environment can result in biological dysfunction.¹⁵⁹ Providing resources and support to allow girls to return to their families may have a scientifically measurable impact on their lives. Researchers have found that girls who live with their biological fathers have a later onset of puberty than girls who live with an unrelated man.¹⁶⁰ Returning girls to their families—or the even better alternative of preventing girls from leaving—may help reduce the high birth rate for teenagers in sub-Saharan Africa.

ii. Improved Rehabilitation/Transit Centers

Transit centers are designed to provide a transition from the military to civilian life, serving as temporary housing and sometimes offering education and training, and are often criticized as having inefficient facilities, such as unhygienic quarters and untrained staff. Nevertheless, these centers often provide children with better living conditions than they would have at home with their families. As a result, it is not uncommon for children to refuse to reunify in order to stay at the centers.¹⁶¹ For these same reasons, some families have chosen to abandon their children at the centers.¹⁶²

A major problem in Liberia's DDR process was the lack of transportation for children to get home. Many children had to sell their demobilization packages in order to get home.¹⁶³ Others were re-recruited while awaiting transport.

Transit centers are also a target for militias to re-recruit children, either voluntarily or by forced abduction.¹⁶⁴ In order to avoid re-recruitment, the U.N. has advised that assembly areas should be located far enough from conflict zones

¹⁵⁸ Verhey, *supra* note 153.

¹⁵⁹ COMM'N ON CHILDREN AT RISK, *HARDWIRED TO CONNECT: THE NEW SCIENTIFIC CASE FOR AUTHORITATIVE COMMUNITIES* 55 n.46 (2003).

¹⁶⁰ *Id.* at 18.

¹⁶¹ See UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS, *supra* note 128, at 88.

¹⁶² *Id.*

¹⁶³ PETERS & LAWS, *supra* note 157, at 153; UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS, *supra* note 128, at 84.

¹⁶⁴ INT'L PEACE ACAD., *A FRAMEWORK FOR LASTING DISARMAMENT, DEMOBILIZATION, AND REINTEGRATION OF FORMER COMBATANTS IN CRISIS SITUATIONS* (2002), http://www.ipacademy.org/PDF_Reports/FRAMEWORK_FOR_DDR.pdf.

to ensure children's security.¹⁶⁵ There should also be a mechanism for staff to follow up with ex-combatants in order to ensure they have not been re-recruited.¹⁶⁶

In Columbia, the Instituto de Bienestar Familiar ("ICBF" or the National Institute of Family Welfare), a public establishment affiliated with the Ministry of Health, has experienced some success in demobilizing child soldiers and reintegrating them into society.¹⁶⁷ More than 1200 soldiers have taken part in ICBF programs since November 1999. These soldiers receive medical attention and counseling at an "entry home" and are then taken to homes run by local NGOs.¹⁶⁸ Children then return to their families or live in a supervised "youth house" with other former child soldiers.¹⁶⁹

d. Preventive Measures

Fears about further conflict, and further recruitment, are well supported by research on the factors that are correlated with the outbreak of wars. Empirical research on the outbreak of conflict indicates that the most significant risk factors are low per capita income, low rates of economic growth, and dependence on commodity exports.¹⁷⁰ Moreover, about one-half of those countries which have experienced a civil war are likely to experience another one within ten years.¹⁷¹ The Congo exhibits all of these factors. Although this does not mean that further conflict is inevitable, it serves as an impetus to develop plans to protect children.

Children often volunteer as child soldiers to escape their impoverished lives. UNICEF advocates education and training "in order to provide children with an alternative means of gaining economic security for themselves."¹⁷² Indeed, such a policy prescription underscores the poverty that is one of the main causes of child soldier.

¹⁶⁵ UNITED NATIONS DEP'T OF PEACEKEEPING OPERATIONS, *supra* note 128, at 87.

¹⁶⁶ GLOBAL INFO. NETWORKS IN EDUC., CHILD AND YOUNG ADULT SOLDIERS METHODS AND PRACTICES: RECRUITMENT, PREVENTION, DEMOBILIZATION PROCEDURES, AND REINTEGRATION (1999), <http://www.ginie.org/ginie-crisis-links/childsoldiers/recruitment.html#Structural%20Reforms>.

¹⁶⁷ Veronica Escobar, Comment, *Reclaiming the "Little Bees" and the "Little Bells": Colombia's Failure to Adhere to and Enforce International and Domestic Laws in Preventing Recruitment of Child Soldiers*, 26 FORDHAM INT'L L.J. 785, 821-22 (2003).

¹⁶⁸ *Id.* at 821, 822 n.93.

¹⁶⁹ *Id.*

¹⁷⁰ Ian Bannon & Paul Collier, *Natural Resources and Conflict: What We Can Do*, in NATURAL RESOURCES AND VIOLENT CONFLICT: OPTIONS AND ANSWERS 1, 2-3 (2003). See generally, Naomi Cahn, *Corporate Governance Divergence and Sub-Saharan Africa: Lessons from out Here in the Fields*, 33 STETSON L. REV. 893 (2004).

¹⁷¹ Ken Menkhaus, A "Sudden Outbreak of Tranquility:" *Assessing the New Peace in Africa*, 28 FLETCHER F. WORLD AFF. 73, 81 (2004).

¹⁷² GLOBAL INFO. NETWORKS IN EDUC., CHILD SOLDIER PROJECTS: THE CASE OF LIBERIA, <http://www.ginie.org/ginie-crisis-links/childsoldiers/liberia1.html> (last visited Mar. 13, 2006).

e. Justice System Responses

The recruitment and use of child soldiers already violates international law. The problems persist because few state and non-state actors are prosecuted.¹⁷³ Some believe that actively criminalizing the process will serve as a deterrent.¹⁷⁴ Besides punishing guilty parties and deterring them from continuing the practice, the threat of inevitable prosecution could deter other governments and guerilla groups from recruiting children. Criminalization would also encourage states that do not use child soldiers to publicly decide whether they want to associate themselves with war criminals by supplying aid and weapons to states and groups that do commit the crime.¹⁷⁵

The timing of the criminalization process can be critical. It may range in scope and duration from the beginning of the DDR process to highly public international trials many years after the conflict to changing domestic law during the transition period.

DDR typically provides a package of goods, services, and money to soldiers agreeing to surrender their arms. The plans in many countries preclude soldiers who are guilty of human rights abuses from receiving the package. But the human rights screening may be focused primarily on soldiers who have vindicated the rights of civilians, rather than those who are guilty of the offense of recruiting children. The phrasing in a government's DDR program is general concerning human rights violations, and subject to broad interpretation.¹⁷⁶ Screening for child soldier recruitment will occur only if such concerns are explicitly incorporated into the demobilization process to ensure that the general term "human rights abuses" includes this particular crime. Moreover, there must be adequate documentation and verification so that the names of these recruiters are known.¹⁷⁷

Human rights screening requires sensitivity to perpetrators, victims, and the process of post-conflict reconstruction. Such sensitivity is also important when it

¹⁷³ See, e.g., P.W. Singer, *Talk is Cheap: Getting Serious about Preventing Child Soldiers*, 37 CORNELL INT'L L.J. 561, 584 (2004).

¹⁷⁴ *Id.* at 581.

¹⁷⁵ *Id.*

¹⁷⁶ See, e.g., Gouvernement de la République Démocratique du Congo, Programme National de Désarmement, Démobilisation et Réinsertion PNDDR 24. The package of services provided includes transportation costs and a security net of money. *Id.* at 41.

¹⁷⁷ This, in turn, requires delicate issues of confidentiality. Providing screeners with a list of perpetrators risks the privacy of the children who have provided the names. Cf. Naomi Cahn, *Women in Post-Conflict Reconstruction: Dilemma and Directions*, WM. & MARY J. WOMEN & L. (forthcoming Apr. 2006) (manuscript at 51–59, on file with author) (examining the treatment of perpetrators in relation to women in post-conflict reconstruction). Jeevan Vasagar, *Final Amnesty for Perpetrators of Rwanda Genocide*, GUARDIAN, Feb. 18, 2004, Guardian Foreign Pages, at 15. In February 2004, the Rwandan government offered a last chance for amnesty, and release from prison, if those alleged of participating in the genocide confessed their guilt. See *id.*

comes to deciding whether to prosecute the children themselves for the acts they committed during the conflict.¹⁷⁸

Given the widespread use of child soldiers by various militias, public condemnation of even a few of the leaders who have "recruited" the children may help to deter future recruitment. Creating a meaningful transitional government that can bring peace to the area is the most likely way to end the ongoing violence and provide the stability necessary to allow children to try to continue their education.

An approach that is focused primarily on rhetorical condemnations of the use of child soldiers as an immoral practice is, however, fruitless when considering that technological and geopolitical changes have made child soldiers a norm on the battlefield.¹⁷⁹ Moreover, many of the most egregious culprits of child soldier recruitment are non-state groups, that are less influenced by external or legal pressures than governments.¹⁸⁰ Still, these leaders can be prosecuted as war criminals. In addition, states can impose other sanctions, such as freezing bank accounts and restricting visas to deter the recruitment of children.¹⁸¹ Supporters can require groups to cease the recruitment of child soldiers as a prerequisite to the release of funds.¹⁸² Finally, states that aid guerilla groups through money or weapons can end their trading with these groups, either voluntarily or through international sanctions. Ending the trade of small arms weapons may be particularly effective, as these arms contribute to the proliferation of child soldiers.

Many reports recommend sanctions, ranging from travel bans to prosecutions, against commanders and recruiters of child soldiers.¹⁸³ In addition, because the armed groups that engage in child soldier recruiting are often involved in financing their efforts through timber and diamond sales, there must be sanctions against corporations that trade with the leaders of these groups and, consequently, finance them.¹⁸⁴ Aside from taking strong steps to alleviate poverty, the international community's best methods for combating the use of child soldiers may be sanctioning guilty parties through embargos of donor aid and weapons. Imposing embargos on non-state actors, however, may be difficult to implement because: (1) many states covertly contribute to warring governments/guerillas; (2) states may be reluctant to cut off aid or trade simply to stop the use of child soldiers if doing so would undermine their political or economic objectives; and (3) the state may itself conscript child soldiers or use underage volunteers. Prosecuting commanders after the conflict may serve as another deterrent. Since the Sierra Leone court is one of

¹⁷⁸ See Cahn, *supra* note 177 (manuscript at 51–59, on file with author).

¹⁷⁹ Singer, *supra* note 173, at 567.

¹⁸⁰ *Id.* at 584.

¹⁸¹ *Id.*

¹⁸² GLOBAL INFO. NETWORKS IN EDUCATION, *supra* note 172.

¹⁸³ The Secretary-General, *supra* note 119, ¶ 57.

¹⁸⁴ Singer, *supra* note 173, at 583.

the first to try this method, and the International Criminal Court is still in its initial stages, it is too early to predict how effective this method will be at combating the problem. Punishment of others may serve as a deterrent, but it is a distant sanction from the everyday battles of the militias.

Turning to the issues of culpability and child soldiers, beyond holding accountable those who recruited and used the soldiers, actors must react sensibly and sensitively to the children themselves. The process begins with recruiting children to participate in demobilization and continues, in the long-run, to criminal trials. Once child soldiers have been identified as human rights abusers, there are important choices concerning whether to imprison, prosecute, or simply segregate them from the communities. Working with the children, by providing special workers and facilities to rehabilitate them, is not sufficient because it does not confront the role of children in committing war crimes. As a result, it is critical to make decisions about how to treat identified perpetrators.¹⁸⁵

If there are trials held for child soldiers, many of the same principles that apply in juvenile courts in other countries are appropriate.¹⁸⁶ For example, the Convention on the Rights of the Child (CRC) specifically provides that imprisonment be imposed “only as a measure of last resort.”¹⁸⁷ If judicial proceedings are instituted, then the CRC recommends that countries adopt a variety of alternative dispositions. These alternatives include: “care, guidance and supervision orders . . . foster care; education and vocational training programmes and other alternatives to institutional care,” and they are designed “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”¹⁸⁸ Children have

¹⁸⁵ In Liberia, women who are victims of “sexual and gender-based violence” are provided with counseling services as part of the DDR program; such counseling should be available to child soldiers as well. See HUMANITARIAN INFO. CTR. FOR LIBER., INFORMATION ON DDRR PROCESS FOR WOMEN, <http://www.humanitarianinfo.org/liberia/coordination/sectoral/DDR/index.asp> (follow “Information on DDRR Process for Women” hyperlink). However, other experts suggest that many DDR schemes do not meet the needs of child combatants, and thus do not adequately prepare communities for reintegration of ex-combatants. For example, many child combatants do not have a weapon to turn in, even though they were a part of the war effort. Under many DDR schemes, such children are excluded from the demobilization process, and all its services, because providers erroneously believe that they have nothing to ‘demobilize’. Caroline Preston, *Rehabilitation Programs Reportedly Failing War-Affected Females*, U.N. WIRE, Apr. 5, 2004, <http://list.web.net.archives/women-peace-and-security/2004-April/000911.html>. Actually, there is some controversy on whether human rights abuses serve as a screen.

¹⁸⁶ Katherine Hunt Federle, Presentation, *Competency and the New Neuroscience*, Ohio State University Moritz College of Law Symposium on *The Mind of a Child: The Relationship Between Brain Development, Cognitive Functioning, and Accountability Under the Law* (Mar. 10–11, 2005).

¹⁸⁷ Convention on the Rights of the Child, arts. 40(3)(b), 37(b), Nov. 20, 1989, 1577 U.N.T.S. 43.

¹⁸⁸ *Id.* at 47. See HUMAN RIGHTS WATCH, *supra* note 36, at 16 (recommending that states consider mitigating factors, such as the penalties children faced when they failed to follow orders, when they sentence child soldiers).

various defenses, including duress or, for some, acting under the influence of drugs given to them by their commanders to numb their feelings.¹⁸⁹

With scientific support, these excuses and justifications may become even more persuasive. The new brain research discussed earlier shows how children are more vulnerable to the risk-taking inherent in voluntary recruitment and react to situations more emotionally;¹⁹⁰ this same vulnerability helps explain the manipulation of behavior that occurs while they are soldiers. Correspondingly, because adolescents' brains are still being formed, interventions should focus on potential treatment and rehabilitation, rather than punishment. The brains of children, including adolescents, are not immutable;¹⁹¹ treating them like adult criminals will turn them into adults too quickly.

Particularly with the movement in the United States to treat juveniles as adults, there may be questions as to why child soldiers should be subject to more lenient standards. The neurological studies on developmental immaturity provide a solid basis for this leniency, helping to explain why child soldiers have done what they did; the studies also show the importance of rehabilitation.¹⁹² The earlier justifications for differential treatment of juveniles were based on sociological and psychological studies of the developmental differences of adolescents, while the new brain studies provide a scientific basis for this treatment.

D. *Appropriate Responses to Child Witches*

Some anthropologists have claimed that the resurgence of witchcraft is an almost inevitable tension of modernity. They have suggested that returning to witchcraft is not, indeed, a return to tradition, but rather a method of coping with the uncertainty, moral ambiguity, and other tensions associated with their contemporary lives.¹⁹³ Much of the anthropological account is compelling: the phenomenon of child witches is appearing in communities which are experiencing conflict, stress, and poverty. Anthropologist Jean Comaroff explains, "Witches are products of moral perplexity, of the sense that evil lurks about the home, inspired by forces that endanger 'normal' domesticity and an established mode of social

¹⁸⁹ AMNESTY INTERNATIONAL, *supra* note 20, at 8.

¹⁹⁰ See Interview with Deborah Yurgelun-Todd, *Frontline: Inside the Teenage Brain* (PBS television broadcast Jan. 31, 2002) (transcript available at <http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/interviews/todd.html>).

¹⁹¹ See Jane Rutherford, *Juvenile Justice: Caught Between the Exorcist and a Clockwork Orange*, 51 DEPAUL L. REV. 715, 742 (2002).

¹⁹² See Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793, 798 (2005). In the context of juvenile competence to stand trial, they explain that adopting "a less demanding competence standard can be constitutionally justified only if the punishment stakes in delinquency proceedings are lower than those facing criminal defendants and the objectives of juvenile justice policy are broader than punishment."

¹⁹³ See, e.g., Moore & Sanders, *supra* note 42, at 3.

reproduction.”¹⁹⁴ Yet witchcraft also serves as a means of legitimizing and supporting rogue churches, legitimizing them through the promise of the church leader that he or she can exorcise the child, and supporting the pastor, both financially and authoritatively. Indeed, traditional views of witchcraft are absorbed into the deeply religious beliefs of the population concerning the battles between good and evil.¹⁹⁵

The underlying problems resulting in the accusations are not easily resolvable. So long as conflict continues, families will be disrupted. Moreover, the level of poverty and the high fertility rate make feeding children difficult.

Short-term solutions are focused on the children who have already been declared “sorcerers.” The first step is removing children from the churches where they are being mistreated.¹⁹⁶ If returning them to their families immediately is infeasible, then the next step involves establishing children’s centers for them. Non-governmental organizations, like Save the Children, work with local partners to help families understand that any perceived abnormality in the child is a typical behavior of growing up, and encourages families to provide care for these children. But much of the problem for these children comes from the parents’ inability to support multiple children. While the non-governmental organizations may be able to convince the parents (after extensive family mediation) to allow the child to return home, the financial burden still remains and the child may not be able to attend school or get adequate food.¹⁹⁷ Addressing this issue of financial support, without simply handing out money to the families and thereby creating an incentive to abandon children, is difficult.¹⁹⁸

Longer-term solutions must focus on poverty and literacy. As the Ralushai Commission recommended in South Africa, there must be society-wide education

¹⁹⁴ Jean Comaroff, *Consuming Passions: Child Abuse, Fetishism, and “The New World Order,”* 17 CULTURE 7, 15 (1997) (internal citations omitted); Peter Geschiere, *Globalization and the Power of Indeterminate Meaning: Witchcraft and Spirit Cults in Africa and East Asia*, in GLOBALIZATION AND IDENTITY: DIALECTICS OF FLOW AND CLOSURE 211, 213 (Birgit Meyer & Peter Geschiere eds., 1999) (discussing Comaroff’s observations).

¹⁹⁵ Moore & Sanders, *supra* note 42, at 16; see Rijk van Dijk, *Witchcraft and Skepticism by Proxy: Pentecostalism and Laughter in Malawi*, in MAGICAL INTERPRETATIONS, MATERIAL REALITIES, *supra* note 42, at 97, 112–13.

¹⁹⁶ See James Astill, *Congo Casts Out Its ‘Child Witches’: Orphans Created by War and Aids Are Being Abandoned by Poverty-Stricken Relatives Who Call Them Sorcerers*, OBSERVER, May 11, 2003, at 23, available at <http://observer.guardian.co.uk/international/story/0,6903,953619,00.htm>:

One practitioner is Prophet Onokoko, a self-styled Christian minister. His preferred method is to induce child witches to “vomit up the devil” and, with 230 children on his books, demand for his services is high. In his shack-like church, Onokoko displays examples of “devils” sicked up so far: a whole prawn, a shell in the shape of a horn, and even two barbel fish.

Other children report various substances placed in their eyes to end their “second eyesight.” Eagleton, *supra* note 53.

¹⁹⁷ Eagleton, *supra* note 53; see Molina, *supra* note 53, at 11.

¹⁹⁸ Eagleton, *supra* note 53.

on the consequences of accusing someone of witchcraft and the futility of exorcisms, with church involvement and legislative reform to penalize accusers.¹⁹⁹

As the number of family disruptions decreases and children are able to remain with their parents and siblings, there should be fewer sorcery accusations.

Organized religion has condemned the "enfants dits sorciers" phenomenon. And, Save the Children points out that churches may actually be able to help in the reunification process particularly where the accusations are based on a child's disability.²⁰⁰ Using traditional healers can help children become reconciled with their communities.²⁰¹

Finally, some of the children accused of witchcraft may indeed have significant psychological²⁰² problems that either predate, or result from, their experiences. Understanding the neurological bases for their actions will help in finding appropriate treatments, whether the treatments are drug or behaviorally based (assuming resources for diagnosis and treatment).

V. CROSS-CUTTING ISSUES

Both child soldiers and witches represent different aspects of vulnerable children and children who have left, or been forced to leave, their families. Consequently, the groups have various issues in common, such as the needs for reunification, education, and monitoring and implementation.

A. Reunification

One common goal for both types of children is reunification, returning children to their families or communities of origin, where this is possible. Community child protection networks help in the transition process for both children and their families. These networks (actually, small committees) are an NGO-initiated response designed to help communities take control of various child protection issues. The committees generally have twenty-five to forty people, including local community and religious leaders and children, and are designed to develop means to protect children from abuse, provide information about

¹⁹⁹ See generally, N.V. RALUSHAI ET AL., REPORT OF THE COMMISSION OF INQUIRY INTO WITCHCRAFT VIOLENCE AND RITUAL MURDERS IN THE NORTHERN PROVINCE OF SOUTH AFRICA 60 (1996); Niehaus, *supra* note 102, at 193–95. See generally ISAK NIEHAUS ET AL., WITCHCRAFT, POWER AND POLITICS: EXPLORING THE OCCULT IN THE SOUTH AFRICAN LOWVELD (2001).

²⁰⁰ Molina, *supra* note 53 at 14.

²⁰¹ This is true for child soldiers as well. See PETERS & LAWS, *supra* note 157, at 97–98.

²⁰² In the United States, many more homeless adolescents have mental disorders than do their comparable peers. See Lois A. Weithorn, *Envisioning Second-Order Change in America's Responses to Troubled and Troublesome Youth*, 33 HOFSTRA L. REV. 1305, 1380 (2005).

children's rights and advocate for children's interests.²⁰³ Networks have been involved in child soldier demobilization and have also helped decrease the recruitment level.²⁰⁴ Such networks might also help in establishing "purification" or "cleansing" rituals which could help to reintegrate both child soldiers and child sorcerers.²⁰⁵

B. Education

Another cross-cutting issue is education, which is protected by numerous international human rights documents, starting with the Universal Declaration of Human Rights of 1948,²⁰⁶ which provides guarantees for free, compulsory elementary education. The Fourth Geneva Convention of 1949²⁰⁷ provides that, even in times of military occupation, the occupiers must facilitate institutes for children's education. Even the Rome Statute, which governs the International Criminal Court, protects educational buildings from "intentionally direct[ed] attacks."²⁰⁸ In addition to its status as a legal right, education can also help reduce

²⁰³ BETH VERHEY, GOING HOME: DEMOBILISING AND REINTEGRATING CHILD SOLDIERS IN THE DEMOCRATIC REPUBLIC OF CONGO 22 (2003), http://www.savethechildren.org.uk/scuk_cache/scuk/cache/cmsattach/932_GoingHome.pdf. Her analysis is as follows:

Strengths:

- The networks efficiently and effectively raise awareness on child protection issues.
- Members of the network can immediately identify and respond to abuses against children and advocate on their behalf with local authorities. The networks, even more than a local NGO, ensure consistent monitoring and follow-up as they are an integral part of the community.
- The networks have improved the collaboration between local authorities and associations.

Weaknesses:

- Some networks remain too dependent on Save the Children. The analysis of the Save the Children team is that conflict and poverty have worn down traditional community solidarity such that communities feel hopeless regarding their own capacity to redress child protection problems.
- Networks often have exaggerated expectations of Save the Children in terms of the organization's resources. These are addressed through participatory research to identify priorities and feasible activities, but this process is relatively time-consuming.
- While all networks have child representatives, genuine participation of children is weak. Child participation should be better addressed in future programmes.

Id.

²⁰⁴ CRIPE ET AL., *supra* note 47, at 22–23.

²⁰⁵ See BRETT & SPECHT, *supra* note 18, at 101 (discussing the use of rituals for cleansing child soldiers of the evil spirits of people they had killed).

²⁰⁶ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. Mtg., U.N. Doc A/810 (Dec. 12, 1948).

²⁰⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

²⁰⁸ Rome Statute of the International Criminal Court, *supra* note 93, at art. 8, 2(b)(ix).

child soldier recruitment as well as gender-based violence, and can help provide children with the tools they need to assert other rights.²⁰⁹

But education is difficult to obtain. The conflict has destroyed most of the schools, and the remaining schools still require that parents pay school fees, which most families cannot afford.²¹⁰ The children who have already been soldiers or accused of sorcery may face further humiliation at school, while girl soldiers may be pregnant or have children.²¹¹ The international guarantee of education would break down without well-funded systems of public education.²¹²

C. Implementation: Protection and Rights for Children

Recourse to the legal system, and the inadequacies of that system, provide another common theme. Pastors and witchcraft accusers may need to be prosecuted, and the accused children may need to be brought into a child protection system. Unfortunately, the justice system is inadequate. Similarly, the internal legal mechanisms for prosecuting child soldier recruiters and, perhaps, the soldiers themselves, are typically ineffective. Consequently, the most critical cross-cutting issue is implementation (and subsequent monitoring of) these protections (or prosecutions) for children. Implementation depends on grassroots organizing, international pressure, and non-governmental organization efforts. It is in conceptualizing who can work with and protect children that the paradigmatic parent-child-state triangle must be reshaped. As Barbara Woodhouse describes it, parents and the private institutions which they have enlisted are on one side, while the state, including schools, family courts, the child abuse and neglect system, and other institutions that use public power to limit parental authority are on the other side. Each side is seeking to control children's development.²¹³ In the United States and some other countries, we can begin to imagine a "supportive state," where institutions are designed to support children's welfare.²¹⁴ But for child soldiers and child witches, there may be no state authority or institutions, and their parents may be able to assert no ongoing power—they may have been killed or they may have rejected their children. Instead of the paradigmatic, perhaps overly protective, triangle there is only the child.

²⁰⁹ See SUSAN NICOLAI AND CARL TRIPLEHORN, *THE ROLE OF EDUCATION IN PROTECTING CHILDREN IN CONFLICT* 9–10 (2003), <http://www.savethechildren.org/publications/ODIEducationProtection.pdf>.

²¹⁰ AMNESTY INTERNATIONAL, *supra* note 20, at 12.

²¹¹ *Id.* at 13.

²¹² Girls face difficult educational issues even in countries without conflict. See Sharon Lafroniere, *Another School Barrier for African Girls: No Toilet*, N.Y. TIMES, Dec. 23, 2005, at A1.

²¹³ Woodhouse, *supra* note 4, at 86.

²¹⁴ For an eloquent discussion and defense of this model, see Maxine Eichner, *Children, Parents, and the State: Rethinking the Relationship in the Child Welfare System*, 12 VA. J. SOC. POL'Y & L. 448 (2005).

Children thus pose a puzzle. With the demise of, or inability to protect, traditional cultural and familial structures, it is tempting for child advocates to seek enhanced internationally respected rights on behalf of children.²¹⁵ But these rights, as conventionally understood, are ill-suited to address the needs of children because they fail to address the reality of children's lives, particularly their dependence on adult caretakers. Professor Annette Appell usefully distinguishes between two different aspects of children's rights: "civil rights," which involve children's rights to autonomy, to express themselves, and to be free from state action, and "protective" or "dependency" rights, which involve others deciding what is best for children because of children's dependency on others.²¹⁶

Children require ongoing, intimate, hierarchical relationships and connections to others.²¹⁷ Legal doctrines and processes must both facilitate the formation and maintenance of these dependency relationships, and protect children from the vulnerability created when those relationships go awry. The conventional means for providing these protections pursuant to both domestic and international law is through the use of "rights." For groups that have been historically subordinated, rights discourse can be powerful, indicating that they, too, are deserving of recognition. Yet rights discourse, particularly given children's developmental immaturities and the difficulties of exercising those rights, remains an imperfect method for describing the realities of children's lives and for recognizing and protecting children's interests. The lesson of focusing on rights discourse for work overseas is that the debate has to be grounded in the empirical data on children's needs for health, education, training, and shelter, not in constitutional and public

²¹⁵ For some of the eloquent commentary on the need to establish children's rights, see, for example, Katherine Hunt Federle, *Children's Rights and the Need for Protection*, 34 FAM. L.Q. 421 (2000); Katherine Hunt Federle, *Looking Ahead: An Empowerment Perspective on the Rights of Children*, 68 TEMP. L. REV. 1585 (1996); Catherine J. Ross, *An Emerging Right for Mature Minors to Receive Information*, 2 U. PA. J. CONST. L. 223 (1999); Catherine J. Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 FORDHAM L. REV. 1571 (1996); Barbara Bennett Woodhouse, "Who Owns the Child?": *Meyer and Pierce and the Child as Property*, 33 WM. & MARY L. REV. 995 (1992).

²¹⁶ Annette Ruth Appell, *Uneasy Tensions Between Children's Rights and Civil Rights*, 5 NEV. L.J. 141, 143 (2004). "The distinction between these two rights categories reflects both the difference between rights applied to children despite their minority and rights applied because of their minority . . ." *Id.* at 153. In this sense, children's rights differ from those of adults. In the U.S. context, the Due Process Clause thus protects against government overreaching and undue state interference with fundamental personal decisions and beliefs. It has not, however, been generally interpreted to require that the government act affirmatively. See Susan Bandes, *The Negative Constitution: A Critique*, 88 MICH. L. REV. 2271, 2318–20 (1990); Anita Bernstein, *Treating Sexual Harassment with Respect*, 111 HARV. L. REV. 445, 486 (1997); ISIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY* 118, 122–23 (1969).

²¹⁷ Children who have higher levels of care and connectedness also have diminished rates of health-threatening illnesses. Loken, *supra* note 108, at 1759.

conflicts;²¹⁸ and that "dependency" rights²¹⁹ can help child soldiers and witches receive the services they need. Establishing children's civil rights, suing to enforce provisions of international or even domestic charters granting children the right to freedom of expression, is less urgent than enforcing the dependency right to universal and free education.²²⁰

First, establishing rights in a country that has no legal structure for enforcing those rights is an admirable rhetoric, but does not provide concrete benefits to the people unable to exercise those rights²²¹ and does not create resources where none exist. Many countries emerging from conflict have long had weak, highly corrupt governments, are still suffering from war, and are left today with very low participation rights in government.²²² These countries possess extremely ineffective basic institutions in the areas necessary to establish the prerequisites for basic human rights; they lack a reliable legal system, governmental transparency, and a legislature capable of enacting legal guarantees.²²³ The law as written and the law as enforced in the courts differ dramatically.²²⁴ The right to adequate health care is meaningless in a country with no health care system because the government does not have the capability nor resources to operate health centers.²²⁵

Second, children are unable to exercise their rights because they lack legal literacy and advocates. But even if they understand their rights, they cannot access them because of longstanding cultural barriers that reinforce children's subordinate

²¹⁸ See Naomi Cahn & Anne T. Goldstein, *Roe and Its Global Impact*, 6 U. PA. J. CONST. L. 695 (2004) (arguing that the culture wars over *Roe v. Wade* are dangerous to the health of adolescents).

²¹⁹ See Appell, *supra* note 216, at 143.

²²⁰ The justiciability and content of economic, social, and cultural rights, including rights to adequate food, clothing, housing, health, medical care, and education is questionable. See Michael J. Dennis & David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, 98 AM. J. INT'L L. 462, 464 (2004). The authors note that at least some of the issues involving economic, social, and cultural rights are subject to review by various human rights bodies and regional systems. *Id.* at 504–06.

²²¹ See Julie Mertus, *Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles*, 41 COLUM. J. TRANSNAT'L L. 541, 546 (2003).

²²² See Tony Gambino & Naomi Cahn, *Towards a Typology of Corporate Responsibility in Different Governance Contexts*, (GWU Law Sch. Public Law Research Paper No. 124, 2004), available at <http://ssrn.com/abstract=663381>.

²²³ Bernard S. Black, *The Legal and Economic Preconditions for Strong Securities Markets*, 48 UCLA L. REV. 781, 848 (2001). The last sentence of the article concludes, "[t]hese countries need honest judges and regulators, good disclosure rules, and the beginnings of a culture of honesty before it makes sense to worry" about other corporate governance issues, such as the number of independent directors. *Id.* at 849.

²²⁴ See Cohn, *supra* note 113. Consequently, written laws may not translate into legally enforceable rights.

²²⁵ See Dennis & Stewart, *supra* note 220, at 497 ("[N]o rights adjudicator can effectively mandate the creation of resources or the provision of adequate food, water, health, housing, or education where they are scarce or nonexistent.").

status. Although non-governmental organizations can help provide basic legal literacy through media campaigns and other means, the absence of a functioning judiciary or of mechanisms to represent children renders this help moot. Instead, this fourth side of NGOs must work on other means of providing basic literacy.

Third, the nature of legal rights does not respond to many of children's needs in a post-conflict society. Children need a family, which is generally not framed as a legal right. The right to an education applies to children, but may not extend to older child soldiers. The right of access to healing therapies, such as community mediation or counseling or community education on the need to change cultural mores is generally not phrased as a legal right.

Of course, while new domestic laws and international covenants can (and do) address these rights, the execution mechanisms must exist as well. These mechanisms include not just the legal system to help establish the entitlements, but also a basic budgetary process to provide funding. The expense of building schools is generally beyond the ability of post-conflict governments and must be undertaken by international and multilateral institutions.

This is where the fourth side, the non-governmental organizations, is critical. Not only can NGOs lobby for better laws, they must implement the relevant programs themselves. In the absence of parental and intrastate capabilities, organizations like Save the Children and indigenous organizations as well as bilateral and multilateral institutions can fill in the gaps. The relevant local communities, such as kin, churches, or schools can provide some services, but they too depend on non-governmental funding.

The role of NGOs in representing children's rights and interests is not without controversy. Within the humanitarian world, there is some tension between the goals of providing assistance to those who need it, regardless of their loyalties within any conflict, and promoting human rights and democracy. While there is a risk in involving humanitarian organizations in the reconstructive enterprise, because the very principles of humanitarian aid are impartiality and neutrality,²²⁶ the actions discussed in this article—aiding child witches and soldiers and their communities—are outside of that risk because they are offered in recognition of a universal right to humanitarian assistance.²²⁷ And yet, in compliance with international human rights norms, these interventions recognize that the assistance will help create peace and security based on principles of justice.²²⁸

²²⁶ See Nicholas de Torrente, *Humanitarian Action Under Attack: Reflections on the Iraq War*, 17 HARV. HUM. RTS. J. 1, 4–6 (2004); see also Fourth Geneva Convention, *supra* note 207, at art. 3, 6 (“An impartial humanitarian body . . . may offer its services to the Parties of the conflict.”) (emphasis added).

²²⁷ See Fox, *supra* note 7, at 36.

²²⁸ De Torrente, *supra* note 226, at 25–26. De Torrente is Executive Director of Medecins Sans Frontieres, an organization whose mission includes speaking out against human rights abuses. See About MSF: The MSF Role in Emergency Medical Aid, <http://www.msf.org/msfinternational/aboutmsf>. Fox suggests that the organization engages in “political humanitarianism,” which, unlike traditional crisis-intervention strategies, is neither neutral

Once the immediate post-conflict crisis ends, more traditional human rights organizations can promote the agenda of children's rights and interests. With weak local and national governments, and weakened community and family networks, children need protection, advocacy, and services from the increasingly important NGO sector.²²⁹ NGOs should focus on local stakeholders so that they can take ownership and control of the agenda. Part of this strategy includes ensuring implementation of longer term actions to affect children's situation. The most essential actions are those to improve education, increase literacy rates, and develop an adequately paid and trained, appropriately sized civil service sector.

VI. CONCLUSION

Rethinking notions of justice involves including what we traditionally think of as "non-legal remedies" to provide different forms of justice. The phenomena of child witches and soldiers affect individuals and communities in complex ways that require multi-layered responses. Focusing simply on prosecutions, on labeling the use of child soldiers or the "exorcism" of child witches as a violation of international law, is critically important in gaining recognition of the significance of these crimes, but does not necessarily respond to the actual needs of the children. The response of local, national, and international actors must include legal and non-legal approaches that recognize the varying impacts of these crimes on children.

Providing justice to these children also provides a method to transform the surrounding culture. Explicitly acknowledging the impact of the conflict on child soldiers, or the vulnerability of children accused of sorcery, should help to protect children's rights. As the adults around them understand the various forms of harm to children, then the children may be strengthened politically, economically, legally, and culturally.

Changing laws and practices requires responding to opportunities. Countries in the post-conflict transition process provide multiple opportunities for transformation on many different levels, including local and national law, reintegration of soldiers and victims, and improving children's status. The involvement of the fourth "side," non-governmental actors, can help protect children and ensure that the rights to which they are "entitled" actually become an entitlement. As the new neuroscience confirms, children's brains are deeply affected by their environments, and the earlier that interventions can begin, then the less trauma their brains undergo, and the easier it is for children to "recover."

nor impartial. See Fox, *supra* note 7, at 25. Yet the meaning of neutrality in this situation is contested. See, e.g., FIONA TERRY, CONDEMNED TO REPEAT: THE PARADOX OF HUMANITARIAN ACTION 20–23 (2002); HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS (J.L. Holzgrefe & Robert O. Keohane eds., 2003).

²²⁹ See Fox, *supra* note 7, at 20 (noting the "unprecedented freedom" of NGOs to operate in fragile nation-states).

In addition, the new neuroscience raises questions about whether child soldiers should be held accountable in the same manner as adults. How do we account for immaturity and brain trauma in addressing their actions and reintegrating them into their families and communities?