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Abbreviations:

ACHPR	African Charter on Human and Peoples’ Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AFL	Armed Forces of Liberia
CPA	Comprehensive Peace Agreement
CRC	Convention on the Rights of the Child
DDR	Disarmament Demobilisation Reintegration
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	Economic Community of West African States
GA	General Assembly
GC	General Comment
IAC	International Armed Conflict

ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDP	Internally Displaced Persons
INPFL	Independent National Patriotic Front of Liberia
LDF	Lofa Defense Force
LPC	Liberian Peace Council
LURD	Liberians United for Reconciliation and Democracy
MODEL	Movement for Democracy in Liberia
NACROG	National Child Rights Observation Group
NIAC	Non-International Armed Conflict
NPFL	National Patriotic Front of Liberia
NPFL-CRC	NPFL Central revolutionary Council
OP	Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
RS	Rome Statute
RUF	Revolutionary United Front
SBU	Small Boys Unit
SLSC	Sierra Leone Special Court
TRC	Truth and Reconciliation Commission
TWP	True Whig Party
ULIMO	United Liberation Movement of Liberia
ULIMO-J	ULIMO - Kromah
ULIMO-K	ULIMO – Johnson
UN	United Nations
UNMIL	United Nations Mission in Liberia
UNICEF	United Nations International Children’s Emergency Fund

Chapter 1- Introduction

‘Words on paper cannot save children in peril.’¹ This criticism by Olara Otunnu, the former representative to the United Nations (UN) Secretary General for Children and Armed Conflict is valid to a certain extent. Perpetrators do not care whether ‘... conflict and violence rob children of a secure family life, betray their trust and their hope’ in the moment committing a violation to a child.² Civil wars have a horrific impact on society and its people. Children are one afflicted group suffering immensely under conditions of armed conflict. Due to their high levels of vulnerability, ‘special care and assistance’³ is attributed to them.

As a group, children are very susceptible to being neglected, abused, exploited and taken advantage of in situations of war. Liberia is one example of an African state having undergone two successive civil wars between 1989 and 2003 during which about 21, 000 children were used as soldiers and rebels.⁴ The use of children as fighters has had implications and repercussions on Liberia’s post-conflict society. The West African country is recovering from civil war within its phase of reconstruction.⁵ Within this phase of reconstruction, Liberia enforced a Children’s Law in 2011 to protect Liberian children.⁶ Thus, the Liberian state recognised that ‘children are the pillars, cornerstones, and foundation of a future vibrant, just, peaceful, and prosperous Liberia’.⁷ Children in Liberia, or former children, now adults, were exposed to tremendously brutalised civil wars where violence became ‘a way of life’ and the children participants in this cycle of violence.⁸ Of the estimated 21,000 child soldiers and rebels used in both Liberian wars, only 4,300 were demobilised which means that the overwhelming majority never learned to be part of a non-militarised, non-violent society.^{9,10} The negligence towards Liberian children having suffered from the civil war years has been attempted to be addressed by the Liberian government enacting the Children’s Law of 2011.

Considering that Liberia is a post-conflict nation, a contracting party to the Convention on the Rights of the Child (CRC), and has adopted a Children’s Law in 2011, the dissertation will examine the effectiveness of protecting children’s rights in post-conflict Liberian society

¹ Otonnu in B Mezur ‘Children at both ends of a gun: child soldiers in Africa’ in J Sloth-Nielsen *Children’s rights in Africa- a legal perspective* (2008) 209.

² Annan in B Mezur (n 1 above) in J Sloth-Nielsen (n 1 above) 213.

³ Preambles of GA Res 44/25 Convention on the Rights of the Child (CRC) (1989) and Children’s Law of Liberia 2011; thereafter ‘Children’s Law’.

⁴ Amnesty International 2005 in B Mezur (n 1 above) in J Sloth-Nielsen (n 1 above) 207.

⁵ See chapter 3 for definition.

⁶ Children’s Law of Liberia 2011.

⁷ Preamble Children’s Law.

⁸ A Adebayo *Building Peace in West Africa- Liberia, Sierra Leone, and Guinea-Bissau* (2002) 70.

⁹ (n 4 above) in (n 1 above) 207.

¹⁰ The terms ‘child soldier’ and ‘rebel’ are used interchangeably. See chapter 3 for definition.

by asking: ‘With regard to the Convention on the Rights of the Child standards, to what extent has Liberia’s Children’s Law 2011 integrated preventive and reintegrative measures for the protection of children used as rebels and child soldiers?’ Since the Children’s Law is a relatively recent document, the dissertation will focus on examining certain provisions in the legislation to determine the extent of the protection for children’s rights in Liberia.

This chapter of the dissertation commences with a re-statement of the research question. It is to be followed with a proposed methodology to address the research question. The objective for examining the effectiveness of the Children’s Law and child rights in a post-conflict African society will conclude this chapter.

1.1) Research Question

As indicated in the introduction, the research question asks ‘With regard to the Convention on the Rights of the Child standards, to what extent has Liberia’s Children’s Law 2011 integrated preventive and reintegrative measures for the protection of children used as rebels and child soldiers?’ The question will allow for the examination and scrutiny of the effectiveness of Liberia’s Children’s Law of 2011 which proclaims itself as a ‘Bill of Child Rights’.¹¹ In addressing the research question, the dissertation will examine whether the Children’s Law of Liberia provides sufficient protection for the rights of children in a peaceful post-conflict Liberian society.

1.2) Methodology

This dissertation will primarily involve desk-based research to examine those provisions of the Liberian Children’s Law that refer to measures preventing the use of children in armed conflict, measures protecting children from being used in armed conflict as well as measures reintegrating children into society who have participated in such violence in their past in light of CRC standards.

Reference will also be made to scholarly contributions on children’s rights in post-conflict societies, reports on and documentation of the condition of child rights in Liberia and the relevant international and regional human rights instruments including the International Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Rome Statute of the International Criminal Court, and the African Charter on the Rights and

¹¹ Children’s Law Art. 1 sec 2.

Welfare of the Child. Among critiquing the Children's Law by comparing its standards to other international human rights instruments, feasibility of the Children's Law will be examined by considering 1) justiciability, 2) accessibility, and 3) enforceability as criteria indicating whether the Children's Law is a substantive document and proves effective in theory or not.

The structure of the dissertation will comprise the following: Chapter two will set out a historical overview of Liberia's historical facts, particularly its civil war years, as well as its contemporary status and condition. It will provide a comprehensive explanation as to why Liberia's troubled (civil war) history has impacted negatively on the situation of children and the Children's Law today. Chapter three will define relevant key terms that will be used throughout the dissertation. Chapter four will use justiciability, accessibility and enforceability as criteria indicating the feasibility of the Children's Law. Also chapter four examines relevant provisions of Liberia's Children's Law comparing it with legal framework of human rights instruments. The aim is to assess firstly the prevention of recruiting children for conscription, child soldiering or other indirect involvement into hostilities, and secondly, the protection and reintegration of children formerly affected by armed conflict. Ideally, this will help identifying the strengths and weaknesses of the Liberian 'Bill of Child Rights'. Due to spatial constraints, the dissertation will only examine children as victims worthy of protection and not consider their contribution as perpetrators. Where appropriate, chapter five will include recommendations to substantiate the provisions set out in the Children's Law. Finally, the dissertation will conclude with chapter six and provide an assessment as to whether the Children's law fulfills its stated purpose.

1.3) Objective of examining the effectiveness of Liberia's Children's Law

The significance of asking to what extent Liberia's Children's Law 2011 has integrated preventive and reintegrative measures for the protection of children used as rebels and child soldiers is easily explained. Liberia became infamous for having used many children in her civil wars as rebels and soldiers.¹² Not only child rebels and soldiers, but nearly every Liberian child was in some way affected by armed conflict.¹³ In turn, Liberia has also gained credit for her post-conflict democracy.¹⁴ The objective to examine how effectively Liberia's government attempts to improve the conditions for her children is twofold: Firstly, there is a theoretical incentive as to determine whether the Children's Law caters for children in different situations

¹² A Sesay *Civil wars, child soldiers and post conflict peace building in West Africa* (2003) 102.

¹³ Human Rights Watch 'How to Fight, How to Kill: Child Soldiers in Liberia' (2004) <http://www.refworld.org/docid/402d1e8a4.html> (accessed 27 January 2015).

¹⁴ A Sesay et al *Post-war regimes and state reconstruction in Liberia and Sierra Leone* (2009) 50.

of vulnerability caused by the years of war. Since the Children's law is a fairly recent statute, no evaluation has been performed on its effectiveness. Except for few reports there is a gap in academic research examining the standards of Liberia's Children's Law which this dissertation seeks to close. Secondly, Liberia as a developmental state having undergone transitional justice, where the rule of law has been disregarded in the past, it is crucial to pay attention to how justice, law and order are re-established and perceived by society.

Chapter 2 - A Historical overview- How Liberia's history has impacted on its society today

2.1) Introduction

Liberia today is a product of a unique historical experience. It is a low income developing country along the West African coast inhabited by around 4,3 million people.¹⁵ Average life expectancy amounts to about 60 years of age.¹⁶ The price that especially Liberia's children and young generation is paying for multiple decades of subjugation, oppression, dictatorship and armed conflict, becomes blatant when one considers some of its developmental indicators. According to 2012 statistics of the United Nations International Children's Emergency Fund (UNICEF) Liberia suffers from an adult literacy rate of only 42,9 per cent.¹⁷ Regarding children, primary school participation is high at enrollment with 107 per cent attendance, but drops to a rate of 67,8 per cent by the last year of primary grade.¹⁸ More generally, over two million of Liberia's entire population are children below the age of eighteen.¹⁹ The attendance of orphans at school is as high as 85 per cent and the use of violence as a method of discipline towards children amounts to 94 per cent.²⁰ These numbers show that Liberia's developmental state is in a poor condition. The high number of children attending orphan schools indicates that there are many children who do not have parents and in some cases presumably no extended family taking care of them. The following chapter will depict why Liberia's legacy of turmoil and violence impacted tremendously on child rights in Liberia explaining the poor condition of child development in the country.

¹⁵ <http://data.worldbank.org/country/liberia> (accessed 03 July 2014).

¹⁶ (n 15 above).

¹⁷ http://www.unicef.org/infobycountry/liberia_statistics.html (accessed 03 July 2014).

¹⁸ (n 17 above).

¹⁹ (n 17 above).

²⁰ (n 17 above).

2.2) Colonial history

Liberia came into being as the first African republic in 1847.²¹ Freed slaves from the United States of America, Barbados and the Congos came to Liberia as settlers and declared their independence.²² They first arrived as early as 1822 in today's capital Monrovia, inhabiting the coastline, leaving the hinterland to indigenous Liberians.²³ These settlers were called Americo-Liberians.²⁴ A colonial state similar to British indirect rule was replicated, placing the black settler at the top as the coloniser.²⁵ A 'paternalistic, grossly imbalanced and ultimately detrimental elite-society' was created which has come to be known as Liberian Creole.²⁶ President William Tubman, also Americo-Liberian, was considered 'father of the nation' because he introduced a unification policy in 1964 which granted African Liberians civil rights.²⁷ However, people had to own land and abandon indigenous beliefs for Christianity in order to receive citizenship status.²⁸ By then occupation of the Americo-Liberian settlers had expanded to the whole country.²⁹ Tubman's presidency was also a time of economic growth. By diversifying the market, the economy expanded.³⁰ Export sales in rubber, timber and iron ore increased.³¹ However, to a large extent Liberia remained dependent on export revenues and concessional contracts.³² The US sustained its relationship as a close political and economic supporter of Liberia.³³ By the time William Tubman died in 1971 he had succeeded in integrating a few educated African elites into the ruling class.³⁴

Tubman's successor, William Tolbert, acceded to office in a time of unforeseen turbulence.³⁵ The Arab countries had imposed an oil embargo on Western countries which increased the import price for oil by fourfold.³⁶ Liberia as a non-oil-producing country was dependent on importing oil from Europe and was suffering from this tremendous increase in prices.³⁷ Conditions worsened and in April 1980, twenty-eight year old Master Sergeant Samuel

²¹ D Harris *Civil war and democracy in West Africa- Conflict resolution, elections and justice in Sierra Leone and Liberia* (2012) 44.

²² Harris (n 21 above) 44.

²³ Harris (n 21 above) 44.

²⁴ Harris (n 21 above) 44.

²⁵ Harris (n 21 above) 47.

²⁶ Harris (n 21 above) 209.

²⁷ Sesay et al (n 14 above) 22.

²⁸ Harris (n 21 above) 46.

²⁹ Harris (n 21 above) 45.

³⁰ Harris (n 21 above) 46.

³¹ Harris (n 21 above) 46.

³² Harris (n 21 above) 48.

³³ Sesay et al (n 14 above) 22.

³⁴ Sesay et al (n 14 above) 22.

³⁵ Sesay et al (n 14 above) 22.

³⁶ Sesay et al (n 14 above) 22.

³⁷ Sesay et al (n 14 above) 22.

Kanyon Doe stormed the executive mansion and President Tolbert was assassinated.³⁸ Popularly, this execution and coup d'état symbolised the revolution of indigenous Liberians against the Americo-Liberian ruling elite, and indicated the level of hostility against the ruling True Whig Party (TWP).³⁹

2.3) The Doe years leading to civil war I

With Samuel Doe's leadership things did not change for the better. Conditions got progressively worse. Sergeant Doe, just as the TWP, perpetuated a rulership that was driven by ethnic belonging.⁴⁰ His leadership turned into a tyranny whereby he eliminated and executed potential political rivals and opposition.⁴¹ He silenced civil society actors such as journalists, students and human rights activists, forcing many into exile.⁴² Doe himself belonged to the ethnic group of the Krahn and replaced military as well as political offices with other Krahn people.⁴³ He especially persecuted ethnic Gios and Manos, turning government and the military (his Armed Forces of Liberia- AFL) into a Krahn instrument.⁴⁴ Krahn made up five percent of the overall population.⁴⁵ Many Liberians felt alienated by Doe having murdered former leaders of their ethnic group, and also felt victimised and not unrepresented.⁴⁶ The below inserted map gives an overview of the ethnic groups and their geographic location in Liberia.

³⁸ Sesay et al (n 14 above) 24.

³⁹ Adebayo (n 8 above) 45.

⁴⁰ Adebayo (n 8 above) 45.

⁴¹ Adebayo (n 8 above) 45.

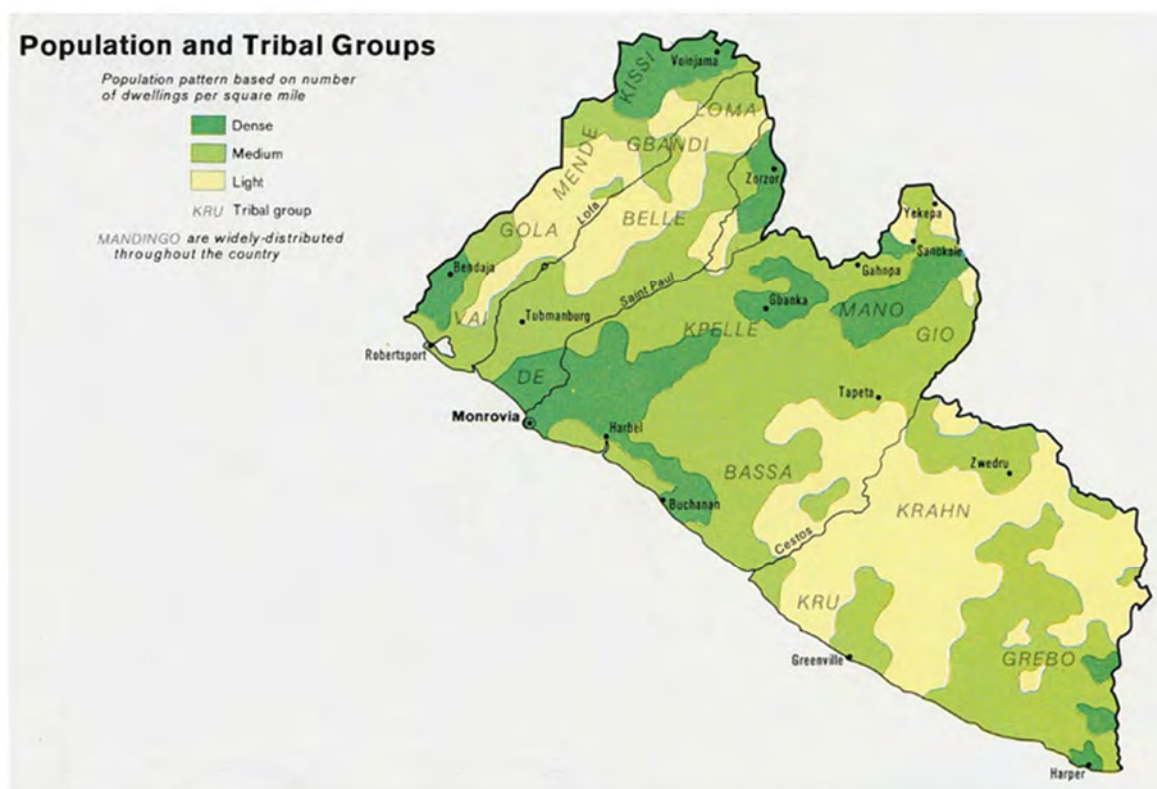
⁴² Adebayo (n 8 above) 45.

⁴³ Adebayo (n 8 above) 45.

⁴⁴ Adebayo (n 8 above) 45.

⁴⁵ Adebayo (n 8 above) 46.

⁴⁶ Adebayo (n 8 above) 45 & 46.



http://hbhoskinliberia.weebly.com/uploads/1/7/1/0/17101950/2492711_orig.jpg (accessed 03 July 2014)

Essentially, he set the scene for ethnic warfare, encouraging ethnic inequality throughout his dictatorship. The brutality of his regime consequently introduced an era of physical violence that impacted negatively on children and their development.⁴⁷

On Christmas evening of 1989 Charles Taylor invaded the country from Nimba County over the Ivorian border.⁴⁸ The map below shows Liberia and her neighbouring countries.

⁴⁷ Adebayo (n 8 above) 45.

⁴⁸ Adebayo (n 8 above) 46.

Geographical map of Liberia



<http://www1.international.ucla.edu/media/images/wg-liberia-2060-400x300.gif> (accessed 03 July 2014)

Since Samuel Doe had continued the politics of ethnic discrimination, the first civil war was fought recruiting rebels and soldiers, among them a substantial amount of children,⁴⁹ on ethnic grounds.⁵⁰ The main warring factions in the first civil war were: Firstly, the National Patriotic Front of Liberia (NPFL) headed by Charles Taylor.⁵¹ Taylor is of Americo-Liberian descent, had served under Doe's regime as the chief of the General Services Agency, and fled into the USA as an exile after having embezzled 900,000 US Dollars.⁵² He escaped from prison in Massachusetts where he was waiting for his extradition to Liberia.⁵³ NPFL rebels were mainly Gios, farmers from Nimba County, Bukinabe from Burkina Faso and Sierra Leonean mercenaries.⁵⁴ Secondly, two splinter groups emerged from the NPFL which were both warring factions in the first civil war. The first splinter group was the Independent National Patriotic Front (INPFL) established by Prince Yeduo Johnson who broke with Taylor in 1990.⁵⁵ He captured and videotaped the torture and murder of Doe in September 1990.⁵⁶ The second splinter group was NPFL Central Revolutionary Council (CRC) led by three former senior NPFL officials breaking with Taylor in 1994.⁵⁷

⁴⁹ Sesay et al (n 14 above) 36.

⁵⁰ S Podder in 'Child soldier recruitment in the Liberian civil wars: individual motivations and rebel group tactics' in A Oezerdem & S Podder (eds) *Child soldiers: from recruitment to reintegration* (2011) 50.

⁵¹ Podder (n 50 above) 50.

⁵² Harris (n 21 above) 65.

⁵³ Adebayo (n 8 above) 46.

⁵⁴ Adebayo (n 8 above) 46.

⁵⁵ Adebayo (n 8 above) 46.

⁵⁶ Adebayo (n 8 above) 46.

⁵⁷ Adebayo (n 8 above) 47.

Further factions were thirdly remnants of Doe's AFL dominated by Krahn soldiers⁵⁸ and the United Liberation Movement of Liberia (ULIMO) which was founded by Krahn and Mandingo politicians recruiting their rebels from Liberian refugees in Sierra Leone.⁵⁹ ULIMO split into two factions and both participated in the first civil war.⁶⁰ The Liberian Peace Council (LPC) another participating Krahn lead militia group and the Lofa Defense Force (LDF) also participated in the first civil war.⁶¹

None of the factions mentioned above justified participation in the first civil war on ideological grounds or articulated a plan as to how to change the country and its structure.⁶² Adebayo suggests that battles were mostly fought over resource rich areas for self-enrichment and to financially sustain their military undertakings.⁶³ Taylor, for instance supposedly derived about ten million US Dollars in gold, diamond, timber, rubber and iron ore exports a month.⁶⁴ Initially, the first civil war erupted primarily due to ethnic disparities created through Doe's tyrannical leadership, but was maintained for economic reasons to exploit Liberia's national resources.⁶⁵ Even worse, many young people and their willingness to get rid of Doe was exploited in the war.⁶⁶ Liberia's average age was low with many underage persons at the time.⁶⁷ Hence, the quantity of rebel groups coupled with the amount of children in Liberia's population explains the involvement of children in Liberia's armed conflicts and the degree of physical violence impacting on children, their development and behaviour.

2.4) Civil war I (1989 – 1995)

Liberia experienced a brutal civil war 'witnessing widespread human rights abuses and atrocities' using 'underfed and mostly underpaid fighters, many of them drug-induced children'.⁶⁸ It is estimated that more than 20,000 child soldiers were used in the first civil war.⁶⁹ A third of the population were internally displaced, or refugees in neighbouring countries.⁷⁰ Thus, Liberia's first civil war was notorious for the severity of its atrocities.⁷¹

⁵⁸ Adebayo (n 8 above) 47.

⁵⁹ Adebayo (n 8 above) 47.

⁶⁰ Adebayo (n 8 above) 47.

⁶¹ Adebayo (n 8 above) 47.

⁶² Adebayo (n 8 above) 47.

⁶³ Adebayo (n 8 above) 47.

⁶⁴ Adebayo (n 8 above) 47.

⁶⁵ Podder (n 50 above) 51.

⁶⁶ Podder (n 50 above) 51.

⁶⁷ http://www.unicef.org/infobycountry/liberia_statistics.html (accessed 03 July 2014).

⁶⁸ Adebayo (n 8 above) 47.

⁶⁹ Sesay et al (n 14 above) 36.

⁷⁰ Sesay et al (n 14 above) 36.

⁷¹ Sesay et al (n 14 above) 36.

Internationally, Liberia's first civil war did not gain much attention. The US, Liberia's 'historical godfather and Cold War patron', was entangled in the dissolution of the Cold War and was preoccupied with its first Gulf war and Iraq's invasion of Kuwait.⁷² Europe was engaged with the upheavals in Eastern European countries as the former Yugoslavia.⁷³ Hence, the Economic Community of West African States (ECOWAS) undertook a mission as Economic Community of West African States Monitoring Group (ECOMOG) and intervened.⁷⁴ However, ECOMOG's efforts to pacify the warring parties in Liberia were hampered.⁷⁵ Between 1990 and 1994 nine Comprehensive Peace Agreements (CPA) were signed, but none of them implemented.⁷⁶ ECOMOG's authority was weak. It did not 'enjoy the trust and confidence of its warring factions'.⁷⁷ After 1994 ECOMOG grew more financially incapable of further military and diplomatic undertakings and was increasingly unwilling to conduct enforcement actions, since all involved parties were ultimately unwilling to end the violence, unless they were offered accession of power in Liberian government.⁷⁸ In June 1995 ECOWAS unexpectedly succeeded with a CPA called 'Abuja I'.⁷⁹ The implementation of the CPA proved difficult, but ECOMOG managed to schedule elections for May 1997.⁸⁰ Conduct of disarmament were food rations and transportation to a destination of choice in exchange for fighters surrendering their weapons.⁸¹ According to UN figures 74 percent of an estimated 33,000 fighters were disarmed and demobilised, among them about 4,300 children.⁸²

Charles Taylor won the general election of 1997 in a landslide with 75,3 percent of the vote, and his closest rival, Ellen Johnson-Sirleaf, was defeated with 9,5 percent of the vote.⁸³ His victory occurred because Liberians believed that he was a guarantor for peace and stability and they feared a return to war had he lost.⁸⁴ With his enormous earnings from exporting natural resources he was able to fund a massive election campaign unlike his counterparts.⁸⁵ However, Liberia's peace did not prove to be durable.⁸⁶ After having waged a war for several years, Taylor had 'the psychology of a warlord' and was unable to make a transition '[in]to a

⁷² Adebayo (n 8 above) 49.

⁷³ Sesay (n 12 above) 96.

⁷⁴ Adebayo (n 8 above) 50.

⁷⁵ Adebayo(n 8 above) 50.

⁷⁶ Adebayo (n 8 above) 50.

⁷⁷ Sesay (n 12 above) 95.

⁷⁸ Adebayo (n 8 above) 50 & 60.

⁷⁹ Adebayo (n 8 above) 59.

⁸⁰ Adebayo (n 8 above) 62.

⁸¹ Adebayo (n 8 above) 63.

⁸² Adebayo (n 8 above) 64.

⁸³ Adebayo (n 8 above) 65.

⁸⁴ Adebayo (n 8 above) 65.

⁸⁵ Adebayo (n 8 above) 65.

⁸⁶ Sesay (n 12 above) 99.

statesman'.⁸⁷ Furthermore, it is said about him that he had 'grandiose' ambitions to 'restore Liberia's days of glory', being the leader of the Mano basin area incorporating Liberia, Sierra Leone and Guinea.⁸⁸ An investigative journalist mentioned that:

'Taylor had a map he carried around with him called Greater Liberia. It included parts of Guinea, diamond fields in Sierra Leone. It wasn't something abstract to him. He had a very clear idea of what he was trying to achieve. He had a grandiose plan...'⁸⁹

Taylor was aware of his own vulnerability and the unhappiness of other rebel groups after having won the elections.⁹⁰ He was paranoid and obsessed with security.⁹¹ The fragility of the state as well as the lack of security made Taylor repeat the same mistake as Doe, filling his armed forces (former AFL) with ethnic loyalists, sending mainly Krahn officers into retirement and demobilisation programmes.⁹² He failed to restructure the AFL and did not allow ECOMOG or the UN to train and restructure security forces.⁹³

2.5) Civil war II (1997 – 2003)

Taylor set the scene for the eruption of the second civil war because among other reasons, political reform was absent.⁹⁴ Further causes for grievance were a lack of running piped water, lack of electricity as well as a lack of educational and vocational opportunities.⁹⁵ The state performed public service functions to the bare minimum.⁹⁶ Since disarmament and demobilisation were not completed and took place in haste, many former fighters were re-recruited by two new rebel forces that entered the scene in the second civil war.⁹⁷ The Liberians United for Reconciliation and Democracy (LURD) was mainly comprised of ex-ULIMO-K fighters who were forced into exile for fear of Taylor's reprisals and re-formed mainly with Krahn and Mandingo fighters, partly funded by the Guinean government.⁹⁸ The Movement for Democracy in Liberia (MODEL) invaded from the Ivory Coast and South-Eastern Liberia around the years of 2002 and 2003.⁹⁹

⁸⁷ Adebayo (n 8 above) 71.

⁸⁸ Harris (n 21 above) 134.

⁸⁹ Harris (n 21 above) 134.

⁹⁰ Adebayo (n 8 above) 71.

⁹¹ Adebayo (n 8 above) 71.

⁹² Adebayo (n 8 above) 70.

⁹³ Adebayo (n 8 above) 71 & 70.

⁹⁴ Harris (n 21 above) 138.

⁹⁵ Harris (n 21 above) 138.

⁹⁶ Podder (n 50 above) 53.

⁹⁷ Podder (n 50 above) 53.

⁹⁸ Podder (n 50 above) 53.

⁹⁹ Harris (n 21 above) 146.

The catalogue of human rights abuses in the second civil war is long.¹⁰⁰ The applied force is best described as arbitrary and brutal.¹⁰¹ Among child soldiers and rebels being used in rebel forces, NPFL fighters were known to be ‘unpaid, often very young and traumatised’.¹⁰² Children were often forced to fight or lived in such dire conditions that fighting seemed like a better option.¹⁰³ Taylor maintained a unit infamous for its violent approach, namely the Small Boys Unit (SBU).¹⁰⁴ These ‘boys’ were supposed to target Krahn and Mandingo people early on.¹⁰⁵ However, the child fighters applied arbitrary violence and plundered systematically.¹⁰⁶ That raised their levels of motivation since they were not paid otherwise. The terror and violations committed are well documented.¹⁰⁷ One boy from Taylor’s SBU testified:

‘I was not paid by my commander, because we were in the forest and five years I could not see my parents, so when we see people we took their money and other things, because we were not paid by the government.’¹⁰⁸

Taylor was responsible for prolonging and instigating the civil wars in Liberia and destabilising the West African region.¹⁰⁹ By protracting the conflict he contributed substantially to creating an atmosphere determined by violence, conditioning Liberians to brutality. Involving children into the conflicts robbed many children of their childhood. Many rebel forces exploited especially vulnerable refugee- and internally displaced children during the last stages of the war, recruiting from internally displaced persons (IDP) camps.¹¹⁰ The end of the second civil war came abruptly. In August 2003 Taylor resigned as president publicly and went into exile in Nigeria.¹¹¹ However, chief prosecutor of the Sierra Leone Special Court (SLSC), David Crane, had indicted Taylor and after more than two years in exile, Taylor was extradited to the SLSC.¹¹²

¹⁰⁰ Harris (n 21 above) 141.

¹⁰¹ Harris (n 21 above) 141.

¹⁰² Harris (n 21 above) 141.

¹⁰³ Tracey B. C. Begley ‘The extraterritorial obligation to prevent the use of child soldiers’ (2012) 27 *American University International Law Review* 616.

¹⁰⁴ Harris (n 21 above) 141.

¹⁰⁵ Harris (n 21 above) 141.

¹⁰⁶ Harris (n 21 above) 141.

¹⁰⁷ Harris (n 21 above) 141.

¹⁰⁸ Podder (n 50 above) 67.

¹⁰⁹ Harris (n 21 above) 134.

¹¹⁰ Podder (n 50 above) 67.

¹¹¹ Harris (n 21 above) 148.

¹¹² Harris (n 21 above) 148.

2.6) Aftermath and Liberia today under Ellen Johnson- Sirleaf

The elections of 2005 went smoothly due to the fact that the rebel groups seemed to have disappeared during the political process, none of them surviving in the political arena.¹¹³ ‘Minor skirmishes in Monrovia’ occurred once and did not repeated themselves.¹¹⁴ Liberia’s election campaign was led without an incumbent able to dominate.¹¹⁵ Additionally, 15,000 UN peacekeepers were present to maintain peace.¹¹⁶ The election was considered to be the most free and fair Liberia had ever experienced.¹¹⁷ Turnout was high with 74,8 per cent present at the voting polls.¹¹⁸ In the end, Ellen Johnson-Sirleaf won by taking 59,4 per cent of the vote.¹¹⁹

Johnson-Sirleaf is known for her political resolve.¹²⁰ She was imprisoned under the Doe regime and imposed exile on herself during the Taylor years when she moved to the Ivory Coast.¹²¹ She served in leading positions for several international organisations and corporations before her presidency and was re-elected for a second term in 2011.¹²² In an interview with Al Jazeera journalist Ali Khan she admitted:

‘We descended into war that lasted fourteen years and did a lot of damage, a lot of destruction in our country... Today I hope, that Liberia is indeed now in a transformative mode.’¹²³

Nonetheless, since Liberia had no special court for war crimes and crimes against humanity, it set up a Truth and Reconciliation Commission (TRC) that began its proceedings in 2008 and published a report in 2009.¹²⁴ The Act to establish the TRC was enforced in 2005.¹²⁵ It recommended investigating 116 persons allegedly responsible for gross human rights violations and war crimes.¹²⁶ It also recommended banning 49 persons from holding public office for 30 years, among them Ellen Johnson-Sirleaf.¹²⁷ However, the TRC lacks credibility because it has provided ‘poor evidence’ for its recommendations.¹²⁸ The recommendations were perceived within Liberia’s political sphere as alarming.¹²⁹ They would have the effect of banning many

¹¹³ Harris (n 21 above) 161.

¹¹⁴ Harris (n 21 above) 162.

¹¹⁵ Harris (n 21 above) 161.

¹¹⁶ Harris (n 21 above) 162.

¹¹⁷ Harris (n 21 above) 164.

¹¹⁸ Harris (n 21 above) 166.

¹¹⁹ Harris (n 21 above) 176.

¹²⁰ Harris (n 21 above) 137.

¹²¹ Harris (n 21 above) 137.

¹²² <http://www.emansion.gov.lr/2content.php?sub=121&related=19&third=121&pg=sp> (accessed 26 July 2014)

¹²³ One on One with Ellen Johnson-Sirleaf on Al Jazeera English Minute 15.50

<http://www.youtube.com/watch?v=zUcvSDK-UYs> (accessed 05 July 2014).

¹²⁴ Harris (n 21 above) 195.

¹²⁵ Act to establish the Truth and Reconciliation Commission of Liberia 2005.

¹²⁶ Harris (n 21 above) 195.

¹²⁷ Harris (n 21 above) 195.

¹²⁸ Harris (n 21 above) 195.

¹²⁹ Harris (n 21 above) 195.

persons from the political sphere potentially resulting in Liberia being politically destabilised anew.¹³⁰ Internationally, Johnson-Sirleaf won the Nobel Peace Prize in 2011. At her laureate speech, she said:

‘This reward belongs to the people whose aspirations we have the privilege to represent and whose rights we have the obligation to defend.’¹³¹

The fact that Johnson-Sirleaf by the TRC’s standards should not be holding public office is problematic. By holding presidential office she is indirectly belittling the credibility of Liberia’s TRC. Her holding of office condones the continuation of impunity among people with access to power who have faced no individual criminal responsibility for the atrocities they have been (in)directly involved in. It does not set a good example for the promotion of respect for the rule of law in the country.

This past chapter has demonstrated how the historical peculiarities of Liberia have contributed to the status of Liberia’s developmental and political state today. People have gone through exceptional suffering and children were exploited as child soldiers and rebels in both wars extensively. The remnants of infrastructure and statehood were very poor or malfunctioning by the end of 2003. Picturing Liberia’s deficiencies, it becomes clear that such preconditions aggravate undertakings of the Liberian state towards the protection and reintegration of children and child development. This chapter has provided contextual illustrations of Liberia’s years of unrest potentially impacting on child rights in Liberia.

Chapter 3 - Defining terminology pertaining to Liberia’s post-conflict situation

3.1) Introduction

This chapter will define the terms essential to understanding whether the Children’s Law addresses integrating preventive and reintegrative measures for the protection of children used as rebels and child soldiers. However, in order to examine whether Liberia’s Children’s Law provides sufficient protection for the rights of children in post-conflict Liberia, one must understand what post-conflict means. Babafemi Akinrinade argues that there is a direct correlation between state collapse and the occurrence of human rights violations.¹³² A collapsed

¹³⁰ Harris (n 21 above) 195.

¹³¹ Ellen Johnson-Sirleaf’s laureate speech at Nobel Peace prize giving Minute 03.40 <http://www.youtube.com/watch?v=vKY58vw44N8> (accessed 05 July 2014).

¹³² B Akinrinade *Human rights and state collapse in Africa* (2009) 1.

state is considered ‘the breakdown of good governance, law and order’ characterised by total disintegration of the state.¹³³ The state as a functioning body is, if collapsed, unable to make, enforce, execute and implement decisions.¹³⁴ In the instance of the state having collapsed, there is very little protection for human rights.¹³⁵ Human rights violations are a manifestation of state collapse and trigger resistance facilitating the process of state collapse.¹³⁶ Other factors enhancing state collapse are civil wars and internal unrest challenging the already weakened state, preventing the enforcement of authority by the state.¹³⁷ These conditions of a collapsed state were met in post-war Liberia.

3.2) Post-conflict

Today’s Liberian state can be identified as post-conflict. There is a lack of consensus in academia and policy making regarding a universal definition of ‘post-conflict’ as a term.¹³⁸ It is often referred to as describing a situation where a conflict is either (temporarily) interrupted or halted by means of a peace agreement, triggered by the victory or defeat of a warring party, or the intervention of an external actor.¹³⁹ Kumar and Zeeuw define post-conflict societies as states having emerged from protracted violent conflict through an external factor as a peace agreement, an international military intervention, or the victory of one warring party.¹⁴⁰ However, post-conflict periods are often mistaken for periods of peace, but very often high levels of violence are detected.¹⁴¹ The term itself is deceptive as it suggests a transitional period from war to peace, but the cessation of warfare cannot be pinned down to a single identifiable moment.¹⁴² The intensity of the conflict, the level of violence may decline rapidly or progressively, with the defeat or withdrawal of warring parties.¹⁴³ Therefore, the level of violence is often used as an indicator determining the end of a conflict.¹⁴⁴ The danger, especially in the Liberian context, is the decline in security during post-conflict periods.¹⁴⁵ Violence that occurs in the aftermath of a conflict is mostly defined as criminal violence assigning a different

¹³³ Akinrinade (n 132 above) 2.

¹³⁴ Akinrinade (n 132 above) 2.

¹³⁵ Akinrinade (n 132 above) 2.

¹³⁶ Akinrinade (n 132 above) 3.

¹³⁷ Akinrinade (n 132 above) 54.

¹³⁸ J Smith-Hoehn *Rebuilding the Security Sector in Post-conflict societies: perceptions from urban Liberia and Sierra Leone* (2010) 13.

¹³⁹ Smith-Hoehn (n 138 above) 13.

¹⁴⁰ Smith-Hoehn (n 138 above) 13.

¹⁴¹ Smith-Hoehn (n 138 above) 13.

¹⁴² Smith-Hoehn (n 138 above) 14.

¹⁴³ Smith-Hoehn (n 138 above) 14.

¹⁴⁴ Smith-Hoehn (n 138 above) 14.

¹⁴⁵ Smith-Hoehn (n 138 above) 14.

quality to violence taking place during a civil war scenario.¹⁴⁶ Therefore, post-conflict states are a danger, particularly to children, since the state is still weak and unlikely to provide the financial ability, legal and technical expertise, and human capacity to prevent and protect children from criminal activity.

3.3) Child soldiers and rebels

What classifies a child as a child? By international standards set by the CRC, a child is defined as ‘every human being below the age of eighteen years unless under the law applicable to the child, majority age is attained earlier’.¹⁴⁷ In Liberia’s Children’s Law as well as in the African Children’s Charter (ACRWC) majority age is not attained earlier. ‘[A] child shall mean any person below the age of 18 years’.¹⁴⁸ Article 21(2) of the ACRWC even prohibits child marriage and betrothal of boys and girls specifying the age of marriage at eighteen.¹⁴⁹ However, an exception to eighteen as the majority age in Liberia’s Children’s Law is the amended Inheritance Law 2003 which assigns sixteen as the minimum age for customary marriage.¹⁵⁰ CRC standards for recruitment and conscription of children into war vary.

‘2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States shall endeavor to give priority to those who are oldest.’¹⁵¹

The CRC states that children not having attained the age of fifteen shall be protected by the state from taking part in ‘direct hostilities’.¹⁵² Further, the state shall refrain from recruiting a child under the age of fifteen and shall give priority to those children who are older than eighteen.¹⁵³ The weakness of Article 38(2) is that it limits the protection of children being exploited in armed conflict to ‘feasible measures’, whereby the state determines what measure is feasible to her. Secondly, Article 38(3) only holds states accountable that are contracting parties. Therefore, the provision that prohibits ‘armed forces’ from recruiting those below the age of fifteen excludes many children from protection who have been recruited by rebel forces not acting on behalf of the state. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP) in its Preamble provides that the

¹⁴⁶ Smith-Hoehn (n 138 above) 15.

¹⁴⁷ CRC Art. 1.

¹⁴⁸ Children’s Law 2011 Art. 1 sec 3 & ACRWC Art. 2

¹⁴⁹ ACRWC Art. 21(2).

¹⁵⁰ Equal Rights of the Customary Marriage Law 2003 sec. 2.9.

¹⁵¹ CRC Art. 38(2) & (3).

¹⁵² CRC Art. 38(2).

¹⁵³ CRC Art. 38(3).

rights of children require ‘special protection’, ‘continuous improvement of the situation of children without distinction’, and that they are ‘disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences’.¹⁵⁴ Article 2 of the OP holds that states need to ensure no compulsory recruitment into the armed forces under the age of eighteen.¹⁵⁵ Article 3 OP urges states to raise the minimum age for voluntary recruitment into armed forces from fifteen because they are entitled to ‘special protection’.¹⁵⁶

The OP also refers in its Preamble to the Rome Statute of the International Criminal Court (ICC). The Rome Statute (RS) in Article 8 distinguishes between international armed conflict (IAC) and non-international armed conflict (NIAC). Article 8 on IAC defines the conscription and enlistment of children under the age of fifteen into the national armed forces or using them in direct hostilities as a war crime.¹⁵⁷ Article 8 on NIAC extends the conscription and enlistment of children under the age of fifteen not only into armed forces as a war crime, but to ‘groups’ letting children take direct part in hostilities.¹⁵⁸ The difficulty here is that the legal definition of a child soldier and the protections related to it in international human rights law, except for offences amounting to war crimes in international criminal law, are explicitly reserved for children having been recruited by armed forces. Thus, child rebels are excluded from protection because the affiliation to the armed forces as a government institution is missing. The tasks of child soldiers and child rebels are, however, similar.

Expanding on this, a child soldier or a child rebel does not only mean a child directly involved in hostilities, but

‘is defined as a child who participates actively in a violent conflict as a member of an organization that applies violence in a systematic way. A child soldier may serve as a spy, scout, cook, messenger, porter or even sex slave. They need not brandish a gun.’¹⁵⁹

The Paris Principles, as principles and guidelines on children associated with armed forces or armed groups, defines child soldiers and child rebels similarly tying together all relevant aspects of child involvement in armed conflict in the following way:

‘A child associated with an armed force or armed group refers to any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers,

¹⁵⁴ Preamble of Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; thereafter OP.

¹⁵⁵ OP Art. 2.

¹⁵⁶ OP Art. Art. 3(1).

¹⁵⁷ Rome Statute; thereafter RS; Art. 8(b) (xxvi).

¹⁵⁸ RS Art. 8(e) (vii).

¹⁵⁹ S Gates ‘Why do children fight? Motivations and the mode of recruitment’ in A Oezerdem & S Podder (eds) *Child soldiers: from recruitment to reintegration* (2011) 31.

spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.’¹⁶⁰

In the African context, especially in Liberia, children as early as of five years of age, but mostly in their pre-teenage years, before their fourteenth birthday, have been exploited and recruited for tasks identified above.¹⁶¹ Hence, this dissertation, when using the term child soldier, will be equally referring to children who were rebels, not affiliated to the armed forces. The rights they are entitled to by the Liberian Children’s Law do not distinguish between child rebels and soldiers, but seek to protect and provide for deprived children having been exposed to armed conflict and seek to prevent further exposure.

3.4) Reconstruction and Disarmament Demobilisation Reintegration (DDR)

Liberia having undergone armed conflict is in a period of reconstruction. It involves ‘rebuilding socio-economic frameworks of society’ and ‘reconfiguring the enabling conditions for a better functioning peacetime society, using the framework of transparent governance and the rule of law’.¹⁶² State reconstruction efforts must give primary consideration to the protection of human rights.¹⁶³ In order to prevent upheaval from reoccurring, a culture for human rights and its recognition must be built.¹⁶⁴

One method towards rebuilding society is by starting to invest into the former fighters who need to be demilitarised. Otherwise they pose a threat to a peace-envisaging society. Despite numbers being unreliable, it is estimated that more than 40,000 Liberian fighters,¹⁶⁵ of which at least 21,000 were under eighteen, had to undergo a so called disarmament, demobilisation and reintegration (DDR) programme.¹⁶⁶

The United Nations Disarmament Demobilization and Reintegration Resource Centre defines DDR as follows:

Disarmament is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons carried by both combatants and often also some civilians. Disarmament may also include the development of responsible arms management programs.

Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. There are two stages of demobilization. The first stage of demobilization includes the processing of individual combatants and placing them in temporary centers plus the massing of troops in camps designated for this purpose (cantonment sites, encampments,

¹⁶⁰ The Paris Principles (2007) para 2.1.

¹⁶¹ Sesay (n 12 above) 9.

¹⁶² World Bank 1998 in Sesay et al (n 14 above) 6.

¹⁶³ Akinrinade (n 132 above) 5.

¹⁶⁴ Akinrinade (n 132 above) 5.

¹⁶⁵ <http://www.irinnews.org/report/47584/liberia-former-government-fighters-riot-during-demobilisation> (accessed 11 July 2014).

¹⁶⁶ B Mezur (n 1 above) in J Sloth-Nielsen (n 1 above) 207.

assembly areas or barracks) while the second stage encompasses the support package provided to the demobilized, which is called reinsertion. Reinsertion is the assistance offered to ex-combatants during demobilization but prior to the longer-term process of reintegration...

Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time frame, primarily taking place in communities at the local level. It is part of the general development of a country and a national responsibility, and often necessitates long-term external assistance.¹⁶⁷

The ex-combatants in Liberia were paid 300 US Dollars each in two installments.¹⁶⁸ The first half was paid after disarmament and discharge from a three week demobilisation programme.¹⁶⁹ The second half was paid after reintegration back into the home communities.¹⁷⁰ A report of the African Development Bank Group of 2011 stresses to recognise that DDR programmes alone do not guarantee a peaceful settlement into transitional society.¹⁷¹ Supplementation with development programmes is needed which contribute to a more enhanced and well rounded recovery into a secure and stable society.¹⁷²

DDR is not only a strategy used in development, but the CRC in Article 39 takes note of the significance of rehabilitating children into society by obliging states to ‘promote physical and psychological recovery and social reintegration of a child victim of ... armed conflicts’.¹⁷³ Article 6(3) of the OP similarly obliges states to demobilise or otherwise release persons from service who were recruited or used in hostilities under the jurisdiction of the state¹⁷⁴. Furthermore, when necessary, appropriate assistance for physical and psychological recovery and social reintegration shall be accorded.¹⁷⁵ Moreover, Article 7(1) provides that states need to cooperate implementing measures assisting with the rehabilitation and social integration of persons victim to armed conflict through technical cooperation and financial assistance.¹⁷⁶ Even though the financial assistance was small scale, and aforementioned provisions restrict the obligation of states to ‘feasible’ or ‘appropriate measures’, prescribed action took place. The Liberian Children’s Law has integrated provisions pertaining to the protection from involvement in armed conflicts and violence stating that: ‘Every child shall have the right to be

¹⁶⁷ http://www.unddr.org/what-is-ddr/introduction_1.aspx (accessed 09 July 2014).

¹⁶⁸ (n 167 above).

¹⁶⁹ (n 167 above).

¹⁷⁰ (n 167 above).

¹⁷¹ African Development Bank Group ‘The role of disarmament, demobilization and reintegration programs in post-conflict reconstruction: some lessons learnt’ (2011) <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/2011%20Role%20of%20Disarmament-%20Reintegration%20Programs%20in%20Post-Conflict%20Reconstruction.pdf> (accessed 19 July 2014).

¹⁷² (n 171 above).

¹⁷³ CRC Art. 39.

¹⁷⁴ OP Art. 6(3).

¹⁷⁵ OP Art. 6(3).

¹⁷⁶ OP Art. 7(1).

protected from involvement in armed or any kind of violent conflicts. The Ministry of National Defense shall not recruit or conscript any child into military service.’¹⁷⁷

3.5) Preventive and reintegrative measures

Linking the aforementioned definitions of ‘post-conflict’, ‘child soldiers’, ‘reconstruction and DDR’ as well as their implications to Liberian society, they can all be accommodated in the term ‘preventive and reintegrative measures’. What is meant by this are measures dealing with a range of desolate situations that war imposes on children. At issue are for instance former child soldiers and rebels, children who are unaccompanied and separated from their parents, or orphans due to the civil war. Liberian law, despite its financial strains, needs to provide for such children in dire need of assistance, especially those susceptible to being otherwise misled into other avenues of violence such as gangs, crime and homelessness. In order to accommodate children in desolate situations caused by war the Cape Town Principles of 1997 were designed to provide guidance and best practice recommendations to states and communities exposed to having to demobilise and reintegrate children, who were involved in armed conflict.¹⁷⁸ To recommend action ending the violation of child rights.¹⁷⁹ The dissertation will examine the effectiveness of ‘preventive and reintegrative’ measures.

Chapter 4- Liberia’s Children’s Law under scrutiny

4.1) Introduction

This chapter will scrutinise the effectiveness of ‘preventive and reintegrative’ measures by using justiciability, accessibility and enforceability to test Liberia’s Children’s Law. The legal framework of human rights instruments will be considered and applied to the relevant provisions of Liberia’s Children’s Law. The aim is to firstly assess the prevention of recruiting children for conscription, child soldiering or other indirect involvement into hostilities. Secondly, the aim is to assess the level of protection and reintegration of children formerly affected by armed conflict. Ideally, the assessment will help identify the strengths and weaknesses of the ‘Bill of Child Rights’ regarding rights ensuring the prevention, protection and reintegration of children having been affected by armed conflict. At the end of the chapter a finding will summarise the overall weaknesses as well as the positive and effective impact of

¹⁷⁷ Children’s Law Art. 3 sec 22.1 & 22.2.

¹⁷⁸ Cape Town Principles and Best Practices UNICEF (1997)

http://www.unicef.org/french/emerg/files/Cape_Town_Principles.pdf (accessed 13 July 2014) 1.

¹⁷⁹ (n 178 above) 1.

its strengths. Remarks will be made as to whether the weaknesses amount to legal loopholes rendering the Children's Law inconsistent with CRC standards.

As a contracting party to the CRC, Liberia enforced the Children's Law in 2011 to 'realise the Convention' and incorporate binding measures of child protection into the Liberian legal system.¹⁸⁰ It is uncontested that the rule of law in Liberia, among other deficits, needs strengthening.¹⁸¹ Liberia has realised, stating in the combined country report to the Committee of the CRC from 2011, that there is a need for a human rights culture in the country.¹⁸² However, Liberia similarly does not fail to mention that it has undergone civil war and is already increasing efforts to further a human rights culture by advancing the CRC's principles.¹⁸³ Legally, the Children's Law places an emphasis on having produced an inclusive Bill of Rights, including not just child rights recognised in the Liberian Constitution, other national statutes and legislation, but also international law especially the CRC to which it is party to.¹⁸⁴

The Preamble of the Children's Law sets out the aims the law aspires to for children in Liberia. The law in its Preamble recognises that 'children are the pillars, cornerstones, and foundation of a future, vibrant, just, peaceful, and prosperous Liberia', 'entitled to survival, development, participation and protection'.¹⁸⁵ It further acknowledges that 'childhood is a period requiring special care and assistance', but is aware that 'many children have in the past suffered because of abuse, exploitation, neglect, conflict and violence'.¹⁸⁶ The Children's Law stresses that children are rights holders, empowered human beings, and shall not be at the mercy of the state, their parents or legal guardian.¹⁸⁷ Evidence for Liberia's Children's Law intending to adhere and include principles core to the CRC, is Article 2, which captures the objective and principles of the Children's law in the following way:

'to facilitate the respect, protection, promotion, and provision of the realisation of child rights to make a maximum contribution to the survival, development, participation, and protection of every child in Liberia.'¹⁸⁸

Followed by this are the best interest principle with the child being 'the paramount consideration' and the non-discrimination principle outlawing discriminatory treatment against

¹⁸⁰ Convention on the rights of the child combined second, third and fourth periodic report of states parties due in 2009 Liberia (2011) CRC/C/LBR/2-4 para 13.

¹⁸¹ (n 180 above) para 4.

¹⁸² (n 180 above) para 86.

¹⁸³ (n 180 above) para 86.

¹⁸⁴ Children's Law 2011 Art. 3 sec 1. Liberia ratified the CRC in 1993.

¹⁸⁵ Preamble Children's Law.

¹⁸⁶ Preamble Children's Law.

¹⁸⁷ (n 180 above) para 85.

¹⁸⁸ Children's Law 2011 Art.2 sec 1.

a child on grounds of ‘sex, family, colour, race, ethnicity, place of origin, language, economic status, parents’.¹⁸⁹ Superficially it seems that the Children’s Law attempts to legally regulate exploitative, abusive, violent and conflictual conditions towards children in the country. Whether or not that is the case with regard to the prevention, protection and reintegration of children involved with armed conflict will be examined in the following section.

4.2) Assessing Liberia’s legal mechanisms to prevent the recruitment of children for conscription, child soldiering and other indirect involvement into hostilities

In order to assess whether or not Liberia’s Children’s Law is capable of preventing children from being recruited or conscripted into child soldiering or indirect involvement in hostilities, legal mechanisms testing the prevention of such procedures must be in place. Therefore, a feasibility test will be conducted in this chapter to consider how justiciable, accessible and enforceable the rights in Liberia’s Children’s Law are.

4.2.1) Feasibility test- justiciability, accessibility, enforceability

Justiciability means the suitability of a right to be asserted by a person or a group of persons in a judicial or quasi-judicial proceeding.¹⁹⁰ In Liberia the justiciability of the CRC relies on its implementation into Liberian national law.¹⁹¹ Many provisions of the CRC are enshrined in subject-specific legislation such as the Children’s Law, the Penal Code¹⁹² relevant to juvenile justice and others.¹⁹³ Since some CRC provisions were implemented through the Children’s Law which was enforced in 2011, certain child rights are justiciable and domestically binding in Liberia.

Not only is it significant to know that child rights in Liberia are justiciable in theory, but it is also important to understand how accessible the judicial system is for them. According to the United Nations (UN) Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepulveda, access to justice is limited for the impoverished due to financial constraints.¹⁹⁴ In her report to the UN General Assembly (GA) in October 2012, she outlined

¹⁸⁹ Children’s Law 2011 Art.2 sec 2.1 & sec 3(a).

¹⁹⁰ J Schneider, ‘Die Justiziabilität wirtschaftlicher, sozialer und kultureller Menschenrechte’ (February 2004) German Institute for Human Rights http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/studie_die_justiziabilitaet_wirtschaftlicher_sozialer_u_kultureller_menschenrechte.pdf (accessed 22 September 2014) 5.

¹⁹¹ White and Case LLP ‘Access to justice for children: Liberia’ (January 2014)

https://www.crin.org/sites/default/files/liberia_access_to_justice_0.pdf (accessed 27 June 2014) para 1B.

¹⁹² Act to amend the New Penal Code Chapter 14 Sections 14.70 and 14.71 and to Provide for Gang Rape 2006.

¹⁹³ (n 191 above) para I C.

¹⁹⁴ 67th session of UN GA report on ‘Access to justice by people living in poverty’ (2012)

<http://www.ohchr.org/EN/Issues/Poverty/Pages/Accessjustice.aspx> (accessed 24 September 2014).

that the main obstacles impeding people from accessing justice is lack of information, lack of legal recognition, unavailability of legal aid in civil and administrative matters, lack of remedies for negative impacts of social policy and the inability to seek redress in case of a violation of human rights.¹⁹⁵ In Liberia, children below the age of 21 are required to sue through a legal representative in civil cases.¹⁹⁶ Whether the same age threshold applies in criminal and administrative proceedings is unclear. If a child in Liberia is financially incapable of paying the costs for legal proceedings, it must file a motion and include an affidavit to qualify as an indigent in order to receive free legal assistance in the form of an attorney being assigned to him or her.¹⁹⁷ In terms of remedies, Liberian law provides for restitution, and compensation.¹⁹⁸ If harm has been suffered, injunctions and restraining orders are available as measures to child plaintiffs.¹⁹⁹ For juveniles, children under the age of 18, a juvenile court has jurisdiction and is the appropriate venue.²⁰⁰ If no juvenile court exists in the county, a magisterial court can exercise jurisdiction.²⁰¹ However, the general public is excluded from hearings and hearings are conducted privately without a jury.²⁰² The burden of proof in civil cases lies with the child plaintiff requiring preponderance of evidence as a standard.²⁰³ Generally, children below the age of twelve are not allowed to testify against the persons they reside with, except if their interests are involved.²⁰⁴ Therefore, theoretically the legal system seems accessible to children, but there is no average time frame for the resolution of a case, so that decisions can be delayed and claimants possibly neither receive judgment nor remedy or redress.²⁰⁵ Furthermore, vigilantism and mob violence are not uncommon in cases where decisions turn out negative.²⁰⁶ Many Liberians turn to ‘traditional justice’ which is not necessarily consistent with national law.²⁰⁷ The rule of law has not established itself to be respected as a fair and final decision, only to be challenged by legal proceedings through appeal.

The enforcement of decisions is the third crucial part of the feasibility test. However, enforcement in Liberia is flawed by the corruptibility of the police.²⁰⁸ This is problematic

¹⁹⁵ (n 194 above).

¹⁹⁶ (n 191 above) para II A.

¹⁹⁷ (n 191 above) para II D.

¹⁹⁸ (n 191 above) para III B.

¹⁹⁹ (n 191 above) para III B.

²⁰⁰ (n 191 above) para IV A.

²⁰¹ (n 191 above) para IV A.

²⁰² (n 191 above) para IV E.

²⁰³ (n 191 above) para IV E.

²⁰⁴ (n 191 above) para IV E.

²⁰⁵ (n 191 above) para IV F.

²⁰⁶ (n 191 above) para IV H.

²⁰⁷ (n 191 above) para V.

²⁰⁸ (n 191 above) para IV I.

because the police is a central organ enforcing the Children’s Law and statutorily recognising rights of the child.²⁰⁹ In a report of 2012, Human Rights Watch attributed lawlessness and abuse inflicted on ordinary Liberians to the police hindering the enforcement of law and investigation of wrongdoings.²¹⁰ Equally worrying are the results of a survey of Liberians perceiving the police and thereafter the courts as the most corrupt institutions in the country.²¹¹ Consequently, victims are reluctant to report crimes.²¹² Often they have to pay bribes to register cases.²¹³ Even if a child plaintiff might have been able to assert his or her right, corruption can undermine justice, as people are released from custody regardless of their guilt or innocence.²¹⁴ White & Case LLP suggest that this deep distrust in the police by the public explains mob violence and vigilante groups as a response to justice often not being done.²¹⁵ Initially, accountability seems to be a problem in Liberia and the enforcement of justice is often denied to Liberians lacking the necessary funds. It effectively hampers the accessibility of child rights in Liberia, if the enforcement of measures, decisions and judgments of children in situations of vulnerability are largely dealt with arbitrarily.

4.2.2) Assessment of provisions

Provisions of the Children’s Law, preventing the recruitment and conscription of child soldiering or indirect involvement in hostilities, are enshrined in some articles of the Children’s Law deriving from the CRC. The substantive law of the most central provisions preventing conscription and recruitment will be assessed, but divided into three subsections: The first subsection covers prevention from involvement in armed conflict. The second subsection deals with children in situations of vulnerability, and the third subsection looks at codes of conduct for child protection practitioners.

4.2.2(i) *Prevention from involvement in armed conflict and violence*

The most significant provision relating to the prevention of conscription and recruitment of children, is Article 3 section 22.1 and 22.2 of the Children’s Law. It emanates from Article 38 of the CRC, especially paragraph (2) ensuring that persons below the age of fifteen do not take part in direct hostilities and (3) which obliges states to refrain from recruiting persons under the age of fifteen into the armed forces.²¹⁶ Section 22.1 of the Children’s Law provides the right to

²⁰⁹ (n 191 above) para V.

²¹⁰ (n 191 above) para V.

²¹¹ (n 191 above) para V.

²¹² (n 191 above) para V.

²¹³ (n 191 above) para V.

²¹⁴ (n 191 above) para V.

²¹⁵ (n 191 above) para V.

²¹⁶ CRC Art. 38(2) & (3).

be protected from ‘involvement in armed or any kind of conflict’ and section 22.2 prohibits the recruitment and conscription of any child into military service.²¹⁷ The incentive for section 22.1 is that Liberia’s National Child Rights Observation Group (NACROG) discovered that Liberian children were recruited to fight wars in neighbouring countries.²¹⁸ The way section 22.1 is formulated obliges the state to protect children from involvement, but it does not specify how protection shall be ensured, and does not prohibit the involvement altogether. Section 22.1 neither explicitly penalises recruitment, nor the involvement in armed and violent conflict itself. On the one hand it creates leeway for children to be exploited as rebels or child soldiers, because the protective right is broadly phrased. On the other hand, it does not specify which actions exactly are prohibited and therefore entitles all children, directly or indirectly involved in violence and armed conflict to protection from involvement in armed violence.

Section 22.2 is narrow in its formulation, ascribing the prohibition of recruitment and conscription of children explicitly to military service and making it a duty of the Liberian state to ensure that all its soldiers and military recruits are above eighteen years. Thereby the section limits the prohibition of recruitment and conscription of children into armed forces, but exclude children from state protection who are recruited by non-state actors. Applying the feasibility test, both sections are justiciable by Liberian law, while accessibility is easier for section 22.2, because the obligation by the state is clear and the burden of proof having to be met by the plaintiff is executable. Enforcement in this case might not depend so much on the police, but on military ranks and to what extent the military is corrupt internally is unclear. In contrast, for section 22.1 the burden of proof cannot be easily provided and enforcement might involve the police arresting street gangs or former warlords whose interaction the police might avoid.

Simultaneously, with the Children’s Law an Act to amend sections 14 to 18 of the Penal Law was enforced. Section 16.14 of the Penal Code of 2006 was amended to enable a person who ‘recruits or enlists any child for purposes of engaging in violent conflict’ to be found guilty of a first degree felony and a person recruiting ‘for purpose of supporting and not for directly engaging in the conflict’ to be found guilty of a second degree felony.²¹⁹ Indirect participation in armed conflict is equally devastating for a child and therefore needs to be deterred and prevented through serious punishment. Thus, these amendments not only oblige the state through Article 2 section 22, to prevent, protect or prohibit recruitment and conscription from taking place, but also criminalises such action making the offence less abstract. Additionally,

²¹⁷ Children’s Law Art. 3 sec 22.1 & 22.2.

²¹⁸ (n 180 above) para 316.

²¹⁹ Act to amend sections 14, 16, 17 and 18 of the Penal Law, Title 26, Liberian Code of Laws revised 2011 sec 16.14.

section 18.15 of the amendment criminalises a person by allowing that person to be found guilty of a third degree felony, if the child was incited to ‘engage or indulge in exposing a child to any cinematic, photographic, or still or motion picture, that by reason of its pornographic or violent content may harm the child exposed to such material.’²²⁰ The section recognises that children need protection from glorification and overexposure to violence through the media as it can harm a child. To criminalise such an act might deter and prevent children from glorification and overexposure to violence.

4.2.2(ii) *Children in situations of vulnerability*

There are numerous situations making Liberian children vulnerable to armed conflict. In order to protect Liberian children in vulnerable situations, Article 7 section 1.1 defines ‘a child in a situation of vulnerability, if she or he is especially at risk of having her or his survival, development, participation, and protection endangered’.²²¹ This definition encompasses many different scenarios referring to the key principles of participation, prevention, provision and protection on which the CRC predicates its rights and which are ‘inseparable, mutually supporting and interdependent’.²²² Section 1.2 specifies under what conditions children are at disadvantage. Relevant to the protection of children from involvement in armed conflict are especially provisions in subsection

‘(a) when a child has no parent or guardian; (d) is a juvenile in need of care under Chapter 11 of the Judiciary Law; (e) has been abandoned by her or his parent and guardian; (g) has no home or runs away from home; (h) heads or lives in a child-headed household; (p) found begging or receiving alms as a means of survival; (s) is truant or is in association of people who may involve her or him in criminal or immoral practice; (t) is displaced as a result of war, civil disturbance or natural disasters; (u) has been sexually abused; (v) consumes or is exposed to alcohol or any intoxicating or narcotic drug’.²²³

Most of the above listed circumstances do not occur out of choice, but are a by-product of the civil war. Many children were separated from their parents and families during the civil war years.²²⁴ A displacement rate of about 86 percent existed during the war.²²⁵ After the war parents gave their children away or made arrangements for relatives or people to provide for their children in exchange for household or trading services.²²⁶ Many children escaped from their homes, because of violence or neglect.²²⁷ These run away children then have to provide

²²⁰ (n 219 above) sec 18.15.

²²¹ Children’s Law Art. 7 sec. 1.1.

²²² D M Chirwa ‘Combating child poverty: the role of economic, social and cultural rights’ in J Sloth-Nielsen (n 1 above) 93.

²²³ Children’s Law Art. 7 sec 1.2.

²²⁴ (n 180 above) para 171.

²²⁵ (n 180 above) para 171.

²²⁶ (n 180 above) para 171.

²²⁷ (n 180 above) para 172.

for themselves and at times end up in situations of disadvantage as listed in the previous paragraph of section 1.2 in Article 7 of the Children's Law. Due to their vulnerability they are prone to being involved in armed conflict.

The Children's Law recognises separated and unaccompanied children (Article 7 section 1.2 a, d, e, g, p, t) as a vulnerable group. Section 1.2 of Article 7 of the Children's Law states that these as vulnerable classified children are at risk and need protection.²²⁸ General Comment (GC) No. 6 on separated and unaccompanied children advises states faced with providing for separated and unaccompanied children to appoint a guardian or adviser to the child as soon as he or she is identified.²²⁹ The committee of the CRC further recommends the guardianship to be upheld until the child has reached majority age or has permanently left the territory and thereby jurisdiction of the state.²³⁰ Section 5.2 of Article 7's Children's Law ascribes responsibility to the Ministry of Health and Social Welfare to facilitate as much as possible 'the reunification of unaccompanied or similarly situated children with their families'.²³¹ The Cape Town Principles recommend reunion with families or placement within family structures.²³² The Children's Law thereby not only accommodates a recommendation of the Cape Town Principles, but also a recommendation of GC No. 6. Paragraph 79 recommends that states make efforts for unaccompanied and separated children to find a 'durable solution' through which family reunification is possible.²³³ This rights-based approach toward family reunification would include tracing, as long as it is in the best interests of the child.²³⁴ However, paragraph 79 of GC No.6 recommends efforts for 'durable solutions' for unaccompanied and separated children to be undertaken 'without undue delay'.²³⁵ Section 5.2 of the Children's Law excludes the phrase 'without undue delay' thereby ridding the law of the obligation to apply immediacy to reunifying children with their families.²³⁶ The absence of the phrase not only relieves the state of its obligation to act immediately, but weakens the right of a Liberian child to be reunified with its family as quickly as possible.

In that respect, the amendment of the Decedent Estates Law is a positive example of an act setting out clear executable measures incorporating a child as a rights-holder,²³⁷ specifically

²²⁸ Children's Law Art. 7 sec 1.2.

²²⁹ GC No. 6 para 33.

²³⁰ GC No. 6 para 33.

²³¹ Children's Law Art. 7 sec 5.2.

²³² (n 178 above) 3.

²³³ GC No. 6 para 79.

²³⁴ GC No. 6 para 80.

²³⁵ GC No. 6 para 79.

²³⁶ GC No. 6 para 79.

²³⁷ The amended section of the Decedent Estates Law is relevant, because it was enforced simultaneously with the Children's Law and is mentioned as an amended act in the Children's Law.

a child in a situation of vulnerability having lost his or her parent(s).²³⁸ The amendment, bars dispossessing a child of her or his inheritance, prescribing that a 'guardian, caregiver, executor of a will, administrator or other such person who dispossesses any surviving child of the child's inheritance is guilty of a third degree felony'.²³⁹ Section 17 of Article 3 of the Children's Law's upholds the same provision as the amended Decedent Estates Law namely, the right of a child to benefit from inheritance by his or her parents prohibiting the dispossession of any surviving child of his or her inheritance.²⁴⁰ Generally, children below the age of 21 need a legal representative in civil cases.²⁴¹ This also applies to matters of inheritance. A guardian will be assigned to the child, or, if the child is older than fourteen, he or she can choose the legal representative him- or herself.²⁴² Another option, if the child falls short of having a general or testamentary guardian, he or she can sue through the principle of 'the next friend'.²⁴³ That way it is ensured that children without parents are entitled to a guardian and have access to inherited property. Inheritance can create financial independence or security of housing for a child after the death of his or her parents. The child might not have to compromise education in order to generate an income. The right to inherit as a child is a protective measure. It makes him or her less prone to becoming indigent or destitute and therefore less susceptible for recruitment and involvement into armed conflict.

Quite extraordinary about the Children's Law is the recognition of child-headed households as a situation of vulnerability for a child.²⁴⁴ The CRC does not provide for such a situation. Article 20 of the CRC on alternative care only holds that a child 'permanently deprived of his or her family environment ... shall be entitled to special protection and assistance by the state'.²⁴⁵ Further it obliges states to provide for alternative care 'in accordance with national laws' in order to ensure alternative care for a child in need of it.²⁴⁶ Article 20(3) enumerates a non-exhaustive and non-prescriptive list of possible placements including foster care, kafalah of Islamic law (authorisation for legal care and guardianship of a child),²⁴⁷ adoption or institutional care, if suitable.²⁴⁸ Similarly, the ACRWC does not explicitly cater for

²³⁸ Act to amend Chapter 3 of the Decedents Estates Law, Title 8 Liberian Code of Laws sec 1. 3.10.

²³⁹ (n 238 above) sec 1. 3.10.

²⁴⁰ Children's Law Art. 3 sec 17.1 & 17.2.

²⁴¹ (n 191 above) para II A.

²⁴² (n 191 above) para II A.

²⁴³ (n 191 above) para II A.

²⁴⁴ Children's Law Art. 7 sec 1.2(h).

²⁴⁵ CRC Art. 20(1).

²⁴⁶ CRC Art. 20(2).

²⁴⁷ 'Court backs French ban on Islamic 'kafala' adoption' 4 october 2014

<http://www.humanrightseurope.org/2012/10/court-backs-french-ban-on-islamic-%E2%80%98kafala%E2%80%99-adoption/> (accessed 24 November 2014).

²⁴⁸ CRC Art. 20(3).

children living in a constellation of a child-headed household either. Article 18(1) highlights that ‘the family shall be the natural unit and basis of society, it shall enjoy the protection and support of the state’.²⁴⁹ Article 18(2) continues ‘in case of the dissolution, provision shall be made for the necessary protection of the child’.²⁵⁰ Article 24 of the ACRWC on adoption is more explicit about the options of care the state shall provide. Inter-country adoption ‘may be considered as a last resort ... if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin’.²⁵¹ Initially, the ACRWC implicitly condones child-headed households, at least preferring it to (inter-country) adoption, since siblings staying together instead of being taken apart, resembles a family setting like a ‘natural unit’. It is very progressive of the Liberian Children’s Law to acknowledge children in child-headed households vulnerable and worth protecting from involvement in armed conflict.

Orphans are a similarly vulnerable group of children that the Children’s Law provides for in Article 7 section 1.2 (a). Aware of that, parents or relatives relinquished their children to orphanages after the civil war, assuming children would receive better opportunities for education, food, clothing and shelter, if they were classified as orphans.²⁵² The number of orphanages grew from ten in 1998 to 114 in 2008.²⁵³ Supposedly, only 40 per cent of children living in Liberian orphanages are without parents.²⁵⁴ The strong focus on institutional care as well as the meagre mechanisms for control and enforcement increased the concern for illegal adoptions and child trafficking.²⁵⁵ It was necessary for the Liberian state to recognise the vulnerability and need of protection orphans and ‘fake’ orphans face.

Another group that the Children’s Law equally recognises as susceptible to situations of vulnerability in section 5 of Article 7 are children who are refugees or internally displaced. Section 5 provides access to basic social welfare thereby catering for children who are separated from their parents or unaccompanied.²⁵⁶ Liberia hosts about 7600 refugees and asylum seekers primarily from Ivory Coast and Sierra Leone.²⁵⁷ How many of them are children is unknown. Section 5 of Article 7 of the Children’s Law makes reference to Article 22(2) of the CRC on

²⁴⁹ ACRWC Art. 18(1).

²⁵⁰ ACRWC Art. 18(2).

²⁵¹ ACRWC Art. 24(a).

²⁵² Joint Submission by the UN Country Team in Liberia for the UN Compilation Report ‘Universal Periodic Review of Liberia’ (2010) United Nations para 33.

²⁵³ (n 252 above) para 33.

²⁵⁴ (n 252 above) para 33.

²⁵⁵ (n 252 above) para 33.

²⁵⁶ Children’s Law Art. 7 sec 5.1.

²⁵⁷ (n 252 above) para 37.

refugees. Wherein states are obliged to provide for refugees as they deem ‘appropriate’ with the help of the international community.²⁵⁸ Section 5.1 directly involves the Ministry of Health and Social Welfare and ties in the international community, civil society organisations, public agencies and services by stating that they ‘shall work with’ each other.²⁵⁹ Although it remains unclear what ‘basic social welfare and services’ is being referred to in section 5.1, the existence of the measure is important. Thus, during the civil war years, destitute children were recruited for child soldiering from refugee camps and camps for internally displaced. These children might be prevented from recruitment with that measure (see chapter 2.5). Refugee and internally displaced children run a greater risk, because they are exposed to reduced social security and lack economic, educational or other opportunities.²⁶⁰ By providing ‘basic services’ the incentive of section 5.1 is to discourage and prevent affected children from joining violent groups for plain survival.

The restriction of the use of physical and mental violence in section 7 of Article 7 also seeks to prevent harm. Section 7.1 prohibits subjecting a child ‘to torture or other cruel, inhuman or degrading treatment or punishment’²⁶¹ thereby incorporating the first sentence of Article 37(a) of the CRC.²⁶² The prohibition against torture or other cruel, inhuman or degrading treatment or punishment is an absolute prohibition with the purpose to prevent such practices by creating deterrence through outlawing it. Liberia has taken ‘appropriate ... measures’ to absolutely forbid mental as well as physical violence which have been employed during the civil war years as a means of recruiting child soldiers.²⁶³ Section 7.2, however, creates a great loophole by formulating that ‘any correction or punishment’ ‘shall be justifiable for the child concerned’.²⁶⁴ It is unclear what kind of correction or punishment would be justifiable for a child. Consequently, the Liberian Children’s Law is denying its full obligation by CRC standards to protect a child from all forms of violence and is indirectly condoning violence by leaving space to justify correction and punishment. Section 7.3 states:

‘no correction of a child is justifiable for any child if it is unreasonable in kind or in degree relative to the age, physical or mental condition of the child and no correction is justifiable if the child by reason of tender age or otherwise is incapable of understanding the purpose and fairness of correction.’²⁶⁵

²⁵⁸ CRC Art. 22(2).

²⁵⁹ Children’s Law Art. 7 sec 5.1.

²⁶⁰ (n 160 above) 5.0.

²⁶¹ Children’s Law Art. 7 sec 7.1.

²⁶² ‘No child shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.’ CRC Art. 37(a).

²⁶³ CRC Art. 19(1).

²⁶⁴ Children’s Law Art. 7 sec 7.2.

²⁶⁵ Children’s Law Art. 7 sec 7.3.

This provision leaves a great amount of discretion to the courts as to how it would interpret ‘unreasonable’ correction. The child is thereby undermined as a rights-holder and subjected to the power and reason of the parent or guardian.

Section 8 of Article 7’s Children’s Law deals with another vulnerable situation unaccompanied or separated children might face. It is a comprehensive preventive provision going beyond the prohibition of abduction and trafficking of children.

‘Any person, convicted under the Trafficking Law or any penal law prohibiting the abduction or trafficking of children shall be placed on a child offenders’ register and not allowed to render direct work services to children.’²⁶⁶

The CRC’s equivalent provisions refer to ‘combat illicit transfer and non-return of children’ in Article 11 as well as Article 35 ‘to prevent the abduction of, the sale of or traffic in children’.²⁶⁷ Liberia enforced an Act to Ban Trafficking in Persons in 2005²⁶⁸ punishing the trafficking and abduction of children, since there were numerous cases reported and evidence gathered, on trafficking and abducting children within Liberia and beyond its borders from and into neighbouring countries.²⁶⁹ Trafficking and abduction was also used as a form of forcible recruitment during the civil war years.²⁷⁰

Two more provisions aimed at the prevention of a child from being recruited or conscripted require attention. The first is another amendment of the penal code section 16.13 whereby

‘a public officer charged with the investigation, prosecution, or punishment of perpetrators of crimes against children who fails without reasonable excuse to investigate, prosecute, or punish a crime committed against a child is guilty of a third degree felony’.²⁷¹

The severity of the punishment in such a case indicates that the state wants to reduce negligence or plain inaction, especially protecting children in vulnerable situations. On the basis of the evaluation of the White & Case report on ‘access to justice’ in Liberia, the rule of law and incentives for enforcement by the police force to act are presumably weak.²⁷² Compliance with the law, in this case prevention and protection from recruitment and conscription, becomes only possible by deterring inactivity with serious penalisation.

²⁶⁶ Children’s Law Art. 7 sec 8.

²⁶⁷ CRC Art. 11 & 35.

²⁶⁸ Act to Ban Trafficking in Persons within the Republic of Liberia 2005.

²⁶⁹ (n 180 above) para 193 – 195.

²⁷⁰ (n 180 above) para 193.

²⁷¹ (n 219 above) sec 16.13.

²⁷² (n 191 above) para IV I & V.

The Children's Law also provides measures in section 2 and section 3 of Article 7 as to how best to relieve children from situations of vulnerability. Section 2 provides that the Ministry of Gender and Development shall coordinate efforts of local government, the private sector, civil society and child welfare committees addressing the causes of situations of vulnerability.²⁷³ By emphasising and dissecting cooperation to different levels of interaction, the accessibility of vulnerable children to protection and enforcement shall be increased. Section 3.1 obliges the Ministry of Health and Social Welfare to work with other ministries in developing, implementing and promoting public policies and programmes, alleviating, mitigating and addressing the effects of situations of vulnerability.²⁷⁴ Such efforts are necessary to make sure that children exposed to situations of vulnerability experience relief and support. Situations of vulnerability are spelt out at great length in Article 7, covering many circumstances to which protection applies. The causes of children in vulnerable situations of Article 7 are addressed by the Ministries of Gender and Development, Labour as well as Health and Social Welfare.²⁷⁵ Child welfare committees shall tackle the causes of situations of vulnerability.²⁷⁶ And the implementation of programmes or, public policy shall alleviate the effect of the situations of vulnerability.²⁷⁷ That way the Liberian state attempts to be more in touch with its citizens addressing children's needs. Although Article 7 identifies many situations of vulnerability and recognises them as such, it does not prescribe any specific action that needs to be taken when finding a child in any of the vulnerable situations. That weakens the practicability and enforceability of Article 7, because the child cannot seek immediate redress. Moreover, some sections are comprehensive provisions setting out the rule and purpose for prevention and protection including a precise test, whereas others are broadly formulated making it difficult for the claimant to hold the state accountable for her violations.

4.2.2 (iii) Conduct for child protection practitioners

The second provision which requires attention is Article 8 section 2 which seeks to prevent abuse, negligence and maltreatment of children by child protection officers. Child protection officers usually stand in direct contact with children often creating relationships of trust. These relationships of trust can be easily exploited. Hence, the Liberian Children's Law included a code of conduct in section 2 of Article 8 which every employer of a child protection officer shall incorporate.²⁷⁸ This provision attempts to ensure that employees working with children do

²⁷³ Children's Law Art. 7 sec 2.

²⁷⁴ Children's Law Art. 7 sec 3.1.

²⁷⁵ Children's Law Art. 7 sec 2, 3, 9.

²⁷⁶ Children's Law Art. 7 sec 2.

²⁷⁷ Children's Law Art. 7 sec 3.1.

²⁷⁸ Children's Law Art. 8 sec 2.

not exploit their power over children. The section stresses that children without parents, or extended family are rights-holders, entitled to protection from situations of vulnerability. Such situations may be inflicted by child protection officers. The incorporated code of conduct might prevent child protection officers from subjecting children to arbitrary treatment.

Seemingly, Liberia is expanding its legislation, progressively regulating areas of law, or amending acts in need of regulation. However, some provisions lack substantive law and might have been adopted and incorporated to appease international pressures by UN reports and CRC Committee recommendations such as sections 5 and 7 of Article 7 of Liberia's Children's law.

4.3) Protecting children from involvement in armed conflict

Degrees of protection within a legal regime often vary and depend on the vulnerability of the group needing protection. The vulnerability of children involved in armed conflict, assumingly, is high. Whether the Children's Law reflects the necessary high regime of protection and has put in place adequate protective measures, will be assessed in the following subsections. The sections will cover the right to life, the right to education, remedies in the Children's Law, children and situations of vulnerability and alternative care for children.

4.3.1) The right to life

The right to life is one of the most fundamental human rights. It is a prerequisite for the protection of any other human condition. The Children's Law phrased the right to life in Article 3 section 3.1 plainly stating that 'every child shall have the right to life'.²⁷⁹ Article 6 of the CRC qualifies the right further, stating that every child has the 'inherent' right to life, adding that 'states parties shall ensure to the maximum extent possible the survival and development of the child'.²⁸⁰ The CRC's formulation shields the right to life from arbitrariness and other inconsistencies. Also the formulation acknowledges that the right to life is a universal human rights principle which needs to be understood as a holistic concept requiring states to adopt positive measures for the protection of life.²⁸¹ Such 'positive' measures are to reduce infant mortality, increase life expectancy, increase rehabilitative health, prohibit or prevent extra-legal arbitrary executions, or any situation of enforced disappearance.²⁸² The Children's Law does not provide such positive measures, putting a child's life potentially at risk by not ensuring his

²⁷⁹ Children's Law Art.3 sec 3.1.

²⁸⁰ CRC Art. 6(1), (2).

²⁸¹ R Hodgkin & P Newell *Implementation handbook for the Convention on the Rights of the Child* (2007) 83 – 84.

²⁸² (n 281 above) 84.

or her survival ‘to the maximum extent’ possible. However, the words ‘maximum extent possible’ leave contracting parties discretion to determine their level of ‘maximum extent’ individually. The ICCPR to which Liberia is a contracting party, leaves less discretion to states saying that ‘this right shall be protected by law. No one shall be arbitrarily deprived of his life.’²⁸³ Hence, the right to life qualifies as an absolute right which cannot be derogated from.²⁸⁴ Article 5(1) and (2) of the ACRWC amalgamates the formulations of the ICCPR and the CRC stating that children have an ‘inherent right to life’ which ‘shall be protected by law’ and that states parties ‘shall ensure to their maximum extent possible survival, protection and development of the child’.²⁸⁵ Subsection (3) of the ACRWC’s Article 5 adds that death sentences shall not be pronounced for crimes committed by children.²⁸⁶ Liberia’s Children’s Law does not qualify the right to life for children to that extent. The Children’s Law merely states that the right to life exists for children and that no law requiring the execution or any form of killing of a child shall be valid.²⁸⁷ The right to life in Liberia’s Children’s Law is weak. It poses the question to what extent the right to life of a Liberian child is valued in the Children’s Law, if a child’s right to life in Liberia is neither absolutely nor extensively protected, but rather simplistically protected.

4.3.1 (i) Substantive weaknesses in the Liberian Children’s Law compromising the right to life

Prevention and protection rights can at times overlap. Because armed conflict is generally perceived as a life threatening condition, states attempt to restrict, prevent and protect the involvement of children into situations of war. The Children’s Law of Liberia provides protection from involvement in armed conflict or violence in Article 3 section 22. Section 22.1 seeks to protect children from involvement in armed conflict, but fails to prohibit recruitment into armed conflict whereas section 22.2 obliges the state to prohibit recruitment and conscription of children into military service.²⁸⁸ The substantive effect of section 22 is ambivalent. On the one hand, it provides an intangible protection right to children. On the other hand, it adheres to the recommendations of UNICEF’s ‘zero under 18’ campaign.²⁸⁹ This campaign was promoted by UNICEF on implementing Article 2 of the OP not to recruit persons under the age of eighteen into the armed forces.²⁹⁰ By prohibiting underage conscription, the

²⁸³ ICCPR Art. 6(1).

²⁸⁴ ICCPR Art. 4(2).

²⁸⁵ ACRWC Art. 5(1) & (2).

²⁸⁶ ACRWC Art. 5(3).

²⁸⁷ Children’s Law Art. 3 sec 3.2.

²⁸⁸ Children’s Law Art. 3 sec 22.1 & 22.2.

²⁸⁹ Report of the Special Representative of the Secretary-General for Children and Armed Conflict ‘promotion and protection of the rights of children’ (2011) United Nations General Assembly A/66/256 para 17.

²⁹⁰ OP Art. 2.

Children's Law fulfils more than minimum standards, but provides insufficient protection for children exposed to non-state armed forces. Even though the amendment 16.14 of the Penal Law which was enforced with the Children's Law criminalises recruitment,²⁹¹ the right to life is not sufficiently protected in section 22 of Article 3. Thus, criminalisation alone does not create enough deterrence, protection and prevention. The OP in Article 4 asks of contracting states and signatories to ensure:

'1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. 2. States parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.'²⁹²

Although the OP in Article 4(2) leaves it open to member states to interpret the prevention from child recruitment by 'all feasible measures' to their own discretion and capacity, strictly speaking the Children's Law does not 'take all feasible measures', because it fails to prohibit recruitment in Article 3 section 22.1.

Like the protection from involvement in armed conflict, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment can compromise the right to life by subjecting persons to the infliction of severe suffering. Article 7 section 7 of the Children's Law not only prohibits, but ought to deter children from being exposed to physical violence.²⁹³ The prohibition's intent is to refrain from subjecting a child to physical violence involving it in armed conflict. Section 7.1 is a sufficient provision, but exceptions for 'justifiable' 'correction or punishment' are created in section 7.2.²⁹⁴ The exception weakens the effect of the prohibition. It does not exclude physical violence, and hence does not exclude torture. Not only torture, but 'use of force' in general is still utilised as a method of discipline by parents, teachers, guardians in Liberia.²⁹⁵ It is further condoned by the state, since the Penal Law allows parents, teachers and guardians to physically discipline children below the age of 18 as long as punishment does not 'create substantial risk of causing death, serious bodily injury, disfigurement or degradation'.²⁹⁶ Section 7.3 restricts the discretion of 'justifiable' 'correction or punishment' to prohibiting corrections as justifiable that are 'unreasonable in kind or degree relative to the age, physical or mental condition of the child ... or otherwise is incapable of understanding the purpose and fairness of the correction.'²⁹⁷ Even though the government has

²⁹¹ (n 219 above) sec 16.14.

²⁹² OP Art. 4(1) & (2).

²⁹³ Children's Law Art. 7 sec 7.

²⁹⁴ Children's Law Art. 7 sec 7.1 & 7.2.

²⁹⁵ (n 180 above) para 143.

²⁹⁶ (n 180 above) para 143.

²⁹⁷ Children's Law Art. 7 sec 7.3.

made efforts to reduce violence and cruel behaviour against children by training teachers and humanitarian workers, institutional violence still largely exists.²⁹⁸ Despite the efforts of the Liberian government restricting and reducing the application of torture through educational measures and legal provisions, the absence of an overall prohibition weakens the prohibition of torture and endangers the right to life of a child in Liberia tremendously. It further implicitly condones a certain amount of ‘justifiable’ use of force which could be exploited to coerce children being recruited into armed conflict.

The prohibition on abduction and trafficking of children is another central prohibition attempting to prevent children from being involved in armed conflict. Article 7 section 8 of the Children’s Law not only prohibits the practice of abduction, but promotes preventive action.²⁹⁹ The section does so by obliging the state, and therefore implicitly the police force, to place persons convicted for trafficking on a child offender’s list.³⁰⁰ The list attempts to restrict the child offender’s access to work services related to children.³⁰¹ The ban of trafficking children is a necessary provision. Liberian children were abducted and trafficked for purposes of forcible recruitment during the civil war years.³⁰² After the end of the war Liberia discovered cross-border operating trafficking rings facilitating the abduction and sale of Liberian children.³⁰³ However, the effectiveness of the National Anti-Trafficking Task Force is, led and financed by the Ministry of Labour, is questionable.³⁰⁴ The task force, despite ‘notable efforts in raising awareness,’ lacks a clearly targeted and adequately financed mandate.³⁰⁵ The Ministry of Labour’s lack of financial capacity to pursue the anti-trafficking campaign rigorously endangers a Liberian child’s right to life, because his or her chances of being abducted and exploited for purposes involving armed conflict are not prevented adequately.

4.3.2) Right to education

Education is commonly valued as knowledge or skills acquired through a formal or informal medium contributing to the personal development of a person as well as the opportunities and chances resulting from it. The right to education in Article 13(1) of the ICESCR, which Liberia ratified in 2004, recognises that

²⁹⁸ (n 180 above) para 142.

²⁹⁹ ‘Any person, convicted under the Trafficking Law or penal law prohibiting the abduction or trafficking of children shall be placed on a child offenders’ register and not allowed to render direct work services to children.’ Children’s Law Art. 7 sec 8.

³⁰⁰ Children’s Law Art. 7 sec 8.

³⁰¹ Children’s Law Art. 7 sec 8.

³⁰² (n 180 above) para 193.

³⁰³ (n 180 above) para 194.

³⁰⁴ (n 252 above) para 7.

³⁰⁵ (n 252 above) para 7.

‘... education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms... education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations...’³⁰⁶

Education therefore not only holds the function of developing ones personality through knowledge and skills, but becoming an informed and responsible individual contributing meaningfully to society. Considering Liberia’s developmental state, the Children’s Law is taking positive measures to increase opportunities in education for children. By adhering to the obligation to provide education, even if progressively, the state protects children from being vulnerable and susceptible to involvement in armed conflict.

The right to education in Liberia’s Children’s Law refers to Article 13(2) of the ICESCR recognising the right to education to be realised.³⁰⁷ In Article 3 section 9.1 it states that ‘every child shall have the right to education’.³⁰⁸ Section 9.2 further states that ‘the government of Liberia shall ensure that primary level education is free and compulsory in line with the Education Law’.³⁰⁹ Hereby section 9.2 refers to Article 12(2)(a) ICESCR and Article 28(1)(a) CRC holding that primary education shall be made compulsory and available to all.³¹⁰ To advance education in a post-conflict country like Liberia is crucial to its development, and the protection of children from involvement in armed conflict. Education can provide formal opportunities and can help the youngest generation fulfil his or her potential, participate in and contribute to society. Many children’s parents are illiterate or have low level education.³¹¹ The Liberian Education Law³¹² has responded to this situation providing that primary school education is compulsory between the age of six and sixteen.³¹³ Despite this conducive legal framework for education, the developmental state of educational institutions seems rudimentary. A large portion of Liberia’s public spending is on reconstructing schools and building new ones.³¹⁴ Money is also invested in the training of teachers for pre-primary, primary and secondary school level.³¹⁵

Certain measures and provisions within the Children’s Law are enforced progressively. The right to education after having finished primary education is affected by progressiveness.

³⁰⁶ ICESCR Art. 13(1).

³⁰⁷ ICESCR Art. 13(2).

³⁰⁸ Children’s Law Art. 3 sec 9.1.

³⁰⁹ Children’s Law Art. 3 sec 9.2.

³¹⁰ ICESCR Art. 13(2)(a) and CRC Art. 28(1)(a).

³¹¹ (n 180 above) para 280.

³¹² The Education Reform Act of Liberia 2011

³¹³ (n 180 above) para 285.

³¹⁴ (n 180 above) para 279.

³¹⁵ (n 180 above) para 287.

Sections 9.4 to 9.8 of Article 3 of the Children's Law are to be enforced progressively. Provision 9.3 of Article 3 is discussed in chapter 4.4.2. It is an educative measure facilitating the reintegration of criminal juveniles and former child soldiers back into educational programmes.³¹⁶ Progressiveness is defined in the Children's Law as follows:

'Progressive' 'in this law shall be interpreted to mean to move as expeditiously as possible towards the realisation of the right or rights; under no circumstances shall this be interpreted as implying the right to deter indefinitely efforts to ensure full realisation but rather an obligation to begin immediately to take steps to fulfil the obligation concerned...'³¹⁷

Section 9.4 of the Children's Law states that the Ministry of Education shall progressively develop various forms of secondary education and progressively make it free and accessible to all children in Liberia.³¹⁸ Section 9.5 adds that the Ministry of Education shall progressively make higher education accessible to all on the basis of capacity and ability.³¹⁹ Since Article 28(1) of the CRC only obliges states to achieve the right of education progressively, Liberia makes use of this term extensively, indicating its inability to provide education as a right to all children at this point in time.³²⁰ This means that children between sixteen and eighteen are not entitled to free education. Children with special needs and disabilities are equally excluded.³²¹ The state has also undertaken measures to control the attendance of school by introducing a fine, if the parent(s) or guardian wilfully neglect the child from going to primary school.³²² Provision 9.6 makes direct reference to the Ministry of Education progressively working with local government authorities to encourage regular attendance at schools and reduce dropout rates.³²³ Essentially, the right to education has the potential to protect children from involvement in armed conflict thus, education can provide opportunities that make a child less likely to become a child soldier out of desperation and hopelessness. School attendance and education standards are a problem in Liberia due to scarcity of teachers and lack of training in educational institutions.³²⁴ However, although Liberia is experiencing difficulties providing adequate infrastructure, personnel and learning materials for children to go to school, education is emphasised greatly in the Children's Law. The state of Liberia has realised that education and educational institutions are potentially the most fundamental factor advancing the developmental state of the country. Therefore, the provisions in Article 3 section 9 are

³¹⁶ Children's Law Art. 3 sec 9.3.

³¹⁷ Children's Law Art. 1 sec 3.

³¹⁸ Children's Law Art. 3 sec 9.4.

³¹⁹ Children's Law Art. 3 sec 9.5.

³²⁰ CRC Art. 28(1).

³²¹ (n 180 above) para 285 & 286.

³²² (n 180 above) para 286.

³²³ Children's Law Art. 3 sec 9.6.

³²⁴ (n 180 above) para 287.

considered a strength of the Children's Law, creating a perspective for children affected by armed conflict.

4.3.3) Remedies in the Children's Law

Different institutions have been established through the Children's Law with the aim to advance the situation of education in Liberia. In order to protect child rights effectively it is important to create organs, bodies and offices which make the remedies of child rights more accessible to children as the beneficiaries. This subsection depicts how the Liberian Children's Law attempts to make child rights more accessible for children who have experienced armed conflict and were deprived of their rights and of the state providing these rights in Liberia.

Article 11 deals with administering the Children's Law. Section 1.1 states that the state establishes the 'Child Rights Advancement Fund' which is managed by the Ministry of Gender and Development. The fund shall provide education on child rights and correlative duties or child well-being in Liberia.³²⁵ This provision relates to Article 13(1) ICESCR requiring of states to 'participate effectively in a free society' and to Article 29(1)(b) of the CRC contributing to 'development of respect for human rights and fundamental freedoms'.³²⁶ Section 1.2 of the Children's Law 'may', but does not oblige the Ministry of Gender and Development, to make 'necessary' grants to child rights and youth clubs, or civil society organisations involved in child rights education in Liberia every three months.³²⁷ Numerous sections in Article 11 establish bodies attending to the purpose of advancing, enforcing and implementing child rights. Section 2.1 establishes the 'Child Rights Education Committee' which coordinates work on children's well-being.³²⁸ Another body established by the Children's Law is the 'National Council for Child Well-being'³²⁹ with the purpose

a) to promote the enjoyment of child rights or child well-being in Liberia; b) make observations and recommendations on the state of child well-being in Liberia; c) indicate and require government organisations to produce reports related to child well-being; d) receive, examine and publicise reports from government departments; e) issue observations and recommendations to advance child well-being; f) any other act promoting and facilitating advancement of well-being of children in Liberia.³³⁰

The council shall provide an annual report to the Minister of Gender and Development with details on its activities, plans and expenditure.³³¹ Such bodies are not only put in place at

³²⁵ Children's Law Art. 11 sec 1.1.

³²⁶ ICESCR Art. 13(1) and CRC Art. 29(1)(b).

³²⁷ Children's Law Art. 11 sec. 1.2.

³²⁸ Children's Law Art. 11 sec 2.1.

³²⁹ Children's Law Art. 11 sec 12.

³³⁰ Children's Law Art. 11 sec 14.

³³¹ Children's Law Art. 11 sec 19.1.

national level, but child welfare committees are established in every town or community advancing the realisation of child rights.³³² The focus and duties of a child welfare committee are set out in section 4.2 of Article 11.³³³ Other bodies which are established through the Children's Law are 'town children's representative forums'.³³⁴ They have the function to ensure that the views of children and young people are heard and acted upon in every town or community.³³⁵ Such children's representative forums are established for each district, county and on national level.³³⁶ The effort of the Liberian state making child rights more accessible to children by providing bodies and representatives promoting, enforcing and granting them their rights, demonstrates the willingness of the state to act and recognise the vulnerability of children. These councils, committees and forums in theory act as direct partners and messengers for children's needs advancing the accessibility of child rights in Liberia.

4.3.4) Alternative care for children

Alternative care is a crucial measure to provide for Liberian children in need. Due to the civil war years many children lost parents, or a parent. Alternative care is defined in section 2.1 of Article 10 of the Children's Law. It applies to a situation 'where the well-being of a child in need of special care and protection' is apparent.³³⁷ Alternative care in context of Liberia's Children's Law becomes available to children 'where the biological parents are unsuitable, deceased, or absent, and the child cannot be brought up fostered by a relative'.³³⁸ Section 1.3 of the Children's Law further identifies that 'any child temporarily or permanently removed from her or his parent or parents or family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance'.³³⁹ The wording of the provision is similar to that of Art. 20(1) of the CRC attributing special care and protection to children in such circumstances.³⁴⁰ Children lacking parental guidance run a risk of falling prey to being involved in armed conflict. A main emphasis of Article 20(3) of the CRC and Article 25(3) of ACRWC is 'with due regard' paying attention to 'the desirability of continuity in a child's upbringing'.³⁴¹ That is key for the best

³³² Children's Law Art. 11 sec 3 & 4.1.

³³³ Children's Law Art. 11 sec 4.2.

³³⁴ Children's Law Art. 11 sec 20.1.

³³⁵ Children's Law Art. 11 sec 20.2 & 20.3.

³³⁶ Children's Law Art. 11 sec 21, 22 & 23.

³³⁷ Children's Law Art. 10 sec 2.1.

³³⁸ Children's Law Art. 10 sec 1.2(a).

³³⁹ Children's Law Art. 10 sec 1.3.

³⁴⁰ 'A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.' CRC Art. 20(1).

³⁴¹ CRC Art. 20(3) & ACRWC Art. 25(3).

interest of the child. The Children's Law adopted the phrase to 'pay due regard to the desirability of continuity in a child's upbringing...' into section 1.5 of alternative care³⁴² which was additionally recommended in GC No. 6.³⁴³ Section 1.4 provides for cooperation among ministries, civil society organisations, the private sector, the international community to ensure alternative care for children.³⁴⁴ The law therefore attempts to exhaust all its options to provide protection for children.

As far as the enforcement of protectionist measures pertaining to alternative care is concerned, if a person feels a child is in need of 'special care and protection' and entitled to them, Article 10 section 2.1, as explained above, applies. In that circumstance a social worker, police officer or child welfare committee shall be contacted, in cases of emergency within 24 hours.³⁴⁵ A social worker may apply to a juvenile or magistrate court to discharge the child concerned into alternative care, provided the parents and prospective caregivers have consented to it.³⁴⁶

With regard to institutional care set out in Article 10 section 7.1 of the Liberian Children's Law, institutionalisation of children is a possibility of 'last resort' placing the aim of a child to live in a family environment first.³⁴⁷ The ACRWC emphasises in Article 18(1) the family as the 'natural unit and basis of society'.³⁴⁸ Article 19(1) accentuates the entitlement of every child to 'the enjoyment of parental care' and residence with his or her parents.³⁴⁹ And ACRWC's Article 25(2)(b) highlights that 'all necessary measures to trace and re-unite children with their parents' need to be undertaken by states, if 'separation' or 'displacement' was caused by armed conflict.³⁵⁰ Article 25(3) reiterates the 'desirability of continuity in a child's upbringing'.³⁵¹ This is to ensure that institutional care remains only a measure of 'last resort' and that the best interests of the child are secured, its development advanced and protection guaranteed. As has been described in the section on the vulnerability of children, relinquished children not orphans, were unnecessarily placed into institutional homes.³⁵² To avoid abuse of arbitrary placement, section 7.2 prohibits the placement of children into institutions 'without the order of a court and registration of such order with the Ministry of Health and Social

³⁴² Children's Law Art. 10 sec 1.5.

³⁴³ GC No. 6 para 40.

³⁴⁴ Children's Law Art. 10 sec 1.4.

³⁴⁵ Children's Law Art. 10 sec 2.1 & 3.3.

³⁴⁶ Children's Law Art. 10 sec 4.1 & 4.4.

³⁴⁷ Children's Law Art. 10 sec 7.1.

³⁴⁸ ACRWC Art. 18(1).

³⁴⁹ ACRWC Art. 19(1).

³⁵⁰ ACRWC Art. 25(2)(b).

³⁵¹ ACRWC Art. 25(3).

³⁵² (n 252 above) para 33.

Welfare'.³⁵³ Section 8 of Article 10 also requires the child care institution to have a certificate of registration in order to operate.³⁵⁴ For the application of registration certain documents need to be included for authentication.³⁵⁵ The criteria of suitability which need to be met are set out in sections 10 to 15 of Article 10.³⁵⁶ Despite regulatory standards set in sections 10 to 15, standards of institutional care facilities in Liberia are very poor.³⁵⁷ The task force on orphanages recommended the closure of 80 per cent of Liberia's orphanages and a UNMIL (UN Mission in Liberia) study conducted in 79 orphanages found human rights violations endangering the right to life of children due to poor sanitation and health standards.³⁵⁸

Alternative care is a crucial provision protecting children from involvement in armed conflict. Since parenting can be poor, or parents deceased or absent, affected children need to be protected from being easy prey to rebels or street gangs. Article 10 provides protection prohibiting arbitrary placement of children into institutional care. Although legal measures recognising the vulnerability of children without parents, guardians, or extended family have increased in Liberia, there is 'a strong indication' of such children being exploited (for involvement in armed conflict).³⁵⁹ Thus, the execution and enforcement of protection and special assistance for vulnerable children does not seem sufficiently reliable.

4.4) Reintegrating children (formerly) affected by armed conflict

The reintegration of children who have been affected by armed conflict into society is crucial for the conduct and consolidation of a peaceful society. Reintegration can occur on many different levels. The Ministry of Justice plays a key role in maintaining the rule of law and protecting human rights in the country. The ministry not only has oversight over the Liberian national police, but among other institutions, also over prisons and the correction service.³⁶⁰ The fact that Liberia underwent civil war left the state in a fragile situation.³⁶¹ This fragile situation requires special protection measures from the Liberian state.³⁶² Such special measures are also provided by the Liberian Children's Law for children and juveniles in conflict with the law.

³⁵³ Children's Law Art. 10 sec 7.2.

³⁵⁴ Children's Law Art. 10 sec 8.1.

³⁵⁵ Children's Law Art. 10 sec 8.2.

³⁵⁶ Children's Law Art. 10 sec 10 – 15.

³⁵⁷ (n 180 above) para 184.

³⁵⁸ (n 180 above) para 185 & 183.

³⁵⁹ (n 180 above) para 184.

³⁶⁰ (n 252 above) para 10.

³⁶¹ (n 180 above) para 295.

³⁶² (n 180 above) para 295.

4.4.1) Standards in juvenile justice

Article 9 of the Children's Law integrates standards of juvenile justice. Section 2.1 outlines objectives which the Liberian juvenile justice system shall adhere to:

'a) prevention of juvenile delinquency and offences committed by children; b) treatment that is consistent with the child's sense of dignity and worth; c) treatment that reinforces the child's respect for the human rights and freedoms of others; and d) treatment that takes into account the child's age and promotes the child's reintegration and assumption of a constructive role in society';³⁶³

Provision a) simply aims to prevent juvenile delinquency. It tacitly acknowledges that children need to be prevented from pursuing crime and not merely be penalised after the crime's commission. Provision b), c) and partly d) contain the wording of Article 40(1) of the CRC.³⁶⁴ In Article 40(1) the emphasis is very much placed on the constructive role a child, or a young person can play in society which justifies that the penalisation of his or her offences deserve careful consideration. The Beijing Rules for standard for standard minimum rules on juvenile justice reinforce that 'disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time' thereby acknowledging that a constructive role in society can be acquired.³⁶⁵ Section 2.1d) of Article 9 of the Children's Law leaves, as the Beijing Rules suggest, 'appropriate' discretion to the juvenile administration system to determine the punishment of the offender.³⁶⁶ The Beijing rules furthermore stress the principle of proportionality for punishment.³⁶⁷ Not only shall the gravity of the crime be taken into consideration, but the personal circumstances of the offender.³⁶⁸ The Children's Law seems to condone the idea of reintegrating children who are in conflict with the law back into society with a certain lenience. Section 2.2 instructs the Ministry of Justice together with other ministries to 'develop and progressively implement a policy aiming at:

'(a) the prevention of juvenile delinquency; (b) training of probation officers and other staff involved in the administration of a fair juvenile justice system; (c) monitoring of effectiveness of interventions that do not resort to judicial proceedings; and (d) intervention in the context of judicial proceedings; (e) monitoring of the effectiveness of measures to ensure that the

³⁶³ Children's Law Art. 9 sec 2.1.

³⁶⁴ 'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. CRC Art. 40(1).

³⁶⁵ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) GA Res 40/33 para 23.2.

³⁶⁶ (n 365 above) para 6.1.

³⁶⁷ (n 365 above) para 5.1.

³⁶⁸ (n 365 above) para 5.1.

deprivation of liberty of a child, including pre-trial detention and post-trial incarceration, conform to this law and international standards on juvenile justice.’³⁶⁹

The progressive implementation weakens the incentive of Article 9 section 2.2 of the Children’s Law to implement reintegrative measures for delinquent children. Another weakness of Article 9 is that there is no age threshold mentioned which determines criminal responsibility of the juvenile. The Beijing Rules suggest not to set the age threshold of criminal responsibility for juveniles ‘at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity’.³⁷⁰ It is thereby left to the discretion of the state to determine what is understood as ‘not too low an age’.³⁷¹ Despite the age of criminal responsibility not being displayed in the Children’s Law, the Penal Law was amended establishing sixteen as the age of criminal responsibility.³⁷²

With regard to juvenile justice, Liberia’s Children’s Law highlights combatting delinquency and provides options to juveniles in order for them to assume a ‘constructive role in society’.³⁷³ However, imprisonment is offered as a measure of ‘last resort’ in Article 9 section 3.3.³⁷⁴ The provision states that ‘imprisonment shall only be in cases where there would be no other way to correct a child’.³⁷⁵ This potentially represents a serious substantive impediment to the assumption of children to a constructive role in society, because it seems to be at the discretion of the court to determine what type of behaviour cannot be corrected other than by imprisonment. Moreover, the Children’s Law implicitly condones physical violence by stating in Article 9 section 3.4 that no ‘unreasonable restraint or force’ shall be used ‘unless the child poses an imminent threat of injury to him or herself’.³⁷⁶ Again, it seems to be left at the discretion of the court to decide which forms of restraint or force are reasonable. A prohibition of using unreasonable forms of restraint or force should be desirable without exception. Especially, because Article 9 section 2.1 (d) ‘promotes the child’s reintegration’ and promotes every young person having the chance to assume a ‘constructive role in society’.³⁷⁷ In light of section 2.1 (d) violence and unreasonable forms of restraint or force should be refrained from and unjustifiable by all means. Section 3.4 stands in contradiction to section 2.1 (d) condoning violence and punishment as a form of reintegration into society, instead of furthering

³⁶⁹ Children’s Law Art. 9 sec 2.2.

³⁷⁰ (n 365 above) para 4.1.

³⁷¹ (n 365 above) para 4.1.

³⁷² (n 180 above) para 310.

³⁷³ Children’s Law Art. 9 sec 2.1(d).

³⁷⁴ Children’s Law Art. 9 sec 3.3.

³⁷⁵ Children’s Law Art. 9 sec 3.3.

³⁷⁶ Children’s Law Art. 9 sec 3.4.

³⁷⁷ Children’s Law Art. 9 sec 2.1(d).

rehabilitation through assuming a constructive role. Delinquent children who before had been affected by armed conflict might suffer from punitive measures, because such measures withhold their chances of reintegration and rehabilitation into society denying them the assumption of a constructive role in society.

Section 3.1 is similarly flawed. It states that children shall not be placed in pre-trial detention or remand ‘unless all other measures for dealing with the child pending trial have been exhausted’.³⁷⁸ Section 3.1 seems only partly committed to believing that a constructive role can be assumed to reintegrate a child having become delinquent, because pre-trial detention revokes the idea of the presumption of innocence ‘until proven guilty according to law’.³⁷⁹ Otherwise the exception for dealing with a child pending trial would be formulated more narrowly including a test (ie: flight risk). Article 37(b) of the CRC formulated a more precise test, requiring states to ensure that ‘no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.’³⁸⁰ The formulation of the CRC stems from the wording of Article 9(1) of the ICCPR.³⁸¹ The report of the Special Representative on children in armed conflict notes that children associated with armed conflict are increasingly detained and arrested.³⁸² At times instead of juveniles being charged with a criminal offence and brought before a court, they are placed in administrative detention deprived of their liberty for long periods of time without access to justice and legal representation.³⁸³ Also, there are no separate detention facilities in Liberia for children only,³⁸⁴ although the CRC in Article 40(3) urges state parties to ‘promote ... institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law ...’.³⁸⁵

As has become apparent, section 3 of Article 9 of Liberia’s Children’s Law bears substantial flaws. Cause for these weaknesses are the created exceptions, especially pertaining to section 3.1, 3.3 and 3.4 which leave room to justify imprisonment, use of force and detention of delinquent children for insufficient and arbitrary reasons. Therefore, section 3 of Article 9 is

³⁷⁸ Children’s Law Art. 9 sec 3.1.

³⁷⁹ CRC Art. 40(2)(b)(i).

³⁸⁰ CRC Art. 37(b).

³⁸¹ ‘Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.’ In S Derick A *Commentary on the United Nations Convention on the Rights of the Child* (1999) 629.

³⁸² (n 289 above) para 26.

³⁸³ (n 289 above) para 26 & 27.

³⁸⁴ (n 180 above) para 310.

³⁸⁵ CRC Art. 40(3).

not protective enough and inconsistent with CRC standards, because it provides too much discretion to the courts for abusive measures.

4.4.2) Reintegration through education

Article 3 section 9.3 is on the obligation of the ‘Ministry of Education to provide and encourage the enrolment of children into school and re-enrolment into school or alternative forms of education for children who may have dropped out of school’.³⁸⁶ The fact that the Liberian state obliges itself to reintegrate children back into society, providing educational opportunities for dropped out children who are beyond their right to free primary level education is significant. Article 28(1)(e) of the CRC is applied here specifically referring to encouraging school attendance and reducing drop-out rates.³⁸⁷ The combined CRC report of 2009 on Liberia asserts the importance of government programmes, explaining that lack of parenting skills of young parents who were born or raised during the war, can have transferred authority from a civilian setting to warlords and commanders.³⁸⁸ Warlords or commanders did not replace civilian social settings of personhood such as education.³⁸⁹ Young parents entangled in the war machinery therefore might have neglected education and kept their children from going to school. Section 9.3 is an important right for a Liberian child having dropped out of education. A necessary duty that the Liberian state has taken on to provide.

4.4.3) Reintegration and rehabilitation

Reintegrative measures for children (formerly) affected by armed conflict also include rehabilitative care for traumatised, abused and exploited children. Article 7 section 10 outlines that the

‘Ministry of Health and Social Welfare shall work with local government authorities through the Ministry of Internal Affairs to facilitate rehabilitative measures, including community or town-based counselling and other forms of psychosocial support, to reintegrate any abused or exploited children.’³⁹⁰

Above quoted section 10 of Article 7 incorporated the provision of Article 39 of the CRC into the Children’s Law

‘to promote physical and psychosocial recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts...’³⁹¹

³⁸⁶ Children’s Law Art. 2 sec 9.3.

³⁸⁷ CRC Art. 28(1)(e).

³⁸⁸ (n 180 above) para 165 & 166.

³⁸⁹ (n 180 above) para 166.

³⁹⁰ Children’s Law Art. 7 sec 10.

³⁹¹ CRC Art. 39.

The section recognises that children exposed to such trauma need external assistance in order to reintegrate into society. Section 10 of Article 7's Children's Law explicitly requires cooperation with local governments.³⁹² With the help of DDR programmes Liberia was able to demobilise about 11,780 children and reunify them with their families.³⁹³ Reintegration programmes assisted by UNICEF for children associated with fighting forces were implemented by the government aiming at social and community integration and education through vocational skills and apprenticeships.³⁹⁴ The measures proved successful returning children from fighting forces back to school and providing children with vocational and work-related experiences.³⁹⁵ The programmes were well received in the communities where implemented.³⁹⁶ Seemingly, the Liberian state wishes to consolidate the reintegration of children affected by armed conflict further providing such services to exploited children. However, with regard to the psychosocial side of rehabilitation, the report mentions that there is a shortage of supply for psychosocial counselling skills.³⁹⁷ Children on the streets and in orphanages not related to a community have not received any psychosocial counselling or rehabilitation.³⁹⁸ It thereby remains questionable how enforceable section 10 of Article 7's Children's Law is and whether all affected children will be able to benefit from it practically.

4.5) Evaluating the feasibility test – justiciability, accessibility, enforceability of the Children's Law

After having assessed different aspects of Liberia's Children's Law pertaining to preventive, protective and reintegrative measures for children affected by and involved in armed conflict, the feasibility of the Children's Law's scrutinised provisions will be evaluated below on its justiciability, accessibility and enforceability.

Most significant for the rights of children and obligations of states to children are the CRC, ACRWC, ICCPR and ICESCR. Liberia is signatory to all of them and ratified all, but the ACRWC.³⁹⁹ As already mentioned, the justiciability of CRC standards in Liberian law relies on the ratification and enactment of international treaties into binding domestic law.⁴⁰⁰ With the enforcement of the Children's Law in 2011 Liberia implemented specific provisions of the

³⁹² Children's Law Art. 7 sec 10.

³⁹³ (n 180 above) para 173.

³⁹⁴ (n 180 above) para 196.

³⁹⁵ (n 180 above) para 197.

³⁹⁶ (n 180 above) para 197.

³⁹⁷ (n 180 above) para 304.

³⁹⁸ (n 180 above) para 304.

³⁹⁹ Preamble of Children's Law.

⁴⁰⁰ (n 191 above) para I A.

CRC into Liberian national law, making child rights directly justiciable in Liberian courts.⁴⁰¹ Therefore, child rights in Liberia are undeniably justiciable.

The access to judicial proceedings or litigation for children claiming their rights is flawed in Liberia. Firstly it is unclear whether children need a legal representative in criminal and administrative cases if they are below the age of 21. A legal requirement that children below the age of 21 need a legal representative, guardian, or ‘next friend’ to sue before a court is only explicitly expressed in Liberia’s civil procedure law.⁴⁰² This conveys a level of uncertainty and inconsistency concerning the procedural requirements of access not only to the Children’s Law, but any Liberian law referring to child rights.

Secondly legal aid can be claimed and an attorney is assigned to a child, if the child can show evidence that he or she is indigent and his or her parents or the person legally responsible for the juvenile is financially unable to bear the costs for legal aid and litigation.⁴⁰³ Whether pro bono representation through a legal practitioner of a child rights organisation can be provided to indigent children, their parents or guardian is unclear.⁴⁰⁴ However, making use of legal assistance requires children and adults to be educated and knowledgeable about child rights and the law, which is often not the case.⁴⁰⁵ Therefore, a main obstacle hampering procedural access to child rights is the lack of awareness by children and their legal guardians about having rights. This lack of knowledge and awareness limits the prospects of children’s accessibility to legal aid and the exhaustion of possible remedies, such as restitution or compensation for harm that they have suffered.⁴⁰⁶

Thirdly the acute shortage of adequately well educated and trained legal and judicial personnel aggravates the accessibility to legal assistance and legal proceedings.⁴⁰⁷ There is only one juvenile court in the country, in Monrovia county.⁴⁰⁸ All cases involving juveniles outside Monrovia need to be settled at magistrate courts.⁴⁰⁹ At the time of the CRC combined country report being written there was only one juvenile judge in the whole of Liberia.⁴¹⁰ Assuming that the amount of juvenile judges has not increased drastically since then, few judges or judicial personnel are accustomed specifically to matters of children or juveniles. The situation of a lack

⁴⁰¹ (n 191 above) para I C.

⁴⁰² (n 191 above) para II A.

⁴⁰³ (n 191 above) para II D.

⁴⁰⁴ (n 191 above) para IV C.

⁴⁰⁵ (n 180 above) para 139.

⁴⁰⁶ (n 191 above) para III B.

⁴⁰⁷ (n 252 above) para 46.

⁴⁰⁸ (n 180 above) para 310.

⁴⁰⁹ (n 191 above) para IV A.

⁴¹⁰ (n 180 above) para 310.

of juvenile judges in Liberia does not enhance judicial decisions made in the best interest of the child. It also does not advance the accessibility to courts admissible for child matters.

Fourthly accessibility to justice in Liberia is impaired by the general disrespect and distrust in the rule of law. Liberians substitute it with traditional law, which is inconsistent with national laws, because at times it is sought through mob violence and vigilante groups.⁴¹¹ It seems as if the rule of law is generally perceived as ineffective.

Fifthly the absence of independent human rights mechanisms impedes the full protection of human rights in Liberia.⁴¹² A culture of human rights has not settled in. Lawlessness not only by its citizens, but by the police often hinders investigations and the enforcement of law.⁴¹³

Lastly, the fact that cases can drag on indefinitely, because time constraints are unclear, makes access to justice inconsistent with the urgency and expediency many child matters require.⁴¹⁴ In summation, accessibility to justice is available, but as above enumerated, several contextual limitations weaken accessibility to such an extent that access to justice for children in Liberia is severely hampered.

Not only accessibility to justice, but also enforcement of justice is grossly flawed in Liberia. This is primarily due to a 'lack of professionalism and accountability' of the Liberian Police Force.⁴¹⁵ Bribery and corruption are rampant having a 'devastating effect' on victims who attempt to protect themselves and assert their legal rights.⁴¹⁶ Irrespective of the crime and its gravity, arrests are undertaken after bribery or extortion.⁴¹⁷ The arbitrariness of the police's enforcement thereby attributes 'justice' to those who can afford it, or who can afford to pay their way out.⁴¹⁸ The ineffectiveness of the police as the primary enforcer of law incapacitates the legal system to a very large extent rendering the legal system an institution of unreliability. Despite the enforcement of the Children's Law and the amendments of other relevant Liberian legislation pertaining to children, the impact of the law seems grossly impaired. It is to be proven to what extent the Liberian state can overcome these severe impediments to duly

⁴¹¹ (n 191 above) para V.

⁴¹² (n 252 above) para 46.

⁴¹³ (n 191 above) para V.

⁴¹⁴ (n 191 above) para IV F.

⁴¹⁵ (n 191 above) para V.

⁴¹⁶ (n 191 above) para V.

⁴¹⁷ (n 191 above) para V.

⁴¹⁸ (n 191 above) para V.

perform its obligations to its children and ensure that the institutions in place facilitate the enforcement of child rights.

4.6) Finding

After having evaluated the substantive provisions of the Children's law on prevention, protection and reintegration of children from armed conflict, it is clear that the Children's Law is mostly not deficient or inconsistent with CRC standards. It attempts to 'facilitate [the] respect, protection, promotion, and provision of the realization of child rights...'.⁴¹⁹ Numerous amended or added statutes including the Penal Law Liberian Codes revised Title 26 1978, the Domestic Relations Law Liberian Codes revised Title 9 1973, the Decedent Estates Law Liberian Codes revised Title 8 1973, the Civil Procedure Law Liberian Codes revised title 1 1972, the Liberian Children's Law 2011 have some 'strict and progressive' provisions.⁴²⁰

After having analysed substantive provisions several weaknesses among prevention, protection and reintegration of children affected by armed conflict prevail and do not meet CRC standards. The weaknesses of the Children's Law which will be outlined in the following are mostly of a procedural nature.

4.6.1) Procedural weaknesses of Liberia's Children's Law

Generally, it is advisable to provide a high age threshold up to which children shall be able to obtain legal representation in respect of criminal, administrative and civil procedure law. Despite the age threshold for criminal and administrative procedure law being unknown in Liberia, the age threshold for civil procedure law is quite high extending to 21 years of age.⁴²¹ That threshold is disadvantageous to children in Liberia's judicial system. There is already a lack of well-trained legal practitioners able to assist children in accessing justice, to assist them in asserting their rights and accessing potential remedies. This high threshold results in more legal assistance being required which amounts to more work and places a greater strain on the legal system. The fairness and justice the civil procedure law wants to create through the high age threshold results in barring access to justice for children even more due to a lack of capable personnel.

Additionally there is a discrepancy between statutory and customary law in Liberia.⁴²² The latter renders a child mature upon attaining puberty,⁴²³ whereas the Children's Law defines

⁴¹⁹ Children's Law Art. 2 sec 1.

⁴²⁰ (n 180 above) para 331.

⁴²¹ (n 191 above) para II A.

⁴²² (n 180 above) para 82.

⁴²³ (n 180 above) para 82.

all persons below the age of eighteen as a child. In order to approximate the Liberian customary idea of adulthood and the age threshold of civil procedure law, it might be helpful to adjust the age threshold in all Liberian procedural law to eighteen years. That way access to justice for children would be eased a little and Liberians despising statutory law would feel that their perception of adulthood is converged.

Another procedural obstacle hindering the full realisation of the Children's Law in Liberia is the principle of progressive implementation. Progressiveness, as outlined in Article 3 section 2, bears the danger of being misused for two purposes. Firstly to justify 'undue delays' and secondly to justify lack of economic resources as a reason for deferring enforcement or access to a right, or a remedy indefinitely.

However, the greatest challenge that the Liberian legal system in general faces is the lack of respect for judgements as final and trusting, the belief in the rule of law. People tend to turn to vigilante groups to provide 'justice' themselves, instead of turning to the law, because they perceive the state as not performing its functions.⁴²⁴ No matter how well revised and amended the laws and procedures of the Children's Law and other statutes may be, if adults do not instil the belief in the rule of law in their children, they will not turn to law enforcement and the judicial system for help. This disbelief and mistrust in the rule of law has the capacity to undermine the essence of not only the Children's Law, but Liberian law in general, damaging prospects for enforcement on a long-term basis. If law is not valued and utilised, it cannot provide a foundation on which an emancipated society may claim its rights and cannot hold persons or the state liable for wrongs.

4.6.2) General strengths and peculiarities of Liberia's Children's Law

Despite the above mentioned deficiencies in the Children's Law, having scrutinised some of the latest reports and assessments available on the post-conflict situation in Liberia and the standard of child rights in the country, it seems that Liberia has undertaken efforts to better the situation for children and expand relevant law and policy. Since the end of the civil war in 2003 and the election of Ellen Johnson-Sirleaf in 2005, numerous statutes have been enacted. Among them the Children's Law of Liberia 2011, the amended Penal Code 2006, the Education Reform Act 2011, the Act to Ban Trafficking in Persons 2005, the New Domestic Relations Law Title 9 Liberian Code of Laws revised 1973,⁴²⁵ the Judiciary Law Liberian Codes revised Title 17 1972, the Penal Law Liberian Codes revised Title 26 1978, the Civil Procedure Law Liberian

⁴²⁴ (n 191 above) para V.

⁴²⁵ (n 191 above) para 8.

Codes revised Title 1 1972 and the Criminal Procedure Law Liberian Codes revised Title 2 1972.⁴²⁶ With these newly enacted or revised statutes several national policies were implemented ascribing direct freedom to act, facilitate and enforce rights to specific ministries such as the National Health and Social Welfare Plan, the National Plan of Action against Trafficking to mention a few.⁴²⁷ Since Johnson-Sirleaf's presidency the child and its well being has been placed at the centre of Liberia's agenda⁴²⁸ and the above enumerated policies and legislation helped to 'spearhead' 'the quest for reovery' from the years of civil war in Liberia.⁴²⁹

The question as to whether the state of Liberia intends to improve legal conditions for children by CRC standards in the country can be answered positively. Article 3 section 2 of the Children's Law clearly expresses that

'international law shall be progressive, subject to the availability of human organisation and economic resources provided that the government shall demonstrate that any such available resources are used to the maximum extent to realise such rights'.⁴³⁰

Although the inclusion of the word 'progressive' limits the obligation of the state to its capacity, it has given substance to international law by enforcing it through national legislation such as the right to education (Article 3 section 9) of the Children's Law. Some of the recommendations which the CRC Committee proposed to Liberia have been made effective through the Children's Law. Despite progressive implementation being a limitation to the realisation of child rights in Liberia, it needs to be taken into account that given its developmental circumstances Liberia seems to be committed to implement rights as 'expeditiously as possible'.⁴³¹ The state understands its obligation towards the realisation of child rights as a duty 'to begin immediately to take steps to fulfil' rather than 'implying the right to deter indefinitely'.⁴³² The intention of the Liberian state attempting to tackle the backwardness of child rights in the country shall be interpreted as a strength of the Children's Law.

The law further portrays the child as a rights-holder, not just placing it at the receiving end, but empowering him or her by providing autonomy rights such as the Article 3 section 14 right to freedom of expression and access to information of the Children's Law which is pivotal to the determination of the child's rights.⁴³³ Section 15, the freedom of thought and religion as

⁴²⁶ (n 252 above) para 4.

⁴²⁷ (n 191 above) para 9.

⁴²⁸ (n 180 above) para 3 &4.

⁴²⁹ (n 180 above) para 2 & 3.

⁴³⁰ Children's Law Art. 3 sec 2.

⁴³¹ Children's Law Art. 1 sec 3.

⁴³² Children's Law Art. 1 sec 3.

⁴³³ Children's Law Art. 3 sec 14.

well as section 16, the freedom of association, Article 3 of the Children's Law, are two central participatory rights granted to the Liberian child.⁴³⁴ These rights allow the child to take part in society, to form an opinion, to have an opinion and to voice an opinion. Participatory rights thereby are a prerequisite for a child's right to access justice. A good example for the participatory nature of the Children's Law portraying the child as a rights-holder is section 17 of Article 3 entitling a child to any inheritance left by his or her parents and prohibiting the dispossession of a child from his or her inheritance.⁴³⁵ In spite the positive efforts of the Liberian government to emancipate the child by law, de facto 'this view is still inferior in Liberia.'⁴³⁶ Instead the dominant ethos is that of the child as a resource or lesser human being who has to be controlled benefitting from benevolence'.⁴³⁷

Another strength is the identification of the Children's Law with the conception of 'African childhood'. It includes not only rights and freedoms of the child, but also duties. Article 6 section 3 entails that

'subject to the child's evolving capacities, every child shall contribute towards: -

- (a) family cohesion;
- (b) respect for parents and other people;
- (c) diligence towards studies and work; and
- (d) positive cultural values of her or his community or town.'⁴³⁸

Article 31 of the ACRWC attributes similar responsibilities to the child. The provision states that

'every child shall have responsibilities towards his family and society, the state and other legally recognised communities and the international community. The child subject to his age and ability ... shall have the duty;

- (a) to work for the cohesion of the family,
- (b) serve his national community,
- (c) preserve national solidarity,
- (d) preserve and strengthen African cultural values in the spirit of tolerance,
- (e) preserve and strengthen independence and integrity of his country and
- (f) contribute to the best of his abilities to promotion of African Unity.'⁴³⁹

The above quoted provisions combine a 'complex system of reciprocal rights and obligations ... in a communal African society'.⁴⁴⁰ Bart Rwezaura locates children and their various roles

⁴³⁴ Children's Law Art. 3 sec 15 & 16.

⁴³⁵ Children's Law Art. 3 sec 17.

⁴³⁶ (n 180 above) para 83.

⁴³⁷ (n 180 above) para 83.

⁴³⁸ Children's Law Art. 6 sec 3.

⁴³⁹ ACRWC Art. 31.

⁴⁴⁰ B Rwezaura 'Competing "images" of childhood in the social and legal systems of contemporary Sub-Saharan Africa' (1998) 12 *International Journal of Law, Policy and the Family* 257.

within that system.⁴⁴¹ Seemingly, children are perceived by their parents, communities and even the state as ‘asset or a resource’.⁴⁴² However, there need not automatically be a negative connotation to perceiving children as an ‘asset or resource’. In the Liberian context, the country is a post-conflict nation and as such needs its children to help re-build the country and contribute to society by fulfilling the duties set out in Article 6 section 3 of the Children’s Law. The Preamble of the Liberian Children’s Law recognises that ‘children are the cornerstones, and foundation of a future vibrant, just, peaceful, and prosperous Liberia;’⁴⁴³ Essentially, the identification with ‘African childhood’ shall be interpreted as a strength, because the relationship between the state and the child in Liberia is an interdependent one. The state needs the child to participate and contribute to prosper⁴⁴⁴, and the child needs to be protected and its participatory, preventive rights safeguarded in order to contribute.

In view of the civil war period only having ended in 2003 and Ellen Johnson-Sirleaf only having commenced her presidency in 2005, Liberia will need considerably more time to build a human rights culture. However, a serious concern for post-conflict Liberia is the amount of violence, abuse and neglect children, juveniles and young adults have experienced and were exposed to. Young people and children internalising violence increases the likelihood of violence being passed on to other generations. The omnipresence of violence and abuse exercised against children as well as the disrespect and disregard for the rule of law in Liberia have the potential to render the accessibility and enforceability of the Children’s Law ineffective for years.

Chapter 5 – Recommendations to improve the accessibility and enforceability of the Children’s Law

5.1) Introduction

‘The major challenge facing Liberia is reversing the negative impact brought about by years of conflict and mismanagement.’⁴⁴⁵ Liberia’s Children’s Law is one attempt to reverse the negative impact that years of conflict had on children and their rights in Liberia. This chapter will provide recommendations as to how the enforced child rights can be made more accessible and enforceable and thereby meet CRC standards. The first recommendation provides an

⁴⁴¹ Rwezaura (n 440 above) 257.

⁴⁴² Rwezaura (n 440 above) 257.

⁴⁴³ Preamble Children’s Law.

⁴⁴⁴ Children’s Law Art. 6 sec 3(c) & (d).

⁴⁴⁵ (n 252 above) para 46.

explanation and suggestion as to why the rule of law might be disregarded so heavily by citizens as well as law enforcers in Liberia, rendering accessibility and enforceability of child rights so difficult. It attempts to contextualise the situation in general terms. The second set of recommendations refers to practical solutions which, if implemented, could meaningfully contribute to the accessibility and enforceability of child rights in the Liberian legal landscape.

5.2) Accountability – the root cause of lack of respect for the rule of law in Liberia

To explain why the rule of law in Liberia suffers from lack of respect and compliance by its citizens, its executors and enforcers is a complex and intricate issue with possibly multiple reasons. One reason for the lack of respect for the rule of law might be the absence of accountability by politicians for the atrocities committed during the civil wars. The Act to establish the Truth and Reconciliation Commission of Liberia was enforced in 2005.⁴⁴⁶ The Liberian TRC was set up in January 2008 and produced a report in December 2009.⁴⁴⁷ However, not much attention was paid to the report recommending that 116 persons responsible for gross human rights violations and war crimes shall be investigated and prosecuted by a special criminal court.⁴⁴⁸ The report further suggested to bar 49 persons, among them Ellen Johnson-Sirleaf, from public office for 30 years.⁴⁴⁹ These recommendations were not well received within the political realm and found to provide ‘poor evidence’.⁴⁵⁰

The behaviour of the Liberian political elite belittling the credibility of Liberia’s TRC by condoning the continuation of impunity might be one reason for Liberians to disregard the rule of law. If no individual criminal responsibility results from the heinous atrocities having been committed or supported by Liberian leaders, citizens as well as enforcers and executors of the law might ask themselves why they shall comply with the law. The fact that no prosecutions until this day have taken place in Liberia⁴⁵¹ has deprived the TRC of credibility. In cases where amnesties have been traded for peace, such as South Africa or Haiti, monetary reparations were paid to victims and their families.⁴⁵² The truth commissions were established to document atrocities, identify perpetrators, and have instituted employment bans and purges (also referred

⁴⁴⁶ (n 125 above).

⁴⁴⁷ Harris (n 21 above) 195.

⁴⁴⁸ Harris (n 21 above) 195.

⁴⁴⁹ Harris (n 21 above) 195.

⁴⁵⁰ Harris (n 21 above) 195.

⁴⁵¹ <http://www.hrw.org/news/2014/09/19/belgiumliberia-war-crimes-arrest-major-step-justice> (accessed 28 December 2014).

⁴⁵² MP Scharf ‘The amnesty exception to the jurisdiction of the International Criminal Court’ (1999) 32 *Cornell International Law Journal* 512.

to as lustrations) keeping such perpetrators from offices of public trust.⁴⁵³ Monetary reparations and lustrations were not provided in Liberia. With letting perpetrators go unpunished, making little effort to appease the victims of war, or acknowledge their suffering, the state of Liberia is in a difficult position. She demands respect for human rights and the rule of law from its citizens, despite certain individuals having been in breach of human rights themselves. Deterrence from crime and respect for the rights of (vulnerable) children can be effectively restored, if prosecutions of international crimes take place.⁴⁵⁴ That may discourage future human rights abuses, may deter vigilante justice and thereby reinforce the respect for the rule of law and democratic government.⁴⁵⁵ This has not been taking place in Liberia. In order to strengthen and restore the belief in and compliance with the rule of law, the state should account for the atrocities through lustrations, reparation, compensation or envisage other remedies for victims.

This contextual circumstance of lacking accountability is not conducive to the accessibility and enforceability of the Children's Law and the protection of rights for Liberian children. The Paris Principles recommend for children associated with armed forces or armed groups that transitional justice or truth commissions shall form the basis for advocacy with national and international institutions.⁴⁵⁶ This again did not take place in Liberia. The Paris Principles also encourage states to end the culture of impunity for those responsible for recruiting or using children in armed conflict.⁴⁵⁷ The principles recommend national justice mechanisms as well as international or hybrid tribunals to uphold and defend human rights law and humanitarian law at all times.⁴⁵⁸ Efforts to implement national mechanisms of justice for those accountable for the atrocities of the civil wars have however not been undertaken.

That being said, the TRC had invited children to give testimonies of victimcy and suffering, and the Women and Children Protection Section provided counselling to survivors.⁴⁵⁹ However, no testimony was given or responsibility taken by perpetrators and instigators of the civil wars having inflicted the suffering. Armed conflict and violence affects children.⁴⁶⁰ Violence can result in children failing to develop social competences and empathy with others, thereby potentially turning into perpetrators of violence themselves.⁴⁶¹ The creation of an

⁴⁵³ Scharf (n 452 above) 512.

⁴⁵⁴ Scharf (n 452 above) 512.

⁴⁵⁵ Scharf (n 452 above) 512.

⁴⁵⁶ (n 160 above) 8.0.

⁴⁵⁷ (n 160 above) 8.1.

⁴⁵⁸ (n 160 above) 8.2.

⁴⁵⁹ (n 180 above) 199.

⁴⁶⁰ Children's rights resource handbook (2004) 19.

⁴⁶¹ (n 460 above) 19.

environment within which law can operate effectively is vital for the prevention, protection and reintegration of children exposed to and involved in armed conflict. Such an environment can only be created where the state is accountable for previous actions. Therefore, implementing measures of restorative or retributive justice is necessary in Liberia in order to re-establish respect for the rule of law.

5.3) Practical solutions

In order to establish and enhance the rule of law not only de jure, but de facto, a judicial training institute was established in Liberia to provide ‘comprehensive and systematic training for judicial officers’.⁴⁶² The James A. A. Judicial Institute has a mandate to train all judicial officers and court staff in the country.⁴⁶³ By training judges directly the Liberian justice system shall be strengthened providing more ‘equitable access to justice’.⁴⁶⁴ The institute is one example of a practical solution attempting to make child rights more accessible and enforceable in Liberia. There are multiple other ways and strategies to strengthen the accessibility and enforcement of child rights in Liberia. Two strategies will be recommended here. The first strategy is raising awareness through national awareness campaigns and training and the second recommendation proposes close monitoring and evaluation of trends, causes and problems in regular intervals.

5.3.1) National awareness campaigns and training

Just as the Judicial Training Institute has a mandate to carry out trainings for judges and legal personnel, national awareness campaigns are a tool to disseminate information on national and international laws, standards, and procedures protecting children from recruitment or involvement in armed conflict.⁴⁶⁵ That way several issues which represent a problem to Liberia’s protection of child rights can be dealt with. One issue requiring improvement is legal education on the duties and fulfillment of functions for the police force.⁴⁶⁶ Since the police force is the first point of contact for the juvenile with the justice system, the police needs to ‘act in an informed and appropriate manner’.⁴⁶⁷ The term ‘appropriate manner’ is not further specified in the standard minimum rules for juvenile justice. Applied to the Liberian context it presumably means to act in a professional manner, no taking of bribes, attend to and administer cases

⁴⁶² (n 252 above) para 42.

⁴⁶³

http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/liberia/news/news_liberia_judicial_institute_graduates_trainers_0309.html (accessed 4 January 2015).

⁴⁶⁴ (n 463 above).

⁴⁶⁵ (n 160 above) para 6.7.0.

⁴⁶⁶ (n 365 above) para 12.1.

⁴⁶⁷ (n 365 above) para commentary rule 12.

neutrally and reliably, no physical violence. At all times shall the well being of a child in conflict with the law (juvenile) be furthered.⁴⁶⁸

A second issue relating to the police force as well as to judges is (pre-) trial detention. Rates of (pre-) trial detention in Liberia are high⁴⁶⁹ and the Children's Law in Article 9 section 3.1 condones exceptions admitting pre-trial detention. Detention however might not always serve the best interest of the juvenile. It will not necessarily fulfil its purpose of correcting a child to become law-abiding. The Paris Principles suggest that alternatives to judicial proceedings should be sought for children,⁴⁷⁰ such as close supervision or intensive care.⁴⁷¹ This in effect would mean that since no formal judicial proceeding takes place, no (pre-) trial detention would become necessary for the juvenile.

Another alternative may be replacing detention with diversion after seeking the consent of the juvenile, his or her parents or guardian.⁴⁷² This method of removing the juvenile from criminal justice proceedings and redirecting him or her to community services is used in many legal systems.⁴⁷³ It might be conducive for 'petty' crime and would relieve courts, prisons and correction services from administering many cases. The discretion to suggest diversion may not only be issued by courts, but also by the police, the prosecution, tribunals, boards, councils or other agencies.⁴⁷⁴ However, it must be ensured that discretion is exercised with sufficient accountability at all stages regarding all actions left to the law enforcing body.⁴⁷⁵ The person exercising discretion shall have received special training to exercise it 'judiciously and in accordance with [his or her] function and mandate[s]'.⁴⁷⁶ In order to prevent abuse of the exercise of discretion, checks and balances must be in place safeguarding the rights of the young offender.⁴⁷⁷ Additionally, all actions carried out by a judge, or other competent official, shall be carried out 'without delay'.⁴⁷⁸ Another section of the Beijing rules qualifies the rule even further stating that cases should be dealt with 'expeditiously' without 'any unnecessary delay'.⁴⁷⁹ The explanation especially in juvenile cases being that the juvenile might find it

⁴⁶⁸ (n 365 above) para 1.1.

⁴⁶⁹ (n 252 above) para 22.

⁴⁷⁰ (n 160 above) para 8.9.0.

⁴⁷¹ (n 365 above) para 13.2.

⁴⁷² (n 365 above) para 11.3.

⁴⁷³ (n 365 above) para commentary rule 11.

⁴⁷⁴ (n 365 above) para commentary rule 11.2.

⁴⁷⁵ (n 365 above) para 6.2.

⁴⁷⁶ (n 365 above) para 6.3.

⁴⁷⁷ (n 365 above) para commentary rule 6.1, 6.2, 6.3.

⁴⁷⁸ (n 365 above) para 10.2.

⁴⁷⁹ (n 365 above) para 20.1.

difficult to relate intellectually and psychologically to the procedure and disposition to the offence the more time has passed.⁴⁸⁰

Generally, juvenile justice services need to be gradually developed in Liberia improving and sustaining the competence of involved personnel.⁴⁸¹ Training legal personnel on a national level might raise overall awareness of child rights as a regime requiring special protection in Liberia. This could be supplemented by ‘comprehensive social policy’ promoting juvenile welfare to the greatest possible extent,⁴⁸² since there are no reformatory or rehabilitation facilities where delinquent children can be admitted for counselling.⁴⁸³

5.3.2) Monitoring & evaluation of trends, causes and problems

Added to the above depicted first strategy to enhance accessibility and enforceability of child rights in Liberia, the second strategy recommends complementary action which shall be undertaken subsequently to raising awareness through professional training. The recommendation encompasses to review the trainings after they have taken place and critically evaluate the trends, causes and problems which emerged from the trainings.⁴⁸⁴ The difficulties which prove to be issues might need periodic reviewing.⁴⁸⁵ This can be applied to trends, causes and problems in juvenile delinquency and crime as well as other areas impairing the rights of children and young adults.⁴⁸⁶ In order to appraise the efficiency of the trainings it may be helpful to monitor and evaluate the methods and mechanisms taught and used in the trainings so that an assessment on the impact of the trainings can be made.⁴⁸⁷ This type of monitoring requires constant evaluation and re-assessment. It is a strategy which may provide gradual improvement in the accessibility and enforceability of child rights in Liberia toward meeting CRC minimum standards.

Chapter 6 - Conclusion

The dissertation set out to examine whether the Liberian Children’s Law adheres to CRC standards and how effective preventive and reintegrative measures of the Children’s Law are in order to protect children from involvement in armed conflict. The historical overview set the scene depicting the extent of destruction and violence Liberia’s civil wars caused, in order to

⁴⁸⁰ (n 365 above) para commentary rule 20.1.

⁴⁸¹ (n 365 above) para 1.6.

⁴⁸² (n 365 above) para commentary rule 1.

⁴⁸³ (n 252 above) para 34.

⁴⁸⁴ (n 365 above) para 30.2.

⁴⁸⁵ (n 365 above) para 30.2.

⁴⁸⁶ (n 365 above) para 30.2.

⁴⁸⁷ (n 160 above) para 6.8.

understand the post-conflict state Liberia is in today. Definitions of key terms used in this dissertation were provided and clarified thereafter. The legal analysis regarding the substantiveness of the provisions of the Children's Law preventing and protecting children from involvement in armed conflict, as well as measures reintegrating former soldiers or rebels back into society was undertaken in two steps. Step one conducted a feasibility test. The test entailed proving the justiciability, accessibility and enforceability of the Children's Law in Liberia. The result showed that the Children's Law is justiciable in Liberia, but that accessibility to justice and the enforcement of child rights and their remedies are flawed. Step two scrutinised the provisions in the Children's Law pertaining to the prevention and protection of children from armed conflict, as well as the provisions reintegrating children exposed to armed conflict. The provisions largely proved 'strict and progressive'⁴⁸⁸ meeting CRC standards. Exceptions and loopholes were discovered especially on the right to life and the provisions for juvenile justice. These provisions require amendment in order to protect a child's life absolutely and protect a delinquent juvenile from maltreatment.

Of noticeable concern is the general disrespect for the rule of law by citizens as well as by law enforcers and judicial personnel. A human rights culture and respect for law and order is yet to be established further. This deficit undermines the effectiveness of the Children's Law. Exceptional is how the Children's Law reconciles African perspectives of childhood, including duties the child has to family and society, and Western conceptions of the child as an emancipated rights-holder.

The recommendations focused on how to potentially strengthen the accessibility and enforceability of child rights in Liberia. Two suggestions were proposed. The first recommendation explained that the rule of law is disregarded so much in Liberia, because the recommendations of the TRC report were largely ignored. Healing and rehabilitation did not take place, because the government was not accountable for the atrocities committed. Victims were neither recognised nor remunerated and perpetrators did not undergo punishment or any other consequences. The first recommendation therefore suggested to implement measures of restorative and retributive justice in order to restore state accountability and re-establish respect for the rule of law.

The second set of recommendations proposed to raise national awareness through professional training for bodies executing and enforcing law such as the police force and judicial officers. Also the outcome and effect of the trainings should be monitored and evaluated

⁴⁸⁸ (n 180 above) para 331.

in periodic reviews so that gradual improvement in the application of child rights may become apparent. Ultimately, ‘despite significant constraints, the Government has made progress on the Convention.’⁴⁸⁹ With the enforcement of its Children’s Law Liberia is on the right track furthering and protecting child rights. However, according to CRC standards, there is still room for improvement.

⁴⁸⁹ (n 180 above) para 43.

Bibliography

International treaties

African Charter on the Rights and Welfare of the Child (1990) OAU/CAB/LEG/24.9/49

Convention on the Rights of the Child (1989) GA/Res 44/25

International Covenant on Economic, Social and Cultural Rights (1966) Res/GA/2200A (XXI)

International Convention on Civil and Political Rights (1966) Res/GA/2200A (XXI)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000) A/Res/54/263

Rome Statute of the International Criminal Court (1998) A/CONF/183/9

Legislation

Act to establish the Truth and Reconciliation Commission (TRC) of Liberia 2005
<http://www.refworld.org/docid/473c6b3d2.html> (accessed 23 December 2014)

Act to amend the New Penal Code Chapter 14 Sections 14.70 and 14.71 and to Provide for Gang Rape 2006
<http://www.refworld.org/docid/44868e674.html> (accessed 28 January 2015)

Children's Law of Liberia 2011
<http://mogdliberia.com/images/stories/pdf/children-law-as-passed-by-the-Senate-15-September-2011.pdf> (accessed 23 April 2014)

Equal Rights of the Customary Marriages Law 2003
<http://www.refworld.org/pdfid/44868b524.pdf> (accessed 27 January 2015)

Education Reform Act of Liberia 2011
http://planipolis.iiep.unesco.org/upload/Liberia/Liberia_Education_Reform_Act_2011.pdf
 (accessed 30 January 2015)

Reports & commentaries

Cape Town Principles and Best Practices (1997) UNICEF

Combined second, third and fourth periodic reports of states parties due in 2009 Liberia (2011) CRC/C/LBR/2-4

General Comment No. 6 (2005) CRC/GC/2005/6

Joint Submission by the UN Country Team in Liberia for the UN Compilation Report 'Universal Periodic Review of Liberia' (2010) United Nations

Report of the Special Representative of the Secretary-General for children in armed conflict (2011) A/66/256

Schneider, J 'Die Justiziabilität wirtschaftlicher, sozialer und kultureller Menschenrechte' (February 2004) German Institute for Human Rights http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/studie_die_justiziabilitaet_wirtschaftlicher_sozialer_u_kultureller_menschenrechte.pdf (accessed 22 September 2014)

Secretary General Report on children and armed conflict (2012) A/66/782–S/2012/261

The Paris Principles - Principles and Guidelines on children associated with armed forces or armed groups (2007) UNICEF

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) GA Res 40/33

White and Case LLP 'Access to justice for children: Liberia' (January 2014) https://www.crin.org/sites/default/files/liberia_access_to_justice_0.pdf (accessed 27 June 2014)

Books

Adebayo, A (2002) *Building Peace in West Africa- Liberia, Sierra Leone and Guinea- Bissau* Lynne Rienner Publishers Boulder Colorado

Akinrinade, B (2009) *Human rights and state collapse in Africa* Eleven International Publishings Utrecht

Children's Rights Centre Durban (2004) *Children's rights resource handbook* Durban

Detrick, S (1999) *A Commentary on the United Nations Convention on the Rights of the Child* Martinus Nijhoff Publishers The Hague

Harris, D (2012) *Civil war and democracy in West Africa – conflict resolution, elections and justice in Sierra Leone and Liberia* I.B. Tauris London

Hodgkin, R; Newell, P (2007) *Implementation handbook for the Convention on the rights of the child* Unicef Geneva

Özerdem, A; Podder, S (2011) *Child soldiers: from recruitment to reintegration* Palgrave Macmillan Basingstoke Hampshire UK

Sesay, A (2003) *Civil wars, child soldiers and post conflict peace building in West Africa* College Press and Publishers

Sesay, A; Ukeje, C; Gabla, O; Ismail, O (2009) *Post-war regimes and state reconstruction in Liberia and Sierra Leone* CODESIRA Dakar

Sloth-Nielsen, J (2008) *Children's rights in Africa- a legal perspective* Ashgate Burlington

Smith-Höhn, J (2010) *Rebuilding the security sector in post-conflict societies- perceptions from urban Liberia and Sierra Leone* Lit Verlag Berlin

Chapters in books

Chirwa, D M 'Combating child poverty: the role of economic, social and cultural rights' in Sloth- Nielsen, J (eds) (2008) *Children's rights in Africa: a legal perspective* Ashgate Burlington US

Gates, S 'Why do children fight? Motivations and mode of recruitment' in Oezerdem, A and Podder, S (eds) (2011) *Child soldiers: from recruitment to reintegration* Palgrave Macmillan Basingstoke Hampshire UK

Mezmur, B D 'Children at both ends of the gun: child soldiers in Africa' in Sloth-Nielsen, J (eds) (2008) *Children's rights in Africa: a legal perspective* Ashgate Burlington US

Podder, S 'Child soldier recruitment in the Liberian civil wars: individual rebel motivations and rebel group tactics' in Oezerdem, A and Podder, S (eds) (2011) *Child soldiers: from recruitment to reintegration* Palgrave Macmillan Basingstoke Hampshire UK

Journals

Begley, T.B.C 'The extraterritorial obligation to prevent the use of child soldiers' (2012) 27 *American University International Law Review* 614

Rwezaura, B 'Competing "images" of childhood in the social and legal system of contemporary Sub-Saharan Africa' (1998) 12 *International Journal of Law, Policy and Family* 253

Scharf, MP 'The amnesty exception to the jurisdiction of the International Criminal Court' (1999) 32 *Cornell International Law Journal* 507

Websites

'Liberia: national laws' (2013) <https://www.crin.org/en/library/publications/liberia-national-laws> (accessed 23 April 2014)

'Liberia' (2007 - 2012) <http://data.worldbank.org/country/liberia> (accessed 03 July 2014)

'At a glance: Liberia' (2013) http://www.unicef.org/infobycountry/liberia_statistics.html (accessed 03 July 2014)

Riz Khan's 'One on one' with Ellen Johnson-Sirleaf Al Jazeera English <http://www.youtube.com/watch?v=zUcvSDK-UYs> (accessed 05 July 2014)

Biographical brief of Ellen Johnson-Sirleaf
<http://www.emansion.gov.lr/2content.php?sub=121&related=19&third=121&pg=sp> (accessed 26 July 2014)

Ellen Johnson-Sirleaf's laureate speech at the Nobel Peace prize giving in Oslo 2011
<http://www.youtube.com/watch?v=vKY58vw44N8> (accessed 05 July 2014)

United Nations Disarmament Demobilization and Reintegration Resource Centre
http://www.unddr.org/what-is-ddr/introduction_1.aspx (accessed 09 July 2014)

'Liberia: Former government fighters riot during demobilisation' (2003)
<http://www.irinnews.org/report/47584/liberia-former-government-fighters-riot-during-demobilisation> (accessed 11 July 2014)

'Liberia: Preparing for the transition from war to normal life' (2003)
<http://www.irinnews.org/in-depth/66996/24/liberia-preparing-for-the-transition-from-war-to-normal-life> (accessed 11 July 2014)

African Development Bank Group 'The role of disarmament, demobilization and reintegration programs in post-conflict reconstruction: some lessons learnt' (2011)
<http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/2011%20Role%20of%20Disarmament-%20Reintegration%20Programs%20in%20Post-Conflict%20Reconstruction.pdf> (accessed 19 July 2014)

67th session of UN GA in October 2012 report on 'Access to justice by people living in poverty' (2012) <http://www.ohchr.org/EN/Issues/Poverty/Pages/Accessjustice.aspx> (accessed 24 September 2014)

'Court backs French ban on Islamic 'kafala' adoption' (2012)
<http://www.humanrightseurope.org/2012/10/court-backs-french-ban-on-islamic-%E2%80%98kafala%E2%80%99-adoption/> (accessed 24 November 2014)

'Belgium/Liberia: War Crimes arrest major step for justice' (2014)
<http://www.hrw.org/news/2014/09/19/belgiumliberia-war-crimes-arrest-major-step-justice> (accessed 28 December 2014)

'James A. A. Pierre Judicial Institute graduates first group of Liberian trainers' (2009)
http://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/liberia/news/news_liberia_judicial_institute_graduates_trainers_0309.html (accessed 4 January 2015)

Human Rights Watch 'How to Fight, how to kill: child soldiers in Liberia' (2004)
<http://www.refworld.org/docid/402d1e8a4.html> (accessed 27 January 2015)