

Is Age Only a Number? A Comparative Study of How State Authorities Respond to Child Soldiers

by
Persia Sayyari

LL.B./J.D. University of Ottawa, 2010
B.A., University of British Columbia, 2006

Thesis Submitted in Partial Fulfillment of the
Requirements for the Degree of
Master of Arts

in the
School of Criminology
Faculty of Arts and Social Sciences

© Persia Sayyari 2022
SIMON FRASER UNIVERSITY
Summer 2022

Copyright in this work is held by the author. Please ensure that any reproduction or re-use is done in accordance with the relevant national copyright legislation.

Declaration of Committee

Name: Persia Sayyari

Degree: Master of Arts

Title: Is Age Only a Number? A Comparative Study of How State Authorities Respond to Child Soldiers

Committee:

Chair: Bryan Kinney
Associate Professor, Criminology

Raymond Corrado
Supervisor
Professor, Criminology

David MacAlister
Committee Member
Associate Professor, Criminology

Ben Maure
Examiner
Inspector
Royal Canadian Mounted Police (RCMP)

Abstract

There is significant normative literature on the moral and legal culpability of child soldiers. However, there is little empirical research regarding how child soldiers are punished by states. This thesis compares how 17 governments implemented consequences for child soldiers. It examines legal sanctions and also other policies, directives, and extrajudicial mechanisms including amnesties, alternative justice programs and the revocation of citizenship. Findings indicate child soldiers are typically treated similarly to their adult counterparts, with three exceptions: (a) children more often are released through handover protocols; (b) children less often face trial; and (c) at trial, children more often receive lenient sentences. Findings also suggest child soldiers receive amnesty more often in African countries than elsewhere. Two models are presented to illustrate how child soldiers will most likely be treated by governments, how age influences that treatment, and how the specific timeframe of an armed conflict affects both issues.

Keywords: child soldiers; young offenders; transitional justice; youth sentencing; international humanitarian law; terrorist organizations

Table of Contents

Declaration of Committee	ii
Abstract	iii
Table of Contents	iv
List of Figures.....	vii
Chapter 1.	1
Introduction	1
Literature Review	1
Focus of existing literature	2
Defining “Child Soldier”	4
Age	6
Non-state armed groups	10
Moral Blameworthiness	20
Chapter 2.	28
Methodology	28
Definitions	28
Government responses	28
Particular armed groups, over particular time periods	30
Response categories	32
a) Detention	32
b) Trial.....	33
c) Alternative justice	34
d) Amnesty.....	34
e) Citizenship	36
Limitations	37
Chapter 3.	39
Comprehensive Chart	39
Chart description	40
Intensity score	40
Colour-coded labels.....	41
Findings	43
Prevalence and intensity of response types.....	43
Relationships between response types.....	46
a) Relationship between detention and trial	46
b) Relationships between amnesty, detention and trial.....	50
c) Observations regarding the citizenship response	51
On-going vs post-conflict context.....	53
The impact of age.....	55
a) Impact of age on trials	55
b) Impact of age on amnesty	56
c) Impact of age on detention.....	57
d) Impact of age on citizenship rights	57

e) Impact of age on alternative justice.....	58
Regional patterns	58
Amnesty and alternative justice programs offered predominantly in Africa	58
Chapter 4.	61
Model #1: Impact of age upon government responses to child soldiers	62
Model #2: Impact of conflict timing upon response and level of retribution	65
Summary of conclusions from model #1 and model #2.....	69
Chapter 5.	71
Predominance of detention.....	71
Lenient treatment at trial.....	74
Findings and the literature regarding detention and trials.....	75
Prevalence of amnesty and alternative justice programs in Africa	77
Findings and the literature regarding amnesty and alternative justice programs ..	81
Validity of models	83
References.....	86
Appendix: Country Reports.....	98
Afghanistan	98
<i>Taliban and ISIS-K: 2015 - 2021</i>	98
Burkina Faso.....	100
<i>Al-Qaeda and ISIS-associated groups: 2014 - 2021</i>	100
Cameroon	102
<i>Boko Haram: 2014 - 2020</i>	102
Canada	104
<i>ISIS and Al-Qaeda: 2001 - 2021</i>	104
Colombia.....	107
<i>FARC: 2016 - 2021</i>	107
Iraq	
1109	
<i>ISIS: 2014 - 2021</i>	109
Israel	112
<i>Hamas: 1988 - 2021</i>	112
Mali	115
<i>Jihadist groups and coalitions: 2012 - 2020</i>	115
Niger	116
<i>Boko Haram: 2014 - 2021</i>	116
Nigeria.....	118
<i>Boko Haram: 2009 - 2021</i>	118
Peru	120
<i>Shining Path: 1980 - 2003</i>	120
Rwanda.....	122
<i>“Génocidaires”: 2001 - 2012</i>	122

Sierra Leone	124
<i>RUF and AFRC: 2002 - 2012</i>	124
Somalia	126
<i>Al-Shabaab: 2006 - 2021</i>	126
Uganda	128
<i>LRA: 2000 - 2012</i>	128
United Kingdom.....	131
<i>ISIS: 2014 - 2021</i>	131
United States of America.....	134
<i>Al-Qaeda & ISIS: 2002 - 2021</i>	134

List of Figures

Figure 1: Comprehensive Chart	39
Figure 2: Prevalence and intensity of reponse types	44
Figure 3: Detention and trial response types across all countries	47
Figure 4: Model #1 – Impact of age upon government responses to child soldiers	62
Figure 5: Model #2 - Impact of conflict timing upon response and level of retribution ...	65

Chapter 1.

Introduction

In the 1990s, the recruitment and use of child soldiers in civil wars, particularly in central and western African nations, aroused enormous controversy in the media, within the UN, among politically liberal democratic nations, and in the broader international community. More recently, the controversial use of child soldiers has become widespread in radical jihadist groups such as Boko Haram and the Islamic State in Syria and the Levant (ISIS or ISIL). The typical reaction was abhorrence towards the armed groups and armies that violently recruited and deployed child soldiers into vicious conflicts. While there were relatively few issues regarding the moral blameworthiness or legal culpability of those adults who forcefully recruited and deployed child soldiers, there were and remain enormous issues regarding the moral blameworthiness and legal culpability of the child soldiers themselves.

Much of the literature on these issues involves normative and legal arguments about whether child soldiers should be considered culpable for their actions and, if so, whether they ought to be punished. However, there is little empirical research regarding how government authorities have (or have not) punished child soldiers. This thesis examines how 17 national governments have both stipulated and implemented consequences for child soldiers through various authorities, including their military forces, justice ministries, social services, and community programs. This study takes a broad approach, including not only formal legal assessments and sanctions, but also other government responses conducted through policies, directives, and extrajudicial mechanisms.

Literature Review

There were few comparative legal studies on child soldiers and their legal culpability, and even fewer empirical studies. Most scholarship has been normative, i.e., prioritizing appraisal about how former child soldiers *ought* to have been treated rather than analysing how they *were* treated. The extant empirical studies typically emphasized prescriptive arguments (i.e., critiquing, condemning, or condoning the status quo) while largely eschewing descriptive analyses of child soldiers and how they were processed legally. In other words, there was little comparative data about how national

governments actually assessed the blameworthiness of former child soldiers, and what the outcomes were for those child soldiers. Nonetheless, the existing scholarship has provided indispensable guidance for the structure and focus of this study. Most importantly, the literature identified three central themes relevant to this thesis. This chapter will describe the overall focus of the existing literature and then discuss those three themes.

Focus of existing literature

The existing literature falls into three general categories. First, much of the existing literature focuses on legal scholarship regarding the culpability of former child soldiers according to international law. Children's accountability for international crimes has been called "one of the most complex legal and moral conundrums in international criminal justice" (Cedrangolo, 2019, p. 698) A correspondingly complex body of literature has evolved on this topic. It includes descriptive and prescriptive studies spanning diverse areas of law, such as: the interpretation of treaties on associated topics (e.g., human rights law, refugee law, and international humanitarian law); caselaw from the International Criminal Court and special tribunals; and the interaction between domestic and international law. The descriptive studies illuminated the exceptionally dense legal themes listed above, while the prescriptive studies advocated novel legal interpretations and related aspirational policy goals.

Second, empirical case studies described former child soldiers in specific post-conflict contexts. The objects of such studies varied, but many include analyses of reintegration and rehabilitation programs (Mitra, 2019) or community-based justice programs (Kiyala, 2019). While these studies did not prioritize questions of blameworthiness, they often provided detailed socio-demographic descriptions of former child soldiers' post-conflict lives that sometimes included information about how their blameworthiness was (or was not) assessed. Media reports also contained important empirical information; for example, legal scholarship about the U.K. government's response to underage ISIS fighters has been informed by news journalism (Nyamutata, 2020).

Third, an extensive body of literature advanced proposals about if, when, why, and how former child soldiers *ought* to be assessed as blameworthy. This literature utilized

different types of empirical research and philosophical approaches.¹ It was multidisciplinary and included law, political science, criminology, sociology, psychology, philosophy, and anthropology. Empirical studies included survey data from specific populations² and public reports authored by governmental organizations such as United Nations committees and non-governmental organizations such as charities. These reports often combined legal references, illustrative case studies, and normative arguments while advocating for particular goals. While advocacy-focused reports varied in their academic rigor, some provided detailed and transparent information regarding their research methodology.³

Despite the literature's diversity, scholarship from all three categories revealed recurring and contentious themes which are conceptually central to this thesis. Central questions regarding key concepts and definitions were: What is the definition of "child soldier"? What defines a "child" for the purpose of defining "child soldier"? What distinguishes armed groups whose members may rightfully be called "soldiers" from other types of violent organizations? Central questions regarding blameworthiness were: Are there any circumstances where former child soldiers should be assessed as morally blameworthy for acts they committed as child soldiers? If yes, by what mechanisms should these assessments take place?

Addressing these questions serves two essential purposes for this thesis.

First, the existing literature helps to inform definitions and parameters that circumscribe the scope of empirical data collection. Obviously, it is not possible to collect meaningful data on *child soldiers* without defining *child*, and the literature offers pertinent suggestions. The literature also informs data collection by describing relevant contemporary construct operationalization parameters. For example, over the past few decades, comparatively few children who participated in armed conflicts were members of national armies; most were associated with other types of armed groups, including

¹ See, for example, Thomason's discussion of relevant moral considerations (Thomason, 2016).

² See, for example, Kiyala's recommendations drawn from hundreds of surveys with victims directly affected by conflicts involving child soldiers in the DRC. (Kiyala, 2019)

³ See, for example, the 32-page research methodology standards prepared by UNICEF National Committees in the Netherlands, Belgium, and Sweden to explain how their "Child Notice" country reports are prepared (Kaandorp, 2015).

some groups considered to be terrorist organizations (Rosen, 2019). Narrowly defining *soldiers* only as members of national armies would have avoided theoretically and legally critical questions about non-government terrorist organizations. Adopting a restrictive definition would also have prevented the investigation of the many thousands of children who were forcefully made to participate in armed conflicts by non-state armed groups (Rosen, 2019). This literature review will explain how the existing scholarship on these contentious questions informed this study's key concept definitions and parameters.

Second, the literature reveals assertions that would arguably benefit from comparative empirical data in terms of their validity. This need is especially evident regarding predominant normative arguments central to the theoretical context needed to situate the relevance of this study. For example, a growing number of academics have asserted that community-based transitional justice mechanisms should be employed to assess the moral blameworthiness of former child soldiers (Drumbl, 2013). As the popularity of these policy recommendations has grown, so has the utility of relevant comparative data to assess, for example: were community-based transitional justice often employed with respect to former child soldiers? If yes, did their actual outcomes align with their proponents' promises? If not, what was done instead?

It should be emphasized that this thesis does not set out to assess the merits of any particular normative argument. Rather, this thesis takes an inductive approach by collecting and analyzing case data concerning potential patterns. At the same time, it is necessary to consider predominant arguments when setting parameters for data collection to provide a more useful contribution to the current literature. In other words, given the predominance of arguments about what *ought* to be done, a necessary follow up study is required to identify what was *actually* done at the case level. With these priorities in mind, the next section reviews the literature regarding the above contentious issues.

Defining “Child Soldier”

Journalists, politicians, academics and activists colloquially use the term “child soldier” to describe young people associated with armed groups in various mass violent contexts. However, the precise definition of “child soldier” has remained conceptually and legally

disputed. In other words, there has been no consensus regarding the precise definition, not only in law, but also conceptually and theoretically in fields such as political science, criminology, sociology, psychology, and anthropology.

From a legal perspective, the definition of “child soldier” has varied according to context and purpose. Was the definition intended to establish a minimum age at which national armies could recruit youth, or deploy them into active hostilities? To clarify whether a youth was a combatant or civilian? To decide whether homicide by a youth should be prosecuted as a gangland murder or considered lawful killing in the context of urban warfare? These fundamental conceptual and legal definition questions have resulted in legal frameworks with inconsistent definitions of “child soldier.” The intersection of national and international law added yet further complexity.

From a political policy perspective, active armed conflicts may encourage actors to reject consistent definitions in favour of perpetually re-adjusting terms to suit changing policy objectives. For example, in the wake of the 9/11 terrorist attacks against the U.S.A, the Bush administration argued that captured terrorist fighters, including children, constituted a new legal category of “unlawful combatants” who were not entitled to legal protection as prisoners of war under the Geneva Conventions, and also not entitled to ordinary protections under U.S. criminal law (Tracy, 2009). A related issue involves changing alliances among government and anti-government armed groups, which may involve corresponding policy changes in who is considered a *terrorist* and who is considered a *soldier*. For example, throughout the latter half of the 20th century, the African National Congress (ANC) used violence to fight against South Africa’s apartheid government, including school-age youth in the struggle (SAHO, 2022). During this period, the ANC was listed as a terrorist organization under U.S. law. However, in 1994, the ANC became the ruling party of South Africa. In 2008, U.S. lawmakers removed the ANC’s terrorist designation while equating the ANC with freedom fighters, praising their triumph over apartheid, and emphasizing the positive relationship between the U.S. and the ANC-led South African government (*U.S. House Report*, 2008).

In addition, academics and journalists often used the term *child soldiers* without clearly defining it. Frequently, definitions were entirely absent and had to be inferred from peripheral arguments. Some authors advanced particular definitions without justification or acknowledgement of alternatives. Others asserted that specific definitions were

authoritative without providing unambiguous or clear justification for why that was so. For example, while various scholars cited the Paris Principles as defining child soldiers,⁴ the Principles themselves never use this term: they reference only children associated with armed groups (UN Children’s Fund (UNICEF), 2007).

Three contentious issues emerged in the literature discussions about the definition of *child soldier*: first, the age at which a person was considered a “child”; second, the types of organizations whose members could have included “soldiers;” and, third, whether child soldiers were equated with their adult counterparts with respect to their agency as combatants, or if they were more appropriately classified as blameless victims. The following section reviews the literature on these three issues.

Age

The age at which a person is a “child” for the purpose of being a “child soldier” is disputed. The literature revealed three predominant views: (a) the age of 18 years distinguished child soldiers from adult soldiers; (b) the distinguishing age was either 15 or 18 years, depending on particular circumstances; and (c) the answer was context-specific, with no universal benchmark based on chronological age.

In recent years, the first approach has gained widespread popularity amongst academics, human rights advocates, and international organizations. The UN and children’s rights groups routinely define a child soldier as under age 18 (Rosen, 2019). There is increasing support for the position that it should be unlawful for both armed groups and armed forces to conscript, enlist, or deploy any person under the age of 18 into hostilities, and also that - as the blameless victims of such recruitment - child soldiers should not bear criminal responsibility for atrocities they commit during hostilities (Drumbl & Barrett, 2019).

Some relevant international law references the age of 18 years. The Rome Statute of the International Criminal Court excludes from the court’s jurisdiction anyone who was below

⁴ See, for example, Nyamutata (2020), who asserts “The Paris Principles defined a child soldier as: Any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies, or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.” (Nyamutata, 2020, p. 8)

the age of 18 at the time of the alleged offense (*Rome Statute of the International Criminal Court*, n.d.). The UN Convention on the Rights of the Child (CRC) defines children as “every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier” (UN General Assembly, 1989). The CRC’s Optional Protocol asserts that state parties should “take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities,” and also “ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces,” though it does permit *voluntary* recruitment of those above the age of 15 into state armed forces (UN General Assembly, 2001). The African Charter on the Rights and Welfare of the Child takes a firmer stance, stipulating that “a child means every human being below the age of 18 years” (African Member States of the Organization of African Unity, 1990); the qualifications contained in the CRC and its Optional Protocol are notably absent. Most recently, the Paris Principles Guidelines on Children Associated with Armed Conflict and Armed Groups have also defined the age of “children associated with armed groups” as below 18 years (UN Children’s Fund (UNICEF), 2007).

However, there is also international law suggesting 15, not 18, is the appropriate age to distinguish children from adult soldiers. International customary law prohibits recruiting those below the age of 15 (Rosen, 2019) as a war crime for which the recruiter is accountable (Nyamutata, 2020). While the CRC’s Optional Protocol requires states to ensure those under 18 are not *compulsorily* recruited into national armed forces, it does permit *voluntary* recruitment of those over 15 (UN General Assembly, 2001). The Rome Statute similarly sets up a two-pronged approach; concurrently disallowing the prosecution of anyone under the age of 18 for war crimes while also allowing *state* armed groups to recruit voluntary soldiers above the age of 15 (*non-state* armed groups, by contrast, are entirely forbidden from recruiting those below the age of 18). The age of 15 was also affirmed by the Statute of the Special Court for Sierra Leone, an international criminal tribunal established in the wake of a civil war involving many child combatants. The tribunal’s statute permitted prosecution of those over 15, though there were special provisions regarding how perpetrators under 18 should be treated (Rosen, 2019). While the prosecution ultimately declined to prosecute anyone under 18, they had the legal authority to do so (Nyamutata, 2020).

By contrast, proponents of the contextual approach argue there is no universal age to distinguish child soldiers from adult soldiers. Although international standards dictate that children should not be held criminally responsible if they are under the age of criminal responsibility, the age of criminal responsibility remains unsettled in international law. Nation states apply the age established by their respective national laws (Maystre, 2014). Some authors believe a standardized international minimum age of criminal responsibility would help protect child soldiers (Ursini, 2015). Others argue there has recently been a “discursive shift” towards considering child soldiers as vulnerable and requiring protection which does not align with historical patterns (Rosen, 2019, p. 160). Rosen (2019) outlines various factors that brought about this shift, including mandatory conscription policies applied to adults in Western countries during WW1 and WW2. He argues:

“Whereas the idea of the ‘rights of the child’, a concept based upon a putative universal child, seems self-evident and obvious to modern-day children’s rights advocates, it may strike anthropologists and historians as facile, tendentious and ethnocentric. Concerns about childhood cast in the language of human rights and humanitarian imperatives tend to overlook the enormity of the social and cultural changes embedded in the transnational restructuring of age categories, thereby concomitantly tending to ignore or demonize historical experiences and cultural contexts.” (Rosen, 2019, p. 162)

Proponents of this contextual approach emphasize that attitudes towards child soldiers are highly influenced by local cultural perceptions of age and childhood. In some countries where conflicts prominently involve young combatants, adulthood is considered to begin at or during puberty, spanning a period between approximately ages 10 – 14 years (Global Coalition for the Reintegration of Child Soldiers, 2020). The Taliban in Afghanistan, for example, judged whether a boy is old enough to fight by whether he has grown facial hair (Van Engeland, 2019).

Furthermore, in practical terms, the enforcement of criminal law for both national and international crimes typically depends upon national governments. There are very few cases where child soldiers or former child soldiers have faced trial in international forums.⁵ Also, many states have not signed the Rome Statute which forbids prosecuting

⁵ A notable exception is the International Criminal Court’s recent conviction of Dominic Ongwen, a Ugandan former commander in the Lord’s Resistance Army (LRA) who was kidnapped and coerced into joining the group as a child. In 2021, the ICC convicted Ongwen of war crimes he

those under 18 for international crimes. The U.S.A, China, Russia, India, Israel and Iran are key examples (International Criminal Court, n.d.). The domestic legislation of national governments regarding the minimum age of criminal responsibility is thus central, and these minimum ages vary enormously, ranging from 0⁶ to 18 (Child Rights International Network, n.d.).

Age: Summary and definition for the purpose of this thesis

The literature on the age at which a person is a “child” for the purpose of being a child soldier is not unanimous. While the age of 18 is widely (and increasingly) cited as an appropriate benchmark, there are persuasive arguments that this approach is: (a) a recent historical development fueled by a humanitarian agenda; (b) dismissive of divergent cultural conceptions of childhood; and (c) inconsistent with both international and domestic legal realities. International legal instruments indicate the age of 15 is sometimes appropriate. There are considerable examples where cultures consider puberty a more justifiable age benchmark.

For pragmatic reasons, this study’s methodology defines the age of 18 as the dividing line between child and adult soldiers. Empirical data for this thesis research was collected from publicly available documents in English. Many of the most relevant documents were prepared by non-governmental organizations or academics who used the age of 18 to distinguish children from adults. However, these sources did not typically distinguish between older and younger children under the age of 18. Because there is scant empirical research on this topic, excluding these documents would seriously undermine this study’s ability to make meaningful empirical comparisons between countries’ approach towards child soldiers.

There are limitations associated with defining child soldiers as under 18 years old. Because the source data does not distinguish 7-year-olds from 17-year-olds, nuances in treatment between children of different ages are not captured in this study. This study

committed as an adult but gave him a reduced sentence due to the circumstances of his recruitment into the LRA (BBC News, 2021).

⁶ Thirty-three states in the USA have no minimum age of criminal responsibility, theoretically allowing criminal penalties to be imposed at any age, though “in most states” a capacity-related test is required. (Child Rights International Network, n.d.)

cannot offer useful comparative data about whether older children are treated differently than younger ones. For the same reason - that is, because the source data focuses on those who are presently under the age of 18 - this study may exclude former child soldiers who are now over the age of 18 but continue to experience consequences for actions they committed when under 18.

Non-state armed groups

Although the word *soldier* is typically associated with uniformed military personnel from national armies, in the contemporary context, most people under 18 involved with armed groups are not part of national armies. The UN designated only 6 states as recruiters of child soldiers in 2017 (Burma, Afghanistan, Somalia, Sudan, South Sudan and Yemen) (Rosen, 2019). Three of those states (Afghanistan, Somalia, and Sudan) have since entered agreements to curb or end their child recruitment (Rosen, 2019). These numbers rise if one distinguishes between the recruitment of children and the deployment of children: Child Soldiers International reported that between January 2010 and June 2012, ten states *deployed* under-18's in active hostilities⁷. When a broader spectrum of state-associated forces are included, such as subsets of state armed forces or state-allied armed groups, a total of 17 states employed child soldiers.⁸ In another 3 states,⁹ children were not formally recruited by state forces, but were used for military purposes such as intelligence gathering and as human shields (Child Soldiers International, 2013).

By contrast, at least 52 distinct *non-state* armed groups recruited child soldiers in 2019. A clear majority of children involved in armed conflicts were part of non-state armed groups: they were predominantly “rebels, freedom fighters, militias, terrorists and other groups that stand outside the system of formal state recruitment” (Rosen, 2019, p. 151). Rosen argues that “the real issue of modern child soldiers is primarily one of recruitment of children by non-state actors” (Rosen, 2019, p. 161).

⁷ Namely: Chad, Cote d'Ivoire, the DRC, Libya, Myanmar, Somalia, South Sudan, Sudan, the U.K. and Yemen.

⁸ Namely: Chad, Cote d'Ivoire, the DRC, Libya, Myanmar, Somalia, South Sudan, Sudan, the U.K. and Yemen, Afghanistan, Central African Republic, Eritrea, Iraq, the Philippines, Rwanda and Thailand.

⁹ Namely: Colombia, Israel and Syria.

Scholarship regarding the blameworthiness of child soldiers often invokes legal, ethical, and political arguments involving international humanitarian law. A recurring question is whether international humanitarian law (colloquially known as the laws of war) applies, or ought to apply, to child members of a particular armed group. It is essential to distinguish between state armed forces, non-state armed groups, and other types of organized groups, because different legal considerations apply to each. While international humanitarian law is complex and involves many factors, it is essential in any violent conflict involving non-state actors to decide whether those actors constitute a non-state armed group. This determination has significant consequences. For example, while killings by rival drug cartels in the context of a “turf war” will attract criminal sanctions prohibiting murder, killings by a non-state rebel group in the context of an armed conflict may be permitted without sanction under international humanitarian law, because combatants directly engaged in hostilities may be lawfully killed (United Nations Office on Drugs and Crime, n.d.-a).

It is therefore important to discuss the definition of *non-state armed groups*. While the preceding example may seem straightforward, contemporary realities have complicated the issue. The following section will review basic principles of international humanitarian law regarding what constitutes a non-state armed group and examine how modern organized criminal groups challenge those definitions. It will then review arguments about whether terrorist groups are non-state armed groups under international humanitarian law. Finally, it will explain how the relevant literature informs the definition of *non-state armed group* adopted in this thesis.

International Humanitarian Law

International humanitarian law is complex, and it is beyond the scope of this thesis to provide even a cursory overview of all of its tenets: “it applies only in certain situations, those situations are not always easily definable in concrete terms and, depending on the situation, one and the same act can be lawful or unlawful, not merely unlawful but a criminal offence, or neither lawful nor unlawful!” (David, 2002, pp. 921-922, as cited in United Nations Office on Drugs and Crime, n.d.-a). In very basic terms, the core principles of international humanitarian law can be summarized as: “do not attack non-combatants, attack combatants only by legal means treat persons in your power humanely, and protect the victims” (David, 2002, pp. 921-922, as cited in United Nations

Office on Drugs and Crime, n.d.-a). International humanitarian law does not prohibit the use of violence *per se*, it is not concerned with the purpose of a conflict, and it does not protect all persons affected by armed conflict, especially combatants directly engaged in hostilities who may lawfully be killed. (United Nations Office on Drugs and Crime, n.d.-a)

But preceding these issues is the question of whether international humanitarian law applies to a particular situation. International humanitarian law only applies when an armed conflict exists. Two categories of armed conflict exist: international armed conflicts and non-international armed conflicts.

International armed conflicts exist whenever there is resort to armed force between two or more states; no other criteria are required. The second category is more complicated. Despite their name, non-international armed conflicts can involve more than one state territory; they are distinguished from international armed conflicts by the parties involved rather than by the territorial scope of the conflict. Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups on the territory of a state (or more than one state). In other words, non-international armed conflicts take place between state armed groups and non-state armed groups, or between non-state groups only. Non-international armed conflicts are distinguished from other forms of generalized violence (such as riots or gang violence) by two additional criteria; the armed confrontations must reach *a minimum level of intensity* and the parties involved in the conflict must show *a minimum level of organization*. Factors demonstrating a minimum level of intensity include whether the hostilities are of a collective character or whether the government is obliged to use military forces against insurgents (instead of mere police forces). Factors demonstrating a minimum level of organization include whether an armed group possesses organized armed forces under a certain command structure, with the capacity to sustain military operations (International Committee of the Red Cross (ICRC), 2008). In other words, non-state armed groups are “collective entit[ies] with a command structure that distinguishes the group from its individual members” which “have sufficient manpower, logistics, including weapons, and coordination to engage in intense and sustained violence” (Nyamutata, 2020, p. 7).

In the contemporary context, it can be difficult to establish what groups qualify as non-state armed groups under this definition. There are circumstances where this definition

appears to include some groups that are conceptually more appropriate to a criminal law regime than the laws of war, such as organized crime groups and terrorist groups focused on non-political goals.

Criminal Organizations: Non-State Armed Groups?

Perhaps scholars of international law never anticipated that drug cartels would develop the same levels of organization and armed capacity described in the definition of non-state armed groups. However, there are major recent cases where this has occurred. Mexico's ongoing struggle against sophisticated drug cartels provides an illustrative example.

Regarding the *minimum level of intensity* factor, Mexico has been engaged in a "drug war" for the past 13 years, with an estimated 175,000 people killed since 2006. The continued proliferation of conflicts involving criminal organizations has led to unprecedented levels of violence with over 35,000 murdered in 2019 (Institute for Economics & Peace, 2020). The pervasive conflict situation has even challenged Mexican authorities' ability to exercise effective control over its police and political institutions in various areas of the country. At many state levels, criminal organizations effectively control the police, the judiciary, and the politicians. In 2006, the Mexican federal government began sending army personnel to fight drug cartels in urban areas. Some analysts argue the outgoing President Nieto government gave up trying to control the violence prior to the 2018 elections. The current President Andrés Manuel López Obrador government has undertaken a major campaign to recover control of oil refineries and pipelines controlled by criminal cartels. The repeated deployment of the army to protect internal security at the local level has changed the relationship between the elected government and the military. While Mexico's civilian government has controlled the military since the 1950's, current President Andrés Manuel López Obrador reportedly conceded that the next secretary of defense had to be appointed in consultation with the head of the army (Bertelsmann Stiftung, 2020).

Given the widespread nature of the violence and the on-going involvement of military forces, cartel-related violence in Mexico has arguably reached the minimum level of intensity required to characterize a non-international armed conflict. Moreover, drug cartels are widely known to recruit children because they are less conspicuous than

adults and subject to more forgiving criminal laws. An estimated 30,000 children were recruited by drug cartels in Mexico by 2019. Children as young as 10 are reportedly “initially used for street-level drug sales and as lookouts, but often are quickly promoted to act as killers” (Stevenson, 2021, para. 18).

Regarding the *minimum level of organization* factor, the Jalisco New Generation Cartel (CJNG in Spanish - *Cartel de Jalisco Nueva Generation*) demonstrates key characteristics described in the definition of non-state armed groups. The CJNG is a Mexican drug cartel that has been in rapid ascension since 2019. The CJNG cartel is highly well-organized and has the resources to engage in intense, sustained violence. The cartel maintains sophisticated alliances with other criminal groups which have allowed it to expand its global market through the Americas, Europe, and Asia. CJNG members have deliberately ambushed and killed Mexican police and have downed a Mexican military helicopter in a direct confrontation (Jones, 2018). In 2018, a single firefight between the CJNG cartel and a rival group in 2018 killed 50 members of both gangs (Ellis, 2020). CJNG members employ improvised explosive devices (IED’s) like those used by the Revolutionary Armed Forces of Colombia – People’s Army (FARC) and drones with explosives attached which mimic weapons used by ISIS. Unlike other Mexican organized criminal groups that buy weapons on the black market, the CJNG has begun manufacturing its own: in 2014, authorities discovered a clandestine AR-15 manufacturing facility that supplied the CJNG. Leaked Mexican intelligence reports indicate the group has further improved its arms manufacturing capacity and supplies weapons to its allies. Recent interviews with officials from the United States Drug Enforcement Administration suggest the CJNG may have purchased training from Israelis. The CJNG have circulated videos of large public assemblies of their armored vehicles and fighters, including armored trucks mounted with high-caliber machine guns, painted in military colours and bearing the group’s name (Ellis, 2020). Like other cartels, the CJNG is known to recruit children for violent assignments, including contract killings and disposing bodies (Stevenson, 2021).

The cumulative circumstances of the Mexican drug war and the characteristics of the CJNG cartel would suggest that the CJNG is a non-state armed group which is currently engaged in a non-international armed conflict with the Mexican state. But there are other factors suggesting a criminal enforcement regime is more appropriate than the laws of war. While international humanitarian law does not consider ideology or motivation in the

definition of non-state armed group, there are other types of international law that emphasize a financial or material motivation. According to the UN Convention Against Transnational Organized Crime, “organized criminal groups ”are structured groups that commit serious crimes “in order to obtain, directly or indirectly, a financial or other material benefit” (United Nations Office on Drugs and Crime, n.d.-b, para. 3.) The CJNG’s goals are unquestionably material. After beginning as a drug trafficking organization, it diversified into extortion, kidnap for ransom, petroleum theft, human labor and sex trafficking as its power grew (Jones, 2018). Yet while the cartel exerts significant political and territorial control in Mexico, it does so solely to increase its wealth. The CJNG does not use the proceeds of organized crime to fund political or ideological goals. Although international humanitarian law is not concerned with a group’s primary motivation, considering whether a group’s motivation is primarily financial does conceptually distinguish non-state armed groups from powerful criminal organizations that would otherwise meet the definition of non-state armed group.

However, there often is overlap between organized criminal activity, political armed struggle, and terrorist activities. The Revolutionary Armed Forces of Colombia (FARC) were a long-standing example. FARC began in the 1960’s as a Marxist-Leninist rebel group that used proceeds from organized crime to resource its efforts to overthrow the Colombian government. Over nearly half a century, the FARC’s criminal operations became increasingly powerful and complex. Since signing a peace agreement with the Colombian government in 2016, FARC has divided in two, with one aboveground element having become a mainstream political wing, and the other underground group continuing criminal activities that no longer serve their original political purpose (Stanford University, 2019).

Clearly some non-state armed groups have engaged in organized criminal activities with mixed ideological and material motivations. Nonetheless, in this thesis the question of motivation is considered an essential conceptual factor in distinguishing criminal organizations from non-state international armed groups whose members can be considered subject to international humanitarian law, including with regards to child soldiers. This is elaborated more fully in the next section.

Terrorist Organizations: Non-State Armed Groups?

The definition of terrorism - and the associated question of whether terrorist groups can also be classified as non-state armed groups, criminal organizations, both, and neither – is contentious. Fully exploring these questions is both beyond the scope of this thesis and not essential for the purpose of this study. Nonetheless, discussion of the relevant literature is important. Assertions about whether children are “terrorists” or “child soldiers” have figured prominently in contemporary political debates about their moral blameworthiness and how they should be treated when captured by enemy groups. For the purpose of this thesis, these discussions are pertinent because it was necessary to decide whether child members of allegedly terrorist groups were included in the data.

There is no generally accepted definition of terrorism in international law. While the U.N. has adopted various treaties related to specific acts of terrorism such as hostage-taking, nuclear terrorism, and terrorist bombings, governments have been unable to agree on a general definition of terrorism itself (Scheinin & Vermeulen, 2010). However, there is a wealth of scholarship on the issue. Some authors have argued that terrorism should be primarily defined as a *tactic*, entirely independent of those who employ those tactics. This perspective was adopted by Scheinin & Vermeulen (2010):

“It should be fairly easy to agree that it is the choice of morally inexcusable tactics, namely, the sacrificing of innocent bystanders, that qualifies an act as ‘terrorism,’ not the identity of the perpetrator or the cause or ideology invoked. [...] What transforms political or ideological aspirations into terrorism is the decision by one or more morally responsible individuals to employ the morally inexcusable tactics of deadly or otherwise serious violence against ‘civilians’, i.e., innocent bystanders or members of the general population or a segment of it.” (Scheinin & Vermeulen (2010), pp.1-2)

Scheinin & Vermeulen (2010) advance this argument with the explicit aim of restraining governments from adopting overly broad and vague definitions of terrorism in order to initiate politically motivated accusations against groups that do not serve their interests. They provide several examples of how governments have, since 9/11, used the so-called “War on Terror” to justify serious human rights abuses against accused terrorists and to deny them due process under criminal law. They assert that this relatively narrow definition of terrorism serves a protective function, both by helping to prevent baseless accusations and by providing those accused with the right to be tried under a criminal law regime with human rights protections.

Though Scheinin & Vermeulen (2010) assert that “it should be fairly easy to agree” that morally inexcusable tactics define terrorism, there is literature dating back decades that calls for a more nuanced approach. This literature considers tactics, but also differentiates political from non-political terrorism and examines the specific motivations and characteristics of particular groups. Mickolus (1983) distinguished between political terrorism, which can be undertaken by either state or non-state groups, and criminal terrorism, whose sole object is personal gain. Stohl (1983) labelled it a *myth* that political terrorism is a criminal activity – a myth deliberately promoted by governments seeking to prevent insurgents from gaining legitimacy with the populations they seek to influence through their terrorist actions. Corrado (1983) explained that political terrorism needed to be understood conceptually by reference not only to particular tactics, but also particular motivations and group characteristics. Unlike other armed groups that challenge state legitimacy, terrorist groups generally do not pursue military objectives like controlling territory: rather, they try to destabilize and undermine confidence in existing regimes by creating political and economic chaos. They are also typically structured as small, clandestine groups who deliberately operate in dispersed cells rather than large, organized groups of soldiers (Corrado, 1983).

By contrast, overly simplistic definitions may inappropriately provide governments with a problematic basis for labelling and prosecuting political opposition members as terrorists. Over the past two decades, a simplistic conceptualization of political terrorism has arguably been utilized by some nation states to mis-characterize certain political groups and individuals to justify persecution or even state violence. For example, former U.S. president Donald Trump repeatedly branded domestic anti-racism protestors as “terrorists” in 2020, ostensibly due to property damage resulting from those protests, and deployed federal agents from the Department of Homeland Security to quell them (Dewan, 2020, para. 3).

It has become increasingly common for states to prepare lists of designated terrorist groups and define members of those groups as terrorists. The trend towards creating official lists of designated terrorist organizations has political roots. While the “list” approach pre-dates the 9/11 attacks on the World Trade Center – the UN Security Council designated the Taliban and Al-Qaeda as terrorist organizations two years prior, in 1999 – this approach arguably increased in practice and legitimacy after the Bush administration declared a “war on terror” in the days proceeding 9/11. In 2011, the U.N.’s

list of terrorist groups was revised, and in 2015, it was expanded. Additional Security Council resolutions currently require states to take specific steps to counter the financing of terrorism, such as freezing the financial assets or other economic resources of those who commit terrorist acts or facilitate their commission. As a result, many states have established their own legal or policy designation processes for individuals or groups that their government considers to be terrorists. Multilateral organizations such as the European Union have also created such designated lists (United Nations Office on Drugs and Crime, n.d.-b).

Children associated with designated terrorist groups have found themselves subject to punishments due to those associations, including arbitrary detention and being stripped of citizenship. This has occurred even when the children in question were born into the group or their association otherwise derived from their parents (Global Coalition for the Reintegration of Child Soldiers, 2020). After 9/11, the U.S.'s Bush administration argued that fighters from the Taliban and Al-Qaeda, including children, constituted a new legal category of "unlawful combatants" who did not have the same legal rights as other "lawful" combatants (Tracy, 2009). Nyamutata (2020) argues that Western countries have predominantly regarded children associated with ISIS as "young terrorists" instead of child soldiers, even though "[b]y all accounts, ISIS, while also correctly described as a terrorist group, would, under [international humanitarian law] conform with the legal identity of non-state armed group" (Nyamutata, 2020, p. 7). Nyamutata (2020) further argues these policies have contributed to harsh treatment of children that violates the tenants of international humanitarian law.

Attempts to identify terrorist groups using a list-based approach is challenged by the complex goals, tactics, and fluid organizational structures of so-called terrorist groups. The same group may undertake both terrorist- and non-terrorist activities; the underground armed wing of a group might launch terrorist attacks while its legal advocacy-based units pursue legitimate activities like fundraising for political parties or hosting political meetings (Mickolus, 1983). A group's status can also change – sometimes quickly and dramatically. The Taliban in Afghanistan is a case in point. At the time of writing, the Taliban has overthrown Afghanistan's government and effectively controls the territory (The Associated Press, 2021). This UN-designated terrorist group is thus positioned to (re)become Afghanistan's *de facto* state government. These realities show the complications of using a simple list-based approach to define terrorist

organizations, rather than a more nuanced approach that perpetually re-examines a group's motivations, characteristics, structures, and resources.

The complexities and controversies around defining terrorism and terrorist groups have led some scholars of children in armed conflict to simply reject definitions altogether. Bloom (2019) does not believe efforts should be undertaken to develop “totalizing vocabulary or phraseology to define ‘terrorist groups,’ ” instead choosing to employ “a variety of terms such as terrorist groups, militant organizations, violent extremists and militias” (Bloom, 2019, p. 196). Bloom further argued that the dispute about appropriate vocabulary can unintentionally hamper efforts to gather empirical information: for example, advocates who focus upon children's roles as victims may hesitate to call those children combatants. However, this perspective can minimize children's violent involvement in hostilities. Bloom claimed this minimization occurred in a 2012 report on the Syrian conflict when Child Soldiers International indicated “there were no child soldiers in Syria, there were merely reports of children used as human shields” (Bloom, 2019, p. 197). Bloom (2019) asserted that media and NGOs vastly underreported the number of children involved in the conflicts in Syria and Iraq and failed to show that “virtually every militant group in the conflict, including those who enjoy the support of the United States and other Western countries, have exploited children on the front line” (Bloom, 2019, p. 197). Some academics drew parallels between child soldiers in armed groups and child soldiers in terrorist groups while others kept them distinct. Bloom (2019) argued that the realities of children in conflict situations could be meaningfully discussed irrespective of the vocabulary used to describe those children.

Non-state armed groups: Summary and definition for the purpose of this thesis

Although there is a relatively clear definition of non-state international armed groups under international humanitarian law, certain contemporary conceptual and legal definitional developments have created questions about how the definition relates to powerful criminal organizations and terrorist groups. At a minimum, the definition has two central requirements - a *minimum level of intensity* for armed conflicts and *minimum level of organization* for the armed groups involved in those conflicts. On its face, this definition would apply to criminal organizations such as Mexico's CJNG cartel. However, the primarily financial motivation of such cartels suggests they are more appropriately classified as organized criminal groups and dealt with according to criminal law, not

international humanitarian law. Likewise, while this definition is applicable to notoriously powerful UN-designated terrorist organizations, such as ISIS and the Taliban, there is controversy about whether these fighters should be treated as criminals, as combatants under international humanitarian law, or as another category (e.g., “unlawful combatants”) entirely.

In this thesis, non-state armed groups are defined as: groups that meet the definition of non-state armed groups as set out under international humanitarian law, whose aspirations *are not* primarily motivated by financial or material gain. Under-18 members of these non-state armed groups, as well as members of formal state forces, are considered “child soldiers”. Members of groups that seek financial or material gain as an end unto itself, rather than as a means to advance political or ideological goals, are excluded.

Another data inclusion criterion is that only terrorist groups with sufficient material and organizational resources to engage in sustained violence are included. Smaller or *ad hoc* terrorist groups with limited ability to effect sustained violence against the state or other groups did not meet the definition of non-state armed group under international law and were therefore excluded. This criterion reflects the reality that many powerful terrorist groups (such as the Taliban, ISIS, and Boko Haram) have been major recruiters of children and have sustained long-running armed conflicts with multiple state- and non-state armed groups. According to UNICEF-funded research, children associated with non-state armed groups suffered more challenges accessing reintegration programs compared to children associated with state armed groups (Global Coalition for the Reintegration of Child Soldiers, 2020). Also, given that the literature revealed specific punishments and consequences for children associated with terrorist organizations, including these children in the data collection will hopefully provide insights about why differences exist between these children and children associated with different types of armed groups (e.g., criminal cartels).

Moral Blameworthiness

As mentioned, there was a wealth of scholarship discussing whether former child soldiers ought to be assessed as morally blameworthy and, if so, what legal and policy processes ought to be utilized to assess this judgment. While overwhelmingly not

quantitative, most of this literature relied upon recorded examples to support legal and policy arguments. This literature provided guidance for this thesis' key concept definitions and data collection parameters. Importantly, the literature on this topic reveals two predominant perspectives based on assertions that can be explored using the comparative empirical data in this thesis.

The first perspective asserted that child soldiers must be viewed and treated solely as victims whose rights have been violated (Global Coalition for the Reintegration of Child Soldiers, 2020). This perspective has gained widespread popularity in recent years amongst academics, human rights advocates, and international organizations seeking to protect the human rights of child soldiers. Its proponents defined children as those below the age of 18 years and prioritize offering child soldiers rehabilitative and reintegrative support to address the trauma they have suffered (Drumbl & Barrett, 2019). Some argued that appropriate mechanisms to address wrongdoing by child soldiers included “traditional approaches to re-integration” that were “guided by community practices and rituals which have often proved to hold therapeutic meaning”, such as “cleansing or purification rituals symbolic of treating an ex-combatant, development of collective social perceptions of ‘personhood’ and [...] the practices of seeking forgiveness for the past wrongdoings” (Mitra, 2019, p. 63). In cases where local community attitudes towards former child soldiers were hostile or punishing, advocates of this perspective maintained that community training and sensitization should be employed to change those harmful attitudes (Global Coalition for the Reintegration of Child Soldiers, 2020).

A key premise of this first perspective is that child soldiers are compelled to participate in armed conflicts under harsh and coercive conditions; even where child soldiers claim to be exercising their own free will, they should not be perceived as having voluntarily joined an armed group. In the most violently coercive contexts, children have joined armed groups under incredible duress after having been kidnapped, orphaned, forced to take drugs and alcohol, and/or made to commit atrocious acts of violence under threat of death. They might also have joined in order to escape life-threatening poverty or to obtain protection from other armed groups. Those patterns were most commonly observed amongst armed groups in sub-Saharan Africa (Bloom 2019). Alternatively, children may have joined armed groups because either their parents encouraged them to do so, they were subjected to an extensive grooming or propaganda process, or they were born into the group. Those patterns were more often observed for children who

joined ISIS. However, in both cases, Bloom (2019) argued that the pressures imposed upon children by adults (either directly in a coercive fashion, indirectly through grooming efforts, or by broader circumstances for which adults are responsible) conceptually rendered their recruitment involuntary.

In addition, non-governmental organizations emphasized the life-threateningly harsh pre-trial detention conditions for many detained child soldiers. While these child soldiers ostensibly were detained to pursue criminal charges against them, detention conditions themselves amounted to excessive punishment. For example, according to a 2020 report by Watchlist on Children in Armed Conflict, a network advocating for the rights of child soldiers:

“Governments often hold children in deplorable conditions in facilities run by military and/or other security actors. Children sometimes lack sufficient access to food or health care and are kept in unsanitary, overcrowded cells, many times with adults. Such conditions heighten children’s risk of contracting diseases such as COVID-19, and in fact, children have even died in custody from starvation, dehydration, and communicable diseases. Security forces have tortured children and subjected them to other cruel, degrading, and inhuman treatment to extract confessions, gather intelligence, or as a form of punishment. Children are sometimes held incommunicado for indefinite periods of time without access to lawyers or a chance to challenge their detention before a judge. (Watchlist on Children and Armed Conflict, 2020, p. 8)

The remainder of the same report provided information regarding handover protocols and advocated for their greater adoption. It explained that handover protocols are policies by government authorities (or their allies) to quickly transfer captured children to civilian authorities (such as social services, an appropriate government ministry, and/or the UN or its partners) for reintegration when those children are detained in the custody or control of security actors due to their alleged association with armed forces. Handover protocols have become more widely discussed in recent years. Over one hundred states have expressed a general commitment to have their military forces on UN peacekeeping missions quickly handover captured child soldiers to child protection agencies or civilian authorities by endorsing the 2017 Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers (“the Vancouver Principles”) (*The Vancouver Principles*, 2021). These principles indicate that endorsing states will, in the context of UN peacekeeping missions,

“ensure that all children apprehended and/or temporarily detained in accordance with mission-specific military rules of engagement are treated in a manner consistent with international norms and standards, as well as the special status, needs, and rights of children and to ensure that detention is used as a measure of last resort, for the shortest possible period of time, and with the best interests of the child as a primary consideration, and that they are handed over expeditiously to child protection actors and civilian authorities in line with the established policies and guidance” (*The Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers*, 2021, para. 7)

While proponents of the first perspective essentially support amnesty for all child soldiers, proponents of the second perspective take a different approach. While they do not advocate treating child soldiers harshly, they do assert that child soldiers may be culpable for their actions, and that when this is the case, they should be held accountable, whether through criminal trials or other procedural mechanisms. For example, while Drumbl believed criminal trials were generally inappropriate for child soldiers, he argued that child soldiers should not be insulated from all accountability processes by “crudely fulsome protectionism” that exclusively considered them to be victims (Drumbl, 2013, p. 127). Drumbl believed the “faultless passive victim image” of child soldiers served to problematically sideline transitional justice initiatives - such as community service programs, truth and reconciliation commissions, public inquiries, and restorative ceremonies - that could play a useful role in re-integrating former child soldiers and reconstructing communities (Drumbl, 2013, p. 139).

Rosen (2019) emphasized that assessments of blameworthiness must be historically and culturally contextual. He asserted “the gap between empirical description and humanitarian advocacy [regarding child soldiers] is vast,” and “virtually no ethnographers or other on-the-ground observers of war zones would agree that the issue of child soldiers can be reduced solely to adults abusing and terrifying innocent children into committing violent acts” (Rosen, 2019, p. 163).

According to (Hanson & Molima, 2019), while some child soldiers were subject to inescapable duress, others acted with agency and independence. They argued that these differences needed to be acknowledged because recognizing the agency of children was relevant not only in holding them accountable for violent acts, but also to honour their contributions in cases where their participation in armed hostilities had made an important contribution to ending violent oppression.

Proponents of the second perspective asserted that child soldiers may have been both victims and perpetrators, and as perpetrators, they created additional victims with the right to demand accountability. For example, Akello (2019) argued that presenting child soldiers as immature and innocent victims, as the Paris Principles do, had the “unintended consequence of silencing victims of war violence [in Uganda] who would have preferred disclosure, reparation and compensation” (Akello, 2019, p. 436). Akello asserted “community members [in Uganda] who had encountered war atrocities perpetrated by former child soldiers were uncomfortable with the propagated narratives of faultlessness and passivity” (p. 438). While child soldiers in Uganda had left their communities as children, they returned as “changed people with changed behaviour” because of their traumatic and violent experiences (p. 437), and they were perceived very differently upon their return than before they had left. Instead of seeking to change the attitudes of community members, Akello argued it was necessary to hold child soldiers accountable for their atrocities to relieve community resentment and deliver a sense of justice. Akello further claimed that this principle applied not only for the victims, but also for the child soldiers themselves: without an accountability process, they were more likely to become alienated and stigmatized from their communities, leading to further harm and potential recidivism.

Legally, the question of whether child soldiers should be subject to criminal prosecution is presently unresolved. Both perspectives have some support. Various international legal instruments suggesting those under 18 should never be prosecuted for international crimes were described in an earlier section of this chapter.¹⁰ However, there are a limited number of recent precedents, such as the ICC judgment in the case of Ugandan former child soldier Dominic Ongwen, addressing the criminal liability of child soldiers and aggravating and mitigating factors relevant to their sentencing (Gacka, 2020). A manual prepared by the International Committee of the Red Cross argues that, from a pragmatic perspective, ignoring the criminal responsibility of children could have the “reverse and perverse effect of rendering them attractive to armed forces and armed groups since crimes committed by them would go unpunished” (cited in Hanson & Molima, 2019, pp.111-112). Despite this lack of legal consensus, examples in the

¹⁰ See the section on “Age” beginning at page 8.

literature clearly established that child soldiers were subject to various forms of assessment and punishment by government authorities.

Moral blameworthiness for the purposes of this thesis

Several methods by which the moral blameworthiness of former child soldiers can be assessed were evident in the literature. These methods spanned a wide spectrum with respect to the level of blame assigned and the harshness of their consequences. They included national or international criminal trials, community-based justice systems, truth and reconciliation commissions, restorative justice processes, traditional conflict resolution practices, and spiritual ceremonies.

Two perspectives were evident in the literature discussing methods by which the moral blameworthiness of former child soldiers could be assessed. The first perspective held that any former child soldier below the age of 18 ought, by virtue of their age alone, to always be considered morally blameless victims and never be punished for actions they committed as child soldiers. The second perspective held that the blameworthiness of child soldiers should be assessed on a case-by-case basis, and that criminal sanctions might occasionally be appropriate. Adherents of both perspectives discussed the relative merits and drawbacks of various formal and informal justice mechanisms. Proponents of both perspectives often argued that formal criminal trials were usually inappropriate and emphasized the importance of alternative processes (Drumbl, 2013).

However, there was arguably a lack of consensus regarding whether alternative processes should assess the blameworthiness of child soldiers. For instance, Mitra (2019) presented alternative justice processes as useful components of disarmament and demobilization programs focused primarily upon the best interests of former child soldiers. Mitra conceptualized the community's involvement in these processes as a means to support former child soldiers, not a mechanism to hold child soldiers accountable for atrocities they committed. In contrast, Akello (2019) argued that victims of child soldiers also had an independent right to demand accountability from child soldiers for atrocities they suffered, and community justice processes were necessary in order to relieve community resentment and deliver a sense of justice.

Interestingly, there was limited discussion in the literature regarding *who* should assess the moral blameworthiness of former child soldiers. By contrast, there was extensive

discussion of the ethical and legal dimensions of retributive punishment. In other words, there was little discussion about which authorities had actually decided (or *ought* to have decided) whether or not to impose punishments upon child soldiers. However, any procedural mechanism to assess the blameworthiness of child soldiers must obviously have occurred within a particular state's territory. Government authorities might have been supportive of such mechanisms, opposed to them, or indifferent. Some armed conflicts involving child soldiers have even involved multiple government authorities from multiple states exercising control over the same territory. For example, in the case of Omar Khadr, the U.S. government detained a Canadian citizen at Guantanamo Bay military prison in Cuba on accusations of fighting alongside the Taliban in Afghanistan (Ali, 2017). Different states involved in the same conflict could have profoundly different interests which could result in different decisions about whether to punish child soldiers. Even different authorities within the same state (such as politicians, military forces, criminal justice authorities, and social service ministries) have differed about whether and how child soldiers ought to be treated: after Canadian intelligence services interrogated Omar Khadr at Guantanamo Bay prison, Canada's Supreme Court ruled that interrogation offended "the most basic Canadian standards about the treatment of detained youth suspects" (Chung, 2010).

The physical location of a particular conflict and particular child soldiers also affected the options of government authorities. The importance of physical location is illustrated by the case of Shamina Begum, a British teenager who travelled to Syria to join ISIS. When British authorities learned Begum was detained in a Syrian camp for suspected ISIS supporters, they stripped her of citizenship, effectively barring her from returning to the U.K. However, had Begum been located in the U.K., she would most likely fall under the authority of domestic intelligence forces, criminal justice systems, social ministries, or all three. British authorities would have had no legal authority to exile her to Syria. This option was only available due to Begum's geographic location.¹¹

As mentioned, this thesis does not take a position regarding the moral blameworthiness of child soldiers. Instead, this thesis focuses on the collection and analysis of empirical data regarding how various government authorities responded to child soldiers, including whether (and if so, how) they punished child soldiers. However, the literature on the

¹¹ See the appendix for details and sources.

topic of whether child soldiers were morally blameworthy remains highly relevant because it identified and critiqued various mechanisms and consequences that government authorities employed in response to child soldiers. Some of these responses, such as criminal investigations and prosecutions, were implemented by justice ministries. Others, such as military detention or handover protocols, were implemented by military forces. Others, such as traditional forms of conflict resolution or spiritual ceremonies, were implemented by community leaders or ordinary citizens. Still others, such as truth commissions or diplomatic sanctions, were implemented by elected politicians. Although much of the literature regarding the moral blameworthiness of child soldiers was concerned with whether child soldiers should ever be considered criminally culpable, it also revealed a wide range of relevant mechanisms and consequences outside criminal justice systems. These descriptions have informed the definitions of “government response” presented in Chapter 3.

Chapter 2.

This chapter explains how data was collected and categorized for the purpose of comparative analysis and highlights related limitations.

Methodology

Case histories were gathered from publicly available media. Sources were predominantly in English and located through internet search engines and the Simon Fraser University (SFU) library catalogue databases. Both online and hard-copy publications were consulted. These included peer-reviewed books and journal articles, reports from governmental and non-governmental organizations, and news media. No interviews were conducted, and no legal interpretation was undertaken of legislation, caselaw or court proceedings.

Data regarding *government responses* towards child soldiers from *particular armed groups*, over *particular time periods*, is summarized in reports provided in the appendix. Seventeen countries were examined. Government responses were divided into 5 response categories: a) *detention*, b) *trial*, c) *alternative justice*, d) *amnesty*, and e) *citizenship*.

The following sections explain how key terms (*government responses*, *particular armed groups*, *particular time periods*, and the five response categories) were defined while collecting and organizing data. It also explains limitations arising from these definitions.

Definitions

Government responses

Government responses represent actions that state authorities took towards child soldiers to assess their culpability and assign consequences for those assessments. Government responses were broadly interpreted to include the actions of: (a) the armed forces, the police, the judiciary, the legislative and executive institutions, and the ruling politicians at all levels in a given country; and (b) third-party organizations, such as non-

governmental organizations or foreign military forces, operating on a country's territory with the support or acquiescence of local authorities.

While most government responses were implemented directly by government authorities, in some situations (for example, in the case of residential transition centers for recently demobilized youth in Uganda¹²), responses were operationalized by non-governmental organizations.

Government authorities were usually synonymous with a country's territorial government. It was not difficult to assign responsibility for particular actions to a particular government when officials from that government were acting within their own domestic territory and jurisdiction. However, in situations of active conflict involving multiple armies, assigning responsibility to a specific government became more challenging. Establishing whether a particular response took place with the support or acquiescence of local government can be difficult in countries where government authority was unstable, weak, splintered or volatile.

In this thesis, a country's government was deemed responsible for a particular response if that response either (a) occurred within that country's territorial jurisdiction, or (b) was taken by authorities towards their own citizens, irrespective of territorial location.¹³ For example, the actions of British armed forces towards child soldiers in Afghanistan was attributed to the Afghanistan government, not the U.K. However, the decision of British authorities to strip British citizenship from British child soldiers who joined ISIS in Syria was attributed to the British government, even though those children were not in Britain.¹⁴

This approach to organizing the data raises questions about which government authorities were appropriately considered responsible for policies towards child soldiers in conflicts involving multiple countries. This approach could obfuscate situations where

¹² See the appendix for details and sources.

¹³ Exceptions were made for the USA's actions in Guantanamo Bay, Cuba, and Israel's actions in the West Bank and Gaza Strip. These cases were considered exceptional because the responses were: (a) incontrovertibly attributable to U.S. and Israeli authorities; (b) explicitly reflective of their stated intentions, and (c) carried out in territories where they had exercised *de facto* control for decades. More detailed justification for including these cases is included in the respective appendices for each country at Appendix A.

¹⁴ See the appendix for details and sources.

particular governments were responsible for ill-treatment of child soldiers when acting in foreign contexts – for example, while participating in multi-country operations through coalitions such as NATO or AMISOM.

Unfortunately, discerning an individual government's responsibility for particular actions was very difficult when that country acted outside its own territorial jurisdiction in an active conflict. The information from such scenarios was often unreliable, incomplete, and difficult to evaluate, for several reasons. This includes the challenges and dangers associated with investigating active conflicts, as well as the reality that parties to the conflict may have spread disinformation to maintain control of their public image and perception of their legally and morally problematic policies. Given these validity constraints, it was not possible in every case to locate and evaluate data about complex levels of responsibility for foreign parties in the context of active conflicts. Examining how different governments have responded to child soldiers when they are acting outside their own jurisdiction – whether as invaders or as allies of a local authority - would be a fruitful avenue for future research.

Particular armed groups, over particular time periods

Regarding the collection of data on particular armed groups over particular time periods, three themes were important. First, countries were identified that had been affected by armed conflicts with groups that used child soldiers. Second, specific armed groups were selected to focus upon from these countries. Third, general information was collected about how governments from the identified countries had responded to child soldiers from those particular armed groups over particular time periods. The selection of a particular time period was influenced by the availability of data regarding how governments had treated child soldiers.

Each individual country report in the appendix summarizes information about the specific armed group in question, identifies the time period for which data was included, and describes how the country approached all five responses (detention, trial, alternative justice, amnesty, and citizenship).

In some cases, more than one armed group employed child soldiers during the same time period. Care was taken to identify the precise armed groups to which findings apply.

This was done both (a) to narrow the focus of the data gathering to a manageable level within the parameters of an M.A. thesis, and also (b) to provide essential context about a given government's approach to child soldiers. It was not considered justifiable to assess a government's "overall" or general policy approach towards child soldiers without specifying the precise armed groups to which these children were attached. For instance, a government could be expected to treat child soldiers from allied forces differently than child soldiers from opposing groups.

As a result of these data collection criteria, this thesis does not categorize countries by "overall" policy responses to child soldiers. Instead, data was collected and categorized only for identified groups and identified time periods.

In some cases, more than one armed group is listed in the same country. This was only done if the government's response to both groups was essentially the same. For example, with respect to Afghanistan, government responses to child soldiers from both ISIS-K and the Taliban were examined from 2015 – 2021. Although ISIS-K and the Taliban are obviously different organizations who were in violent competition with each other during the stipulated time period, they shared the common goal of overthrowing the Afghan government. Most importantly, the data collected suggests the Afghan government's response towards child soldiers from both groups during the identified time period was essentially the same.¹⁵ Data about the treatment of child soldiers from both groups was therefore considered a useful illustration of the Afghan government's approach towards child soldiers in this particular conflict.

It must be emphasized that the time period covered for each country did not always correspond with the start and end dates of particular conflicts. Wherever possible, though, data was collected from the early stages of a particular conflict through to either (a) the conflict's official ending point, or (b) 2020. For some countries, data for the entire conflict period was obtained. The data for Peru, for example, included information spanning the entire conflict period. However, for other countries, the data is more restricted. For Colombia, for instance, the data included only post-conflict information. Some time periods were restricted by the availability of reliable data that could be collected within the parameters of this M.A. As a result, some countries have data

¹⁵ See the appendix for details and sources.

covering only part of a particular armed conflict. These limitations need to be considered when comparing all the countries included in this study. Chapter 3 highlights how this issue impacts particular findings.

Response categories

Five specific categories of government responses were identified. This section details how each category was defined. It is important to note that these categories do not always correspond to legal conceptions and dictionary definitions. The following definitions were more appropriate for this study's exploratory purposes; they allowed this thesis to examine the broad range of government responses that were discussed in the relevant literature. A full explanation for each definition is provided below.

a) Detention

"Detention" is defined as deprivation of liberty that does not arise as punishment after a formal fact-finding process. It does not include periods of incarceration imposed as a sentence after a hearing, regardless of whether that hearing took place before a criminal trial, a military tribunal, or another specialized court process. If a child soldier was sentenced to a period of incarceration after a hearing, that case was not included under the "detention" category. Instead, it was included in the subsequent "trial" category, because it demonstrated the child was subject to a formal hearing.

This definition of detention includes both arbitrary detention without charge and pre-trial detention for child soldiers awaiting a hearing. Both military and criminal detention were included in this response category. Cases were included irrespective of whether there was any legal basis for detention. The data includes both cases where child soldiers were lawfully detained under international or domestic laws, and also cases where child soldiers were detained without legal authority.

This broad definition was adopted because the literature described these forms of detention as a widespread and ever-increasing government response to child soldiers: "Between 2012-2017, the U.N. recorded a five-fold increase in the detention of children in armed conflict. At any given time, thousands of children are imprisoned for suspected association with armed groups, often without charge and in inhuman and degrading conditions" (Becker, 2020, p. 86).

In other words, the literature suggests this form of detention is a *de facto* form of punishment independent of judicially sanctioned prison sentences. This response category therefore distinguished such cases of detention from those where incarceration arose from prosecution, which are instead included in the “trial” category below.

b) Trial

“Trial” refers to formal assessments of guilt through the ordinary criminal or military justice systems of a particular country. Cases where child soldiers were subject to trial but ultimately acquitted were counted under this category, as were cases where child soldiers were sentenced to incarceration or other punishment. The “trial” category is not a quantitative measure of how frequently child soldiers were found guilty; rather, it reflects the intention of government authorities to subject child soldiers to formal trials where they may, or may not, have been found guilty. Cases of actual prosecution and attempted prosecution are both included.

It is important to note that cases of pre-trial detention are not considered a proxy for the intention to send child soldiers to trial. Only cases where child soldiers went to trial are included in this category.

It is also important to note that only domestic proceedings were examined. International courts or special tribunals were excluded from analysis. Although international courts or special tribunals relate directly to some of the conflicts studied in this thesis (for instance, conflicts in Sierra Leone, Rwanda, Uganda and Mali), they do not represent the response of any particular country. Rather, they are international bodies acting entirely under international law. National governments not uncommonly have disagreed with the approach taken by these tribunals, both in a general sense and specifically with respect to how child soldiers are treated.¹⁶ This thesis focuses entirely upon comparing the domestic responses of national governments. In any case, apart from the recent ICC decision regarding former Ugandan child soldier Dominic Ongwen, there has been very

¹⁶ Government authorities in Sierra Leone, for example, asserted that the Special Court for Sierra Leone should be able to prosecute those between 15 and 18, contrary to the views of Special Court prosecutor. While the Special Court was ultimately given jurisdiction to try those 15 and older, the prosecution decided “no child between 15 and 18 had the sufficiently blameworthy state of mind to commit war crimes in a conflict setting,” and restricted prosecution to those above 18 (Nyamutata, 2020).

little discussion of child soldiers' culpability in jurisprudence from international courts and tribunals.¹⁷

c) Alternative justice

“Alternative justice” encompasses all justice mechanisms that fall outside a country’s ordinary criminal or military systems. Such processes may be formally or informally structured. They can be conducted by governments or non-governmental organizations. They can be purpose-built transitional mechanisms established in the wake of particular conflicts, or age-old customary systems rooted in spiritual beliefs. They can include restorative or retributive elements. However, these procedures all share clear distinctions from ordinary criminal or military justice systems. They also must be considered legitimate by local populations: while corporal punishment imposed by a customary religious court is included in this category, the same punishment meted out by vigilantes is not.

Much of the literature regarding child soldiers suggested that neither criminal nor military trials were appropriate for child soldiers and advocated for alternative processes. Precise recommendations varied – they included truth commissions, community courts, customary law, religious rituals, restitution, and victim-offender mediation, to name a few – and although many involved elements of restorative justice, alternative justice was not synonymous with restorative justice. Yet while alternative justice mechanisms of various types were frequently suggested as appropriate for child soldiers, it was not clear whether, where, or how often such processes were employed. In this thesis, alternative justice processes are deliberately defined in a broad manner in order to explore various options for child soldiers outside the ordinary criminal and military courts.

d) Amnesty

Amnesty is defined as the deliberate decision to absolve child soldiers of responsibility for crimes they committed as child soldiers (moral responsibility, legal responsibility, or both). Amnesty can apply either immediately, in the future, or retroactively.

¹⁷ The International Criminal Court’s prosecution of Uganda’s Dominic Ongwen in May 2021 is notable because, although Ongwen was charged with crimes he committed as an adult, the fact he was initially recruited as a child soldier factored into his defense (BBC News, 2021).

In this thesis, one example of immediate amnesty is official handover protocols regarding child soldiers. As explained in Chapter 1, handover protocols are policies by government authorities (or their allies) to quickly transfer children to civilian authorities (such as social services, an appropriate government ministry, and/or the UN or its partners) for reintegration when those children are detained in the custody or control of security actors due to their alleged association with armed forces (Watchlist on Children and Armed Conflict, 2020). Although handover protocols do not necessarily guarantee amnesty for child soldiers, in this thesis, handover protocols are considered significant evidence that a government authority does not consider child soldiers culpable for their association with a particular armed group. Evidence of handover protocols being implemented was considered in this thesis as evidence of amnesty, unless there was additional evidence indicating the released child soldiers were later subjected to additional consequences.

Examples of future amnesty include official promises that any child soldiers who surrender will not be punished. Examples of retroactive amnesty include peace treaties that stipulate previously incarcerated child soldiers from a particular group should be released.

To be considered amnesty, absolution must be independent from formal assessments of guilt during criminal or military trials. It is not considered amnesty if, after an attempted prosecution, a person is acquitted, found not criminally responsible, or released in consideration of time served. Amnesties are deliberate decisions to either forgive, or to refrain from assessing guilt at all.

It is important to note that demobilization, rehabilitation and reintegration programs are not synonymous with amnesty. In this thesis, how child soldiers are (or are not) removed from armed forces and rehabilitated is a separate question from whether they are absolved of guilt. Such programs were only considered evidence of amnesty if child soldiers were placed in rehabilitative programs instead of being subjected to other consequences.

e) Citizenship

The “citizenship” response category term is defined as government actions involving citizenship rights. It includes efforts to revoke, restrict, or interfere with the citizenship of a child soldier, as well as providing (or denying) consular assistance.

The literature review for this thesis revealed various cases where child soldiers had been punished through the revocation or the denial of citizenship rights. Most contemporary conflicts involving child soldiers had an international dimension. Citizenship responses have become increasingly common and have potentially life-threatening consequences when child soldiers were required to remain in, or return to, active conflict zones.

Although decisions about asylum-seekers could undoubtedly be considered under the citizenship response category, they are not included in this thesis for several reasons.

According to the 1951 Convention Related to the Status of Refugees, a person can be excluded from refugee protection due to criminality: child soldiers who would otherwise qualify for asylum can be denied asylum due to their association or activities with armed groups. The standard of proof to assess criminality in such cases is lower than the standard of beyond a reasonable doubt (which typically applies to criminal proceedings), and the standards for the type of evidence required are also lower (Rikhof, 2019). In some countries, refugee tribunals have been willing to exclude certain child soldiers without much concern for their age. Other tribunals have demonstrated comparative reluctance to exclude child soldiers from refugee protection, specifically due to their young age. After conducting a comparative analysis of relevant jurisprudence from eight countries,¹⁸ Rikhof (2019) concluded: “unless a child soldier is under, or close, to 15 years old, left the armed unit fairly quickly or can raise the defense of duress with credibility, the chances of exclusion [from refugee protection] are fairly high” (p. 405).

However, while asylum applications involving child soldiers are highly relevant to this thesis, they are also exceptionally rare. Rikhof (2019) estimated that the number of adults who had been excluded from refugee protection due to criminality across Europe, North America, Australia, and New Zealand combined was exceptionally small, ranging from about 0.1 – 0.4 percent of all decisions; while the number of children excluded due

¹⁸ Namely: the Netherlands, Canada, Australia, France, Belgium, the U.S.A, and Luxembourg, and Denmark.

to criminality was unknown, it was certainly even lower. It is beyond the scope of this thesis to locate and meaningfully compare these exceptionally rare decisions. This thesis therefore does not examine asylum decisions related to child soldiers.

Limitations

The methodology employed in this thesis gives rise to certain limitations.

Whether directly from the organizations themselves, or indirectly through subsequent citation in academic or news articles, much of the data is from non-governmental organizations with an explicit focus on human rights advocacy, such as Human Rights Watch, (the now-defunct) Child Soldiers International, and U.N. committees with a focus on human rights monitoring. This data is invaluable because these organizations regularly publish high-quality or validated reports on a variety of countries, allowing for meaningful comparison of reliable information. Also, given their explicit goals to improve the treatment of children, these publications often highlight particularly deplorable conditions and human rights violations. These publications focused considerably less upon positive initiatives, perhaps because they are less relevant to their advocacy efforts (because there is no need to fix what is not broken), or because their mandate structurally excludes them. For example, a UN-sanctioned prison tour would not, by definition, report on community-based reintegration projects. Similarly, most news journalists highlighted government failings or abuses, not success stories. Due to this thesis' reliance upon these reports, those government responses that prioritize and respect the well-being of child soldiers were likely underreported. To mitigate this concern, academic publications and reports highlighting recommendations and so-called best practices for the treatment of child soldiers were accessed, as these publications sometimes provided specific examples of amnesty-focused or alternative justice mechanisms.

There were also various practical constraints to accessing and analysing relevant data. The treatment of child soldiers is a controversial issue, and information on the topic is sometimes deliberately obscured for legal or political reasons. For example, military or criminal trials related to national security charges have been held in secret, making it not only difficult to obtain accurate information, but even to a certain whether such information exists. Some countries may inaccurately be listed as not prosecuting child

soldiers because, although the country clearly did prosecute some members of armed groups, the records were secret and information about whether any defendants were children was unattainable. Even where such records were not strictly protected, relevant information online, and in English, was often unavailable. Such information accessible from mainstream Internet search engines by someone without specialized knowledge of particular countries' legal archives or forms of record-keeping was similarly unavailable. The time, resources, access, and specialized knowledge required to fully canvas the whole scope of one government's approach to child soldiers – let alone several governments' - is beyond the scope of this Master's thesis. For the same reason, this thesis is not comprehensive with respect to the countries studied. A number of countries where child soldiers remain a significant issue are absent - Yemen, the Democratic Republic of the Congo, Sudan, and South Sudan, to name a few. There are therefore important gaps in the information collected.

In the appendix, there are detailed country reports describing the data collected for each country so that readers can easily ascertain what information has (and has not) been utilized in this thesis. This thesis is only an early step in the endeavor to understand how countries compare in how they process child soldiers.

Chapter 3.

This chapter presents findings on how governments authorities from 17 countries responded to child soldiers from particular armed groups over particular time periods. Patterns and themes described in this chapter informed the models presented in Chapter 4.

Comprehensive Chart

COUNTRY	ARMED GROUP	TIME PERIOD		POST-CONFLICT	DETENTION	TRIAL	ALTERNATIVE JUSTICE	AMNESTY	CITIZENSHIP
Afghanistan	Taliban and ISIS-K	2015-2021	No	5	0	0	0	0	0
Burkina Faso	Jihadist-affiliated groups	2014-2021	No	4	0	0	3	0	0
Cameroon	Boko Haram	2014-2020	No	5	0	0	3	0	0
Canada	Al-Qaeda & ISIS	2001-2021	No	1	1	0	0	4	0
Colombia	FARC	2016-2021	Yes	0	3	0	3	0	0
Iraq	ISIS	2014-2021	No	5	4	0	1	3	0
Israel	Hamas	1988-2021	No	5	4	0	0	0	0
Mali	Coalition of jihadist groups	2012-2020	No	3	0	0	4	0	0
Niger	Boko Haram	2014-2021	No	5	0	2	4	0	0
Nigeria	Boko Haram	2009-2021	No	5	2	0	3	0	0
Peru	Shining Path	1980-2003	Yes	5	4	0	0	0	0
Rwanda	"Genocidaires"	2001-2012	Yes	2	5	5	0	0	0
Sierra Leone	RUF and AFRC	2002-2012	Yes	0	1	4	5	0	0
Somalia	Al-Shabaab	2006-2021	No	4	4	0	4	0	0
Uganda	LRA	2000-2012	Yes	0	0	3	5	0	0
UK	ISIS	2014-2021	No	0	0	0	0	5	0
USA	Al-Qaeda & ISIS	2001-2021	No	5	3	0	0	0	0

Youth = aggravating factor. Youth were treated more harshly than their adult counterparts.

Youth = mitigating factor. Youth were treated more leniently than their adult counterparts.

Youth = neutral factor. Youth and their adult counterparts treated similarly.

Adults experienced this response, but youth did not.

Figure 1

Chart description

The appendix includes 17 country-specific reports describing how domestic government authorities responded to child soldiers from particular armed groups over particular time periods. Each country report describes the relevant armed group, identifies the time period covered by the data, and explains findings across the five response categories (detention, trial, alternative justice, amnesty, and citizenship). Data in these reports was used to assign the following labels to each of the five responses: (a) a 0–5-point intensity score indicating the predominance of each response within each country, and (b) a colour-coded label signaling the impact of age upon each response within each country. The 0–5-point scale indicates the intensity of each response within each country. The colour-coding system highlights cases where youth was found to be: (i) an aggravating factor; (ii) a mitigating factor; (iii) a neutral factor; or (iv), acting against the application of a particular response (i.e., the response was observed for adults, but not children).

Intensity score

The intensity score describes how aggressively each country employed each of the 5 response categories. The scores reflect a 0–5-point scale. A score of “0” indicates no examples of a particular response were found. A score of “5” indicates maximum support and enforcement for a particular response.

In assigning an intensity score, various factors were considered. Relevant factors included how assertively (or ambivalently) government authorities justified its use, whether it was used with (or without) domestic legal authority, and its prevalence compared to different responses within the same country. Although the overall frequency of a particular response was considered, it was not a determinative factor. Responses that heavily reflected official policies, laws, or public declarations were generally given high intensity ratings, regardless of how frequently each response occurred in absolute terms. This is because the intensity score is meant to reflect the strength of government support for a particular response to child soldiers, even if the total number of child soldiers processed under that response is small. For the same reason, even if a particular response was illegal, it was given a high intensity score if it was applied systemically, deliberately, and with impunity. Responses that were applied more ambivalently or inconsistently received a middle intensity score of 3. In countries where multiple responses occurred, more than one response could have the same intensity

score, since it was possible to vigorously pursue more than one response at the same time.

It is important to note the intensity score does not indicate how punitively or leniently children were treated. Rather, it describes government authorities' commitment to a particular response. A country where child soldiers were sentenced to death (e.g., Somalia) received the same "trial" intensity score as a country where child soldiers were acquitted (e.g., Peru) when both countries demonstrated similar determination to put child soldiers on trial.

It is also important to note that while most government responses fell clearly into one specific response category, some overlap occurred. Rwanda's *gacaca* courts, for example, were categorized as both *alternative justice* programs because they were implemented separately from the country's ordinary criminal justice system) and *trials* because a major feature of the *gacaca* process was individual hearings where guilt was assessed by community leaders with authority to impose incarceration. An intensity score of "5", therefore, was assigned for both the *alternative justice* response and the *trial* response for Rwanda based on the *gacaca* process.

Intensity score assessments were calculated with close attention to the objective evidence. Inferences were avoided. For example, an aggressive government policy of prosecuting adult soldiers was not equated with prosecuting child soldiers. If there was no evidence such countries had prosecuted any child soldiers, they were given an intensity score of "0" in the trial category.

However, it was beyond the capacity of this thesis to have included an interrater reliability score methodology to establish the internal validity of the assigned scores. Again, this study is exploratory and, understandably, any potential publications of these data likely will require this methodology be included.

Colour-coded labels

Four colour-coded labels indicate the specific impact of age: youth as an aggravating factor (red); youth as a mitigating factor (yellow); youth as a neutral factor (green); or, youth mitigating against a particular response being applied (blue).

Youth as an aggravating factor (red label)

Youth was considered an aggravating factor (red label) in cases where youth were associated with harsher treatment. Harsher treatment took various forms. Treatment was considered harsher for children when either (a) children were punished more severely than their adult counterparts in the same contexts, or (b) infant children (children below age 5) were punished entirely due to their parentage. For example, in cases involving detention, harsher treatment included specifically targeting youth for detention and torture (e.g., Peru), disproportionate shackling and solitary confinement of detained youth (e.g., Israel) and detaining infants in life-threatening conditions (e.g., Nigeria). In cases involving the citizenship response, harsher treatment included reluctance to repatriate infants from life-threatening conditions in detention camps (e.g., the U.K.) or denying infants citizenship because their parents were suspected ISIS supporters (e.g., Iraq).

Youth as a mitigating factor (yellow label)

Youth was considered a mitigating factor (yellow label) in cases where children received either more lenient treatment than their adult counterparts or special benefits denied to adults. In cases involving the trial response, examples included mandatory reduced sentences for children (e.g., Rwanda). In cases involving the amnesty response, examples included handover policies requiring the military to release captured child soldiers to social services (e.g., Mali).

Youth as a neutral factor (green label)

Youth was considered a neutral factor (green label) when evidence showed children were treated similarly to adults. It was applied in cases where youth had no apparent effect. Importantly, the green label does *not* indicate that treatment of adults was *assumed* to be applicable to children. The green label was only applied when evidence indicated adults and children were similarly treated.

Youth as a factor mitigating against a particular response (blue label)

The blue label identifies cases where youth appeared to prevent the application of a particular response. It highlights cases where specific responses were applied to adults, but not children. The difference between the blue label and the green label is illustrated as follows. In cases where a country rejected a particular response for both children and adults, that response was labelled green (youth was a neutral factor, since adults and children were treated similarly) and given an intensity score of “0” (the response was not imposed on children). However, in cases where a country rejected a particular response for children, but applied it to adults, the response was labelled blue (youth prevented the application of a particular response) and given an intensity score of “0” (the response was not imposed on children).

To summarize, the colour-coding system is not a general measure of whether children were treated punitively or leniently. It measures how they were treated relative to adults. For instance, detention conditions for youth in Iraq were extremely punitive: in 2020, the juvenile prison operated at almost triple capacity, overcrowding caused deaths, and torture was routinely used to extract confessions.¹⁹ Overall, the conditions for youth detained in Iraq were more punitive than the conditions for youth detained in Israel. Nonetheless, detention in Israel is labelled red (indicating youth is an aggravating factor for child soldiers in Israeli detention) because Israel’s own Public Defender’s Office reports that minors detained by Israel under national security laws were disproportionately subject to shackling and solitary confinement.²⁰ By contrast, detention in Iraq is labelled green (indicating that youth is a neutral factor for child soldiers in Iraqi detention) because, although conditions for detained youth in Iraq were highly punitive, the available data suggested they were treated similarly to adults.

Findings

Prevalence and intensity of response types

The most common response overall was detention (13 countries, or 76%), followed by trial and amnesty (both with 10 countries, and 59%). Alternative justice and citizenship

¹⁹ See country report for Iraq in the appendix.

²⁰ See country report for Israel in the appendix.

responses were less common: alternative justice responses were noted in 4 countries (24%), and citizenship responses were noted in 3 countries (18%).

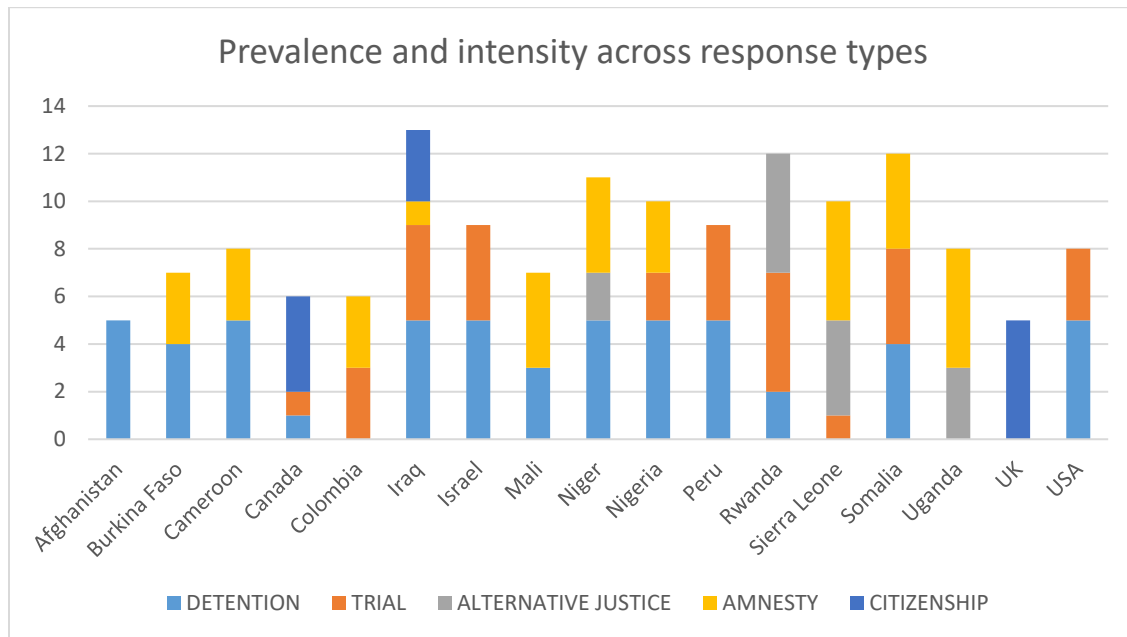


Figure 2

When all cases are considered, including those with an intensity score of “0,” the **mean** intensity scores for each response category across all countries are (listed in descending order): detention - 3.18; amnesty - 2.06; trial - 1.82; alternative justice - 0.82; citizenship - 0.7. The average intensity scores for detention are notably higher than the others. Most strikingly, when all cases are considered, the **mode** of the intensity scores for detention is “5.” However, the mode of the intensity scores for all four of the other categories (trial, alternative justice, amnesty, and citizenship) is “0.” The **median** intensity scores for the five response categories are (listed in descending order): detention – 4; amnesty – 3; trial – 1; alternative justice – 0; citizenship – 0.

A somewhat different picture emerges if calculations are restricted only to cases where some type of response was observed – that is, only cases with an intensity score above “0.” While detention remains predominant, it becomes apparent that some other responses are also applied with vigor. When all intensity scores of “0” are omitted, the **mean** intensity scores of the remaining cases are, listed in descending order: detention – 4.15; citizenship – 4; amnesty – 3.5; alternative justice – 3.5; trial – 3.1. Detention

remains the response with the highest average intensity score, but by a lower margin. When all intensity scores of “0” are omitted, the **modes** of the intensity scores are (listed in descending order): detention – 5; trial – 4; amnesty rights – 3. There was no mode for the alternative justice or citizenship responses: alternative justice responses were noted in 4 countries, with respective scores of 2, 3, 4 and 5; citizenship responses were observed in 3 countries, with respective scores of 3, 4 and 5. Lastly, when all intensity scores of “0” are omitted, the **median** intensity scores are (listed in descending order): detention – 5; citizenship – 4; trial – 3.5; alternative justice – 3.5; amnesty – 3.5.

There is a remarkable difference in the frequency with which detention is applied at the maximum possible intensity score compared to the other categories. Detention is the only response applied at the maximum level by most countries that employed it: eight out of the 13 countries (62%) that employed detention did so at the maximum intensity score of “5.” By contrast, only one country (out of 10) employed trials at the maximum intensity level of “5;” only two countries (out of 10) pursued amnesty at the maximum intensity level of “5;” only one country (out of 4) employed alternative justice at the maximum intensity level of “5;” and only one country (out of 3) applied the citizenship response at the maximum intensity level of “5.”

In considering these results, it should be emphasized that the total number of alternative justice responses (4) and citizenship responses (3) are notably smaller than the total number of cases for detention (13) and amnesty and trial (both 10). However, while relatively few countries employed responses under the alternative justice or citizenship categories, these responses were often employed assertively. The data for these two categories is similar: four countries in total employed alternative justice responses, and three employed citizenship responses. The four countries that employed alternative justice responses did so at respective intensity scores of 2, 3, 4 and 5. In other words, half (2 out of 4) of the countries that used alternative justice responses did so at an intensity score above 3. The three countries that used citizenship responses did so at respective intensity scores of 3, 4, and 5. In other words, two-thirds (2 out of 3) of the countries that used citizenship responses did so at an intensity score above 3.

Conclusion regarding prevalence and intensity of response types

Detention is both the most common policy response, and the most intensely applied. It appears more frequently than any of the other response types, and when it is applied, it is usually with a high degree of intensity. In terms of frequency, detention is closely followed by the trial and amnesty response types. However, although the trial and amnesty responses are pursued almost as frequently as detention, they are not employed at such a high degree of intensity.

The alternative justice and citizenship responses are notably rarer than the other three responses. Due to their relative infrequency, it is more difficult to observe clear patterns regarding how intensely they are applied. The clearest pattern in the data indicates that detention is both highly prevalent and vigorously applied.

Relationships between response types

Despite the clear predominance of detention, most countries simultaneously pursued multiple response categories. Seven countries (41%) pursued 3 or more responses during the same time period, while eight countries (47%) pursued 2 responses at the same time. Only two countries (12%) employed a single response type.

It is not surprising that some response categories overlapped. Even though this thesis defines *detention* more broadly than typical legal or criminal codes of procedure define pre-trial detention, it is not unexpected that prosecuted children were be previously detained, therefore creating overlap between the detention and trial response categories. Also, because the citizenship response can easily be applied in conjunction with any other response category, overlap between the citizenship response and others also is unsurprising. However, the findings are more complex than these expectations: They reveal unanticipated areas of overlap between markedly different response types. Notable patterns are discussed below.

a) Relationship between detention and trial

As anticipated, it was common for the detention and trial responses to overlap. There are 8 examples (Canada, Iraq, Israel, Nigeria, Peru, Rwanda, Somalia, and the U.S.A.). Yet there also are 7 cases where trial and detention do *not* appear together (Afghanistan, Burkina Faso, Cameroon, Colombia, Mali, Niger, and Sierra Leone). Two

of those seven cases involve countries that employed trial, but *not* detention; five of those seven cases involve countries that used detention, but not trial.

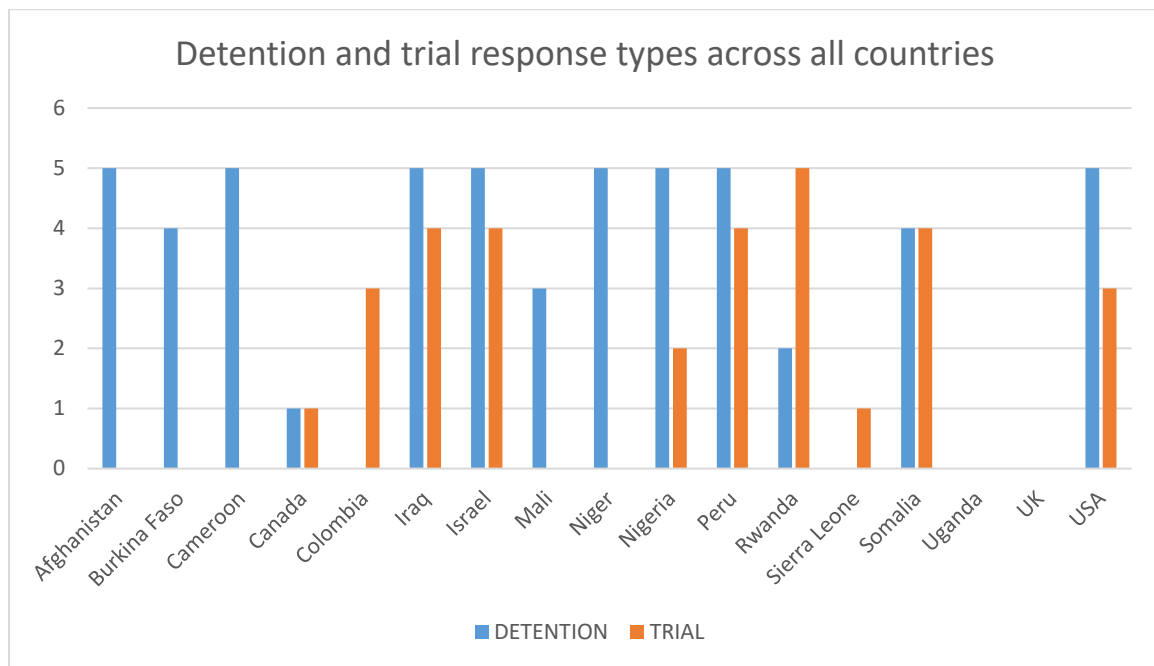


Figure 3

Trial without detention

The apparent oddity of trial without detention observed in Colombia and Sierra Leone likely is explained by limitations of this study regarding time periods for data collection combined with complex post-conflict dynamics specific to each country.

For both these countries, data was collected only for post-conflict time periods after formal peace agreements were instituted. For Colombia, no cases of youth detention were identified for this time period, so an intensity score of “0” was assigned for detention. However, because Colombian Supreme Court authorities have suggested that child soldiers from FARC may be prosecuted in the future, an intensity score of “3” was assigned for trial. This intensity score was assigned because the Supreme Court’s pronouncement was considered a high-level official endorsement of the trial response. For Sierra Leone, although no cases of youth detention were identified for the stipulated time period, a single example of youth prosecution was discovered: a trial for members of the West Side Boys, sometimes described as a splinter group of the AFRC. However,

no concrete information was discovered about how these specific youth were detained prior to trial. In the absence of this information about detention, no inferences were made. In effect, because no information about the detention of children was located for the stipulated time period for Sierra Leone, none was recorded, even though those youth were probably detained prior to trial.

For those reasons, Colombia and Sierra Leone are considered anomalous. These cases do not suggest any significant practice of subjecting children to trials without first subjecting them to detention.

Detention without trial

There are 5 cases of detention without trial (evident in Afghanistan, Burkina Faso, Cameroon, Mali, and Niger) that merit further inquiry. For all 5 countries, although trials were observed for adults, zero trials were identified involving children. Three of these countries – Afghanistan, Cameroon, and Niger – very aggressively pursued detention, with a maximum intensity score of “5.” The other two countries also have relatively high intensity scores for detention: Burkina Faso - 4, and Mali - 5. Unlike the cases of Colombia and Sierra Leone, no immediate explanations for this pattern arise on the face of the data. It remains unclear why countries that intensely pursue detention of children would not also move forward with trials. This dynamic will be further explored later in this thesis.

Detention with trial

Eight countries pursued detention with trial: Canada, Iraq, Israel, Nigeria, Peru, Rwanda, Somalia, and the USA. Six of these countries pursued detention at more intense levels than trials.

The two exceptions, which pursued *trial* at a more intense level than *detention*, were Canada (detention – 1, trial – 1) and Rwanda (detention – 2, trial – 5). In Canada, the single case of Omar Khadr informed both the *detention* and *trial* rankings. As detailed in the appendix, Omar Khadr was a Canadian citizen associated with Al-Qaeda who was detained and prosecuted by American authorities at Guantanamo Bay in Cuba. Because Canadian authorities participated in Khadr’s detention by sending intelligence officers to interrogate him at Guantanamo Bay, Canada was assigned a score of “1” for detention. Khadr ultimately pleaded guilty in an agreement that required his transfer to Canada to

complete his prison sentence. Because Canadian authorities upheld Khadr's American conviction by incarcerating him in Canada, Canada was also assigned a score of "1" for trial. One was considered an appropriate intensity score for "trial" because the trial itself was not conducted by Canadian authorities.

By contrast, in Rwanda, authorities established a comprehensive system of community courts known as *gacaca* which brought approximately two million people to trial for their role in the 1994 genocide against the Tutsi. Anyone over the age of 14 at the time of the alleged offence could face trial and be sentenced to prison. Because these specialized courts assessed evidence to make findings of guilt and impose prison sentences, Rwanda was given a score of "5" for the trial response category. Also, because these specialized courts differed in significant ways from Rwanda's ordinary criminal justice system, Rwanda was also given a "5" for the alternative justice response category. There is clear evidence to show that suspected perpetrators, including children, were detained prior to their *gacaca* trials. The unsustainably high number of people detained in Rwandan prisons was a key motivation to establish the courts in the first place. However, during the time period for which data was collected (2001-2012), it was considered inaccurate to label detention as an *intense* Rwandan policy response because Rwandan government officials were exceptionally determined to bring every detained perpetrator to trial, including children. Unlike many of the other countries in this thesis, which appeared to employ detention as a punishment in its own right, Rwanda seems to have used detention between 2001-2012 primarily as a means to the end of putting detainees on trial through the *gacaca* court process. Rwanda's detention response therefore merits an intensity score of "2" because although it was extensive, it was employed primarily in service of the *gacaca* trial process.

In other words, for reasons specific to each country, Canada and Rwanda diverge from the overall pattern. Generally, detention is pursued at a greater intensity than bringing defendants to trial. The six countries that pursued both detention and trial, with higher intensity scores for detention (Iraq, Israel, Nigeria, Peru, Somalia, and the USA), represent a significant pattern. This pattern complements similar findings in five other countries (Afghanistan, Burkina Faso, Cameroon, Mali, and Niger) where countries pursued detention without trial for child soldiers. It emphasizes that detention is a prevalent response often applied with more commitment than bringing detained child soldiers to trial.

Conclusion: detention and trial

There is a strong pattern of countries choosing to pursue *detention* at more intense levels than *trial*. It remains unclear why countries that intensely pursue detention of children either did not pursue prosecution for child soldiers or did not pursue prosecution at a similar intensity level to detention. These questions will be further explored in chapters 4 and 5.

b) Relationships between amnesty, detention and trial

While it is not unexpected that an inverse relationship between the absolving response of amnesty and the more retributive responses of detention and trial is evident in some countries, the relationship is more complex.

Some cases do suggest an inverse relationship. Four countries (Afghanistan, Israel, Peru, and the USA) imposed detention at an intensity of “5,” and no amnesties. A fifth country, Iraq, only mildly endorsed *de facto* amnesties by often ignoring rather than arresting former child soldiers from the minority Yazidi community, while aggressively detaining and prosecuting Sunni Arabs. Conversely, two countries that granted amnesties at the maximum ranking of “5” (Sierra Leone, and Uganda) scored “0” for detention, while a third country, Colombia, ranked “3” for amnesty and “0” for detention. There are therefore 8 countries suggesting an inverse relationship between detention and amnesty. However, there are also six countries (Burkina Faso, Cameroon, Nigeria, Mali, Niger, Somalia) where detention and amnesty were both applied with relatively similar levels of intensity. In these six countries, detention and amnesty were both applied less than a 2-point difference in intensity score. In other words, while nearly half the countries studied demonstrate an inverse relationship between amnesty and detention, almost as many applied detention and amnesty simultaneously and at roughly the same levels of intensity.

The relationship between trials and amnesty is also more complex than might be anticipated. There were 5 cases of amnesty without trials, 5 cases of trials without amnesty, and 5 cases where amnesty and trials were both applied. There is less relationship between a country’s willingness to offer amnesty and its decision to prosecute child soldiers than would be expected. Chapters 4 and 5 will further discuss

the co-existence of the amnesty response with the more retributive responses of detention and trials.

c) Observations regarding the citizenship response

The citizenship response is relatively rare. It was observed in the U.K., Canada, and Iraq.

The U.K. applied the citizenship response to the exclusion of all others while Canada utilized it along with the detention and trial responses at low intensities. However, as explained in the country report for Canada in the appendix, Canada's detention and trial scores are both based upon the single case of Omar Khadr. His detention and trial were first initiated by the U.S.A. If American authorities had not arrested Omar Khadr, it is not clear that Canada would have supported his detention and trial. Canada and the U.K. both prioritized the citizenship response above all others.

For both Canada and the U.K., the citizenship response was applied to young citizens from their own countries who travelled abroad to join jihadist groups. The U.K. repeatedly refused requests from allies such as the U.S.A to repatriate British juveniles detained in Syrian camps for ISIS supporters. The UK also stripped young nationals of their citizenship to bar them from returning to the U.K. Canada also resisted calls to repatriate juveniles associated with ISIS from Syrian camps. Although no cases were found where Canadian authorities stripped citizenship from minors, Canadian law does permit this response. Canadian authorities also resisted offering diplomatic assistance to Omar Khadr when he was detained at Guantanamo Bay.²¹

Iraq applied the citizenship response in a substantively different manner from Canada and the U.K. While the citizenship response in Canada and the U.K. involved children abroad, in Iraq, the citizenship response involved children who never left. In 2020, there were over 45,000 displaced children in Iraq without civil identity documents who were consequently excluded from public services such as education, health care, and food. Many of these children were born in areas previously controlled by ISIS and thus had ISIS-issued birth certificates, which Iraqi authorities considered invalid because these children were perceived to be affiliated with ISIS. As a result, they often faced problems

²¹ See country reports for both countries in the appendix.

obtaining official Iraqi birth certificates, which effectively rendered them stateless. This occurred despite Iraq's constitution, which grants citizenship to children with at least one Iraqi parent. Iraq was given an intensity ranking of "3" for the citizenship response. This score was assigned because, although the denial of citizenship to ISIS-born children appeared intentional and detrimentally affected many children, no official policies or declarations justified this approach. Available information simply indicated the children faced problems obtaining citizenship as a result of their perceived ISIS affiliation. In the absence of more specific information about whether this approach was endorsed by high-level government authorities, a mid-level intensity score of "3" was assigned.

Previous sections explained why certain countries that deviated from general patterns were likely anomalous. In contrast, there is no obvious reason to believe the data for Iraq was influenced by research limitations or due to highly unique circumstances. The phenomenon of refusing to grant infants citizenship at all, rather than refusing to extend the *benefits* of citizenship to existing citizens, is an unexpected finding.

In summary, two out of the three countries which pursued a citizenship approach towards child soldiers, the U.K. and Canada, did so to the general exclusion of other responses. The third country, Iraq, demonstrated a comparatively mixed approach. Iraq applied the citizenship response alongside aggressive detention and trial responses, plus a relatively minor amnesty response. While Canada and the U.K. applied the citizenship approach to their own citizens abroad, Iraq sought to deny citizenship to children on its own soil who were born on territory previously controlled by ISIS. Given the relatively small number of countries that employed the citizenship response, it remains unclear whether the British and Canadian approach of prioritizing the citizenship response over other responses represents a meaningful pattern. The unexpected nature of Iraq's citizenship response is also worth exploring in future research. Chapters 4 and 5 will discuss these issues in more detail.

On-going vs post-conflict context

For 5 of the countries studied (Colombia, Peru, Rwanda, Sierra Leone, and Uganda), the data includes only information about post-conflict government responses. Data for the other 12 countries reflects government responses during periods of active conflict.

At first glance, post-conflict countries demonstrate certain patterns. Only 4 countries employed alternative justice programs, and 3 of those 4 countries were post-conflict (Rwanda, Sierra Leone, and Uganda). Amnesty was observed in 3 out of 5 post-conflict countries (Uganda, Sierra Leone, and Colombia). Amnesty in post-conflict countries always took the form of blanket peace agreements that provided amnesty to both children and adults. In this way, post-conflict countries differ from countries in on-going conflict, where amnesty took the form of hand-over agreements that transferred captured child soldiers to social services or family members. Also, detention was markedly less common in post-conflict countries; only 4 out of all 17 countries did *not* apply detention, and 3 of those 4 countries were post-conflict (Uganda, Sierra Leone, and Colombia).

Some of these patterns are expected. Typically, for example, when conflicts were ending, the prevalence of detention fell and the probability of peace agreements increased. The end stages of active conflict also increased the likelihood of alternative justice programs, perhaps because communities became less concerned with immediate survival and more resourced to address justice and reconciliation issues. However, relevant research limitations require caution in interpreting and extrapolating or generalizing these results.

As explained in Chapter 2, data for each country was collected for specific time periods. The selection of these time periods was guided by several factors. One factor was the conflict start date and, where applicable, the end date. In some cases, the selection of a particular time period was determined by the availability of reliable data. This limitation further requires caution in inferring patterns. For example, neither Uganda, Colombia, nor Sierra Leone ever employed detention as a response to child soldiers. There are important similarities between these countries that are, arguably, critical to understanding this commonality or pattern: they all experienced protracted domestic armed conflicts (i.e., civil wars) with anti-state militias or guerrilla armies systematically and forcibly recruited high numbers of child soldiers. The obvious hypothesis is that similarities between conflicts in these countries was the key to explaining the hesitancy to detain child soldiers. However, the data gathered for Colombia and Sierra Leone involved only post-conflict periods. If Colombia and Sierra Leone earlier had pursued aggressive detention campaigns during periods of active conflict, this was not captured in the thesis data. In contrast, the Uganda data includes information about how government authorities reacted to child soldiers both during the middle stages and after the end of their armed conflict with the LRA. In Uganda, even during periods of active conflict, government authorities did not pursue a policy of detaining child soldiers. However, because of the difference with respect to when data was collected, it remains unclear whether Colombia, Sierra Leone, and Uganda took a similar approach towards detention during periods of active conflict. The findings might be different if data was included for the *entire* period of each of the three conflicts.

In summary, it remains unclear whether apparent similarities between post-conflict countries represent meaningful patterns. These similarities may have been influenced by research limitations. Chapter 4 will further discuss how conflict timing may impact how government authorities respond to child soldiers. Chapter 5 will make suggestions regarding future research in this area.

The impact of age

Remarkably, it appears that age often has no impact upon government responses towards child soldiers. Age has an impact only within the *trial* and *amnesty* categories. Findings regarding each response category are described below.

a) Impact of age on trials

Only in the trial response category did youth factor impact the majority of cases; in 10 out of 17 cases in this category, age made a difference. Age influenced the trial response in two ways.

Children faced trials less than adults

Most frequently, age affected whether a trial occurred at all. Seven countries (i.e., Afghanistan, the U.K., Burkina Faso, Cameroon, Mali, Niger, and Uganda) held trials for adults from particular armed groups, but *not* their underage counterparts. Furthermore, there were no cases where any of the other four response types were applied exclusively to adults. Only the trial response category was sometimes inflicted on children, but not adults. The high proportion of cases where this occurred suggests a pattern.

In seven other countries (i.e., Canada, Israel, the U.S.A, Colombia, Nigeria, Somalia, Sierra Leone), age does not appear to have reduced the likelihood of a trial. This suggests an equal number of cases where age did and did not mitigate the use of trials for child soldiers. However, the data for these seven countries also suggests that, although they did sometimes apply the trial response to child soldiers, this option still very rare compared to trials for their adult counterparts.

In Nigeria, government authorities pursued prosecution for several hundred Boko Haram fighters, but because these trials were largely secret or remained pending at the time of writing, it was not possible to ascertain the defendants' ages. Nigeria was coded with an intensity response of "2" for the trial response based upon a single news report indicating one defendant was under 18. Similarly, the U.S.A was given an intensity score of "3" based entirely upon one prosecution (Omar Khadr) and one failed attempt to bring another case to trial (Mohamed Jawad). Colombia was given an intensity score of "3" based on comments from Supreme Court authorities that child soldiers could

hypothetically face criminal trials in the future. Therefore, although youth did not entirely prevent these countries from putting child soldiers on trial, it remains possible they disproportionately put adults on trial.

Of all countries, only Israel, Rwanda and Peru demonstrated assertive efforts to bring child soldiers to trial at roughly similar rates to adults. Somalia occupies somewhat ambiguous territory in this respect, as government authorities there have both sentenced child soldiers to death and also publicly branded child soldiers as victims, not criminals.

Although the findings are not consistent, a pattern whereby child soldiers are less likely than their adult counterparts to be put on trial is evident.

Children receive lighter sentences than adults

Age had a mitigating impact during trials for child soldiers from 3 countries (i.e., Peru, Rwanda, and Iraq). In all three cases, people under 18 years old facing criminal charges benefited from more lenient sentences than adults. A notable exception was Somalia, where children and adults both received the death sentence due to their association with Al-Shabaab.

In summary, the data suggests: (a) child soldiers are less likely to face trial than their adult counterparts and, (b) when child soldiers do face trial, they receive more lenient sentences than adults. These patterns are explored further in Chapter 4 and Chapter 5.

b) Impact of age on amnesty

The amnesty response is observed in 10 out of 17 countries. In 6 of the 10 countries that offered amnesty, age is a mitigating factor: Burkina Faso, Cameroon, Mali, Niger, Nigeria, and Somalia. In all six countries, the type of amnesty and the mitigating impact of age are the same; age-specific handover protocols instigate the release of captured child soldiers to social services or their families.

The 4 countries that granted amnesty in an age-neutral manner were Colombia, Sierra Leone, Uganda and Iraq. Colombia, Sierra Leone, and Uganda. They all negotiated peace agreements which applied blanket amnesties to adults and children. Iraq offered *de facto* amnesties to those from the Yazidi ethnic group by declining to detain and prosecute them.

In other words, age is a mitigating factor when applied in the form of handover policies or protocols. However, when amnesties are offered through peace agreements, age is a neutral factor. These findings are discussed in Chapters 4 and 5.

c) Impact of age on detention

Detention is evident in 13 out of 17 countries. As discussed in the previous section, youth sometimes increases the likelihood of being released from detention through handover protocols. However, in most cases, youth has no apparent impact on detention. Children in detention are predominantly treated in the same manner as their adult counterparts.

Surprisingly, youth is an aggravating factor for detention in 4 countries: Israel, Nigeria, Peru, and Rwanda. In Israel, detained youth were disproportionately subject to shackling and solitary confinement. In Nigeria, infants under the age of 5 were routinely detained in life-threatening conditions. In Peru, authorities found it easier to capture and detain youth than adults, and therefore targeted them for detention and interrogation. In Rwanda, children were reportedly held up to 3 times longer in pre-trial detention than their adult counterparts.

While age is an aggravating factor for detention in four countries, child soldiers in each country experience different conditions. The data does not suggest that youth in detention are regularly subjected to *specific* forms of treatment, which are harsher than the treatment inflicted on their adult counterparts. The finding that children are generally treated in a similar manner to adults will be explored in Chapters 4 and 5.

d) Impact of age on citizenship rights

The citizenship response was employed in the U.K., Canada, and Iraq. In all three cases, youth was considered an aggravating factor because infant children below the age of 5 were punished solely due to the activities of their parents. In Iraq, newborn children were denied citizenship because their parents were associated with ISIS. Both British and Canadian authorities refused to repatriate children below the age of 5 from Syria, due to their parents' association with ISIS. The particularly punitive effect of the citizenship response upon children below the age of 5 will be discussed further in Chapter 4.

e) Impact of age on alternative justice

Within the alternative justice category, age does not appear to have any impact whatsoever. These findings are essential to several major recommendations advanced in the literature. As described in Chapter 1, much of the literature regarding child soldiers emphasized they should be treated differently than adults. Much of the literature also promoted alternative justice programs of various types as suitable mechanisms to process child soldiers. However, as mentioned above, alternative justice programs were comparatively rare. In other words, the pattern that alternative justice programs were both relatively uncommon *and* indifferent to age is an important addition to the literature on this topic. Further implications of this finding will be discussed in following chapters.

Regional patterns

It is important to note that the 17 countries examined in this study, as well as the violent conflicts within them, are unevenly distributed in terms of geography, socio-economic development, political systems and international or global power strategic positions. The distribution is nine countries in Africa, three in the Middle East, two in South America, two in North America, and one in western Europe. Several countries, such as Iraq, have been politically volatile conflict zones for decades, and data reflects how authorities treated hundreds of local children actively fighting on domestic territory. Others, such as Canada, are stable democracies, and data reflects how authorities treated only a few of its citizens abroad. Given this uneven distribution of countries and consequent non-random distribution of the above broad key theoretical variables regarding government responses to child soldiers, it is not possible to infer generalized patterns without tentative and very qualified cautions. Yet one notable pattern merits exploring further; the remarkable contrast between the prevalence of amnesty in African and non-African countries.

Amnesty and alternative justice programs offered predominantly in Africa

Eight of the 9 African countries in the data set offered some type of amnesty to child soldiers with a high level of political commitment. Five countries are assessed intensity scores of 4 or 5, and 3 have intensity scores of 3. Furthermore, in half of these 8 countries (i.e., Mali, Sierra Leone, Uganda, and Somalia), amnesty was a predominant

response to child soldiers; their amnesty intensity scores are either greater than, or equal to, intensity scores for other responses.

Amnesties for child soldiers in African countries were either formal peace agreements granting amnesty irrespective of age (Sierra Leone, Uganda), or handover protocols which instigated the release of captured child soldiers specifically due to their youth (i.e., Burkina Faso, Cameroon, Mali, Niger, Nigeria, Somalia).

In addition, every recorded alternative justice program was implemented in an African country (i.e., Niger, Rwanda, Sierra Leone, and Uganda). Alternative justice programs differed in how retributive they were toward child soldiers. For example, in Uganda, community welcoming ceremonies essentially offered absolution for child soldiers since they did not include punishment and heavily promoted reintegration. Others, such as the *gacaca* courts implemented in Rwanda, bore closer resemblance to criminal trials; though children were, by law, given more lenient sentences than adults, retributive punishment remained possible through *gacaca*. In all cases, however, alternative justice programs included certain restorative elements, such as placing value upon remorse and repentance.

By contrast, no non-African country offered any alternative justice programs for child soldiers and only Colombia and Iraq offered amnesties. In Colombia, amnesty was assigned an intensity score of “3” because a formal peace agreement set out a scheme offered amnesties to members of FARC. In Iraq, amnesty was assigned an intensity score of “1” because it was considered an exception to the dominant Iraqi responses of detention (intensity score - 5) and trial (intensity score - 4). A *de facto* amnesty was granted specifically to young people from the minority Yazidi ethnic group associated with ISIS, because Iraqi authorities largely “ignored” them instead of detaining them. However, this approach toward Yazidi youth was a marked departure from the harsh treatment of Sunni Arab youth that composed the majority of ISIS fighters.²² In other words, the Iraqi political commitment to amnesty was minimal. Colombia was the only non-African country that meaningfully employed the amnesty response, and it did so in an age-neutral fashion.

²² See country report for Iraq in the appendix.

In addition to withholding amnesty, non-African countries more often emphasized the retributive approaches of detention and trials. Five of the 8 non-African countries applied detention at the maximum intensity score of “5”. In contrast, only 3 of the 9 African countries applied detention at the maximum intensity score of “5.” Also, while 6 of the 8 non-African countries put child soldiers on trial, only 4 of the 8 African countries put child soldiers on trial.

It is important to note this study included more countries from Africa than any other continent. Arguably, this could have exaggerated the apparent prevalence of amnesty and alternative justice programs in Africa. However, contemporary literature has also suggested that in recent years, handover protocols have predominantly been employed in African countries. A 2020 report regarding handover protocols for child soldiers listed the status of handover protocols in 13 African countries,²³ 7 West Asian countries,²⁴ and 2 East Asian countries²⁵ (Watchlist on Children and Armed Conflict, 2020). Apart from the Philippines, which was described as having national legislation in place for handing over children, every country with a handover protocol was in Africa.

It remains unclear why amnesty in the form of handover protocols was predominantly offered in African countries. It also remains unclear why non-African countries appeared to emphasize the more retributive approaches of detaining child soldiers and putting them on trial. Chapter 5 will discuss potential reasons and suggest areas for future research.

²³ Namely: Burkina Faso, Cameroon, Central African Republic, Chad, Democratic Republic of Congo, Libya, Mali, Mauritania, Niger, Nigeria, Somalia, Sudan, Uganda.

²⁴ Namely: Afghanistan, India, Iraq, Israel, Lebanon, Syria, Yemen.

²⁵ Namely: Myanmar, the Philippines.

Chapter 4.

This chapter presents two models informed by the findings in Chapter 3.

The first model illustrates two dynamics: (a) the relative likelihood that a child soldier will be subjected to detention, trial, alternative justice, amnesty, or the citizenship response; and (b) how youth affects the likelihood of a particular response. The second model illustrates how the temporal stage of an armed conflict influences a government's response to child soldiers.

These two models suggest how child soldiers will most likely be treated by governments, how their age influences that treatment, and how the specific timeframe of an armed conflict affects both questions.

It is important to note that these models do not precisely illustrate the exact findings presented in Chapter 3. Rather, they suggest comparatively likely outcomes informed by general patterns in the findings.

Model #1: Impact of age upon government responses to child soldiers

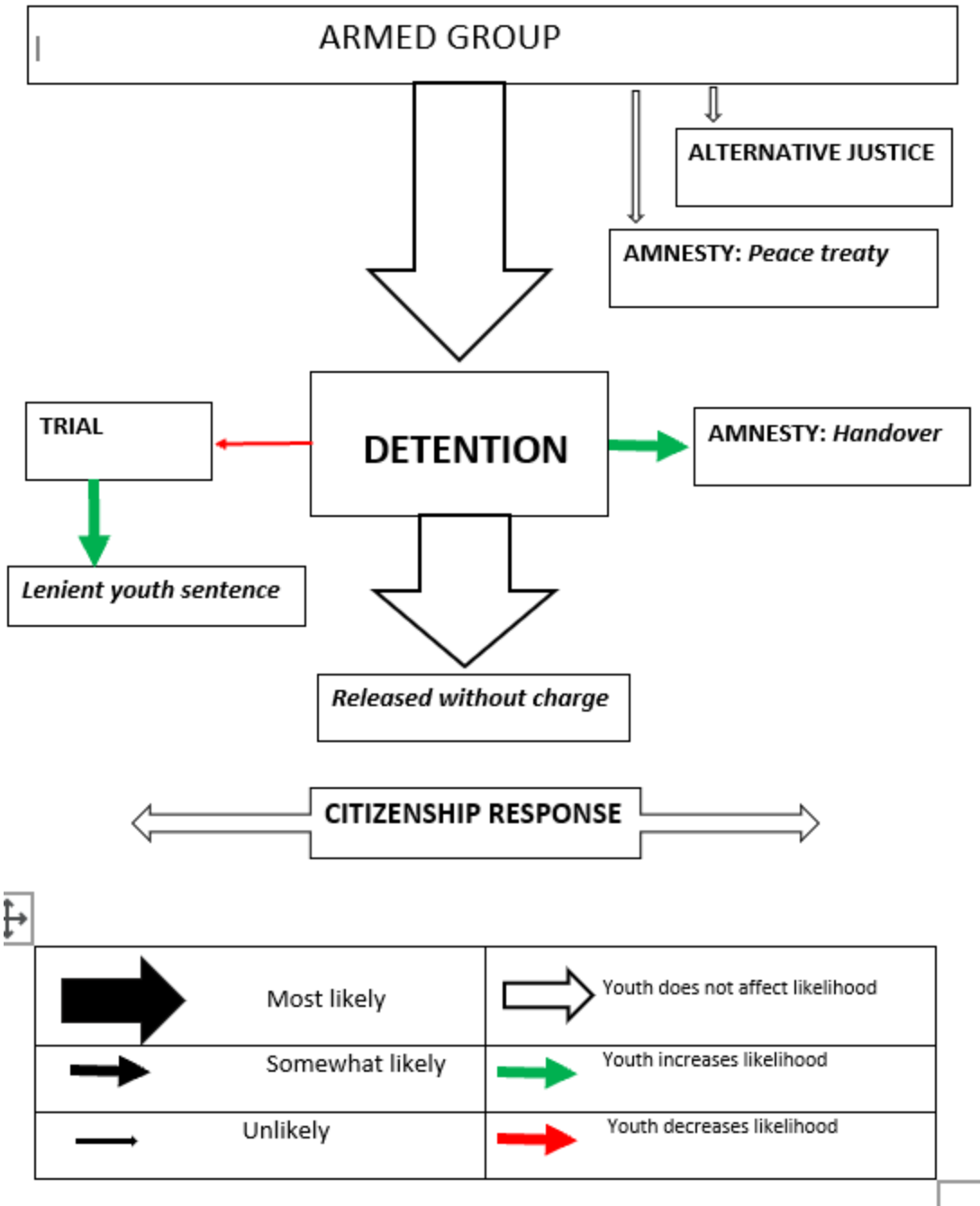


Figure 4

The first model's flow chart illustrates two dynamics: (a) the relative likelihood that a child soldier will be subjected to detention, trial, alternative justice, amnesty, or the citizenship response; and (b) how youth affects the likelihood of a particular response.

This model recognizes that the same child can face multiple responses and charts potential pathways between them. It demonstrates the likelihood of each response type through arrows of different sizes: large arrow = most likely; medium arrow = somewhat likely; small arrow = unlikely. It illustrates the impact of age by colour-coding the arrows: white = youth is a neutral factor; green = youth increases likelihood of a response; and, red = youth decreases likelihood of a response.

The flow chart begins from a child soldier's association with a particular armed group. This association could occur in several ways: either active and deliberate (e.g., when a Palestinian teenager decided to join Hamas), or entirely outside the child's control (e.g., when an infant was born in Iraqi territory controlled by ISIS). The model makes no distinctions regarding how children become involved with a particular armed group. It also does not distinguish between their specific ages, the type of armed group, how long they were involved, and any other contextual factors.

The model suggests that child soldiers are more likely to encounter detention than any other government response. However, this is not because children are more likely to be detained than adults. Age is a neutral factor with respect to whether detention occurs. Rather, child soldiers are more likely to encounter detention than any other response because detention is the overwhelmingly predominant response towards both children and adults associated with armed groups. Illustrative cases from the findings include detention practices observed in Iraq, Israel, U.S.A, and Nigeria.

The model illustrates five potential pathways out of detention. The most likely pathway out of detention is the same for children and adults - to eventually be released without charge. The model further suggests that age does not significantly impact the likelihood of release without charge, the likelihood of being released under a post-conflict peace agreement or the likelihood of being placed into an alternative justice program. The latter two possibilities are both considered unlikely for both children and adults, and in relatively equal measure. However, the model suggests that two pathways out of detention *are* affected by age: handover protocols and trials.

Age has a positive effect on the likelihood of being released from detention through a handover protocol. As described in Chapters 2 and 3, handover protocols required child soldiers to be released from detention usually to family members or child welfare service, specifically due to their youth. Handover protocols were applied both immediately after child soldiers were captured, or after they had been detained for some time. In all cases, child soldiers were released through these protocols specifically due to their age. Illustrative cases include handover protocols in Mali, Somalia, and Cameroon.

However, age has the opposite effect upon the likelihood of exiting detention through a trial. The model suggests that both children and adults associated with armed groups are more likely to be released without charge than to be put on trial. Even so, child soldiers are *particularly* unlikely to be put on trial, because of their age. Illustrative cases include detention and trial practices in Afghanistan, Niger, and Burkina Faso.

Yet for those few child soldiers that face trials, youth is a mitigating factor. When child soldiers are tried, they generally are treated more leniently than adults (i.e., receiving reduced sentences or acquittals). Illustrative cases from include sentencing practices in Iraq, Peru, and Rwanda.

While the most likely government response to child soldiers is detention, other paths are possible. The model stipulates that post-conflict peace agreements sometimes allow child soldiers to move directly from an armed group into demobilization and amnesty, avoiding detention entirely. Child soldiers and adults are equally likely to receive amnesty in this pathway. Likewise, some child soldiers move directly from an armed group into an alternative justice program. Like post-conflict peace agreements, alternative programs are equally likely for children and adults. However, these two options also are infrequent. In contrast, detention remains much more probable than either amnesty or alternative justice programs.

The citizenship response occupies a unique place compared to the other response types in the model because it can occur in either conjunction with or in the absence of any other response. In effect, government authorities unilaterally can apply the citizenship response at any time, irrespective of whether they control, influence, or even know the specific location of a particular child soldier. The citizenship response requires nothing

beyond the requisite political will. In the flow chart, it is therefore a free-floating possibility, which can be applied at any time.

The model further suggests that youth does not affect the likelihood of the citizenship response. The citizenship response is described as independent of the others, age-neutral, and comparatively rare. One reason the citizenship response is unlikely is that it applies to a smaller pool of children. As explained in Chapter 3, Canada and the U.K. applied the citizenship response to a small number of citizens who had left to join armed groups abroad. Iraq applied the citizenship response to infants born in territory formerly controlled by ISIS. However, these examples constitute a small minority of the cases studied. The citizenship response, therefore, is considered relatively unlikely.

It is important to note that this model does not address children who never encounter any government response whatsoever. A number of child soldiers, for example, have independently demobilized and returned home, or anonymously started lives in new communities without being subject to any government programs or sanctions. Schotsmans (2012) described how many former RUF child soldiers in Sierra Leone moved to new communities without revealing the extent of their crimes to avoid being rejected by community members. It is beyond the scope of this thesis to comment upon the relative likelihood that a child soldier will not encounter any government response.

Model #2: Impact of conflict timing upon response and level of retribution



Figure 5

The second model describes how the temporal stage of an armed conflict influences a government's response to child soldiers. It illustrates the responses most likely in the early, on-going, or post-conflict stages. The five government responses also are organized according to their punitive effect. The most punitive approaches are at the bottom and the most forgiving approaches are at the top. The model therefore displays both the response(s) at a particular stage in a conflict, and whether those response(s) are comparatively punitive or forgiving.

The level of punitiveness reflects probable long-term detrimental effects upon physical integrity, health, safety, and liberty. The five response types listed from most punitive to least punitive are: 1) citizenship; 2) detention; 3) trial; 4) alternative programs; and 5) amnesties. The following section discusses how each response type relates to different conflict stages. It also explains why a response type is considered punitive.

The second model suggests child soldiers are commonly detained without trial during the initial and middle stages of a conflict. Country reports in the appendix reveal that government authorities often justified such detention in the name of protecting national security because either the detainees themselves were dangerous, the detainees could provide valuable intelligence, or both. Illustrative examples include the American authorities' response to minors associated with Al-Qaeda, Israel's response to minors associated with Hamas, and Peru's response to minors associated with Shining Path.

Country reports in the appendix furthermore reveal that detained child soldiers are frequently subject to harsh conditions, including physical abuse and torture. There are specific reports of child soldiers being tortured and physically abused for Afghanistan, Cameroon, the U.S.A, Iraq, Nigeria and Mali. Extra-judicial killings of children suspected of association with armed groups are also reported in some cases, such as Cameroon and Nigeria. Prison overcrowding is severe enough to cause deaths in countries including Burkina Faso, Nigeria, and Iraq. Given these serious threats to physical security, detention is considered a highly punitive response.

The second model indicates that in the initial and middle stages of a conflict, government authorities are more willing to offer amnesty through handover protocols. Handover protocols promote releasing captured child soldiers from detention due to their youth. The findings indicate that handover protocols are sometimes applied almost

immediately. In Mali and Somalia, for example, child soldiers sometimes are released within days of being captured by security forces. Other illustrative examples involving handover protocols include Niger's response to minors associated with Boko Haram, and Burkina Faso's approach to minors associated with jihadist groups. In contrast, amnesty through peace agreements is most likely post-conflict. Illustrative examples of amnesty through post-conflict peace agreements include Uganda's approach to minors associated with the LRA and Sierra Leone's approach to minors associated with the RUF and ARFC.

Amnesty was considered the least punitive option, whether offered through handover protocols or peace agreements. Arguably, offering amnesty in the context of an on-going conflict is not a durable solution to the problem of child recruitment if released children are vulnerable to re-recruitment. For example, between January 2019-December 2019, the U.N. verified the recruitment and use of 215 children by armed groups in Mali, which has implemented handover protocols, and in 140 of those cases, the children had also been recruited in previous years (*Mali*, 2020). Nonetheless, the issue of re-recruitment is not considered directly attributed to providing amnesty. Amnesty remains the least punitive potential option.

The second model suggests that the trial response remains equally likely throughout all conflict stages. Because on-going armed conflicts threaten the resources, organization and political stability required to conduct trials, it is more likely that trials are most prevalent in the post-conflict stage. However, while trials may be more widespread and well-organized in the post-conflict stage, the country reports in the appendix indicate that several countries also pursued trials during the early and middle stages of a conflict. These cases include Israel, Nigeria, Peru, Somalia, and Iraq.

Trials vary widely in terms of their punitive sentences. In some cases, child soldiers have received acquittals (e.g., Peru) or significantly reduced sentences (e.g., Rwanda) on account of their age. However, in other cases, child soldiers have been sentenced to death (e.g., Somalia) or long prison terms based on torture-induced confessions (e.g., Iraq). Because of the inherent possibility of harsh pretrial and sentencing prison conditions, including death, trials are designated as a relatively punitive response.

The second model also suggests the citizenship response remains likely throughout all conflict stages because of certain unique features of the citizenship response. Most importantly, government authorities can apply the citizenship response without expending significant time or resources. For example, as detailed in the appendix, laws in Canada and the U.K. gave authorities broad discretion to revoke citizenship without the evidentiary burden of a criminal trial, and a person's nationality could be stripped regardless of whether that person had been located and detained. The citizenship response can be applied either in conjunction with, or in the absence of, any other response. Although the citizenship response is noted in only three countries (Canada, the U.K., and Iraq), there is little evidence in those cases to suggest that the citizenship response characterizes any particular stage of a given conflict. In the early stages of a conflict, for example, threats of revoking citizenship might be articulated to deter people from becoming foreign fighters abroad. In the middle stages of a conflict, citizenship might be revoked to prevent foreign fighters from returning to launch domestic attacks. In the post-conflict stage, revoking citizenship can punish foreign fighters by effectively exiling them in dangerous countries.

Obviously, other than a death penalty sentence, the citizenship response is considered the most punitive of all responses. Some might argue the citizenship response is not as harsh as detention; unlike detention, the citizenship response does not inflict a specific form of physical punishment. Rather, it removes a person's right to enjoy certain benefits of citizenship. In theory, a person whose citizenship has been revoked could live a comfortable life in a different country. However, in practice, the citizenship response has been applied in a cynical and calculated manner deliberately intended to inflict harsh punishment outside of ordinary legal protections. For example, as described in the appendix, British politicians have justified revoking citizenship from foreign fighters to prevent domestic British courts from treating returning foreign fighters in a lenient manner. At least one former child soldier stripped of British citizenship, Shamina Begum, was rendered stateless and stranded in a Syrian detention camp where British authorities acknowledged she faced a risk of torture. This occurred despite British laws forbidding rendering anyone stateless. Similarly, Iraqi authorities ignored the Iraqi constitution – which states that anyone born to an Iraqi parent is a citizen of Iraq – and effectively rendered many infants born to suspected ISIS supporters stateless by refusing to provide them with official birth certificates.

The long-term consequences of losing citizenship are varied, unpredictable, and beyond the control of those authorities who originally imposed it. In the short term, a person whose citizenship has been revoked may be stranded in a conflict zone without the ability to leave. In the longer term, being stripped of citizenship may restrict a person's access to housing, employment, or other necessities. It is therefore considered the harshest of all the potential response types.

Lastly, the second model suggests alternative justice programs are most likely in the middle and post-conflict stages. Alternative justice programs are identified in Uganda, Rwanda, Niger, and Sierra Leone. In all four cases, alternative justice programs are characterized by grassroots community participation outside the formal legal machinery of national governments. In Uganda, Niger and Sierra Leone, these programs received varying levels of government support, and are predominantly led by local groups. In Rwanda, the *gacaca* court program was actively organized and directed by high-level officials, but its daily operations and decisions are implemented by local community leaders, not government judges or lawyers. The evidence does not suggest any of these four countries applied alternative justice programs in the initial stages of a conflict.

The alternative justice programs identified in this study are predominantly restorative in nature, emphasizing repentance and community reconciliation. However, punishment remains possible. Rwanda's *gacaca* courts, for example, are empowered to impose jail sentences or community service. In cases where no formal punishment is imposed, community stigma nonetheless sometimes results from programs that required child soldiers to publicly confess their crimes. In Sierra Leone, for instance, some child soldiers who felt remorse were reluctant to participate in reconciliation hearings because they did not wish to risk community rejection by revealing the extent of their crimes. Alternative justice programs are, therefore, considered more punitive than amnesty.

Summary of conclusions from model #1 and model #2

Age often is irrelevant with respect to how government authorities treat child soldiers. Overall, the best way to predict how child soldiers are treated is to study how adults from the same armed group have been treated. However, there are two important exceptions. The first exception is handover protocols. These agreements require child soldiers to be released from detention specifically due to their youth. Handover protocols protect child

soldiers from harms often experienced by their adult counterparts, such as the punitive effects of detention and/or prosecution. The second exception involves trials. Age appears to affect trials in two ways: (a) children are less likely than adults to ever face trial; and (b) children who do face trial are likely to receive more lenient sentences than their adult counterparts. Despite the prevalence of literature promoting alternative justice programs for children, alternative justice programs are rare. Where they do exist, they do not seem to treat children in a significantly different manner than adults.

Understanding when child soldiers are most likely to be treated punitively has implications for policy development and advocacy work. For example, advocates seeking to protect child soldiers from retributive punishment in the early or middle stages of a conflict may be well-advised to focus their efforts upon promoting handover and release protocols. These options often are applied during those time frames and offer an opportunity for children to avoid detention.

Chapter 5.

This chapter advances potential explanations for the findings and patterns described in Chapters 3 and 4. It also discusses the implications of this study's findings for future research and advocacy work related to child soldiers.

Predominance of detention

This study suggests that detention without trial is the predominant government response to child soldiers. The empirical data detailed in Chapter 3 indicates that countries employ detention both more frequently *and* with greater intensity than any other response type. The models described in Chapter 4 indicate that, while detention is the preferred response towards both child and adult soldiers, children are even *less* likely than their adult counterparts to move from detention to trial. There is neither an obvious reason for the predominance of detention over the other response types, nor for why children appear less likely than adults to ever face trial. While these patterns need further empirical study, potential explanations are the focus in the following section.

Research limitations may have exaggerated the predominance of detention

One explanation for the apparent predominance of detention involves this study's research design limitations. As explained in Chapter 3, the data indicates that several countries put adults on trial, but not child soldiers. This finding informed a central premise presented in Chapter 4: because of their youth, child soldiers are less likely than their adult counterparts to move from detention to prosecution. However, it remains possible that trials for child soldiers did take place in these countries but were never identified or recorded. As described in Chapter 2, there were constraints regarding data on the trials of child soldiers. The processing of child soldiers, including their general treatment, is an enormously controversial issue for international human rights groups, the UN, and the foreign policies of liberal democracies such as Canada and the US. Information on this topic, therefore, could be deliberately obscured to avoid harmful repercussions, including economic sanctions for violations of international laws specifically regarding prosecuting child soldiers. Military or criminal trials relating to national security not uncommonly occur in secret, therefore making it extremely difficult

to obtain accurate information about their proceedings. As a result, this study may have inaccurately assigned scores on this domain for some countries (e.g., inaccurately indicating they did not put child soldiers on trial) simply because the relevant records were not in the public domain. Furthermore, this study is limited to public sources available: online; in English; accessible without specialized knowledge of particular countries' legal archives or forms of record-keeping. Even if records of child soldiers' trials are not strictly confidential, the resource constraints of this M.A. study were insufficient to obtain these data. Further legal research is needed to explore whether this pattern is as prevalent as this study suggests.

Detention may predominate during periods of active conflict

Most of the empirical data in this study involves on-going conflicts. As described in Chapter 3, data for 12 out of the 17 countries studied does not include post-conflict information. Also, as described in Chapter 3, the frequency and intensity of detention is substantially higher in countries experiencing active conflict than post-conflict countries.

Unfortunately, this study also is limited by inconsistencies in data collection over particular time periods for some countries included in this study. The data for some countries (e.g., Peru) includes early on-going, and post-conflict periods; the data for some countries (e.g., Nigeria) includes early and on-going conflict periods; the data for some countries (e.g., Rwanda) includes only post-conflict periods. These validity concerns make it difficult to discern the relevance of conflict timing for any particular response types. Future research that includes data from all conflict stages would enable more meaningful inferential comparisons.

Nonetheless, it remains possible that during periods of active conflict, governments pursued detention without trial as a means of preserving national security. Detention could be justified to collect intelligence, to remove dangerous actors from the field, to inspire deterrence or by a combination of these policy goals. Several countries that aggressively pursued detention (e.g., Afghanistan, Cameroon, Iraq, Israel, Peru, the U.S.A) justified their approach as necessary for national security. Authorities in Peru and the U.S.A. argued that child soldiers in pre-trial detention were valuable intelligence assets. Sometimes, authorities were transparent regarding their disinterest in ever bringing detainees to trial, such as when U.S. authorities announced some child soldiers

at Guantanamo Bay prison would only be detained as long as they were considered intelligence assets.

However, it is also possible that government authorities deliberately impose detention as punishment, irrespective of any national security concerns. In all the countries studied, detention conditions for child soldiers were punitive for reasons beyond the simple deprivation of liberty. Harsh treatment of child soldiers in detention was the norm, not the exception. Examples included extrajudicial killing (e.g., Cameroon, Nigeria), torture (e.g., Afghanistan, Iraq, Peru, Somalia, the U.S.A), life-threateningly poor prison conditions (e.g., Burkina Faso, Niger), and other forms of physically or psychologically harmful treatment (e.g., Israel, Mali). Some government authorities (e.g., the U.K.) openly stated they would prefer not to have domestic trials for suspected extremists because they feared courts would treat them too leniently. Government authorities could cynically impose detention as a form of retaliation to punish and deter child soldiers, regardless of whether those child soldiers have any intelligence value or pose any on-going security threat. If governments are indeed imposing detention as a form of punishment unto itself, further research is warranted to examine what factors make government authorities more or less likely to do so. Likewise, further research can explore what factors encourage or discourage government authorities from bringing detained child soldiers to trial.

Detention may predominate due to resource constraints

Another potential explanation for why child soldiers infrequently face trial relates to countries' police, judicial and related criminal justice resources. There were 7 countries where trials did occur for adults, but not their minor counterparts. Interestingly, 6 out of these 7 countries were politically and economically developing economies, including Afghanistan, Burkina Faso, Mali, Cameroon, Niger, Nigeria, and Uganda. In effect, these national government authorities lacked the basic financial resources, human resources, or infrastructure required to bring all accused persons to trial. In such contexts, certain governments prioritize trials for highly culpable adults rather than children with inherently more problematic legal responsibility status.

A notable exception to this pattern and explanation is Rwanda. In the policy responses to a devastating genocide that decimated the country's limited resources and

infrastructure, Rwandan authorities persistently enforced policies that sent approximately 2 million detained adults and children to trial. The Rwandan example highlights the importance of political policy choices over resource constraints. The relative importance of policy choices is also examined later in this chapter in the section regarding the citizenship response. Further research needs to explore the relative importance of limited resources compared to other factors, such as political policy choices, in determining whether child soldiers move from detention to trial.

Lenient treatment at trial

As discussed in Chapters 3 and 4, child soldiers who are sent to trial often receive more lenient sentences than adults. The legal literature described in Chapter 1 emphasized the diminished responsibility of child soldiers due to factors such as duress and coercion, the need to escape life-threatening situations, and their immature psychological and social development. However, the empirical evidence described in Chapter 3 indicates that government authorities routinely imposed harsh treatment on child soldiers without regard for their age. Child soldiers were much more likely to face arbitrary detention in life-threatening prison conditions than to face trial before a potentially more sympathetic judge. If courts are indeed applying age-specific reasons or legal protections to child soldiers at the sentencing stage, this reasoning and protection is largely absent from pre-trial considerations.

Interestingly, legal and policy responses within the same country can vary widely in terms of their punitive effect. In some cases, criminal courts were more sympathetic towards child soldiers than authorities such as intelligence services, military forces, or politicians. For example, in Peru and Iraq, child soldiers were routinely abused and tortured in pre-trial detention, but also given more lenient sentences than their adult counterparts at trial. But judges are not always more sympathetic than other authorities. In Somalia, for instance, some child soldiers were sentenced to death by military tribunals, but others were released to social services through handover protocols after being captured. Courts do not universally treat child soldiers more leniently than other authorities. Although findings suggest courts treat child soldiers more leniently than other government authorities, it is not universally the case.

As described in Chapter 1, a small but significant body of literature has argued child soldiers should not be released from accountability entirely due to their youth. Proponents of this perspective generally believed that appropriate sanctions for child soldiers were needed hold them accountable for serious abuses and better promote community reconciliation than blanket amnesties. The findings of this study suggest courts of law often, but not always, treat child soldiers with leniency at sentencing. However, this study did not fully examine jurisprudence involving the prosecution of child soldiers. Further research examining judicial decisions sentencing child soldiers will illuminate differences (or similarities) between how judges assess the blameworthiness of child soldiers compared to other government authorities. Such research also needs to explore whether arguments that commonly arose in the literature about the blameworthiness of child soldiers impacts judicial decision makers at sentencing.

Findings and the literature regarding detention and trials

Chapter 1 outlined two major perspectives regarding whether child soldiers are morally blameworthy for reprehensible actions they commit while in the service of armed groups. The first perspective held that child soldiers were essentially the victims of adults either through direct coercion, or coercive situations created by adults. The second perspective asserted that child soldiers were often both victims and perpetrators, and, therefore, they should be held accountable through appropriate mechanisms that may include punitive consequence. Drumbl, a proponent of the second perspective, maintained that transitional justice processes serve a useful role in holding child soldiers accountable. He argued that widespread fears that child soldiers will be “subject to punitive criminal trials has induced a crudely fulsome protectionism that has come to insulate child soldiers from accountability processes generally, regardless of the goals or potentials of those processes” (Drumbl, 2013).

This thesis finds that child soldiers are, more often than any other government response, subject to harsh detention conditions without any formal assessment of their accountability whatsoever. Child soldiers are unlikely to ever face trial or participate in an alternative justice process, but they are highly likely to face punitive consequences. The country reports in the appendix reveal that many detained child soldiers are held due to suspected association with armed groups, not because they have been accused of any specific crime. This finding contrasts with various international instruments and

proclamations stating that children associated with armed groups should not be prosecuted or otherwise punished solely for their membership in those forces or groups (Becker, 2020).²⁶

Chapter 1 also describes how non-governmental organizations advocating for children's rights have emphasized the on-going harsh treatment against child soldiers have continue to argue that child soldiers should be given amnesty. The empirical findings described in Chapter 3 support their assertion that child soldiers often are treated very harshly. These findings provide numbers and examples regarding the high prevalence of pre-trial detention for child soldiers. At the same time, this thesis suggests the relatively few child soldiers who move from detention to trial often fare better than their adult counterparts at sentencing.

In other words, this thesis data partially supports central premises from both perspectives. On the one hand, there are findings that suggest child soldiers are often treated in a harsh and arbitrary manner. This widespread maltreatment has likely informed arguments that child soldiers should be given amnesty instead of being punished any further. On the other hand, when criminal trials occur, they can represent a better option for child soldiers than their adult counterparts. In effect, this latter suggestion is not a normative proposition about the ethical or legal desirability of trials; it is an interpretation of the empirical findings outlined in Chapter 3.

To be clear, this thesis does not suggest that criminal trials are not punitive towards child soldiers. The data includes various examples of child soldiers being tortured to obtain confessions used at trial (e.g., Afghanistan), as well as harsh criminal sentences, including the death penalty (e.g., Somalia). However, further research is warranted regarding the ways child soldiers may benefit during criminal trials compared to their adult counterparts (as apparently occurred in Rwanda, Iraq, and Peru). In contexts where child soldiers are more likely to receive lenient treatment at trial than to receive

²⁶ For example, the Paris Principles (adopted in 2007 and endorsed by over 110 states) indicate children who are associated with armed forces or armed groups should not be prosecuted or punished solely for their membership in those forces or groups. In 2018, the UN Security Council states that children associated with armed forces should not be unlawfully or arbitrarily deprived of liberty, and that whenever possible, alternatives should be sought to judicial procedures and placing a child in an institution. (Becker, 2020).

amnesty, advocates for the rights of child soldiers might consider pressuring government officials to expedite their criminal trials rather than remain indefinitely in detention.

Prevalence of amnesty and alternative justice programs in Africa

Factors promoting handover protocols and alternative justice programs

Chapter 3 explains how handover protocols and alternative justice programs for child soldiers were exclusively observed in African countries. No literature was identified to indicate that alternative justice programs were more common in Africa. However, both this study's empirical findings and recent literature suggests that handover protocols for child soldiers have predominantly been employed in Africa.²⁷ It is important, therefore, to explore why this pattern occurred.

A 2020 report by Watchlist asserted that UN-led advocacy efforts were central to establishing handover protocols and that the success of these negotiations was influenced by contextual factors such as access to strategic local allies and diplomatic pressure (Watchlist on Children and Armed Conflict, 2020). Consequently, a key policy theme is: were UN-led handover negotiations more aggressively pursued in African contexts? And, relatedly, were the profiles of the conflict groups different in Africa than in other regions?

Interestingly, the empirical data presented both in this study and the Watchlist report indicates that child soldiers directly associated with ISIS or Al-Qaeda have not benefited from handover protocols. All five permanent members of the UN Security Council (i.e., China, the United States, France, the U.K., and Russia) are enemies of ISIS and Al-Qaeda. Both ISIS and Al-Qaeda also are considered designated terrorist groups by the UN. Yet it remains unclear whether these geopolitical dynamics have influenced UN advocacy efforts regarding handover protocols.

²⁷ Both the empirical findings and the relevant literature are described in Chapter 3.

Alternatively, factors outside the UN's advocacy efforts may explain the prevalence of handover protocols in Africa. The specific dynamics of particular conflicts, histories, and cultures may be more or equally important.

Perhaps the manner that child soldiers initially were recruited affected willingness to adopt handover protocols. Bloom (2019) found that the recruitment methods for child soldiers in sub-Saharan Africa disproportionately followed a distinctive pattern: children's parents were murdered, or children were otherwise isolated from their family prior to being forced to join militias under threat of death. In addition, parents or guardians frequently did not encourage children to join armed groups. An illustrative example is Uganda, where the LRA recruited large numbers of children and adults through kidnapping and violent coercion. The Ugandan government adopted both handover protocols and blanket amnesties in response to LRA defectors. Government authorities may have been especially willing to grant amnesty to child soldiers perceived as victims of brutal coercion.

In contrast, many children apparently joined ISIS without being violently coerced. ISIS's recruitment processes relied primarily on grooming, propaganda, and indoctrination techniques. A substantial number of children also were encouraged to join ISIS by their parents. While ISIS recruited some children through abduction and violent coercion, it also focused substantial resources upon cultivating ideological support: "ISIS facilitates recruitment by branding itself as a utopian society and ideal way of life, luring in parents who bring their children or children who might run away from home. Many European emigrants to the Islamic state insist that the Caliphate provides a better environment for their children than the licentious, drug-infested West" (Bloom, 2019, p. 202).

This study includes five countries' responses to child soldiers from ISIS (Afghanistan, Canada, Iraq, the U.S.A, and the U.K.). All five countries have had a heavily retributive approach. Possibly, these countries' government authorities perceived ISIS's child soldiers as willing participants more deserving of punishment. Among all 5 countries responding to child soldiers from ISIS, only one case involved amnesty. Iraqi authorities provided a policy whereby child soldiers from the minority Yazidi ethnic community had the opportunity to return home without detention. In contrast, Sunni Arab children associated with ISIS were subject to harsh detention conditions and prosecution. It is important to note that ISIS waged a genocidal campaign against the Yazidi. Iraqi

authorities, therefore, likely perceived Yazidi children associated with ISIS as both forcibly recruited and ideologically opposed to ISIS. This example was consistent with the general proposition that government authorities considered recruitment methods in their policies towards child soldiers.

There are other hypotheses about why national government policies varied regarding willingness to offer amnesty or alternative justice programs. Depending on the distinctive histories of groups in conflict in a country, the ethnic, religious, linguistic, or socioeconomic composition of a particular armed group could have influenced whether its child soldiers were perceived more or less deserving of either sympathetic or retributive policies. Another hypothesis focuses on the scale or geographic location of the conflict and whether more significant threats to national security inspired higher levels of punitive treatment. All these factors likely influenced whether child soldiers were perceived primarily as either community members or outsiders that could pose an existential threat. Sarkin (2012) summarized these themes:

Reconciliation's source is the dignity of each human being, and its manifestation is in repaired relationships. ... It is often viewed as the coming together, the antithesis of falling or growing apart. Reconciliation has a normative - almost a moral - aspect as well. It is the coming together or re-coming together of things that *should* be together. Unlike its less common relative, conciliation, reconciliation is coming together of things that once reunited but have been torn asunder - a return to or recreation of the status quo. ... Reconciliation thus implies the repairing of a relationship, whether real or imagined. It is about the return (or creation) of normalcy. Thus, it has great appeal to societies whose preeminent challenge is how to be normal again after a particularly devastating agent such as genocide or war." (Sarkin, 2012, p. 11)

If authorities perceived child soldiers as community members with whom relationships must be repaired to re-establish "normalcy," they more likely prioritized policies based on amnesty and alternative justice programs with a restorative focus. In contrast, in contexts where child soldiers were perceived as foreign threats to be expelled, harsher policies were more likely. Further research on how specific armed groups and conflicts were characterized by political authorities is needed to more fully explain why amnesty and alternative justice programs were more prevalent in Africa.

Co-existence of handover protocols with harsher punishments

Countries provided amnesty in two forms: a) formal peace agreements that absolved both children and adults, and b) handover protocols that required child soldiers be quickly released to social services or family members after capture.

The relationships between handover protocols and more retributive responses such as detention and trial were more complex than anticipated. Handover protocols provided child soldiers with amnesty specifically because of age. However, handover protocols occurred conjunction with punitive responses that did not distinguish children from adults. As well, handover protocols co-existed alongside extrajudicial killings polices (e.g., Nigeria and Cameroon), life-threatening pretrial detention conditions (e.g., Burkina Faso and Niger), and criminal prosecutions attracting the death sentence (e.g., Somalia). Such harsh punishments clearly implied retribution and deterrence policy goals. Nonetheless, these policy contradictions existed; harsh punishments occurred along with handover protocols, which offered unconditional amnesty entirely based on age.

These findings raise important themes. Why would government authorities within the same country pursue multiple and apparently contradictory policies to child soldiers from the same armed group? Is it due to characteristics of the child soldiers themselves, such as their specific age, gender, rank or activities? Are handover protocols applied differently in rural and urban areas? Are handover protocols applied differently by different authorities, such as military forces and intelligence agencies? Are handover protocols inconsistently applied due to uneven levels of political will or enabling resources? Are handover protocols influenced by fluctuating national security concerns in different parts of the same country? Further research exploring these questions could provide valuable insight regarding why some children within the same country benefit from handover protocols, while others do not.

Findings and the literature regarding amnesty and alternative justice programs

In Chapter 1, there appeared to be an emerging consensus in the literature that a mixed policy approach to child soldiers was the appropriate approach: while child soldiers generally should not be prosecuted, in extreme cases a less punitive policy might be utilized, such as alternative justice programs. It was therefore somewhat surprising to find that alternative justice programs are a comparatively rare response toward child soldiers, and youth does not play a determinative role in such programs. On both points, alternative justice programs differ from handover protocols. In this study, handover protocols are found to be a relatively common form of amnesty offered to child soldiers and are available to child soldiers based entirely upon age. This pattern too is unexpected given that the literature discussed handover protocols much less frequently than alternative justice programs.

However, these findings require caution since research limitations detailed in Chapter 2 might have affected data collection on alternative justice programs. In particular, smaller community-based programs were less likely to attract widespread attention. This context might have resulted underreporting of these policies in this study. Further comparative empirical research on the prevalence of alternative justice programs is needed to facilitate generalizations about the prevalence this approach.

With this caveat in mind, this pattern suggests a disconnect between the predominant normative arguments about alternative justice programs for child soldiers and the empirical reality of implementing such programs. As explained in Chapter 1, many academics and children's rights advocates suggested that alternative justice programs were the best age-appropriate response to child soldiers. Yet empirical findings in this study indicate that these programs are both rare and indifferent to age. In other words, proponents of alternative justice programs for child soldiers were advocating for a largely untried policy approach. In effect, these advocates were enthusiastically recommending programs that, for the most part, do not exist. This should be kept in mind when assessing the merits of arguments about alternative justice programs for child soldiers. In the absence of applicable examples, proponents of alternative justice programs for child soldiers would be well-advised to provide specific information about how they envision such programs would function.

Mixed findings regarding the citizenship approach

Based on the literature review, it was anticipated the citizenship response likely predominated among countries whose citizens had travelled abroad to join an armed group. This phenomenon was a major and controversial policy issue in relation to ISIS because of its success in recruiting thousands of adults and children from various countries to join military campaigns in Iraq and Syria (Bloom, 2019).

It was expected then that the citizenship response policy would be prevalent in the three liberal democratic countries whose citizens travelled overseas to join ISIS: Canada, the U.K, and the U.S.A. However, the empirical findings in this study challenged this hypothesis.

As explained in the appendix, both adult and underage citizens of Canada, the U.K., and the USA have been detained in Syria because Kurdish regional authorities suspected or were able to confirm they were ISIS members or supporters. Yet although these three countries were close allies in military operations against ISIS, they responded differently to the detention of their citizens in Syria. The U.S.A. was firmly committed to repatriating and prosecuting its citizens detained in Syria and urged its allies to do the same. In contrast, the U.K. not only steadfastly refused to repatriate detained British citizens, but also sought to prevent their return by stripping some of citizenship. Canada adopted a mixed policy approach; it resisted pressure to repatriate citizens while also declining to use existing legal powers to strip ISIS-associated Canadians of citizenship. For all three countries, the number of foreign fighters has been relatively small, numbering in the dozens or less. It is interesting to observe different approaches in three military allies with relatively similar cultures, political systems and levels of socioeconomic development. News articles reviewed during the data-collection phase discussed a wide range of responses towards foreign fighters. For example, Kazakhstan's policy involved repatriating ISIS-associated children and giving them amnesty (Kaliyev, 2021), while Sweden prosecuted the *mother* of a 12-year-old child who died fighting with ISIS in Syria because she failed to prevent him from being recruited as a child soldier (*Sweden Convicts Mother of War Crimes over Minor Fighting for ISIL*, 2022). Further research with a larger sample size could provide valuable information about why countries choose to pursue different policies towards foreign fighters.

None of the literature reviewed for this study suggested that countries had denied, revoked, or otherwise interfered with the citizenship rights of local child soldiers *on their own territory*. An unexpected finding was the Iraqi authorities' citizenship policy towards infants born on Iraqi territory formerly controlled by ISIS. Arguably, the contextual justification for the Iraqi authorities' policy of denying citizenship to infants was not unique. Retaliation towards children born in territory formerly controlled by ISIS suggests a policy to either punish their parents by proxy, or to impose punishment upon children themselves based entirely on their parentage. Further research is needed to explore whether other government authorities have applied a similar approach.

Validity of models

This study presented two models illustrating how government authorities would likely treat child soldiers. The following section considers the validity of these two models in the context of available findings.

Model #1: Impact of age upon government responses to child soldiers

The first model (model #1) described how child soldiers would most likely be treated by governments and how age influenced that treatment.²⁸ Specifically, it illustrated the relative likelihood that a child soldier would be subject to detention, trial, alternative justice, amnesty, or the citizenship response, and also how age affected the likelihood of those 5 responses.

Model #1 incorporated various empirical findings outlined in Chapter 3. Since empirical findings indicate detention is the overwhelmingly predominant approach to child soldiers, model #1 suggested that child soldiers were more likely to encounter detention than the other 5 responses. Model #1 also incorporated findings indicating child soldiers are typically treated similarly to their adult counterparts, with three exceptions: (i) children more often are released through handover protocols; (ii) children less often face trial; and (iii) at trial, children more often receive lenient sentences.

²⁸ See Figure 4 at page 64.

Because model #1 was based upon patterns in the empirical findings, its validity is subject to the same cautions and limitations as the empirical data. For example, while model #1 indicated alternative justice programs were both highly unlikely and indifferent to age, there were limitations on the data regarding alternative justice programs.²⁹ It is also important to note that model #1 did not address children who never encountered any government response whatsoever. Literature revealed that a number of child soldiers independently demobilized and returned home, or anonymously started lives in new communities without being subject to any government programs or sanctions (Schotsmans (2012)). Further research is needed to explore the likelihood of child soldiers encountering no government response at all.

Model #1 illustrated likely outcomes informed by general patterns in the findings. However, model #1 did not precisely illustrate *all* of the empirical findings. In some countries, outcomes were different than model #1 suggested. For example, although model #1 described detention as highly likely for child soldiers, Ugandan child soldiers from the LRA were not detained. Likewise, although model #1 described alternative justice programs and trials as highly unlikely for child soldiers, alternative justice programs and trials were the Rwandan government's predominant response towards underage *genocidaires*. Furthermore, some patterns in the empirical data were absent from model #1. In particular, model #1 did not reflect the finding that amnesties are more likely in African countries than elsewhere. Model #1 is best understood as a summary of global trends in the treatment of child soldiers, not as a predictive tool for specific cases.

Model #2: Impact of conflict timing upon response and level of retribution

The second model (model #2) described how the timeframe of an armed conflict (i.e. early, on-going, or post-conflict stages) affected the likelihood of detention, trial, amnesty through handover protocols, amnesty through peace agreements, alternative justice programs, or the citizenship response.³⁰ Model #2 also organized these responses according to their relative degree of punitiveness.

²⁹ These limitations are detailed in Chapter 2, Chapter 3, and in this chapter at page 80.

³⁰ See Figure 5 at page 65.

Unlike model #1, model #2 was not primarily informed by empirical findings regarding the relative prevalence of detention, trial, amnesty, alternative justice programs, and the citizenship response. Instead, model #2 was primarily informed by the literature review and overall themes from the country reports in the appendix.

Model #2 has the potential to assist children's rights advocates because it provides at-a-glance information about when child soldiers are most likely to be treated punitively within a particular conflict. This information has implications for policy development and advocacy work. For example, according to model #2, in the early or middle states of a conflict, advocates seeking to protect child soldiers from harsh detention conditions could be well-advised to promote handover protocols. In later stages of a conflict, advocates could have more success promoting amnesties through peace agreements, alternative justice programs, or sending children from detention to trial.

It is important to note that while model #2 describes three conflict stages, this study did not empirically examine the early, on-going, and post-conflict stages of particular conflicts. The empirical data simply distinguished between post-conflict cases and other cases. Furthermore, there were significant limitations in the empirical data related to conflict timing.³¹ Model #2 is therefore best understood as an early hypothesis informed by initial exploratory research.

³¹ These limitations were fully described in Chapters 2 and 3.

References

- A Historical Timeline of Afghanistan*. (2021, August 30). PBS News Hour. <https://www.pbs.org/newshour/politics/asia-jan-june11-timeline-afghanistan>
- Afghanistan: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/afghanistan/>
- African Member States of the Organization of African Unity. (1990). *African Charter on the Rights and Welfare of the Child*. [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/2AfricanCharterontheRightsandWelfareoftheChild\(1990\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/2AfricanCharterontheRightsandWelfareoftheChild(1990).aspx)
- African Union Commission, & Lake Chad Basin Commission. (2018). *Pillar Paper for Screening, Prosecution, Rehabilitation and Reintegration: Lake Chad Basin Region*. African Union. <https://www.peaceau.org/uploads/annex-3-lcbc-strategy-pillar-paper-screening-prosecution-rehabilitation-and-reintegration.pdf>
- Akello, G. (2019). Child agency and resistance to discourses within the Paris Principles in rehabilitation and reintegration processes of former child soldiers in northern Uganda. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 436–451). Edward Elgar Publishing Limited.
- Al Tahhan, Z. (2022). *Palestinian prisoners launch boycott of Israeli military courts*. Al Jazeera News. <https://www.aljazeera.com/news/2022/1/4/palestinian-prisoners-launch-boycott-of-israeli-military-courts>
- Ali, M. M. (2017). Omar Khadr's Legal Odyssey: The Erasure of Child Soldier as a Legal Category. *Georgia Journal of International and Comparative Law*, 46(2), 350. <https://heinonline.org/HOL/P?h=hein.journals/gjicl46&i=358>
- Amnesty International. (2017). *Cameroon's Secret Torture Chambers: Human Rights Violations and War Crimes in the Fight Against Boko Haram*. Amnesty International. <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR1765362017ENGLISH.pdf>
- Amnesty International. (2021). *Germany/Iraq: World's first judgment on crime of genocide against the Yazidis*. ReliefWeb. <https://reliefweb.int/report/iraq/germanyiraq-world-s-first-judgment-crime-genocide-against-yazidis>
- BBC News. (2018). *Nigeria's Boko Haram crisis: Court frees 475 suspects*. BBC News. <https://www.bbc.com/news/world-africa-43111860>
- BBC News. (2019). *Shamima Begum: What is her legal status?* BBC News. <https://www.bbc.com/news/uk-47310206>
- BBC News. (2021). *Dominic Ongwen: Former Ugandan child soldier jailed for war crimes*. BBC News. <https://www.bbc.com/news/world-africa-57009970>

- Becker, J. (2020). The Detention of Children in the Context of Armed Conflict. *Allons-y: Journal of Children, Peace and Security*, 4(0), 86–94.
<https://doi.org/10.15273/allons-y.v4i0.10086>
- Bell, S. (2019). *Among Canadian ISIS detainees in Syria, women far outnumber men*. Global News. <https://globalnews.ca/news/6021043/canadian-isis-detainees-women-outnumber-men/>
- Bell, S. (2021a). *Canadian ISIS sniper broke 2 anti-terrorism laws, RCMP alleges in unsealed document*. Global News.
<https://globalnews.ca/news/8449795/canadian-isis-sniper-anti-terrorism-laws-rcmp/>
- Bell, S. (2021b). *RCMP preparing charges against Toronto IT worker who became ‘voice of ISIS,’ document reveals*. Global News.
<https://globalnews.ca/news/7970022/rcmp-charges-toronto-it-worker-voice-isis/>
- Bertelsmann Stiftung. (2020). BTI 2020 Country Report—Mexico. *Gütersloh: Bertelsmann Stiftung, 2020*. <https://www.bti-project.org/en/reports/country-report-MEX.html>
- Bloom, M. (2019). Weaponizing the weak: The role of children in terrorist groups. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 195–216). Edward Elgar Publishing Limited.
- Boisvert, N. (2021). *Father of Canadian imprisoned in Syria after joining ISIS urges Ottawa to bring him home to face trial*. CBC News.
<https://www.cbc.ca/news/politics/john-letts-repatriation-interview-1.6278950>
- Burke, J. (2017). *Secret trials of thousands of Boko Haram suspects to start in Nigeria*. The Guardian News. <https://www.theguardian.com/world/2017/oct/09/nigeria-begin-secret-trials-thousands-boko-haram-suspects>
- Burkina Faso: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/burkina-faso/>
- Cameroon: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/cameroon/>
- Casey-Maslen, S. (2019). Children associated with Boko Haram: Dissociation, protection, accountability and reintegration. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 452–470). Edward Elgar Publishing Limited.
- Cedrangolo, U. (2019). The Accountability for International Crimes Perpetrated by Children. *International Criminal Law Review*, 19(4), 698–723.
<https://doi.org/10.1163/15718123-01904003>

- Center for the Study of Human Rights in the Americas. (2013). *Guantanamo's Children: The Wikileaks Testimonies*. Center for the Study of Human Rights in the Americas. <https://humanrights.ucdavis.edu/reports/guantanamos-children-the-wikileaks-testimonies/guantanamos-children-the-wikileaks-testimonies>
- Child Rights International Network. (n.d.). *Minimum ages of criminal responsibility around the world*. Retrieved August 18, 2021, from <https://archive.crin.org/en/home/ages.html>
- Child Soldiers International. (2001). *Child Soldiers Global Report 2001—Palestinian Authority/Occupied Territories*. RefWorld. <https://www.refworld.org/docid/498805d928.html>
- Child Soldiers International. (2013). *Louder than words: An agenda for action to end state use of child soldiers*. Refworld. <https://www.refworld.org/docid/5208bcdb4.html>
- Child Soldiers International. (2016a). *Refworld | Briefing on the situation of underage recruitment and use of children by armed forces and insurgent groups in Afghanistan to the UN Security Council Working Group on Children and Armed Conflict*. Refworld. <https://www.refworld.org/docid/57d80b204.html>
- Child Soldiers International. (2016b). *Refworld | Submission to the 75th pre-session of the Committee on the Rights of the Child: Cameroon*. Refworld. <https://www.refworld.org/docid/5949017f4.html>
- Chung, E. (2010). *Khadr repatriation overturned by top court*. CBC News. <https://www.cbc.ca/news/canada/khadr-repatriation-overturned-by-top-court-1.893059>
- Ciurliza, J. (2012). And the Children Learned Not to Cry: Stories about Children and Transitional Justice in Latin America. In I. Derluyn, C. Mels, S. Parmentier, & W. Vandenhoe (Eds.), *Re-member: Rehabilitation, reintegration and reconciliation of war-affected children* (pp. 105–126). Intersentia.
- Corrado, R. R. (1983). Ethnic and Ideological Terrorism in Western Europe. In M. Stohl (Ed.), *The Politics of Terrorism* (2nd ed.). M. Dekker.
- Counter Extremism Project (CEP). (2022). *Canada: Extremism and Terrorism*. Counter Extremism Project. <https://www.counterextremism.com/countries/canada-extremism-and-terrorism>
- Dewan, A. (2020). *Trump is calling protesters who disagree with him terrorists. That puts him in the company of the world's autocrats*. CNN Politics. <https://edition.cnn.com/2020/07/25/politics/us-protests-trump-terrorists-intl/index.html>
- Dozier, K. (2019). *What Happens Now to the Child Soldiers of ISIS? Time*. <https://time.com/longform/isis-child-soldiers-yezidi/>

- Drumbl, M. A. (2013). Transcending Victimhood: Child Soldiers and Restorative Justice. In T. Bonacker & C. Safferling (Eds.), *Victims of International Crimes: An Interdisciplinary Discourse* (pp. 119–145). T. M. C. Asser Press.
https://doi.org/10.1007/978-90-6704-912-2_8
- Drumbl, M. A., & Barrett, J. C. (2019). Introduction to the Research Handbook on Child Soldiers. In *Research Handbook on Child Soldiers* (pp. 195–216). Edward Elgar Publishing Limited.
- Ellis, R. E. (2020). Mexico's Deepening Crisis. *Center for Strategic and International Studies*, 11. https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/200920_Ellis_NeighborRisk_v2.pdf
- Encyclopaedia Britannica. (2022a). *Al-Qaeda*. Britannica.
<https://www.britannica.com/topic/al-Qaeda>
- Encyclopaedia Britannica. (2022b). *Omar Khadr case*. Britannica.
<https://www.britannica.com/event/Omar-Khadr-case#ref335900>
- France 24. (2020). *France asks Afghans not to free Taliban convicted of killing French citizens*. France 24. <https://www.france24.com/en/20200816-france-asks-afghans-not-to-free-taliban-convicted-of-killing-french-citizens>
- Gacka, P. (2020). Can Duress Exclude Criminal Responsibility of Former Child Soldiers? The Case of Dominic Ongwen Before the International Criminal Court. *Studia Iuridica*, 82, 78–100. <https://www.ceeol.com/search/article-detail?id=841338>
- Geleff, K., & McGillivray, K. (2022). *20 years after he built it, this general wants Guantanamo closed. But he's "not confident" it ever will be*. CBC Radio.
<https://www.cbc.ca/radio/asithappens/as-it-happens-tuesday-edition-1.6310999/20-years-after-he-built-it-this-general-wants-guantanamo-closed-but-he-s-not-confident-it-ever-will-be-1.6312359>
- Global Coalition for the Reintegration of Child Soldiers. (2020). *Gaps and Needs for the Successful Reintegration of Children Associated with Armed Forces or Armed Groups*. <https://childrenandarmedconflict.un.org/wp-content/uploads/2020/12/GCR-Gaps-and-Needs-10.2020.pdf>
- Global Risk Insights. (2015). *Shining Path is Back*. International Policy Digest.
<https://web.archive.org/web/20150926061045/http://www.internationalpolicydigest.org/2015/08/18/shining-path-is-back/>
- Haddad, M. (2022). *Guantanamo Bay explained in maps and charts*. Al Jazeera.
<https://www.aljazeera.com/news/2021/9/7/guantanamo-bay-explained-in-maps-and-charts-interactive>
- Hajjar, L. (2005). *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza (1st ed.)*. University of California Press.
<http://www.jstor.org/stable/10.1525/j.ctt1pp0fd>

- Hanson, K., & Molima, C. (2019). Getting Tambo out of limbo: Exploring alternative legal frameworks that are more sensitive to the agency of children and young people in armed conflict. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 110–132). Edward Elgar Publishing Limited.
- History.com. (2022). *Rwandan Genocide*. History.Com.
<https://www.history.com/topics/africa/rwandan-genocide>
- Holaday, C. (2022). *American Allison Elizabeth Fluke-Ekren, 42, 'led female ISIS battalion to plan attack & trained recruits with AK-47s.'* The Sun.
<https://www.thesun.co.uk/news/17485113/allison-fluke-ekren-kansas-isis-terrorist/>
- House Report 110-620: Removing the African National Congress from Treatment as a Terrorist Organization.* (2008). U.S. Congress.
<https://www.congress.gov/congressional-report/110th-congress/house-report/620>
- Human Rights Watch. (n.d.). *Omar Khadr: Military Commission Trial of Ex-Child Soldier Questions and Answers*. Human Rights Watch.
https://www.hrw.org/sites/default/files/related_material/Omar%20Khadr%20Q%26A.pdf
- Human Rights Watch. (2011a). *Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts*. Human Rights Watch.
<https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courts>
- Human Rights Watch. (2011b). *Uganda: Q&A on the trial of Thomas Kwoyelo*. Human Rights Watch. https://www.hrw.org/news/2011/07/07/uganda-qa-trial-thomas-kwoyelo#_Toc297802922
- Human Rights Watch. (2012). *Q&A on Joseph Kony and the Lord's Resistance Army*. Human Rights Watch. <https://www.hrw.org/news/2012/03/21/qa-joseph-kony-and-lords-resistance-army#16>
- Human Rights Watch. (2013). *Mali: Islamists Should Free Child Soldiers*. Human Rights Watch. <https://www.hrw.org/news/2013/01/15/mali-islamists-should-free-child-soldiers>
- Human Rights Watch. (2020). *Cameroon: Boko Haram Suicide Bombers Strike Displacement Site*. Human Rights Watch.
<https://www.hrw.org/news/2020/08/25/cameroon-boko-haram-suicide-bombers-strike-displacement-site>
- Immigration and Refugee Board of Canada. (2012). *Rwanda: Whether the gacaca courts are still operational; if not, the new mechanisms for solving issues that were under the jurisdiction of gacaca courts (July 2010-Sept. 2012)*. RefWorld.
<https://www.refworld.org/docid/50aa41462.html>
- Institute for Economics & Peace. (2020). *Mexico Peace Index 2020: Identifying and Measuring the Factors that Drive Peace*. April.

- <https://www.visionofhumanity.org/wp-content/uploads/2020/10/ENG-MPI-2020-web.pdf>
- International Center for Transitional Justice. (2018). *Victims in the Thomas Kwoyelo Case Forced to Wait Longer for Justice*. International Center for Transitional Justice. <https://www.ictj.org/news/victims-thomas-kwoyelo-case-forced-wait-longer-justice>
- International Committee of the Red Cross (ICRC). (2008). *How is the term “Armed Conflict” defined in international humanitarian law?* International Committee of the Red Cross. <https://www.icrc.org/en/doc/resources/documents/article/other/armed-conflict-article-170308.htm>
- International Crimes Database. (n.d.). *United States of America v. Omar Ahmed Khadr*. International Crimes Database (ICD). <https://www.internationalcrimesdatabase.org/Case/968/Khadr/>
- International Crisis Group. (2017). *Niger and Boko Haram: Beyond Counter-insurgency*. International Crisis Group. <https://www.crisisgroup.org/africa/west-africa/niger/245-niger-and-boko-haram-beyond-counter-insurgency>
- International Crisis Group. (2018). *Cameroon’s Far North: A New Chapter in the Fight Against Boko Haram*. International Crisis Group. <https://www.crisisgroup.org/africa/central-africa/cameroon/263-extreme-nord-du-cameroun-nouveau-chapitre-dans-la-lutte-contre-boko-haram>
- International Federation for Human Rights. (2017). *Choosing justice in the face of crisis*. International Federation for Human Rights. https://www.fidh.org/IMG/pdf/20171208_rapportmali_justice_en.pdf
- Iraq: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/iraq/>
- IRIN News. (2013). *Mali takes baby steps toward protecting former child soldiers*. The New Humanitarian. <https://www.thenewhumanitarian.org/news/2013/10/11/mali-takes-baby-steps-toward-protecting-former-child-soldiers>
- Israel, West Bank and Gaza: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/israel-west-bank-and-gaza/>
- Jiménez, A. M. (2019). Challenges for the protection of child victims of recruitment and use in an era of complex armed conflicts: The Colombian case. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 52–73). Edward Elgar Publishing Limited.
- Jones, N. (2018). The Strategic Implications of the Cártel de Jalisco Nueva Generación. *Journal of Strategic Security*, 11(1). <https://doi.org/10.5038/1944-0472.11.1.1661>

- Kaandorp, M. (2015). *Methodology Guidance on Child Notice*. UNICEF The Netherlands. https://www.unicef.nl/files/unc_methodology_guide_child_notice_en_final_web.pdf
- Kafeero, S. (2021). *Failed justice casts shadow over ICC trial verdict*. New Frame. <https://www.newframe.com/failed-justice-casts-shadow-over-icc-trial-verdict/>
- Kaliyev, T. (2021). *Kazakh efforts to repatriate ISIL fighters should be replicated*. Al Jazeera. <https://www.aljazeera.com/opinions/2021/7/7/kazakh-efforts-to-repatriate-isil-fighters-should-be-replicated>
- Kiyala, J. C. K. (2019). *Child Soldiers and Restorative Justice: Participatory Action Research in the Eastern Democratic Republic of Congo*. Springer, Cham. <https://doi.org/10.1007/978-3-319-90071-1>
- Knight, S. (2020). *If Shamima Begum, the ISIS Bride, Is No Longer British, What Does Citizenship Mean?* The New Yorker. <https://www.newyorker.com/news/letter-from-the-uk/if-shamima-begum-the-isis-bride-is-no-longer-british-what-does-citizenship-mean>
- Laub, Z., & Robinson, K. (2021). *Backgrounder: What Is Hamas?* Council on Foreign Relations. <https://www.cfr.org/backgrounder/what-hamas>
- Lorschiedter, A., & Bannink-Mbazzi, F. (2012). Support to the Education and Livelihoods of War-Affected Children and Youth in Northern Uganda. In I. Derluyn, C. Mels, S. Parmentier, & W. Vandenhole (Eds.), *Re-member: Rehabilitation, reintegration and reconciliation of war-affected children* (pp. 243–262). Intersentia.
- Macdonald, A., & Porter, H. (2016). *The Trial of Thomas Kwoyelo: Opportunity or Spectre? Reflections from the Ground on the First LRA Prosecution*. Cambridge University Press. <https://www.cambridge.org/core/journals/africa/article/trial-of-thomas-kwoyelo-opportunity-or-spectre-reflections-from-the-ground-on-the-first-lra-prosecution/FAB62165B7B94FC1007BA5CE313EED2D>
- Maizland, L. (2021, September 15). *The Taliban in Afghanistan*. Council on Foreign Relations. <https://www.cfr.org/backgrounder/taliban-afghanistan>
- Mali: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/burkina-faso/>
- Maystre, M. (2014). The Interaction between International Refugee Law and International Criminal Law with respect to Child Soldiers. *Journal of International Criminal Justice*, 12(5), 975–996. <https://doi.org/10.1093/jicj/mqu073>
- McDonald, J. (2021). *'One name in a long list': The pointless death of another West Bank teenager*. The Guardian News. <https://www.theguardian.com/global-development/2021/may/28/one-name-in-a-long-list-the-pointless-death-of-another-west-bank-teenager>

- Mednick, S. (2021). *Burkina Faso sees more child soldiers as jihadi attacks rise*. AP News. <https://apnews.com/article/africa-United-Nations-child-soldiers-burkina-faso-e28058b0ae92dfa44df9633bc6affcef>
- Mickolus, E. (1983). International Terrorism. In M. Stohl (Ed.), *The Politics of Terrorism* (2nd ed.). M. Dekker.
- Middle East Monitor. (2021). *Israel sentences Palestine teen to 10 years in jail*. Memo Middle East Monitor. <https://www.middleeastmonitor.com/20211126-israel-sentences-palestine-teen-to-10-years-in-jail/>
- Mitra, A. (2019). Child Soldiers in the Democratic Republic of Congo: Revisiting 'Reintegration' through a Psycho-Social Framework. *Allons-y: Journal of Children, Peace and Security*, 3(0), 48–63. <https://doi.org/10.15273/allons-y.v3i0.10060>
- Mosadiq, H., Kaandorp, M., Poyesh, N., Hassrat, H., Mohammadi, A. A., Thorson, J. E., Mirzaei, Z., & Ahmadi, F. (2018). *UNICEF Child Notice Afghanistan 2018*. 124. [https://www.unicef.nl/files/Child%20Notice_Afghanistan%20EN%20\(2018\)%20FINAL.pdf](https://www.unicef.nl/files/Child%20Notice_Afghanistan%20EN%20(2018)%20FINAL.pdf)
- Ngari, A., & Olojo, A. (2020). *Mass terror trials test Nigeria's criminal justice system*. Institute for Security Studies. <https://issafrika.org/iss-today/mass-terror-trials-test-nigerias-criminal-justice-system>
- Niger: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/niger/>
- Nyamutata, C. (2020). Young Terrorists or Child Soldiers? ISIS Children, International Law and Victimhood. *Journal of Conflict & Security Law*, 25(2), 237–261. <https://doi.org/10.1093/jcsl/krz034>
- Ocen, J. (2007). *Can Traditional Rituals Bring Justice to Northern Uganda?* Institute for War & Peace Reporting. <https://iwpr.net/global-voices/can-traditional-rituals-bring-justice-northern-uganda>
- Office of the High Commissioner for Human Rights, & United Nations Assistance Mission for Iraq Human Rights Office. (2014). *Report on the Death Penalty in Iraq*. https://www.ohchr.org/sites/default/files/Documents/Countries/IQ/UNAMI_HRO_DP_1Oct2014.pdf
- Paybarah, A. (2021, August 27). What Is the Islamic State Khorasan, a.k.a. ISIS-K? *The New York Times*. <https://www.nytimes.com/2021/08/27/world/asia/who-isis-k-afghanistan.html>
- Rikhof, J. (2019). Child soldiers and asylum – duality or dilemma? In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 390–407). Edward Elgar Publishing Limited.

- Rome Statute of the International Criminal Court*. (n.d.). Retrieved April 21, 2021, from <https://www.icc-cpi.int/resourcelibrary/official-journal/rome-statute.aspx>
- Rosen, D. M. (2019). Child soldiers in historical and comparative perspective: Creating a space for data-driven analysis. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 150–174). Edward Elgar Publishing Limited.
- Rothman, L. (2015). *Why the United States Controls Guantanamo Bay*. Time. <https://time.com/3672066/guantanamo-bay-history/>
- Rudling, A. (2022). *Can Colombia Be a Model for the Post Truth Commission Period?* JusticeInfo.Net. <https://www.justiceinfo.net/en/86885-can-colombia-be-model-for-post-truth-commission-period.html>
- Saffon, S. (2020). *Peru in Familiar Stalemate With Shining Path Rebels*. InSight Crime. <https://insightcrime.org/news/brief/peru-stalemate-shining-path/>
- Scheinin, M., & Vermeulen, M. (2010). *Unilateral Exceptions to International Law: Systematic Legal Analysis and Critique of Doctrines that Seek to Deny or Reduce the Applicability of Human Rights Norms in the Fight against Terrorism* [Working Paper]. European University Institute Department of Law. <https://cadmus.eui.eu/handle/1814/14178>
- Schotsmans, M. (2012). No Return Home: The (Non-) Reintegration of Youth Ex-Combatants in Sierra Leone as a Challenge to the Contextualisation of DDR and Transitional Justice. In I. Derluyn, C. Mels, S. Parmentier, & W. Vandenhole (Eds.), *Re-member: Rehabilitation, reintegration and reconciliation of war-affected children* (pp. 215–241). Intersentia.
- Shephard, M. (2009). *CSIS failed in Khadr case, review finds*. Toronto Star. https://www.thestar.com/news/canada/2009/07/16/csis_failed_in_khadr_case_review_finds.html
- Somalia: 2020 Country Reports on Human Rights Practices*. (2020). U.S. Department of State. <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/somalia/>
- Stanford University. (2019). *Mapping Militant Organizations: “National Liberation Army.”* <https://cisac.fsi.stanford.edu/mappingmilitants/profiles/national-liberation-army-eln>
- Stevenson, M. (2021). *In Mexico, children as young as 10 recruited by drug cartels*. AP News. <https://apnews.com/article/caribbean-mexico-city-mexico-drug-cartels-6f73f0a2277ea91eb5a39a098238ae6b>
- Stohl, M. (1983). Myths and Realities of Political Terrorism. In M. Stohl (Ed.), *The Politics of Terrorism* (2nd ed.). M. Dekker.
- Sullo, P. (2012). When Hurbinek Survives: Transitional Justice and Children’s Rights: Lessons Learnt from Rwanda. In I. Derluyn, C. Mels, S. Parmentier, & W.

- Vandenhoe (Eds.), *Re-member: Rehabilitation, reintegration and reconciliation of war-affected children* (pp. 127–151). Intersentia.
- Sweden convicts mother of war crimes over minor fighting for ISIL. (2022). Al Jazeera. <https://www.aljazeera.com/news/2022/3/4/sweden-jails-mother-for-war-crimes-over-minor-fighting-for-isil>
- The Associated Press, T. A. (2021, August 16). *7 dead in chaos at Kabul airport as Afghans desperately try to flee the country* | CBC News. CBC. <https://www.cbc.ca/news/world/afghanistan-kabul-taliban-august16-2021-1.6142098>
- The Guardian. (2003). *US detains children at Guantanamo Bay*. The Guardian News. <https://www.theguardian.com/world/2003/apr/23/usa>
- The Roméo Dallaire Child Soldiers Initiative et al. (2018). *Somalia Country Report: Children and Security*. <https://www.childsoldiers.org/wp-content/uploads/2020/01/Somalia-September-2018-Report.pdf>
- The Times of Israel. (2021). *Israel said to arrest over 100 Hamas members in Hebron area in major sweep*. The Times of Israel. <https://www.timesofisrael.com/israel-said-to-arrest-over-100-hamas-members-in-hebron-area-in-major-sweep/>
- The Vancouver Principles*. (2021). Government of Canada. https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/principles-vancouver-principes.aspx?lang=eng
- The Vancouver Principles on Peacekeeping and the Prevention of the Recruitment and Use of Child Soldiers*. (2021). Government of Canada. https://www.international.gc.ca/world-monde/issues_development-enjeux_developpement/human_rights-droits_homme/principles-vancouver-principes-pledge-engageons.aspx?lang=eng
- Thomason, K. K. (2016). *Seeing Child Soldiers As Morally Compromised Warriors: The Ambiguous Moral Responsibility Of Child Soldiers*. The Critique. <http://www.thecritique.com/articles/seeing-child-soldiers-as-morally-compromised-warriors/>
- Thrower, A. (2022). *Woman who shared ISIS propaganda videos showing children's dead bodies is jailed*. Mirror. <https://www.mirror.co.uk/news/uk-news/woman-who-shared-isis-propaganda-26195891>
- Townsend, M. (2021). *Police treated us like criminals, say families of girls trafficked to Islamic State in Syria*. The Guardian News. <https://www.theguardian.com/politics/2021/dec/04/police-treated-us-like-criminals-say-families-of-girls-trafficked-to-islamic-state-in-syria>
- Tracy, J. (2009). Detention and Prosecution of Alleged Terrorists and Combatants. *Human Rights Brief*, 16(3). <https://digitalcommons.wcl.american.edu/hrbrief/vol16/iss3/4/>

- Truth and Reconciliation Commission Communications and Public Impact Office. (2003). *Final Report: Press Release 226*. Comision de La Verdad y Reconciliacion. <http://www.cverdad.org.pe/ingles/pagina01.php>
- UN Children's Fund (UNICEF). (2007). *The Paris Principles. Guidelines on Children Associated with Armed Forces or Armed Groups*. <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>
- UN General Assembly. (1989). *Convention on the Rights of the Child. Treaty Series, 1577, 3*. <https://www.ohchr.org/documents/professionalinterest/crc.pdf>
- UN General Assembly. (2001). *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>
- UN Secretary General. (2019). *Children and armed conflict in Colombia—Report of the Secretary-General (S/2019/1017)*. ReliefWeb. <https://reliefweb.int/report/colombia/children-and-armed-conflict-colombia-report-secretary-general-s20191017>
- United Nations Office on Drugs and Crime. (n.d.-a). *Core principles of international humanitarian law*. Retrieved July 20, 2021, from <https://www.unodc.org/e4j/en/terrorism/module-6/key-issues/core-principles-of-ihl.html>
- United Nations Office on Drugs and Crime. (n.d.-b). *Organized crime international framework—The Organized Crime Convention and its Protocols*. Retrieved July 20, 2021, from <https://www.unodc.org/e4j/en/organized-crime/module-16/key-issues/organized-crime-international-framework---the-organized-crime-convention-and-its-protocols.html>
- Ursini, B. (2015). Prosecuting Child Soldiers: The Call for an International Minimum Age of Criminal Responsibility. *St. John's Law Review*, 89, 1023. <https://heinonline.org/HOL/Page?handle=hein.journals/stjohn89&id=1037&div=&collection=>
- Van Engeland, A. (2019). The voiceless child soldiers of Afghanistan. In M. A. Drumbl & J. C. Barrett (Eds.), *Research Handbook on Child Soldiers* (pp. 175–194). Edward Elgar Publishing Limited.
- Vindevogel, S., Coppens, K., Derluyn, I., Loots, G., & Broekaert, E. (2012a). Life in Rebel Captivity and its Challenges for the Psychosocial Rehabilitation and Reintegration of Former Child Soldiers: The Case of Northern Uganda. In I. Derluyn, C. Mels, S. Parmentier, & W. Vandenhole (Eds.), *Re-member: Rehabilitation, reintegration and reconciliation of war-affected children* (pp. 307-327.). Intersentia.
- Vindevogel, S., Coppens, K., Derluyn, I., Loots, G., & Broekaert, E. (2012b). Psychosocial Care in Rehabilitation Centers for Former Child Soldiers in Northern Uganda. In I. Derluyn, C. Mels, S. Parmentier, & W. Vandenhole (Eds.),

Re-member: Rehabilitation, reintegration and reconciliation of war-affected children (pp. 329–375). Intersentia.

Walker, C. (2021). Inocencia: Shining Path and the Recruitment of Minors, Ayacucho in the 1980s. *Journal of Social History*. <https://doi.org/10.1093/jsh/shab052>

Watchlist on Children and Armed Conflict. (2020). *A Path to Reintegration: The Role of Handover Protocols in Protecting the Rights of Children Formerly Associated with Armed Forces or Armed Groups*. Watchlist.Org. https://watchlist.org/wp-content/uploads/2416-watchlist-policy-note-dec-2020_final.pdf

Wilkins, H. (2021). *Hundreds in Burkina Faso, Including Minors, Await Trial on Terrorism Charges*. VOA News. <https://www.voanews.com/a/hundreds-in-burkina-faso-including-minors-await-trial-on-terrorism-charges-/6260162.html>

Wilson Center. (2022). *Timeline: The Rise, Spread, and Fall of the Islamic State*. Wilson Center. <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state#:~:text=The%20Islamic%20State%20%E2%80%93%20also%20known,begin%20to%20reemerge%20in%202011>.

Wintour, P. (2021). *US pushes France and UK to take Isis fighters back from Iraq and Syria*. The Guardian News. <https://www.theguardian.com/world/2021/jun/28/us-pushes-france-and-uk-to-take-isis-fighters-back-from-iraq-and-syria>

Youth and the National Liberation Struggle. (2022). South African History Online (SAHO). <https://www.sahistory.org.za/article/youth-and-national-liberation-struggle>

Appendix A: Country Reports

Afghanistan

Taliban and ISIS-K: 2015 - 2021

BACKGROUND

The Taliban are a militant jihadist group that ruled Afghanistan from 1996 until their government was toppled by a U.S.-led military invasion in 2001 (Maizland, 2021). The Taliban regime was replaced by a NATO-backed government which it continued to fight for the next twenty years (*A Historical Timeline of Afghanistan*, 2021). In August 2021, the Taliban overthrew the sitting government and re-won political control of Afghanistan. The Taliban have strong ties with Al-Qaeda, who they provide with protection in exchange for resources and training (Maizland, 2021).

Islamic State Khorasan Province (ISIS-K) is an ISIS-affiliated militant jihadist group in Afghanistan that is a rival, not an ally, of the Taliban. It was initially founded in 2015 by Pakistani Taliban and advocates a more violent version of Islamic law than the Taliban (Paybarah, 2021).

Various armed groups in Afghanistan, including the Taliban and ISIS-K, have been recruiting children since at least 2015 (Mosadiq et al., 2018). Both the Taliban and ISIS-K continued to recruit and deploy child soldiers in Afghanistan throughout 2020 (*Afghanistan*, 2020).

This data reflects how Taliban and ISIS-K child soldiers were treated under the former government of Afghanistan between 2015-2021.

DETENTION

In a June 2016 briefing report, the UN Security Council Working Group on Children and Armed Conflict reported:

“Detention of children on national security related charges continues to be widely practiced by authorities in Afghanistan. Once children are arrested, they are dealt with not as victims but as adult offenders. Ill-treatment and torture during interrogations, which are primarily focused on obtaining confessions, is common.” (Child Soldiers International, 2016, p. 2)

In 2018, government authorities in Afghanistan often detained children associated with the Taliban or ISIS-K on charges related to national security (Mosadiq et al., 2018).

In April 2017, the United Nations Assistance Mission in Afghanistan (UNAMA) reported that 38 out of 85 minor conflict-related detainees being tortured and ill-treated by Afghan security forces (Mosadiq et al., 2018).

Throughout 2020, after being captured by government forces, children associated with militant groups were placed in detention facilities run by the national intelligence and security service. Those associated with ISIS-K remained at these facilities indefinitely. Children arrested for national security violations stayed in the country's primary military prison. Others were sometimes transferred to juvenile rehabilitation centers and a shelter run by the Ministry of Labor and Social Affairs. In 2020, an estimated 125 children were held at the detention facility and an estimated 30 children were at the shelter; the number at the juvenile centers was unknown (*Afghanistan*, 2020).

Children were imprisoned irrespective of their age and usually did not receive the presumption of innocence, the right to know the charges against them, access to defense lawyers, or protection from self-incrimination. They were predominantly treated as criminal adults, without separate facilities or adequate protections from abuse by adult inmates or prison staff (*Afghanistan*, 2020).

Non-governmental organizations reported a predominantly punitive and retributive approach to juvenile justice throughout the country in 2020. Although it is against the law, corporal punishment in rehabilitation centers (as well as schools and other public institutions) remains (*Afghanistan*, 2020).

TRIAL

Adults associated with the Taliban were prosecuted for murder. In 2020, the (former) government of Afghanistan agreed to release some previously convicted adult Taliban militants during peace negotiations (France 24, 2020). However, despite the widespread practice of detaining children suspected of being members of the Taliban or ISIS-K on charges related to national security, no cases of children being sent to trial were identified.

ALTERNATIVE JUSTICE

There are informal customary justice systems in Afghanistan rooted in tribal structures and Sharia law (Mosadiq et al., 2018). However, no cases were found of these systems being applied to children associated with the Taliban, ISIS-K, or any other armed group.

AMNESTY

In 2020, Afghan authorities reportedly had not begun discussions with UN authorities regarding handover protocols for the large number of children in detention (Watchlist on Children and Armed Conflict, 2020). By the end of 2020, there were no established reintegration programs for children detained on suspicion of involvement with militant groups (*Afghanistan*, 2020).

In 2018, the director of a local NGO that worked with Afghan juvenile rehabilitation centers reported: “There are some projects and initiatives by NGOs [in Afghanistan] who are working towards the reintegration of the children who were involved in acts of terrorism including murder, suicide bomber to be and etc [sic]” (Mosadiq et al., 2018, p. 74). However, this quote does not indicate whether the children in question were absolved of committing crimes, nor does it provide any details about the programs provided to them. It also does not indicate whether these programs received any support from Afghan government authorities. In the context of the overall evidence, this quote does not provide reason to believe Afghan government authorities ever supported providing amnesties for children associated with the Taliban, ISIS-K, or any other militant groups in Afghanistan over the stipulated time period.

CITIZENSHIP

No cases identified for the stipulated time period.

Burkina Faso

Al-Qaeda and ISIS-associated groups: 2014 - 2021

BACKGROUND

Various militant jihadist groups affiliated with al-Qaeda and ISIS have recruited and deployed children in violent attacks in Burkina Faso since 2014. For example, in June

2021, the relatively little-known group Mujahed al Qaeda used children in an attack that left about 160 people dead: this group is connected to the broader Jamaat Nusratul Islam wal-Muslimin (JNIM) coalition, which is itself affiliated with Al-Qaeda (Mednick, 2021). This data reflects how government authorities in Burkina Faso have responded to children from local jihadist groups affiliated with al-Qaeda and ISIS.

DETENTION

In September 2020, officials from the Ministry of Justice confirmed that eight minors, arrested together with alleged terrorists, were detained at two prisons – the High Security Prison (HSP) in Ouagadougou, and Ouagadougou’s House of Arrest and Correction (MACO) (*Burkina Faso*, 2020). In 2020, the HSP, “which mostly houses suspected terrorists, was at double its designed capacity, housing more than 900 inmates” (*Burkina Faso*, 2020, p. 6). Overcrowding reached levels severe enough to threaten the lives of detainees. Almost all detainees were in pre-trial detention, and the prison held pre-trial detainees in the same locations as convicted prisoners. Guards at MACO reportedly sometimes used excessive physical force, inflicting injuries on prisoners (*Burkina Faso*, 2020).

In October 2021, “at least 400 people [had] been awaiting trial on terrorism charges for years, including several minors” reportedly under the age of 16 (Wilkins, 2021, para 1).

In August 2021, an official from the prosecutor’s office reported at least 14 boys were being held in detention for alleged association with militant armed groups. Some had been in detention since 2018 (Mednick, 2021).

TRIAL

In 2021, two adult male jihadist militants were put to trial and convicted under a terrorism-related criminal law that was created in 2019 (Wilkins, 2021). No cases were identified for children during the stipulated time period.

ALTERNATIVE JUSTICE

No cases identified for the stipulated time period.

AMNESTY

At an unspecified time in 2020, Burkina Faso had reportedly endorsed a handover protocol to release detained children, and it was awaiting signature (Watchlist on Children and Armed Conflict, 2020).

In September 2020, several minors who had been arrested and detained as terror suspects were released to non-governmental organizations and the Red Cross for return to their families; the precise number of minors was not available (*Burkina Faso*, 2020).

CITIZENSHIP

No cases identified for the stipulated time period.

Cameroon

Boko Haram: 2014 - 2020

BACKGROUND

Boko Haram, also known as the Islamic State in West Africa, is a militant jihadist group based in northeastern Nigeria. It is active in the Lake Chad Basin area, which includes Chad, Nigeria, Niger, Cameroon, and the Central African Republic, and wishes to establish an Islamic State. It has recruited and deployed child soldiers as fighters, suicide bombers, cooks, wives, and sexual slaves. In 2012, the group's leader expressed solidarity with al-Qaeda affiliates in Afghanistan, Iraq, North Africa, Somalia and Yemen (International Crisis Group, 2017). In 2014, Boko Haram was labelled a terrorist group by the U.N. and the European Union, and targeted with financial sanctions and arms embargoes; the US Department of State had already designated it a terrorist organization in 2013. By 2015, Boko Haram was considered the deadliest terrorist group in the world. (Casey-Maslen, 2019)

Boko Haram has conducted violent attacks in northern Cameroon since 2014 (Human Rights Watch, 2020). Throughout 2019, the group continued to use child soldiers, including girls, in armed attacks against civilian and military targets in Cameroon (*Cameroon*, 2020). In 2018, the intensity of the conflict with Boko Haram diminished. Until then, Cameroonian authorities had taken a predominantly punitive approach to the group, but around 2018, they became more willing to offer amnesty to former fighters, including children (International Crisis Group, 2018). However, in early 2020, there was a major rise in violent incidents attributed to Boko Haram: between January and August 2020, they carried out over 200 attacks and raids in Cameroon, including suicide bombings conducted by children (Human Rights Watch, 2020). It is unclear whether the

latest violence will reduce the Cameroonian government's willingness to offer amnesty to Boko Haram members.

DETENTION

Cameroonian authorities have arrested and detained child soldiers suspected of association with Boko Haram without charge. According to Child Soldiers International, between 2014 and 2016 Cameroonian security forces arrested hundreds of adults and children in the Far North due to suspicions that they either are associated with Boko Haram, or to prevent them from joining Boko Haram (Child Soldiers International, 2016b). Children suspected of association with Boko Haram have been tortured in detention (Amnesty International, 2017).

Authorities have also conducted extra-judicial killings of children suspected of being members of Boko Haram. In 2014, 200 men and boys were arbitrarily arrested; 25 reportedly died in custody the same night, 45 were transferred to prison, and at least 130 disappeared to unknown fates (Amnesty International, 2017).

In 2018, videos circulated online of Cameroonian soldiers killing unarmed women and children accused of belonging to Boko Haram (International Crisis Group, 2018).

TRIAL

Authorities appear determined to prosecute and convict adult members of Boko Haram. Anti-terror laws in Cameroon allow the death penalty. In early 2016, authorities sentenced 89 Boko Haram members to death, and many trials have reportedly taken place since then (Casey-Maslen, 2019). However, no cases involving children were identified.

ALTERNATIVE JUSTICE

Some local authorities (such as sub-prefects and traditional chiefs) have tried raising awareness about reintegrating former Boko Haram membership, but there is widespread opposition to such measures, and former members are often ostracized: there has been no substantive discussion of restorative justice initiatives or reintegration programs (Casey-Maslen, 2019). No cases were identified where alternative justice programs or reintegration efforts were applied to either children or adults associated with Boko Haram.

AMNESTY

In 2017, the Cameroonian government expressed willingness to offer amnesty to Boko Haram deserters and began encouraging them to surrender, though there was no clear official policy on the issue. The military and police usually investigated those who surrendered in an effort to separate combatants from non-combatants and high-risk from low-risk individuals. In 2017, some child soldiers were sent back to their villages after publicly swearing on the Quran that they would never rejoin Boko Haram (Casey-Maslen, 2019).

The UN has initiated negotiations with Cameroon to establish hand-over protocols for captured children associated with Boko Haram (Watchlist on Children and Armed Conflict, 2020). In 2019, a draft protocol stipulated that any child detained in the course of counterterrorism operations would immediately be handed over to the Ministry of Social Affairs without any prosecution. As drafted, the protocol effectively grants amnesties to children associated with Boko Haram, irrespective of the seriousness of any crimes he or she has committed (Casey-Maslen, 2019). As of December 2020, the protocol had not been signed (Watchlist on Children and Armed Conflict, 2020).

CITIZENSHIP

No cases identified for the stipulated time period.

Canada

ISIS and Al-Qaeda: 2001 - 2021

BACKGROUND

Al-Qaeda: Al-Qaeda is a militant jihadist founded in the late 1980's by Osama bin Laden to support Muslims fighting against the Soviet Union during the Afghan War. It subsequently evolved and merged with a number of other militant Islamist organizations. It opposes foreign involvement in Islamic countries, has repeatedly called for holy war against the United States, and has claimed responsibility for numerous attacks against American targets, including various embassies and the September 11, 2001 attacks. The U.S. government responded to the Sept. 11 attacks by launching a military invasion

of Afghanistan (Encyclopaedia Britannica, 2022a). Canadian citizens, including children, have travelled overseas to support Al-Qaeda.

ISIS: ISIS (a.k.a, Islamic State, ISIL, or Daesh) initially emerged from an Iraqi faction of al-Qaeda in 2004. In 2014, ISIS launched an offensive against the Iraqi cities Mosul and Tikrit, and declared they would create a caliphate stretching from Aleppo in Syria to Diyala in Iraq (Wilson Center, 2022). A coalition of forces led by the U.S.A. subsequently began airstrikes against ISIS in Iraq and Syria. By 2017, the ISIS caliphate had lost 95 percent of its territory, and the Iraqi president declared victory over the group in Iraq. In eastern Syria, where a coalition of Syrian Kurds and Arabs known as the Syrian Democratic Forces (SDF) gradually captured remaining ISIS-held territories throughout 2018 and 2019 (Wilson Center, 2022). Many ISIS members or supporters were detained by SDF forces in Syrian camps: in 2021, there were an estimated 60,000 former ISIS members or supporters held at al-Hawl camp in northern Syria (Wintour, 2021). A number of Canadian citizens have travelled overseas to join ISIS. Some of the Canadians who travelled overseas to join ISIS have since borne children who were held in SDF-controlled detention camps for ISIS supporters.

Leaders of ISIS and al-Qaeda have implored their supporters to retaliate against Canada for supporting military strikes against them over the past two decades. However, there has been little violence linked to either group on Canadian soil (Counter Extremism Project (CEP), 2022). Canada's engagement with children associated with these groups has predominantly occurred abroad, either (a) through foreign military operations, or (b) through diplomatic decisions made regarding Canadian citizens associated with ISIS or al-Qaeda.

As explained in Chapter 2, this thesis does not generally examine actions committed by a state on foreign soil unless those actions relate to that state's own citizens. This data therefore focuses on Canadian authorities' response to Canadian citizens associated with ISIS and al-Qaeda. It does not address how Canadian authorities responded to non-Canadian child members of ISIS or al-Qaeda in operations abroad.

DETENTION

No cases were identified involving the detention of ISIS- or al-Qaeda-associated children by Canadian authorities, on Canadian soil. However, the case of Omar Khadr provides an illustrative example. Omar Khadr was a Canadian citizen detained at the U.S.A's

military prison at Guantanamo Bay prison at the age of 15. He was brought to Guantanamo Bay after being captured by Americans during a firefight in Afghanistan. He was accused of killing an American soldier. Khadr's family was closely associated with al-Qaeda. Although Canadian authorities did not capture or detain Khadr, Canadian intelligence agents interrogated him regarding his ties to al-Qaeda when he was detained at Guantanamo Bay; they were permitted to do so because they agreed to share any information they gathered with American prosecutors (Encyclopaedia Britannica, 2022b). Khadr was abused by American officials prior to these interrogations to "soften [him] up" for questioning by the Canadians (Shephard, 2009). After a Canadian court ruled that Khadr's interrogations by Canadian intelligence agents had violated his constitutional rights, Canadian politicians asked U.S. authorities not to use the evidence gained from those interrogations for prosecution (Encyclopaedia Britannica, 2022b).

TRIAL

ISIS: Canadian police have collected evidence against adults associated with ISIS who are currently detained in Syria, in anticipation of laying charges in the future (Bell, 2021b). None were brought to trial within the stipulated time period. No cases involving children were identified for the stipulated time period.

Al-Qaeda: after Canadian citizen Omar Khadr was prosecuted in the USA, he served a portion of his sentence in Canada (Encyclopaedia Britannica, 2022b).

ALTERNATIVE JUSTICE, AMNESTY

No cases identified for the stipulated time period.

CITIZENSHIP

ISIS: In 2019, journalists reported at least 11 Canadian women and almost two dozen Canadian children were detained in Syria on suspicion of being associated with ISIS (Bell, 2019, para. 5). In mid-2021, Human Rights Watch reported there were 26 such children detained in Syria (Bell, 2021b). By the end of 2021, there were at least four Canadian men and nine women and their children detained at prisons and camps in northeastern Syria for suspected ISIS members and their families (Bell, 2021a). Canadian authorities have repeatedly refused to repatriate these detainees, arguing the region remains unsafe for Canadian officials (Bell, 2021a).

By the end of 2021, Canadian authorities had repatriated two of the Canadian children. While Canadian authorities provided consular services for one minor girl after she was released, they did not organize her release (Boisvert, 2021).

In 2014, the Canadian government announced it would invalidate the passport of any Canadian citizen who travelled overseas with the intention of joining an extremist group. These Canadians might effectively become stranded abroad without the ability to return to Canada or travel to other countries (Counter Extremism Project (CEP), 2022). However, no specific cases were identified.

Al-Qaeda: Canadian authorities decided not to ask U.S. authorities for Khadr's repatriation from Guantanamo Bay when he was detained there prior to trial by U.S. military commission. When Khadr struck a plea bargain with U.S. prosecutors in late 2010, Canadian authorities agreed he could serve one year in the U.S, followed by the remainder of his sentence in Canada. Americans accused Canada of dragging its heels regarding the repatriation to a Canadian prison. Khadr returned to Canada in September 2012 (Encyclopaedia Britannica, 2022b).

Colombia

FARC: 2016 - 2021

BACKGROUND

FARC originated in the 1960's as a Marxist-Leninist rebel group seeking to overthrow the Colombian government. It used proceeds from organized crime to fund its efforts. Over time, its criminal operations became increasingly powerful and complex (Stanford University, 2019).

FARC recruited many child soldiers. Human Rights Watch has estimated that between 20-30% of all FARC members were under 18, while Colombian news organization *El Tiempo* has reported that about 50% were under 18 when they joined (Stanford University, 2019).

While other guerrilla groups and the Colombia army have also used child soldiers, FARC did so on a significantly larger scale. FARC was connected with rural guerrillas, in which

family and communal relations were central, and many children were associated with FARC from a very early age (Ciurliza, 2012).

In 2016, FARC signed a peace agreement with the Colombian government. Since then, FARC has split in two, with one aboveground element becoming a mainstream political party while a dissident faction rejected the peace process and continued criminal activities. Both factions continue to call themselves FARC (Stanford University, 2019). This thesis discusses only how Colombian authorities have responded to children from the first faction: those who accepted the 2016 peace agreement and demobilized.

DETENTION

No cases identified for the stipulated time period.

TRIAL

The legal situation of FARC child soldiers who committed serious crimes is not entirely clear. While a 2016 peace agreement (further discussed below) provided for amnesties, in 2018, two Constitutional Court decisions left open the possibility such children may be prosecuted, even if they participated in formal demobilization programmes under the 2016 peace process (Stanford University, 2019). The 2018 decisions suggest a degree of high-level official support for prosecuting FARC child soldiers through ordinary criminal courts, despite the amnesty provisions of the peace agreement.

AMNESTY

The 2016 peace agreement created a demobilization framework and formal justice mechanisms to provide amnesty for former FARC members. Some children underwent formal demobilization from FARC, while others demobilized informally. Many who were informally released returned to their families. Colombia's Family Welfare Institute implemented a specialized programme for the protection and reintegration of demobilized children. The United Nations also ran specialized reintegration programs for such children (UN Secretary General, 2019).

Former FARC combatants not convicted (or under investigation for) crimes under international law could obtain amnesties or pardons from the Colombian government. Also, former FARC combatants who had served at least five years in prison for crimes under international law might be eligible for conditional release (Jiménez, 2019).

ALTERNATIVE JUSTICE

Part of the 2016 peace agreement called for the establishment of a truth commission. The commission prioritized establishing a historical record, addressing harms to victims, and making recommendations. Testifying before the truth commission did not imply criminal responsibility of those testifying (Rudling, 2022). No precise information was located about how this process specifically assessed the responsibility of children, nor its consequences upon them.

CITIZENSHIP

No cases identified for the stipulated time period.

Iraq

ISIS: 2014 - 2021

BACKGROUND

The Islamic State, or ISIS (a.k.a ISIL or Daesh), is a jihadist group that initially emerged from an Iraqi faction of al-Qaeda. In 2014, ISIS launched an offensive against the Iraqi cities Mosul and Tikrit, and declared it would establish a caliphate stretching from Aleppo in Syria to Diyala in Iraq (Wilson Center, 2022). A coalition of forces led by the U.S.A. subsequently began airstrikes against ISIS in Iraq and Syria. By 2017, the ISIS caliphate had lost 95 percent of its territory, and the Iraqi president declared victory over the group in Iraq. In eastern Syria, where a coalition of Syrian Kurds and Arabs known as the Syrian Democratic Forces (SDF) gradually captured remaining ISIS-held territories throughout 2018 and 2019 (Wilson Center, 2022). Nonetheless, ISIS continued to launch violent attacks throughout 2020, including sniper attacks, ambushes, kidnappings, and assassinations. ISIS recruits and deploys children in Iraq. (*Iraq*, 2020).

DETENTION

In 2019, there were approximately 1,500 children aged 13-17 detained on accusations of supporting ISIS (Dozier, 2019). The number of people (both adults and children) detained on suspicion of ISIS affiliation increased in 2020, causing many deaths due to

overcrowding. A senior Iraqi ministry official stated the juvenile prison was holding 600 inmates, despite a maximum capacity of 250 (*Iraq, 2020*).

Arbitrary arrests and detentions of suspected ISIS supporters remained widespread throughout 2020. Detainees are predominantly Sunni Arabs and often arrested in security sweeps without warrants. They were frequently held for prolonged periods without charge or registration, or not informed of the reasons for their detention or the charges against them. Many were held incommunicado without family notification of their arrest or location. Many have been detained without trial for months or for years (*Iraq, 2020*).

TRIAL

Several children associated with ISIS have been prosecuted in Iraq. The UN monitored over 600 trials of ISIS suspects in Iraq in 2018 and 2019; 44 cases involved defendants who were children at the time of the alleged offense. Most of the 44 children said they were tortured, and most received sentences of 10 to 20 years in prison. Despite the prevalence of torture, judges relied heavily on confessions. Those responsible for violent crimes were not meaningfully distinguished from those with lesser roles or those who joined to save their own lives (Becker, 2020). In ISIS-related prosecutions, guilt was sometimes presumed based on geographic location or family relationships. (*Iraq, 2020*).

Specialized courts were established in 2019 to prosecute repatriated Iraqis accused of fighting with ISIS in Syria. Out of 900 cases launched in April 2019, 794 had been found guilty and sentenced to death by August 2019. (*Iraq, 2020*). However, the death penalty in Iraq is not legally permitted for those below the age of 18 at the time of the alleged offense (Office of the High Commissioner for Human Rights & United Nations Assistance Mission for Iraq Human Rights Office, 2014). No specific cases of children being sentenced to death for association with ISIS were discovered. It appears that only adults were formally sentenced to death.

ALTERNATIVE JUSTICE

No cases identified for the stipulated time period.

AMNESTY

Iraqi authorities did not officially grant amnesty to any children associated with ISIS. Overall, their responses to children associated with ISIS were highly punitive. However,

Iraqi authorities reportedly focused on Sunni Muslims and largely “ignores” child members of ISIS from the minority Yazidi community (Dozier, 2019, para. 36). ISIS aggressively targeted the Yazidi community for extermination while selling Yazidi women and girls into sexual slavery (Amnesty International, 2021). Given this context, Iraqi authorities presumably perceived former minor Yazidi members of ISIS as victims who had been forced to join the group, but did not share its ideology and would thus not pose a serious risk to national security after being released.

Because Iraqi government authorities were largely indifferent towards them, Yazidi children associated with ISIS were subject to treatment from their own community leaders. In 2014, Yazidi religious leaders passed a decree which “forgave their people for the sin of being forced to convert, or for being raped, or for being forced to kill and maim for ISIS” (Dozier, 2019, para. 32). They offered a cleansing rebaptism ritual for community members returning from ISIS, including children (Dozier, 2019). However, children fathered by ISIS fighters were not welcomed: Yazidi women returning home after becoming pregnant by ISIS fighters were frequently pressured to abandon their children to orphanages as a prerequisite for being accepted back (*Iraq, 2020*).

CITIZENSHIP

In 2020, according to UNHCR estimates, there were over 45,000 displaced children in Iraqi camps missing civil documentation and therefore excluded from public services such as education, health care, and food. Many of these children were born in areas previously controlled by ISIS and thus issued birth certificates considered invalid by Iraqi authorities. Due to their perceived affiliation with ISIS, they often faced problems obtaining official birth certificates, which effectively rendered them stateless (*Iraq, 2020*).

Yazidi women made pregnant by ISIS members were pressured to abandon their children as a prerequisite for returning home. Abandoned children were left not only without parents, but also without any clear country of birth or settled nationality (*Iraq, 2020*).

Israel

Hamas: 1988 - 2021

SPECIAL NOTE REGARDING ISRAEL

As described in the methodology section in Chapter 2, in this thesis, responses have generally been attributed to particular governments only when those governments are acting either (a) towards their own citizens, or (b) within their own territorial jurisdiction. However, this section includes cases where Israeli forces have acted on disputed territories they have occupied since 1967. Both Israel and Palestine have laid claim to these areas. These cases were not included with the intention of expressing any conclusion regarding Israel's lawful authority to exercise jurisdiction over those territories. Rather, these cases were included because (a) Israeli authorities have exercised significant *de facto* control in these areas for over 40 years, with no evidence to suggest their actions there were compelled by any other authority; (b) Palestinian authorities in these territories have unequivocally objected to Israeli's actions and jurisdiction there, thus making it incorrect to categorize them as "Palestinian" responses; and (c) Israeli authorities have repeatedly justified their responses towards child soldiers in those areas in formal policy and legal documents, leaving no question that their responses are deliberate and systemic, not *ad hoc* reactive behavior by rogue forces. For these reasons, actions taken by Israeli forces in territories disputed with Palestine are considered legitimate and relevant examples of Israeli responses.

Also, some of the data regarding Israel relates more broadly to its overall treatment of children perceived as security threats, and not specifically to members of Hamas. This differs from the more specific approach taken towards the other countries in this appendix. However, given that Hamas' military wing expressly advocates violence against Israel, and given that Hamas has been a persistent military threat towards Israel for decades (as recently demonstrated by Hamas' launching of rockets into Israel in May 2021), this author believes it is reasonable to equate Israeli's general security policy with its approach to Hamas.

BACKGROUND

Hamas is both a militant group and a major political party in the Palestinian territories. Hamas was founded in 1987, after the "first intifada," a Palestinian uprising against Israeli occupation of the West Bank, Gaza, and East Jerusalem. At that time, Hamas

called for the destruction of Israel and the establishment of an Islamic society in historically Palestinian territory. In the early 2000's, Hamas spearheaded violent resistance against Israel in the "second intifada," though other militia groups also participated. After Israel withdrew from Gaza in 2005, Hamas became its *de facto* government. In 2017, Hamas announced it would accept an interim Palestinian state as defined before the Six-Day war (when Israel occupied both the West Bank and Gaza), but still refused to recognize Israel. Israel and Hamas have engaged in various conflicts since the group's founding. In May 2021, Hamas fired rockets into Israel, and an eleven-day conflict ensued (Laub & Robinson, 2021).

Reports of children as young as 12 being members of Hamas date back 20 years (Child Soldiers International, 2001). Hamas continued to train children as combatants throughout 2020 (*Israel*, 2020).

DETENTION

Israeli soldiers in the West Bank and Gaza can arrest anyone suspected of having committed, planned, or conspired to commit an offense. In 1988, in response to the first intifada, military orders made stone throwing a felony offense and allowed the arrest of children, including very young children. Children under 12 could be arrested, but not interrogated (Hajjar, 2005, pp. 190-191.)

In 2021, military law still permitted imprisonment of those under 12, and detention of 15- to 17-year olds was reportedly commonplace. Most minors imprisoned under the military system are accused of stone throwing (McDonald, 2021). Israeli authorities accused Palestinian authorities of using children as soldiers in violent demonstrations in Gaza where stones or Molotov cocktails are thrown (Child Soldiers International, 2001).

Israel's Emergency Powers Law allows the Ministry of Defense to administratively detain people without charge for six months, renewable indefinitely. The Illegal Combatant Law also allows indefinite detention, subject to judicial approval and semi-annual court review (*Israel*, 2020). In January 2022, Al Jazeera reported at least four Palestinian children were reportedly in administrative detention. The same article reported a total of 170 child prisoners without indicating the process by which they were imprisoned (Al Tahhan, 2022).

Israel defines "security prisoners" as prisoners convicted (or suspected) of nationalistically motivated violence. Palestinian "security prisoners" reportedly faced

more restrictive conditions than other accused criminals, including solitary confinement. A 2019 report by the Public Defender's Office indicates minor prisoners were disproportionately subject to solitary confinement and shackling (*Israel*, 2020).

In December 2021, Israeli military troops operating in the West Bank arrested over 100 Hamas members allegedly planning to carry out terrorist attacks. Although it is not clear whether any of the 100 were minors, the raids themselves were reportedly triggered when a 16-year-old Hamas member tried to carry out a shooting attack (*The Times of Israel*, 2021).

TRIAL

Since 1967, Palestinians who are not citizens of Israel have been prosecuted under Israeli military law (*Israel*, 2020). People detained on security grounds may be prosecuted criminally or held as administrative detainees or as illegal combatants. Children as young as 12 can be incarcerated if convicted of serious crimes such as murder, attempted murder, or manslaughter (*Israel*, 2020).

In 2021, an advocate from the organization Defence for Children International alleged nearly every child is handed a guilty verdict by the military detention system (McDonald, 2021), but did not cite any specific cases or statistics.

In November 2021, the Israeli Central Court in Jerusalem sentenced a 17-year-old Palestinian to ten years imprisonment and issued him a fine of about \$50,000 USD for planning to attack soldiers with a knife. He was arrested in October 2019 (*Middle East Monitor*, 2021).

ALTERNATIVE JUSTICE, AMNESTY, CITIZENSHIP

No cases identified for the stipulated time period.

Mali

Jihadist groups and coalitions: 2012 - 2020

BACKGROUND

Jihadist groups in Mali have recruited children since at least April 2012, when they occupied Northern Mali (Human Rights Watch, 2013). Jihadist groups in Mali have worked in coalitions such as Movement for Oneness and Jihad in West Africa (MOJWA), and Al Qaeda in the Islamic Maghreb (AQIM). While some stability returned to the north after a 2015 peace agreement (Algiers Accord) between the government and several armed groups, violence perpetrated by Islamist extremist armed groups subsequently spread into central Mali (*Mali*, 2020). In 2017, Mali, Mauritania, Burkina Faso, Niger and Chad launched a multinational counterterrorism military force known as the G5 Sahel Joint Force to combat Islamist groups in the region. The force coordinates its operations with French and UN troops (*Mali*, 2020).

DETENTION

In 2017, Human Rights Watch reported that four boys aged 14 to 17 were physically abused in detention under suspicion of being jihadists (*Mali*, 2020). Despite the existence of handover protocols in Mali since 2013, UN staff report that a July 2019 counterterrorism law has made it difficult to secure the release of detained children (Watchlist on Children and Armed Conflict, 2020).

TRIAL

While adults have been prosecuted by domestic courts and the International Criminal Court due to participation in militant jihadist groups in Mali (International Federation for Human Rights, 2017), no cases were identified regarding children during the stipulated time period.

ALTERNATIVE JUSTICE

No cases identified for the stipulated time period.

AMNESTY

In October 2013, 23 children between the ages of 12 and 17 were transferred by Malian authorities to shelters where they were clothed, fed and offered psychosocial care. Four of them were charged with terrorism and national-security related crimes and briefly

detained before being transferred to the shelters; the director of Mali's child welfare department reportedly sought to have their trials halted. In July 2013, authorities signed an agreement with the UN to hand over children captured in conflict to child protection services (IRIN News, 2013).

A December 2020 report indicates that handover protocols in Mali called for children to immediately be handed over to social services whenever they are detained within country's the capital city (Watchlist on Children and Armed Conflict, 2020).

CITIZENSHIP

No cases identified for the stipulated time period.

Niger

Boko Haram: 2014 - 2021

BACKGROUND

Boko Haram, also known as the Islamic State in West Africa, is a militant jihadist group based in northeastern Nigeria. It is active in the Lake Chad Basin area, which includes Chad, Nigeria, Niger, Cameroon, and the Central African Republic, and endeavors to establish an Islamic State. It has recruited and deployed child soldiers as fighters, suicide bombers, cooks, wives, and sexual slaves. In 2012, the group's leader expressed solidarity with al-Qaeda affiliates in Afghanistan, Iraq, North Africa, Somalia and Yemen (International Crisis Group, 2017). In 2014, Boko Haram was labelled a terrorist group by the U.N. and the European Union, and targeted with financial sanctions and arms embargoes; the US Department of State had already designated it a terrorist organization in 2013. By 2015, Boko Haram was considered the deadliest terrorist group in the world (Casey-Maslen, 2019).

Prior to 2014, authorities in Niger reportedly believed Boko Haram primarily Nigeria's problem. However, in 2014, Boko Haram pushed towards the Niger border and sought to recruit hundreds of young Nigeriens. Niger then joined multilateral military efforts against Boko Haram (International Crisis Group, 2017).

DETENTION

In February 2017, 61 children were reportedly detained in the juvenile section of Niamey prison in Niger. One media report from June 2017 indicated that a young boy who escaped from Boko Haram, after his village was raided and he was forced to carry supplies for them for a single day before being let go, had been in that prison for two years (Casey-Maslen, 2019).

Prison conditions were reportedly harsh and life-threatening due to food shortages, overcrowding, and inadequate sanitary conditions and medical care (*Niger*, 2020).

There are also reportedly dozens of children in a Boko Haram defector's camp at Goudoumaria (Casey-Maslen, 2019). The camp reportedly detains and rehabilitates defectors from violent extremist organizations. At the camp, non-governmental organizations provided most services including drinking water, food, and medical care. Children there reportedly suffered from malaria and pregnant women lacked adequate emergency medical care (*Niger*, 2020).

Throughout 2020, government security forces abused and harmed detainees, especially those accused of connections with Boko Haram or other extremist groups. There were also reports of extrajudicial killings of unarmed suspected Boko Haram fighters (*Niger*, 2020). However, it is unclear if any of those killed were children.

TRIAL

In 2017 and 2018, hundreds of adults were brought to trial in Niger to face terrorism charges related to supporting Boko Haram. These trials took place *in camera* and it is unknown whether the defendants included any children. (Casey-Maslen, 2019)

ALTERNATIVE JUSTICE

Traditional ceremonies known as 'Ardia' were reportedly organized by communities to facilitate the return and reintegration of older repentant children formerly associated with Boko Haram after their release from detention (Casey-Maslen, 2019). Ardia means "acceptance" in the Kanuri language and these ceremonies were intended to assist with social cohesion and to facilitate reabsorption into the community. Government-established committees in four regions were tasked to assist with Ardia ceremonies, which involved family members, victims, and the accused perpetrators. Adults as well as

older children participated (African Union Commission & Lake Chad Basin Commission, 2018).

AMNESTY

In 2015, increased military operations to counter Boko-Haram related violence in Niger led to the detention of many children. UN agencies advocated for these children to be transferred to juvenile justice centers, then negotiated with Malian authorities for a handover protocol to ensure their release. A handover protocol was signed between the UN and Malian authorities in February 2017 (Watchlist on Children and Armed Conflict, 2020).

In 2019, Nigerien forces captured a number of children and detained them on suspicion of supporting terrorist groups. Officials from justice ministries and child protection ministries established their ages, provided them with services in one of four orientation and transition centers, and progressively reunited them with their families (*Niger*, 2020).

CITIZENSHIP

No cases identified for the stipulated time period.

Nigeria

Boko Haram: 2009 - 2021

BACKGROUND

Boko Haram, also known as the Islamic State in West Africa, is a militant jihadist group based in northeastern Nigeria. It is active in the Lake Chad Basin area, which includes Chad, Nigeria, Niger, Cameroon, and the Central African Republic, and endeavors to establish an Islamic State. It has recruited and deployed child soldiers as fighters, suicide bombers, cooks, wives, and sexual slaves. In 2012, the group's leader expressed solidarity with al-Qaeda affiliates in Afghanistan, Iraq, North Africa, Somalia and Yemen (International Crisis Group, 2017). In 2014, Boko Haram was labelled a terrorist group by the U.N. and the European Union, and targeted with financial sanctions and arms embargoes; the US Department of State had already designated it a

terrorist organization in 2013. By 2015, Boko Haram was considered the deadliest terrorist group in the world. (Casey-Maslen, 2019)

The conflict in Nigeria erupted after Nigerian police executed Boko Haram's spiritual leader in 2009. By 2013, the group's violent attacks across northern Nigeria led the government to declare a state of emergency in the area.

DETENTION

Nigerian authorities have conducted mass arrests of men and boys suspected of being Boko Haram members or supporters and subjected them to abuses including summary executions and torture. The Office of the Prosecutor of the ICC reports that between March 2011-June 2015, more than 7,000 people, including some children, may have died in military detention from illness, poor conditions, overcrowding, torture, ill-treatment and extrajudicial execution. (Casey-Maslen, 2019)

Nigerian authorities reportedly detained more than 3,600 children as Boko Haram suspects between 2013-2019, including children under five and infants detained with their mothers. Human Rights Watch interviewed some children detained for years. None had ever been charged with a crime, met with a lawyer, or been brought before a judge. The main military detention facility in the northeast region was reportedly severely overcrowded, squalid, and overwhelmingly hot; detainees there reported frequent hunger and thirst (Becker, 2020).

TRIAL

Hundreds of suspects have been processed through mass trials on criminal charges related to supporting Boko Haram (Ngari & Olojo, 2020). Many of these trials took place *in camera*, making it difficult to determine how many suspects were children (Burke, 2017). At least one child – a girl married to a Boko Haram fighter at age 11 – was cleared of all charges after appearing in court in 2018 (BBC News, 2018).

ALTERNATIVE JUSTICE

No cases identified for the stipulated time period.

AMNESTY

Nigerian authorities offered some former child members of Boko Haram amnesty in exchange for denouncing the group and its aims. In January 2018, the Nigerian army released 244 Boko Haram suspects, including 19 teenagers and 51 children on the basis

that they had been screened and had denounced Boko Haram (the specific ages of the “teenagers” and “children” were not provided) (Casey-Maslen, 2019)

In 2019, the Nigerian authorities released 160 children who had been arrested for their alleged association with Boko Haram. The UN was unable to verify the number of children still in detention, as access to the detention facilities was denied (Watchlist on Children and Armed Conflict, 2020). By late 2020, the UN had begun negotiations for handover protocols in Nigeria (Watchlist on Children and Armed Conflict, 2020).

CITIZENSHIP

No cases identified for the stipulated time period.

Peru

Shining Path: 1980 - 2003

BACKGROUND

In 1980, the Peruvian communist guerrilla group Shining Path initiated a self-proclaimed popular war to overthrow Peru’s government. Shining Path had an official policy of recruiting children, including children below the age of 11, in part because it would help children to adopt proletariat ideology (Ciurliza, 2012). Over the next two decades, civil war killed almost 70,000 people (Saffon, 2020). Most deaths occurred between 1980-1992, while the 1990’s were characterized (in a subsequent Truth and Reconciliation report) as being dominated by a so-called counter-subversive state without subversion, as the conflict was essentially over. More than 35% of those forcibly recruited during the conflict (by both guerrilla and government forces) were children (Ciurliza, 2012).

Shining Path’s founder was captured in 1992, and his second-in-command was captured in 2012 (Saffon, 2020). Shining Path has since evolved into a criminal narco-terrorist organization that traffics cocaine throughout South America (Global Risk Insights, 2015).

DETENTION

In the 1980’s, Peruvian security forces and police subjected children to illegal detention. They had greater success locating and detaining minors associated with Shining Path

than adults. Minors were beaten, deprived of food and sleep, and subjected to sexual violence. Torture was used on minor detainees, both to get information about the whereabouts of others, and to collect forced confessions or other information for use in prosecutions (Walker, 2021).

The Peruvian army criminalized peasant communities in regions controlled by guerrillas; in one congressional hearing, an army lieutenant declared that even children and the elderly had to be eliminated because they might be terrorists (Ciurliza, 2012). Children were abducted by security forces and disappeared together with their families. The army used sexual violence against many children, including those under the age of 10, as a means of punishment or to intimidate their families (Ciurliza, 2012).

PROSECUTION

In 1992, the former government reduced the minimum age for criminal responsibility for terrorism from 18 to 15 years; over 209 children were sentenced to prison, including life imprisonment, until the law was repealed in 1995. Conditions of detention for these children were reportedly miserable, and some were beaten and tortured by police (Ciurliza, 2012).

However, prosecutions had also occurred in the 1980's, when minors associated with Shining Path faced charges in youth court such as "anti-social acts against public tranquility" (Walker, 2021). In a paper examining trial records for youth prosecuted in Ayacucho between 1980-1985, Walker (2021) reports that 151 minors were tried in 97 separate youth court trials. Due to their young age, they were sentenced more leniently than adults. Rampant ill-treatment, including torture, was imposed on minors awaiting trial. However, Walker also reports (with express surprise, given their harsh treatment pre-trial) that approximately 85% of the 151 minors were released to their relatives. Walker urges caution regarding the "85%" statistic however, because it includes situations where judges dismissed a case from youth court, but called for the accused to be tried as an adult.

ALTERNATIVE JUSTICE

Peru held a Truth and Reconciliation process examining the conflicts that began in the 1980's. Its final report was made public in 2003 (Truth and Reconciliation Commission Communications and Public Impact Office, 2003). The TRC's final report was not

precise in its recommendations about how to respond to former child combatants, and as of 2012, Peru did not have any specific programs for them (Ciurliza, 2012).

AMNESTY, CITIZENSHIP

No cases identified for the stipulated time period.

Rwanda

***“Génocidaires”*: 2001 - 2012**

BACKGROUND

In April 1994, nationalists from the majority Hutu ethnic group launched a genocide against the minority Tutsi ethnic group in Rwanda. As many as 800,000 people, predominantly Tutsi, were killed. Initially, specific government authorities and extremist groups lead the killing: the Presidential Guard, members of the Rwandan armed forces, and militias known as “Interahamwe (“Those Who Attack Together”)” and “Impuzamugambi” (“Those Who Have the Same Goal”) cooperated to slaughter Tutsis and moderate Hutus with impunity (History.com, 2022). However, the genocide quickly spread throughout the country as officials incited ordinary citizens to kill their neighbours. Those who refused were killed, and those who participated were financially rewarded. The Rwandese Patriotic Front ended the genocide by gaining military control of Rwanda in early July 1994 (History.com, 2022). The RPF subsequently established political control and launched determined efforts to identify and prosecute all those who participated in the genocide (Sullo, 2012).

The evidence indicates that many ordinary citizens outside of established armed groups were perpetrators in the genocide, irrespective of affiliation with any particular armed group. For the purposes of this thesis, accused perpetrators are broadly termed *génocidaires*.

DETENTION

Minors arrested for genocide-related crimes were reportedly treated in a similar manner to adults. According to Sullo (2012), both children and adults experienced arbitrary arrests, appalling detention conditions, and unfair and delayed trials. *Avocats Sans*

Frontiers reported that minors at the time of the genocide in Rwanda were tried at a pace three times slower than adults, representing around 3.5 % of the prison population but 1.2 percent of individuals brought to trial (Sullo, 2012). However, it does not appear that arbitrary detention was a deliberate policy. Overall, authorities were determined to formally prosecute suspected genocide perpetrators through either ordinary or specialised courts (Sullo, 2012).

TRIAL

Rwandan authorities exercised concerted efforts to prosecute anyone involved in the 1994 genocide. There were two justice streams for accused perpetrators: the ordinary criminal courts, which were given jurisdiction to prosecute genocide perpetrators in 1996, and a specific system of community courts established in 2000 to deal exclusively with accused genocide perpetrators, known as *gacaca* (Sullo, 2012). The ordinary justice stream will be discussed here and the *gacaca* courts will be discussed in the following section.

Children under the age of 14 at the time of the offense were not usually considered criminally responsible for genocide-related crimes. Those between 14 and 18 were entitled to reduced sentences, generally receiving half the sentence envisioned for adults. The harshest possible penalty for them was 20 years incarceration; unlike adults, they could not be sentenced to life imprisonment or death (Sullo, 2012).

ALTERNATIVE JUSTICE

Customary law in Rwanda was traditionally based on a community-centered model known as *gacaca*. In 2001, Rwandan authorities established an ambitious new system of courts with both retributive and restorative elements specifically to hear the cases of accused genocide perpetrators. These courts were inspired by the *gacaca* model and themselves became known as *gacaca* courts (Human Rights Watch, 2011a).

Gacaca courts had multiple objectives, including to expedite genocide-related trials, to expose the truth of the genocide, and to strengthen national reconciliation. Beginning in 2001, about 250,000 lay persons were elected as *gacaca* judges to cover about 11,000 courts. Community members attended court proceedings to provide information, testimony and argument. Nearly 1.5 individuals were tried. Depending on various factors, sentences could range from community service to life imprisonment (Sullo, 2012).

These new *gacaca* courts tried perpetrators as young as 15 at the time of the offense. While minors' culpability was generally assessed in the same manner as adults', they were entitled to reduced penalties (Sullo, 2012).

When the *gacaca* courts closed in 2012, they had tried approximately two million cases. Cases that were not resolved at the time of closure were sent to ordinary criminal courts (Immigration and Refugee Board of Canada, 2012).

AMNESTY

Although perpetrators who passed through the *gacaca* court process could be absolved or released on a promise to complete community service (Sullo, 2012), such outcomes are better understood as acquittals or sentences, not amnesties. No cases of amnesty were found.

CITIZENSHIP

No cases identified for the stipulated time period.

Sierra Leone

RUF and AFRC: 2002 - 2012

BACKGROUND

In a civil war between 1991-2002, the Revolutionary United Front (RUF) fought to overthrow Sierra Leone's government. In 1997, a group of military officers defected from the armed forces, established the Armed Forces Revolutionary Council (AFRC), overthrew the government, and aligned themselves with the RUF.

In 1999, the Lomé Peace Agreement provided for disarmament, power sharing, new elections, a blanket amnesty for non-international crimes, and a Truth and Reconciliation Commission. Violence resumed for a time, but the war was officially declared over in 2002. While all groups involved in the conflict (including the army) enlisted children, the RUF and the AFRC were their principal recruiters (Schotsmans, 2012).

DETENTION

No cases identified for the stipulated time period.

TRIAL

During debates about the mandate of the Special Court for Sierra Leone, Sierra Leone's government authorities were strongly in favour of prosecuting those below the age of 18 at the time of the offense (Schotsmans, 2012). Ultimately, the court was given jurisdiction to prosecute former child combatants between 15 and 18, but the Prosecutor of the Court decided not to pursue prosecutions for anyone below 18.

Domestically, there have been very few prosecutions, in accordance with an official government policy to forgive and forget. In theory, prosecutions are possible for those who do not benefit from the Lome Peace Agreement, such as those who committed crimes after the government signed it. There have been a very small number of domestic prosecutions, such as the trial of a few members of the West Side Boys, a militia group sometimes associated with the AFRC (Schotsmans, 2012). No official accountability mechanism has been established for youth who committed crimes during the war in Sierra Leone. The Truth and Reconciliation Commission confirmed that children had committed atrocities but did not make any recommendations for accountability mechanisms. (Schotsmans, 2012).

ALTERNATIVE JUSTICE

In some communities, traditional cleansing ceremonies took place for former child soldiers. These differed between chiefdoms. They could involve symbolic rituals purifying the child of their past (such as washing their feet or burning their old clothes), establishing their re-acceptance into the community (such as sharing a kolanut), and presenting them to their ancestors (such as making animal sacrifices to ancestors). Some cleansing ceremonies included elements of confession or contrition, as the child was asked to acknowledge their wrongdoing and apologize, but this was not always the case. Cleansing rituals can be costly and are thus not performed in communities too poor to bear the expense. Schotsmans (2012) considers such rituals acts of both community reconciliation and spiritual transformation that advance reintegration into the community.

There were also reconciliation ceremonies after the hearings for Sierra Leone's Truth and Reconciliation Commission, where, according to traditional practices of dispute resolution, those who committed crimes asked traditional leaders and religious leaders for forgiveness. Some RUF child soldiers who felt remorse about their actions during the

war did not attend the TRC's reconciliation hearing because they did not wish to risk being rejected by community members after revealing the extent of their crimes (Schotsmans, 2012).

AMNESTY

In 2003, former President Kabbah promoted an official policy of forgive and forget (Schotsmans, 2012). The Lomé Peace Agreement explicitly recognized the existence of child soldiers and the need to address their specific needs during disarmament, demobilization and reintegration processes. About 6,845 children were demobilized through a government program after the conflict. However, the program only accepted those below the age of 18 at the time of demobilization. Also, some below 18 may have pretended to be adults to receive financial assistance children were not provided (Schotsmans, 2012).

CITIZENSHIP

No cases identified for the stipulated time period.

Somalia

Al-Shabaab: 2006 - 2021

BACKGROUND

Al-Shabaab (Arabic for "The Youth") is a militant jihadist group. It was founded in Somalia in 2006, but foreign fighters have come to Somalia to join its ranks. In 2010, al-Shabaab officially announced it had joined Al-Qaeda's international jihad. In 2021, it continued its war with the Somali government while also conducting attacks in neighboring Kenya, Uganda, and Ethiopia. While various armed groups in Somalia (including ISIS and the national army) have used child soldiers, al-Shabaab is reportedly the most prolific recruiter of children. Some estimates suggest half its ranks are children. The UN reports that between April 2010-July 2016, there were 6,163 verified reports of children recruited by various armed groups in Somalia. Incidents of recruitment doubled from 2015-2016, and continued to rise in 2017 and 2018 (The Roméo Dallaire Child Soldiers Initiative et al., 2018). In 2018, Al-Shabaab was reportedly responsible for 85%

of verified cases. Al-Shabaab has recruited children as young as eight and trained children as young as nine for combat and suicide missions (The Roméo Dallaire Child Soldiers Initiative et al., 2018).

DETENTION

Children accused of association with various armed groups, including Al-Shabaab, have been detained without due process by Somali authorities (The Roméo Dallaire Child Soldiers Initiative et al., 2018). The Somali National Army reportedly detained 386 children in 2016 and 156 in 2017 (Becker, 2020). Apart from some newly-built facilities, prison conditions in Somalia were generally poor, characterized by inadequate sanitation, hygiene, food and water, and medical care (*Somalia*, 2020).

TRIAL

“Due to capacity issues in the civilian court system, authorities often transferred criminal cases, sometimes even involving children, to the military court system, even when military courts did not appear to have jurisdiction” (*Somalia*, 2020, para. 7). Children have been prosecuted in military courts on charges of Al-Shabaab membership and conflict-related offenses. Sentences have included incarceration for periods of 10-20 years and the death penalty. Interrogators and guards have reportedly subjected children to beatings and torture in order to obtain confessions (Becker, 2020). “Federal and regional authorities sometimes executed those sentenced to death within days of the court’s verdict, particularly in cases where defendants directly confessed their membership in al-Shabaab before the courts or in televised videos. In other cases the courts offered defendants up to 30 days to appeal” (*Somalia*, 2020, para. 8).

ALTERNATIVE JUSTICE

No cases identified for the stipulated time period.

AMNESTY

Somalian authorities signed a handover protocol in February 2014 (Watchlist on Children and Armed Conflict, 2020). Children associated with Al-Shabaab have been released by Somali authorities to child protection actors and reintegration services. For example, in 2016, the Galmudug Interim Administration released 44 children allegedly associated with Al-Shabaab to child protection services two months after they were captured (Becker, 2020). Some children who have escaped or been captured from al-

Shabaab have received vocational training and psychosocial counseling in rehabilitation camps. UN representatives have asked Somali government authorities to accelerate the transfer of detained children to these camps (Becker, 2020).

No precise information was found about why some children are transferred instead of prosecuted, nor how long they typically remain in detention before such transfers.

CITIZENSHIP

No cases identified for the stipulated time period.

Uganda

LRA: 2000 - 2012

BACKGROUND

In 1986, the Lord's Resistance Army (LRA) began a guerrilla campaign in northern Uganda against the national government. In 2006, a cessation of hostilities agreement led the LRA to resettle outside Uganda in neighboring countries (namely: South Sudan, Democratic Republic of Congo and the Central African Republic) (Vindevogel et al., 2012a). The LRA abducted and forcibly recruited tens of thousands of child soldiers. The majority of abducted children were forcibly involved in atrocities against their own neighbors, family members, or friends (Vindevogel et al., 2012a). One estimate suggests the group had abducted 66,000 children and youth by 2006 (Lorschiedter & Bannink-Mbazzi, 2012) Another report suggests that by 2006, approximately 25,000 children were forcibly recruited (Vindevogel et al., 2012a). While estimates vary, by 2008, the LRA's insurgency in Northern Uganda had arguably caused the highest number of child abductions in the world (Lorschiedter & Bannink-Mbazzi, 2012).

DETENTION

The Ugandan army's Child Protection Unit handed over captured child soldiers to rehabilitation centers (Vindevogel et al., 2012b). No information was found to demonstrate any frequent or systemic detention of children recaptured from the LRA.

TRIAL

While Ugandan authorities did not generally pursue domestic prosecution for former LRA members, one notable exception was identified. In 2009, alleged LRA commander Thomas Kwoyelo was captured and charged with several serious crimes. He faced trial by a special division of Uganda's high court that handles the most serious international crimes (Human Rights Watch, 2011b). In 2018, his pretrial hearing was adjourned indefinitely because there were not adequate funds available to hold the hearing (International Center for Transitional Justice, 2018). In 2021, he remained in pre-trial detention (Kafeero, 2021). Kwoyelo alleges he was kidnapped in 1987 by the LRA at the age of 13 years old, and never afforded an opportunity to escape (Macdonald & Porter, 2016). However, Ugandan prosecutors allege Kwoyelo willingly joined the LRA in his twenties and repeatedly frustrated attempts from Ugandan authorities to negotiate his surrender (Macdonald & Porter, 2016). Given that Ugandan prosecutors allege that Kwoyelo was an adult at the time he joined the LRA, this case is considered an example of an adult prosecution. Therefore, for the purposes of this study, no cases were found regarding domestic criminal prosecution for children involved with the LRA for the stipulated time period.

ALTERNATIVE JUSTICE

In 2007, an accord was reached between Uganda's government and the LRA which discussed traditional justice mechanisms:

“Traditional justice mechanisms, such as Culo Kwor, Mato Oput, Kayo Cuk, Ailuc and Tonu ci Koka and others as practised in the communities affected by the conflict shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation.” (Ocen, 2007, para. 13)

Mato Oput is performed by the Acholi people, the ethnic group to which LRA leader Joseph Kony belongs and who suffered exceptionally due to the conflict. *Mato Oput* has been employed as a justice mechanism for child soldiers who were under the age of 18 at the time of the offense. The ceremony involves making tea from the fruit of an oput tree, which is mixed with the blood of a slaughtered sheep and shared between two clans to symbolize reconciliation and forgiveness. In the context of former LRA soldiers, the ritual has been described as a truth-telling event. The process emphasizes mediation and restoration, not retribution (Ocen, 2007).

Some rehabilitation centers conducted a welcoming ritual to indicate the child's former life had been left behind them by burning their old clothes and possessions brought from the bush. Such rituals were motivated primarily by the desire to encourage psychological healing and remove items that could remind children of their prior experiences. At the same time, because many items were stolen from people in the community, an aspect of this ritual might also be understood as a form of conflict resolution because it destroyed ill-gotten goods (Vindevogel et al., 2012b).

Some rehabilitation centers provided financial support for traditional justice ceremonies to take place in the communities. Financial support provided by rehabilitation centers sometimes increased stigmatization for children or caused conflict when they returned to communities, as they were perceived by some as having been materially rewarded for joining the LRA. Living standards at the reception centers were often higher than what they would have at home (Vindevogel et al., 2012b).

AMNESTY

In 2000 the Ugandan government enacted an amnesty for Ugandan citizens, including LRA fighters, involved in an armed rebellion against the state if they renounced their involvement. Since 2000 more than 12,906 people affiliated with the LRA have been granted amnesty, including a number of former high-ranking LRA commanders (Human Rights Watch, 2012).

Reception centers were established in northern Uganda to provide children with rehabilitation and reintegration services for a few weeks before they returned to their families. Children who attended these centers received an amnesty certificate from the government indicating they would never be prosecuted (Vindevogel et al., 2012b).

Ugandan authorities signed a handover protocol in May 2011, supporting a policy of captured children being released to social services rather than detained or prosecuted (Watchlist on Children and Armed Conflict, 2020).

International non-governmental groups, such as World Vision, as well as local organizations, such as Gulu Support the Children organization, opened rehabilitation centers in Uganda. Over 43% of abducted children are estimated to have passed through a rehabilitation center (Vindevogel et al., 2012b).

About 80% of those who attended reception centers escaped of their own initiative, with the remainder either being released (often when their commander surrendered or they

were injured and left behind) or rescued by another armed force (Vindevogel et al., 2012a).

Unlike countries where children and youth were included in large-scale demobilization, disarmament and reintegration programs, programming in northern Uganda focused primarily on reintegration (Lorschiedter & Bannink-Mbazzi, 2012).

Some rehabilitation centers conducted community advocacy in efforts to sensitize returning communities to the plight of former child soldiers, in an effort to improve their acceptance and the childrens' reintegration. Prayer and religious education were a significant part of programming (Vindevogel et al., 2012b).

CITIZENSHIP

No cases identified for the stipulated time period.

United Kingdom

ISIS: 2014 - 2021

BACKGROUND

Over the past decade, dozens of U.K. citizens, including children, have left the U.K. to join ISIS (a.k.a, Islamic State, ISIL, or Daesh), a jihadist group that initially emerged from an Iraqi faction of al-Qaeda. In 2014, ISIS launched an offensive against the Iraqi cities Mosul and Tikrit, and declared it would establish a caliphate stretching from Aleppo in Syria to Diyala in Iraq (Wilson Center, 2022). A coalition of forces led by the U.S.A. subsequently began airstrikes against ISIS in Iraq and Syria. By 2017, the ISIS caliphate had lost 95 percent of its territory, and the Iraqi president declared victory over the group in Iraq. In eastern Syria, where a coalition of Syrian Kurds and Arabs known as the Syrian Democratic Forces (SDF) gradually captured remaining ISIS-held territories throughout 2018 and 2019 (Wilson Center, 2022). Many ISIS members or supporters were detained by SDF forces in Syrian camps: in 2021, there were an estimated 60,000 former ISIS members or supporters held at al-Hawl camp in northern Syria (Wintour, 2021). A number of U.K. citizens, including children, ended up in SDF-controlled detention camps for ISIS supporters.

The U.K.'s engagement with children associated ISIS has predominantly occurred abroad, either (a) through foreign military operations in Iraq and Syria against ISIS, or (b) through diplomatic decisions made regarding British citizens associated with ISIS.

As explained in Chapter 2, this thesis does not generally examine actions committed by a state on foreign soil unless those actions relate to that state's own citizens. This data therefore focuses on the response of British authorities towards British citizens associated with ISIS. It does not address how British authorities have responded to non-British children associated with ISIS abroad.

DETENTION

No cases identified for the stipulated time period.

TRIAL

British authorities have prosecuted adult British citizens for supporting ISIS. By December 2021, approximately 400 Britons had reportedly returned to the U.K. after travelling to Syria or Iraq to join terrorist organizations; about 40 of them were prosecuted (Townsend, 2021). In December 2021, an adult British woman was also convicted under the UK's Terrorism Act for disseminating ISIS propaganda videos from the U.K. (Thrower, 2022). However, no trials involving children were identified for the stipulated time period.

ALTERNATIVE JUSTICE, AMNESTY

No cases identified for the stipulated time period.

CITIZENSHIP

Revocation of U.K. citizenship

British authorities have revoked U.K. citizenship from both adults and children in retaliation for supporting ISIS. Since 2016, over 120 people have been stripped of British citizenship under the U.K.'s British Nationality Act, which states a person can be deprived of their citizenship if the Home Secretary is satisfied it would be conducive to the public good. This mechanism is meant to apply only to dual nationals who would not be rendered stateless by revocation of their British citizenship (Nyamutata, 2020).

However, in practice, some have been rendered stateless by this policy, including at least one person who was a child at the time they joined ISIS. Shamina Begum was 15 years old when she left the U.K. to join ISIS in Syria. She married an ISIS fighter and

gave birth to two children who died of natural causes. Four years after leaving the U.K., while Begum was detained in a Syrian camp for former ISIS fighters and pregnant with her third child, she told a reporter she wanted to return to Britain because she feared for her unborn baby's health. British authorities then revoked her U.K. citizenship (Knight, 2020). Begum's third baby, who British authorities confirmed was a British citizen (BBC News, 2019), died of a respiratory infection at 3 weeks old (Knight, 2020). British authorities argued that Begum was not rendered stateless by the revocation of her U.K. citizenship because Begum's mother is Bangladeshi, and Begum was therefore eligible for Bangladeshi citizenship until the age of 21. However, Begum never actually held Bangladeshi citizenship, and Bangladesh's Foreign Minister announced Begum had no connections with Bangladesh and would be refused entry to the country. Begum's legal appeals to U.K. authorities were rejected. In rejecting one of her appeals, the U.K. Special Immigration Appeals Commission acknowledged that Begum's situation in the Syrian detention camp exposed her to a risk of torture and degrading treatment (Knight, 2020).

Refusal to extend consular assistance

By the end of 2021, about 20 British families remained detained in north-eastern Syria in camps for suspected ISIS supporters. They included about 19 women and 36 children; over half the children were under 6 years old (Townsend, 2021).

British authorities have repeatedly resisted calls from their allies, including the U.S.A, to repatriate the U.K. citizens detained in these Syrian camps (Wintour, 2021). High-ranking British politicians have justified this position with various arguments: because they fear U.K. citizens in Syrian camps pose an on-going risk to national security; because they cannot ensure they would be prosecuted if they return to the U.K.; and because they fear that U.K. courts will likely grant them freedom, thus imposing a major burden on the U.K.'s domestic intelligence services (Wintour, 2021) They have also argued Syria is too dangerous to provide consular assistance; the U.K. Minister for State Security stated he would not risk the lives of British people to seek out terrorists (or former terrorists) in Syria (Knight, 2020).

United States of America

Al-Qaeda & ISIS: 2002 - 2021

SPECIAL NOTE REGARDING THE U.S.A

As described in the methodology section in Chapter 2, in this thesis, responses have generally been attributed to particular governments only when those governments are acting either (a) towards their own citizens, or (b) within their own territorial jurisdiction. However, this section includes cases of non-American citizens detained at U.S.-run prison facilities in Cuba's Guantanamo Bay. Although Guantanamo Bay is not territorially part of the USA, and although these detainees were not American citizens, these cases were nonetheless included because: (a) for over 100 years, U.S. military forces have had recognized jurisdiction in the area through a lease agreement with the Cuban government;³² (b) the Cuban government does not hold authority in the area, making it inappropriate to categorize these cases as "Cuban" responses; and, (c) American authorities have repeatedly justified their actions at Guantanamo Bay in formal policy and legal documents, leaving no question their responses there are deliberate and systemic, not *ad hoc* reactive behavior by rogue forces. For these reasons, actions taken by U.S. forces in Guantanamo Bay are considered legitimate and relevant examples of U.S. responses towards child soldiers.

BACKGROUND

Al-Qaeda

Al-Qaeda is a militant jihadist founded in the late 1980's by Osama bin Laden to support Muslims fighting against the Soviet Union during the Afghan War. It subsequently evolved and merged with a number of other militant Islamist organizations. It opposes foreign involvement in Islamic countries, has repeatedly called for holy war against the United States, and has claimed responsibility for numerous attacks against American targets, including various embassies and the September 11, 2001 attacks. The U.S. government responded to the Sept. 11 attacks by launching a military invasion of Afghanistan (Encyclopaedia Britannica, 2022a). American authorities established a high-

³² In 1903, the U.S.A and Cuba entered a treaty granting the U.S.A jurisdiction and control over Guantanamo Bay through a perpetual lease that can only be voided by mutual agreement. The U.S.A. established a military base there. In the 1960's, Fidel Castro threatened to expel US forces from the area, but the lease ultimately remained in force. (Rothman, 2015)

security prison at the Guantanamo Bay naval base in January 2002 specifically intended to hold suspected al-Qaeda members captured during the US invasion of Afghanistan in 2001 (Haddad, 2022).

ISIS

ISIS (a.k.a, Islamic State, ISIL, or Daesh) is a jihadist group that initially emerged from an Iraqi faction of al-Qaeda in 2004. In 2014, ISIS launched an offensive against the Iraqi cities Mosul and Tikrit, and declared it would establish a caliphate stretching from Aleppo in Syria to Diyala in Iraq (Wilson Center, 2022). A coalition of forces led by the U.S.A. subsequently began airstrikes against ISIS in Iraq and Syria. By 2017, the ISIS caliphate had lost 95 percent of its territory, and the Iraqi president declared victory over the group in Iraq. In eastern Syria, where a coalition of Syrian Kurds and Arabs known as the Syrian Democratic Forces (SDF) gradually captured remaining ISIS-held territories throughout 2018 and 2019 (Wilson Center, 2022). Many ISIS members or supporters were detained by SDF forces in Syrian camps: in 2021, there were an estimated 60,000 former ISIS members or supporters held at al-Hawl camp in northern Syria (Wintour, 2021).

DETENTION

Between 2002 and 2021, 780 detainees were held at Guantanamo Bay. Human Rights Watch reports that only 16 were charged with criminal offenses. Detainees included nationals from various countries, including Afghanistan, Saudi Arabia, Yemen, Pakistan, and Algeria (Haddad, 2022).

The exact number of minors detained at Guantanamo Bay is contested. According to documents released by Wikileaks in April 2011, fifteen detainees were below 18 years old when transferred to Guantanamo Bay. However, because their birth dates were only recorded in years not precise months, there remains ambiguity about whether six additional detainees were 17 or 18 years old at the time of transfer their transfer. If all of these detainees were 17 at the time of their transfer to Guantanamo Bay, it would bring the total number of minors to 21. The two youngest detainees were either 13 or 14 years old at the time of transfer (Center for the Study of Human Rights in the Americas, 2013).

In April 2003, a US military spokesman said children younger than 16 were being detained at Guantanamo Bay were “enemy combatants” and “active combatants against US forces” (The Guardian, 2003, para. 2). He argued these detainees had “potential to

provide important information in the ongoing war on terrorism,” and that they would be released if it was determined they were not a threat to the US and had “no further intelligence value” (The Guardian, 2003, para. 9-10).

In January 2022, a US Major General who supervised the prison’s construction said that some detainees were tortured in Guantanamo (Geleff & McGillivray, 2022).

TRIAL

Minor Guantanamo Bay detainee Omar Khadr was prosecuted by a military commission. Khadr was captured at 15 years old by US forces during a firefight in Afghanistan in 2002 (Encyclopaedia Britannica, 2022b). He was a Canadian citizen whose father sent him to Afghanistan a few months prior. Khadr’s family was associated with Osama bin Laden, and his father was a suspect in the 9/11 terror attacks against the US (Encyclopaedia Britannica, 2022b).

In a 2010 plea agreement, Khadr admitted guilt to murder and attempted murder in violation of the laws of war, conspiracy to commit terrorism, providing support for terrorism, and spying. He was sentenced to 40 years imprisonment, to serve a maximum of 8 years. Khadr was repatriated to Canada in 2012 to serve the remainder of his sentence (International Crimes Database, n.d.). He was released on bail by a Canadian court in May 2018. In March 2019, his sentence was declared complete and his bail conditions lifted (Encyclopaedia Britannica, 2022b).

The US also brought Guantanamo detainee Mohamed Jawad, who was either 17 or 18 years at the time of his transfer to Guantanamo, to face charges before a military commission. However, a military commission judge determined his confessions had been produced by torture, and he was repatriated to Afghanistan in 2009 after a federal judge ordered his release (Human Rights Watch, n.d.).

American authorities have also prosecuted adult American citizens for aiding ISIS (Holaday, 2022) . Some of these include adults repatriated from Syrian detention camps for ISIS supporters. American authorities report they have repatriated 28 Americans associated with ISIS – 12 adults and 16 children – from Syria, and prosecuted ten of the adults for terrorist offences (Wintour, 2021).

No cases were found involving the prosecution of repatriated American children.

ALTERNATIVE JUSTICE, AMNESTY

No cases identified for the stipulated time period.

CITIZENSHIP

No cases identified for the stipulated time period. To the contrary, American authorities have sought to repatriate and criminally charge U.S. citizens suspected of supporting ISIS and have urged their allies to follow suit (Wintour, 2021).