CHILD SOLDIERING– A MASSACRE OF INNOCENCE AND RIGHTS

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“War violates every right of a child – the right to life, the right to be with family and nurtured and respected.”

- Graca Machel

One of the most appalling developments in the last few decades has been the growing use of youth as soldiers. For centuries, children have been enrolled to become expendable frontline soldiers in conflicts worldwide. Child soldiers, also known as Children Associated with Armed Forces, are engaged by the state and non-state actors as fighter soldiers, slave labourers, drug traders, intelligence agents, suicide bombers, cooks, spies, messengers, or lookouts, etc. Despite child soldiering being universally condemned to be atrocious and abhorrent, its continued practice over the years has killed, injured, orphaned, permanently disabled and caused serious psychological trauma to several children. In order to combat this evil, a number of international legal standards have been developed which have however, faced difficulties in its implementation.

In this article, the authors discuss the major causes of the recruitment of child soldiers, the serious implications of child soldiering, existing legal framework, the hurdles to the effective implementation of international conventions and treaties providing for the civil, socio-economic and politico-cultural rights of children as well as effective rehabilitation measures. The authors also attempt to suggest appropriate mechanisms to curb the use of child soldiers.

Introduction

“They use stronger stuff, like drugs or money, to bait us and to make us march...I remember the attack on Njola-Kombouya village, in the south of Sierra Leone. They made us wake up at 1 in the morning and we marched until 7. A doctor came with a small bowl of cold water, two injections, and a small vial filled with red liquid. At first, I constantly felt weak and then after, I had a sense of overwhelming power, I felt myself capable of anything...I had rage, hate, I wanted to destroy everything. You can’t understand, we were

1 This was quoted in the Report of the Expert of the UN Secretary-General, Ms. Graca Machel, who was appointed on June 8, 1994 as an Expert of the Secretary General on the Study of Impact of Armed Conflict on Children.
placed in such a state that we laughed in face of all that violence, we found it exciting, we had no limits."

The UNICEF and *The Paris Commitments and Principles 2007* define child soldiers as persons below the age of eighteen years directly or indirectly involved in armed forces. Children are recruited worldwide for national and international conflicts in humongous numbers, leading to the death of millions children due to their participation in these armed conflicts. Their age may vary from four years to late teens. The basic rights of these children are shamelessly disparaged for carrying out barbarous activities causing them injury, trauma and disablement. The military use of children takes three distinct forms: direct participation in hostilities, indirect support roles such as cooks, drug traders, spies, suicide bombers, porters, messengers, guards, labourers, human shields and even as sex slaves, and lastly for advantage in political propaganda. The phenomenon of recruitment of the child soldiers is age-old. The recruitment of children can be traced back to the drummer boys of the Napoleon soldiers, or the young boys in the American civil war

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3 UNICEF defines a ‘child soldier’ as any child, boy or girl, under the age of 18, who is part of any regular or irregular armed force or armed group in any capacity. This includes, but is not limited to, cooks, porters and messengers. It includes girls and boys recruited for sexual purposes and/or forced marriage. (Based on the ‘Cape Town Principles’, 1997). *Children Associated with Armed Groups and Forces*, UNICEF, [https://www.unicef.org/wcaro/FactSheet100601Final_E_100603_.pdf](https://www.unicef.org/wcaro/FactSheet100601Final_E_100603_.pdf) (last visited Apr. 5, 2017).

Paris Commitments and the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups defines, ‘a child associated with an armed force or armed group’ as “any person, below the age of 18 years, who is, or has been recruited or used by an armed force or armed group in any capacity, including but not limited to, fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken a direct part in hostilities. *The Paris Principles*, UNICEF (Feb. 2007), [https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf](https://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf) (last visited Apr. 5, 2017).

4 According to UNICEF factsheet, approximately three lakh children are currently involved as combatants worldwide.


or the underage allied troops of Hitler Jugend. This list is not exhaustive. Eventually with time, the promotion of the international child rights movement led to the development of international policies and laws regarding the use of child soldiers. Yet, in spite of a lot of efforts by the UN Security Council Resolutions, international accords, domestic legislations and many more, the exploitation of children in the armed forces remains unabated, which is also an indication of grave issues of political and economic nature. However, until the root causes of such practice are identified and apprehended, the embargo against child soldiering will never be effectively executed; policies and legal framework shall be designed accordingly to eradicate this evil.

### Countries that recruit child soldiers

The UN Secretary General’s Annual Report on Children and Armed Conflict includes details of both state and non-state armed forces which use children in armed conflict. The UN Report 2016 discusses the use of child soldiers in 21 countries. However, the list is not exhaustive. Out of twelve signatories to the Paris commitments, ten countries appear on the UN blacklist for recruiting child soldiers. Presently the recruitment of child soldiers is carried out in largest degree and worst forms by the non-state actors, insurgency groups and government– supported militias. Evidence suggests that countries having similar ethnicity vary widely in their likelihood or degree of using child soldiers. The practice of child soldiers cannot be stereotyped to be ‘an African thing’, for instance, Rwanda.

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6 The drummer boys were often recruited in civil wars to communicate orders by beating their drums to the army as it was difficult to gear the officer’s orders during the war. The civil war is also called the Boy’s War as most of its soldiers were below 18 years. Marcie Schwartz, *Children on the Battlefield*, CIVIL WAR TRUST, [http://www.civilwar.org/education/history/children-in-the-civil-war/children-on-the-battlefield.html](http://www.civilwar.org/education/history/children-in-the-civil-war/children-on-the-battlefield.html?referrer=https://www.google.co.in/) (last visited Apr. 5, 2017).


8 Child soldiers is also used in these unlisted countries: Chad, South African Republic, Bolivia and Mexico.

9 The ten signatories blacklisted are: Burundi, Chad, Colombia, Ivory Coast, the Democratic Republic of Congo, Nepal, Somalia, Sudan, Sri Lanka, and Uganda. The remaining two offenders, Philippines and Myanmar neither attended the conference nor signed the document. These include the Taliban in Afghanistan, Mai–Mai Nyatura in Democratic Republic of Congo, the ‘Islamic State’ in Iraq and Syria, the Kachin Independence Army in Myanmar, Al Qaeda, Jaysh al–Mahdi and the Lord’s Resistance Army.
encountered mass genocide but it is not noted for child soldiering. Thus it can be understood that child soldiering cannot be linked with any particular culture, ethnicity or past historical events of a nation.

Causes of Recruitment

As children can be easily enticed and forced, they are abducted and beaten into submission by the armed groups. The cost of recruiting and training children is also less than that of adults. Moreover, due to the availability of lightweight weapons, children can easily substitute adult combatants.\(^{11}\) Besides combatant roles, girls are mostly exploited as sex slaves, occasionally serving as a ‘reward’ for the best fighters. The quota system in Burma, Sri Lanka and Nepal, mandates families to ‘volunteer’ one member to armed rebel groups.\(^{12}\) Political indoctrination also aids in such propaganda and recruitment.

In some rare instances, young boys and girls join voluntarily to escape poverty, defend community identity or are influenced by the idea of revenge, heroic death and martyrdom. In the hope of being fed and housed, poor parents send their children to armed groups. Children, who are unaccompanied, orphaned or living in a tough family environment consider it safer to join an armed group than confronting those problems. On witnessing the humiliation, killing of parents or rape of their siblings, children might join out of the feeling of revenge. Discrimination on the lines of ethnicity, culture and religion potentially mobilises children to protect their community identity. However, there is no voluntary enlistment. The distinction between ‘voluntary’ enlistment and forced recruitment is without meaning because even if children join on a ‘voluntary’ basis, it is their desperate attempt to survive.

Refugee camps turn out to be ideal breeding grounds for child soldiers considering factors such as militarisation, heightened insecurity of displaced population, porosity of international borders and weak protection of refugee camps. As rates of criminal activity soar in post conflict societies, they are sometimes as violent as they were when at war. This lawlessness harnesses a host of both economic (poverty, lack of education and job opportunities) and social (domestic and sexual abuse) issues that drive child recruitment.

\(^{11}\) This argumentation has been used both by UNICEF (1996) and Human Rights Watch (2008), the latter stating that: “Technological advances in weaponry and the proliferation of small arms have contributed to the increased use of child soldiers.”


In sum, as peacetime never calls for child recruitment, it is the conflict itself which is a major immediate factor causing their recruitment.

Victims or Perpetrators: The Two-Sided Story

The debate on whether child soldiers are victims or perpetrators, hence should be prosecuted, has been going on for a long time now. On one side of the argument, many believe that child soldiers are not morally responsible for their actions as they have no say in their recruitment, however many consider it safer to join as it secures them the basic necessities. Once recruited, they become over-dependent on their commanders when brainwashed by drugs and alcohol. Moreover, rehabilitation is believed to be the aim and not punishment. Prosecuting children might have negative implications, for instance, prosecution may be selective or based upon insufficient evidence. The Report of Children and Justice during the Aftermath Conflict states that since children below 15 years are considered too young to fight, they should as well considered too young to be prosecuted. The part of the human brain which controls decision making develops well only in one’s 20’s. Children lack the maturity and sense of rightfulness, hence, easily intimidated and indoctrinated. On the other side of the argument, child soldiers are thought of as replicas of child criminals and therefore should be prosecuted. In the last few decades, child soldiers have committed numerous brutal war crimes, viz., rape, mutilation, mass slaughter of civilians, etc. The age of criminal culpability in most states is below 18 years. It is argued that if a child can be convicted for murder under such domestic laws, they should not be excused from liability for the similar crimes during wartime. Besides, not all children are forced into fighting, some join voluntarily and hence are not innocent. Moreover, if not prosecuted, it could be an incentive for militants to delegate children to commit war crimes, thus, aiming at impunity; and also be a denial of justice to the victims.

Determining the minimum age of criminal liability is the main challenge. The ICC Statute prohibits the Court from prosecuting anyone under 18 years, child soldiers are still tried and jailed.

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14 Ibid.
15 Radhika Coomaraswamy, Special representative of Secretary-General for children in armed conflict, stated: “If minors who have committed serious war crimes are not prosecuted, this could be an incentive for their commanders to delegate to them the dirtiest orders, aiming at impunity.”
16 Article 26, Rome Statute of ICC, 1998 mentions that no court shall have jurisdiction over any person who is under 18 years at the time of the alleged crime.
A prosecuted Sudanese child soldier, Emmanuel Jal, stated that in his fighting history of five years, his only focus was to kill maximum number of Muslims. From drugs to alcohol, these children are placed under horrific and preposterous circumstances. They kill to stay alive. Children must not undergo such cruel and grotesque circumstances. Thus, the authors believe that the determination of criminal liability shall also consider the voluntary and involuntary recruitment of child soldiers. Prosecution should be the last resort as the ultimate purpose shall be to rehabilitate and reintegrate the ‘offending and/or victim’ child into the society.

Impacts of Child Soldiering

“They give you a firearm, and you have to slaughter your best friend. They do that to see if they can trust you. If you don’t kill, your friend is ordered to kill you. I had to do it, otherwise I would have been killed.”

Child soldiering has far-reaching adverse impacts on the young boys and girls. Children are subjected to abuse, deprivation of basic subsistence needs, internal displacement, uprooted form homes and communities and are forced to commit atrocities. The past decade has witnessed millions of children being killed, orphaned, traumatised, injured and handicapped.

To subjugate children, combatants do not hesitate to rape, torture, abuse or even kill their family members. This very phenomena is a gross violation of human rights of children whether directly or indirectly affected by war. The tender bodies bruised and broken, starved and malnourished, abused and traumatised, are evident proofs of victimhood, and their reintegration into the community faces several hindrances. Common psychological disorders are post-traumatic stress disorder (PTSD), anxiety, depression, withdrawal, suicidal tendency, low self-esteem, hostility and aggression.

Even when demobilised, former child soldier due to lack of educational and vocational skills suffer from reduced earning potential, which in turn increases their susceptibility to gang membership, violence and re-recruitment in combat groups than other children. The Survey of War Affected Youth in North Uganda found abductees to be twice more likely to be illiterate and earning capacity to be one-third less than their non-abducted counterparts.

18 This quote is from Columbie, a boy recruited at 7 years by a paramilitary group.
19 Over 10 years, 2 million children have been killed, 6 million have been seriously injured, 1 million have been orphaned and 10 million have suffered psychological trauma. Children in Conflict: Child Soldiers Children in Conflict, SOS CHILDREN VILLAGES, http://www.child-soldier.org/ (last visited Apr. 7, 2017).
20 SWAY surveyed 741 youth out of which 462 were former abductees.
Child soldiering has a devastating effect on girls. Their problems include unwanted pregnancies, sexually transmitted diseases, HIV/AIDS and abortions, during and after which they do not usually receive proper medical care, resulting in serious lifelong illnesses affecting their reproductive capabilities. They along with their ‘unwanted’ war children suffer stigmatisation in post-conflict life. Such stigmatisation is replaced by feelings of pity in case of male child soldiers. Girls are often left out of post-conflict reintegration programs. Their distinctive gendered needs are not addressed.

Former child soldiers may at best have their needs forgotten and at worst be blamed by their communities for what happened.

**Legal framework and Case Studies**

*Prosecutor vs. Thomas Lubanga Dyilo*, an exclusive judgement on the issue of child soldiers is a reliable and authoritative verdict at the global level. In this case, Dyilo was found guilty on charges of conscription and mobilization of children under the age of fifteen, by using them to join in an armed conflict in Ituri, Democratic Republic of Congo.

In another case law of *Child Soldiers International vs. Secretary of State of Defence*, stated that the basic aim of the local as well as global law is to prioritize the paramount interest of the child under eighteen years and prohibiting the recruitment of child soldiers before the age of twenty two.

*The Optional Protocol on Involvement of Children in an Armed Conflict, 2000*, declares the minimum age for combatants as eighteen years by clearly prohibiting the non-state armed groups engaging of hostilities in conflicts. Nevertheless, by providing a separate binding declaration assuring safeguards for such recruitment, the state may also accept volunteers from the age of sixteen. *The Convention on Rights of Child, 1989* (hereinafter referred as CRC) defines a child as a person below the age of eighteen years. It states the minimum age for participation in combat as 15 years.

OPAC was drafted to increase the age limit set out in the CRC.

Considering the horizon of International Criminal law, the International Criminal Court (ICC), established under the Rome statute, tries persons charged with genocides and war

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21 It is easier for boys to be accepted after amputation of the hand, than girls to be accepted by the villagers after being raped. *Female Child Soldiers, GLOBAL POLITICAL*, http://www.globalpolitics.cz/clanky/female-child-soldiers (last visited Apr. 2, 2017)
22 ICC-01/04/06
23 (2015) All ER(D) 305 (Jul)
24 Hereinafter referred to as OPAC.
26 Article 38, CRC requires the state parties to prevent recruitment below the age of 15 years and to prohibit the direct participation in hostilities.
crimes\textsuperscript{28} including sexual slavery\textsuperscript{29} to fight national and international armed conflicts waged by 15 year old children. The defence of ‘acting on superior’s orders’ to escape criminal responsibility has been denied by ICC\textsuperscript{30} as well as the Nuremberg Principles.\textsuperscript{31} The Geneva Conventions 1949 and their Additional Protocols prohibit children under the age of 15 years to be used in an armed conflict. The International Labour Organisation (ILO) Minimum Age Convention, 1978 states eighteen years as the minimum age for admission to any work which is likely to endanger the safety and health of the children\textsuperscript{32}. Similarly, the ILO Worst Forms of Child Labour Convention, 1999\textsuperscript{33} as well as Customary Humanitarian law\textsuperscript{34} obligates each ratifying state to take effective and immediate measures to secure elimination of worst forms of child labour practices.

Besides the intentional framework, many countries\textsuperscript{35} have taken measures to eradicate this issue. \textit{African Charter on Rights and Welfare of Child} requires the ratifying states to appraise measures refraining participation of children in combat\textsuperscript{36}. The \textit{European Convention for Protection of Human Rights and Fundamental Freedoms} prohibits use of inhumane treatment including compelling children to be involved in warfare.\textsuperscript{37} The \textit{Paris Commitments and Principles} issue directions to protect children from unlawful.\textsuperscript{38} The United Nations Security Council also passed a series of resolutions criticizing children taking part in hostilities.\textsuperscript{39} Special Representative of the Secretary-General for Children and Armed Conflict (SRSG) advocates for safeguarding rights of the young combatants by further enhancing the protection through humanitarian and diplomatic initiatives at the grass root level.\textsuperscript{40}

\textsuperscript{28} Article 8(2)(b)(xxvi), Rome statute, ICC.
\textsuperscript{29} Article 8(2)(e)(vii), Rome statute, ICC.
\textsuperscript{30} Article 33(2), Rome Statute, ICC.
\textsuperscript{31} Nuremberg Principle IV, 1950 states: “Fact that a person acted pursuant to the order of his government or superior does not relieve him from criminal responsibility.” \textit{Should child soldiers be prosecuted for their crimes? IRIN}, (Oct. 6 2011) \url{https://www.irinnews.org/fr/node/256022} (last visited April 12, 2017)
\textsuperscript{32} Article 3, The ILO Minimum Age Convention, 1978.
\textsuperscript{33} Article 3(a) defines child as persons under age of eighteen years.
\textsuperscript{34} Rule 55 of Customary International Humanitarian Law.
\textsuperscript{35} Countries like South Sudan, Africa, Democratic Republic of Congo, Somalia, Yemen, Afghanistan and Myanmar have taken steps to prevent the practice of child soldiers.
\textsuperscript{36} Article 22(2), African charter on rights and Welfare of the Child, AFRICAN COMMISSION ON HUMAN AND PEOPLE’S RIGHTS, \url{http://www.achpr.org/instruments/child/#a22} (last visited April 10, 2017)
\textsuperscript{37} Customary IHL Database ICRC, \url{https://ihl-databases.icrc.org/customary-ihl/eng/docs/citation} (last visited April 10, 2017).
\textsuperscript{40} \textit{Strategic Framework 2011–13}, Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UNITED NATIONS,
Till date, UN has adopted 11 resolutions concerning children participating in war that aided in successfully releasing over 1 lakh child soldiers, created strong action plans worldwide and also setup a committee to monitor and report the mechanism established. International law, Customary law, Humanitarian law, Labour law or the other regional laws, statutes, treaties, agreements have repeatedly stated the negative repercussions of child soldiering, still the lacunas in the existing legal framework need to be filled.

Preventive Measures

The grave issue of recruitment of child soldiers is curbed by constant efforts round the globe by adoption of various laws, relevant directives and treaties. In the first half of the 20th century, child protection norms began with the foundation of Save the Child (1919) further leading to passing of The Declaration on Rights of Child (1924). Establishment of UNICEF in 1946 and United Nations Declaration on Rights of Child, 1959 boosted the machineries working to stop this custom. The norm emergence reached a tipping point with the passage of the CRC, 1989. According to recent studies, states have internalised norms in respect of the rights of the children. Child soldier International, 2002 a UK based non-governmental organisation, promotes implementation of international standards preventing the military recruitment or use of children in such hostilities and aims for reintegration of children in the society. Maintaining a long involvement in campaigns worldwide, Cultures of resistance Network (CoR) has maintained and Human Rights Watch aim to end child soldiering. Children, not Soldiers, an initiative by the UNICEF aim to galvanise support to terminate recruitment of child soldiers in conflicts.

International federations act as a support system to institutions like Red Cross and Red Crescent National Society that demobilise and reintegrate the child into the society. Action plans like Disarmament, demobilisation and Reconciliation and The Truth and reconciliation commission (hereinafter referred as DDR and TTR) are far better ways of helping children recover and reintegrate back into society and out of war. Components of the civil society, Media, and other significant developments on protection of children engaged in warfare have been accomplished by institutionalised.

Conclusion and Suggestions


41 In 2001, 70 states have passed national laws to limit recruitment of young combatants however in reality around 25 states use children in their militaries from 1998-2008 which has declined to less than ten by 2012.


The international community consisting of diverse UN agencies, policymakers and NGOs have worked extensively to address the problem. Yet, realistically, they have succeeded very little due to lack of enforcement mechanisms, paucity of funds or weak administration. Although there are numerous conventions and treaties, these are binding only on the ratifying nations, thus, the absence of compelling factor helps the nations to escape liabilities. Even if ratified, it must be backed by strong political will, a change in the social outlook and strong administrative systems.

In most third world nations, on-going internal armed conflicts, collapsing social and administrative structures and weak economy lead to higher recruitment of child soldiers. In these countries, where situation demands strict enforcement of rights, the very same factors become major obstacles. The progress towards criminalising international law which shifts culpability from governments to individuals, might have great bearing on the protection of rights of former and future child soldiers. The best policy shall be to ensure that peace settlements remain effective so that civil wars - the very root cause of child soldiering - are itself eliminated. For the DDR programs, focus on community-level education reform and development and maintenance of basic services is essential. Another measure which proved effective in Sierra Leone to end their civil war, is shaming the leaders who recruit child soldiers.

The international bodies should use pressure and sanctions on those countries that do not establish and enforce legislations for rehabilitation of child soldiers and prosecution of their recruiters. Cooperative efforts of national governments and international organisations are imperative in this regard. Until such cooperation and commitment is accomplished, each day one more child will take up arms in Afghanistan, another will breathe his last in the battlefields of Congo and yet another girl will be ‘rewarded’ to the best fighter in Sierra Leone.