

## ‘CHILDREN, NOT MUSKETEERS’ – A CALL FOR JUSTICE IN ARMED CONFLICTS

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### Abstracts:

This paper is an endeavour to assay the myriad miseries and anguish inflicted on children in the aftermath of armed conflicts. Infringement of child rights during armed conflicts have gone unpunished for long. In spite of significant progress of the international community in building mechanisms with the aspiration of ending freedom from punishment for violations against children, a lot still needs to be done. The dynamic and contemporary nature of armed conflicts necessitates the implementation of aberrant approaches to iron out the steep challenges. Youth-specific reparations for protecting the children today, implicate much more than merely punishing these perpetrators. These include addressing issues like education, loss of childhood, family, psycho social support, rehabilitation, livelihood and many more. Increasing participation of the youth in meeting the ends of justice and innovative modus operandi will efficaciously deal with the current day agony of children in the quagmire of armed conflicts. The paper also attempts to articulate how the grave suffering and violation of children in armed conflict can access justice and how the current system of justice deals with victims and witnesses.

**Keywords:** *Armed, Children, Reparation, Justice, Miseries*

The young and the budding population of our future nation has been dragged into quagmire for which law is not giving a solution. No doubt children in war conflict are protected by International humanitarian law under the umbrella of civilians or combatants, also several special provisions recognizing their vulnerability and needs in armed conflict are been taken care of, but children as soldiers is a shock to the world's conscience where extreme violence directly or indirectly is targeting children. Millions of children are not merely bystanders, but also targeted in conflict. Children are still recruited by armed forces of the nations. Some children are victim to general onslaught against civilians and others die as calculated genocide. They suffer from sexual violence or multiple deprivation that expose them to hunger or disease. The recruitment of children over the past few decades, especially in Africa, is a serious humanitarian problem. The children are put in great danger not only by taking active part in the fighting but they are also used as supporting roles like providing military intelligence or caring supplies. However the role of children is not limited to fighting. Hundreds and thousands of children around the world are used as soldiers in armed conflict. Children are abducted and beaten into submission while others join to defend their communities, to escape from poverty, or out of the feeling of revenge. The condition of girls in particular is vulnerable. They are forced to serve as sexual slaves. Also, in the modern phenomena children are used as agents of terror such as suicide bombers. Regardless of these, the reintegration of these children into normal civilian life is a long healing and complex process. They are victims who bear serious



implication for their physical and emotional well-being. They are subject to abuse, witness death, killing and sexual violence. The chilling conclusion of child soldiering has sucked the world into a desolate moral vacuum. This space is devoid of most basic human values, a space where children are raped, slaughtered, maimed and exploited as soldiers, by being exposed to starvation and extreme brutality.

### **CHILD SOLDIERING – “Shame of War”**

A child soldier is a child actively participating in violent conflict as a member of that organization which applies violence in a systematic way. The internationally agreed definition for a child associated with an armed force or armed group (child soldier) is 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.<sup>1</sup> This definition, however is broad in many respects when we worry about child recruitment and focus on specific reasons either from a normative or analytical point of view. The participation of children as soldiers in armed conflict is an alarming situation. Earlier children were recruited supporting role in armies like cooking, porters, spies and messengers. But in today's date 80% the fighting force is composed of child soldiers, that can be characterized as “new war “which constitutes the overriding form of violent conflict which over the last few decade has emerged. Hundreds and thousands of children are kidnapped, conscripted or presumed into joining armed groups. It has been made possible after the proliferation of lightweight weapons such as automatic guns for effective child soldiering which can also be used by under 10year old child. The growth of these light weapons was an obvious pre-requisite for the involvement

of these tiny hands in modern conflict. The easy availability of very light, cheap, and easily maintained weapon with high power and fire, which can even be effectively use by the children without even giving training adds to the problem.

“When they came to my village, they asked my older brother whether he was ready to join the militia. He was just 17 and he said no; they shot him in the head. Then they asked me if I was ready to sign, so what could I do - I didn't want to die.”<sup>2</sup>

### **CHILD RECRUITMENT -THE YOUNGEST SOLDIER**

#### **WHY CHILD?? ROOT CAUSE-**

Children are an important determinant of war strategy. They are viewed as a source to be exploited by military and rebel leaders. Children are innocent and they don't have the conception of death. The myriad image of death is not clear in their mind, so they find it fascinating, adventures and agree to join child soldiering. They also join armed groups for various reasons and by various methods. Recruiting children is seen as cheap, effective and provides obedient fighters. Children are mainly a part of war strategy as they are plentiful as well as they are easy to impress and are expandable. According to the media report in some African countries of civilians and soldiers, they fear child soldiers more than adult ones because they believe children possess magical and extraordinary powers. The main reason for their recruitment is their fearlessness in the battle field and the atrocities which are so easily committed by them. Development and proliferation of small and light weight weapons has made active participation of children possible. Factors such as poverty, lack of opportunity, high orphan rates, illiteracy and displacement are the root cause of child soldiering. The children who are from a impoverished and

<sup>1</sup>Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, 2007.

<sup>2</sup>Myanmar A former child soldier taken when he was 13. (Source: BBC report.)



marginalised background or those who have been separated from their families are most likely to become victims of child soldiering. They are also preferred and desired by commanders as they are "more obedient, do not question orders and are easier to manipulate than adult soldiers".<sup>3</sup>

The recruitment and use of children has become endemic in the conflict. Despite the protection they are still continued to be recruited by armed groups and armed force. In modern day warfare even girls are increasingly becoming the subject of targeted attack to military recruitment and sexual violence. They are recruited in many different ways. Some are conscripted, kidnapped, others are press-ganged and the rest forced in order to defend their families. The basic problem of child recruitment is that in many countries birth registration is inadequate or non-existent and hence children do not know how old they are. So in compliance with the national laws, on the basis of appearance and physical development recruiters recruit children by guessing them as 18 or plus. Countries which do not conscript systematic registration or with weak administrative system recruit arbitrarily from streets, schools and orphanages. Children from poorer sectors and adolescent boys who work in the informal sector like selling gun, cigarettes or lottery tickets are particularly targeted. In Myanmar, whole groups of children from 15 to 17 years old have been surrounded in their schools and forcibly conscripted.<sup>4</sup> Children from wealthy and more educated family are left undisturbed. To avoid forced conscription the parents who have means even send their children out of county.

Forced recruitment, where they are beaten and abducted to present or submit themselves to join service. There are other push and pull factors that drive children to join army group. The most basic reason is economic

condition and its related factors like poverty, hunger, discrimination or the idea of martyrdom and heroic death. In Lebanon and Sri Lanka, for example, some adults have used young people's immaturity to their own advantage, recruiting and training adolescents for suicide bombings.<sup>5</sup> Children sometimes voluntarily join armed service to ensure at least one meal, clothing and medical service. Parents also give their children in the movement for this cause. Revenge is a key motivating factor when they witness discrimination on the basis of ethnic, tribal and religious identity and the killing, humiliation of their parents or sisters being raped. However sometime children associate themselves with armed conflict for social cause, self-determination or religious expression or national liberation. In South Africa, children had joined the fight for the pursuit of political freedom, even though there is no voluntary enlistment of child soldiering because the ultimate decision to recruit them or not lies on the decision of adult commanders and so they are the people who should be held accountable for this inhuman act.

### **Myriad miseries and anguish- Heart of darkness-**

They fight like musketeers but die as innocent children. They are the youngest soldiers. Children once recruited as soldiers are given the same treatment as adult's combats. Some start as support function which entail great risk and hardship. Common work assigned to children are to serve as porter, carry heavy loads which can be double their weight or carry ammunition or injured soldiers. Children who are not able to carry their loads are savagely beaten or even short to death. Children are extensively used as lookouts or messengers at the time of war. In Latin America, reports tell of government forces that have deliberately killed even the youngest children in peasant communities on the grounds that they, too, were dangerous.<sup>6</sup> Also they are used for household chores or other routine services.

<sup>3</sup>Brett, Rachel, Margaret McCallin and Rhonda O'Shea, "Children: The Invisible Soldiers", Geneva, Quaker United Nations Office and the International Catholic Child Bureau, April 1996, p. 88.

<sup>4</sup>Ibid., p. 23

<sup>5</sup>Ibid., p. 31

<sup>6</sup>Ibid., p. 52



Like in Uganda, children work as guards, gardener, hunter for fruits and vegetables. Child soldiers include both boys and girls, but girls mainly who are physically strong and can perform same function as boys. In Guatemala, rebel groups use girls to prepare food, attend to the wounded and wash clothes. Girls may also be forced to provide sexual services. In Uganda, girls who are abducted by the Lord's Resistance Army are "married off" to rebel leaders.<sup>7</sup>

### CASE STUDY-

A case study showing child's experience of joining armed group from Honduras:

"At the age of 13, I joined the student movement. I had a dream to contribute to make things change, so that children would not be hungry ... later I joined the armed struggle. I had all the inexperience and the fears of a little girl. I found out that girls were obliged to have sexual relations 'to alleviate the sadness of the combatants'. And who alleviated our sadness after going with someone we hardly knew? At my young age I experienced abortion. It was not my decision. There is a great pain in my being when I recall all these things ... In spite of my commitment, they abused me, and they trampled my human dignity. And above all, they did not understand that I was a child and that I had rights."<sup>8</sup>

Starting as an indirect support soon these children become the heart of the battle. Public health hazard has become a major problem which can't be ignored. Any hazardous disease that caused large scale damage to children in past would drag the attention of public health specialist. In today's context also, armed conflict kills and maims thousands of more children as compared to men. Thousands of children every year are

killed due to direct fighting-from bullets, knife, bombs and landmines and many die from malnutrition or disease caused by conflict. Between 1981-88 in Mozambique 454,000 children died in armed conflict. They are vulnerable to collective assault and well-being.

### Promoting psychological recovery and social reintegration-

Child best nourishment, wellbeing, development in his best interest is ensured by family and community and develop understanding from local culture, religion and belief. But children in armed conflict are raised in the environment of severe violence and commit cruelties and hardship. During the development of these buds into flowers they are exposed to chronic and traumatic stress which leaves a mental and related physical ill-health impact which severely changes their personality in a negative way and deprive them from normal and healthy development. Historically the primary focus concerned with children in armed conflict was physical vulnerability. But the grief, loss and fear which a child goes through should be taken into consideration and their experience should be taken into account. Childhood has become a nightmare for the children living in war-torn nations. The very foundation of a child's life i.e. home, families, community is being destroyed, separated or splintered by armed conflict. It also leads to breakdown of trust between people, disrupts health and education. Children seeing their parents or loved ones in vulnerable state affects their psychosocial condition which severely undermines their confidence and a sense of fear builds up home deep in their heart. Children have witnessed traumatic experiences like torture, murder or rape of their parents. These traumatic experience increase their anxiety about being separated from their families or they have nightmares and trouble in sleeping. They may cease laughing and playing like other children, as well as they lose their appetite, concentration in education and withdraw themselves from all contacts. They

<sup>7</sup>Almquist, Kate, Robbie Muhumuza and David Westwood, "The Effects of Armed Conflict on Girls", Geneva, World Vision International, May 1996, p. 21.

<sup>8</sup>Brett, Rachel, Margaret McCallin and Rhonda O'Shea, "Children: The Invisible Soldiers", Geneva, Quaker United Nations Office and the International Catholic Child Bureau, April 1996, p. 84.



become depressed, hopeless about their future or develop aggressive behaviour.

### **Children and Justice for them during conflict –**

Some children are direct victims or are affected by war crimes and also some are involved in committing crimes. Justice can be accessed for children who have been victims of armed conflict and can be achieved both during and after conflict through forums like judicial, non-judicial, or traditional justice mechanisms. Ensuring justice or access to it during armed conflict at times can be problematic due to the collapse of the judicial infrastructure and displacement and disappearance of judicial staff, prosecutors and lawyers. Children who have either witnessed or are victims of armed conflict see justice as a support system to find their families, return back to education, live independently and assist them to find employment. But these expectations, inevitably, could not be fulfilled in the true sense, leaving children disappointed and disillusioned and thereby leaving perpetrators free. Also they are used for household chores or other routine services. Like in Uganda, children work as guards, gardener, hunter for fruits and vegetables. Child soldiers include both boys and girls, but girls mainly who are physically strong and can perform same function as boys. In Guatemala, rebel groups use girls to prepare food, attend to the wounded and wash clothes. Girls may also be forced to provide sexual services. In Uganda, girls who are abducted by the Lord's Resistance Army are "married off" to rebel leaders.<sup>9</sup>

### **Victim and witness in judicial proceeding**

The difficulty for victims to confront their harsh memories and their assailants in judicial proceeding is often underestimated. If they speak, there could be vengeance towards them or their families. If they testify, they may have to undergo a vigorous cross-

examination that might be like re-living those horrific events. Balance between the prosecutors and children as participants is also of great importance and concern. Closed sessions, image and voice distortion, pre and post statement, screens between the accused and the witness are all useful methods for protecting child witness from possible consequences when they testify. Also while ensuring the best interest of children while justice is done, a number of new ideas should be developed including protective measures and finding alternative forms of participation ensuring child-specific reparations.

### **Traditional judicial system and protection under the system –**

Local traditional mechanisms are used by some countries to resolve disputes in a community between families and clans to bring about settlement and reconciliation. This traditional justice for many children is sometimes the only form of justice that they view as meaningful for possibility of justice. In this particular case, national justice system is perceived as corrupt and ineffective. Traditional justice gives a number of opportunities to alleged perpetrators to apologise, make reparation or to compensate the victim party. The decisions by them are widely accepted and can be very effective in promoting healing and reconciliation of the community and the victims.

However, as compared with other forms of justice, there is a limitation to the traditional form of justice, particularly in the aftermath of the conflict. Traditional justice is based upon oral traditions and customary practice, which might be lost as a result of dissipation of collective memory, displacement and loss of traditional authority at the time of breakdown of social justice. Also traditional justice often resides with the elder males of the community. So always a patriarchal culture can't be taken into account for child rights, especially for the girl's right who can be subject to discrimination leading to further violence. In addition to this, another limitation of traditional justice is ambit of jurisdiction and it has not been used to

<sup>9</sup>Almquist, Kate, Robbie Muhumuza and David Westwood, "The Effects of Armed Conflict on Girls", Geneva, World Vision International, May 1996, p. 21.



address international crimes and gender-based crimes.

### CONCLUSION- A FRAMEWORK FOR EFFECTIVE ACTION

“We want a society where people are more important than things, where children are precious; a world where people can be more human, caring and gentle.”<sup>10</sup>

The present paper is the approach for highlighting the protection of children in armed conflict and also focuses on their myriad miseries and anguishes. In the past two decades children have increasingly been affected by armed conflict. It has tried to concentrate on practical and possible aspect. A daring step should be taken in consideration of the future of children. We should find solutions looking beyond what seems immediate to shield children from the consequences of the war. There is a need of some form of accountability, more effective and appropriate methods apart from only detention and prosecution, along with that it should include restorative measures, truth telling, reintegration programme, traditional healing ceremonies. The emphasis should also be laid on prosecuting the perpetrators who bear the greatest responsibility for the sufferings and crimes committed by children. Basic health systems and services and water supplies should be maintained by parties to a conflict. Facilities for adequate rehabilitation, social integration and provisions for proper medical assistant like artificial limbs for injured or permanently disabled children should be made accessible. Rights of the child must be advocated by health professionals. Local professionals, young people and communities in collaboration with organizations and NGO's should focus on child health needs taking in account of factor's like food, health and care. Government and non-State entities during conflict should encourage facilities like

"days of tranquillity" or "corridors of peace" to continue basic child health measures and deliver humanitarian relief. Food crops, water sources and agriculture should be refrained from destroying by the parties involved in conflict in order to avoid disruption of water supply, food supply thus leading to decrease in production capacities. Income generating programmes such as rehabilitation of livestock, agriculture, fisheries should be given special attention for self-reliance and sustainable population. “It is unforgivable that children are assaulted, violated, murdered and yet our conscience is not revolted nor our sense of dignity challenged. This represents a fundamental crisis of our civilization.”<sup>11</sup> The first priority of all nations is to devise a framework of effective action to remove and stop child's participation as soldiers from the armed group thus protecting their right from being violated. In addition to it following actions can be taken

- The training and screening of children in national army has to be exhausted and pre-development training should be made system.
- Comprehensive refreshers training for members of the armed forces and Child Protection Units should be done.
- Child protection agencies and the Ministry of School Affairs should provide adequate interim care and reintegration support to demolished children.
- An authenticated and efficient mechanism for age verification should be embedded in military recruitment procedures.
- Release of children from all ranks of forces.
- Effective investigation of incident of child recruitment and a complaint procedure for cases of the same should be established.

<sup>10</sup>Archbishop Desmond Tutu speaking at the Eminent Persons Group meeting for the United Nations Study on the Impact of Armed Conflict on Children, Tarrytown, New York, 9 May 1995.

<sup>11</sup>GracaMachel, The Impact of Armed Conflict on Children attached to: UN Note of the Secretary-general, A/51/306 (1996), para. 317.



- Birth registration should be free or easily accessible in practice.
- Criminalize the recruitment and use of children by armed groups to stop and prevent this inhuman activity.
- Child protection specialist should be appointed in security force.

**“Mankind owes to the child the best it has to give.”<sup>12</sup>**

It is getting difficult to determine whether children are victims or perpetrators of crimes. So to differentiate the thin line between them and to punish the perpetrators there should be an application of national and international legal framework practiced in international courts and other judicial and non-judicial forums to ensure the best interest of the child. Also for many reasons, the participation of children for justice is very less. So there is an early need for judiciary to pull up their socks and make some remarkable change in this aspect

- Child victims and witness should be allowed to participate in the trial so that the prosecuting authorities and courts can consider child's evidence and protect them from any adverse consequences.
- National courts should enact those legislative provision that are in best interest of the child victim or witness and should have special measures to support and protect them.
- If States decides to detain and prosecute children for criminal activities under national and international law, they should comply with international standards and judicial guarantee. The UN should have access to detention centre to monitor and report the functioning.
- Further, Administrative detention should not be used by the state for children under 15, and should urge to find more appropriate and effective ways for dealing with them so that their psycho-social development is not affected.

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<sup>12</sup>Preamble, UN declaration OF The rights OF The Child (1959)