



Children and Armed Conflict

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Dedicated to my late grandparents
Zilfikar Agous and Zilfikar-Alious Dade and my children Peter and Nekija

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ABSTRACT

The book examines international efforts to protect children from the effects of war and armed conflict through the Convention on the Rights of the Child (CRC), especially article 38, and the Convention's Optional Protocol on the involvement of Children in Armed Conflict (OPAC). It charts the evolution of the Convention and the place it occupies in the broader efforts of the UN to provide for human rights. The principal focus of the book is on the machinery the UN has established for implementing the CRC and OPAC, particularly the Committee on the Rights of the Child and the processes the Committee uses to monitor states' compliance with the CRC and OPAC. Detailed examination is made of the extent to which States Parties to the CRC and OPAC submit the initial and periodic reports by the stipulated deadlines, and of how far reports provide the information required by the Committee. The way the Committee deals with the information it receives is also examined. These investigations expose major shortcomings in the monitoring process. The book therefore concludes by examining possible ways in which compliance with the CRC and OPAC might be secured more effectively.

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CHAPTER ONE

INTRODUCTION

"The question of children and armed conflict is an integral part of the United Nations' core responsibilities for the maintenance of international peace and security, for the advancement of human rights and for sustainable human development."

—Secretary-General Kofi Annan in a speech to the Security Council, 26 July 2000

1.1 Children and Armed Conflict

War and armed conflict have been enduring features of the human condition. For as long as they existed, their victims have included children as well as adults. That is as true of war and armed conflict in the modern age as it has been of previous ages. Indeed, in some respects children are more directly affected by military conflicts nowadays than they have been in the past. During and after conflicts, children remain exposed to the dangers of landmines and millions of pieces of unexploded ordnance – bombs, shells and grenades that fail to denote on impact.

Many of the wars of the previous century continue to the present day, and leave indelible marks on the lives of millions of children. Civilian deaths have far exceeded those of armed combatants. Due to the role that international politics and commercial interests play in initiating, supporting and maintaining these conflicts, we are all in some ways, like it or not, woven into the complex net of complicity and accountability surrounding them. Thus we cannot ignore this ongoing assault on the lives of children.

Armed conflicts affect the development of children from before birth into young adulthood in a myriad of ways, the effects accumulating in interminable civil wars as children grow, and diverting them from normal life pathways in the culture and societies in which they live. The consequences of these childhood experiences will continue to reverberate throughout their lives. Armed conflict also continually violates and undermines the rights of children as they are enunciated in the Convention

on the Rights of the Child (CRC)¹ and in its Optional Protocol on the Involvement of Children in Armed Conflicts (OPAC).²

Children are specifically targeted to create terror and subdue local populations. They are forcibly recruited as “volunteers” in their thousands to fight adult wars. There is overwhelming evidence from recent armed conflicts that children are not only the incidental victims of crossfire and so called “collateral damage”, but also that they are specifically sought out and killed, maimed and abused by warring parties. Youths with guns, rather than defending local communities, are often used to terrorise them. In January 1999, the Ugandan army executed five teenage boys between the ages of 14 and 17 who were suspected of being rebel soldiers.³ When not actively engaged in combat, children are often used to man checkpoints. Adult soldiers tend to stand several metres further back at times of an attack so that, if bullets start flying, the children will be the first victims. And in any conflict where even a few children are involved as soldiers, all children, civilian or combatant, come under suspicion. A military sweep in Congo-Brazzaville killed all rebels who had attained the ‘age of bearing arms’.⁴

Child soldiers are often depicted as victims and casualties of war, and they are indeed exploited, torn from their families, and deprived of their education, and forced into battle. But children are also assailants. Child soldiers are cheap and efficient weapons in asymmetric warfare. Accounts from the field tell of child soldiers who are virtually free to recruit, cheap to feed, and quick to follow orders. They readily learn how to employ brutal tactics. The Revolutionary United Front (RUF), a rebel group operating in Sierra Leone from 1991 to 2002, for example, was notorious for raping and mutilating the civilian population. It was often coerced children, frequently drunk or high on drugs, who perpetrated the acts. The Liberation Tigers of Tamil Eelam, fighting for independence from Sri

¹ Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 in November 1989. Entry into force 2 September 1990, in accordance with article 49.

² Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict. (OPAC). Adopted and opened for signature, ratification and accession by the General Assembly resolution A/RES/54/263 of 25 May 2000. entered into force on 12 February 2002.

³ Alex Obote-Odora, ‘Legal Problems with Protection of Children in Armed Conflict’ *Murdoch University Electronic Journal of Law* 6 (1999). (http://www.murdoch.edu.au/elaw/issues/v6n2/obote-odora62_text.html#t34, 15 August 2008).

⁴ Ibid.

Lanka, relied on children for their suicide bombing missions during their decades-long campaign. At times, they found that children could much more easily penetrate targets than their adult counterparts.⁵ Trained and educated in the ways of guerrilla war, many child combatants grow up in a world where brutality is the norm. In Algeria, many of the killers are young boys under the age of 17.⁶ In one incident, it was reported that some boys, who looked to be around 12 years old, decapitated a 15-year-old girl and played 'catch' with her head.⁷ The result is a violent gift that keeps on giving – today's Taliban leaders reputedly cut their teeth in the field as child soldiers fighting the Soviets. In addition to inducing psychological trauma, a violent childhood reduces healthy educational opportunities, leaving militancy the only viable career path in later years.⁸

Child soldiers also pose unique challenges to professional armies. They are lethal combatants, but they are also victims who have often been forced to fight. For professional soldiers, hesitation out of sympathy may prove fatal. Furthermore, encounters with child soldiers can greatly demoralize professional fighters.⁹

The following examples are just a sample of the roles child soldiers have played in recent conflicts, and in some instances continue to play.

Sri Lanka:¹⁰ The Sri Lankan government estimated that at least 60% of LTTE fighters were under 18.¹¹ The average age of children at the time of recruitment into the LTTE was 15¹², though some recruits were as

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Simon Reich and Scott Gates, 'Think again: child soldiers' Foreign Policy May 2009 (http://www.foreignpolicy.com/story/cms.php?story_id=4944, 10 June 2009).

⁹ Eben Kaplan, 'Child Soldiers Around the World' Council on Foreign Relations (<http://www.cfr.org/publication/9331/>, 12 January 2009).

¹⁰ Charu Lata Hogg "Child Recruitment In South Asian Conflicts: A Comparative Analysis of Sri Lanka, Nepal and Bangladesh" (Coalition to Stop the Use of Child Soldiers: Chatman House, 2006): 9.

([http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-794KLM/\\$file/chatham-nov2006.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-794KLM/$file/chatham-nov2006.pdf?openelement), 15 January 2008).

¹¹ UN Doc. CRC/C/70/Add.17, 2002: Second Periodic Report of Sri Lanka to the UN Committee on the Rights of the Child: para.170.

¹² UNICEF, 'Action Plan for Children Affected By War, Progress Report January – June 2004' (http://www.unicef.org/videoaudio/PDFs/plan_progress_june04.pdf, 15 February 2008).

young as nine.¹³ The UN Children's Fund (UNICEF) estimated that at least 1,440 children remained in the LTTE as of 30 April 2006. Of these, 859 children were under age at the time of recruitment.¹⁴ Children were reportedly used from frontal assaults in major battles during the Eelam Wars.¹⁵ Estimates of LTTE cadres killed in combat suggest that during the height of the Eelam Wars, at least 40% of the fighting force consisted of children aged between nine and 18. The nucleus of the 'Baby Brigade' was first formed in early 1984 and deployed heavily during the IPKF intervention.¹⁶ The Sirasu Puli ('Leopard Brigade'), one of LTTE's fiercest fighting forces, was composed entirely of children.¹⁷

Uganda: As many as 25,000 children have been abducted by the Lords Resistance Army (LRA) for use as child soldiers, sex slaves and porters since the conflict began in 1986. 7,500 are girls, with 1,000 having conceived children during captivity. An unknown number have been killed.¹⁸ Currently an estimated 30,000 Ugandan children – "night commuters" – walk quietly through the darkness every night, fleeing their homes on the look out for a relatively safe place to sleep in an urban area or in the centre of larger Internally Displaced Persons (IDP) camps – only to return back home in the morning and repeat the trip all over again as night falls.¹⁹

According to Article 1 of the Convention on the Rights of the Child, a child "is every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." Also, it is worth mentioning that there is no precise definition of the term 'child' in the

¹³ Amnesty International, 'Children in South Asia – securing their rights' AI Index ASA 04/001/1998, 22 April 1998.

(<http://www-secure.amnesty.org/en/library/asset/ASA04/001/1998/en/d6b07591-e827-11dd-9deb-2b812946e43c/asa040011998en.pdf>, 18 February 2008).

¹⁴ Under-age Recruitment as of 30 April 2006, monthly statistics provided by UNICEF see UNICEF, 'Action Plan for Children Affected By War, Progress Report January – June 2004'.

¹⁵ Rachel Brett and Margaret McCallin, *Children: The Invisible Soldiers* (Stockholm: Radda Barnen [Swedish Save the Children], 1996).

¹⁶ UN Doc. CRC/C/70/Add.17, 2002, paras.170-1.

¹⁷ N. Manoharan, 'Child Soldiers III: 'Baby Brigades' of the LTTE', Article No. 1184, 21 October 2003, Institute of Peace and Conflict Studies (IPCS): (http://www.ipcs.org/article_details.php?articleNo=1184, 6 June 2009).

¹⁸ Amnesty International, 'UGANDA: Child "night commuters" fear abduction' AI Index: AFR 59/016/2005, 18 November 2005 (<http://asiapacific.amnesty.org/library/Index/ENGAFR590162005?open&of=ENG-UGA>, 15 June 2008).

¹⁹ Ibid.

laws of war (humanitarian law) whether customary international law or treaty law.²⁰

An imprecise definition of the term 'child' is found in Additional Protocols I & II of 1977 to the four 1949 Geneva Conventions. Article 77 (2) of the Additional Protocol I discourages, but does not prohibit, recruitment of young persons who have not attained the age of fifteen.²¹ Article 77 (3) acknowledges, though grudgingly, that children who take a direct part in hostilities may be taken as prisoners of war.²² Thus, Additional Protocol I tacitly recognises that children will continue to take part in armed conflict. This is a weak prohibition of child participation in armed conflict as none of the above mentioned Protocols actually prohibit the use of child soldiers.²³

Unfortunately, a 'child soldier' has received no agreed definition. According to the Cape Town Principles, a child soldier is "any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It does not, therefore, only refer to a child who is carrying or has carried arms."²⁴ Meanwhile, the United Nations Children Fund (UNICEF) defines a child soldier as "any child—boy or girl—under eighteen years of age, who is part of any kind of regular or irregular armed force or armed group in any capacity." This age limit on an international scale is relatively new – as the Cape Town Principles have no international

²⁰ Obote-Odora, 'Legal Problems with Protection of Children in Armed Conflict', 30.

²¹ Article 77 (2) of the Additional Protocol I of 1977 states: "The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen but have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest".

²² Article 77 (3) of the Additional Protocol I of 1977 provides: "If, in exceptional cases, despite the provision of [Article 77 (2)], children who have not attained the age of fifteen years take direct part in hostilities and fall into the power of an adverse Party, [Prisoners of War] they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war".

²³ Obote-Odora, 'Legal Problems with Protection of Children in Armed Conflict'.

²⁴ Cape Town, South Africa, 27-30 April 1997: The Cape Town Principles and Best Practices: Adopted at the Symposium on the Prevention of Recruitment of Children into the Armed Forces and on Demobilisation and Social Reintegration of Child Soldiers in Africa ([http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf), 15 May 2009).

application – established in 2002 by the Optional Protocol to the Convention on the Rights of the Child. Prior to 2002, the 1949 Geneva Conventions and the 1977 Additional Protocols set fifteen as the minimum age for participation in armed conflict. While some debate exists over varying cultural standards of maturity, nearly 80 percent of conflicts involving child soldiers include combatants below the age of fifteen, with some as young as seven or eight.²⁵

Here are some facts illustrative of how children are affected by armed conflicts in the contemporary world:

- *As of mid-2004, up to 100,000 children—some as young as nine—were actively involved in armed conflict in Africa.*²⁶
- *80 per cent of children aged 8 to 13 in Sierra Leone had suffered the death of a parent, sibling or close relative; 74 per cent had seen somebody being killed or injured with machetes; 68 per cent had seen somebody being burned to death or tortured; and nearly 10 per cent of girls had been gang-raped.*²⁷
- *66 per cent of children in Angola had seen people murdered, and 67 per cent had seen people beaten or tortured.*²⁸
- *55 per cent of children in Sarajevo, Bosnia and Herzegovina had been shot at, and 66 per cent had been in a situation where they expected to die.*²⁹

Children are drawn into armed conflict by both push and pull factors. Push factors include negatives that children escape by joining an armed group. Abuse suffered in the family is a push factor – the child might join an armed group to escape an abusive situation. They may also seek to escape boredom, physical insecurity, extreme poverty, and the humiliation associated with personal or family victimization and shame. These push factors are only partial causes, since most children who have difficult family situations or live in abject poverty do not become child soldiers.

Equally or more compelling are the pull factors, which are the positive rewards or incentives for joining armed groups. Analysts have tended to underestimate the importance of pull factors, probably because the emphasis of much child-soldiering literature has been on protecting

²⁵ Kaplan, 'Child Soldiers Around the World'.

²⁶ Hogg "Child Recruitment In South Asian Conflicts: A Comparative Analysis of Sri Lanka, Nepal and Bangladesh".

²⁷ 'What is Child Soldier? Plan:

(<https://www.planusa.org/contentmgr/showdetails.php/id/2147> , 15 October 2008).

²⁸ Ibid.

²⁹ Ibid.