

RIGHTS OF THE CHILDREN IN AN ARMED CONFLICT

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ABSTRACT

Children are considered as a gateway of future and the hope that they will bring salvation onto their parents. Every species in the world works toward preventing and protecting their offspring's as in young age because they need special and attentive care as they are very vulnerable and maybe subject to various type of risks. Almost all the states of the world as well as various Multi-lateral international organizations works toward protecting their future and safeguarding their children's rights.

However, in horrific times of war where even basic human rights are neglected, what can one expect of protection of child's rights? Wars can last for decade which might lead to shortage of manpower and what will be preventing the state from handing over the gun to a minor? Wars also have the potential to ruin a child's life as in a collapsed or war torn country, how will child get right to education, right to grow in a nourished environment etc.,

This paper focuses on the provision of Lebanon on safeguarding the rights of a child as well various International conventions which protects the rights of a minor and prevent enlistment of children in the armed forces. The paper further talks about the ongoing wars and whether the preventive conventions of the International co-operations are effective in preserving our future from the horrors of the war?

Keywords: Child Rights, Armed Conflict, War, Conventions, Education

I. Introduction

“The Impact of armed conflict on children is everyone's responsibility. And it must be everyone's concern”

- Graca Machel

(International Advocate for Women and Children's Right)

War concerns the life and growth of kids in all the ways it could concern to the adults, but in different ways such as. First, the concept of dependence comes into light as children are dependent in nature and them dependent upon their guardian or parents for the care, empathy and for the love of the parents or guardian. Their constant need for love and care are mostly disturbed in the war due to various reasons such as the loss of parents, changing priorities of the parents as their primary objectives become survival and finding food or shelter for the family, and unavailability of parents whether emotionally or physically as they too are supposed to be depressed or distracted in times of war. The threat of the children to put in substitute care with someone else other than their parents who does cares for them but not to the extent as supposed to be done by their parents such as relatives or in an orphanage. A small but certain percentage of children lose their adult protection in the war and they are to be known as “unaccompanied children in the refugee camps. Secondly, the trauma of the war can create an impact in the life of a child which can

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be far greater than that of a trauma which an adult can suffer. Children lose many opportunities in the war such as right to education, children get displaced during the war and forced to move into camps whether refugee camp or displaced person camps if they get displaced from their parents and supposed to wait for months or perhaps years in inhumane conditions without proper empathy and care, for continuation of their normal life, if it ever becomes normal. In an instance where a child gets disabled in a war by no fault on their own, with an addition for losing a limb or sight or any type of physical capacity, they also lose the opportunity of having normal schooling as now they'll be put in a special school and a normal social life providing, war actually ends in favour of them. A girl who faces the horrific consequence of getting raped in a war is probably be subjected to be marginalized by her own society and her dream of normal life or marriage and kids one day will become far-fetched. In aftermath of the war, the ruined lives of the children will fail to attain the potential they were supposed to have.

Child rights are not different from or in addition to that of basic human rights but basically comes under it with some special provisions and rules which are given only to a child, minor or infant whatever the case may be.

After the horrifying events of both the world wars that took place in the 20th century and their impact on children whether physical or psychological, the United Nations came to reason that the basic human rights of children need special conventions or declaration which will provide extra layer of protection for the children.

After the conclusion of World War II, the United Nations presented the Universal Declaration of Human Rights² which was inclusive of various basic human rights such as;

- a) Rights to life³
- b) Right to Food and Shelter⁴
- c) Right to Education⁵
- d) Right to freedom of speech and religion, justice and peace⁶.

Considering that children need special rights because they are vulnerable, the United Nations adopted the Declaration of Geneva on Children's Rights. After the end of World War II, the General Assembly of United Nations drafted the Declaration of the Rights of the Child. This declaration made it possible for the international community to adopt the Convention on the Rights of the Child in 1989⁷, which was later known as the first legally binding international convention to safeguard the rights of the children.

The Convention on the Rights of the Child is considered as one of the most widely ratified treaty concerning human rights in the history of mankind. It clearly put out and exhibits the rights of children in its 54 articles which is guided by four basic beliefs such as:

² Universal Declaration of Human Rights 1948.

³ Universal Declaration of Human Rights 1948, see art.3.

⁴ Universal Declaration of Human Rights 1948, see art.25.

⁵ Universal Declaration of Human Rights 1948, see art.26.

⁶ Universal Declaration of Human Rights 1948, see art.18, 19.

⁷ Convention on the Rights of the Child 1989.

1. Right against discrimination⁸.
2. Best interest of the child is to be taken into consideration⁹.
3. Right to life and to survive and state is directed to ensure such right to the maximum extent possible¹⁰
4. Taking into consideration the views of the children whenever the question raises on the matters concerning the child¹¹

II. Recruitment of Children in Armed Conflict

When there is an armed conflict, there is no doubt in stating that human rights will be disobeyed and huge loss of life and resources will occur, but what we can do is make sure that armed conflict is in accordance to the international Humanitarian law in order to minimize the harm.

a) In accordance with Geneva Convention

According to International Humanitarian Law, states which are occupying another states' territory and its citizen, cannot enlist the children into its military¹² further it was provided that children who didn't attained the age of 15 years cannot take part directly in hostilities¹³ and state should refrain itself from recruiting the children from enlisting and should choose oldest children if needed to choose from between a kid of 15 years and a kid of 18 year¹⁴.

b) In accordance with Convention on the Rights of the Child

Main motive behind the creation of this convention is to strengthen the vulnerable position of the children in a community and enforcing their rights as this convention is legally binding on the state parties.

The convention protects the rights of the children and has provisions¹⁵ in accordance with Geneva convention with added protection which provides that state should take all necessary actions to improve and promote the well-being of the children who was victim of a war or torture or inhumane treatment¹⁶.

c) In accordance with African Charter on the Rights and Welfare of the Child

African union also passed a charter concerning towards safeguarding the rights and welfare of the children of the society and the provision of this charter too, expressly prohibits the entry of children into war and the state shall not

⁸ Convention on the Rights of the Child 1989, see art.2.

⁹ Convention on the Rights of the Child 1989, see art.3.

¹⁰ Convention on the Rights of the Child 1989, see art.6.

¹¹ Convention on the Rights of the Child 1989, see art.12.

¹² Geneva Convention IV 1949, see art.50.

¹³ Geneva Convention IV 1949, Additional Protocol II 1977, see art.4(3)(c).

¹⁴ Geneva Convention IV 1949, Additional Protocol I 1977, see art.77(2).

¹⁵ Conventions on the Rights of the Child 1989, see art.38.

¹⁶ Conventions on the Rights of the Child 1989, see art.39.

recruit children to fight in wars¹⁷ and to be considered as a child, a person should be less than 18 years of age¹⁸. Hence it went on one more step in protecting the child as most international conventions refers a kid to be children till 15 years of age.

d) In accordance with International Criminal Statute

Although Geneva Convention and Convention on Rights of Children protect the rights of the children and prohibit enlisting of children under 15 years of age. It is International Criminal Court who puts the offence of recruiting the children in armed forces as an offence under the head of “War Crimes”¹⁹ and punish them accordingly.

e) In accordance with Worst Forms of Child Labour Convention

Convention of Worst forms of Child Labour expressly provides that state should deal with the issue of Child Labor immediately and ensure and promote effective measures against it²⁰. This convention indicates that recruiting children in the armed conflicts are one of the worst forms of child labour and that shall work towards abolishing the same.

f) In accordance with Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

This protocol²¹ was first of its kind which addressed the issue of involvement of children in the armed forces in totality, this protocol while prohibiting compulsory recruitment of the children in armed forces²² but also prohibits the voluntarily services of the children in the armed forces and directed that state party shall not accept any voluntary services in armed forces made by children and can only be allowed by the consent or parent or guardian while ensuring full security and safety of the concerned child²³.

The provision of this application is applied on armed forces of state as well as armed forces which are not part of state as well²⁴, for ex rebel forces, mercenaries etc.

III. Sexual Offences against Children

Children are most often subjected to the cruel behaviour of the mankind when the children are from the losing side of the war. Children face various threats such as rape, mutilation etc. as they are vulnerable and physically weak to defend themselves against the attacker. Contrary to common misconception, Boys are also subjected to the cruelty of sexual violence in an armed conflict. For example, in Afghanistan there is a famous practice known as *Bacha Baazi* which means dancing boys and such practice continues to be a far-flung phenomenon. Such practice is considered as a form of sexual slavery and child prostitution to which even boys are subjected to and be sold to

¹⁷ African Charter on the Rights and Welfare of the Child 1990, see art.22.

¹⁸ African Charter on the Rights and Welfare of the Child 1990, see art.2.

¹⁹ International Criminal Court 1998, see art.8(2)(b)(xxvi), art 8(e)(vii).

²⁰ Worst form of Child Labour Convention 1999, see art.1.

²¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002.

²² Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002, see art.1.

²³ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002, see art.3.

²⁴ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2002, see art.4(1).

powerful or wealthy men, such powerful man can be whether military personnel or any political leader for various purposes such as entertainment which can include sexual activities.

Another important factor that needs to be considered is the mental trauma that children face due to such sexual violence and that their lives can't get normal ever again. Children can also be made to commit rape to other children either directly by the orders of their commanding officer or through peer pressure.

a) Prohibition under International Law against Sexual Offences for Children

Rape along with other types of sexual violence or activity conducted against the children are considered as human rights violations and such offences shall be amount to serious breach of international humanitarian law. If such violence is committed continuously in a series of systematic attack against a civilian population then such sexual violence attacks can be constituted as war crimes and crimes against humanity under the ambit of International Criminal Court statute, also known as Rome Statute.

Under Security Council²⁵, the Council declared that sexual offences which are committed against children are a critical priority and called on its member parties to ongoing armed conflict to formulate and execute effective measures to address such offences. Sexual offences against children is also considered as a trigger for inclusion on the list of the Secretary-General of parties to conflict committing grave violations against children in armed conflict.

IV. Rights of Children in Lebanon

In spite of, the armed conflict that held the country and its institutions for a extended period of time until 1989, Lebanon ratified the Convention on the Rights of the Children relatively swiftly. The existing Lebanese laws match with most of what is required under the Convention, and the Lebanese government has adopted a number of amendments in its attempt to observe fully with the balance of such requirements.

Lebanon endured about fifteen years of civil strife, coming close to a full-blown state of chaos and civil war before a political agreement was reached among the warring factions in October 1989 in the city of Taef in Saudi Arabia. The recovery from the devastating damage to the infrastructure of that period is still proceeding as of this date. On the social level, and especially with respect to children the harm was more complex to assess and more difficult to repair.

Lebanon became a party to the 1989 Convention on the Rights of the Child in 1991²⁶ and to the Optional Protocol on the sale of children, child prostitution and child pornography, in 2004. On February 11 2002, Lebanon signed (but has not yet ratified) the Optional Protocol on the involvement of children in armed conflict²⁷

²⁵ Security Council, Resolution 1882, UN SCOR S/RES/1882 (2009).

²⁶ The Convention on the Rights of the Child, with a Preamble and fifty-four articles, was adopted by the U.N. General Assembly Nov. 20, 1989, and entered into force Sept. 2, 1990. G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989). For an online text, see the OHCHR Web site, <http://www.ohchr.org/english/law/crc.htm> (last visited July 23, 2020).

²⁷ The Child Soldiers Protocol entered into force Feb. 12, 2002. G.A. Res. A/RES/54/263 of May 25, 2000. For an online text, see the OHCHR site, <http://www.ohchr.org/english/law/crc-conflict.htm> (last visited July 23, 2020).

V. Conclusion

Safeguarding and protection of our future generation is the duty and responsibility of us as a society, such duty and responsibility is shared among us with state and further with international organizations. National as well as International organization have provided with sets of legislations in order to prevent the abuse of child in the armed conflicts and prevent their rights.

Such international conventions are as good as the members willing to contribute, as international courts such as International Criminal Court or International Court of Justice can only work as far as the member parties which are willing to contribute to the same vision of providing the justice.