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A ‘Call to Arms:’ A Gender Sensitive Approach to the Plight of Female Child Soldiers in International Law

by Priya Pillai*

INTRODUCTION

THE USE OF CHILDREN IN ARMED CONFLICT HAS DEVASTATING CONSEQUENCES to the children, as well as their families and communities. Yet this practice continues unabated, especially in countries that are in the throes of civil war. Unconfirmed statistics estimate that around 300,000 children are engaged in thirty conflict areas around the world.¹

While the problem of child soldiers itself is urgent, it is equally important to highlight that a large proportion of these child soldiers are girls. In situations of armed conflict, girls are particularly vulnerable to sexual abuse and other egregious violations of their human rights. In addition, girls face even greater challenges in their rehabilitation and reintegration back into society after a conflict.

This article places in context the specific needs and problems associated with girl soldiers. It then examines the nature of the legal protection given to child soldiers, and whether this protection affords sufficient safeguards for the protection of girls. Further, the paper examines disarmament, demobilization and reintegration (DDR) programs and whether gender is a component of these programs. In order to examine these issues, this paper assesses girl soldiers from two levels — first, the protection afforded to such children under the international legal regime, with focus on problem areas in the law; and second, domestic responses to the issues involved in the DDR process. The analysis emphasizes the lack of a distinct protection regime under international law and the failure to include girls in DDR programs following a conflict, pointing to the need to approach the problems of girl child soldiers from a gendered perspective.

CONTEXTUALIZING GIRL SOLDIERS IN CONFLICT

This section places in context the particularities of the experience of the girl child in conflict. At this juncture, it is relevant to question whether there should indeed be a gendered approach to the problems of child soldiers, or whether a gender neutral approach would suffice. Would a difference in perspective impact substantially upon the incidence of girls being drafted into armed forces or groups? These dilemmas arise from problems that female child soldiers face.

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Girl child soldiers are particularly vulnerable to sexual abuse by their commanders and are often raped and forced to become mothers.

To respond to these questions, it is necessary to assess the impact of armed conflict on girls, and whether this impact is distinct from its impact on boys. The experiences of girls in conflict are similar to boys' experiences to the extent that their childhood is taken away in traumatic and violent circumstances. Girls in conflict, however, are likely to experience trauma that is distinct from that of boys precisely due to gender.

The starting point in charting this difference is twofold — the nature of many societies in which girls are raised and the nature of conflicts. The first point refers to the fact that while not all societies are the same in their attitude toward women, many in the grip of a conflict are predominantly patriarchal and have strictly defined gender roles. The second point refers to the increased use of violence against women as a tool and a strategy in conflicts.



In Sierra Leone, many children were involved in the conflict in the 1990s.

It is against this backdrop that the incorporation of girls in the conflict is in many cases by force rather than purely voluntary.² The violence perpetrated against the girls is, more often than not, sexual in nature.³ This has the impact of brutalizing girls and results in alienation from their families. There are instances, however, in which inclusion in conflict situations seems to empower rather than be detrimental. Surveys of girl soldiers in Colombia, Sri Lanka, and the Philippines indicated greater equality between the sexes, fewer instances of abuse, and a feeling of having enhanced opportunities.⁴ This sense of empowerment, however, is the exception rather than the rule, and is not sufficient cause to justify or encourage the participation of girls in a situation of conflict.

Participation in the conflict as well as the violence that is meted out to children has consequences well beyond the conflict. In many instances, due to sexual abuse, girl soldiers are stigmatized and not accepted by their families. This stigma is worse in cases where the girls conceive children due to the abuse, and feel that they have no option but to remain with a particular abuser or ‘husband,’ as documented in Sierra Leone.⁵

It is due to these distinct and differentiating factors that girl soldiers face great brutality in times of conflict. Thus far, the focus on child soldiers has not adequately incorporated the different reality of girl soldiers into legal mechanisms. A perspective that takes into account gender would enable a greater focus on the specific problems that are faced by girl soldiers and would be more effective in tackling this practice.

INTERNATIONAL LEGAL NORMS: GENDER SPECIFIC?

This section examines the response of international law in affording protection to child combatants and assesses whether this protection takes into account gender-related distinctions. The most important areas of international law to examine are international humanitarian law (IHL) and international human rights law. While these two branches of international law differ in operation, they face similar problems in their approach to regulation of child soldiers. One of the most vexing problems is how to approach participation by child soldiers in conflict, and whether all types of children’s participation should be prohibited. Yet another is the definition and age of a child soldier; and most importantly, enforcement measures under these realms of international law.

Legal norms under IHL for the protection of children in hostilities are contained in the four Geneva Conventions of 1949. The Fourth Geneva Convention, relating to the protection of civilians, extends general protection to children as members of the civilian population not taking part in hostilities.⁶ Article 3, common to all the four Geneva Conventions and their Protocols, provides fundamental guarantees to all, including children, such as the right to life and protection against torture and reprisals. It is important to note, however, that the Geneva Conventions do not refer to the participation of children in hostilities.

The Geneva Conventions’ Protocols Additional of 1977 (Additional Protocol I and Additional Protocol II) impose further limitations.⁷ Article 77 of Additional Protocol I prohibits the “direct participation” of children below the age of 15 in hostilities. This leaves open the question of what would be construed as direct versus indirect participation and the basis of this distinction. Increasingly, the roles of children in conflict are fluid and may range from acting as porters to the actual use of weapons in combat. Many roles that girls perform often fall within this grey area and may not come within the purview of “direct participation.” In non-international armed conflicts, these roles are further blurred: frontlines are not defined, and children are used for various purposes. Additional Protocol II, which relates specifically to non-international armed conflict, has attempted to plug this loophole by stipulating that the par-

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ticipation of children under 15 is prohibited completely, regardless of their role or type of participation.⁸ From the Additional Protocols it is clear that the law regards women and children as vulnerable populations; however, there are no specific provisions regarding girl soldiers.

Implementing IHL’s prohibitions is not simple. First, an insufficient number of states have ratified Additional Protocol II, and further, even among those states that have ratified it, there is a lack of adherence. Second, IHL seeks to put all parties to a conflict on equal footing, applying the same rules to

all. In modern conflict, while one party may be a state, invariably there will be an armed group or a non-state actor involved. While Additional Protocol II seeks to apply the same rules to all, many states fear that doing so legitimizes non-state actors. This inconsistency prevents the widespread implementation of international norms.

Under international human rights law, several legal instruments relate to the rights of children. The most important universal legal instruments are the Convention on the Rights of the Child (CRC) and its Optional Protocol on the involvement of children in armed conflict (Optional Protocol).⁹ The CRC is the most widely ratified international treaty, but it has serious loopholes in its approach to the recruitment of children as combatants. Article 38 stipulates that states take all “feasible measures” to ensure that only those over 15 are able to take part directly in hostilities. This leaves open the question of how to treat the involvement of those below 15 if they participated “indirectly.” Article 38(2) also stresses that when recruiting those between 15 and 18 years of age, older recruits should be preferred to younger ones. This, in effect, legitimizes recruitment of children as young as 15, albeit with the direction to ensure this is done prudently. Article 38 places an obligation of conduct — rather than an obligation of result — on the state.

As with the IHL treaties, the CRC has no specific provisions relating to girl soldiers. In fact, these provisions seem to reinforce an approach that disregards the specific problems that face girl soldiers. They exclude a number of children affected by the conflict, but who may not have such a direct role in the course of hostilities. Most directly impacted by this distinction are under-age girls who are forced to undertake various duties apart from armed combat in the course of conflict.

The Optional Protocol increases the age of compulsory recruitment to 18 and incorporates safeguards in cases where there is voluntary recruitment of those younger than 18. The Optional Protocol, however, makes a distinction between the regular armed forces of a state, as opposed to non-state actors and other “irregular” armed forces. Article 1 of the Optional Protocol places a lower obligation on state actors than Article 4 imposes on non-state actors. Article 1 obligates state actors to ensure by feasible measures that members of the armed forces below 18 years of age do not take part directly in hostilities, while Article 4 stipulates that non-state actors are not to ‘recruit or use’ persons under 18 in hostilities. This, in effect, places non-state actors at a disadvantage while allowing state forces to recruit for participation in a non-direct manner. This set of asymmetrical obligations would result in non-compliance and make the Optional Protocol merely a theoretical exercise. Instead this high threshold should be applicable not only to non-state actors, but also to state armed forces. The concept of reciprocity in IHL embodies the principle of treating all actors the same under IHL, but under international human rights law, treatment differs. This problem is further complicated because relatively few states have ratified the Optional Protocol.¹⁰

The issue of enforcement and accountability for violations of human rights and international law is common to both IHL and international human rights law. The application of international criminal law in various tribunals has, however, resulted in greater implementation of international law, specifically as related to child soldiers. For example, Article 8(2)(e)(vii) of the Rome Statute of the International Criminal Court (ICC) criminalizes

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the recruitment of child soldiers as a war crime.¹¹ The ICC also addresses the problems of the definition of “direct” participation in hostilities, as well as the age threshold limit of 15 years. The ICC is currently adjudicating cases related to the recruitment of child soldiers.¹² The Special Court for Sierra Leone (Special Court) has also had occasion to deal with this issue and has prosecuted members of armed forces for the recruitment of children.¹³ While the Special Court’s decision is significant, the Court dealt with the issue as a matter of individual responsibility rather than as one of state responsibility. None of these cases, however, reflect a gendered perspective on the issue.

DISARMAMENT, DEMOBILIZATION AND RE-INTEGRATION OF CHILD SOLDIERS: A GENDER BLIND APPROACH?

International law recognizes that the reintegration of child soldiers into society is crucial to their well-being. Article 39 of the CRC obliges states to take steps towards the physical and psychological recovery and reintegration of child victims of armed conflict and other forms of abuse. This provision has contributed to the development of DDR programs that are not restricted to adult ex-combatants, but also address the needs of children. Unfortunately, the number of DDR programs is still limited, and there is little empirical research regarding the fate of the children who have participated in these processes. There is even less evidence regarding the nature of the involvement of girls in these processes and of their status subsequently.

Given the CRC’s limited protection and the lack of ratification of the Optional Protocol, the definition used by many child protection agencies comes from 1997’s Cape Town Best Practices and Principles.¹⁴ In addition to direct participation, the

“The lack of empirical data and the failure to act on behalf of female ex-combatants makes it imperative to include girls in a more holistic manner in the entire process of DDR.”

definition includes other incidental activities undertaken by children during a conflict. For example, it includes girls “recruited for sexual purposes and forced marriage.” Further, it mandates that the minimum age for the recruitment into regular armed forces or irregular armed groups be 18 years. Unfortunately, because the Cape Town Principles are not legally binding on states, enforcement is difficult.

Despite the shortcomings of this instrument, DDR programs implemented in various conflict regions, such as Burundi, rely on it.¹⁵ While this is a positive development, even with the expanded definition, the Cape Town Principles alone are insufficient to achieve greater participation of girl soldiers in DDR. As pointed out in Amnesty International’s Burundi Report, DDR processes’ emphasis on the disarmament aspect automatically excludes many women and girls from the purview of these processes. This is largely because many of the roles performed by females are not related to arms or direct participation in combat. Because in many cases girls are not provided with weapons, the fundamental premise of exchanging arms for reintegration assistance does not apply to girl soldiers. The more appropriate procedure would be to include all children associated with the armed conflict in DDR. In short, DDR processes need to be more inclusive in their fundamental premise.

The statistics on children involved in DDR processes do not reflect the number of girls who are embroiled in conflicts around the world. The number of girls going through a DDR process is as low as two percent, while involvement of girls in conflicts is as high as 40 percent.¹⁶ The inconsistency of the statistics may be attributed to two factors. First, there is very little information or follow-up with regard to female child soldiers. Second, the enrolment of a girl in a DDR process indicates her involvement as a combatant and thus brands her negatively, which has repercussions for her reintegration.¹⁷ This is not to say that reintegration would occur without the DDR process. In some situations, girls are excluded intentionally from the process of DDR.¹⁸ This exclusion results in girls bypassing the formal DDR processes, with unfortunate consequences for their prospects of reintegration into society.

Given such a scenario, what would be the most appropriate manner to approach the consequences of failure of a DDR process to reach girl combatants adequately? One approach suggests that there should be greater emphasis on the reintegration aspect, rather than on the disarmament and demobilization. This would allow the process to focus on the role of girls and approach their reintegration into communities in a more sensitive manner. Another approach, according to some authors, should be a greater emphasis upon the psychological and social aspects of reintegration, rather than an excessive focus on the economic and educational aspects of DDR.¹⁹ It is important to maintain a balance between these roles, but it is undeniable that the psycho-social factors need to be given importance.

Thus far, the high incidence of re-enrolment in armed groups points to lacunae in DDR processes, specifically in the reintegration aspects.²⁰ Furthermore, the lack of empirical data and the failure to act on behalf of female ex-combatants makes it imperative to include girls in a more holistic manner in the entire process of DDR. It is incumbent on the national jurisdiction to implement enabling legislation to facilitate the DDR process. The international community should also take responsibility to ensure that the use of aid and assistance for this purpose is done in a more gender-sensitive manner so that a large section of the population that has so far been excluded can be involved in greater measure.

CONCLUSION

THE ABHORRENT PRACTICE OF PUTTING CHILDREN into conflicts as participants and utilizing them as resources for warfare needs to be stopped. These practices must be stopped at the international as well as the local level through better, more effective legal prohibitions, implementation, and political will. Equally pressing is the need to recognize that many of these child victims are girls and that there are different aspects to take into account and incorporate into the legal tools used to proscribe this behavior.

The legal regime that prohibits the recruitment and use of children in conflict is itself riddled with problems and inconsistencies. Furthermore, such legal regimes are not gender sensitive and do not take the needs of girls, an especially vulnerable category, into account. This is also evident in the DDR programs currently being implemented. Girl soldiers are slipping through the net. This has devastating consequences for societies and individuals.

The international norms need to be viewed from gender-sensitive perspective. At the very least, international norms should incorporate roles performed by girls in conflicts within the purview of what is prohibited and punishable. Further, DDR program directives should require governments and agencies to consider the special needs of girl child soldiers. Such directives should include greater emphasis on reintegration rather than disarmament and effective follow up mechanisms to assess the impact of DDR programs on girls.

There also needs to be greater awareness of this problem to bring about much needed changes. To start, legally binding international instruments should adopt the definition of child soldiers in the Cape Town Principles and incorporate stronger enforcement and monitoring mechanisms. An end to conflict and lasting peace will not be possible without addressing the needs of a significant section of society that faces exclusion and alienation and is currently left out in the cold.

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ENDNOTES: A ‘CALL TO ARMS’

¹ COALITION TO STOP THE USE OF CHILD SOLDIERS & UNICEF, GUIDE TO THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT (2003). See also The Coalition to Stop the Use of Child Soldiers, *The Child Soldiers Global Report*, 3 (2004), available at <http://www.child-soldiers.org/library/global-reports> (indicating that obtaining numbers of child soldiers is increasingly difficult given the changing situation on the ground).

² The aspect of “voluntariness” itself is debatable, as in many cases there are no other real alternatives, which might lead to girls volunteering to join the armed force.

³ See Graca Machel, *Impact of Armed Conflict on Children*, U.N. Doc. A/51/306 (1996) available at http://www.unicef.org/graca/a51-306_en.pdf. See also Allison Bennett, *The Reintegration of Child Ex-Combatants in Sierra Leone with Particular Focus on the Needs of Females* (Sept. 2002)(MA in Refugee Studies, University of East London), 31-32 available at http://www.essex.ac.uk/armedcon/story_id/000025.doc (referring to the Sierra Leone conflict and the violence against girls that ensued).

⁴ Yvonne E. Keairns, *The Voices of Girl Child Soldiers*, Quaker United Nations Office, 3-4 (2002), available at <http://www.quono.org/newyork/Resources/QUNOchidsoldiers.pdf>.

⁵ Bennett, *supra* note 3, at 29 (referring to the Consolidated Inter-Agency Appeal for Sierra Leone (CIAASL) Report of 2002).

⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

⁷ Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Aug. 15, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I]; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Aug. 15, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II].

⁸ Protocol II, *supra* note 7, art. 4 (3)(c) (stating “children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.”).

⁹ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (1989); Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (2000).

¹⁰ As of October, 22 2007, there are 122 signatories and 119 state parties to the Optional Protocol. See http://www2.ohchr.org/english/bodies/ratification/11_b.htm.

¹¹ Rome Statute of the International Criminal Court art. 8(2)(e)(vii), July 17, 1998, 2187 U.N.T.S. 90.

¹² Prosecutor v. Thomas Lubanga Dyilo, ICC, Case No. ICC-01/04-01/06-2; Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, ICC, Case No. ICC-02/04-01/05.

¹³ Prosecutor v. Hinga Norman, SCSL, Case No. SCSL-04-14, Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), May, 31 2004; Prosecutor v. Brima, Kamara and Kanu, SCSL, Case No. SCSL-04-16, Judgment (Trial Chamber) June 20, 2007.

¹⁴ UNICEF, *Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa* (1997) available at [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf).

¹⁵ Amnesty International, *Burundi: Child Soldiers- The Challenge of Demobilisation* (2004).

¹⁶ Save the Children, *Forgotten Casualties of War- Girls in Armed Conflict* (2005) available at [http://www.reliefweb.int/rw/lib.nsf/db900SID/EVIU-6BSFEG/\\$FILE/SCF_apr_2005.pdf?OpenElement](http://www.reliefweb.int/rw/lib.nsf/db900SID/EVIU-6BSFEG/$FILE/SCF_apr_2005.pdf?OpenElement).

¹⁷ Katy Barnett, *Home Truths for Girls Returning from the Armed Forces and Groups*, CHILD SOLDIERS NEWSLETTER, Spring 2005, available at http://www.child-soldiers.org/document_get.php?id=1011..

¹⁸ Swapna Kona, *Child Soldiers in Afghanistan*, IPCS Special Report No. 44 (June 2007).

¹⁹ Bennett, *supra* note 3, at 25.

²⁰ Barnett, *supra* note 17, at 5.