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CHILD RIGHTS' CONVENTION AND ITS IMPLEMENTATION

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Abstract:

Child labour is one of the severe problems faced by developed and developing economies. The Convention on the Rights of the Child (CRC) adopted on 20 November 1989 and entered into force on 2 September 1990. Nevertheless the challenges faced by the children remained the same. In some of the African and Asian countries children are exposed to vulnerable conditions due to various economic, social, cultural and political problems. This paper provides a general overview of the impact of poverty on child labour and child soldier. An attempt is made in this article to highlight and critically examine the problems of children in many developing countries. An attempt is also made to highlight what may be termed as tentative children issues and lessons emerging from Africa and India.

Keywords: Poverty, Child labour, child soldier, Child rights' convention, Africa, India.

JEL Codes: I 31; I 32; J13; K4; K42

1. INTRODUCTION

Child labour is one of the severe problems faced by developed and developing economies. In developed nations, this problem was highlighted, discussed and debated during the Industrial Revolution and in the developing countries; it has attracted attention in recent past especially in the light of Harkinson Bill of USA, ILO Labour Standards and WTO Social Clause.¹ Whatever be the motives behind these international organisations' deliberations, there is a common understanding that child labour has negative impact in both normative and pragmatic perspectives, on the child's growth and development. Therefore, it is a phenomenon that should be eliminated. In the normative perspective, every child should enjoy childhood, schooling and therefore should be work-free. In the pragmatic perspective, the nature of work and working conditions impedes the growth and development of children.

The Convention on the Rights of the Child (CRC) adopted on 20 November 1989 and entered into force on 2 September 1990 and the African Charter on the Rights and Welfare of the Child.² Indeed, the 1995 Statement on the First Regional Consultation on the Impact of Armed Conflict on Children in the Horn, Eastern, Central and Southern Africa realized the truth of the ominous inception of children's rights, opening with the phrase: A threat haunts Africa. The question of the nature of the special protection afforded to children in armed conflict has been described as the most controversial issue debated during the course of the CRC negotiations. The outcome of this debate was

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dissatisfactory and revealed a general lack of innovation. Furthermore, the higher standard of protection subsequently granted by the African Children's Charter was seen as being of little practical use. This was due to its inability to gain sufficient support to enter into force, until recently. The African Children's Charter inevitably presents the same obstacles encountered in the enforcement of the provisions of the CRC.

However, the CRC recognizes the child as the bearer of rights entrenched in a binding international instrument, comprising various categories of rights including protection and participation rights. So does the African Children's Charter. The struggle between these competing rights is epitomized in the case of child soldiers who are at the same time entitled to the special protection accorded to children in situations of armed conflict and to exercise their participation rights. As Graça Machel, the previous United Nations (UN) expert on children in armed conflict stated that "*It is important to note that children may also identify with and fight for social causes, religious expression, self-determination and national liberation. As happened in South Africa or in the occupied territories, they may join the struggle in pursuit of political freedom.*"

2. CHILDREN IN AFRICA

Although the African Children's Charter came into force in the year 2000, the question of the impact on, and involvement of children in armed conflict has long since lingered on African agendas. In July 1996 the Organization of African Unity (OAU) adopted a resolution on the plight of African children in situations of armed conflict. This conviction was reiterated in its decision of July 1999.

Most significantly, the concern felt for this threat to African children culminated in the African Conference on the Use of Children as Soldiers in April 1999, and the adoption at this conference of the Maputo Declaration³ on the Use of Children as Soldiers. The extent of the participation of children in armed conflicts in Africa was captured in the Africa Report that was released at this conference: At the time more than 120, 000 children under eighteen years were participating in armed conflicts across Africa. The countries most affected by this problem were Algeria, Angola, Burundi, Congo-Brazzaville, the Democratic Republic of Congo, Liberia, Rwanda, Sierra-Leone, Sudan, Chad, Uganda, and to a lesser extent Ethiopia and Eritrea.⁴ Recently, Graça Machel concluded that despite humanitarian efforts and the intervention of governments, our promises to children throughout the world remain unfulfilled. This review is a second call to action. However, this is not only an African problem. African states are also not only subject to regional treaties, but also to obligations under UN treaties. It is in this context that the CRC, the African Children's Charter and the Optional Protocol to the Children's Convention on the Involvement of Children in Armed Conflicts are considered. The Machel Report encouraged this co-operation within the framework of the Convention on the Rights of the Child and other relevant international and regional treaties, declarations and guidelines that emphasize children's rights. Furthermore, the Machel Report reiterated that one of the most basic reasons that children join armed forces is economic. Combined, these approaches are very useful. We must both realize the root causes of the

involvement of children in armed conflict, as well as respect their participation rights by providing alternative methods by which they can contribute to their social, cultural or political convictions.

3. POVERTY AND CHILD SOLDIER

The problem of child soldiers is immense and has been growing. According to UNICEF in 2004, it is found that there are over 3,00,000 children under 18 years, used as combatants, camp labourers, sex slaves, and runners in more than 30 armed conflicts worldwide. Using children as soldiers is one of the worst forms of brutalisation and it is practiced in every corner of the globe. Thus, the State of the World's Children 2004 report of the UNICEF calls for concerted action on issues that directly and indirectly imposes on the lives of children.⁵ Foremost among these must rank the HIV/AIDS pandemic and the impact of armed conflict on civilians.

It is in countries where the conflicts are the most protracted and the most intractable that children are in the greatest danger. Thousands of children often abducted from schools or refugee camps, risking beatings or death if they attempt to escape, become at times not only victims but also perpetrators. And once childhood is snatched from them, they are cut off from their normal development, education and relationships. Devastated by suffering and hardened against the suffering of others, these children require psycho-social rehabilitation, education and economic opportunities within their communities.

There are many reasons why youth end up in armed groups: some are coerced or induced, some are abducted, some join because economic and social systems around them have collapsed, and still others join for ideological reasons, because they have been manipulated by religious or political forces. Root causes of war, such as poverty, repression and devastated economies, take their toll on children as well as adults. Children become susceptible and vulnerable to being induced to bear arms before they can make decisions for themselves. Evidences reveal that the child soldier who are committing atrocities, also forced to kill their own friends as proof of loyalty to their captors. Although, many children dream of returning to the normal life, but their nightmares never leave them.

According to the ILO 'the problem of child soldier ship cannot be solved overnight'. It is the problem closely associated with poverty and underdevelopment. It is often pointed out that poverty is the main cause for child labor in general and child soldier in particular. As in all the developing countries including India the prevalence of poverty is a larger extent and therefore, the child soldier ship in India does exist. The welfare of a society is large and of children in this regard is greatly affected by poverty. Indeed, no society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable.

It has been further noticed that most child soldiers are from very poor families or underprivileged sections of the society. Although, poverty dictates the need for some

children to make an economic contribution to their family; but can not justify placing the children in soldier ship that jeopardize their lives, safety, physical or psychological development.

The causes of child labor or soldier are complex factors and include mainly economic social, cultural factors. Therefore, solutions must be comprehensive and should involve the widest possible range of partners in each society. In fact a single agency (Like UNICEF/WHO etc.) or organization cannot solve the child soldier problem on its own. Hence, child soldier who is deprived mainly by the problem of poverty needs to be confronted by all social agencies. The social agencies need to attack both the problem and its causes. Public and private sectors with the support of NGO's should play an important role in eradicating the child soldier problem

International Treaty on Child Soldier

It should be recalled that on 12th February 2002 an International Treaty on "banning the use of children as soldiers" came into effect. This treaty was negotiated for more than six years by the entire international community and was adopted by consensus. This treaty is the optional protocol to the Convention on the Right of the Child (CRC-1989) on the 'Involvement of children in Armed Conflict'. Indeed, this treaty was considered as valuable tool for exerting pressure on states and rebel movements that engage in this particularly cynical exploitation of children. As of 12th February 2002, governments and rebel groups that condemn the use of children will face the consequences from the international community. This treaty not only outlaws the use of child soldiers, but also urges the signatories to allocate the necessary recourses for their rehabilitation and reintegration. But unfortunately, even after five years of the Treaty, the child soldiers are not decreased rather increased. This mainly happened because of lack of cooperation of the signatories of the treaty and certain flaws in its implementation.

Therefore, the governments' involvement is imperative in gradual reduction of child soldier through designation of public policies and they should provide special assistance to such children at risk. There must be an effort to stimulate rapid and broad reaching economic expansion that will create employment opportunities, rendering child superfluous. It is not enough to demand that a child disarm, however we must break the cycle of violence. A former child soldier must be given education, training and psycho - social treatment. It is in the interest of the international community to commit far greater resources to this goal. A society cannot make the transition to stability unless its children it's very future are given hope, dignity and respect.

The Contribution of the CRC and UN Committee

The CRC entrenched children's rights in a binding document. It is the entrenchment of children's participation rights that is most significant in the context of the further evolution of children's rights. Children's participation rights are also the most controversial category of rights to be recognized. Although, the CRC protects child soldiers and establishes a minimum age for recruitment and participation in hostilities,

the framing of these provisions was not concerned with an examination of the developmental needs or abilities of children with regard to either protection or participation rights. It is evident from the observations of the UN Committee on the Rights of the Child (UN Children's Committee) that even these low standards with regard to the protection of child soldiers are not being enforced. Examples are the UN Children's Committee reports on Uganda and Sierra Leone.⁶ This reveals little prospect for compliance with the higher standard embodied in the African Children's Charter, which requires that no child, being a person under the age of eighteen, takes a direct part in hostilities or be recruited.⁷ An innovative feature of the CRC is its provisions with regard to states obligations concerning the psychological recovery and social reintegration of children affected by armed conflict.

Furthermore, the greatest contribution of the UN Children's Committee is undoubtedly its recognition that poverty and armed conflict are difficulties affecting the implementation of children's rights generally.⁸ The UN Children's Committee has therefore already begun to place children's rights in a country and environment specific context with regard to enforcement, which may assist in combating the unique factors. Which determine the critical situation of many African children as recognized in the Preamble of the African Children's Charter.⁹ The UN Children's Committee has already shown that a reporting obligation is not a guarantee of the implementation of children's rights. In mitigation, it should be stated that the Preamble recognizes the political, economic and social root causes of children's involvement in armed conflict.

Assessing specific participation rights

Not all rights entrenched in the CRC are protective in nature, as some relate to children being heard in matters that affect their lives and empower them to act. These empowerment or participation rights include the right to freedom of expression, the right to have his or her views heard and freedom of association. The evolving capacities of the child are the guiding principle in respect of these rights. It is the conflict between this category of rights, dealt with more insubstantially than other categories of rights in the CRC, and protection rights, more specifically the safeguards provided by article 38 of the CRC and article 22 of the African Children's Charter concerning the voluntary participation of children in armed conflict, which deserves examination.

It is important to note that children are not always forcibly recruited into the armed forces. Only voluntary enlistment is focused upon here. As was the case in Ethiopia, Eritrea and South Africa, an appeal was made to children's sense of patriotism in their fight for self-determination and national liberation or to protect the sovereignty and territorial boundaries. The debate is therefore complicated by some children's belief that fighting in wars of national liberation is the only means for them to contribute to a political or social cause, as was sometimes the case in Uganda.¹⁰ In this regard it is important to note the responsibilities placed upon the child in the African Children's Charter, which include the duty to serve his national community by placing his physical and intellectual abilities at its service: to preserve and strengthen social and national

solidarity and to preserve and strengthen the independence and the integrity of his country more specifically how these duties may be interpreted in the light of the wars of liberation and in the context of other remnants of colonization.

4. CHILDREN IN INDIA

When we look at the Indian perspective, its population already reached over 1 billion and India has the largest child population in the world, estimated at more than 380 million below the age of 18 years. This alone brings home the need for amazing efforts at tackling the monumental problem of child welfare. The problem areas focused include the issues of child survival and health, nutrition and food security, status of girls and women, family care and institutional protection, education, children under especially difficult circumstances, impact of terrorism on children, prevention of degradation of the environment and poverty. In line with this, the Government of India has undertaken measures to progressively implement the provisions of Article 32 (on the rights of the child to be protected from economic exploitation), particularly paragraph 2(a) (on minimum age or ages for admissions to employment), in accordance with its national legislation and relevant international instruments to which it is a state party.

It is surprising to note that in July 2006 a poll was conducted by the Reuters AlertNet campaign to focus on neglected humanitarian crises, and reported that India as the sixth most dangerous place on earth — for children. It suggests that children are more at risk here than in conflict-ridden war-torn regions such as Afghanistan, the Palestinian Territories, Myanmar, and Chechnya. India, in fact, ranks just better than Darfur in Sudan, Northern Uganda, the Democratic Republic of Congo, and Somalia. Those polled include experts from international aid agencies and the idea is to highlight the lack of coverage of these issues in the international media. The respondents, who were not given a specific definition of the word 'dangerous', were nevertheless given a list of indicators of deprivation — such as hunger, malnutrition, lack of access to education and health care, child labour, gender discrimination, child sexual abuse, and factors like exposure to violence — to include in their assessment as being threats to a safe childhood. India's precise ranking as the world's sixth most dangerous place, reflecting angularities in the exercise, does seem over the top. However, enough of what has been emerged is uncomfortably close to the truth, highlighting the distressing condition of millions of children in India.

It is reported that despite India's emergence as an economic powerhouse, 1.2 million children under five die from malnutrition every year. Despite being the third largest producer of food and the third largest defence spender in the world, India is unable to safeguard its children from hunger, malnourishment, and other kinds of dire exploitation ranging from child labour to child sexual abuse and trafficking. The continuing invisibility of children and their exclusion from a framework of rapid economic growth indicates that as a country we are not meeting the elementary obligations to the most vulnerable within Indian communities. In 2006, State of the World Children's Report from UNICEF points out, half the world's undernourished children live in South Asia.

India's malnutrition rate stands at 47 per cent, the same as the poorest countries like Eritrea and Ethiopia. As far as child labour is concerned, the 2001 Indian Census reports a figure of 12.7 million working children but the numbers are likely to be three times higher. There is no question that the majority of children in India are subject to various forms of severe deprivation, but it can be argued that images of war, rape, kidnapping, and landmines — situations of extreme peril, not descriptive of the landscape of every day India.

5. CONCLUSION

A child should not be stopped to do something by force without being convinced. Otherwise the child will remain in sheer confusion and will be constantly tempted to do some violent actions. Researches have shown that the affection-oriented technique of disciplining is more effective than the power oriented technique. In order to provide for the exercise of participation rights and effective protection it is essential that alternatives be provided to those children who are induced by circumstances to join armed forces, as is stated in the Maputo Declaration on the Use of Children as Soldiers. In exercises like these, well-meaning international agencies such as UNESCO, UNICEF, etc., out to make a moral impact on behalf of children must learn to keep a just sense of proportion in projecting the facts. Exaggeration and over-the-top assertions will prove counter-productive. All the concerned agencies and the states all over the world should work hard to not only to draft the Child rights' conventions but also for their implementation. Indeed, the children have the right to shape their own lives. They have the right to their own beliefs and to express them, and to participate in decisions affecting their lives. Children must be an integral part of the design and implementation of the programmes and strategies that are related to them.

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