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EXPLOITATION OF CHILD SOLDIERS IN ARMED CONFLICTS: RIGHTS OF CHILD

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*“A generation of children is at risk. We must help them.”
Henrietta H. Fore, UNICEF Executive Director [1]*

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Abstract: *This article analyses how in modern world some countries' armed groups are exploiting children and what rights are violating. To the whole world known that young boys and girls abduct, subject to meet sexual needs of soldiers, beat, deprive, force to kill and often be murdered. It considers mainly three rights of child: right to life, right to education and right to be protected from trafficking. The article gives the answer to the question of recruitment age of conscription under the international law.*

Despite the obligation for states to maintain peace and security in the world the number of military conflicts (international or non-international) is not reduced and active participants of conflicts are getting younger.

In the world today there is a tendency to increase the number of children in armed conflicts (government armed forces and non-governmental armed groups). In 2019 there were estimated 250,000 child soldiers in at least 20 countries [2]. According to current year only in 13 countries numbered 280,343 total children-participants and the actual figure cannot be established [3]. Furthermore, especially in countries like Afghanistan, Central African Republic, Democratic Republic of Congo, Myanmar, Somalia, South Sudan, Yemen, Syria, Iran, Iraq, Sudan, Pakistan, Zimbabwe and Bolivia children are an integral part of modern warfare.

There are different reasons why children get into military groups: recruitment or by force. I do not consider voluntarily, because I believe that children are naive and easy to force them to believe some absurd things by brainwashing their minds. Moreover, they do not totally perceive all these situations and do not guess consequences of their actions. Even if he/she went to the militants with consent and voluntarily, it is assumed that there was some influence or interference from other people. Furthermore, the armed groups increase the number of militants by force. It can be

expressed in the following forms: threatening to kill someone from the family members, from the circle of close people of the child, or even to kill himself/herself.

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000) abducted actions without essential element - consent of child can be classified as trafficking [4]. Due to the fact that recruitment is voluntary, children cannot be protected under this Protocol.

There are several base causes of the growth in the use of child soldiers: poverty, ignorance, intellectual and developmental immaturity, a lack of formal education [5]. According to the Report of the Special Representative of the Secretary-General for Children and Armed Conflicts (The Report) the number of attacks on schools, including the recruitment and abduction of children from schools, and the military use of schools have increased [6]. Attacks or threats of attacks on schools and widespread violence led to mass school closures in Afghanistan in 2018, depriving more than 140,000 girls and boys of their right to education. In the Democratic Republic of the Congo, in Kamonia territory, Kasai province, Bana Mura militia abducted 49 girls and 15 boys and forced them to work on farms between March and May 2017, while girls were raped and sexually abused [6]. Same situations also placed in Mali, Democratic Republic of Congo, Iraq and Syrian Arab Republic. The significant reduction of number students was not the main cause of closing schools, also general insecurity, attacks on schools, attacks or threats attack against protected personnel by armed groups.

The abduction of children violates right of child protecting by universal and regional human rights rights mechanisms (European, American and African), especially by the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. For instance, The Convention's such articles:

- *Article 9:* shall ensure that a child shall not be separated from his or her parents against their will;

- *Article 11:* shall take measures to combat the illicit transfer and non-return of children abroad;

- *Article 16:* no child shall be subjected to arbitrary or unlawful interference with his or her privacy, home, family or correspondence;

- *Article 35:* shall take all appropriate measures to prevent the abduction, the sale or traffic children for any purpose or in any form - provide obligations to states to prevent child abduction in their own jurisdiction and territory. However, trafficking may realize between two or more countries. For instance militant group ISIL in Iraq for the reason to sale, training and use kidnapped children and transported to Syrian Arab Republic. Also Boko Haram in the Chad engaged in such activities and forced children to marry, to participate in combat, and to provide means of subsistence [6]. The inclusion of two states in the process creates more problems and makes it more complicated to prevent and protect children. In all probability during transportation, children encounter indifference and abuse treatment. As a result some of them die from starvation, dehydration, suffocation in inappropriate conditions or transport accidents. Transportation boys and girls from one country to another without essential element – their consents is subject to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000) and should be classified as trafficking [4]. If it was voluntary, children cannot be protected under this Protocol.

In aspect of international law closures of school have devastating effect on the right to education of the affected children, because mass closing of schools prevent from access to education. In accordance with article 28 of the Convention on Rights of the Child (The Convention) "States Parties recognize the right of the child to education, and they shall (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates" [7]. In the CESCR General Comment № 13 of Office of the High Commissioner for Human Rights proclaim that right to education itself is a right that empowers people, as well as one of the most powerful tools that can help economically and socially marginalized children and adults escape poverty and participate fully in society [8].

Education is vital for every child, because the knowledge which gained in the process of learning becomes the basis of future life. And then what happens to children who didn't learn the basic materials, who does not able to write or read simply? What does the future hold them? So kidnappers not only restrict access to education, but also ruin their future. The worst thing about this situation is lack of efficiency in fulfilling states' obligations under the treaties. All abovementioned states (Mali, Democratic Republic of Congo, Iraq, Afghanistan, Somalia, Nigeria) accessed to the Convention and it has legal force for them, but this provisions are not enforced by these governments [7].

There are also known situations where the right to life, which guaranteed by The Convention, has been violated. "Every child has the inherent right to life", but in Nigeria, Boko Haram often specifically kidnapped girls for use as live bombs, attached improvised explosive devices to their bodies, and forced them to carry out attacks as suicide bombers [9]. Besides adolescents are used for the disposal of infantry mines, their installation and also for intelligence and for setting ambushes, since they are less noticeable than adults. However for all these military actions, children naively go and lose their lives. In Part 2 of article 6 (right to life) of The Convention was determined obligation for member states to ensure to the maximum extent possible the survival and development of the child [7]. This norm stipulates that States must not only guarantee the child's right to life, but also take positive steps to maintain and extend the child's life and to ensure his or her full physical and spiritual development.

Life is the highest value of every person and he/she only knows how to live it. Therefore children are born to live, not to die. However brainwash of the their minds by the militants affects to that they will lose sober outlook on life and think doing kind of actions are a heroic acts. Military groups recruits children to their side, because it is easier to bring children than adults to a state in which they mindlessly submit and fight fearlessly. For example, one of the commanders of armed groups in the Democratic Republic of the Congo said: "Children are good fighters because they are young and want to show themselves. They believe it's some kind of game, which is why they are so fearless". All of this is a gross violation of international humanitarian law, contrary to the norms of Geneva Conventions on the protection of women and children in times of armed conflict or extraordinary circumstances.

Furthermore young boys and girls become victims of sexual abuses. In Uganda, Ethiopia and El Salvador nearly a third of child soldiers are young girls, who are raped by commanders or soldiers. Boys are part of sexual violence as well. For instance, in Afghanistan it is called by slang term "bacha bazi", it means sexual relations between commanders and adolescent boys [10]. These actions contradicts to human rights instruments, especially article 19 of The Convention guaranteed by state protection the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse [7]. Thus without exception of gender, boys and girls suffer from violations of their right to sexual integrity.

Moreover abduction and its consequences can be classified as international crime, because it is contains actions such as sexual slavery, the forcible transfer of children, the sale of children, enslavement and enlisting or conscripting children under 15 years of age. The last one is stated in article 8 2) e) vii) of the Rome Statute of the International Criminal Court (ICC) among with the war crimes [11]. However we should remember that this norm only use in international armed conflicts and cannot provide the civil wars and non-international conflicts.

The ICC in its decision of 15 June 2017 the case of Bosko Ntaganda stated that the sexual exploitation and rape of child soldiers by members of their own armed group constituted a war crime and deprived him for 30 years [12]. In addition 10 years after ICC's creation issued its first verdict about the case of Lubanga, the leader of one of the democratic Republic of Congo's rebel groups. He was found a guilty of recruiting and abduction children and in particular of turning minors into murderers, servant and sex slaves [13]. As a vivid example of these violence, we can say about Nadia Murad. She was born in Iraq and after the capture of the village by ISIL militants, she and her three nieces were turned into sexual slavery. After liberation from the slavery she was

awarded the 2018 Nobel Peace Prize for intensifying international efforts to end human trafficking and sexual violence in conflict situations [14].

The most prominent legal issue surrounding child soldiers is the question of age of them for recruitment and use in conflict. Because answer to such question can determine which international mechanisms can protect children in armed conflicts: The Convention or Geneva Conventions. Or on the contrary, they will be considered as combatants and will be responsible for their actions.

An international regulation about the question of children involved in armed conflicts appeared in 1977 with Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims of international armed conflicts (Protocol I), 8 June 1977 [15]. This document obliges states to “take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, refrain from recruiting them into armed forces” [16]. Totally ban the participation of teenagers in armed operation is impossible. Part 2 of article 77 of Protocol I suggests to state parties reduce recruitment persons who have attained the age of fifteen years but who have not attained the age of eighteen years and endeavour give priority to those who are oldest. It should be noted that this rule is not mandatory, but conditional, so States can refer to an emergency situation in order to legally implement the call of young people in the state's military.

The Protocol I refers to the Article 1 in the UN Convention on the Rights of the Child (1989) (Convention), which created the universal definition of childhood: “a child means every human being below the age of eighteen years”. There is a discrepancy between the norms. Because from the psychological point of view childhood ends when the child first time saw with his own eyes the horror of war, explosions, dead and wounded bodies and took up weapons to fight, because after seeing violence which has negative impact on their mental and psychical health he/she will never be the same. So Protocol I which allows 15 years old children to participate in armed conflicts contradicts to the Convention which extends childhood to 18 years. Moreover the age limit for conscription sets in article 38 part 3 of the Convention on the rights of the child and applies to children under 15 years of age. Optional Protocol to the Convention on rights of the child on the involvement of children in armed conflict (2000) raises the minimum age for the voluntary recruitment into national armed forces and recognizes special protection to persons under the age of 18 years (Article 3, part 1) [17]. However this norm is not also mandatory, because in paragraph 3 of this article there is a provision allowing voluntary recruitment of persons who have not reached the age of 18. For example despite the Uganda’s accession OP in 6 may 2002 [18], the minimum age of conscription is 13 years and this rate is lower than the standard of international humanitarian law.

Although the topic of child soldiers is not already new, there are still unanswered questions about their active participation and responsibility for them. However as for their rights as children and their violations are still there and unfortunately the number of boys and girls who participate in armed conflicts is increasing. Consequently for addressing the problem of child soldiers we must not wait for the right moment or terms. The efficient way to decrease of such violations contains protection, prevention and deterrence. In order to that the global community have to act by strengthening compliance and implementation of international humanitarian laws, human rights mechanisms, slavery instruments, trafficking conventions, international criminal laws that are applicable to children’s right and child soldiering.

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