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Child Soldiers: Victims or Offenders?

Mary Grace Castillejos Agcaoili ¹

Institute of Human Rights and Peace Studies, Mahidol University

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ABSTRACT

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While the Convention on the Rights of the Child has been adopted 30 years ago, the conception of childhood it introduced is often seen by developing societies as “Western.” This tension is often seen in situations where children commit crimes or are engaged in armed conflict or violent extremism. In these cases, children are often seen as both victims and offenders. While human rights advocates tend to emphasize the image that child soldiers are incapable victims of adults’ abusive compulsion, stripped from legal agency and without any accountability, some scholars believe this does not represent the child soldiers’ own perceptions of their role (Shepler, 2005). While children should primarily be considered victims under the universal application of the CRC, treating child soldiers only as victims could often be counterproductive if it prevents community reintegration and lack of self-perception (Derluyn, 2015, p. 4). The 2009 Conference on Children and Transitional Justice argued that children can be victims, witnesses and alleged offenders simultaneously. Transitional justice does not favour one model. Therefore, alternative measures for holding children accountable in a variety of legal and non-legal mechanisms should be implemented such as non-judicial accountability, amnesties, community dialogues, and juvenile justice approach. There should also be reconciliation processes where social and societal rebuilding of networks is facilitated including in humanitarian assistance while respecting the rights of the child to be reintegrated.

¹ Mary Grace C. Agcaoili a PhD candidate at Mahidol University’s Institute of Human Rights and Peace Studies.

Corresponding author’s email: marygraceagcaoili@yahoo.com

Introduction

Armed conflict exposes children to traumatic situations. The conflict as well as children's vulnerabilities themselves expose them to different threats and risks. Children can be individual victims or collective victims. As collective victims, they experience violence as part of society or because they belong to a specific sub-population. They can be direct or indirect victims either by experiencing hardship and pain because of crimes committed or by witnessing suffering. Finally, they can be first or second-generation victims where conflict produces a new, traumatized generation (Derluyn, 2015, p. 28).

The 2007 Paris Principles and Guidelines on Children associated with armed forces or armed groups set out the internationally agreed upon definition of a child soldier as "any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity." In 2015, it is estimated that about 250,000 children, boys and girls, are involved in armed groups worldwide such as fighters, cooks, porters, messengers, spies or for sexual purposes (Derluyn, 2015, p.1).

Prior to the 1990s, relatively little attention was paid to children affected by armed conflict generally and child soldiers in particular. Humanitarian organizations and advocates have viewed child soldiers as victims with international law backing them. This article discusses the reasoning behind this approach as well as the contrary view that looks at child soldiers as possible perpetrators who must face accountability. The article highlights the importance of considering local communities' and child soldiers' own perspectives, in ensuring children's rehabilitation and reintegration. The paper examines the role that mechanisms of transitional justice can play in responding to the needs of child soldiers and their communities. While affirming that transplantation is no real solution, this paper relied on countries that have dealt with these issues more substantially to facilitate understanding particularly Sierra Leone in Africa. In particular, this article analysed Susan Shepler's work on "The Rites of Passage: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone."

Asian Context

The recruitment and use of children by parties to conflict is not a new phenomenon globally including in Asia. Children recruited are not only victims of use, killing, maiming, enslavement, sexual exploitation, constant fear, indoctrination and psychological pressure, but also

witnesses to and could have committed these same acts. Cases of children involved in armed conflict are seen in Afghanistan, Iraq, Syria, and Yemen as well as Philippines and Myanmar among others. In Afghanistan, the UN country task force on Monitoring Rights Mechanism documented the recruitment and use of 556 boys and four girls from 2010 to 2014, 75 per cent of which were recruited and used by armed opposition groups. The scope of child recruitment in Iraq remains difficult to ascertain owing to the lack of access to affected areas, traditional militarization of Iraqi society, fear of families to report incidents, and security concerns for victims and their families. From 2011 to mid-2013, reports of children recruited by Al-Qaida in Iraq were received, but verification of cases was limited. In 2014 alone, the United Nations (UN) verified at least 67 cases of boys recruited. However, those figures do not reflect the full scope of child recruitment. Comparatively, the recruitment and use of children in Syria occurred on a significant scale during 2013-2018, with 3,377 verified cases (3,150 boys and 227 girls). The verified numbers of cases of recruitment and use of children continued to rise steadily, with children, overall, becoming younger and increasingly used in combat roles. The UN documented 84 cases of recruitment and use of children in Yemen from 2011 to 2013 with 69 cases, all involving boys aged between 10 and 17 years, were verified by the country task force on monitoring and reporting.

In Southeast Asia, the latest data in Myanmar indicates that the country task force on monitoring and reporting continued to receive reports of the border guard police using boys as young as 10 years old in support functions, including identifying 53 cases in 2017 alone. The UN was able to verify the use of 47 boys, aged 10 to 17 years, by the border guard police. Their functions included border guard police camp construction and maintenance, cleaning, cooking, collecting firewood or serving as sentinels. They were often forced to work through the night and suffered humiliation, threats and punishments such as physical assaults for minor disobedience of orders. In the Philippines, the country task force verified 17 incidents of recruitment and use that affected 71 children. The majority of the children were used as human shields as well as other support and combat roles. In 2009, the Moro Islamic Liberation Front (MILF) signed an action plan with the UN to end the recruitment of child soldiers, a practice that extends over generations. As of April 2017, at least 1,869 child soldiers have been disengaged from the MILF. Many of these children are part of the fabric of the community that has been supporting the MILF.

International Legal Framework

The international legal framework for the protection of children in armed conflict stems from international humanitarian law and international human rights law, particularly the Convention on the Rights of the Child (CRC). Both frameworks do not focus on children generally affected by war but more on child soldiers and the need to prevent recruitment, protect and rehabilitate child soldiers (Derluyn, 2015, p. 3).

International humanitarian law applies during armed conflict and protects those who are not or no longer taking part in hostilities and regulates the means and methods of warfare. The 1949 Geneva Conventions include protection of children with the two additional protocols of 1977 establishing 15 as the minimum age for recruiting children into the armed forces and armed groups and for engaging in non-international conflicts, and 18 as the minimum age for international conflicts (Aptel, 2010, p. 71).

On the other hand, international human rights law applies at all times including in war to protect the basic human rights of all, including civil, political, economic, social and cultural rights (Siegrist, 2010, p.5). Over time, attitudes towards children have dramatically changed from indifference to viewing childhood as a period requiring special care and protection. Children are now recognized as active holders of rights as humans and as children specifically, which led to the development of rights of all children including those involved in armed conflict (Derluyn, 2015, p.2). These rights are enshrined in the Convention on the Rights of the Child (CRC) which was adopted in 1989. It is one of the core human rights treaties and has received near universal ratification. It sets out the rights of all children and the standards and obligations guaranteed by governments. Article 38 requires States to ensure children under 15 are not recruited and do not engage directly in armed conflict. The 2000 Optional Protocol to the CRC prohibits forced and voluntary recruitment and the use of children under 18 in armed conflict. However, States can still recruit those over 15 for the national armed forces, provided minimal safeguards are met (i.e. recruitment is voluntary, recruits are fully informed of military service duties, and the informed consent of parents/guardians and proof of age are both provided (Committee on the Rights of the Child (CRC), 2002). Article 39 calls for States to take “measures to promote the physical and psychological recovery and social reintegration” of child victims of, among other things, armed conflict. Aside from the CRC, there are several UN Security Council Resolutions (SCRs) addressing child protection during emergencies. SCR 1261 (2011) condemns six grave child rights violations: (1) the recruitment or use of children -

SCR 1539 (2004), (2) killing and maiming, (3) rape or other grave sexual violence - SCR 1882 (2009), (4) attacks on schools and hospitals - SCR 1998 (2011), (5) child abduction - SCR 2225 (2015), and (6) denial of humanitarian access for children.

The Nuremburg and Tokyo international military tribunals, the first international tribunals, did not specifically consider crimes against children (Aptel, 2010, p.69). Since then and through the efforts of human and child rights organizations, recruitment and use of children under 15 is now an international crime as per the 1998 Rome Statute of the International Criminal Court (ICC) (Aptel, 2010, p. 71). The ground-breaking 1996 Graca Machel report on the impact of armed conflict on children, commissioned by the UN Committee on the Rights of the Child and the UN Secretary General, informed and driven by the CRC's momentum in the early 1990s, put children front and centre on the global peace, security and development agenda (Siegrist, 2010, p. 4).

Especially central to the issue of child soldiers are the 2007 Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris principles and guidelines on children associated with armed forces or groups. Though not legally binding, the Paris commitments and principles have been endorsed by 105 States, including many where children are part of or associated with armed forces or groups (Aptel, 2010, p. 73). Building on the 1997 Cape Town principles and best practices on the recruitment of children into the armed forces and on the demobilization and social reintegration of child soldiers in Africa, the Paris commitments aim to prevent recruitment, protect children, support release from armed forces or groups and enable reintegration into civilian life (United Nations Children's Fund (UNICEF), 2007). Additionally, the International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour included the compulsory use of children in armed conflict in the list of worst forms of child labour (International Labour Organization (ILO), 1999).

With regard to prosecuting children for crimes committed as members of armed forces or groups, there is emerging agreement under international law that these children should be seen as victims. The Paris Principles reaffirm this idea and recommend accountability be pursued through "alternatives to judicial proceedings" where appropriate (Siegrist, 2010, p. 25).

Since the Nuremburg and Tokyo international military tribunals, international criminal courts have not prosecuted children (Aptel, 2010, p. 100). The crimes committed by Nazi

youth and their organizations, for example, were not addressed (Aptel, 2010, p.101). Based on the idea that children are not the ones who bear the greatest responsibility for the crimes committed, and taking into consideration their limited mandates and resources, prosecutors have focused efforts on “those who planned or orchestrated widespread criminal activity” (Aptel, 2010, p. 99). At the domestic level, State legislation sets out the minimum age of criminal responsibility below which a child cannot face charges and lays out the possibility of granting amnesties or pardons (Aptel, 2010, p.100).

Some hybrid/mixed courts have the authority to try children, as their mandates come from negotiations with the particular country and can therefore reflect the country’s national laws (Aptel, 2010, p. 102). For example, the Special Court for Sierra Leone (SCSL) had the mandate to investigate and prosecute children over 15. This was motivated by the notion that “the people of Sierra Leone would not look kindly upon a court which failed to bring to justice children who committed crimes of that nature and spared them the judicial process of accountability” (Aptel, 2010, p.104). Regardless, the prosecutor suggested that it would be better to prosecute “those who forced thousands of children to commit unspeakable crimes” (Aptel, 2010, p. 104).

Victims or perpetrators

Susan Shepler (2005) in “The Rites of the Child: Global Discourses of Youth and Reintegrating Child Soldiers in Sierra Leone” conducted an 18- month ethnographic fieldwork throughout Sierra Leone from 1999 to 2001. She, like other authors (Boyden, 1997; Burman, 1994; Nieuwenhuys, 2001; Pupavac, 2001), claim that the CRC is a Western construct that depoliticizes youth and sees children as innocent rather than the actuality.

Shepler described child soldiers’ “strategically adopted identities” while attempting to reintegrate in Sierra Leone. With friends and fellow soldiers, they “wear combat clothes and sunglasses and brag about firing rocket-propelled grenade launchers” yet “with NGOs they adopt the persona of the traumatized innocent, usually requesting aid in furthering their education.” “With community members and in school they act like normal kids, never mentioning the past” (Shepler, 2005, p. 198). Shepler argued that international child rights approaches facilitate child soldiers’ “discourses of abdicated responsibility” (Shepler, 2005, p.200).

Shepler interviewed a local NGO worker who characterized the NGO work as bringing children back to their own appropriate place at the bottom of the social hierarchy. This goal corresponds to the local understanding of youth but contradicts some of the core tenets of the CRC in particular, for children to be able to stand up for themselves and make their voices heard.

While the “Western” conception of innocence makes it easier for Sierra Leoneans to forgive children for the crimes they committed during wartime, Shepler claims that the child rights discourse made reintegration more difficult. Some NGO practices harden the child soldier identity through labelling and list-making and provoke community anger at the inequitable distribution of benefits to child ex-combatants to the exclusion of other war affected youth. Shepler continued that the provision of aid for former child soldiers is an example of how humanitarian aid can buttress patrimonialism in local communities. The promotion of child rights is meant to improve the social position of children but in fact Shepler claims that they may just do the opposite. Shepler cited Pupavac (2001) who said that child rights can be seen as misanthropic and pathologizing of Southern childhoods.

Shepler believes that the “Western” model depoliticizes youth which is a change from the previous model in which youth, and the potential of youth revolt served as a check on abuses. By accepting the “Western” model of youth, Sierra Leonean youth gain something – ease of reintegration and forgiveness - but they lose something as well, namely a kind of political agency that is absent from Western youth.

Shepler concludes that studies of child soldiers are most often based on psychology or human rights frameworks, and both frameworks risk losing the important aspect of people strategically manipulating those frameworks. If child soldiers are seen only as traumatized, all the other aspects of his or her reintegration most importantly the social aspects, may be missed. Shepler directed readers to look into the politics at the base of modern models of childhood, and by insisting on a historically and culturally nuanced analysis of practice, understand present forms of power.

The concept of childhood and the cross - cultural validity of age limits have long been debated. What the scholars like Shepler claim as a “Western” conception is actually based on a biomedical model of childhood. Neuroscientists argued that children simply cannot form the required criminal intent regardless of culture. Steinberg (2008) found out that “basic intellectual abilities reach adult levels before the process of psycho-social maturation is

complete.” The neocortex which is the last part of the brain to develop is responsible for planning, reasoning, impulse control, thinking ahead, regulation of emotions, learning from experience, and weighing of risks and reward (Casey, Getz, & Galvan, 2008). Moreover, excessive and repeated stress such as conflict causes the release of chemicals that impair cell growth and interfere with the formation of healthy neural circuits in the brain. Toxic stress can damage the brain's stress response system and contribute to premature ageing of the body (Steinberg, 2008).

These studies claim that children cannot distinguish between right and wrong, given their age and the trauma they have experienced (Aptel, 2010, p. 107). A central element of international crimes is that they are committed through the application of coercion, manipulation and propaganda, and children are especially susceptible. Children frequently engage in splitting or dissociation, where they break off from their past identity, construct a new one in line with the new world, and act accordingly (Aptel, 2010, p.108). Consequently, it becomes difficult to blame children. However, an interdisciplinary rather than purely legal/human and child rights approach is critical in understanding and responding effectively to child soldiers.

The view that children are autonomous individuals, fully fledged beneficiaries of human rights with agency, resilience and coping mechanisms (Hinton, 2008, p. 285) is not contrary to the CRC. This view is the rationale behind the very existence of the CRC- children as active holders of rights. The CRC struck a balance between these two schools of thought (Eide, 2006, p.3). Hence it introduced doctrines such as evolving capacity and minimum age of criminal responsibility.

While Shepler and other scholars argue that there are children who voluntarily choose to join armed forces or groups, the Special Court for Sierra Leone pointed out that the distinction between voluntary and forced enlisting for children is somewhat contrived, given their age and especially given the context of rampant human rights abuse (Aptel, 2010, p. 77). As the UN Special Representative of the Secretary-General for Children and Armed Conflicts stated to the International Criminal Court:

In most conditions of child recruitment even the most ‘voluntary’ of acts are taken in a desperate attempt to survive by children with a limited number of options. Children who ‘voluntarily’ join armed groups often come from families who were victims of killing and have lost some or all of their family or community protection

during the armed conflict. Many ‘volunteer’ recruits soon become disillusioned but are not able to leave due to fear of being killed. Many children who try to escape are executed in order to serve as an example to the other children (Aptel, 2010, p. 78).

The nature of contemporary warfare is such that the line between perpetrator and victim is often unclear (Derluyn, 2015, p.3). Not only is it difficult to distinguish whether a particular child had the necessary intent, even where it seems like the child might have exercised agency, the voluntariness of that choice is questionable at best.

Linked to the biomedical and neuroscientific model is the psychosocial perspective. Most of humanitarian interventions for former child soldiers are framed as ‘DDR’ – disarmament, demobilization, rehabilitation and reintegration- to repair the damage that was caused by traumatic experiences during warfare (Coppens et al, 2012, p.329). Post traumatic stress disorder (PTSD), depression, and anxiety are just some of the effects of involvement in war (Bayer, Klasen, & Adam, 2007, p. 298). Possible interventions under this framework would be counselling and therapy as well as vocational training and psycho-educative programs and longer -term support like follow up with the child and family even after the child’s return to the community.

The role of transitional justice

Often, former child soldiers who return to their communities continue to be stigmatized and discriminated by community members who consider them as perpetrators (Derluyn, Vindevogel, & De Haene, 2013). The community members are of the opinion that humanitarian agencies are rewarding former child soldiers while civilian victims do not get anything. This fuels feelings of hatred and injustice among community members. Transitional justice plays an important role in the reintegration of child soldiers in their communities.

The UN Secretary General defined transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (Parmar, 2010). The end goal is to build sustainable peace after conflict, using various mechanisms, including prosecution, truth-seeking, reparation and institutional reform (Van Zyl, 2003, p. 6).

Transitional justice emerged from the political transitions of the 1980s and 1990s, such that the focus has predominantly been on civil and political rights and corresponding international crimes like killings, disappearances and torture. Little attention has been directed towards violations of economic, social and cultural rights, discrimination, marginalization and resulting distributive justice. Yet, these are often the root causes of violence and war and are more relevant to the needs of children and child soldiers (Derluyn, 2015, p.5). An example is the recruitment of children such that they are deprived of an education, erased of their identities and social ties, and especially if they are girls, forced to endure sexual violence. Transitional justice offers three distinctions of victimhood. One is between individual and collective victims, between direct victims, and first and second-generation victims. This distinction is relevant in identifying who can participate in transitional justice mechanisms (Bloomfield, Barnes, & Huyse, 2003).

However, transitional justice has not paid attention to the value of child participation in transitional justice mechanisms either as victims or perpetrators. Concern about protection at times jeopardize participation. Debates about the evolving role of children and their role as citizens or citizens in training are not new but these debates have not been part of the transitional justice discourse. Genuine youth participation with their best interests protected helps them grow as citizens. Another area of transitional justice that affects children the most is the systems and procedures for reparations set up in many jurisdictions (Ang, 2006). Aside from reforming institutions and mechanisms to make them child friendly, there is a need to develop alternatives other than purely criminal or judicial forms of accountability for child soldiers. While the community may demand that those responsible for gross violations be prosecuted and punished (Van Zyl, 2003, p. 6), the problems with prosecuting children are many as previously discussed. Furthermore, the criminal justice system was designed for societies where legal violations are the exception. When violations are the norm, this system does not have the time nor resources to prosecute everyone while remaining fair and governed by due process (Van Zyl, 2003, p. 6). There is more to transitional justice than prosecution though, and many non-judicial mechanisms can be deployed. Given the multiple aims that can be satisfied, it is better for children to engage in reconciliatory processes, such as mediations, truth commissions, community dialogues or adaptations of a genuine juvenile justice system (Aptel, 2010, p.109). If reconciliatory processes are handled appropriately, children can acknowledge their responsibility and express remorse, while also explaining their

victimization and desire for reintegration into their families and communities. This is not to say alternative methods are a panacea, as truth-telling can reveal the full extent of children's crimes, but this can also deconstruct what happened, as well as how and why. In this manner, newfound understanding can break down the stigma and discrimination against child soldiers (Aptel, 2010, p.109). It is important for everyone to acknowledge the harm and the wrong committed. Societies that have experienced mass atrocity must now contend with suspicion and hatred. If steps towards reconciliation are not taken and truth and accountability are not satisfied, then problems like revisionism, a return to abuse, and the deepening of distrust and disillusionment are all possible (Van Zyl, 2003, p.7).

It is also important for victims to tell their stories to receive some closure. This must be done in a safe and respectful manner to protect children who are viewed as both victims and perpetrators. As a founder for the Network for Young People Affected by War has raised, in the context of trials: "Young war victims were once forced to commit the most horrible atrocities, all the architecture of adults. And today we ask them to tell in detail how they were forced by the defendant to kill their parents or relatives, rape their sisters or mothers" (Siegrist, 2010, p.20). The "why" of transitional justice is therefore especially important. Identifying the exact aims of transitional justice can determine the right mechanisms and how to deliver them (Smith, 2010, p.47), such as the provision of appropriate support that meet children's material, medical and psychological needs (Derluyn, 2015, p.9).

Identifying victims' cultural values is essential to shaping processes in line with the local context. For example, the Grace Machel study highlighted children's participation in traditional healing practices enabling reintegration while protecting and supporting children. At the same time, these practices might simply reinforce social inequalities and discrimination, such as gender bias. While romanticizing such practices is clearly problematic, factors such as the CRC's call to consider the best interests of the child in Article 3(1) and the evolving capacities of the child in Article 5 requiring varying standards of protection, participation and autonomous decision-making cannot be ignored. Utmost consideration for both internationally agreed upon principles and local perspectives is imperative.

Reparations can come in the form of material assistance such as bursaries, psychological assistance like trauma counselling and symbolic measures such as memorials. It is especially challenging to determine whether to differentiate between categories of victims and among victims within a category. Offering child soldiers educational and psychological

support is the only humane option, and one also in the State's best interests in the long run. However, acknowledging that these categorical approaches generate community resentment requires more coordinated interventions. The community cannot be left behind, but rather, rehabilitation, reintegration and reconciliation should extend beyond individual recovery to community and societal recovery, in the interest of long-term peace building (Derluyn, 2015, p. 10).

Finally, transitional justice requires changing institutions responsible for human rights abuses, and preventing those responsible from holding public service positions (Van Zyl, 2003, p. 8). If those responsible for exploiting children as tools in armed conflict face no repercussions, but instead are given roles in rebuilding the country, the chances of lasting peace and improvement are slim. Carefully crafted, transitional justice processes, such as truth commissions, can provide opportunities for genuine participation as part of a national process aimed to help shape a new foundation for a society based on respect of rights of everyone especially children and civic trust (Ladisch, 2013).

Conclusion

Despite the 30 years that passed since the CRC was adopted, the conception of childhood has been an ongoing debate. The CRC's conception of childhood is based on neuroscience and child rights. The child has evolving competency and agency, requiring equal human rights that allow autonomy and social participation, as well as supplementary rights for children accommodating their specific vulnerabilities (Hanson, 2011, p. 40).

While human rights advocates and humanitarian agencies tend to emphasize the image that child soldiers are incapable victims of adults' abusive compulsion, stripped from legal agency and without any accountability, some scholars like Shepler believe this does not fully correspond with prevailing pedagogical and jurisprudential discourse, nor represent the broad range of child soldiers' own perceptions of their role (Dekker, 2009, p. 17).

As the contrasting arguments suggest, the nature of modern warfare and the toll it takes on individuals and societies are complex. In most cases, children are forcibly recruited while in other communities, the children form part of the very fabric of the community that support the conflict. The ethnic nature of most conflicts can turn every civilian into a potential victim or a perpetrator ready to defend the group's interest (Barenbaum, Ruchkin, & Schwab-

Stone, 2004, p. 41). In the field of international development and humanitarian aid, enough on-the-ground research and documentation exists such that one-sided views or one-solution-fits-all approaches are generally known to be problematic and often ineffective. The same is true for responding to the impacts of armed conflict on child soldiers and their communities. If employed appropriately and adapted to local contexts, however, transitional justice mechanism which emphasize reconciliation provide viable options for starting the recovery process. Education and awareness on how child soldiers were exploited is crucial for community understanding.

The 2009 Conference on Children and Transitional Justice, convened by the UNICEF Innocenti Research Centre, established the key principles for children and transitional justice to inform efforts on involving children in transitional justice processes. Children should primarily be considered victims, and consistency and coherence is required in applying the near universal application of the CRC. There should be alternative measures for holding children accountable in a variety of legal and non-legal mechanisms such as non-judicial accountability, amnesties, community dialogues, and juvenile justice approach. There should also be reconciliation processes where social and societal rebuilding of networks is facilitated including in humanitarian assistance. Development assistance which address root causes of conflict as well as the structural, cultural and direct violence should be made available. Moreover, child rights should form part of peace building, peace-making and peace keeping processes.

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Author's Biographical Statement

Mary Grace C. Agcaoili is a PhD candidate at Mahidol University's Institute of Human Rights and Peace (International Programme). She obtained a Juris Doctor degree from Ateneo de Manila Law School and a Masters in International Cooperation for Development at the Universidad Complutense de Madrid. She is a member of the Integrated Bar of the Philippines. This article is part of her coursework for her PhD studies and does not reflect the views of the organization she works for.