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Children, Not Soldiers

The On Going Use of Child Soldiers in South Sudan

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Fokus

South Sudan is allowing the use of child soldiers in violation of several international conventions as well as customary law.

Sources:

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BBC (2015)
<http://www.bbc.com/news/world-africa-31681302>

HRW (2014)
<http://www.hrw.org/news/2014/08/20/south-sudan-child-soldiers-thrust-battle>

The week of February 23rd, 2015 UNICEF reported that more than 100 boys, some as young as 12, had been abducted by the Shiluk militia. A week prior, Human Rights Watch reported the ongoing recruitment of minors by government forces. These incidents are part of a long history of child soldiers being used in South Sudan. The country has repeatedly made appearances in the annual Secretary General's Report on Children and Armed Conflict, leading it to being deemed a persistent perpetrator. The UN believes that 12 000 child soldiers were used across South Sudan last year in a non-international armed conflict (NIAC) that has been waging since December 2013. The protracted conflict is between rebel groups loyal to the Vice President Riek Macher and the Government supported by its allied militias, including the Shiluk militia whose leader Johnson Oloni was made a general in the armed forces as part of an amnesty agreement.

There are several different bodies of law prohibiting the recruitment and use of children in conflict, including: human rights law, international humanitarian law (IHL), and domestic law. Under the Geneva Conventions' Second Additional Protocol, that South Sudan is a party to, Article 4 (3)(c) states that children under 15 shall not be recruited into an armed group nor take part in hostilities in a NIAC. Any violation of this would be a grave breach of IHL, for which the state should prosecute any perpetrators. However, no high-profile commander has been prosecuted at either the national or international level.

In human rights law, the Convention for the Rights of the Child (CRC) is the strongest protection mechanism, in which Article 38 obliges states to ensure children under 15 do not take part in direct hostilities. While South Sudan has yet to ratify it, they have begun the process to become a party to the treaty resulting in the creation of domestic law that supports the CRC. South Sudan's 2008 Child Act, in accordance with Article 38 of the CRC, forbids children under 18 from partaking in hostilities. As evident by the reports of ongoing recruitment and use of child soldiers as well as the lack of prosecutions, the domestic system is failing and the state is either unwilling or unable to uphold these children's human rights. The CRC and Geneva Conventions regard the state as the subject of law and, therefore, enforcement measures would be taken against the states, generally in form of sanctions which often result in more suffering for the general population.

Like all states, South Sudan is bound by customary law. The protection of children from recruitment and participation in armed hostilities has become a general practice that is accepted as law. ICRC customary law rules 136 and 137, outline the protection of children against these crimes. Rules 156 – 161, contain the definition of war crimes, of which using children in hostilities is part, while rules 151 – 155 address individual criminal responsibility. The prosecution of such war crimes should happen at a national level, however as established the government is heavily involved in the practice itself and not upholding the 2008 Child Act. Therefore, in order to ensure these crimes do not keep being unpunished, the international community needs to investigate and prosecute those responsible. As South Sudan is not party to the Rome Statute, the UN Security Council needs to refer the case to the International Criminal Court (ICC) for the court to get jurisdiction over these crimes, just as they did in the case of the atrocities committed in Darfur by Sudan. Under the Rome Statute, Article 8 (2)(e)vii), it is a war crime to use children under 15 actively in hostilities, and those in violation should be brought to justice. The conviction of Thomas Lubanga from the Democratic Republic of Congo by the ICC, shows the deterrent effect the ICC can have, as it led to other commanders of armed groups releasing children from their ranks.

As illustrated above, South Sudan has a clear legal obligation under different areas of law to ensure that children are protected from being recruited or participating in armed hostilities. The latest abductions by a militia with close ties to the state shows an unwillingness or inability of the state to protect its citizens leaving no alternative but for the international community to protect them through the mechanisms available. These include diplomatic and political pressure, sanctions and a referral of the situation to the ICC.

Verantwortung

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