

# Victims and Perpetrators; Plight of the Child soldiers in the Eyes of Law

*CLCM Patabendige*<sup>#1</sup>

<sup>1</sup>*Institute of National Security Studies, Sri Lanka*

<sup>1</sup><charani.patabendige@gmail.com>

**Abstract**— *The Sri Lankan government underwent a three-decade war with the Liberation Tigers of Tamil Eelam (LTTE) and successfully defended the rights of Sri Lankans. Irrespective of the victory, LTTE international networks are using social media, diplomacy, and legislation and falsely accusing Sri Lanka of having committed the Tamil Genocide. The uprising of false information and hate speech is controversial as well as illegal. The false picture painted by LTTE has resulted in doubts in the world about Sri Lanka's guiltlessness. The Sri Lankan government has failed to counter the false allegations successfully. The Paper showcases the plight of LTTE child soldiers who are a threat to national security. It has attempted to identify the laws relating to child soldiers. Moreover, the paper showcases the government's role in the rehabilitation process and it discusses how to use the argument of usage of Child soldiers by LTTE to alarm the world on atrocities committed by LTTE. The research is a doctrinal research, which has used primary sources such as existing and laws and policies. It has utilised secondary sources such as reports and journal articles. The atrocities of LTTE in using child soldiers are strictly in contravention of human rights law and humanitarian law. Therefore, the government can successfully use the claim of child Soldiers to show the dark reality of the LTTE. The steps that were taken by the government to rehabilitate and reintegrate child soldiers into society advocates the guiltlessness of the Sri Lankan Government.*

**Keywords**— *Child Soldiers, National Security, Law relating to child soldiers*

## I. INTRODUCTION

Sri Lanka fought with The Liberation Tigers of Tamil Eelam (LTTE) the notorious, ruthless terrorist organization and achieved peace and freedom. Irrespective of the success of humanitarian operations conducted by the Sri Lankan government, there is an intellectual warfare uprising. LTTE has deviated from their traditional stratagem of arms and weapons and at present, they use modes including social media, diplomacy, and international pressure by passing laws and policies. This is detrimental to national security. The government has failed in responding to these claims swiftly. It is now high time to act efficiently and counter the fabricated accusations of the LTTE. Usage of Child soldiers by the LTTE is strictly in contravention of the laws of armed conflict as well as human rights law. Moreover, child Soldiers are a threat to national security. Sri Lanka can use the reality of LTTE's conduct on the usage of child soldiers to alarm the atrocities committed by LTTE. Therefore, it is imperative to look into the legal standards relating to child soldiers to portray the plight of the child soldiers of LTTE. Furthermore, Sri Lanka's role in the rehabilitation of LTTE child soldiers is praiseworthy and it can be employed as a counter-narrative against the false claim on Tamil Genocide.

## II. METHODOLOGY

The research is a doctrinal research, which is a library research also known as a "knowledge-building research". Primary sources such as existing legislation and policies are critically analyzed and have attempted to build up an argument against the pro-LTTE international network and LTTE front organizations. Furthermore, secondary sources such as books, journal articles are equipped for the sustenance of the narrative.

## III. DISCUSSION

### A. Child Soldiering

Children are known as the future of the country. They must be nurtured with love, kindness, and empathy. The period of childhood is significant. During childhood, they are highly attentive to detail, keen on learning, and grasp information speedily. Due to this, they can be easily manipulated. This is detrimental to children as well as the entire society. One such example is child soldiers. When looking at the history of Sri Lanka, LTTE conscripted child soldiers voluntarily as well as forcefully as instruments of war.

*Sirasu Puli* ('Leopard Brigade'), one of LTTE's fiercest fighting forces, was composed entirely of children. *'LTTE used child soldiers in all capacities, including as infantry soldiers, security and intelligence officers, medics, combat and administrative support, and as trainers for other cadres. The LTTE also used children as suicide bombers. The LTTE gave cyanide capsules and grenades to its soldiers, including children, with instructions to ingest the capsule or blow*

*themselves up rather than allow themselves to be captured by the Sri Lankan security forces*'. This extract depicts the human rights as well as humanitarian law violations by LTTE.

There are various reasons behind conscription. Conscription can be voluntary as well as by threat and inducement. In the case of voluntary enrollment, children tend to join rebel groups or the military due to heroism, feeling of victory, to gain a sense of ownership, the medals, colours, honours, and patriotism. In addition, Displacement, losing loved ones, family history and poverty are reasons behind joining. When looking at the approach of LTTE, [members of] *'Leopard's Brigade'*, saw Velupillai Prabhakaran as a father figure and accepted orders unconditionally.' Culture, religion, and politics also play a vital role. Children can also be forcibly recruited by way of abductions, illegal detention and when taken as a witness. According to N Manoharan; LTTE attracted school children by inculcating a sense of guilt 'War is glorified and a 'cult of martyrdom' created to lure children on the grounds of 'national liberation,' 'social reform' or 'defending religion.' Karuna forces too committed the crime of recruiting child soldiers, 'they generally targeted poor families, and often those who had already had a child recruited by the LTTE. The activities of LTTE, as well as the Karuna group, violated international humanitarian law and human rights law.

The effect of the conscription of child soldiers is always pernicious. It abuses children mentally and physically. Fundamental rights as well as human rights of the children are infringed including the right to life, right to be free from torture, right to education, freedom of expression and freedom of association. The consequences of war is everlasting and it is strenuous to eliminate trauma in the child victims. Child soldiers end up having post-traumatic stress disorder. This drains their personality by making them vulnerable to threats and less empathetic. Therefore, it is crucial to rehabilitate, disarm and reintegrate child soldiers into the society. It is a pity that the international network of LTTE is making fictitious allegations on Sri Lanka on Tamil Genocide when it is LTTE who are truly culpable. The lacuna in the system is, Sri Lankan government is not paying sufficient attention to rebut their claims strategically. Atrocities committed by LTTE are vast and recruiting child soldiers are only one of them, which affects national security. Therefore, it is pivotal to critically analyse the plight of the child soldiers of LTTE.

### *B. National Security*

It is evident that there is a threat to national security posed by child soldiering, this goes beyond the human rights approach, which is an ethical and legal concern. What is seldom addressed is the link of child soldiering with national security. The reason is, repercussions of child soldiering is long term. The trained child soldier is an investment done by a terrorist to make an individual who can run a brigade with authority in future. They will be highly trained and immune to pain, which is detrimental to national security. There is also a possibility of recurrence of violence even aftermath of the eradication of roots of war. Hence, it is clear that child soldiering is injurious to national security including human security. To preserve national security it is imperative to de-radicalize, rehabilitate terrorists and reintegrate them into society, which Sri Lanka became successful in.

### *C. Legal Framework*

Laws and policies are available to prevent and deter child soldiering. Child soldiering is prohibited both in international human rights law as well international humanitarian law.

*1) International legal regime:* International humanitarian law provides both special protection as well as general protection to children. Article 1 of the Child Rights Convention (CRC) 1989 defines a child as, *'any person under the age of eighteen*. Article 38 mentions that the 'state should ensure and respect international humanitarian law and take all feasible measures to prevent children under fifteen from directly participating in hostilities'. If the child is not fifteen, states must ensure to give priority to the oldest. An Optional Protocol to the CRC was adopted by the United Nations in 2000 making the minimum age eighteen for children conscripted, recruited by non-state armed groups. As per article 22, the state is obliged to give special protection to a refugee child or a child seeking refugee status by cooperating with competent organizations to provide protection and assistance.

As per Article 77.2 of Protocol I of the Geneva Convention 1977, recruitment of children under the age of 15 in the direct participation of hostilities is in breach of law. Article 75 prohibits attacks on civilians. Therefore, the principle of distinction is encapsulated making children nonmilitary targets. Moreover, Geneva Convention IV covers civilian protection. Additional protocol II Article 4(3) mentions, children who have not attained the age of 15 years shall be recruited in neither the armed forces nor groups and they are not allowed to take part in hostilities even if enlistment is done voluntarily. Hence, this provision is applicable to direct as well as indirect participation of hostilities. This also applies to non-international armed conflicts. The article sheds light on education, assistance, care, cultural environment, and the exemption from the death penalty. Rule 136 of the customary Human rights law states that children must not be recruited into armed forces or armed groups. According to Rule 137, children should not be allowed to take part in

hostilities. Moreover, United Nations Security Council Resolutions 1261 and 1314 deal with children in armed conflict. These international legal standards are suggestive of the importance of the protection of children and especially in times of war. Therefore, children cannot be used as an instrument of war as they are a threat to national security.

*1) Domestic legal regime:* The Constitution of the Democratic Socialist Republic of Sri Lanka, the supreme law of the country sets many rights including freedom from torture, right to equality, freedom from arbitrary arrest, detention, punishment, Freedom of speech, assembly, association, occupation and movement. It also guarantees special protection to children. Sri Lanka is a party to CRC as well as optional protocol I for CRC on the involvement of children in armed conflict, Geneva conventions and common Article 3. Sri Lanka has not ratified Protocol II; nonetheless, the majority of the legal provisions are authoritative as customary international law. Amendment to the Penal Code in Act no.16 of 2006, Article 358A (1) (d) of the Penal Code provides that *'any person who engages or recruits a child for use in Armed conflict, shall be guilty of an offence'*. Article 358A (2) states that a person who is guilty of engaging or recruiting a child will *'be liable to imprisonment of either a description for a term not exceeding thirty years and to a fine'*. Therefore, it is crystalline that international as well as domestic legal standards proscribes child soldiering. Therefore, the conduct of LTTE is strictly in breach of law and LTTE is at fault for victimizing children by posing a threat to national security.

#### *D. State Response*

It is vital to pay attention to state responsibility. The state has to foster human rights and fundamental rights. If the state is incapable of guaranteeing such rights it is an aspect of the failure of the state. Sri Lanka took imminent measures to combat child soldiering. Sri Lanka's rehabilitation process was noteworthy. Soon after the war then-president, Mahinda Rajapaksa stated *'Our hearts are not vicious. We will not prosecute children who are 12, 13 and 14 years of age and were forced to take up arms. We need to integrate them into society after rehabilitation.'* This explains how child soldiers were viewed as victims rather than perpetrators. Furthermore, this portrays the reality behind Sri Lanka's humanitarian mission. Sri Lanka established rehabilitation centres to integrate LTTE members including child soldiers. According to Hettiarachchi, there are *'Six modes of rehabilitation; educational, vocational, spiritual, recreational, psycho social and familiar social and cultural'*. The government of Sri Lanka rehabilitated LTTE child soldiers; de radicalized them and reintegrated them into society. The measures of the government of Sri Lanka display how victims of LTTE were emancipated from brutality.

Despite that, there are mishaps in the road towards justice; one such is the concept of "command responsibility". Jayawardena (2010) states that the *'Supreme Court has generally affirmed the doctrine of 'vicarious responsibility in the context of its fundamental rights jurisdiction, even in regard to the working of emergency regulations. However, the extension of this doctrine to command responsibility in conflict situations has not been evidenced. The reform of the criminal law and prosecutions affirming the responsibilities of senior officers in situations of war, rather than the scattered trials of junior officers, is therefore imperative'*. Lacuna in the law on the absence of command responsibility hinders justice. For that reason, it is crucial to address the needs without further delay. National security must be preserved whilst abiding by international standards.

#### IV. CONCLUSION AND RECOMMENDATIONS

The abundance in law proves that it is not the inadequacy of laws but the drawbacks in implementation and governance that hinders justice. Sri Lanka has successfully defeated terrorism. However, it is important to preserve harmony and prevent the reoccurrence of extremism. The prevailing lacuna is Sri Lanka has failed to rebut the claim of Tamil Genocide successfully. Even though the law proves LTTE are perpetrators, rebutting false speech and penalizing the hate speech by LTTE is not accomplished. As a result, the Pro LTTE international network has been able to pass legislation such as Bill 104 Genocide Education Week Act in Canada. The recent European Parliament resolution of 10<sup>th</sup> June 2021 on the situation in Sri Lanka, in particular, the arrests under the Prevention of Terrorism Act (2021/2748(RSP)) are such examples. Thus, child soldiers are one of the prominent arguments Sri Lanka can raise against the Pro LTTE international network to rebut the claim of the Tamil Genocide. Sri Lanka's State response to LTTE child soldiers was rehabilitation and reintegration instead of penalizing the child soldiers. This can be employed by Sri Lanka as a counter-narrative against the allegation on Tamil Genocide. It is imperative to preserve national security from soft as well as hard threats. Therefore, Sri Lanka must focus on rebutting false claims. It is crucial to prevent false information, misinformation and disinformation and criminalize hate speech. Invoking the command responsibility even though controversial will express the democratic status of the country. Moreover, it is important to adhere to international legal standards whilst upholding national security.

## REFERENCES

- 'Complicit in Crime: State Collusion in Abductions and Child Recruitment by the KarunaGroup' <<https://www.hrw.org/reports/2007/srilanka0107/>> accessed 8 June 2021.
- 'Jayawardena KP, 'Post War Justice in Sri Lanka ; Rule of Law, The Criminal Justice System and Commission of Inquiry' <[https://reliefweb.int/sites/reliefweb.int/files/resources/04234216454178AFC12576B20038FF61-Full\\_Report.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/04234216454178AFC12576B20038FF61-Full_Report.pdf)>
- 'Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka | Eldis' <<https://www.eldis.org/document/A18334>> accessed 6 June 2021.
- 'Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka' <<https://www.hrw.org/reports/2004/srilanka1104/>> accessed 5 June 2021.
- 'Sri Lanka Not to Prosecute Child LTTE Soldiers: Rajapaksa - Times of India' <<https://timesofindia.indiatimes.com/world/south-asia/Sri-Lanka-not-to-prosecute-child-LTTE-soldiers-Rajapaksa/articleshow/4798160.cms?from=mdr>> accessed 2 June 2021
- 'Sri Lanka: The Liberation Tigers of Tamil Eelam (LTTE) and Child Recruitment - silence' (*Relief Web*) <<https://reliefweb.int/report/sri-lanka/sri-lanka-liberation-tigers-tamil-eelam-ltte-and-child-recruitment>> accessed 8 June 2021.
- 'Tamil Tigers 'Child Conscripts Bid Farewell to Arms' (*The National*, 4 June 2009) <<https://www.thenationalnews.com/world/asia/tamil-tigers-child-conscripts-bid-farewell-to-arms-1.552045>> accessed 8 June 2021.
- Hettiarachchi M, 'Sri Lanka's Rehabilitation Program: A New Frontier in Counter-Terrorism and Counter Insurgency' (2013) 4 *Prism : a journal of the Center for Complex Operations* 105 <<https://researchers.mq.edu.au/en/publications/sri-lankas-rehabilitation-program-a-new-frontier-in-counter-terro>> accessed 2 June 2021
- Wessells M, *Child Soldiers: From Violence to Protection* (Harvard University Press 2006)
- 'War Crimes Relating to Child Soldiers and Other Children That Are Otherwise Associated with Armed Groups in Situations of Non-International Armed Conflict. An Incremental Step toward a Coherent Legal Framework?' (*QIL QDI*, 23 September 2019) <<http://www.qil-qdi.org/war-crimes-relating-to-child-soldiers-and-other-children-that-are-otherwise-associated-with-armed-groups-in-situations-of-non-international-armed-conflict-an-incremental-step-toward-a-coherent-legal/>> accessed 5 June 2021

## AUTHOR BIOGRAPHY



Charani Patabendige is an Honorary Associate Research Fellow at the Institute of National Security Studies, the premier think tank for the Ministry of Defence, Sri Lanka; she holds a Bachelor of Laws degree with a second class as well as an Advanced Diploma in Transitional Justice from Bandaranaike Centre for International Studies with a Distinction Pass. Currently, she is reading for the final year of the Attorney at Law examination. She has also represented Sri Lanka at the 'International Scientific-Practical Conference on Regional Security in Asia in the context of preventing new challenges and threats' conducted by the Conference on Interaction and Confidence Building Measures in Asia (CICA). Her research interests are on counter-terrorism, religious extremism, drug menace, human rights and national security.