



**Submission to the UN Committee on the Rights of the Child's
Day of General Discussion 2018
"Protecting and Empowering Children as Human Rights Defenders"**

**Protecting and Empowering Children as Human Rights
Defenders in conflict and post-conflict situations**

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June 2018

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We note the Objectives of the 2018 DGD. We further note that globally many of the most vulnerable children live in situations of conflict, and that it is in such situations that the state is most likely to deny or breach human rights and/or fail in their duty to discharge their UNCRC obligations. It is important therefore that the Committee's 2018 DGD deliberations on "Protecting and Empowering Children as Human Rights Defenders" give detailed consideration to how the 2018 DGD Objectives can be realised in respect of child human rights defenders in situations of conflict. In particular it is important that the Committee in its guidance specifically clarify State's and the international community's obligations to protect and promote the rights of children who defend human rights in situations of conflict. Art1 of UNCRC clearly defines the child and the UNCRC recognises that children under 18 years are rights holders **requiring special attention and protection**. The emerging capacity of the child is well recognised and is central to the capacity of the child to vindicate their rights and to act as a human rights defender. The Committee acknowledge that additional empowerment and protection is required for children in situations of conflict. Likewise "balancing" recognising the child's emerging capacity against the child's "best interest" is particularly engaged when considering child human rights defenders in situations of conflict. The interpretation of the application of "UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" must take cognisance of the nature of childhood, the lived experience of child human rights defenders in situations of conflict, the UNCRC and afford protection accordingly.

We further note the Annex of the "UN Declaration on Human Rights Defenders" acknowledges:

"the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, **including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources**"

We also note Art12 (1) of the Declaration on Human Rights Defenders provides:

1. Everyone has the right, individually and in association with others, to participate in **peaceful** activities against violations of human rights and fundamental freedoms.

In the context of the UNCRC and the Declaration's Acknowledgement and Art 12, one important issue for the 2018 DGD is for the Committee to consider how to give clear guidance *visa-vis* protecting and promoting the rights of child human rights defenders in situations of conflict and post-conflict.

The Concept Note for the 2018 Day of General Discussion on "Protecting and Empowering Children as Human Rights Defenders", reflecting the Declaration on Human Rights Defenders, provides that human rights defenders are those of any age who are involved in actions which are "wide-ranging and include promoting the realisation of human rights, collecting and disseminating information on human rights violations, supporting victims, contributing to the implementation of human rights treaties, and supporting better governance and accountability" (paragraph 12). These actions include: "engaging in children's Parliaments and youth clubs, undertaking campaigns such as collecting signatures of the public *on the streets*, holding consultations with politicians, *exercising their rights to peaceful assembly*, or taking action for human rights through the means of information and communication technology" (paragraph 15, italics added). "Children human rights defenders do not defend human rights *solely by reacting to violations of human rights* but also by proactively promoting human rights, by raising awareness and knowledge of the CRC for example" (paragraph 13, italics added).

Recognising children's need for special protection, the reality of children's lived experience, and their defence of human rights through challenging "mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources" there is a strong argument for widening the definitional focus. The Concept Note's definition of child human rights defenders is most likely to be realised in societies where there is a relative amount of order, with formal mechanisms for all citizens, children included, to engage in democratic action and debate. Unfortunately, this is a luxury denied to many children throughout the world. Where the "rights to peaceful assembly" are in effect non-existent, where being "on the streets" can lead to arrest or death (as in South Africa

during apartheid or currently in Palestine), the ability for children to be human rights defenders, as defined, and consequently to enjoy international protections as is envisaged in the Objectives of the 2018 DGD, is severely restricted.

It is however worth noting that the Concept Note paragraph 12 does not exclude "reacting to violations of human rights" from the definition. In situations such as those in the Declaration's Acknowledgement, re-actions may, given the particular vulnerabilities of children, be the only actions available to children. Along with their wider communities they may involve themselves in challenging mass and systemic human rights violations such as genocide, mass arrest, repression, house raids, summary executions, occupation, etc. Definitional space has to be expanded to allow that much of what children do as agents in such communities of resistance has, at its core, the realisation and defence of human rights. Standing up to genocide, murder and occupation are as the Declaration acknowledges upholding the ideals of human rights. Moreover, they have proven to be effective measures leading to the eventual establishment of societies built on human rights rather than on human rights violations. For example, without the human rights activism of schoolchildren in South Africa the struggle to end the systemic human rights violations of apartheid may well have reached a different conclusion. As it was, their defence of human rights, along with those of others, led to the establishment of a free South Africa whose Constitution is among the most progressive in the world in terms of protecting human rights.

It might be argued that it is out with the Declaration to define children as human rights defenders if they have been involved in what the State which is denying them their human rights defines as illegality and even violence. Prior to excluding such children from the definition consideration must be given to the particular vulnerability of the child and the child's need for additional protection. While some might reject the labelling of actions of such child human rights defenders as constituting criminal activity, others might argue that the UNCRC's guidance re the minimum age of criminal responsibility is engaged and should also be a factor in determining the definition of the child as a human rights defender vis-a-vis non-peaceful actions.

The nature of the state itself is central to the definition of a child as a human rights defender. Where the law is the embodiment of human rights abuse, where defence against annihilation cannot always be clothed in the ideal of nonviolence, then self- and communal-defence of human rights by the child cannot summarily be excluded from the definition. Defence of

human rights in such circumstances is a sign of agency and resilience; where children do not set out to break the law by throwing stones at occupying troops or building barricades in defence of attacks on their community, but engage in these actions as integral and active members of communities seeking to vindicate their rights, they should command the protections envisaged in the Objectives of the 2018 DGD. Where the defence of human rights is engaged in by the child in pursuit of equality, socio-economic rights, civil and political rights, self-determination, freedom of assembly, freedom of expression, etc. such actions can contribute to bringing about a society founded on human rights ideals. In this scenario, it is plausible to see children in such situations playing the role of human rights defenders even if formal and peaceful means are unavailable to them.

Expanding the definition in this way enables the agency and rights of children as human rights defenders to be considered more fully than it frequently is in conflict situations. Such a definition should require the state and the international community to recognise, protect and defend these children as human rights defenders. It also opens up the possibility of seeing how this agency can be recognised and encouraged in the post-conflict situation, including in the building of human rights compliant societies.

Globally, the aftermath of conflict has produced a range of mechanisms to deal with the human rights abuses of the past and the legacies of conflict-- from prosecutions through truth commissions and security sector reform and including policies of reparation. In most cases, such mechanisms have not specifically targeted the experiences, needs and rights of children and young people as either victims or human rights defenders. Prosecutions for recruitment of child soldiers have been few and far between. Truth commissions may document the experience of human rights abuses but have rarely sought to hear the direct voice of young people, nor produced specific recommendations in relation to young people. Security sector reform post-conflict has paid little attention to the specificity of human rights abuses experienced by children. Children may benefit from reparations directed at families or communities, but have rarely been the direct object of such policies. There are exceptions to this trend. In Sierra Leone the Truth and Reconciliation Commission documented the experience of children and young people. Through focus groups and the gathering of statements, information was compiled which was fed into the Commission. As a result, an official record of human rights abuses experienced by children was produced. In addition, the Commission made recommendations regarding policies for the reintegration of children

through the work of child protection agencies and traditional structures and leaders.¹ However, a shortcoming of the endeavour was that the direct voice of children was not heard; rather the findings were presented by organisations on behalf of children.

South Africa went further than Sierra Leone. Specific hearings of the Truth Commission were set aside to examine the experience of children and young people. However, they tended to be less successful than expected because of their concentration on the suffering of young people during apartheid. "Many saw themselves not as victims, but as soldiers or freedom fighters, and, for this reason, chose not to appear before the Commission at all."² To circumvent this, some more creative techniques were employed, such as having children spend the day before the hearings began, telling stories and drawing pictures of their experiences which were then shared at the hearings the next day.³

Such attempts point the way to the major steps which must be made to ensure the incorporation of children, including those who were human rights defenders during the conflict, in debates and policies of post-conflict transformation. The International Center for Transitional Justice spells out what this means:⁴

- Truth-seeking mechanisms need to assess children's specific needs.
- More needs to be done to ensure prosecutions of those guilty of crimes against children.
- Specific reparation programmes should be geared towards children to give them the tools to progress in society.
- Security sector reforms have to focus on the concerns of children, especially girls.
- Education should be viewed as a mechanism of transitional justice, building a culture of rights and non-discrimination.

The overall effect of such serious endeavours would be not simply the protection of children but the empowerment of children to contribute constructively to post-conflict human rights frameworks and to continue to be, or to become future human rights defenders. Just as one of the goals of transitional justice and much conflict transformation work is that never again will

¹ Natalie Mann and Bert Theuermann, *Children and the Truth and Reconciliation Commission for Sierra Leone*. UNICEF, National Forum for Human Rights and UNAMSIL/Human Rights 2001; <https://www.unicef.org/emerg/files/SierraLeone-TRCReport.pdf>

² *Report of the South African Truth and Reconciliation Commission*, volume 4, chapter 9, page 251.

³ *Ibid*, page 252.

⁴ Cécile Aptel and Virginie Ladisch, *Through a New Lens: a Child-Sensitive Approach to Transitional Justice*, New York, ICTJ 2011: 3-4

the human rights abuses of the past be repeated, the empowerment of children can ensure their buy-in to and involvement in that project. Coming out of conflict, many of them know well what abuse is and will have their own reading of and commitment to this ideal. They can be enabled to be their own human rights defenders.

In relation to transitional justice, recognising child human rights defenders in conflict situations will involve four major and interrelated swathes of activity which we would welcome the Committee reflecting in their guidance:

1. Recognising that there are many actions which children do in conflict which may not initially appear to involve human rights defence but in fact do.
2. Carefully gathering narratives of the conflict experiences of children in their own words in the post-conflict situation.
3. Building the involvement of children directly into the mechanisms of transitional justice in the post-conflict stage.
4. Creating specific ways in which children coming out of conflict, who may have a profound understanding of justice and injustice as a result of their personal experiences, can formalise this knowledge by engagement as human rights defenders, employing the formal mechanisms which exist but which were not available to them during conflict.

In addition we would welcome the Committee's guidance post the 2018 DGD having a particular focus on and making specific recommendations in relation to child human rights defenders in conflict situations to include:

1. A recognition that additional consideration needs to be given to balancing the child's emerging capacity vis-a-vis the child's best interest when children act as child human rights defenders in conflict situations
2. The issue of emerging capacity and/or MACR vis-a-vis the issue of "non-peaceful" or "criminal" defence of human rights in conflict
3. A recognition of the lived reality of child human rights defenders in situations of conflict, including the particular challenges they face in accessing "peaceful" ways to defend human rights especially in the face of state oppression and mass and systemic breaches of human rights
4. A strong statement re State's heightened duty of care to child human rights defenders in situations of conflict

5. The State's, the International Communities' and the UN's obligations to provide additional empowerment and protection to child human rights defenders in conflict situations
6. A recommendation that in situations of conflict, even when a child human rights defender's action may not appear to be "peaceful", the presumption should be that they fall within the definition of a human rights defender unless and until they are proved otherwise.