

An appraisal of the legal regime governing the protection of women and children in the context of armed conflicts

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In history, war was interpreted as a military combat between two or more opposing parties. Therefore, without any distinction, all the people relating to the opposition group were treated as enemies. As a result, women and children relating to both counterparts became more and more vulnerable in the event of warfare. However, because of continuous development of the concept of humanity and unique jurisprudence relating to norms and customs of warfare, currently there is a specific conventional and customary safeguard to protect unarmed and unarmamented women and children during the waging of armed conflict. However, because of the lack of agreement and the debates among states and non-state parties on the current interpretation of the terms “civilians” and “direct participation in hostilities” there are considerable gaps in protection. This apparent contradiction is at the core of the debate on the protection of civilians and direct participation as well as the nature of hostilities, and raises a number of questions about the protection of the rights of women and children during the armed conflict. The main research problem of this paper is to identify the relevant legal regime that governs the protection of people who do not or no longer participating the hostilities and whether the legal provisions and definitions of terms “civilians” and “direct participation in hostilities” as interpreted under the said legal regime are adequate enough to safeguard the rights of women and children in modern armed conflicts situations. This research will examine whether there should be more broad and specific interpretations, for aforementioned terms in order to effectively protect the rights of women and children those who need additional protection in the event of warfare. The researcher aims to present a suitable platform to provide appropriate recommendations to enhance the protection of these vulnerable groups of people caught up in armed conflicts with no direct participation in the said warfare. For this purpose the interpretive guidelines prepared by the International Committee of the Red Cross on the direct participation in hostilities and the relevant principles of international humanitarian law will be critically examined. The research methodology of this work will be mainly a qualitative one and a number of books, journal articles and internet articles were used to gather secondary data on this area. The relevant authorities at Governmental and non-governmental organizations will be interviewed with a view to get their view points in order to see a possible expansion of the definitions and the interpretations of the terminology involved in this research. Few focused group discussions with women and children affected by warfare during the Sri Lankan internal armed conflict will enhance the credibility of the research findings.

Key words

Rights of the women and children, direct participation in hostilities, concept of humanity, international and internal armed conflicts