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Protection of Children in Armed Conflict¹

Background

Children are increasingly victims of war and conflict around the world. As of recent, more and more girls are recruited as combatants, especially in areas such as Somalia and the Central African Republic. Due to cultural and religious circumstances, girls are deemed good candidates to carry explosive devices, and even suicide devices undetected. This practice merely illustrates a change in the environment in which contemporary conflicts take place. A contributing reality to this is that often being a child soldier is safer than trying to reach the refugee camps and stay in a refugee camp. However, the secondary effects of conflict, state fragility and underdevelopment are often more costly in terms of lives and suffering of vulnerable groups, with approximately 250 million children living in countries affected by war and conflict.

International Standard

To address the widespread violations against children in armed conflicts and beyond, the United Nations (UN) established the office of the UN Special Representative of the Secretary-General (UNSRSG) for [Children and Armed Conflict](#) in 1996. This has resulted in several action plans being agreed on and implemented in typically conflict-ridden countries. The said initiatives include the criminalisation of the recruitment of child soldiers and the investigation and prosecution of groups and individuals involved in crimes against children. In addition, action plans and demobilisation of child soldiers have been agreed on with both government forces and armed groups. In the Democratic Republic of Congo (DRC), the UN Mission, [MONUSCO](#), has been successful in demobilising child soldiers in a number of the armed groups and the national army, (FARDC).

¹ A word of appreciation to Dr Sonja Els, Faculty of Military Science, for her assistance in compiling this SIGLA Brief.

Individual warlords have also been prosecuted at the [International Criminal Court \(ICC\)](#) in The Hague for war crimes and the recruitment of children.

According to the [UNSC's first resolution](#) on children and armed conflict, the grave violations against children's rights are divided into six categories.

- a. Killing and maiming of children.
- b. Forced recruitment and use of children as soldiers.
- c. Sexual violence against children.
- d. Abduction of children.
- e. Attack against schools and hospitals.
- f. Denial of humanitarian access for children.

Geneva Convention IV as well as the Additional Protocols furthermore stipulated that

- a. children should not be the target of attacks;
- b. children are entitled to special protection, care and aid; and
- c. children must be evacuated from besieged or encircled areas.

In practice, there exists a conundrum between adhering to the rules of the Law of Armed Conflict (LOAC) (the legal side) and then the situation on the ground where children are often actively involved in armed conflicts. Children are also used as child soldiers or human shields; the question being, how do we deal with this dilemma? It is estimated that 250 000–300 000 children around the globe are in some form actively involved in conflicts. This has a severe impact on the life and well-being of the individual child. However, it also has long-term negative implications on society, where a generation of children has lost their childhood, and where conflict served as their primary social context throughout adolescence. Vulnerable groups in society, typically woman and children, are the primary victims in contemporary conflicts. When conflict and instability plague countries and communities, women and children tend to suffer disproportionately from attacks and the side effects from violent conflict, e.g. arbitrary killings, sexual exploitation and abuse, as well as forced recruitment. The work undertaken by organisations like [Save the Children](#) to reorient those children to be children again is a long and challenging task. Although some children are damaged for life, success has been registered by using a broad spectrum of tools and positive interventions such as cultural mediation; improved quality of care and more centres of protection; psychosocial service; capacity-building of professionals; and community migration dialogues. However, this requires a concerted and coordinated effort, including the availability of the resources needed.

One problem concerning children in armed conflict is the lack of a universal definition on who is considered to be a child. Conflicting principles exist between states and regions, but also in the international legal framework. In Human Rights Law (HRL) the [Convention on the Rights of the Child](#) defines a child as being under the age of 18 years, while the International Humanitarian Law (IHL), through the Additional Protocols to the Four Geneva Conventions, defines a child as being 15 and below. For military forces in operations, this discrepancy presents soldiers with several dilemmas on what their legal obligations are in the conduct of hostilities in relation to the targeting of children.

The actual problems of children in armed conflict

Internationally it is estimated that 46 state militaries and 56 armed non-state actors (ANSA) recruit children and the numbers are increasing. One major void is inappropriate national tools and legislation to manage children coming from armed conflict effectively. In, for instance the DRC, national legislation is in place, but little will and capacity to effectively implement and handle the challenge posed by the use and recruitment of children as armed combatants. The reason why children are being targeted and recruited as combatants has multiple drivers. From an instrumental point of view, children have a relatively high level of usefulness during armed conflict, since they are relatively easy to recruit, which points to convenience for the recruiter. Children are often relatively fearless since from a cognitive and behavioural point of view they are not fully developed. Finally, children are relatively easy to brainwash and indoctrinate to serve the purpose of the recruiter. An oft-cited example was the attitude put forward by the leader of Lord's Resistance Army, Joseph Kony, who argued that he preferred to recruit children since they were easy to indoctrinate being not yet "polluted" by the ideas, as was the case with grown-ups.

A relevant question at this stage is why the problem of recruitment of children in armed conflict is on the rise. Apart from the legal challenges mentioned above, one explanation is the relative voicelessness of children in a male and adult dominated world. Apart from a few cases, children recruited and impacted by conflict are not visible on the international scene and have little voice. They can subsequently not present the urgency of their experience as victims of the actions of the adult world and its widespread conflict. A related issue is the current inability of the UNSC to function effectively as the world's centre of conflict management. In the UNSC, due to the breakdown of relations between the permanent members in the council, even issues such as the protection of children in armed conflict have been strongly politicised and became part of the political theatre taking place in UNSC and internationally. The results are political dinner-speeches and political inaction, leaving the affected children without much hope and assistance. As in the matter of Climate Change, a voice similar to that of Greta Thunberg seems necessary to provide child soldiers with some priority and political traction.

One of the ways to approach the challenges posed by children involved and impacted by armed conflict has been to focus on three different approaches focusing on prevention, the conflict situation, and post-conflict matters. Each phase requires a different approach and tools to deal with the challenge in a skilful manner. However, the guiding principles and approach should be based on values of their best interest; right of life and non-discrimination. When working on the ground in a hostile conflict environment, it is often difficult to implement the guiding principles, facing the discrepancy that often exists between the legal principles and the realities on the ground. An often-occurring example is the situation in which multinational peace missions need to cooperate with local forces that do not honour agreed-upon principles and continue to have child soldiers within their ranks, fail to offer special protection to children during operations or undertake operations against targets that include children.

At the UNSC level, the protection of children has been an area that has received some attention over the years. The 1996 groundbreaking report compiled by Graça Machel on the “[Impact of Armed Conflict on Children](#)” gave rise to various resolutions and the establishment of a Working Group on children in armed conflict. However, to get increased focus and active political support for actual political implementation, changes are needed. One way could be to move this issue out of the domain of politicised UNSC and into the workgroup, which seems to be less affected by the constant deadlock in the UNSC. This outcome would require the UN member states and especially the P5 states to accept that the protection of children is and should be a depoliticised issue because the focus should only be on the rights of the children.

Another urgent issue is the reporting of the challenges related to the protection of children in armed conflict, which also requires increased cooperation between the UN and regional agencies. The international list that name and shame armed actors, both state and non-state, that violate the rights of children, has turned to be a useful tool creating awareness on the issue. The challenge is to make transgressors aware that they are on the list, highlight the consequences of violating the rights of children and persuade them to accept that children have special protected rights. Examples from the DRC show that with a concerted effort it is possible to change some behaviour and norms. The national army used to have child soldiers, which after a long engagement by the UN is no longer the case. The [2009 Children’s Act](#) that criminalises the recruitment of children has been a useful tool in dealing with some of the armed groups and has led to a definite downward trend in the recruitment of children into armed conflict in the DRC.

In Africa, the two countries with the highest number of violations against children are Somalia and Nigeria. The African Union (AU) is actively engaged with this issue through instruments such as the AU Charter, conventions and policies. However, the AU and its member states are challenged by the [growing number of violations against children](#), and the fact that these violations are often committed

by state actors. This is visible in the slow rate of adoption and ratification of the related AU treaties by the member states and the lack of reporting violations. The root problem stems from insufficient domestic instruments in state law, or, as in the case of the DRC, weak implementation of existing laws. For effective cooperation between the UN and regional entities, there is a need for commitment from both sides. On paper at least, the [AU is fully committed](#) to addressing the problem, but the different African regions have diverse political objectives and limited political will, and therefore the AU commitment is often not shared by its regional entities. Hence, some African states are trying to implement effective national tools to increase the protection of children in armed conflict. South Africa has, for instance, enhanced force preparation in a way that allows for the monitoring of the theatre of conflict, and thereby an awareness of the potential presence of children in the operational area.

Concluding remarks

Internationally, an increase in the violations of children's rights in conflict zones remains high. Despite the clarity of law in some states, there often exists a discrepancy between HRL, IHL and LOAC, and domestic law. In the case of the DRC, a contradiction exists between the Constitution and the Children's Act, including the contradiction between the definitions of "children" and "youth" in the domestic legislation. Another example is the [Convention on Child Labour](#), which is ratified by the DRC, but not implemented in practice. This flags a central problem of a lack of implementation and political will when it comes to the rights and protection of children in armed conflict. In the case of the DRC, some progress is visible to get some armed actors to respect the rights of children, both in terms of not recruiting children as armed combatants, and of LOAC principles stating that children are entitled to special protection. The DRC case illustrates that a concerted effort, alongside the right human and legal instruments, can actually lead to an increased awareness and a reduction in the violation of the rights of children. However, this requires alignment of the research and practical experiences on these issues. Unfortunately, practical issues are often overlooked during legal considerations, emphasising the necessity to persistently advocate change and pursue solutions to protect the many children whose lives are intertwined with armed conflict.

Recommended Reading

PhD Thesis by Vibeke Høge Rehfeld, *"Children in war. Protection of children in armed conflicts: an extended obligation?"* University of Copenhagen (2017).

Recognition: This SIGLA Brief (No 19/2019) reflects a compilation of inputs from participants in a seminar on the Protection of Children in Armed Conflict. The workshop took place in Pretoria under Chatham House Rules. Prof Mandrup can be contacted on thomasm@sun.ac.za .