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## PROTECTING CHILDHOOD: LEGAL RIGHTS OF CHILDREN IN ARMED CONFLICT

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### ABSTRACT

Armed conflict negatively impacts children, it violates their basic human rights. The children are forced to enlist as child soldiers. They are exposed to multiples forms of violence and abuse. They are subjected to conditions no child deserves to endure. The international legal framework, which includes the Geneva Conventions, the Convention on the Rights of the Child (CRC), Optional Protocol, and the International Labour Organisation Convention, establishes significant provisions prohibiting child recruitment and emphasising state responsibilities. However, the gap between legal provisions and their enforcement remains significant due to ongoing conflicts, weak governance, and socio-economic challenges. The landmark judgements have focused on States' and leaders' accountability. There is a need for better redressal and rehabilitation mechanism for reintegration of child survivors. This research paper provides a multidimensional perspective on the existing legal frameworks, challenges in its implementation and effective enforcement mechanism to protect and safeguard legal rights of children in armed conflict.

**Keywords:** Child Soldiers, armed conflict. Convention on Rights of Child, sexual exploitation, basic human rights

## **INTRODUCTION**

The protection of childhood in armed conflict poses a significant challenge in international humanitarian law and human rights discourse. Children, are the most vulnerable group in societies torn by war, face grave threats including recruitment as combatants, displacement, exploitation, and loss of access to education and healthcare. International legal frameworks such as the Geneva Convention, Additional Protocol, United Nations Security Council Resolution, United Nations Convention on the Rights of the Child (CRC) and its Optional Protocols, alongside international humanitarian law, seek to safeguard their right to life and dignity. This research aims to examine the effectiveness of these legal instruments and mechanisms in ensuring meaningful protection for children amidst armed conflict and ways in which better protection can be ensured.

## **STATEMENT OF PROBLEM**

Armed conflict continues to gravely compromise the rights and welfare of children; these children find themselves at the center of violence they neither instigated nor understand. Despite ratification of conventions and treaties prohibiting the involvement of children in hostilities. Children are forced to enlist as child soldiers due to multiple reasons. It can be due to poverty, coercion, lack of safety and security. The children are subjected to not only physical violence but their very core is affected. They are sexually exploited, traumatized, denied their liberty, education, become malnourished.

The theoretical dimension of the problem lies in the paradox of strong international legal frameworks existing alongside widespread impunity. International law, particularly International Humanitarian Law (IHL) and the United Nation Convention on Rights of Child, clearly prohibits the recruitment and exploitation of children in hostilities. Yet gaps in enforcement, competing state interests, and the growing role of non-state armed groups weaken their practical applicability. On the applied side, humanitarian interventions often concentrate on immediate relief but fail to address structural vulnerabilities such as economic instability, gender-based disparities, or lack of educational opportunities. that perpetuate children's vulnerability to conflict recruitment.

## **SIGNIFICANCE OF RESEARCH**

This research paper helps analyse the issues children face due to armed conflict. It further

focuses on ways in which they can be protection. The main aspect is to protect their basic human rights. Every child deserves a decent and happy childhood and a hope for a better future. They cannot and should not be denied these rights. The research will also help provide reasons for the lack of proper protection of children in armed conflict and ways in which it can be ensured.

## **SCOPE AND LIMITATION OF RESEARCH**

This research paper examines the challenges children encounter as a result of armed conflict. It also emphasizes methods for ensuring their protection. The primary focus is on safeguarding their fundamental human rights. Every child is entitled to a joyful and fulfilling childhood, along with the hope for a brighter future. These rights must not be withheld from them. The research will additionally highlight the reasons behind the inadequate protection of children in conflict situations and explore effective measures to guarantee their safety.

The major limitation is the lack of proper documentation of children in armed conflict. Although there is data and empirical research on the same, the data is wavering and a lot of factors remain hidden due to cultural taboos. This acts as a hindrance towards effective research.

## **RESEARCH QUESTIONS**

1. What are the international legal frameworks that establish and safeguard children's rights during armed conflict, and how do these provisions address vulnerabilities such as recruitment, exploitation, and violence?
2. What are the obstacles that causes delays and failures in the enforcement and implementation of international child protection norms in conflict settings?
3. Which legal mechanism has made the biggest difference in protecting children in armed conflict, and what newer and more effective legal mechanisms and policies can bring redressal to these children to prevent future suffering?

## **RESEARCH OBJECTIVES**

1. To analyze legal provisions that define as well as protect children's rights during armed

conflict.

2. To investigate challenges and understand why there is delays in enforcement and implementation of international legal norms to protect children in armed conflict.
3. To analyze ethical and legal aspects involved.
4. To evaluate legal mechanisms available while suggesting better solutions as policy recommendations.

## **RESEARCH METHODOLOGY**

This research adopts a analytical and qualitative research methodology. Through analytical research, existing facts and information regarding legal rights of children in armed conflict is analysed and a critical evaluation is made on the same.

The qualitative research helps to provide an understanding on the opinions, experiences, and the social context regarding multiple aspects of children in armed conflict, including the recruitment of children in the army, displacement from their families, the lack of enforcement of their legal rights and so on. This research does not rely on numerical data but on understanding the lived realities of children impacted by wars, as reflected in reports, testimonies, and case studies. Through this method, the research explores the human, emotional, and social dimensions of armed conflicts.

## **LITERATURE REVIEW**

International humanitarian law provides robust protections for children amid armed conflicts. The 1949 Geneva Conventions (GC IV Arts. 24, 25, 50, 51, 68, 385) and Additional Protocols (AP I/II Art. 77) mandate special respect, priority aid (food/medical care), education/cultural safeguards, bans on forced labor under 18, indecent assault, and death penalty prohibitions for those under 18. UNCRC Art. 38 incorporates IHL duties, while the Optional Protocol sets 18 as the minimum recruitment age with rehabilitation mandates; UNSC Resolutions 1261 (1999) and 1612 (2005) establish monitoring for child soldiers and grave violations; ILO Conv. 182 deems recruitment a worst child labor form.

Landmark cases reinforce accountability: Inter-American rulings in *Vargas Areco v.*

*Paraguay* (2006) and *Gómez Paquiyauri Bros. v. Peru* (2004) condemned state torture/killings of minors, violating rights to life and humane treatment. SCSL judgments (*Prosecutor v. Brima et al.*, 2008; *Prosecutor v. Taylor*, 2012) convicted leaders for child recruitment and sexual violence, advancing IHL precedents.

Scholarly works critique gaps: Nilsson (2013) addresses trauma/rights; Ruiz-Casares et al. urge child participation; Pedersen & Sommerfelt note data challenges; Van Bueren examines enforcement barriers; Machel Report (1996) highlights vulnerabilities from poverty/displacement. Glossaries (ICRC/UNHCR/MPEPIL) clarify terms like "best interests." Despite frameworks, implementation fails due to impunity, weak governance, and socio-economic drivers, perpetuating abuse.

## EXISTING INTERNATIONAL LEGAL FRAMEWORKS AND ITS IMPLICATIONS

In 1996, a United Nations report<sup>1</sup> raised international awareness of the scale and scope of how children's rights are violated in situations of armed conflict<sup>2</sup>. Graça Machel of Mozambique in 1996 had submitted a report "Impact of Armed Conflict on Children", also known as the Machel Report<sup>3</sup>. This report brought to light the dangerous impact of armed conflict on children. There is immense social constructivist influence.

Following the recommendations of the Machel Report, the UN system saw the establishment of the Office of the Special Representative on Children and Armed Conflict. The Machel Report characterizes child soldiers not only as victims and targets but also, "even" as perpetrators<sup>4</sup>. However, it educationally frames the heinous acts committed by child soldiers as influenced by coercive tactics or manipulation by adults. The Machel Report recognizes the complexities of "balancing culpability, a community's sense of justice and the 'best interests of the child.'"<sup>5</sup>

Children were considered for special protection in the Geneva Convention of 1949, however child soldiers as child labour were not included, leaving a legal void in the protection of

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<sup>1</sup> Report presented by the expert appointed by the UN Secretary-General, Graça Machel, Impact of armed conflict on children, 1996 (1/51/306).

<sup>2</sup> UNICEF, *25 Years of Children and Armed Conflict: Taking Action to Protect Children in War*, June 2022.

<sup>3</sup> Report of the Expert of the Secretary-General, "Impact of Armed Conflict on Children," UN Doc. A/51/306 (Aug. 26, 1996), [http://www.unicef.org/graca/a51-306\\_en.pdf](http://www.unicef.org/graca/a51-306_en.pdf).

<sup>4</sup> Id.

<sup>5</sup> Id

children. For the International Labour Conference to be held in 1999, the International Labour Office called for statements and opinions on whether the recruitment of children in armed conflict should be addressed as a worst form of child labour<sup>6</sup>. However, International Labour Organization was the first organization to define the recruitment of children in armed conflict as one of the worst forms of labour in their treaty on child labour, Convention 182 on the Worst forms of Child Labour<sup>7</sup>.

The Security Council of the United Nations adopted two significant the United Nations security council Resolution 1261 and the United Nations Security Resolution 1612. The former addresses the issue of children and armed conflict, including the harmful impact of harmed conflict on children. The latter is involved in monitoring and reporting mechanism on the recruitment and use of child soldiers and other grave violations.

In *Vargas Areco v. Paraguay*<sup>8</sup>, on January 26, 1989, Gerado Vargas Areco, a 15 year old minor was recruited into military service in the Paraguayan Armed Forces. Later, on December 30, 1989, Areco was arrested for failing to voluntary and timely return to his military post. He was shot to death by a non-commissioned officer.

The court held that the state violated American Convention on human Rights and the Inter American Convention to prevent and punish torture to the detriment of the victim. This case highlighted the inhumane treatment children endure in times of conflict with no proper protection or safety mechanism.

In *Gomez Paquiyaury Brothers v. Peru*<sup>9</sup>, on June 21 1991, brothers Emilio Moises and Rafael Samuel Gomez Paquiyaury, 14 and 17 years old respectively were tortured and executed by agents of the national police, Peru. This case was decided by the Inter-American court of Human Rights and was the first international case concerning children in armed conflict. The court found that Peru had violated the brother's rights to life, humane treatment, personal liberty, a fair trial and judicial protection under the American Convention on Human Rights Court found Peru's tolerance of impunity unacceptable, the court awarded reparations to the family. The fact that Emilio was only 14 is in clear violation of the Convention on Child Rights

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<sup>6</sup> ILO, International Labour Conference, 87th Session, 1999, Report IV(1), Child Labour.

<sup>7</sup> Convention (No. 182) Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour. 17 June 1999. 2133 UNTS 161.

<sup>8</sup> Vargas Areco v. Paraguay, IHRIL 1539 (IACHR 2006).

<sup>9</sup> Gomz Paquiyaury Brothers v. Peru, IHRIL 1493 (IACHR 2004).

which states, “shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.”<sup>10</sup>

On the other hand, Optional Protocol to Rights of Child convention on involvement of Children in armed conflict requires minimum age for recruitment to 18 years. This further reminds us that children have not attained a mental or physical maturity to grasp the consequences and impact of joining armed forces. Taking this into, Gerado Vargas, Emilio and Rafeal, none of them were age appropriate to be recruited or even considered in the army. None of them deserved their untimely death, there were children with hopes for a better future with families or at least they could build their own family. They were denied their basic right to life and personal liberty, right to education and a better life, even in death they were not given basic dignity by their perpetrators. The judgement by the Court is significant in highlighting the inhumane torture the children had to undergo and holding the State accountable is a major step forward.

Article 68 of the Geneva convention IV<sup>11</sup> and Article 77 of the Additional Protocol II<sup>12</sup> prohibits death penalty for those under 18 years of age. This means that a Court of law cannot lawfully convict a child below the age of 18 years with death penalty. However, in the above two cases and many such situations, members of the armed forces themselves murder children, this is an arbitrary and violative of not only of these articles but also of the basic principles of international humanitarian law. These landmark judgements also prove that despite laws being implemented, recruitment and brutality towards children in armed conflict continues to take place.

Furthermore, the Rome Statute along with the International Criminal Court emphasize the wider implications of child soldiers and sexual violence with regards to human rights. In a landmark *Prosecutor v. Taylor (Charles Ghankay)*<sup>13</sup> case, the Special Court for Sierra Leone found Charles Taylor guilty of supporting and enabling war crimes and crimes against humanity which included recruitment of child soldiers. The Appeals Chamber for Sierra Leone sent a clear message that those who recruit and use children in hostilities will be held liable for their war crimes, affirming the fact that no one is above the law. This case set a precedent

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<sup>10</sup> UN Convention on the Rights of the Child (CRC), G.A. Res. 44/25, Annex, UN Doc. A/ RES/44/25 (1989), art. 38(2).

<sup>11</sup> Geneva convention IV, Art. 68.

<sup>12</sup> Additional Protocol II, Art. 77.

<sup>13</sup> *Prosecutor v. Taylor*, ICL 936 (SCSL 2012).

and helps promote accountability for those who violate children's right.

In *Prosecutor v. Alex Tamba Brima , Brima Kamara Brizzy and Santigie Borbos Kanu*<sup>14</sup>, also called the AFRC case on February 2008, the Appeals Chamber of the Special Court for Sierra Leone (SCSL) issued its final judgement. The three former leaders of the Armed Forces Revolutionary Council (AFRC) was convicted for their crimes against humanity, war crimes and, other serious violations of international humanitarian law.

This judgement is an important addition to international criminal jurisprudence with light being thrown on the unfortunate circumstance of children stuck in conflict, where through a combination of drugs and duress they become not only victims but also perpetrators of the atrocities. Children are exposed to drugs and are forced into illegal activities. Not only are the children too innocent to comprehend what is happening but they are also under the influence. This destroys their health and cognitive capacity. Most of these children become victims to liver and brain damage at a very young age with hardly any possibility of recovery from the permanent damages.

Children stuck in the midst of an armed conflict are unable to access basic services, this violates their right to life, health, food, water, education as well as their cultural rights. These child soldiers can also be domestic labourers, sexual slaves, mine worker, cook and so on. Although they are illegally recruited as child soldiers, they are forced to engage in multiple other activities. The leaders of these armed forces taking advantage of the vulnerability of children torture and abuse them.

International Federation Terre des Hommes, a non-governmental organization put forth a report based on twelve State case studies, and they found that the main perpetrators of sexual violence and abuse were the military, and further six out of the twelve case studies claim that the presence of peacekeeping force has acted in favour of development of child prostitution<sup>15</sup>. Girls seem to be at greater risk of sexual abuse while boys seem to be at a greater risk of being recruited into the army as combatants. The boys are also subjected to sexual violence but lack proper documentation. This might be because of homosexuality being a taboo topic and be

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<sup>14</sup> Prosecutor v. Alex Tamba Brima , Brima Kamara Brizzy and Santigie Borbos Kanu ICL 100 (SCSL 2007).

<sup>15</sup> Eylah Kadjjar-Hamouda, *An End to Silence: A Preliminary Study on Sexual Violence, Abuse and Exploitation of Children Affected by Armed Conflict* (U.N. Study on the Impact of Armed Conflict on Children, International Federation Terre Des Hommes, 1996).

considering against their traditional cultural belief.

The troops of the government assume that the boy child soldiers support these rebel groups and subject them to torture<sup>16</sup>. These boys being in an extremely vulnerable situation and having nowhere to go, join the opposition armed forces. This is not necessarily done out of revenge but a sense of familial vulnerability<sup>17</sup>. This mostly gives them some sort of temporary security.

A lot of children are also displaced and separated from their families. This displacement can be either internal, that is within their own country or across international borders. Based on reports, around fifty million refugees are displaced internally and worldwide, in this more than half are said to be children<sup>18</sup>. There are multiple mandates that child refugees must be given special protection. This is provided in the Convention on Rights of Children. Although a child is deemed a refugee, there is no specific right to receive asylum. However, there is customary international law rule based on the principle of non-refoulement that prevents a State from sending a refugee back “to the frontier of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>19</sup>

Children are always affected during times of conflict whether directly or indirectly. This is irrespective of whether the rules of armed conflict are followed and respected. A prime example for this would be the attack on Iraq’s electricity grid during the Gulf War. This was in accordance with international humanitarian law and completely lawful based on international standards however the impact on Iraqi children was horrific. The mortality rate of children below 5 years of age had increased drastically. This goes to show that war and armed conflict will always negatively impact everyone, especially children. Innocent children end up being the collateral damage in times of armed conflict, a fate no one deserves.

While many child deaths are directly attributable to hostilities, many more children are indirect victims falling prey to disease, malnutrition or starvation. The supply of food, absolutely essential for children, is nearly always disrupted by war. One 1980 study in a war zone in

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<sup>16</sup> Elizabeth Protacio-Marcelino It Al, *Torture Of Children In Situations Of Armed Conflict: The Philippine Experience* (1996).

<sup>17</sup> Rachel Brett Et Al, *Children: The Invisible Soldiers* (2nd ed. 1996).

<sup>18</sup> United Nations, High Commissioner For Refugees, *The Impact Of Armed Conflict On Children: The Refugee And Displaced Children Dimension* (U.N. Study On The Impact Of Armed Conflict On Children, Working Draft, July 22, 1996).

<sup>19</sup> Convention Relating to the Status of Refugees, July 28, 1951, art. 1A(2), 189 U.N.T.S. 150.

Uganda, attributed only 2% of deaths to violence whereas 20% were caused by disease and 78% by hunger<sup>20</sup>.

Children are unable to access basic services with famines ravaging regions involved in armed conflict. These children are unable to attend school as schools are shut down and usually used as shelter for displaced persons or even as military bases. The Global Coalition to Protect Education from Attack identified around 6,000 attacks on students, educators, schools and universities, and uses of education facilities for military purposes in 2022 and 2023, a sharp rise of nearly 20% compared to the previous two years<sup>21</sup>.

Article 24 and 25 of GC IV states that children have a right, overall, to the protection of their cultural environment, their education and the exercise of their religion.

### **STRATEGIES FOR ENSURING BETTER PROTECTION OF CHILDREN IN ARMED CONFLICT**

The best solution for protection of children in armed conflict would be to prevent armed conflict itself. Since this seems like an impossible solution, one is forced to look for alternatives. Peace education is considered the long-term solution to organized violence, however research suggests that the actual effectiveness of peace education is disputed.<sup>22</sup>

There must be stricter mandates to ensure that the States comply with the international laws. Firstly, there should be strict monitoring of any human rights violations and stringent punishments must be ensured. States must also be punished for any violation from their side. The concept of States being responsible for the acts of their armed forces, and that they should provide compensation was established in 1907 in the Fourth Hague Convention Respecting the Laws and Customs of War on Land<sup>23</sup>.

Weapons that are excessively harmful must not be allowed. Furthermore, weapons should not be made easily available to children. In countries like Mozambique and Angola, with less than \$15 an AK-47 can be bought, in some cases, it can also be traded for a bag of maize<sup>24</sup>. It is

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<sup>20</sup> UNICEF (1996).

<sup>21</sup> *Education Under Attack*, Global Coalition to Protect Education from Attack (GCPEA), (2024).

<sup>22</sup> Joboyden & Paul Ryder, *The Provision Of Education to Children Affected by Armed Conflict*, U.N. Study on the Impact of Armed Conflict on Children. (1996).

<sup>23</sup> Convention (No. IV) Respecting the Laws and Customs of War on Land, With Annex of Regulations, Oct. 18, 1907, art. 3, T.S. No. 539, 1 Bevans 631.

<sup>24</sup> Chris Smith & Dylan Hendrickson, *The Transformation of Warfare and Conflict in the Late-Twentieth*

truly tragic that at the time when children are supposed to study and build their futures, they are weighed down by the burdens of armed conflict. Reports have shown that in many regions, it is easier to buy a gun than a book<sup>25</sup>.

An essential aspect would be to give more importance must be given to education. Education is neglected for children in armed conflict. In areas affected with armed conflict, education is not provided or given much importance. This is because education is seen as a developmental measure rather than a relief measure, especially in developing countries<sup>26</sup>. Providing children with education can help keep them away from being recruited into armed forces. Preventive education must also be given importance with creating awareness on how to prevent contracting certain diseases including the HIV virus. In fact, providing education, which includes primary, secondary and tertiary education can also help compensate for the skills lost due to death or displacement of skilled persons.

Child survivors of armed conflicts and war must be actively involved in policy making forums with importance being given to their opinions along with experts in the field. Since these children have experienced violence, torture and abuse firsthand, taking into account their experience is a major step to making better laws at protecting children.

These children must also be provided with proper rehabilitation to able to recover physically and mentally. Children who are survivors of armed conflict suffer from Post Traumatic Stress Disorder (PTSD) and Complex Post Traumatic Stress Disorder (CPTSD), they must be provided with proper recovery mechanisms and necessary treatments. Although for most of these children, life may never come back to normalcy, they should still be provided with opportunities to recover. Despite the misfortune they had to undergo, they must be given opportunities to atleast hope for a better future.

## **FINDINGS**

As the most vulnerable group in armed conflicts, children are subjected to recruitment as soldiers, torture, abuse, sexual exploitation, displacement, and are denied their basic rights such as right to life, education, health, family life and so on. The existing frameworks including

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*Century*, (U.N. Study on the Impact of Armed Conflict on Children 42-44 (1996).

<sup>25</sup> Graga Machel, *Address to the Fifty-Second Session of the Commission on Human Rights* (Apr. 15, 1996).

<sup>26</sup> *Supra* at 22.

Geneva Convention, Additional Protocol, Convention on Rights of Child (CRC), United Nations Security Resolution, and International Labour Convention 182 recognize the need to protect children in armed conflict however there are enforcement challenges and multiple legal voids that need to be filled. The 1996 Machel Report brought to light with evidence the dangerous impact of armed conflict on children, including the existence of child soldiers and the need for more protective laws. Vargas Areco and the Gomez Brothers case highlighted the severe brutality child soldiers had to endure. Holding rebel groups as well as States is extremely essential to ensure accountability and prevent grave violations of human rights in the future. Unfortunately, despite their existing legal frameworks, basic human rights are constantly violated. The major reasons for this are lack of effective enforcement and associated cultural conflicts.

## **CONCLUSION**

Despite legal frameworks addressing the protection of children in armed conflict, the issue of child soldiers, sexual exploitation of children, and denial of basic rights continues to persist. This is a significant challenge that needs to be overcome. There is a significant gap between the idealistic legal provisions and the harsh realities of areas affected by war and armed conflict. The landmark judgements have affirmed the States's responsibility, strict punishments for those accused of war crimes ensuring accountability, and better enforceability of the basic human rights.

There is an urgent need for better rehabilitation mechanisms taking into account the brutality children witness and are forced to partake in. Not just their physical abilities but also their mental, cognitive and emotional abilities are affected. Factors such as poverty, coercion and displacement make children enlist as child soldiers.

Moreover, curbing the proliferation of illicit arms and enhancing state compliance through rigorous monitoring and punitive mechanisms are indispensable to operationalizing legal safeguards. Protecting children in warzones is an essential aspect of the international community's broader commitment to justice, humanity, and intergenerational equity which act as the foundations essential for lasting peace and socio-political reconstruction.

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