

Dual Victimization of Children Associated with Armed Groups: Rehabilitation, Reintegration and the Role of State and Non-State Actors

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Abstract

Armed conflicts pose a multitude of challenges for all stakeholders often leading to grave human rights violations in terms of loss of life, abuse, violence, displacement and everlasting trauma. Children riddled with intersectionality due to deeper economic or social disadvantages stand at a greater risk of being affected by the consequences of such conflicts. The physical and strategic advantages provided by children over adults in a war zone lead to the involvement of young children in the conflict by forced recruitment by armed groups. These children though they may not always partake directly in the hostilities, undergo extreme stress and trauma as they bear witness to brutally violent crimes leading to low self-esteem, shame, acute anxiety and guilt. The causation and factors leading to the recruitment of children and factors leading the children to join such groups are diverse, complex and multifaceted. The International Legal Framework on Human Rights and Humanitarian Law while seeking to protect the rights of 'children associated with an armed force or armed group' has attempted to prevent and criminalize such recruitment but has failed to concretize the measures needed to be taken for their rescue and rehabilitation into the mainstream society. This paper delves into the causation of such recruitment of children by armed groups and attempts to analyze the contextual and systematic victimization of these children. It also highlights the lack of or rather absence of legislative intent towards recognition, rehabilitation and reintegration of these young victims who often end up on the wrong side of the criminal justice system.

Key Words: armed conflict, abuse, victimization, legislative intent, rehabilitation, reintegration

1. Introduction

Children, who owing to their age and lower level of mental development are regarded as one of the most vulnerable sections of society when born or living in conflicted areas, are more at risk

than their counterparts in relatively peaceful areas. An armed conflict poses a range of challenges for families, communities, and humans in general in the form of acute physical, mental, and psychological stress caused by various forms of abuses including but not limited to loss of lives, destruction of property and forced displacement among others. However, the impact increases manifold for vulnerable groups such as women, children, and refugees.

Recruitment and use of young children by various armed groups as suicide bombers, combatants, cooks, servants, sex slaves, messengers, porters, or spies has been very rampant across the globe.

Chen Kai in his book *Comparative Study of Child Soldiering on Myanmar-China Border: Evolutions, Challenges and Countermeasures* identifies displacement due to armed conflict as one of the six major causes of child soldiering in Myanmar. Children who are already internally displaced due to an existing armed conflict or those from areas or communities with separatist or secessionist tendencies are often easy to manipulate and abuse owing to lack of economic security, educational facilities, communal support, the already existing anguish, and being subjected to neglect which places them at a much greater risk of being recruited by the armed forces, armed groups, terrorist organizations or other extremist groups.

A child associated with an armed force or armed group commonly known as a 'child soldier' has been defined as any person below eighteen years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.¹

The International Human Rights and Humanitarian Law discourse has made earnest academic attempts to protect children from being engaged in armed conflicts through various Covenants, Conventions and Declarations. However, the reality depicts a gloomy picture. As per the United Nations International Children's Emergency Fund (UNICEF), 105,000 children have been verified as recruited and used in armed conflicts by combating parties between 2005 and 2022.² According to the UN Press, the highest-ever number of violations against Children has been Verified in 2022.³ Virginia Gamba, the Special Representative of the Secretary-General for Children and Armed Conflict briefed the UN Security Council as to the grave violations of the protections afforded to children including mutilations, recruitment and abductions.⁴

A child's involvement in armed conflict in any manner whatsoever constitutes a grave human rights violation and has been described as one of the 'worst forms of child labour' by the International Labour Organization (ILO).⁵ The action plans by the United Nations Security Council (UNSC) under the campaign 'Children, Not Soldiers' essentially pertain to recruitment by the Security Forces of the state as they suggest criminalizing such recruitment by using military orders in ignorance of recruitments by non-state and anti-state combatants.⁶ However, the States including India for being signatories to various legally binding International Conventions, Covenants, and Treaties are under obligation to protect the rights of children who are coerced into joining armed groups leading to abuse. The Obligation goes beyond the prevention and criminalization of such recruitment. It extends to the protection of these children after their release or rescue for they are victims of gross abuse of their dignity, loss of their identity, and violation of their rights. To fulfill the aim of reintegration of this vital human resource into society, contextual analysis of causation is crucial.

2. Navigating the Causation and Methods

To study the causation of child soldiering, it is imperative to look at the advantages children provide over adult members in an armed group, the methods adopted by these groups to recruit children and the

factors leading the children to be associated with these armed groups. These imperatives are intertwined as they depict a vicious cycle and an unceasing abuse of child rights.

The dynamic and diversifying nature of conflict and wars, technologically driven weapons, and widespread spy networks have led to the mass exploitation of children who are recruited by armed groups and extremist militant organizations. The nature and extent of such exploitation and the impact thereof may vary in differing contexts according to varying conditions and the relationship between the child and the recruiter. The voluntariness of a child while joining or continuing to remain in such armed groups remains contentious and completely unrecognized under International Law. The entire international legal framework is premised upon the assumption that these children are being coerced into conflicts or wars.

The availability of small-size firearms has facilitated the use of children as combatants in active war zones of modern warfare. Armed groups use these children as a means to exert pressure, spread propaganda and depict the ruthlessness of the group or organization. Pictures and videos of children being engaged in violence or normalizing the engagement of children in violence are often used to pressure the state and increase their visibility. They further serve as human shields to protect adult combatants of the group. Furthermore, families are often compelled to give their child up in exchange for security that the armed groups promise to afford to the rest of their family members in communities where this practice of fulfilling such quotas becomes a norm.

Apart from combat, these children, especially girls, are used to extract information and act as messengers without raising suspicion. The experiences of children being weaponized by armed groups are gendered. One cannot turn a blind eye to the underlying sexist tones in the division of labour among children within these armed groups. Young girls being dragged into forced marriages for the sexual gratification of male members are usually left with lifelong mental trauma leading to severely low self-esteem and several mental illnesses such as PTSD, Suicidal thoughts, etc.

The ever-dynamic nature of conflict has also diversified the ways of forceful recruitment of children into these armed groups. The traditional form is the physical and mental abuse of children. Due to the significant strategic advantages of recruiting children over adults, the armed groups (groups other than the armed forces of the State) usually resort to abductions at relief camps, schools and other places. These children are usually manipulated, threatened or beaten into submission. Recruiters also resort to cyber mobilization through deceptive and enticing social media campaigns to lure children. Getting children addicted to substance abuse is often used by these recruiters to remain in a position of control over these children.

Another aspect of the causation of this horrendous crime and the 'worst form of child labour' are the factors that lead these little children to submit to the coercion of their recruiters from these armed groups. These factors critically depend on the relationship that the child shares with the armed group. The increase in secessionist, insurgent and separatist tendencies across the globe has significantly changed the dynamics of children's association with armed groups. In a study of child involvement in armed groups on the Myanmar-China border, Chen Kai identified three relationship levels between a child and a recruiter that facilitate child participation in armed forces: (a) a victim-coercer relationship,

(b) a patron-client relationship, and (c) comradeship.⁷ Children in conflicted areas affected by the struggle between the State and local armed groups are often ideologically motivated, fostered with extremism and sentiments of vengeance. They enter into active conflict with the perception that the concerned armed group aims to protect their community from external attack or even attack by the State. Association with armed groups also serves as a means to attain higher status and earn military prestige within the community for children already riddled with neglect, economic disadvantage, or stigma around abuse.

3. International Frameworks: Protections and the Interpretive Quandary

An assessment of the International Framework brings the interpretive quandary involved herein to the surface. Even when the protections granted seem comprehensive and all-encompassing, the sophistication and diversification of means and methods of warfare have made the applicability of the general and special provisions a tricky trail to tread. Furthermore, the growing unwillingness of states to let the International Humanitarian Law to truly operate in their territories accentuates the fallouts relating to the Responsibility to Protect or the R2P Principle.

The act of enlisting children under the age of 15 into armed forces and groups is in itself a war crime. Article 8(2)(b)(xxvi) of the Rome Statute declares the "conscripting and enlisting of children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities" to be a war crime. This provision is supplemented by Article 50 of the Fourth Geneva Convention of 1949 (hereinafter referred to as "GC IV") which prohibits an Occupying Power from enlisting children in formations and organizations subordinate to the said power. Furthermore, the provisions of the GC IV also stipulate that preferential treatment be granted to children by domestic legislations during an international armed conflict. The minors accused of offences under legislations in force before the occupation have also been afforded special treatment under the GC IV.⁸

The Additional Protocol I mandates the children arrested, detained or interned to be lodged in quarters separate from the quarters of adults except where the children are lodged with their families.⁹ In fact, the drafters of the GC IV and the Additional Protocols have also fixed the minimum age limit for the execution of the punishment of death penalty at 18 years.¹⁰ Even though the ideal categorical prevention of children from taking part in hostilities has not thus far seemed possible, plausible or realistic, the International Humanitarian Law framework forbids the recruitment or enlistment of children in armed forces or groups while also conferring the benefits including education, healthcare and spiritual well-being upon them as far as practicable.

4. Rehabilitation and Reintegration- Issues and Challenges

The nature of torture, violence, and abuse these recruited children undergo has been very well documented by various agencies and researchers. Corporal punishments, sexual abuse, sleep deprivation, unhygienic conditions, confinement, threats, and amputations are usually used by their commanders in armed groups either to punish deviant children or to immunize them towards the gravity and extent of violence they are expected to witness or commit themselves. Undergoing, committing, and witnessing such brutal violence causes trauma that trespasses into every aspect of their being and has far-reaching implications for the future quality of their lives. It makes attaining social reconstruction

and economic self-sufficiency extremely difficult for them.

While the international regimes arguably contemplate the prosecutions for violations of human rights, they also contemplate the protection of the best interests of children. The International framework laying down the modus operandi while dealing with children involved in conflicts lays down the obligation of States to prevent and criminalize such recruitment, though mostly in the State's armed forces. However, it overlooks practical national realities once the wheels of the Criminal Justice System are set into motion after the cessation of a conflict or any isolated incident of that conflict.

Post any rescue operations, these children are viewed by the State as offenders and prosecuted by the Juvenile Justice System of the country to be 'put to justice' for committing crimes and other acts of violence as members of concerned armed groups.

While the State remains incognizant or rather blind-eyed of the victimization caused by blatant human rights abuses these children undergo, their treatment as offenders and prosecution by the criminal justice system leads to dual victimization and further abuses their sacrosanct rights. Such attitude by the State evidences the lack of legislative intent to lay down a concrete policy for their reintegration into mainstream society in fulfillment of its obligations.

Prevention or mitigation of such victimization necessitates the contextual analysis of causes that resulted in their entanglement with these armed groups. While the International Legal Framework does not recognize a child's voluntary service in an armed group as a cause, denying children who claimed to have joined such groups 'voluntarily', their agency to choose what they wish to do or be might further agitate them making their rehabilitation more difficult. Thus, children who are rescued or leave these non-state armed groups (NSAGs) need to be catered to with utmost sensitivity, care and precision by both the State and the community. There is a need to view the reintegration of these children as a shared responsibility across sectors.

5. Rehabilitative Model- Expanding the Mandate of Statutory Bodies

The undue victimization of children in the wake of hostilities witnessed or participated in by them is surely a cause of grave concern for both the State and the community as a whole. While there is no denying the abuse and trauma these children experience, there exists a quandary as to the lens these children are viewed by the law formulating and enforcement authorities. Given the challenges faced by the criminal justice system, these children are often automatically looked at as offenders and get entangled in the prosecution of their sins. The responsibility to protect children against the excesses that they might be subjected to during an armed conflict must cut across varying sectors. The decline in respect for the Principle of Responsibility to Protect has to be effectively dealt with by the International Community as a whole.

The authors recommend that, at least in the Indian context, they be classified as 'children in need of care and protection' instead of 'children in conflict with law' under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "JJ Act"). The mandate of the statutory bodies such as Juvenile Justice Boards and Child Welfare Committee under the JJ Act or the National Commission for Protection of Child Rights (NCPCR) or the State Commission for Protection of Child Rights (SPCPR)

under the Commissions for Protection of Child Rights Act, 2005 can be extended to make a 'contextual analysis of the conditions of these children for their aftercare reformation and development. These bodies with the assistance of various experts like psychologists, special educators, vocational institutions, disability rights activists, etc can foster and reinstate a sense of identity and dignity in these children. Realization of these notions is inalienable to ensure these children regain the trust in the community enabling them to lead a normal life. The State must ensure and monitor their progressive development to transform them into productive human resources for the benefit of the community.

The above model, if proven effective, could be replicated in other states as well. In fact, children being an extremely vulnerable class of the global population must be protected from the clutches of war crimes, detention and violence through shared responsibility and the exchange of ideas, resources and intelligence between the states.

Reference

1. Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (The Paris Principles, 2007) para 2.1.
2. UNICEF, 'Children Recruited by Armed Forces or Armed Groups' <<https://data.unicef.org/topic/child-protection/children-recruited-by-armed-forces/>> accessed 5 May 2024.
3. UN Press, 'Highest-Ever Number of Violations against Children Verified in 2022, Briefer Tells Security Council, as Speakers Champion Reintegration, Education Programmes' (2023) SC/15343 <<https://press.un.org/en/2023/sc15343.doc.htm>> accessed 5 May 2024.
4. *Ibid.*
5. International Labour Organization (ILO), Worst Forms of Child Labour Convention (No 182) (adopted 17 June 1999, entered into force 19 November 2000) art 3(a).
6. UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 'Action Plans' <<https://childrenandarmedconflict.un.org/tools-for-action/action-plans/>> accessed 5 May 2024.
7. Maung Aung Myoe, 'Comparative Study of Child Soldiering on Myanmar-China Border: Evolutions, Challenges and Countermeasures' (2015) 37 JSTOR 143, 143–145.
8. Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (GC IV) art 76.
9. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 art 74.
10. GC IV, art 68(4).