Investing in the Future of Pakistan: Understanding why it is Important to Ensure Protection of the Rights of Children Affected by Armed Conflicts

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INVESTING IN THE FUTURE OF PAKISTAN: UNDERSTANDING WHY IT IS IMPORTANT TO ENSURE THE PROTECTION OF THE RIGHTS OF CHILDREN AFFECTED BY ARMED CONFLICTS

By: Nida Mahmood*

Introduction

The foundations of a harmonious and peace loving society as envisaged in the Charter of United Nations (UN), wherein there is respect for and faith in the fundamental human rights and in the dignity and inviolability of man, rests upon creating and maintaining a society in which the basic and core human values as proclaimed by the UN in its Charter and various other Declarations and Conventions, including inter alia, the Universal Declaration of Human Rights (1948), the 1966 Covenants on Civil and Political and on the Economic Social and Cultural Rights, and the Declaration on the Rights of Child (1959), are instilled and internalized.¹

In particular, the focus and emphasis on child rights and child protection should be a paramount consideration for all policy makers and state actors, given the nexus between the peculiar vulnerability of children, their tender age of influence and the fact that they are the ambassadors carrying the future of their nations.

The special rights of the child were first enunciated in the Universal Declaration of Human Rights (UDHR) 1948, which provided in Article 25 (2) that, "Motherhood and Childhood are entitled to special care and assistance."² Further, it has been noted in the Declaration of the Rights of Child (1959), that “the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after

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² See Article 25 (2), Universal Declaration of Human Rights (1948).
More importantly, this Declaration recognizes that “the child for the full and harmonious development of his personality needs love and understanding.”

Thus given that (a) all human beings are entitled to their basic rights and freedoms, “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, birth or other status”, and (b), that nurturing a harmonious society necessitates nurturing of the children in a healthy, friendly, peaceful and secure environment, the rights of children must not only be promoted, but also actively protected.

Children and Rights
The UN Convention on the Rights of Child (hereafter “the Convention”) 1989, and its two Additional Protocols set out the basic rights and protection regime for children.

Article 1 of the Convention defines the child as any human below the age of 18, ‘unless under the law applicable to the child, majority is attained earlier.’

The Convention provides for the Rights of Child which include not only the basic human rights such as right to life, freedom of expression, access to information etc, but also the rights which are peculiar to the children in their respective context, such as for example, right to identity and nationality and the right not to be separated from parents unless necessary in their best interest etc.

The Convention addresses some of the particularly grave issues affecting children including trafficking, adoption, education, exploitation, refuge and social reintegration. It imposes several obligations on the States to respect and ensure the rights in the Convention through legislative,

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3 UN Declaration on the Rights of Child (1959), Preamble, Para 3.
4 Declaration on the Rights of Child, Supra note 3, Principle 6.
5 Universal Declaration of Human Rights (1948), Article 2.
6 The UN Convention on the Rights of Child (UNCRC) was adopted by the UN General Assembly Resolution No. 44/25 on 20th November, 1989 and it entered into force on 2nd September, 1990.
7 UNCRC, supra note 6, Article 1.
8 Ibid, Articles 6, 13 and 17 respectively.
9 Ibid, Article 8 and Article 9 respectively.
10 Ibid, Articles 11 and 35, 20-21, 28, 19 and 32, 22 and 39 respectively.
administrative or other endeavors, together with the obligation to ensure that both parents recognize their common responsibility for the upbringing and development of their children.\textsuperscript{11}

**Children and Armed Conflicts**

Although, the Convention has attracted immense popular support from the international community in spirit, nonetheless, there exists in the world certain grave situations and circumstances including most abhorrently, war and other ‘armed conflict’ zones, as a result of which most of the rights in the Convention and the healthy and secure development of a child are compromised.\textsuperscript{12}

In Pakistan for instance, many children have either, been killed, kidnapped, used as human bombs or exposed to violence in one way or another as a result of the internal strife, ethnic violence and other conflicts that have plagued the country since its very inception. Many schools, particularly those for girls have been blown in the north-west region of Pakistan and socialization to violence amongst other things, has directly contributed to the increased propensity of young boys to take to violence which in turn has led to the development of a culture of violence and the trend of settlement of disputes through unsanctioned use of force rather than through state institutions such as the police and the judiciary.

\textsuperscript{11} Ibid, Articles 4 and 18 respectively.

\textsuperscript{12} It is however, pertinent to note that the term ‘armed conflict’ is not here being used as a legal determination to establish that a situation of ‘armed conflict’ within the meaning of Geneva Conventions of 1949 and its Additional Protocols exists in the State under review. The idea is to use this term in its generic sense to denote a meaning of instability leading to internal strife, conflict or war-like situations wherein children are exposed to arms and ammunition and are victims of violence, keeping it in line with the stance taken by the UN Secretary General on Children and Armed Conflict in his report at the 59\textsuperscript{th} session of the UN General Assembly, where it was recognized that, “in the context of the present report, it should be emphasized that there is no universally applicable definition of “armed conflict” in general and in particular that the mandate of my Special Representative for Children and Armed Conflict does not contain a definition of the term. In the performance of his mandate, my Special Representative has adopted a pragmatic and cooperative approach to this issue, focusing on ensuring broad and effective protection for children exposed to situations of concern, rather than dwelling on the definition of the term “armed conflict”. Reference in the present report to any State or situation should not be construed as a legal determination that there exists a situation of armed conflict within the meaning of the Geneva Conventions and their Additional Protocols.” See Para 7 of the Report of the UN Secretary General on Children and Armed Conflicts (59\textsuperscript{th} Session) 2.
Thus, in view of the fact that armed conflicts can have lasting and devastating impacts on the development of children in particular and societies in general, the United Nation’s General Assembly adopted the Optional Protocol on the Involvement of Children in Armed Conflict by Resolution 54/263 in 2000, to address this issue specifically and to advance this issue in the list of the agenda items of nation states as well as of the international bodies.

**Protection of Children under the Optional Protocol**

The Optional Protocol to the UN Convention on the Rights of Children (1989) expressly deals with the issue of protecting children from being involved in armed conflicts and explicitly recognizes that ‘harmful and widespread impact of armed conflict on children has long-term consequences for peace, security and development’.\(^{13}\)

The Protocol is more ambitious than Article 38 of the Convention, in that it calls for raising the age of possible recruitment of persons into armed forces and their participation in hostilities from 15 to 18 years so children up to the age of 18 years are ensured protection from the impacts of armed conflict.\(^{14}\) In addition to this, the Protocol in its Article 4, introduces a new obligation on the State Parties to further ensure that armed groups that are distinct from the armed forces of the State also do not recruit children below the age of 18. In that the State Parties are not only to ensure the prevention of such recruitment, but also under a duty to criminalize such practices within their domestic laws.\(^{15}\) The Protocol also calls upon the State Parties to demobilize the children being used in armed conflicts and to provide appropriate assistance for their recovery and social reintegration where necessary.\(^{16}\) These obligations are discussed in detail below.

**Obligations of the State under the Protocol vis a vis Armed Forces of the State Parties**

Article 1 of the Optional Protocol on the Involvement of Children in Armed Conflict states that, “State Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.”\(^{17}\) Article 2 further

\(^{13}\) See the Optional Protocol to the UN Convention on the Rights of Child on the Involvement of Children in Armed Conflicts (2000), Preamble, Para 3.

\(^{14}\) See Optional Protocol, Supra note 13, Article 3.


clarifies that, “State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.” Moreover, Article 3 elaborates that State Parties should raise the minimum age for voluntary recruitment of persons into armed forces to 18 years and must, amongst other things, maintain safeguards to ensure that such recruitment is (a) genuinely voluntary, (b) done with informed consent of the person’s parents or legal guardians, (c) such persons are fully informed of the duties involved in such military service and (d) such persons provide reliable proof of age prior to acceptance into national military service. In addition to this, there is a general obligation on the State Parties under Article 6 of the Protocol as per which they are to ‘take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.’

**Obligations of the State Parties under the Protocol vis a vis the Armed Groups Distinct from the Armed Forces of the State**

Article 4 of the Optional Protocol prohibits the recruitment of children under 18 from being (a) recruited or (b) used in hostilities by armed groups that are distinct from the armed forces of a State. In this context, the Protocol is a lot more assertive for it addresses not only the prevention of recruitment of children under 18, but also the situations where they are ‘used in hostilities’, such as for instance as human bombs in suicide attacks.

Furthermore, Article 4 (2) imposes a two-fold obligation on the State Parties which are required to (a) ‘take all feasible measures to prevent such recruitment and use’, and (b) to adopt all necessary legal measures to ‘prohibit and criminalize such practices.’ Hence, the obligation of State Parties in relation to armed groups is again more extensive than in relation to the armed forces of the State, in that in case of armed groups, the State Parties are required to not merely prevent the recruitments but also under a duty to criminalize such practices by imposing penal sanctions within their domestic laws.

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18 Ibid, Article 2.
19 Ibid, Article 3.
20 Ibid, Article 6.
21 See Optional Protocol, supra note 13, Article 4.
22 Ibid, Article 4 (2).
Obligations of State Parties under the Optional Protocol in relation to the Recovery and Social Reintegration of Children

Article 6 (3) of the Optional Protocol requires the states to take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities are demobilized or otherwise released from service. They are also under a duty to accord to these persons where necessary, all appropriate assistance for their physical and psychological recovery and their social reintegration. Additionally, the State Parties are obliged under Article 7 to cooperate with each other including through technical cooperation and financial assistance.

The extent of de facto Compliance of existing Pakistani laws with the Provisions of the Optional Protocol


While the Pakistani laws pertaining to compulsory recruitment of soldiers as contained in the Pakistan National Service Ordinance and others are by and large compliant with obligation under Article 1 of the Optional Protocol, the provisions concerning the enrolment criteria for voluntary recruitment for services in the armed forces appear to be less clear, especially under the Pakistan Navy Ordinance under which any person duly enrolled for the services shall be bound to perform both ‘during his/her minority and after he/she attains majority’, as made explicit under subsection 3 (a) of Section 12 of this Act.\textsuperscript{23} This appears to be in stark contrast with the provisions of Article 3 of the Optional Protocol and for this reason, the minimum age of 18 years even for voluntary recruitment for service in the armed forces of the state need to be prescribed and inserted into the relevant applicable laws once Pakistan has ratified the Protocol.

In short, Pakistan should endeavor to set the minimum age of 18 years for both voluntary and compulsory recruitment into its armed forces uniformly and ensure that there remains no

\textsuperscript{23} See the Pakistan Navy Ordinance, 1961, Section 12 (3) (a).
discrepancy in the prescribed minimum age for recruitment under all relevant and applicable laws that govern the point.


While these laws partially attempt to prevent and criminalize the recruitment of ‘persons’ for hostilities by armed groups distinct from the State, there is still the need for addressing the particular need to prevent the recruitment of children by inserting an express provision to that effect in the relevant applicable law such as the Prevention of Anti-National Activities Act (1974). Likewise, under the Anti-Terrorism Act, Pakistan does make an attempt to criminalize the training of children for acts of terrorism or handling fire arms, explosives and other chemical weapons under Section 21 C. However, it also makes it an offence upon the child to receive such training under the same Section, thereby, rendering the child in conflict with the law, making him/her criminally responsible to have received such training.

This goes against the spirit of the Convention as well as the Optional Protocol under which children and their rights are to be protected, and that they need special care and assistance because of their peculiar vulnerabilities. Moreover, child soldiers and those affected by armed conflicts should be treated as “victims” rather than as criminals. Furthermore, the government is under an obligation under Article 6 and 7 of the Protocol to focus on the social reintegration of such children and holding them accountable as criminals is likely to lead those children to further alienation. Hence, an overall policy reform would be required at this stage for reforming the approach towards children in this scenario, and ultimately treating children as ‘victims’ rather

24 See Optional Protocol, supra note 13, Preamble, Para 2 and 15.
25 UN-SRSG on Children and Armed Conflict, Human Rights Council Presentation, 12 September 2011 where she said, “Given the forced nature and the root causes of their association with armed groups, and, considering their age, children should be treated primarily as victims, not as perpetrators,” the child rights advocate said and called on Member States to prosecute adult recruiters who force girls and boys to commit violations. Many are themselves abused, exploited and beaten into submission by their commanders while associated with an armed group. As cited at http://www.un.org/children/conflict/english/pr/2011-09-12269.html. Last accessed on, 10 December 2011, 2:26 pm.
than as ‘criminals’ will have to be reflected in the language of the law to comply with the international approach and obligations.

The Pakistani laws that currently address the obligation under Article 6 (3) of the Optional Protocol are (i) The Sindh Child Protection Authority Act, 2011 and (ii) Khyber-Pakhtunkhwa Child Protection and Welfare Act, 2010.

These two provincial laws cater to the need to provide appropriate assistance for the recovery and social reintegration of the children affected by armed conflicts by establishing designated child protection authorities and officers who have a duty to protect and provide for basic necessities such as food and shelter to the ‘child at risk’. However, Punjab and Balochistan remain outside the purview of these legislations and therefore no uniform system or policy for rendering assistance to children at risk exists throughout the country as envisioned under Articles 6 and 7 of the Optional Protocol.

**Pakistan’s position under International Law**

Pakistan became a signatory to the Convention on 20th September 1990 and ratified the same on the 12th of November, 1990. The State of Pakistan is therefore under a legal obligation to implement the provisions of the Convention, which states inter alia, in Article 32 that, ‘the child has a right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.’

26 Under Article 36, the State Parties have an obligation to protect the child ‘against all other forms of exploitation prejudicial to any aspects of the child’s welfare.’

27 Furthermore, Article 38 of the Convention calls upon the States to ensure respect for rules of international humanitarian law relevant to children and in particular, to ensure that children below 15 are not recruited into their armed forces. Additionally, Pakistan signed the said Optional Protocol on 26th September, 2001, as a result of which it has a standing international obligation to ratify the same and incorporate it in its domestic laws.

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Pakistan’s Social and Global Responsibility

Both the Convention and its Optional Protocol impose the obligation on the State Parties to ensure and protect the rights guaranteed in those instruments.

By ratifying the Convention and by signing the Optional Protocol regarding the Involvement of Children in Armed Conflict, Pakistan has therefore accepted a mandate for global accountability on the welfare of children.

Secondly, by ratifying the said Protocol, the State of Pakistan would be complying with its international commitment to deal with the issue of involvement of children in armed conflict which it took upon itself at the time of signing the Protocol in 2001 and considering that in essence there already do exist Pakistani laws that more or less are in de facto compliance with the provisions of the Optional Protocol shows that it is not an area that is completely alien to the Pakistani parliament and so therefore its amendment or insertion should not seem to be an issue.

Thirdly, considering that Pakistani children have been exploited, trained and used in armed conflicts according to a report by the Society for the Protection of the Rights of Child (SPARC, 2003), Pakistan is mandated by virtue of its social compact with its citizens and by virtue of its obligations (both national as well as international) towards its people to protect the rights and lives of its people, including children.28

This obligation becomes even more serious in view of the fact that in Pakistan majority of population is below the age of majority and therefore requires special care and assistance both, for healthy development of the children and for nurturing a harmonious future society of responsible individuals.29 Ratification of the Optional Protocol to the UN Convention on the Rights of Child on the Involvement of Children in Armed Conflict is therefore, the right step forward in Pakistan’s commitment to fight terror, to uphold the rights of its people, to save its

children and provide for them a secure and healthy environment, in improving its image both at home and abroad and to fulfill its international obligations under the various UN Conventions.

**Conclusion**

In short, for Pakistan - a country which was amongst the first signatories to the UN child rights convention and in whose history, political instability and religious discord, has fuelled violent tendencies in people, the question of ensuring child rights and protecting them from violence or from being involved in armed conflicts and other hostilities becomes very important for the purpose of harnessing a harmonious and peace loving society and to break away from the culture of violence that currently seems to prevail. For this reason alone, Pakistan must invest in its future and ratify the Optional Protocol to the UNCRC on the involvement of children in armed conflicts.