Protecting Children in Armed Conflicts as a New Imperative of International Peace and Security

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Supporting America's Children and Adolescents

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I. Introduction

Contemporary vulnerabilities that beset human beings around the world come in a variety of guises and affect diverse populations differently. Perhaps no category of people is as easily exposed as children to such injuries as the interconnected factors of poverty, disease, lack of education, physical violence, and family breakdown. To be sure, there is marked and continuous progress on a number of fronts, particularly in the reduction of mortality among the young. Yet many children and adolescents still suffer from a variety of risks to their well-being. Although not confronted with as many or as severe risks as children in the developing world, many children and adolescents in the United States are at high risk—higher than the risks faced by their counterparts in many other Western industrialized countries. Despite the fact that the United States ranks first in Gross Domestic Product, it is last among the industrial North in relative child poverty, adolescent birth rates, and securing children against gun violence. Furthermore, the United States has relatively high rates of low birth weight and infant mortality statistics as well as other indicators of poor health, such as obesity, asthma, and lack of physical fitness. For example, our country ranks 43rd among developed countries in infant mortality. Each of these risks is most pronounced among families living in poverty, many of whom are also members of racial and ethnic minority populations.

The performance of America's children and adolescents in school also falls far short of the performance of their peers in many other industrial countries both in terms of scores on standardized tests and on school attainment.[1] Once again, these academic deficits are particularly pronounced among children from poor homes living in segregated communities, many of whom also come from stigmatized minority groups.[2]

Other risky contextual characteristics, less closely linked to poverty and inequity, have also made life difficult for many youth today. A number of technological and geo-political changes have created a unique moment in human development. The globalization of business and telecommunications has made all nations and their populations totally interdependent. The full financial impacts of this fact have been made very salient by the recent global meltdown of the financial markets. At the same time, we are experiencing major confrontations between cultural and religious beliefs, coupled with the basic desire of all human beings to be members of a clearly identifiable "tribe" or in-group, as the social psychologists would say. Xenophobia is widespread and is easily stimulated and inflamed by political zealots in all nations, often under the guise of religious and cultural causes. Adolescents around the world are being recruited into terrorist and hate groups of all kinds and their energies and needs for both social and personal identities are being used for aggressive and non-compassionate purposes.

In addition to these forces, life in general has become quite stressful due to the complexity of the multiple worlds in which America's young people grow up. They are bombarded with mixed cultural messages about what is right versus wrong, good versus bad, and productive versus destructive. Furthermore, maturing youth in most industrialized countries are given little opportunity to be fully contributing and responsible members of their larger society at a time in their lives when the desire for such responsibility and "mattering" is emerging and gaining in

strength, leaving them with feelings of alienation from their own larger social system. Finally, many of our youth are suffering in our school systems due to excessive competition and the stress on being right rather than on learning and mastery. They also suffer from bullying and violence among peers, inadequate adult mentorship, inadequate supports for the teachers to do their best, and inadequate facilities.

In this section, I will discuss some of the ways in which these risks endanger the healthy development of American children. I was asked to address the following four questions: What are the main circumstances facing children in the United States? What subgroups are most vulnerable? What are the primary sources/causes responsible for these contexts and why? In what specific ways might these conditions be transformed? In other words, what types of individuals, organizations, ideas, and policies must come to the fore to tackle these conditions? I will address each of these questions, but doing full justice to them all would take many volumes rather than the 8,000 words I have been asked to write. So let me begin with a brief answer for each and then turn to a more elaborated discussion of those influences that I know the most about: the American educational system.

Throughout the first section, I am going to couch my comments in the language of risk and protective factors because this perspective provides a useful lens on the four key questions. According to this perspective, there are many developmental risks that threaten healthy development, including poverty, inequity, exposure to toxic substances, exposure to physical and emotional violence, inadequate nutrition and exercise, and inadequate education throughout development. Variations in these constitutional and environmental hazards affect the likelihood that children and adolescents will have academic, socio-emotional, physical, and behavioral problems. In addition, the likelihood that any particular psychosocial hazard will lead to problematic outcomes will be affected by the presence of promotive as well as protective factors in the lives of children and adolescents. Some individual characteristics and environmental conditions serve as both promotive and protective factors while others act as one or the other. Promotive factors protect children and adolescents from environmental or constitutional risks by counteracting the effects of psychosocial threats.[3] Protective factors serve as buffers so that the relation between risks and problematic developmental outcomes are attenuated. The probability of problematic development depends on the combination of risks, promotive factors, and protective factors present in an adolescent's life.

Now let me turn to my brief response to the four primary questions. First, what are the main risky circumstances facing children in the United States? I would have to say that poverty and inequity are the two biggest risks to the healthy development of children because these two circumstances are so strongly associated with other risk factors, such as living in a dangerous and disorganized neighborhood, being exposed to physical violence often involving guns, being exposed to toxins, having parents with little education, and receiving inadequate medical, recreation, protective, and educational services.[4] Sameroff and his colleagues argue that it is the accumulation of these risks for children living in poverty, rather than the lack of money itself, that is the problem. That said, there are other very important risks as well. These include the ones associated with poverty, as well as risks that can be found in many types of neighborhoods and schools. The latter include underfunded schools and community programs;[5] inadequately designed school programs and overstressed or poorly trained and supported teachers;[6] easily accessible drugs and guns; parents under great stress due to current economic conditions;[7] bullying from peers;[8] inadequate support services for children and adolescents with learning or other difficulties;[9] racism, sexism, heterosexism, and other forms of discrimination, intolerance,

and prejudice;[10] exposure to ads for unhealthy food and behaviors; and even widespread exposure to activities known to be unsafe (such as hitting the soccer ball with one's head or riding in cars without seat belts or with drivers who use their cell phone while driving). All of these risks can be substantially reduced with appropriate social policies and adequate education.[11]

Second, what subgroups are most vulnerable? I am reluctant to say that we should focus on a single group as being most at risk because different subgroups have differential likelihoods of being exposed to these various risks at various ages. However, as noted above, children living in highly concentrated impoverished neighborhoods are the most likely to be exposed to several of these risks simultaneously.[12] In addition, young children and infants are likely to be the most vulnerable because they are least able to protect themselves. However, some of the risks are most problematic at other ages. For example, exposure to drugs for purchase or to gang violence is most prevalent in late childhood and adolescence. Also, as I discuss later, exposure to poorly designed school transitions is most probable in early and middle adolescence, as youth move from elementary school into middle school and then into high school.[13] We lose far too many children to these risks at all ages.[14]

Third, what are the primary sources/causes responsible for these contexts and why? Given the risk-and-protective-factor perspective that I have taken, the answer to this question mirrors the answer to question one. Nonetheless, let me take a stab at the issue of poverty anyway. First, let me state the obvious: one basic definition of poverty is the lack of money. However, researchers have concluded that it is not the lack of money *per se* that is primarily responsible for the consequences of living in poor neighborhoods.[15] Instead, as noted earlier, it is the co-occurrence of many other risk factors with low family income that makes living in poverty so risky for children and adolescents in the U.S.[16] The real question is why do so many of these risks co-occur in this country? Answering this question requires the expertise of an international social policy analyst—which I am not!! Such scholars are quick to point out that the concentration of these risk factors in fairly isolated communities is much more prevalent in the U.S. than in many other industrialized countries (particularly in Europe but also increasingly in Asia as well). This fact suggests that the co-occurrences evident in the U.S. reflect something about our history and our social policies. William Julius Wilson, for example, argues that it is due, in part, to the exodus of the working poor and upwardly mobile black and Latino families from the poor neighborhoods in our inner cities during the 1950s and 60s, as job-producing communities moved to the suburbs.[17] Others argue that our housing policies led to the creation of ghettos with high concentrations of poverty and that our social welfare policies left these neighborhoods under-resourced.[18] Together, these two sets of policies set in motion the dynamic processes underlying the accumulation of risky conditions in these neighborhoods. Once started, this process is hard to stop and then reverse without massive investments and major reforms.[19] Add to these conditions the fact that we have neither a national health care system nor a well-supported national educational agenda and you a have a recipe for the state we are currently in with regard to neighborhoods with highly concentrated poverty.

This analysis, however, does not explain why we let this happen or why we are willing to let these conditions exist given what we now know about their consequences for the children and adolescents living in these neighborhoods. I must say I am at a loss to answer this question and I am deeply ashamed of my nation's lack of will to respond quickly and effectively to these conditions of human suffering (as well as the many other conditions of human suffering not so tightly tied to poverty). According to a new Pew Research Center Report, we have allowed the

inequities in wealth to balloon over the last six years.[20] In 2005, the wealth gap between the richest and the poorest families in the United States was ten-fold; in 2009, it had risen to twenty-fold. This gap is even larger among stigmatized minority groups. For example, the median net wealth of white, Hispanics, and black households in 2005 (converted to 2009 dollars) was $134,992, $18,359, and $12,124, respectively; in 2009 these figures were $113,149, $6,324, and $5,677, respectively. Thus, although all three groups lost net wealth over this four-year period, whites lost only 16 percent compared to 66 percent for Hispanics and 53 percent for blacks. Coupling these differences in family wealth with the fact that the public does not provide equally high-quality education for these three American subgroups, the implications of these differences in wealth for group differences in the quality of education the children in these families are likely to receive is staggering.

Fourth, in what specific ways might these conditions be transformed? In other words, what types of individuals, organizations, ideas, and policies must come to the fore to tackle these conditions? The answer, unfortunately, is everyone. In her most recent book, *My Boat is Small and the Sea is so Large*, Marian Wright Edelmann calls for changes at all levels of our society. She put out a plea for change at all levels, from equipping individuals to take better care of themselves and their families to changing educational, health, and social welfare policies at the federal level. Although some of these changes can be implemented now, others will require educating the next generation into a different worldview.

Similarly, His Holiness the Dalai Lama, in his recent book *Ethics for a New Millennium*, spoke to us of what is needed if we are to survive together. He argues that we need to educate our children in compassion as well the "3 Rs." We need to help our children develop the wisdom to value all human beings and all ways of life as well as the self-control and calmness to respond with kindness rather than aggression when faced with frustrations. We need to help our children learn to control their destructive emotions as well as to develop their intellect and knowledge. Finally, we need to help them develop the discipline of mind and emotion needed to be able to focus all of their strengths and capacities on right intention, right speech and right action.

Essentially, both of these leaders argue that our job as mature adults is to reshape the ways in which we educate our young people in light of these increasingly demanding and formidable challenges. We need to provide our youth with the cognitive, social, and ethical skills necessary to be proactive citizens in a world that demands tolerance, compassion, and wisdom. They must acquire the calm flexibility and strength of character necessary to be a life-long learner and a resilient, adaptable human being. Many humanitarians, social policy makers, educators, and scientists have made similar pleas. They also plead for social policy makers and their fellow citizens to enact changes *right now* that will improve the condition of children and adolescents immediately.

In the next section, I will elaborate upon some policy levers that could be implemented now and are known to work. Then, in the final section, I will become much more specific about problems in the K-12 school setting and will suggest some possible solutions.

II. The State of America's Children and Adolescents

As noted previously, America's children and adolescents, on average, fare less well than the children and adolescents of other Western and industrialized, developed modern countries on several dimensions. In this section, I draw heavily on figures gathered and updated regularly by the Children's Defense Fund and the Annie Casey Foundation.

A. Physical Health

Let me begin with basic indicators of infant, child, and adolescent physical health and mortality. America has a substantial number of low birth weight babies and this percentage has gone up from 7.6 percent in 2000 to 8.2 percent in 2008. Infant mortality is higher than in other European and industrialized countries, as is the rate of child death (19 per 100,000 in 2008). On the positive side, the rate of child death has declined by 14 percent since 2000. In 2008, the death rate among adolescents between 15 and 19 was 62 per 100,000 and this rate had shown some (7%) improvement since 2000.[21]

   America's children display very high rates of other indicators of poor health as well. In 2007–2008, for example, ten percent of American children between 2 and 5 years of age were obese. This percentage jumped to 20 percent and 18 percent for children from 6–11 and 12–19 years of age, respectively.[22] These figures represent a marked increase since 1976, with the percentage of obese preschool children going from five percent to ten percent and the percentage of obese adolescents going from five percent to 18 percent. The prevalence of obesity is highest among African-American and Hispanic children, with the highest rates being among Mexican-American boys (26.8%) and non-Hispanic African-American girls (29.2%).[23]

   Incident rates of asthma are also troubling. To quote, "Over 10 million U.S. children aged 17 and under (14%) have ever been diagnosed with asthma."[24] The rates of asthma are particularly high among non-Hispanic African-American children and youth (21%) and children living in poor families (17%). Furthermore, the rate of increase in asthma over the last years is highest among African-American children, with a 50 percent increase from 2001 to 2009.

   It is very important to recognize that children living in poverty fare substantially worse than other children on each of these indicators. Furthermore, in part because they are more likely to live in poverty, Hispanic and black children and adolescents also fare substantially worse on each of these indicators. For example, black children are twice as likely as white children to be born with low birth weight and more than twice as likely to die before their first birthday.[25] Finally, it is important to note that health problems are a major predictor of academic and other school-related problems.[26]

B. Exposure to Poverty

Next let me turn to family financial well-being, drawing on information from the "2010 Kids Count" report by the Annie E. Casey Foundation. In 2000, 17 percent of America's children lived in poverty (income below $21,834 for a family of two adults and two children, in 2008 dollars). By 2008, that figure has risen to 18 percent. This figure jumps to 34 percent for African-American children, 31 percent for American Indian and Alaskan Native children, and 28 percent for Hispanic children. Thus, African-American children are three times more likely than European-American children to live in poor families and seven times more likely than European-American children to live in persistently poor families.[27] Furthermore, in 2008, 27 percent of America's children lived in families in which neither parent had full-time, year-round employment. This figure is 34 percent, 31 percent, and 28 percent for African-American, Native American, and Hispanic children, respectively. In addition, closely linked to family income is the presence of two parents. In 2008, 32 percent of America's children lived in a one-parent household. This figure is 65 percent, 50 percent, and 38 percent for African-American, Native

American, and Hispanic children, respectively. Additionally, these percentages went up from 31 to 32 percent from 2000 to 2008.

Finally, what about health insurance? As many as 8.3 million American children have no health insurance; 38.5 percent of these are African American, 37.1 percent are Hispanic, and 88.8 percent are U.S. citizens. Not unexpectedly, 63 percent of the uninsured live either in poverty or in near-poverty conditions.[28]

Concern over the long-term consequences of growing up poor is a major concern among developmental scientists. In a recent report, Duncan and colleagues found that children growing up in families earning close to or below the poverty line obtained less schooling and earned less income as adults, as compared to children growing up in homes in which the parents earned well above the poverty line.[29] These children were also more likely to use food stamps, to be arrested and incarcerated (males), and to have children prior to age 21 (females) when they became adults. They were also more likely to report having poor health and being obese as adults. Finally, those individuals who grew up in homes in which the income was below the poverty level worked fewer hours and reported more psychological distress as adults than other children.[30]

C. Educational Well-Being

Let me now turn to educational well-being. According to the "2010 Kids Count" report, six percent of America's 16 to 19-year-olds in 2008 were neither in school nor graduated from high school, a substantial improvement from 2000, when the figure was 11 percent. The 2008 figure is 12 percent, 15 percent, and 11 percent for African-American, Native American, and Hispanic youth, respectively. Using the best statistics available, 6–7 percent of white students drop out of high school, compared to 16 to 22 percent (females versus males) of Hispanic youth, 9 to 12 percent of African-American youth, and 16 to 17 percent of Native American youth. In his report for the Annie E. Casey Foundation, Hernandez concluded that, "22% of the children who live in poverty do not graduate from high school, compared to 6 percent of those who have never been poor. This rises to 32 percent for the students spending more than half of their childhood in poverty."[31] Put more dramatically, 70 percent of those children who do not graduate from high school have lived in poverty one or more years of their lives.

Even more starkly, 35 percent (female) to 51 percent (male) of African-American 12th graders scored below the basic level in reading on the 2009 NAEP tests.[32] The corresponding figures are 19 percent to 42 percent for Native Americans, and 33 percent to 45 percent for Hispanics. The figures are even worse for mathematics, with 63–64 percent of African-American 12th graders scoring below the basic level. The comparable figures are 46–40 percent for Native Americans and 58–51 percent for Hispanic 12th graders.

Similar disparities are evident for higher education. A smaller percentage of African-American, Hispanic, and Native American youth attend and then graduate with a bachelor's degree from four-year colleges and universities than Asian-American and European-American youth.[33] Family income from ages six and up also predicts the total number of years of education obtained.[34]

These educational inadequacies and disparities are evident during the early elementary school years as well. There is a significant ethnic group and family income impact on several major indicators of children's school readiness at school entry.[35] As expected, children from poor homes and children from African-American, Hispanic, and Native American homes begin school

less well prepared in terms of the skills and attitudes needed for school success. The reasons for these deficiencies are not clear and likely primarily reflect the cumulative impact of poverty as discrimination, as well as culturally based early family interaction patterns. In the 2009 NAEP report on school performance, only 33 percent of beginning fourth graders read at the proficient level, meaning that two-thirds of America's children are not reading at grade level when they enter the fourth grade.[36]

The mere fact that so many American children are entering school unprepared for successful engagement and then are performing below the level expected by grade 3 is alarming. Even more alarming is the longer-term educational pathway many of these children are likely to follow. In a recent report by the Annie C. Casey Foundation, Hernandez found that 16 percent of the children who do not read at the proficient level at grade 3 fail to graduate from high school, four times the school dropout rate for children who do read at the proficient level at grade 3. These dropout rates are even higher among African-American and Hispanic students, with 31 percent and 33 percent of the non-proficient readers, respectively, failing to graduate from high school. Finally, Hernandez concluded that, "children who have lived in poverty and are not reading proficiently in third grade are about three times more likely to dropout or fail to graduate from high school than those who have never been poor."[37]

Bullying has become a recent concern in several Western industrialized countries.[38] I include it in this section because it occurs primarily at school and puts many children at high risk. According to Nansel and colleagues, in 1999, nine percent of the children in Norway reported being abused at school, seven percent reported bullying other children, and 1.6 percent reported both being a bully and being bullied.[39] In the United States, these figures rise to eleven percent, thirteen percent, and six percent, respectively. Furthermore, being bullied predicts "higher anxiety, greater depression, low self-esteem, peer rejection, suicidal behaviors and aggression."[40] It also predicts substance use and reduced levels of academic success.

Finally, it is also important to look at the number of American children who evidence learning disabilities and other cognitive and behavioral disabilities that are known to influence school achievement. In 2010, "almost 5 million children aged 3–17 had a learning disability (8%).[41] Learning disability rates are highest among boys, African-American, and poor children, with disability rates being twice as high for children in poor families (12%) than children in families earning more than $100,000 (6%). Another five million U.S. children have Attention Deficit Hyperactivity Disorder (ADHD). These rates are highest among boys, Hispanic children, and poor children. Furthermore, both learning disabilities and ADHD are most common among children suffering from other health problems.

In closing this section, it is critical to point out that academic success is key to both current and future well-being. For instance, early academic problems—such as retention in the current grade, declining academic performance, declining student engagement, and poor motivation—are predictors of a variety of subsequent emotional/behavioral difficulties that emerge in later adolescence, including drug use/abuse, delinquency, teenage pregnancy, and failure to complete high school.[42] Furthermore, high school academic achievement is a very strong mediator of the association between early family contexts and adult socioeconomic and mental health outcomes.[43] In addition, dropping out of high school is strongly associated with future joblessness and incarceration, particularly for young men of color.[44] Finally, well-designed interventions aimed at increasing children's early academic success have been shown to improve both subsequent school success and a variety of indicators of well-being in adulthood.[45]

D. Employment

Let me now turn to youth employment. A successful transition into the labor market is critical for the successful transition into adulthood. Reasonable levels of employment during the school year and summer can also be a positive experience for non-college-bound youth, as well as for youth who live in low socioeconomic status neighborhoods and families.[46] It should be noted, however, that excessive employment (greater than 20 hours per week) is sometimes associated with increased drinking and drug use and decreased school engagement during the high school years.[47] Finally, positive expectations of future work potential are likely a psychological asset for youth, particularly if they live in low socioeconomic status neighborhoods, because it gives them hope for the future.[48]

Sum and his colleagues in the Center for Labor Market Studies at Northeastern University have investigated youth employment patterns in the U.S. for many years. The proportion of employed American teenagers (16–19) and youth (20–25) has declined steadily since 2000.[49] In 2000, 45 percent of civilian, non-institutionalized American adolescents worked for pay at some time during the year. By 2009, that figure had dropped to 26 percent, the lowest it has been in sixty years.[50] The 2009 figures for African-American teenagers were 14 percent for males and 16 percent for females compared to 28 percent and 31 percent for European-American male and females teenagers, respectively. Although the rate of employment dropped for all age groups (except those 55 and older) between 2007 and 2008, the drop in employment rates was highest among 16 to 19 year olds, who experienced a decline of 9.4 percent compared to drops ranging from .6% to 3.8% for other age groups.[51]

The 2008 summer work statistics are equally problematic. Summer is a time when adolescents typically seek out work. It is also a time when adolescent employment is seen as appropriate and not problematic. As recently as 1989, 48.4 percent of America's teenagers worked for pay in the summer. By 2008, this figure had dropped to 33 percent, the lowest it has been since the immediate post-World War II period.[52] As is true for employment in general, the teen summer employment rates are lowest among African-American youth (21%) and youth living in poor households. Twenty-seven percent and 34 percent, respectively, of 16–19 year olds living in families with incomes of less that $20K and $20–40K were employed in the summer of 2008, compared to 41–48% of the 16–19 year olds living in households with incomes greater than $60K.

Putting these statistics together with the educational statistics discussed above, 19.3 percent of African-American youth between the ages of 12 and 24 were both out of school *and* out of work in 2008. This figure was 16.1 percent for Hispanic youth and ten percent for European-American youth. Furthermore, the odds of being both out of work and out of school was 3.4 times higher for youth coming from low socioeconomic status families compared to youth coming from high socioeconomic status families.[53]

E. Thriving

I would like to end this section with a discussion of an alternative way to think about the state of America's children and adolescents; namely, in terms of thriving instead of merely surviving. With the advent of positive psychology and the positive youth development movement, there has been a great deal of discussion about the need to conceptualize positive development.[54] These scholars and policy makers argue that it is critical for youth to be prepared for a successful

transition to adulthood, as well as to avoid or overcome the many risks that can undermine a person's life chances. Peter Benson and his colleagues at the Search Institute in Minneapolis specified a list of 40 assets that children and adolescents need in order to experience healthy development that leads to a healthy adult life. Twenty of these assets are external to the individual and can be seen as the supports needed for healthy development; the other 20 are internal assets that individuals need to acquire as they grow up in order to thrive as adults.

The Search Institute has now gathered evidence regarding the extent to which children and young people all over American have these assets in their lives, and the relationship of having these assets to participation in high-risk behaviors versus thriving behaviors. They define high-risk behaviors as problem alcohol and drug use, smoking, risky sexual behaviors, depression, attempted suicide, anti-social behaviors, school misbehavior and other school problems, driving while drinking, and gambling. They define thriving behaviors as success in school, helping others, valuing diversity, maintaining good health, exhibiting leadership, resisting danger, delaying gratification, and overcoming adversity. When individuals have a large number of assets in their world, they are less likely to become involved in high-risk behaviors and more likely to be involved in thriving behaviors.[55] Furthermore, the strength of these associations is comparable across different ethnic groups in the U.S. However, among low socioeconomic status youth, the negative impact of not having these assets is particularly strong among African-American, European-American, and mixed ethnic group youth. With regard to particular external assets, having appropriate levels of support and of boundaries and expectations, as well as having opportunities for the constructive use of time, were especially important for both preventing engagement in high-risk behaviors and promoting thriving behaviors.

In other reports, the Search Institute has found ethnic and socioeconomic status differences in profiles of assets, however these differences are not as large as one might expect.[56] Not surprisingly, children living in poverty, those in single parent homes, and African-American children report fewer external assets than other groups of children. Interestingly, males and high school students report fewer external and internal assets than females and early adolescents. Notably, the least common external assets reported by the youth in the study were positive family communications (present for only 30% of the youth), a caring school climate (32%), positive adult role models (35%), youth being seen as a resource (30%), youth being valued by their community (26%), and having opportunities for involvement in creative activities (20%). In contrast, the most commonly available external assets were positive peer influences (75%) and family support (73%).

F. Summary and Policy Implications

Many of America's children and adolescents are not faring very well on many indicators of well-being and positive development. This is particularly true for children and adolescents living in poor families, who are also often children of color living in neighborhoods with high rates of poor families and low availability of public community resources and good schools. Furthermore, many of these indicators are inter-related and appear to be reciprocally related to each other over time, creating an escalating risk rate as the children mature.

There have been many efforts to explain these patterns. Sameroff and his colleagues have offered the most comprehensive perspective on this issue. They argue that it is the cumulative exposure to many risk factors that explains the association of poverty and its related risk factors with problematic development. They have shown that the likelihood of negative outcomes, such

as school failure, poor health, and the emergence of problematic behaviors in adolescence and adulthood, goes up linearly as the number of risk factors in children's and adolescents' lives increases.[57] Similarly, the likelihood of good outcomes goes up linearly with the number of protective factors in their lives.[58] Because living in poverty is associated with so many risk factors, it should not be surprising that children living in poverty are more likely than other children to show many of the problematic outcomes described in this section.

What should be done? We know that well-designed programs can help to ameliorate each of the problematic characteristics noted in this section, as well as a variety of other problematic developmental characteristics and behaviors. Good preschool interventions are known to be effective, particularly if they are followed up with high quality subsequent educational experiences.[59] Similarly, high quality community- and school-based co-curricular programs for children and youth can serve as both protective and remedial factors in the lives of children and adolescents.[60] Finally, well-designed school programs can also serve as both protective and remedial factors through their impact on school success and student engagement.[61] What is needed is the will to make such programs available to all of America's children.[62]

III. Supporting our Children during the Transition into and through Adolescence

I now turn to a more specific topic directly related to my own research: the decline in student engagement found as American students move from elementary school into secondary school. Evidence from a variety of sources suggests that the early adolescent years mark the beginning of a downward spiral for some individuals, a spiral that leads some of these adolescents to academic failure and dropping out of school. To illustrate, Simmons and Blyth reported a marked decline in some early adolescents' school grades as they move into junior high school.[63] Furthermore, the magnitude of this decline was predictive of subsequent school failure and drop out. Similarly timed developmental declines have been documented for such motivational constructs as interest in school, intrinsic motivation, self-concepts/self-perceptions, student engagement, and confidence in one's intellectual abilities, especially following failure.[64] There are also increases during early adolescence in such negative motivational and behavioral characteristics as test anxiety, a focus on self-evaluation rather than task mastery, and both truancy and school drop out.[65]

A variety of explanations has been offered to explain these negative changes. Some link such declines to the intra-psychic upheaval assumed to be associated with early adolescent development.[66] Others have suggested that developmental changes in the brain may be responsible. For example, Casey and her colleagues suggest that differential rates of development in various parts of the brain leave adolescents highly susceptible to stress, drug and alcohol abuse, and engagement in risky behaviors.[67] Still others have posited that it is the coincidence of the timing of multiple life changes. Drawing upon cumulative stress theory, Simmons and her colleagues have suggested that the concurrent timing of the junior high school transition and pubertal development accounts for the declines in the school-related measures and self-esteem.[68] To test this hypothesis about the declines in motivation, Simmons and her colleagues compared the pattern of change on early school-related outcomes for adolescents who moved from sixth to seventh grade in a K–8, 9–12 system with the pattern of change for adolescents who made the same grade transition in a K–6, 7–9, 10–12 school system. This work separates the conjoint effects of age and school transition operating in most developmental studies of this age period. These researchers find clear evidence of greater negative change

among adolescents making the junior high school transition than among adolescents remaining in the same school setting. But are these differences due to the cumulative impact of school transition and pubertal change for girls who moved to a junior high school at grade seven or are they due to differences in the nature of the school environments in these two educational structures? Or are the differences due to both of these sets of experiences? Simmons and her colleagues now argue for the latter.[69]

Similarly, my colleagues and I have suggested that the change in the nature of the learning environment and the large school context associated with the junior high school transition are plausible explanations for the declines in the school-related measures.[70] Drawing upon Person-Environment Fit theory, Midgley and I propose that these motivational and behavioral declines could result from the fact that junior high schools are not providing appropriate educational environments for early adolescents.[71] According to Person-Environment Fit theory, behavior, motivation, and mental health are influenced by the fit between the characteristics that individuals bring to their social environments and the characteristics of these same environments. Individuals are not likely to do very well, or be very motivated, if they are in social environments that do not meet their psychological needs. If the social environments in the typical junior high school do not fit very well with the psychological needs of adolescents, then Person-Environment Fit theory predicts a decline in motivation, interest, performance, and appropriate behavior as they move into this environment.

A. Stage/Environment Fit and School-Related Changes

Work in a variety of areas has documented the impact of various classroom and overall school environmental characteristics on motivation. For example, the big school/small school literature has demonstrated the motivational advantages of small schools, especially for marginal students.[72] Similarly, the literatures on teacher efficacy and teacher-student relationships document the importance of high teacher efficacy and positive teacher-student relations for positive teacher and student motivation.[73] Finally, motivational psychology has demonstrated the importance of participation and self-control on motivation.[74] The list of such influences could, of course, go on for several pages. The point is that there may be systematic differences between typical elementary classrooms and schools, and typical junior high classrooms and schools, and that these differences may account for some of the motivational changes seen among early adolescents as they make the transition into middle or junior high school. If so, then some of the motivational problems seen at early adolescence may be a consequence of the negative changes in the school environment rather than characteristics of the developmental period *per se*.

Do schools change in ways that might undermine early adolescents' engagement and interest in the academic content of school? Yes! My colleagues and I believe that there are developmentally inappropriate changes in a cluster of classroom organizational, instructional, and climate variables, including task structure, task complexity, grouping practices, evaluation techniques, motivational strategies, locus of responsibility for learning, and quality of teacher-student and student-student relationships. In 1993, we proposed that such changes contribute to the negative change in students' motivation and achievement-related beliefs assumed to coincide with the transition into junior high school.[75] Substantial research has now been done to assess our prediction and, by and large, the evidence supports our hypothesis.

How do middle/junior high schools and classrooms differ, on average, from elementary schools and their classrooms? First and foremost, middle and junior high schools are typically much bigger

than elementary schools and each teacher is responsible for the education of many more students.[76] These two changes alone should undermine the teacher-student relationship and the likelihood of close personal relationships developing between the students and the adults in these school communities. This, in turn, should undermine students' sense of social supports and high expectations from their teachers. Additionally, reduced social connection between the students and teachers should increase the likelihood that students who are already at risk will not be provided with the kinds of supports and help that they need to do well academically and to resist negative peer influences.[77]

Second, junior high/middle school classrooms are characterized by a greater emphasis on teacher control and discipline, as well as fewer opportunities for student decision-making, choice, and self-management.[78] For example, in the work of my colleagues and I, sixth grade elementary school math teachers reported less concern with controlling and disciplining their students than these same students' seventh grade junior high school math teachers reported one year later.[79]

Similar differences emerge on indicators of student opportunity to participate in decision-making regarding their own learning. For example, upper elementary school students are given more opportunities to take responsibility for various aspects of their schoolwork than seventh grade students in a traditional junior high school.[80] In addition, using a measure developed to assess the congruence between the adolescents' desire for participation in decision-making and their perception of the opportunities for such participation, Midgley and Feldlaufer found a greater discrepancy when the adolescents were in their first year in junior high school than when these same adolescents were in their last year in elementary school.[81] The fit between the adolescents' desire for autonomy and their perception of the extent to which their classroom afforded them opportunities to engage in autonomous behavior had *decreased* over the junior high school transition. Finally, the extent of this type of discrepancy predicted decreases in student engagement in the classroom.[82]

Third, middle school and junior high school classrooms, compared to elementary school classrooms, evidence less personal and positive teacher-student relationships.[83] For example, in our work, both students and observers rated junior high school math teachers as less friendly, less supportive, and less caring than the teachers these students had one year earlier in the last year of elementary school.[84] In addition, the seventh grade teachers in this study trusted the students less than did these students' sixth grade teachers.[85]

Fourth, middle and junior high school teachers often feel less effective as teachers, especially for low ability students, than elementary school teachers. This was one of the largest differences we found between sixth and seventh grade teachers in our study. In mathematics, seventh grade teachers in traditional junior high schools report much less confidence in their teaching efficacy than sixth grade elementary school teachers in the same school districts.[86] This is true in spite of the fact that the seventh grade math teachers were more likely to be math specialists than the sixth grade math teachers.

Finally, middle school and junior high school teachers appear to use a higher standard in judging students' competence and in grading their performance than do elementary school teachers.[87] There is no stronger predictor of students' self-confidence and sense of efficacy than the grades they receive. If grades change, then we would expect to see a concomitant shift in adolescents' self-perceptions and academic motivation. There is evidence that junior high school teachers use stricter and more social comparison-based standards than elementary school teachers to assess student competency and to evaluate student performance, leading to a drop in grades for many early adolescents as they make the junior high school transition. For example, Simmons and Blyth found a greater drop in grades between sixth and seventh grade for adolescents making the junior high

school transition than for adolescents who remained in K-8 schools.[88] Interestingly, the decline in grades is not accompanied by a similar decline in the adolescents' scores on standardized achievement tests, which suggests that the decline reflects a change in grading practices rather than a change in the rate of the students' learning.[89] Imagine what this decline in grades might do to young adolescents' self-confidence, especially in light of the fact that the material may be less intellectually challenging.

Changes such as these are likely to have a negative effect on children's motivational orientation toward school at any grade level. But we believe these types of school environment changes are particularly harmful at early adolescence given what is known about psychological development during this stage of life. Evidence from a variety of sources suggests that early adolescent development is characterized by an increase in the desire for autonomy and self-determination, peer orientation, self-focus and self-consciousness, salience of identity issues, concern over heterosexual relationships, and capacity for abstract cognitive activity.[90]

Furthermore, Simmons and Blyth argue that adolescents need a reasonably safe, as well as an intellectually challenging, environment to adapt to these shifts—an environment that provides a "zone of comfort" as well as challenging new opportunities for growth.[91] In light of these needs, the environmental changes often associated with the transition to junior high school seem especially harmful in that they emphasize competition, social comparison, and ability self-assessment at a time of heightened self-focus. They decrease decision-making and choice at a time when the desire for control is growing. They emphasize lower-level cognitive strategies at a time when the ability to use higher-level strategies is increasing. And they disrupt social networks at a time when adolescents are especially concerned with peer relationships and may be in special need of close adult relationships outside of the home. We believe the nature of these environmental changes, coupled with the normal course of individual development, results in a developmental mismatch so that the fit between the early adolescent and the classroom environment is particularly poor, increasing the risk of negative motivational outcomes, especially for adolescents who are having difficulty succeeding in school academically. By and large, the evidence supports these predictions. When students experience these kinds of shifts in their classrooms and schools, their motivation and engagement declines.[92]

B. Summary and Policy Implications

A sizable number of American youth experience a negative shift in the nature of their educational experiences as they move into secondary school. Our evidence suggests that this shift undermines adolescent students' engagement in the academic content of school, leading to poorer grades and increased truancy. These results are particularly marked for adolescents who were already having academic difficulties in elementary school.[93] Our evidence also suggests that the declines in school engagement results from these kinds of changes in the school context rather than any inherent maturational processes associated with puberty and adolescence. The adolescents in our studies and in the study by Simmons and Blyth did not show these declines in engagement or increases in other problematic behaviors when they experienced more developmentally appropriate shifts in their educational settings. Secondary schools and classrooms can be designed in ways that support rather than undermine the students' motivation and engagement.[94] However, it seems increasingly unlikely that such schools and classrooms will be provided for America's youth, particularly in poor and under-resourced communities.

IV. Conclusions

I have summarized the data on the current status of American's children and adolescents across a wide array of indicators. On the one hand, our children and adolescents are faring better than fifty years ago. On the other hand, too many children are not receiving the kinds of experiences they need for healthy development. The recent recession has exacerbated this situation for many children and adolescents, particularly those that live in poor families and in under-resourced neighborhoods. A timely report from the Foundation for Child Development suggests that the recession may also be undermining the resources available to middle-class families and their children.[95] Efforts need to be made to provide to *all* of America's children and adolescents the types of resources that have been proven to work. As both Edelman and His Holiness the Dalai Lama argue, the future depends on our will to make sure this does happen.

Notes

1. PISA 2009.

2. NAEP 2009.

3. Sameroff et al. 1998.

4. Booth and Crouter 2008; Furstenburg et al. 1999; Edelman 2008.

5. Kozol 2005.

6. Darling-Hammond 2000.

7. Booth and Crouter 2008.

8. Ma et al. 2009.

9. Eccles and Roeser 2011.

10. Wong et al. 2003.

11. Eccles and Gootman 2002; Edelman 2008; IES, no date; Wilson 2010.

12. Gutman, Sameroff, and Cole 2003; Sameroff 2009.

13. Eccles et al. 1993.

14. Edelman 2008; Finn and Zimmer, in press; Reschly and Christenson, in press.

15. Sameroff et al. 1998.

16. Furstenberg et al. 1999; Sameroff 2005, 2009.

17. William Julius Wilson, for example (1990).

18. Eccles and Gootman 2002; Wilson 1990, 2010).

19. Wilson 1990, 2010.

20. Kochhar et al. 2011.

21. See 2010 "Kids Count Data Book."

22. Ogden and Carroll 2010.

23. Ibid.

24. Centers for Disease Control 2010, p. 16.

25. CDF 2011.

26. Needham, Crosnoe, and Muller 2004.

27. CDF 2011.

28. CDF report, January 2011.

29. Duncan, Kalil, and Ziol-Guest 2008.

30. See also Duncan et al. 2010.

31. Annie E. Casey Foundation, Hernandez report (2011), pp. 3–4.

32. Lee and Ranson 2011.

33. Ibid.

34. Duncan et al. 2008, 2010.

35. Booth and Crouter 2008.

36. NAEP 2009.

37. Hernandez 2011, p. 7.

38. Ma et al., 2009.

39. Nansel et al. 2001.

40. Ma et al. 2009, p. 863.

41. CDC 2010, p. 18.

42. See Eccles and Roeser 2011; Finn and Zimmer, in press; Meece and Eccles 2010; Reschly and Christenson, in press.

43. Slominski et al. 2011.

44. Lee and Ranson 2011; Sum, Khatiwada, and McLaughlin 2009.

45. See Booth and Crouter 2008; Heckman 2006; Sameroff 2005.

46. Mortimer 2003.

47. Ibid.

48. Wilson 1990, 2010.

49. Sum and Khatiwada et al. 2008, 2010; Sum and McLaughlin 2008.

50. See Sum, Khatiwada et al. 2008.

51. Sum and McLaughlin 2008.

52. Sum, Khatiwada et al. 2008.

53. Sum, Khatiwada, and McLaughlin 2010.

54. Benson 2006; Eccles and Gootman 2002; Lerner 2007; Moore, Lippman, and Brown 2005; and K. Pitman, CEO of The Forum for Youth Investment.

55. Search Institute 2003.

56. Roehlkepartain, Benson, and Sesma 2003.

57. Sameroff 2005.

58. See also, Furstenburg et al., 1999.

59. Booth and Crouter 2008; Duncan, Ludwig, and Magnuson 2007; Heckman 2006.

60. Eccles and Gootman 2003.

61. See IES what works clearing house web site; Meece and Eccles 2010; NRC/IOM 2004; Reschly and Christenson, in press.

62. Edelman 2008.

63. Simmons and Blyth 1987.

64. See Wigfield et al. 2006 for review.

65. Ibid.

66. e.g., Blos 1965.

67. Casey et al. 2008.

68. e.g., Simmons and Blyth 1987.

69. Ibid.

70. See Eccles et al. 1993.

71. Eccles and Midgley 1989.

72. Elder and Conger 2000.

73. See Wigfield at al. 2006.

74. See Deci and Ryan 2002.

75. See Eccles et al. 1993.

76. See Eccles and Roeser 2010.

77. Ibid. Our own research supports these predictions.

78. See Wigfield et al. 2006.

79. Midgley, Feldlaufer, and Eccles 1989.

80. See Midgley 2002.

81. Midgley and Feldlaufer 1987.

82. MacIver and Reuman 1988.

83. See Wigfield et al. 2006.

84. See Eccles et al. 1993.

85. See Midgley et al. 1988a.

86. Midgley et al. 1988b.

87. See Eccles and Midgley 1989.

88. Simmons and Blyth 1987.

89. Kavrell and Petersen 1984.

90. See Simmons and Blyth 1987.

91. Ibid.

92. See Eccles and Roeser 2010; Meece and Eccles 2010; Reschly and Christenson, in press.

93. Lord, Eccles, and McCarthy 1994.

94. See Eccles and Roeser 2010; Meece and Eccles 2010; Midgley 2002; NRC/IOM 2004; Reschly and Christenson, in press.

95. Hernandez 2011b. Foundation for Child Development.

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Protecting Children in Armed Conflicts
as a New Imperative of International Peace and Security*

Tonderai W. Chikuhwa

> *More and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality….Millions of children are caught up in conflicts in which they are not merely bystanders, but targets. Some fall victim to a general onslaught against civilians; others die as part of a calculated genocide. Still other children suffer the effects of sexual violence or the multiple deprivations of armed conflict that expose them to hunger or disease.*
>
> *Children are both our reason to eliminate the worst aspects of armed conflict and our best hope of succeeding in that change.*
>
> Graca Machel, 1996

One may say that there is no clearer mirror on the soul of who we are than the reflection of how we treat our children. The horrors that are being visited on children in more than thirty conflicts around the world today are a shadow over our collective conscience. The most conservative estimates suggest that in the past decade more than two million children have been killed in armed conflict. Three times that number have been seriously injured or permanently disabled. Millions of others have been forced to witness and even partake in terrible acts of violence. Hundreds of thousands of children continue to be exploited as child soldiers, and tens of thousands of girls are being subjected to rape and other forms of sexual violence. Abductions of children are a more common and widespread enterprise than ever before. And, since 2003, over fourteen million children have been forcibly displaced within and outside their home countries, and between 8,000 and 10,000 children are killed or maimed every year as a result of landmines.

Our most sacred covenant to care for and protect our children is being broken in every part of the world. The 2011 annual report of the Secretary-General to the Security Council on Children and Armed Conflict[1] documented grave violations against children in 21 situations of concern: Afghanistan, Burundi, Central African Republic, Chad, Colombia, Côte d'Ivoire, the Democratic Republic of the Congo, Haiti, India, Iraq, Lebanon, Myanmar, Nepal, the Occupied Palestinian Territory and Israel, Pakistan, the Philippines, Somalia, Sri Lanka, Sudan, Thailand, and Yemen. Furthermore, the report explicitly cited 59 parties—both state and non-state actors— for committing grave violations against children.

This essay focuses on the plight of children in the context of conflict. It looks at the problem specifically through the lens of United Nations' response. The central argument is that the changing nature of conflict has generated an acute protection crisis for civilian

populations in general and children in particular. This has led to a fundamental conceptual and operational shift at the level of the United Nations, namely, a recognition that the protection of children cannot be treated exclusively as a human rights or child rights consideration. It has to be viewed first and foremost as a peace and security concern that requires an operational security response. Grave violations being perpetrated against children in the context of war constitute a direct and legitimate threat to the maintenance of international peace and security.

This conceptual shift is manifested primarily in the sustained priority that the United Nations Security Council has given to children in armed conflict in the last decade, and in particular the structured regime put in place by the Council to engender compliance with international standards for the protection of children. The Security Council's purposeful engagement with the status of children has established a number of important precedents, which carry implications for the human rights agenda as a whole. The Security Council's engagement has increased the pressure on perpetrators of violations by shining a spotlight on the crimes that they commit. It has increased pressure on the United Nations Secretary-General and his Secretariat to react to this crisis. It has increased pressure on the Security Council itself, as it recognizes that its ability (or otherwise) to protect children is a fundamental component of its own credibility. The essay argues that as a result there have been important gains in the protection of children in war. However, the sustained political will of states and a strategic approach to leverage the infrastructure and tools of the United Nations system are required to translate these gains into consistent physical protection for children on the ground.

Graca Machel asked, "Why are children so brutally exposed during modern warfare—not just as collateral damage but as deliberate targets?" This fundamental question marks the point of departure of this essay. Part One begins by examining the changing character of modern warfare, outlining a number of emerging child protection themes. Part Two looks at how children and armed conflict concerns have progressively taken center stage on the international peace and security agenda. The essay looks specifically at how acute concerns for the protection of the rights of children in conflict situations has resulted in prioritization and development of this agenda in the work of the United Nations, leading to deeper integration of this issue in terms of policies, priorities, and operations. Part Three examines in particular the emergence of children and armed conflict as a policy and operational priority for the key departments of the United Nations Secretariat charged with implementing mandates of the Security Council in situations of conflict. Part Four highlights some of the progress that has been made to bring protection to children and outlines some of the remaining challenges.

PART I: The Changing Character of Modern Warfare and Critical Child Protection Themes

In the last decade a number of United Nations reports, including the Graca Machel study and the Machel 10-Year Review Report,[2] have noted with concern that the character and tactics of war are changing, bringing new and unprecedented threats for children. Most notably, today's wars are being fought *within* states rather than *between* states. In many of these new wars, especially in Asia and Africa, conflict is located in peripheral areas where access is difficult. In many cases religious and ethnic affiliations are being manipulated to

exacerbate hatreds or aggression. As a result, the proportion of war victims who are civilians has increased dramatically in recent decades, from five percent to more than ninety percent. At least half of these casualties are children.

It is also evident that children and other vulnerable segments of the civilian population are the direct targets of violence. In addition to thousands of children being killed and wounded as a direct result of fighting, many more children in conflict contexts die from malnutrition and disease. Other fundamental rights, such as education and recreation, are also being denied children in situations of armed conflict. This led Graca Machel to declare that, "War violates every right of a child—the right to life, the right to be with family and community, the right to health, the right to the development of the personality and the right to be nurtured and protected."[3]

The new face of war blurs the lines between military and civilian targets, and has constricted humanitarian space and access to affected populations. Traditional safe havens and critical infrastructures, such as educational institutions and medical facilities, are being deliberately targeted. The rise of terrorism—as well as counter- terrorism measures—has made children more vulnerable than ever before. Conflicts create environments that exacerbate grave violations against children. Therefore, the changing nature of conflict and its impact on children must serve as the overarching framework of analysis for a global agenda to protect children in war.

A. Protection of Children in the Course of Military Operations

New tactics of war, the absence of clear battlefields, and increasingly numerous and diverse parties to conflict (in terms of their composition, motivations, and character) have complicated matters. Moreover, the rise of terrorism has been met with counter-terrorism action that often blurs the line between what is legitimate (and what is not) in addressing security threats. Raids against predominately civilian targets, including night raids and the use of heavy artillery in civilian-populated areas, make children more vulnerable to being killed or maimed and often serve to fuel resentment and further conflict.

Rules of engagement of armed forces stipulate that the protection of civilians should remain the foremost consideration in the course of military operations. However, increasingly the record indicates that these strictures are inadequate to ensure the safety of children. Moreover, as noted by the Secretary-General in his 2010 report to the Security Council on Children and Armed Conflict,[4] there is also a growing practice of putting children in the direct line of danger, for instance through their use for intelligence for military operations. This includes the interrogation of children separated from armed groups during military actions in contravention of standards that require their immediate transfer to protection actors.

The Security Council is now including more explicit civilian protection provisions in its peacekeeping mandates. This has led to development of new arrangements in U.N. peacekeeping operations, such joint civilian, military, and police protection teams and rapid reaction and early warning arrangements. The objective of these initiatives is to deepen information as a basis for more effective action; to better coordinate action across civilian, police, and military components of peacekeeping operations; and to leverage more effectively peacekeeping resources, particularly the advantage of physical presence in remote areas where the access of humanitarian actors may be limited.

B. Terrorism and Counter-Terrorism

The concept of terrorism has come to dominate the security discourse in many places around the globe. Both terrorist actions and counter-terrorism measures have a profound impact on children. Terrorist attacks disproportionately target civilians in hitherto sacrosanct locations, such as places of worship, schools and hospitals, markets, and other public spaces. Children are also increasingly being used to perpetrate these attacks because they can be more easily compelled to such acts and they are less conspicuous. In some locations child suicide bombers have been used.

As a result, anti-terrorism measures often target children, including through the arrest and detention of children suspected of having links to terrorist organizations. Many of these children are detained for extended periods of time for relatively minor offences like stone throwing or demonstrating. In a number of conflicts around the world, children as young as twelve are detained without due process provisions, in violation of international juvenile justice standards. In detention they sometimes suffer beatings, sexual violence, and physical and psychological torture. "Precision" aerial bombardment and other types of military operations also result in what is termed "collateral damage," and children are often the victims.

International humanitarian law is built on the principle of *separation of combatants from civilians* and on *proportionality in the use of force*. Both of these cornerstone elements are being challenged by new types of military actions, with major consequences for children.

C. Asset Wars and Small Arms

There is increasingly a "grey area" in which criminality and politically motivated action intersect. Asset or resource wars have become more common. Such conflicts often revolve around the domination of territory or the state apparatus as a direct means of controlling natural resources, such as oil, diamonds, gold, coltan, timber, or cocoa. There are often a multiplicity of actors vying for a stake, from government armed forces to armed groups opposed to the state, to international interests such as "third-party" states, multinational corporations, and criminal networks. There is often close inter-linkage with other lucrative and mainly illicit trade, for example in weapons and drugs, which serves to fuel and prolong conflict. Beyond conscription as soldiers, children may also be forced to labor in mining activities or be subject to child trafficking.

Asset wars have given rise to complex war economies and have frequently internationalized armed conflict. As a result, the international community faces a considerable challenge in responding. Sanctions regimes and other measures must be increasingly sophisticated and multifaceted to affect those who wage, fuel, and otherwise benefit from conflict. Higher standards of corporate responsibility are required of those enterprises and industries that benefit from the illicit trade of natural resources.

Widespread and ready availability of small arms and light weapons fuels and exacerbates conflict, undermines peace processes, impedes peace building, and hinders the provision of humanitarian assistance. There is a direct correlation between the increased use of children in conflict and the ready availability of small arms. Such weapons are easy even for

the youngest children to manipulate and master. The proliferation of small arms helps to sustain cultures of violence in fragile post-conflict societies.

D. Recruitment of Child Soldiers

Recruitment and use of children has become a common practice of many armed groups for waging war. At root there are numerous and often inter-related factors that drive the recruitment and use of child soldiers. Children are recruited by force or may "voluntarily" join armed groups to safeguard themselves and their families. Many are compelled by poverty and lack of livelihood opportunities, domestic violence, or lack of parental care altogether. Some have seen family members killed in conflict and these children may be motivated by a desire for retribution or revenge. For some, the lack of legitimate avenues for political dissent and participation or ideologies of nationalism or ethnic identity become powerful motivating factors. Particularly in situations of protracted conflict that may have lasted for several decades and decimated the adult male population, the recruitment of children becomes a calculus of the urgent "demand" for fighters and the ready "supply" of children.

  Compared to adults, children are easier and cheaper to recruit. While adults often have to be paid, children may be compelled by the promise of protection and basic sustenance. Children are easily indoctrinated, manipulated, and exploited by adults wielding guns and authority. For many children these adults represent their only role models.

  Reintegration of former child soldiers into communities is a complex and long-term proposition. It begins with negotiating the release of children and their physical extrication from armed groups. The tracing of family and the reunification phase that follows are often complicated, time-consuming, and resource intensive. Beyond the practical challenge of locating the families and communities of children who have sometimes been "lost" for years, successful reunification must also address the challenge of "spiritually" reconnecting children and their communities. This includes dealing with the sense of alienation, guilt, or anger that children may harbor against families whom they may accuse of failing to protect them. At the same time, reintegration programs must also take into account challenges related to the communities themselves being prepared to accept the return of their children in contexts in which atrocities may have been committed by those very children in their communities.[5]

E. Sexual Violence

Sexual violence is one of the most cynical and devastating tactics of war. It is used to achieve military, political, and social objectives through, for instance, the targeting of specific ethnicities or terrorizing populations to force displacement. Data indicates that children are particularly vulnerable to sexual violence in and around refugee and internally displaced population settings and when they are directly associated with armed forces and groups. Child survivors of sexual violence suffer debilitating physical and psychological consequences. This is particularly true for girls who have been raped or forced to "marry" combatants, as well as for their children born of rape.

  Women and girls remain the main victims of sexual violence in armed conflict. However, there are increasingly reports of sexual abuses committed against boys. Information on

sexual violence against boys continues to be thin in part because boys are more reluctant to speak out about these violations and there is inherently a bias against questioning boys about such abuse. Another aspect that tends to be overlooked is the trauma boys face as perpetrators or witnesses of sexual violence. They may be forced to commit rapes either directly by their commander or indirectly though peer pressure. Many may be forced to witness sexual violence perpetrated by others. Landmark jurisprudence related to the conflict in the former Yugoslavia determined that forcing an individual to witness acts of rapes and other sexual violence is considered to be sexual torture under international law.[6]

There are significant challenges in collecting data and reporting on sexual violence against children in armed conflict. Part of the problem lies in the fact that these acts are considered as deep taboos and, as such, survivors and communities are not encouraged to speak out. The lack of trust in judicial processes and the fear of reprisals accentuate the culture of silence. Yet, more precise and comprehensive information, including incident details and identity of perpetrators, is required in order to combat impunity and for more effective programs for survivors. It is recognized that monitoring, reporting, and response to sexual violence requires new perspectives and methodologies, as well as more extensive partnerships across the U.N. system and beyond. For example, in the context of U.N. peacekeeping, collaboration between civilian components and the U.N. military and police may entail the matching of information on sexual violence with intelligence gathered on movements of armed parties and their command structures and *modus operandi*. At the same time, more precise incident-related information must be complemented by macro-level information related to scope, trends, and patterns of sexual violence. More timely and effective programming and dedication of sufficient resources depends on the deepening of all aspects of the information base on sexual violence. This has emerged as a central operational priority of the U.N. system.[7]

F. Targeting Schools and Teachers

The changing nature of conflict is characterized by deliberate attacks against and destruction of educational infrastructures, including the targeting of schoolchildren and teachers. This is illustrated by data which indicates that over one-third of the 72 million out-of-school children of primary school age reside in low-income countries affected by conflict.[8]

Beyond the destruction of educational facilities through deliberate targeting or as collateral damage of armed confrontations, attacks against education also have other faces. For instance, there are reports of the use of acid and gas on girl students on their way to or at school, as well as shootings and suicide bombings on school premises. In some contexts, schools are a prime recruiting ground for armed groups. Elsewhere, school buildings are used as training centers or as military bases, turning them into high-value military targets.

There are numerous motivations for attacking teachers, students, and school buildings, including the achievement of military, political, or socio-cultural objectives. In some cases attacks are perpetrated as a means of creating a general climate of insecurity, to destabilize local communities or target them for retribution for perceived support of the government or to undermine the government by destroying symbols of state institutions. The result is a growing disregard for the notion that schools above all other places should be safe havens

for children. The consequence is the growing fear of children to attend school, of teachers to give classes, and of parents to send their children to school.[9]

G. Diversity of Armed Actors

The nature of armed conflict in recent years is also changing insofar as the character of armed actors is increasingly varied and difficult to define. The 59 parties to conflict cited in the Secretary-General's 2010 report include government forces, armed political opposition forces, rebel groups or liberation movements, community-level self-defense militias, paramilitary and proxy forces, and illegal armed groups. This array of labels reflects the diverse character and motivations of armed actors in contemporary conflicts and the rapidly shifting realities on the ground. The objectives and organizational structures of armed actors are increasingly fluid. Often there is a grey area where political motivations coincide with criminal intent. Prominent examples include the political motivations of the FARC rebels in Colombia and their deep-rooted involvement in the narco-trade, and the criminal gangs in Haiti who have frequently been mobilized by political parties as part of election campaigns. A central emphasis of the United Nations child protection agenda is to engage in child protection dialogue with all parties to a conflict. This continues to be a sensitive issue for national governments, which consider such engagement by the U.N. as conferring legitimacy on their opponents and constitutes a fundamental encroachment on their sovereignty.

PART II: Placing Children on the United Nations Peace and Security Agenda

As the dangers for children in situations of armed conflict have become more acute, the United Nations system has moved to treat their plight as a legitimate threat to international peace and security requiring an operational security response. In a practical sense this has signified an extension of the debate on children and conflict. It has moved it from its traditional human rights frame, under the rubric of the United Nations Human Rights Council and the General Assembly, to becoming a standing concern on the agenda of the Security Council as the pre-eminent global body for the maintenance of international peace and security. This shift has brought a new level of attention, energy, and resources. In the past decade the most notable progress on the children and armed conflict agenda has been the concerted, purposive, and systematic engagement by the U.N. Security Council and the consequent gains that have been made in addressing the impunity of perpetrators and the resourcing of protection programs for children in situations of conflict.

The engagement of the Security Council has raised the stakes on all sides. From the perspective of state and non-state parties who are committing grave violations, the perceived and actual consequences for abusing children has risen as the Security Council has put in place a monitoring and compliance regime and moved toward the adoption of sanction measures against violators in successive resolutions. From the perspective of the Secretary-General and other United Nations system actors, the engagement of the Security Council has resulted in a new sense of urgency and pressure within the system to re-evaluate and redirect priorities and to better coordinate actions on the ground. From the perspective of the Security Council itself, the stakes have also risen because as the rigor of

its engagement on this issue has increased, so has the level of outside interest, understanding, and scrutiny of the work of the Council in this area. Concerted action for children is increasingly perceived by the Security Council as a matter reflecting its own credibility. The children and armed conflict agenda has also raised the stakes by opening the door for more systematic engagement of the Security Council on a number of other critical thematic human rights concerns, such as *Women, Peace, and Security* and *Protection of Civilians in Armed Conflict*.

A. Critical Precedents in the Work of the Security Council

The engagement of the Security Council on a thematic issue like children and armed conflict has necessitated a fundamental shift in the mode of business of the Council and, to some extent, a redefinition of the scope of its engagement. In its mode of work the Security Council typically adopts a situation-specific approach, focusing primarily on country situations of concern. The threshold consideration for inclusion on the agenda of the Council is a determination by its fifteen members that a given situation poses a legitimate threat to international peace and security. Hence, the Security Council has on its present agenda some of the most pressing situations of conflict and instability, such as Sudan and South Sudan, Côte d'Ivoire, the Democratic Republic of the Congo, Somalia, Iraq, Afghanistan, and Haiti. Yet, it is clear that what makes it onto the formal agenda (and what does not) is also a political determination by Security Council members. It is conspicuous, for instance, that a number of grave situations in which there has been protracted conflict are not formally on the agenda of the Security Council, such as the cases of Colombia, Myanmar, and Chechnya.

The engagement of the Security Council on the thematic issue of children and armed conflict must be viewed against this backdrop of political considerations. When the Council adopted the first resolution on children and armed conflict, SCR1261 (1999), it signaled that the issue as a cross-cutting theme constitutes a legitimate threat to international peace and security that belongs on its agenda. The practical implication of this decision is that the Council now focuses on all situations of concern in which children are suffering in the context of armed conflict. As the substantive gatekeeper of the children and armed conflict agenda, the Secretary-General makes the determination of situations of concern requiring Council attention. Therefore, the central political preoccupation and concern within the Security Council, and more broadly among many member states of the United Nations, is that thematic issues such as children and armed conflict may be used to "back-door" specific country situations onto the agenda of the Security Council.[10] This has been a concern, for example, for Colombia, as well as for permanent members of the Security Council, such as the United Kingdom and the Russian Federation, as the children and armed conflict agenda over the past years has focused on violations by paramilitary groups in Northern Ireland and by Chechen rebels.

This central political dilemma has become an increasingly vexed question as the children and armed conflict agenda has evolved and the Security Council moves closer to adoption of sanction measures against violators. It is a testament to the political will of states to address this issue that these high-line political considerations have so far been overridden by a deep consensus and imperative to protect children in situations of armed conflict.

Traditionally in the context of United Nations institutional frameworks, human rights issues have been addressed primarily in the Human Rights Council and the General Assembly. The adoption of Resolution 1261 set an important precedent as the first thematic human rights concern to be formally taken up by the Security Council. Therefore, the treatment of children and armed conflict by the Security Council sparked a highly charged discourse among member states. Many consider that the Council has encroached on the prerogative of the General Assembly and Human Rights Council, which do not have selective membership but include all member states of the United Nations. However, over the years since the Security Council's adoption of 1261, it has been broadly recognized that the Council has unique tools that it may bring to bear, particularly to address impunity, and that this does not preclude the treatment of the issue by the General Assembly and Human Rights Council. The precedent-setting adoption of 1261 opened the door for the Security Council to include other thematic human rights issues as formal and standing concerns on its agenda, including the *Protection of Civilians;*[11] *Women, Peace and Security*; and *Sexual Violence in Conflict.*[12]

The active consideration of such thematic issues by the Security Council represents a deeper penetration than ever before of human rights into the realm of international peace and security. It has translated into a more fundamental and systematic integration of such concerns into the peacekeeping and peace-building mandates of the Security Council. It is exemplified by more specific and operational language on the protection of civilians and children and on conflict-related sexual violence in country-specific resolutions on the Democratic Republic of the Congo, Côte d'Ivoire, Sudan, and Somalia, to name a few.[13]

B. Establishing a Monitoring and Compliance Regime through Security Council Resolutions on Children and Armed Conflict

Since 1999, the Security Council has adopted eight resolutions on children and armed conflict: 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), and 1998 (2011). These resolutions represent an important pillar in the international normative protection infrastructure for children. Their central aim has been to put in place a monitoring and compliance regime to compel parties to conflict to adhere to international child protection standards. There are four key elements of the compliance regime:

- Review of the conduct of parties to conflict, resulting in the systematic naming and listing of offending parties for grave child rights violations;
- Establishment of a monitoring and reporting mechanism to provide systematic and reliable information on violations and compliance, as a basis for action;
- Initiation of dialogue with parties to conflict leading to the development and implementation of actions plans to halt grave child rights violations;
- Ensuring accountability through action by key policy and decision-making bodies.

Security Council Resolution 1261 (1999) marked the entry point of the Council on children and armed conflict. It affirms that the protection of children in situations of armed conflict constitutes a legitimate international peace and security concern. The resolution outlines a broad framework for the protection of children and may be read alongside Graca Machel's report on the "Impact of Armed Conflict on Children." The resolution essentially draws out the major themes and priorities outlined by Graca Machel as the broad

framework for the engagement of the Security Council. The seven subsequent resolutions do not add substantively new elements but rather focus on and refine critical aspects of Res. 1261. In this sense the first resolution may be viewed as the foundation stone of the Council's formal engagement on children and armed conflict.

The subsequent resolutions have sought to advance the children and armed conflict agenda by refining critical substantive elements and orienting them toward concrete measures on behalf of children. The resolutions have dealt with multiple aspects of the agenda, such as the inclusion of child protection in peacekeeping mandates, the responsibility and engagement of regional groups, and the importance of programs for disarmament, demobilization, and reintegration of children. The unifying strand and central emphasis has been to structure a monitoring, reporting, and compliance regime. Therefore, Security Council Resolution 1314 (2000) provides a more specific plan of action for child protection, calling for an end to impunity for those who abuse children, including their exclusion from amnesty provisions; intensification of efforts to obtain the release of abducted children; and inclusion of child protection advisers in United Nations peacekeeping operations. The key feature of Security Council Resolution 1379 (2001) is to formally establish the practice of monitoring, reporting, and compliance by mandating the Secretary-General to prepare and publish a formal list of parties that recruit or use children in situations of armed conflict as an annex to his annual report to the Security Council on children and armed conflict. Resolution 1460 (2003) reinforces accountability by calling on parties identified in the Secretary-General's list to provide information on steps they have taken to halt the recruitment and use of children, with the Security Council expressing its intention to take appropriate steps when insufficient progress has been made.

Resolution 1539 marks a watershed moment in that it specifies, concretizes, and unifies the key elements of the monitoring, reporting, and compliance regime that were introduced in the previous resolutions. Through Resolution 1539, the Security Council requests that the Secretary-General provides information on progress and compliance by parties named in the annexes to his report, taking into account information concerning other violations and abuses being committed against children. The broadening of the focus to other grave violations has been critical, because hitherto the Council's formal engagement was focused on the issue of recruitment and use of child soldiers as a violation of international law. Security Council Resolution 1539, for the first time, articulates other categories of grave violations against children, thereby expanding the protection framework. The agenda now also addresses the killing and maiming of children, rape and other forms of sexual violence, abductions, attacks on schools and hospitals, and denial of humanitarian access for children. The Security Council, for the first time, requested parties to conflict to prepare concrete, time-bound action plans to end grave violations for which they have been cited.[14] The Secretary-General was also requested to outline modalities of a systematic and comprehensive monitoring and reporting mechanism. The Council expresses its intention to consider imposing "targeted and graduated measures" against those parties who commit grave violations against children, *inter alia*, "a ban on the export or supply of small arms and light weapons and of other military equipment and on military assistance, against these parties if they refuse to enter into dialogue, fail to develop an action plan or fail to meet the commitments included in their action plan." The Security Council also formally assigned the primary responsibility to ensure effective follow-up to resolutions and commitments on children affected by armed conflict to the heads of United

Nations country presence, namely, the Special Representatives of the Secretary-General and United Nations Resident Coordinators. This marked the first time that the most senior U.N. officials on the ground were formally and explicitly made responsible for overall follow up on the agenda, while specialized agencies, such as UNICEF and peacekeeping operations, are still required to lead in day-to-day implementation.

Under the new framework established by Res. 1539, Security Council Resolution 1612 also advances the protection of children in a number of crucial respects. The Council requests the Secretary-General to implement the monitoring and reporting action plan as specified in the 2005 report of the Secretary-General to the Security Council, to record the six categories of grave violations against children. The Security Council requests the heads of U.N. country presence to initiate contact with the parties to conflict listed in the Secretary-General's report with a view to engaging in dialogue leading to the preparation and implementation of time-bound action plans to halt the recruitment of child soldiers and other grave abuses. The Security Council establishes a dedicated Working Group on Children and Armed Conflict to review reports on violations and action plans by parties to conflict. The Security Council mandates the Secretary-General to continue reporting specific information on grave violations against children and to prepare monitoring lists naming offending parties in situations on the Council's agenda and other situations of concern.

The import of the Security Council Working Group on Children and Armed Conflict is that it further deepens and systematizes the engagement of the Council on children and armed conflict. In a practical sense, through the working group, the Security Council adjusts its frequency and mode of engagement on the issue. Even though children and armed conflict has formally been on the agenda of the Security Council since 1999, until the establishment of the working group the Council continued to deal with this issue on a "seasonal basis" in its annual Open Debate on children and armed conflict. This was inadequate from the perspective of timely response to rapidly evolving situations on the ground. The establishment of the working group provides a vehicle for in-country child protection actors to seize the attention of the Security Council about situations and incidents of concern for children on an as-needed basis throughout the course of the year. The annual Open Debate of the Council on children and armed conflict continues to serve as an important moment on the calendar of the Security Council to advance the children and armed conflict agenda, but the day-to-day work of monitoring compliance is being driven at the level of its working group.

Resolutions 1882 (2009) and 1998 (2011) build two important new aspects into the monitoring and compliance regime. As already noted, although the Security Council has begun to consider a broad range of violations against children in its review, hitherto its mandate to the Secretary-General to list parties to conflict has been restricted to those who recruit and use child soldiers. Res. 1882 for the first time mandates the Secretary-General to list parties *credibly suspected* of committing systematic acts of sexual violence against children, while Res. 1998 extends the list to include parties who target schools and hospitals. These two new triggers for the Secretary-General's list have brought greater balance to the children and armed conflict agenda and have expanded the protection framework for children.

PART THREE: Children and Armed Conflict as an Operational Priority of the Secretary-General and the United Nations Secretariat

A. Secretary-General's Report on Children and Armed Conflict as a Protection Instrument

The annual report of the Secretary-General to the Security Council on children and armed conflict defines the United Nations' substantive agenda on this issue, including the situations designated of concern for children. The report has always sought to establish the highest possible threshold of protection. In terms of the substantive elements they advance, the Security Council resolutions respond to the policy recommendations contained in the Secretary-General's annual report. Thus, the Secretary-General's report has been the driver in shaping the evolution of the children and armed conflict agenda in the Security Council. At the same time, the vigorous responses of the Council in its resolutions have, in turn, challenged the United Nations system, NGOs, and other key stakeholders to act more effectively and be more accountable in their work. The exchange between the United Nations Secretariat and the Security Council (through the "tandem-instruments" of the Secretary-General's report and resolutions of the Security Council) has been the primary vehicle for advancing the global child protection agenda. The report has served as an authoritative narrative account of the plight of children in conflict zones, thereby elevating the understanding of this problem. At the same time, it has progressively evolved into a more precise monitoring and compliance report—a "report-of-record"—on parties to conflict and the violations they commit, which serves as a basis for targeted measures against the perpetrators.

It was recognized early on that the report of the Secretary-General must be crafted in a specific way if it is to serve as an instrument to facilitate concrete action by the Security Council and other policy-level actors. At a minimum, the report has to represent the different dimensions and nuances of the children and armed conflict *problematique*, and serve as a tool to enhance global understanding and awareness. It has to focus the attention of the Council more explicitly on those parties to conflict that are committing violations. Hence, the Secretary-General is mandated to list these parties as a focal point for the Council and a clear signal of its intent to perpetrators. The report has to ensure that the spotlight is maintained on all parties to conflict that commit violations, both state and non-state actors. This has been achieved, notwithstanding the intense political sensitivity of the Secretary-General naming states. It has to ensure that the Security Council maintains its focus on all situations of concern for children, beyond the limited number of situations that are on its country-specific agenda (hence the gradual expansion of the listing exercise to include parties in situations not on the country-specific agenda). It has to ensure that the level of specificity regarding the listed parties is gradually increased, as a basis for action against explicitly named groups or even individuals (i.e., it is possible for the Security Council to adopt direct sanctions, such as a travel ban or asset freeze on Laurent Nkunda of the FDLR, whereas targeted measures against a broader category, such as "fighting groups in Afghanistan," is not possible in terms of sanction mechanics). The report has to serve as a means to forge a consensus understanding and agreement on the grave violations that constitute the basis for monitoring and reporting. This is also a process of ensuring an expansion beyond the initially rigid focus of the Security Council on the child soldiering dimension of children and armed conflict. It has to offer a viable technical roadmap for a monitoring, reporting, and compliance regime. Furthermore, it has to ensure that

information contained in the report is unimpeachable in its reliability, accuracy, and timeliness, if it is to serve as a basis for Security Council action (including possible sanctions measures).

B. Secretary-General's Monitoring and Reporting Mechanism

The Fifth Report of the Secretary-General to the Security Council on Children and Armed Conflict[15] represents the culmination of a strategic process begun in 1999 to build-in all of the features outlined above, and develop a compliance report-of-record on grave violations against children. The centerpiece of this report is the specification by the Secretary-General of a structured mechanism to monitor and report on grave violations against children. The monitoring and reporting mechanism operates at three principal levels:[16] (1) Country level: Information gathering, coordination, action and preparation of reports at country-level; (2) Headquarters Level: Coordination, scrutiny and integration of information, and preparation of reports at headquarters-level; (3) Destinations for action: Monitoring information included in reports used to obtain concrete action to ensure compliance to be taken particularly by bodies that constitute "destinations for action," such as national governments, regional organizations, the Security Council, the General Assembly, the Human Rights Council and Committee on the Rights of the Child, the International Criminal Court, United Nations Country Teams, and United Nations Peacekeeping Operations, among others.

The mechanism monitors and reports on the six categories of violations against children. It has enabled U.N. operational actors to determine and agree upon coordination arrangements and has specified accountabilities in the U.N. system.

C. Strengthening the Child Protection Role of U.N. Peacekeeping and Political Missions

United Nations peacekeeping and political missions are the operational arm of the Secretary-General, responsible for executing mandates of the Security Council, including the operational aspects of the children and armed conflict agenda as articulated in the resolutions cited above. There has been significant progress to integrate child protection in the policies, priorities, and operations of United Nations peacekeeping and political missions.

Notably, in 2009, the Department of Peacekeeping Operations (DPKO) and the Department of Field Support (DFS) adopted a Policy Directive on Mainstreaming the Protection, Rights and Well-being of Children Affected by Armed Conflict ("the Directive"). This ground-breaking policy enshrines and reinforces the role of peacekeeping missions in the protection of children. The Directive is built around the key operational elements of Security Council Resolutions 1612 and 1882. The Directive specifies the role of peacekeeping operations in key areas. It includes such instructions as the monitoring and reporting of grave violations against children; the conduct of dialogue with parties to the conflict for the preparation of time-bound action plans to address the grave violations for which they have been cited by the Secretary-General; and other responsibilities such as the provision of regular training for civilian, police, and military personnel in peacekeeping operations on child protection issues.

In 2010, in an effort to bring consistency throughout all U.N. missions, the Department of Political Affairs (DPA) transmitted the DPKO-DFS Child Protection Directive to all relevant Special Political Missions under its purview. This is seen as an interim measure, pending DPA's internal review of the implications for its political missions of Security Council resolutions on children and armed conflict and the institution of a similar DPA policy.

It has been evident that the effective implementation of the Directive and consistent follow up of key operational elements of the Security Council resolutions depends on the deployment of the requisite child protection expertise to United Nations missions. In recognition, the Security Council has called for the deployment of Child Protection Advisers (CPAs) to all relevant peacekeeping and political missions. The broader General Assembly has also welcomed the deployment and role of Child Protection Advisers, including through General Assembly Resolution A/RES/62/141 on the Rights of the Child, and through its Special Committee on Peacekeeping Operations as referenced in the Secretary-General's report to the General Assembly A/64/19.

To date, CPAs have been appointed in nine peacekeeping missions and two Special Political Missions of the U.N. CPAs have ensured that reports of the Secretary-General on peacekeeping operations and specific country reports on children and armed conflict have more consistently included reliable and timely information and analysis as well as feedback to states about concrete child protection measures that are being undertaken. CPAs have also ensured that mission senior management is increasingly engaged on child protection at the highest level. More and more, child protection is being understood and reflected as part of the overall mission success criteria and performance benchmarks for which United Nations Special Representatives and Resident Coordinators are directly accountable.

D. Child Protection in Mediation, Peace Processes, and Agreements

Experience has shown that the long-term sustainability of peace depends on addressing the specific needs of children in peace-mediation processes and resultant agreements. Not to do so carries the risk of children ultimately becoming "spoilers" into the future. Since 2000, a number of peace processes and ceasefire agreements have reflected child protection considerations.[17] However, the specific provisions have not necessarily been consistent or crafted in such a manner as to have a practical bearing as the agreements are operationalized.

One of the key challenges is to overturn the perception (including that of many United Nations mediators) that the broader political considerations and dynamics of a peace process may be adversely affected or compromised by raising child protection issues at the negotiation table. There is often a reticence to consider the protection of children as a "high-line" priority on par with achieving or maintaining ceasefires, for instance. Yet such issues as the immediate cessation of grave violations against children or the unconditional release of all children associated with fighting forces should be seen as primordial to any ceasefire agreement. Continued violations, such as child recruitment or unwillingness to identify and release children already in fighting forces, must be formally stipulated as violations of ceasefire agreements by parties to conflict. Other specific issues that should be reflected as integral provisions of peace agreements include terms for child disarmament, demobilization, and reintegration; care of internally displaced children; participation of

children in transitional justice frameworks; and specific attention and resources for children in the recovery and reconstruction phases.

In negotiation terms, the universal moral consensus on the protection of children may be viewed as an entry point and "comparative advantage," a common point of agreement around which parties can be brought to the negotiating table, and a good-will prerequisite for broader negotiations. It is imperative that children are not made to wait until peace is settled. Parties should be required to make child protection commitments at all stages of the peace process, whether a ceasefire or peace agreement is imminent or not. In a practical sense this means that child protection elements should be routinely included in guidance materials for mediators, in mediation training programs, and in development of mediation tools.[18]

PART FOUR: Progress in the Protection of Children

A strong momentum for the protection of children in situations of conflict has been generated over the past ten years. A comprehensive normative protection framework is now in place. The sustained engagement of the Security Council has been a critical factor in advancing the child protection agenda, particularly in terms of engendering compliance with international law. The preceding sections have outlined important precedents and progress in norm building at the level of the U.N. Security Council and in the operational responses of the Secretary-General and the United Nations Secretariat. Highlighted below are a number of examples that may be considered as pivotal developments specifically to address the impunity of the perpetrators of grave child rights violations. These examples represent important precedents in themselves, and are indicative of the priority focus at all levels of the international system on holding perpetrators to account.

A. Building a Comprehensive Normative Infrastructure for the Protection of Children

The past decade has seen the elaboration and strengthening of the international normative infrastructure for the protection of children. The international community has put in place a robust and comprehensive legal framework specifically for the protection of children in situations of armed conflict. The Convention on the Rights of the Child, which enshrines many of these protections, is the only international treaty that enjoys near universal ratification (only the United States of America and Somalia have yet to ratify the convention). The international community has adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The Rome Statute for the International Criminal Court (ICC) has been adopted and classifies crimes against children as war crimes under international law. African countries have adopted the African Charter on the Rights and Welfare of the Child, the first regional treaty establishing 18 years as a minimum age for any recruitment or participation in hostilities. International Labour Organization Convention 182 has been adopted, which defines child soldiering as one of the worst forms of child labor. It also sets 18 as the minimum age for forced or compulsory recruitment.[19] In addition the international community has expressed its commitment to address the plight of children in conflict situations through ten General Assembly resolutions on the Rights of the Child. Furthermore, the eight resolutions of the U.N. Security Council on children and armed conflict are designed

specifically to "give teeth" to children's interests by holding perpetrators of violations to account and thereby compelling parties to conflict to respect international law. As "paper promises" for children, these standards represent a remarkably high threshold of protection. The emphasis now has to shift to application on the ground.

B. Indictment by the International Criminal Court of Thomas Lubanga Dyilo

On March 18, 2006, the Chief Prosecutor of the International Criminal Court issued a statement announcing the indictment of Thomas Lubanga, founder and leader of a militia group in Ithuri, in the Democratic Republic of the Congo, for commission of war crimes: *conscripting and enlisting children under the age of 15 years* and *using children to participate actively in hostilities.* In his statement, the prosecutor also stressed:

> This is the first case, not the last. The investigation is ongoing, we will continue to investigate more crimes committed by Thomas Lubanga Dyilo and we will also investigate other crimes committed by other groups. This is important, it's a sequence. We will investigate crimes committed by other militias and other persons—this is the first case, not the last….We are totally committed to staying in Congo—to make sure justice is done.[20]

This was the very first case of the ICC and it sent a signal that the protection of children is the highest priority.

C. Successful Prosecution of Jean-Pierre Biyoyo in the Democratic Republic of the Congo

On March 19, 2006, Major Jean-Pierre Biyoyo became the first person to be convicted in a national judicial process for recruiting child soldiers. He was sentenced to five years imprisonment by a military tribunal. The case establishes an important precedent in that it represents the first time that a Congolese court has tried and convicted a soldier of its national army for recruitment of children.

D. Indictment of Charles Ghankay Taylor by the Special Court for Sierra Leone

Former President of Liberia, Charles Taylor, was transferred into the custody of the Special Court for Sierra Leone on March 17, 2006, indicted on eleven counts of war crimes and crimes against humanity, including: *"conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities."*[21] The case sets an important precedent by indicting, for the first time, a former head of state for recruitment and use of children. It should also be noted that the recruitment of children has been included in the list of counts against all eleven individuals indicted by the Special Court.

E. Submission of Action Plan to End Recruitment and Release Children by Force Nouvelles, Côte d'Ivoire

In November 2005, the Force Nouvelles, one of the parties cited by the Secretary-General for recruitment and use of child soldiers in Côte d'Ivoire, signed a time-bound action plan in the context of dialogue established under the framework of SCR 1612 (2005). In the action plan the group committed to taking measures to prevent recruitment of children and to the release of all children associated with their fighting forces. This commitment led to the release of more than 1,600 children. The pressure exerted on the group in the framework of SCR 1612 (2005) also opened the door for child protection dialogue beyond the issue of recruitment and use of children. For example, the top leadership of the Force Nouvelle, at the behest of the United Nations, also issued a Command Order to its forces in April 2006, ordering the release of all children in detention in the northern half of Côte d'Ivoire, which was under its administrative control, putting an end to the practice of detention of children. The issue of juveniles in detention had been a major child protection concern in rebel controlled and administered territory, given the nonexistence of a functional system of the administration of justice.[22] Since the Forces Nouvelle action plan, the U.N. has concluded similar agreements with parties in places such as the Philippines, Uganda, Sudan, Chad, and Myanmar, to name a few, resulting in the release of thousands of children from state forces and non-state armed groups.

F. Sanctions by the U.N. Security Council for Child Recruitment in Côte d'Ivoire and the Democratic Republic of the Congo

On February 7, 2006, the Security Council Sanctions Committee for Côte d'Ivoire, established pursuant to Resolution 1572 (2004), approved a list of individuals subject to specific sanction measures, including travel ban and attachment of financial assets. Martin Kouakou Fofie of Force Nouvelles, Commandant of Korogo Sector, was listed in this regard under the citation that forces under his command had engaged in recruitment of child soldiers, abductions, and sexual abuse and exploitation. Similarly, in 2009 under the framework of Resolution 1533, the Security Council Sanctions Committee for the DRC designated several individuals for targeted measures specifically for the crime of recruitment and use of children. These sanction measures were not adopted in the framework of the specific resolutions on children and armed conflict but it signals the willingness of the Council to consider imposing sanction measures for violations against children under the frame of existing sanctions regimes. As such it represents a first critical step towards establishment of a thematic sanctions regime on children and armed conflict.

G. Recommendation of Sudan Expert Panel for Sanctions for Violations against Children

On April 19, 2006, the Secretary-General's Panel of Experts on Sudan issued a recommendation that:

The Security Council should request the Committee to consider information on children and armed conflict presented to the Council by the Secretary-General under the monitoring and reporting mechanism established in Council resolution 1612 (2005). The Committee would then use this information to assist in the deliberations on possible designation of individuals

who commit violations of international humanitarian or human rights law as being subject to the measures in subparagraphs 3(d) and 3(e) of resolution 1591 (2005).

Subparagraphs 3(d) and 3(e) of Security Council Resolution 1591 (2005) refer to sanction measures as follows:

3(d) that all States shall take the necessary measures to prevent entry into or transit through their territories of all persons as designated by the Committee pursuant to subparagraph (c) above, provided that nothing in this paragraph shall obligate a State to refuse entry into its territory to its own nationals;
3(e) that all States shall freeze all funds, financial assets and economic resources that are on their territories on the date of adoption of this resolution or at any time thereafter, that are owned or controlled, directly or indirectly, by the persons designated by the Committee pursuant to subparagraph (c) above, or that are held by entities owned or controlled, directly or indirectly, by such persons or by persons acting on their behalf or at their direction, and decides further that all States shall ensure that no funds, financial assets or economic resources are made available by their nationals or by any persons within their territories to or for the benefit of such persons or entities.[23]

The recommendation illustrates the increasing cohesion of various frameworks of the Security Council. It reinforces the assertion that the Council is prepared to consider sanctions measures against those who commit grave violations against children under the framework of existing country-specific regimes. This level of language is unprecedented in its specificity and focus on violations against children and it opened the door for similar language in the context of several other country-specific sanctions regimes.

H. Adoption of U.S. Legislation on Conflict Minerals

In response to grave human rights violations, particularly sexual violence, in the conflict in the Democratic Republic of the Congo, the United States Congress adopted the Conflict Minerals Trade Act in 2009. This legislation is intended to help prevent deadly conflict over minerals in eastern Congo. The objective of the bill is to regulate the importation and trade of tin, tungsten, and tantalum, which are minerals used in cell phones, laptop computers, and other electronic devices. The bill entails the audit of mineral mines to certify them as conflict free (or not), and the mapping of such mines. Importers must certify that they are not importing conflict minerals. This legislation represents an important innovation and catalyst for greater accountability in the corporate sector. It is crucial in that it attacks in a practical sense the root causes of conflict.[24]

I. Integrating the Protection of Children Affected by War into the Agendas and Programs of Regional and Other International Organizations

Regional organizations and groupings have also begun to incorporate children and armed conflict concerns more systematically into their agendas, policies, and programs, including the area of post-conflict reconstruction and rehabilitation. The most notable examples are the adoption by the European Union of far-reaching guidelines on children and armed

conflict[25] and the establishment by the Economic Community of West Africa of a Child Protection Unit within its Secretariat as a locus of advocacy to ensure more systematic orientation of ECOWAS to children's issues, particularly in its peace-making and peacekeeping engagements.[26] The past several years have also seen deeper collaboration on child protection between the United Nations and the African Union, including in the context of the U.N.-AU hybrid peacekeeping missions for Darfur and the political mission for Somalia.

J. Increased Global Awareness and Advocacy on Children Affected by Armed Conflict and Engagement of Civil Society

The past several years have seen a significant increase in overall coverage of children and armed conflict, as well as a more sophisticated treatment of the issue, particularly by the media. This awareness and publicity of the plight of war-affected children has been an important factor in maintaining the pressure on the United Nations system and other important policy-level institutions to make commitments and undertake concrete actions and initiatives on behalf of children. Civil society organizations and groupings are also engaging more concertedly on children and armed conflict concerns. Among these entities are NGOs, faith-based groups and communities, academia, women's groups, and children and youth themselves. NGOs have played an especially critical role in the development and advancement of the agenda. In recent years space has also been opened for more direct exchange between civil society and key United Nations bodies such as the Security Council.[27] The role of academia is also crucial, particularly to ensure that the significant gaps in knowledge that exist on children and armed conflict issues are systematically assessed and addressed. Conspicuous gaps in our knowledge are hampering effective advocacy and program response.[28]

PART FIVE: Several Challenges for Study and Implementation

Addressing the root causes, including the issues of corporate responsibility and natural resource wars.

Applying the strong norms to the reality for children on the ground, which is getting progressively worse.

Increasing the cost of committing crimes against children as an effective deterrent to state and non-state parties who contravene their most basic rights. In other words, how do we make the cost of recruitment prohibitive? There must be no pay-off.

Ensuring that sanctions against perpetrators are applied equitably and consistently.

Information/knowledge challenge. We cannot address what we do not understand.

Rethinking partnerships with academia, the research community, communities of faith, practitioners, etc. We must broaden the circle of stakeholders.

How do we reach and mobilize the global community? How do we sustain media focus and persuade media to treat complex problems in a more sophisticated way? How do we keep children on the agenda?

Resource challenges. We must significantly ramp up funding at a moment of global austerity. We need a "surge" investment.

Risks of locating children under the peace and security rubric. There is the danger of politicizing human rights issues.

Fostering national "ownership," rather than relying solely on the United Nations.

PART SIX: Conclusion: Distance between Norms and Reality on the Ground

Although the plight of children in many situations of armed conflict around the globe remains grave and unacceptable, collaborative efforts over the last ten years among national governments, regional organizations, United Nations entities, NGOs, and civil society organizations, have resulted in notable progress. In fact, these efforts have created a strong momentum for the protection of children on the ground. Notable advances include the elaboration and strengthening of international norms and standards for the protection of children; more fundamental mainstreaming of children and armed conflict concerns in the United Nations system and beyond; and, increasingly, the broadening of the global circle of stakeholders and actions on behalf of children. Perhaps most significantly, the purposeful engagement of the Security Council has raised the stakes considerably on this issue, not only for those who are committing grave violations, but also for the United Nations system and other actors that are charged with advocacy and program interventions for children and armed conflict.

  We are beginning to witness a turning of the tide for children as commitments translate to concrete action for their protection. However, it is also evident that the progress that has been registered thus far remains fragile and may dissipate if not consolidated and reinforced.

*The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

Notes

1. 10th Report of the Secretary-General to the Security Council on Children and Armed Conflict, April 2011, United Nations document A/65/820-S/2011/259.

2. Reference to Machel report and the 10-Year Machel Review report.

3. "Impact of Armed Conflict on Children," Report of the Expert of the Secretary-General, Ms. Graca Machel, submitted pursuant to General Assembly Resolution 48/157 (1996).

4. Reference (S/2010/181).

5. For the approach and framework of the U.N. on reintegration of children formerly associated with armed forces and groups, refer to the Paris Principles and Commitments. For the perspective of war-affected children on reintegration programs, refer to "'Will You Listen?': Young Voices from Conflict Zones," Youth report prepared in the context of the 10-Year Graca Machel Study Strategic review.

6. Refer particularly to the jurisprudence of the International Criminal Tribunal for Yugoslavia (1998 Furundjiza case).

7. For information on the system being put in place by the U.N. to monitor conflict-related sexual violence refer to "Guidelines on Monitoring, Reporting and Analysis Arrangements on Conflict-Related Sexual Violence established pursuant to Security Council Resolution 1960," Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (2011).

8. UNESCO report.

9. There has been a concerted campaign in recent years as a response to this crisis of education in conflict and other emergency settings. This resulted in the adoption of General Assembly Resolution A/64/L.58 on "The Right to Education in Emergency Situations," in July 2010. The resolution affirms that attacks on educational buildings is a war crime and threatens the achievement of the Millennium Development Goals, especially as relates to "education for all." Attacks against schools and hospitals have been designated as one of six grave violations that are now systematically recorded under the Secretary-General's "Monitoring and Reporting Mechanism on Grave Violations Against Children in Armed Conflict"; and in 2011, the Security Council, through Resolution 1998, gave the Secretary-General the mandate to list state and non-state parties to conflict who target schools and hospitals. A Global Coalition for Protecting Education from Attack has also been created, comprising U.N. agencies, NGOs, and researchers. The coalition focuses on the prevention of attacks on education, effective response, enhanced monitoring and reporting, increased accountability, and development of stronger international norms.

10. The Secretary-General has made it clear that the focus of the children and armed conflict agenda is not on situations of concern, but rather on parties that commit grave violations against children. The mention of country situations is for the purpose of geographically locating these parties to conflict rather than to name specific countries as situations of concern.

11. Refer to Security Council resolutions on the Protection of Civilians in Armed Conflict.

12. Refer to Security Council Resolutions 1325, 1820, 1888, 1889, and 1960, on Women, Peace and Security and Sexual Violence in Conflict.

13. Refer, for example, to Security Council Resolutions 1880 and 1881 on Côte d'Ivoire and Sudan.

14. Action plans are formal undertakings by parties to conflict which include at a minimum the following: (i) Commitment by the listed party to immediately end violations; (ii) Commitment by the listed party to release all children within its ranks; (iii) Commitment by the listed party to cooperate with DDR program; (iv) Specific measures to prevent recruitment and re-recruitment of children; (iv) Designation by listed parties of a high-level focal point to liaise with the U.N. team during the implementation of the action plan; (v) Agreed, time-bound benchmarks for measuring progress and compliance; (vi) Issuance of formal instructions by the political and military leadership of the listed party to their chain of command, reflecting commitments contained in the action plan; (vii) Agreed arrangements for access by the U.N. team for monitoring and verification of the action plan.

15. Report of the Secretary-General to the Security Council on Children and Armed Conflict, United Nations document symbol-number: A/59/695-S/2005/72).

16. As specified in the report cited above.

17. Peace processes and peace agreements that reflect children and armed conflict concerns include:
i.   Agreement on Disarmament, Demobilisation and Reintegration between the Government of Uganda and the Lord's Resistance Army/Movement of 29 February 2008;
ii.   Acte d'Engagement for North Kivu between several armed groups in North Kivu of 23 January 2008;
iii.   Acte d'Engagement for South Kivu between several armed groups in South Kivu of 23 January 2008;
iv.   Pact on Security, Stability and Development in the Great Lakes Region between eleven countries of the Great Lakes Region of 15 December 2006;
v.   Agreement on the Monitoring of Arms and Armies in Nepal of 8 December 2006;
vi.   Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Maoist (Nepal) on 21 November 2006;
vii.   Comprehensive Ceasefire Agreement between the Government of Burundi and the Parti de Libération du Peuple Hutu (Palipehutu)-Forces Nationales pour la Libération (FNL) of 7 September 2006;
viii.   Darfur Peace Agreement between the Government of Sudan, the Sudan People's Liberation Movement/Army (SPLM/A) and the Justice and Equality Movement of 5 May 2006;
ix.   Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur between the Government of Sudan, the Sudan People's Liberation Movement/Army (SPLM/A) and the Justice and Equality Movement of 5 July 2005;
x.   Agreement on Permanent Ceasefire and Security Arrangements Implementation Modalities between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) of 31 December 2004;
xi.   Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region between all countries in the Great Lake region of 20 November 2004;
xii.   The Protocol between the Government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) on Power Sharing of 26 May 2004;

xiii. The Transitional Federal Charter of the Somali Republic of February 2004;

xiv. Peace Agreement between the Government of Liberia, the Liberian United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the Political Parties of 18 August 2003;

xv. Accord de Cessez-le-Feu between the Forces Armées nationales de Côte d'lvoire (FANCI) and Forces Nouvelles of 3 May 2003;

xvi. Inter-Congolese Negotiations (The Sun City Agreement) of 2 April 2003;

xvii. Ceasefire Agreement between the Transitional Government of Burundi and the Conseil National pour la Defense de la Democratie – Forces pour la Defense de la Democratie of 2 December 2002;

xviii. Nuba Mountains Ceasefire Agreement on Sudan between the Government of Sudan and the Sudan People's Liberation Movement/Nuba of 19 January 2002; and

xix. Arusha Peace and Reconciliation Agreement for Burundi of 28 August 2000.

18. For further information on initiatives of the U.N. in this regard refer to the *UN Peacemaker* (http://peacemaker.unlb.org/), which is a databank resource managed by the Department of Political Affairs, which provides guidance to mediators on children and sexual violence issues in peace processes.

19. For a compendium of protection standards refer to "Children and Armed Conflict: International Standards for Action," Human Security Network and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict (2003).

20. Statement by Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court, The Hague, 18 March 2006; and International Criminal Court, Public Document no: ICC-01/04-01/06 (17 March 2006), "Decision to Unseal the Warrant of Arrest against Mr. Thomas Lubanga Dyilo and Related Documents."

21. Special Court for Sierra Leone, Case No. SCSL-2003-01-I, The Prosecutor against Charles Ghankay Taylor, Amended Indictment.

22. United Nations Department of Peacekeeping Operations confidential Code Cable no: 396 (28 November 2005); and Code Cable no: 151 (4 May 2006).

23. Second Report of the Panel of Experts established pursuant to resolution 1591 concerning the Sudan, United Nations S/2006/250. Rec. 11 (2005).

24. For the text of the Conflict Minerals Trade Act (H.R.4128), refer to website opencongress.org/bill/111-h4128/.

25. Refer to "European Union Guidelines on Children and Armed Conflict," Council of the European Union document, adopted by the Political and Security Committee (PSC) at its meeting on 4 December 2003.

26. Refer to the "Accra Declaration and the Plan of Action on War-Affected Children in West Africa," African Union document.

27. A case in point is the annual Arria Formula briefings of NGOs to the Security Council, preceding the annual Open Debates of the Security Council on Children and Armed Conflict.

28. In this regard, reference may be made to the initiative of the Research Consortium on Children and Armed Conflict, which was established in 2002 under the auspices of the New York-based Social Science Research Council, bringing together nineteen academic and research institutions to engage on a number of specific projects, such as data collection on Children and Armed Conflict; research into changing trends in warfare that detrimentally impact children; and traditional norms, values, and practices that protect children in times of war and in post-conflict recovery.

Response

Leigh Bercaw

Last semester I walked to school through one of the toughest neighborhoods in the capital city of Madagascar. Every morning my friends and I passed the same gang of sleeping street-children—honestly the best word for it is puppy pile. They were a shivering, shifting heap of children, and they broke my heart. On the way home from school, they were awake and I was afraid of them. If I walked alone, they would surround me and steal everything in my pockets. They eventually pulled one of my friends to the ground and took her backpack. As a student of anthropology trained to approach multifaceted issues by looking first through the lens of the particular, these kids, for me, embody the complexity of the lives of children living in difficult situations. They inspire our compassion and move us through their vulnerability. Yet, they simultaneously remind us that they are agents in their own right.

I am honored and humbled to engage in an exchange about children's resilience and vulnerability with Mr. Tonderai Chikuhwa. His experience in the field with children in conflict dwarfs my own; yet the themes in his essay demonstrate that there are parallels between our experiences. One characteristic of vulnerable children that he too has encountered is their embeddedness in the societies they come from—the issue of children becoming soldiers did not occur spontaneously, but is reflective of greater global trends of human insecurity. In a world where malnutrition, poverty, and environmental crises are increasingly trans-state organisms, child soldiers are part and parcel of the changing state of human security. In his essay, Mr. Chikuhwa proposes that the violations being perpetrated against children constitute a legitimate threat to international peace and security. He details the work the United Nations Security Council has done to prosecute transgressions on children's rights and proposes that the Security Council continue to systematically and purposefully engage in interventions for children in armed conflict. His essay is an example of a passionate and grounded argument for increased international intervention on behalf of compromised children.

The implications of humanitarian intervention through the Security Council merit investigation, however. In my response, I intend to further the discussion by examining the changing nature of humanitarian aid and questioning its role in protecting vulnerable children. The nature of human security is changing. Humanitarian aid intervenes on behalf of populations that survive in multi-state conflicts and economies. Children should be protected because they represent the future—but the consequences of maladaptive humanitarian interventions form the societies we leave to them.

In this response, I will begin by examining how populations in conflict blur state boundaries in the pursuit of human security. Then I will demonstrate the transformation of humanitarian aid working in a climate of trans-state conflict. I will illustrate some unintended consequences of a humanitarian aid system that oversteps state sovereignty under the banner of urgent action. Last, I will conclude by inquiring into the symbolic use of vulnerable children as humanitarian motivators.

I. Unraveling Boundaries: Characteristics of the Global Community

To understand the phenomenon of child soldiers one needs to begin at the level of the individual; to understand their personhood in their social context.[1] What are the forces that affect the security of an individual in a conflicted state? Civilian involvement in warfare goes beyond landmines; their very livelihoods are woven into the international economy. In her ethnography on international crime networks, anthropologist Carolyn Nordstrom introduces the concept of the "extra-state." She proposes that societies in the 21st century have broken the fragile boundaries of the state in favor of extra-state economies of transnational, informal networks characterized as "economies of war based on pillage."[2] In Nordstrom's depiction of sub-Saharan Africa, modern warfare restructures the economy in that " the business that transports people, equipment, and commodities often rely on military-controlled travel." The factors that propel economies— "airplanes and vehicles…are always military matters." The military involvement of child soldiers is representative of the militarization of their societies—the humanitarian response has been reshaped in response to human security being embedded in these militarized states.

Humanitarian aid is part of the balance of international power systems. It represents one society's recognition of human security transgressions in another society. Insecurity at the level of the individual is heavily tied into economic power. To some extent insecurity is intrinsic to the capitalist system. As anthropologist Thomas Eriksen explains:

> The entrepreneur fares like everybody else in the age of neoliberalism, which values freedom so highly but neglects security. Whenever one has success, the range of options and the scope of personal freedom feels fantastic, but the moment one hits the wall, freedom is reinterpreted as insecurity…the entrepreneur becomes an anomaly the moment he fails to succeed.[3]

In the context of a globalizing economy, developing nations are the entrepreneurs that risk human insecurities to engage in this economy. And when this insecurity is apparent on the national scale, humanitarian aid intervenes with urgency.

Humanitarianism is faced with several contradictions: how to adapt the use of force at the scale of the individual and how to engage at the level of the state without feeding extra-state economies. Child soldiers are one of the manifestations of the increased militarization of civilians and simultaneously one of the most obvious breaches of human rights. Aid organizations are working in the context of the extra-state yet governed by the bureaucracy and militarization of the state. To mediate this, militarized powers like the U.N. Security Council have evolved as technical and strategic tools in the name of human security. Militarized humanitarian aid acts to correct outwardly perceived insecurities while the groups that determine what insecurities need addressing and how they should be addressed are part of the constant negotiation of global power systems.

II. "The Duty to Intervene": Humanitarian Aid as National Security

In her critique of modern humanitarian intervention, anthropologist Chowra Makaremi characterizes human security militarization as "legal utopianism," or the "aspiration to transcend governments in the name of the common good of humanity."[4] To exemplify this, Makaremi quotes Kofi Annan defining the modern state as "the servant of its people, and not vice versa"

and explains that "when states do not prove responsible to their population…if they fail to provide for their human security, the international community has the responsibility to free this population from its irresponsible governors through an intervention."[5]

Transgressing state sovereignty was not originally the intention of the development-focused aid system; in the early 1990s, the "right to intervene" was created for the short-term purpose of creating "humanitarian corridors" that would serve the good of the people above the interests of the states. However, by the late 1990s, after the defeat of U.N.-led humanitarian interventions in Somalia, problems in Bosnia, and failure in Rwanda, human security was redefined from economic insecurity to "a concern of safety and protection from violence." Infringement on state sovereignty in the name of human security has resulted in the remilitarization of humanitarian interventions—which were originally designed as the demilitarized approach to security.[6] In the process of legalizing this militarization, the passionate discourses questioning the "duty to intervene" have been lost. In official documents from the U.N. Commission for Human Security, "freedom from want and freedom from fear" are the common denominators of human security. Under these definitions, human security interventions are part of the "project of modernity," as "man imagines himself free from fear when there is no longer anything unknown." What is lost when the project to eliminate insecurity operationalizes national sovereignty?

As is argued in Chikuhwa's essay, the extension of U.N. Security Council policy to allow militarized interventions into conflicts involving children is part of a larger aid system that, in the words of Makaremi, "erodes the concept of state sovereignty in the name of enforcing humanitarian standards of safety wherever necessary." [7] In the context of global power systems, who decides when intervention to enforce safety is necessary? On what basis are these decisions made? The unintended consequences of human security interventions become an even higher-stakes game in the context of Nordstrom's extra-state economic trade systems, in which redistribution of aid resources along corrupt government lines are widespread. In reframing child soldiers as a threat to security that merits widespread intervention, Chikuhwa opens the door to a body of interventions justified by vulnerability. In the context of international power systems, humanitarian aid becomes the management of global disorder as a goal of national self-interest.[8]

III. Symbols of Vulnerability: Child Soldiers as Humanitarian Motivators

In the realm of intervention in the name of human security, why do the rights violations of a child soldier merit more action than the rights violations of a starving child? If intervention is justified by the protection of children as our future, then why are children embroiled in political violence more likely to be damaging to the future than children embroiled in structural violence? A child soldier is psychologically damaged by the atrocities forced upon him or her, but the damaging effects of malnutrition on a child begin in utero. Why does violence prompt us to act when other kinds of global vulnerabilities prompt, at best, detached compassion?

In critiquing U.N. Security Council disarmament of child soldiers, I am not advocating the continued use of children in warfare, but rather suggesting a humanitarian aid system that targets the systems that manifest in human insecurities—certainly the systems that contribute to food insecurity share similarities with the systems that create child soldiers. A society in which children are forced to kill, submit to sexual violence, and are torn from their communities cannot stand. Yet transgression of state sovereignty in the name of a common good cannot remain unquestioned, particularly when the common good is defined by the interests of a select group of states.

IV. Conclusion

According to Makaremi, "the issue now facing human security intervention is how to adapt the use of force to a situation where lives matter."[9] I interpret this as the conundrum of effective and educated humanitarian military intervention when the cost of delayed action is literally human lives. The work of Tonderai Chikuhwa is invaluable; as a Senior Advisor at the United Nations he has done illuminating and courageous work identifying massive breaches of human rights and proposing relevant and timely intervention. Through a decade of work in humanitarian aid, he has become a force for systems change.

The academic community, in turn, must respond in a way that problematizes system change to create solutions that integrate the context of globalizing power dynamics and extra-state economic systems. While Chikuhwa has done his job so effectively that he is a force in reshaping the way the U.N. Security Council engages with vulnerable child populations, I cannot respond in turn with a humanitarian aid solution that does not compromise state sovereignty or feed into international systems of corruption. Luckily, I am part of an academic network greater than myself; doubtless the Macalester community has something to say about the issue, so I turn the conversation over to you. Is there a humanitarian aid system that can address not only the vulnerable child soldiers and displaced children that Chikuhwa discusses, but also the vulnerable street children that I encountered in Madagascar? In some sense, all children are vulnerable. Is humanitarian intervention the right tool to address global child vulnerability? How can the response to child vulnerabilities be met both effectively and with some urgency? I thank the Macalester Community—in particular Tonderai Chikuhwa as part of the Macalester Community—for the opportunity to ask these questions.

Notes

1. Eriksen, Thomas Hylland, Ellen Bal, and Oscar Salemink, eds., *A World of Insecurity* (London: Pluto Press, 2010).

2. Nordstrom, Carolyn, *Global Outlaws: Crime, Money, and Power in the Contemporary World* (Berkeley and Los Angeles, Cal.: University of California Press, 2007).

3. Eriksen 2010.

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7. Ibid., p. 113.

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Response

Jean-Pierre Karegeye

I. Introduction: Vulnerability and Promise

The movie *Slumdog Millionaire* (2008), adapted from Vikas Swarup's 2005 novel *Q & A*, tells the story of Jamal Malik, a *vulnerable* orphan and street boy exposed to the misery of the world: extreme poverty, disease, lack of education, violence, murder, prostitution in Cherry Street, police brutality, and other misfortunes. Very painful images, but not without *promise* and determination, show Jamal at five years old, covered in excrement, succeed in reaching the Indian movie star, Amitabah, and receive an autograph. When Jamal starts playing and winning "Who Wants to be a Millionaire," Sergeant Srinivas and other policemen torture Jamal because they cannot understand how this vulnerable lost child is winning the game. Their conclusion: he must be cheating. The film places us into the dialectic of vulnerability and promise. What we can take from it is that the well-being of a child is not a private affair. It is linked to the order of the *economic* and the *political*, with these two words understood in their etymological sense. The fact of being on orphan evokes the *oikos* and miserable life in the streets, as well as the cops' response referring to the order of the *polis*. Jamal Malik's exceptional achievement raises the question of how is this possible? What is the correct answer among the four choices in the film: he cheated, he's lucky, he's a genius, it is destiny? There is a risk of celebrating the idea of heroism in Jamal Malik's character and forgetting the call to protect vulnerable children. Any *promise* is inscribed in a societal project that creates conditions of possibility for the protection and success of children.

Tonderai Chikuhwa, senior advisor at the United Nations, discusses the Roundtable theme of "Children of the World: The Dialectic of Promise and Vulnerability" by focusing on particular situations of children involved in armed conflict and he evokes concrete actions/operations by the United Nations to protect such "child soldiers." The well-being of children has been defined as a "categorical imperative" for the realization of planetary peace and security, which therefore calls for actions from the United Nations Security Council.

II. Child Protection for Planetary Peace and Security

Chikuhwa affirms that, "protecting children in armed conflicts is a new imperative of international peace and security." He suggests that protecting the child exceeds the duty towards the vulnerable populations in a society, but is an imperative for global peace and security. If the protection of children is an end in itself, without reducing it to a means, this end in itself generates another end that is world peace and global security.

Tonderai Chikuhwa's presentation, first of all, inscribes the protection of the child within the deontological ethics that emerge through the notion of the "imperative." But at the same time, if the protection of the child is not realized as a goal, we will not have international security. Thus, a child rights that is linked to the context of the family and the nation finds itself in an international world. We should recall that the implication of the United Nations in the protection of the child has moved the notion of human rights from a pious wish, from a simple declaration of Human Rights, to the domain of international law. It is worth appreciating as well the creation

of the International Criminal Court (ICC), according to the Rome statute. Military operations of the United Nations are no longer on the wishful level of overseeing a ceasefire and putting themselves between two belligerent parties. United Nations soldiers no longer hesitate to engage in combat in order to protect civilian lives. If a "strategic peacekeeping operation" is justified by its goal of protecting human rights, then peace and national security become the stakes of military intervention. As Chikuhwa points out so well, "the Security Council and the United Nations system as a whole recognize that the grave violations being perpetrated against children in the context of war constitute a legitimate threat to the maintenance of international peace and security." It appears, then, that the protection of the child in armed conflicts has become one of the basic rights, which means it is an essential path to enjoying international peace and security.[1] This shift in the United Nations mandate therefore involves moral and legal considerations.

Tonderai Chikuhwa emphasizes the United Nations' engagement along four axes:

- The changing character of modern warfare and critical child protection themes;
- Locating children on the United Nations peace and security agenda;
- Children and armed conflict as an operational priority of the Secretary-General and the United Nations Secretariat;
- and, finally, progress in the protection of children.

War increasingly occurs *inside* of states. Such a war leads to a gray zone between spaces of living, or safe zones, and spaces of combat. Chikuhwa reminds us that, "new tactics of war, the absence of clear composition, motivations and character, are complicated matters." It follows that such a context does nothing to protect a civilian or a child in a "safe" area. This form of total war shakes the core of international humanitarian law, which is based on the distinction between combatants and civilians, as well as the principle of proportionality in the use of force. We observe that terrorism, and paradoxically the war on terrorism, does not spare children. I will return shortly to the question of children in detention.

The response of the United Nations on the protection of the child has taken several faces and has engaged the United Nations through nearly all of its structures. The protection of the child constitutes an essential element of world peace insofar as it engages the capacities and structures of the Security Council. One of the consequences has been eight Security Council resolutions, as well as other measures, such as the entrance of the child within the mandate of peacekeeping operations. We should note as well that the work of monitoring, reporting, and regime compliance can lead to legal sanctions through the International Criminal Court for any act relating to, as outlined by Chikuhwa, the "Killing or maiming of children, recruiting or using child soldiers, attacks on schools or hospitals, rape or other grave sexual violence against children, abduction of children, and denial of humanitarian access for children."

Finally, in what he calls "progress in the protection of children," Chikuhwa emphasizes the importance of the ICC institution after the Rome agreement and other international legal systems. The arrest of people accused of using child soldiers is an act that can put an end to the cycle of impunity. The cases presented here are those of Thomas Lubanga Dyilo, Charles Taylor, the Côte d'Ivoire, and the Sudan. Please note that Charles Taylor is being prosecuted by the Special Court for Sierra Leone (and Milosovic was prosecuted by the International Criminal Tribunal for the former Yugoslavia).

III. Means, Ends, and Law

The protection of children as a factor of world peace is a very important step. This relationship makes the protection of children effective. It will be crucial, however, to reconcile the two without either losing its autonomy. What does this mean? If world peace is the goal, the protection of children becomes a means for realizing this goal, yet by this very fact, the child becomes objectified. There is a need to keep the protection of children as an end in itself, making it absolute, autonomous, and independent. Without reducing it to a means, but in generating a new meaning, a new end, children's rights become concrete when they are understood as constituents of world peace and global security. This is important at the moral and the social levels, in spaces of the village or communities where the notion of global peace and security is abstract.

The protection of children is a right in itself and, in a second end, an essential constituent of world peace. In fact, the use of children in the army can also lead to at least two charges: the violation of the rights of the child and an attack on world security.

The term often employed is "child soldier." I prefer "children in armed conflicts," which was well chosen by Chikuhwa, even if he does not explicitly discuss these terms. The designation "child soldier" presupposes the possibility of a child becoming an authentic soldier and thus playing an active role. The term "soldier" also legitimizes any armed group that uses children as a regular army. Instead of the descriptor "child soldier," it seems to me that "abducted child" would emphasize the status of the child as a victim and open up the possibility of extending protection to every child victim in armed conflicts, whether recruited directly or not, and including, among others, cases of detention, rape, and porters. In addition, it could permit the right to asylum currently refused to certain children because they are defined as "having participated in armed conflicts." The codification of Human Rights or of Child Rights is the most efficient way to punish crimes. Law can present certain limits, however, if it is not upheld by other structures and procedures that help protect children. Here, I would like to underline several pitfalls. The first is linked to the criterion of age. In his presentation, Chikuhwa declares that:

> While both sexual exploitation and the recruitment of child soldiers under fifteen are prohibited by the Convention, it has a number of weaknesses. The most glaring evidence of its weakness is that while it is the most widely ratified convention of the United Nations, the number of children abducted or recruited to serve as soldiers continues to grow every year. Part of this ineffectiveness must lay in the fact that only those states that have ratified the convention are bound to its rules.

Chikuhwa has good reason to recall that ratification not only links signatory states. It is well known that the United States is not a signatory. In the war on terror, Chikuhwa recognizes that "anti-terrorism measures often also target children, including through arrest and detention of children suspected of having links to terrorist organizations." I would like to illustrate this point with the example of Omar Khadr, arrested at fifteen years of age and currently incarcerated at Guantanamo Bay. At twelve years old, he was implicated in throwing a grenade in Afghanistan that killed an American. The military jury at the American base, considering him a "dangerous terrorist," recommended a prison sentence of forty years during the trial of the young Canadian, but an agreement limiting the sentence to eight years was finally concluded. Omar Khadr, now

24 years old, was supposed to finish his sentence in his home country of Canada beginning in November 2011, but the Canadian government has refused to receive him. What, then, are the mechanisms of the International Criminal Court to obligate the United States and Canada?

According to Tonderai Chikuhwa, the element posing a problem regarding the criterion of age stems from the fact that this law does not apply to the United States, which is not a signatory to either the Convention on the Rights of the Child or the Rome Statute. It seems, nonetheless, that the weaknesses of the age criterion exceed the stakes of ratification. The International Criminal Court considers as a war crime the enlistment of children younger than fifteen years of age and their use during hostilities in armed or international conflicts. Since the term "child soldiers" applies to the use of soldiers under eighteen years of age in armed conflicts, a state that has signed the Convention can abduct children aged sixteen or seventeen years without infringing upon the law.

IV. Justice, Local Peace, and Elections

The case of Thomas Lubanga Dyilo in the Democratic Republic of the Congo rests on the question of the capacity of the right to protect children and to ensure peace and security. Thomas Lubanga was the chief of the Hima militia in armed conflict against the Lendu militia led by Floribert Njabu. Lubanga was arrested in 2005. His case constitutes the first arrest relative to the protection of children. The armed conflict in the province of Luturi appears to have cost the lives of 60,000 people and displaced more than 600,000. Lubanga and Njabu both made use of child soldiers. What explains the selective arrest? The conflict had implicated two armed ethnic groups, Hima and Lendu. One might ask how the law contributes to peace. The Congolese signatories of the Sun City Accords had agreed to integrate the armed groups into state structures. The arrest of Lubanga, on the other hand, refers to crimes before the Accords, crimes before 2002. Nonetheless, insofar as Floribert Njabu did not stop his practices, the impression for the Hima was that the international community took sides in the conflict; which is to say that the respect of the law seemed unjust and above all kept intact the hotbed of tension between the two groups. We thus have here a case in which the pursuit of international peace ignores the stakes of local peace and security. As explained by Congolese Minister of Justice and International Security Emmanuel-Janvier Luzolo in a press conference: "[I]n the judicial practice of any state, there are moments when the demands of peace override the traditional needs of justice." Etienne Tshisekedi and Vital Kamerhe, presidential candidates in the Democratic Republic of Congo and opponents of President Joseph Kabila, visited Jean-Pierre Bemba and Thomas Lubanga to solicit their support during the Congolese presidential elections.

Tonderai Chikuwa also cited the case of Charles Taylor and that of the former Côte d'Ivoire rebels. Why is Prince Johnson's recruitment of children and other numerous crimes not the object of international criminal pursuit? Prince Johnson has been described as a "Kingmaker." He could not support Winston Tubman, who was ready to bring him and others to the ICC for war crimes. He made it clear that his endorsement of Ellen Johnson Sirleaf was to avoid the recommendations of the Liberian national commission that called for his arrest and banning Sirleaf from politics for thirty years. What fate is reserved for the Ivory Coast's *Forces Nouvelles* of Guillaume Soro, who is today in a position of power? Except for the Sudanese al-Bashir case, one gets the impression that the ICC applies the "law of the jungle" by only judging those who are not in power.

V. The Law of the Jungle

I would like to come back to one of the two seminal principles of international humanitarian law: the separation of combatants from civilians. The presenter has shown us how the use of children in armed conflicts shatters both principles. It seems that the international forces do not respect the operations of international humanitarian law. For example, the principle of the separation of civilians from combatants is reinforced by the idea of "peace zones." The weapons engaged in war by the United Nations or "international community" suggest to the contrary that these "peace zones" actually exist, but that they have been displaced. In a war such as those in Iraq, Afghanistan, or Libya, the fact that bombs indiscriminately kill both civilians and combatants indicates that the effective zone is between the space of combat (Iraq, Libya, Afghanistan) and Western countries (the safe zone). The distinction between civilians and military combatants has become the distinction between the citizens of the North and the population of those locked in bombing zones.

There is no doubt that the success of the International Criminal Court has helped to determine accountability. Nevertheless, the ICC remains biased in the sense that it has never tried to arrest any of the Western leaders involved in war crimes. Therefore, the Rome initiative seems to lose its moral and universal legitimacy to serve as a solution to child protections. The ICC and the Western countries that have signed and ratified the Rome statute seem to operate through the sovereign's ability to judge and condemn others by a law that his leaders and citizens are not subjected to in reality.

The United States never ratified the Rome treaty. In fact, in 2002, the U.S. Congress passed an American Service members' Protection Act, containing many provisions prohibiting the U.S. from cooperating with the ICC and authorizing the president to use "any means necessary" to secure the release of U.S. military personnel before anyone holding them has a chance to turn them over to the ICC.[2]

Recognizing the limitations of the legal system does not mean undermining its legitimacy. We should lead states to recognize international law and sign and ratify conventions and treaties. It is important to bridge international decisions and local concerns.

Peacekeeping operations seem to be justified by a moral obligation. In certain situations, a moral language is (mis)used to justify a military intervention. The conciliation between the local and the international will depend on the principle of "right intention" in action. Some powerful states push the U.N. to make resolutions in the name of humanitarian intervention, with no genuine humanitarian concern at all. This brings us to the fundamental question of James Burk: "Given that we live in the world in which peacekeeping operations are likely to occur, how can we know whether any particular operation is justified?"[3]

Ismael Beah, from Sierra Leone, was forced to become a "soldier" at the age of thirteen in a war that started in 1991. During the United Nations' First International Children's Parliament, held in New York, Ismael Beah shared his experiences with other children from various countries. These recollections have been incorporated into his memoir, *A Long Way Gone*:

> I joined the army really because of the lost of my family and starvation. I wanted to avenge the deaths of my family. I also had to get some food to survive, and the only way to do that was to be part of the army. It was not easy being a soldier, but we just has to do it. I have been rehabilitated now, so don't be afraid of me. I am not a soldier anymore; I am child.[4]

VI. Toward Structures of Promise?

To conclude, there is no doubt that the shift made by the United Nations to consider the protection of children as a constituent element of world peace is one more step in the development of structures of promise. Jamal Malik's story, which I used to introduce my response to Chikuhwa's report on the positive role of the U.N., reveals the tension between the dreams of a child and the social structures of vulnerability that young people come up against. My intentions are predominantly concentrated on the place of the International Criminal Court as a result of the simple fact that it has been presented as fundamental to "progress in the protection of children." This tribunal, without a doubt, has succeeded in translating what is conveyed in the Declaration of Human Rights into reality through positive law. It has also reinforced the notion of universal rights and has brought to justice dictators—war criminals who believed themselves to be invincible. A crime, committed in Africa or elsewhere, touches every person, every power, and every right in the world.

My reservations, therefore, do not concern the implementation of the ICC and other international legal systems as such, but derive instead from the necessity to make rights applicable to everyone so that justice does not appear to be an injustice or an ideological device of Western domination. There is also a need to rethink the necessity of regional or national enforcement of the Convention against the use of child soldiers.

My overall argument is that the protection of children from abduction and coercion into combat requires "right intention" and equality in the present international legal regime. It also shows that the protection of children (such as that related to the idea of world peace) requires other support outside of a tribunal. War criminals who employ children, cited in the Chikuhwa report, pursued or not by the ICC, have become the allies of presidential candidates in the Democratic Republic of the Congo, just as in Liberia. These criminals sadly represent ethnic communities who identify with them and consider them to be "heroes." In this context, the notion of peace resting on the protection of children is only as effective as the measure to which it is lived and accepted by local communities. This idea presupposes peace between communities and ending the solidarity with war criminals. In addition, there will be a necessity to ban the solicitation of support for war criminals during elections. Promise structures in the protection of children have a social resonance. This does not mean to protect children as individuals detached from the rest of the world. We must stand up to the family and political and economic situations that leave children vulnerable. Ishmael Beah's meditation shows that the armed group operates as a structure of substitution. Preventing child soldiering requires, then, the task of building the foundation of a new system that breaks the logic that has welcomed various structures of violence. Children who grow up in war circumstances—as orphans, poor, marginalized—are at risk of abduction. Indeed, the "broken child" milieu operates as a receptacle of child soldiering.

Notes

1. For Henry Shue, a basic right is the right to have rights. According to him, a right is basic when its enjoyment "is essential to the enjoyment of all other rights." Two criteria determine a basic right: (1) Everyone has right to something, and (2) Some other things are necessary for enjoying the first as a right. The author considers, for example, security, subsistence, and liberty as basic rights. It seems to him that a right is to enjoy something else. In other terms, a basic

right is a right that allows having rights. See H. Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1996, reprint), pp. 11–87.

2. Online at state.gov/t/pm/rls/othr/misc/23425.htm-.

3. James Burk, "What Justifies Peacekeeping?," *Peace Review*. Children and War, and other Features, Vol. 12 (2000): 467.

4. Ismael Beah, *A Long Way Gone* (New York: Sarah Crichton, 2007), p. 199.

Protecting India's Children:
Vulnerabilities and Challenges

Asha Bajpai

I.   Introduction

India is a land of paradoxes. There is no other country in the world that embraces such an extraordinary profusion of ethnic groups, mutually incomprehensible languages, topography and climate, religions and cultural practices, and levels of economic development.[1] This largest democracy in the world is also home to the largest number of children in the world. Children constitute more than 400 million of the one billion plus population of India.[2] The country has twenty percent of the 0–4-year-old child population of the world.

India's economy is growing at a very high rate: around seven percent GDP growth per year. It is now a trillion dollar economy (2007–08). In terms of Purchasing Power Parity, it is the fourth largest economy in the world (after the United States, China, and Japan). Sadly, the impressive economic growth of the past decade has not made much impact on underprivileged children. This is compounded by the persistence of social inequalities in the country, whereby the Scheduled Castes and Tribes, together comprising a quarter of the country's population, have the worst income/poverty and human development indicators in the entire population.[3] Disparities can be identified across several vectors: geography (between and within states, districts, and sub-district levels), social identity, and gender being the most notable. National data establishes that approximately 100 million children are in the poorest wealth quintile.[4] One-half of all the poor children belong to the Scheduled Castes and Tribes groups and they continue to be at a significant disadvantage.[5]

It is clear that children have not benefited equitably from the economic growth and development in India. The lives of underprivileged children in contemporary India are struggles for survival revolving around hunger, ill health, lack of education, protection, shelter, and so on. Children continue to be malnourished; exploited while at work (instead of being in school); trafficked far away from their home, kith, and kin to unknown lands; and subject to abuse, violence, and discrimination concerning gender, caste, community, and class. This is true in spite of schemes and programs designed for their benefit; laws, policies, and charters formulated to provide them access to food, education, and many other entitlements; and their rights being guaranteed by law.

Some of the harsh facts relating to children in India:

- Every second child under five-years old is malnourished;
- 1 in 4 adolescent girls between 15–19 years old is married;
- 30 of 100 girls who enter school do not complete primary-level education.[6]

II. The Child and Law in India

The Constitution of India is the basic law of the country, which includes the fundamental rights[7] and directive principles[8] for every citizen. The Constitution encompasses most rights included in the United Nations Convention on the Rights of the Child (CRC) as fundamental rights and

directive principles of state policy. It is significant to note that the Constitution mandates special protection of children by adopting "positive" discrimination, such as making special provisions for them.[9] The fundamental rights in the Constitution impose on the state the primary responsibility for ensuring that all the needs of children are met and that their basic human rights are fully protected.[10] In addition, the rights to equality, protection of life and personal liberty, and the right against exploitation, enshrined in Articles 14,[11] 15,[12] 16,[13] 17,[14] 21,[15] and 21A[16] of the Constitution of India, are fundamental rights applicable to all citizens including children.

Constitutional remedies by the Supreme Court and the High Courts can be resorted to in case of any violation of fundamental rights.[17] Judicial activism has been displayed in several court decisions, for example in public interest litigations by civil society groups relating to children in institutions, adoption, child labor, child marriage, child prostitution, and the educational and health rights of children.

In 1974, India adopted a National Policy for Children, declaring children to be the nation's most precious asset. Among the other policy initiatives that were undertaken was the formulation of the National Charter for Children (2003) and the National Plan of Action for Children (2005). The National Policy on Child Labor was announced in 1987, which emphasized the need for strict enforcement measures in areas of high child labor concentration. From the Fourth Five-Year Plan (1969–74) onward, children have found mention in national development plans, but there has been insufficient attention in terms of investment. The current Eleventh Five-Year Plan (2007–12) emphatically states that the development of the child is at the centre of the plan. While continuing with the rights-based approach to child development, the plan recognizes the importance of a holistic approach as well, focusing on outcomes and indicators of child development as well as macro-perspective trends and governance issues.

In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992, with goals for the decade. In the same year, it also ratified the United Nations Convention on the Rights of the Child. The Hague Convention on the Protection of Children and International Cooperation in Inter-country Adoption (1993) was ratified on June 6, 2003, with a view to strengthening international cooperation and protection of Indian children placed in inter-country adoption. India has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as well as the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. India has a full-fledged Ministry of Women and Child Development. A Child Budgeting[18] category has also been initiated by the Ministry.

The twenty-first century has heralded a number of important policy and legislative initiatives[19] as well as significant court interventions, and there are important legislative bills[20] pending before the Indian Parliament to ensure child protection.

III. The Dilemma of the Legal Age of the Child

The problem begins with the very definition of a child under the law. There are several grey areas in the law here.[21] Who is a child? When does childhood cease? These simple questions have complex answers. Age limits differ from activity to activity and from country to country and, in India, from legislation to legislation. The word "child" in Indian laws has been used in various legislation as a term denoting relationship, a term indicating capacity, or as a term of

special protection. Underlying these alternative specifications are very different concepts about the child.

For purposes of criminal responsibility, the age limit is between seven and twelve years under the Indian Penal Code (1860). For purposes of protection against kidnapping, abduction, and related offences, the age is fixed at sixteen in the case of boys and eighteen in the case of girls. However, the Indian Penal Code, while defining rape (Section 375), exempts a person from the charge of rape if he has forcible sexual intercourse with his wife who is above 15 years of age. Under the Immoral Traffic (Prevention) Act (1986), a child means a person who has not completed 16 years of age and a minor means a person who has completed 16 years of life, but not completed 18 years.[22]

Under the Child Labour Prohibition and Regulation Act (1986), "child" means a person who has not completed his fourteenth year of age, but below fourteen he or she can work in non-hazardous industries. An area of concern is that no minimum age for child labour has been specified. For purposes of special treatment under the Juvenile Justice (Care and Protection of Children) Act (JJA) of 2000, the age of majority is 18 for both boys and girls. The Protection of Women from Domestic Violence Act (2005) defines a child as any person below the age of 18 years and includes any adopted step- or foster child. Under the Plantation Labour Act (1951), "child" means a person who has not completed his fourteenth year of age. "Adolescent" means a person who has completed his fourteenth year of age, but has not completed his eighteenth year of age.[23]

Under the Age of Majority Act (1875), every person domiciled in India shall attain the age of majority on completing the age of 18 years and not before. The Indian Age of Majority Act was enacted in order to bring about uniformity in the applicability of laws to persons of different religions. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained the age of majority upon completion of 18 years of age. However, in the case of a minor for whose person or property (or both) a guardian has been appointed or declared by any court of justice before the age of 18 years, and in the case of every minor the superintendence of whose property has been assumed by the Court of Wards before the minor has attained that age, then the age of majority will be 21 years and not 18. The Hindu Minority and Guardianship Act (HMGA) of 1956, in Sec. 4(a), defines a minor as a person who has not completed the age of 18 years. According to the Dissolution of Muslim Marriages Act (1939), for the purpose of the appointment of guardians of the person and property of minors, the age of majority is also completion of 18 years.[24]

An anomaly is prevalent as far as a child's consent to sexual intercourse is concerned. The law considers a person aged less than 18 years to be a child/minor and not competent to make major decisions affecting herself or others, for the purposes of the Indian Majority Act, the Contract Act, the Juvenile Justice Act, the Child Marriage Act, and the Representation of Peoples Act. However, under Section 375 of the Indian Penal Code, the girl is given the right to consent to sexual intercourse. Yet, she cannot marry at that age even with the consent of her parents. She cannot be taken out of the keeping of her lawful guardian even with her consent for lesser purposes. But strangely, she can give consent to sexual intercourse so long as she does not go out of the keeping of her lawful guardian.

The age of criminal responsibility in India is seven years old.[25] Hence a child under seven cannot be considered a child in conflict with the law. Nothing is viewed as an offence if done by children between seven and twelve years of age who have not attained sufficient maturity of

understanding to judge the nature and consequences of their conduct on that occasion and therefore did not know that what they were doing was wrong.[26]

The Courts have held that a child witness, if found competent and reliable to depose to the facts, may provide such evidence as could be the basis of a conviction. In other words, even in the absence of an oath, the evidence of a child witness can be considered (under Section 118 of the Evidence Act) provided that such witness is able to understand the answers. Therefore, the evidence of a child witness and its credibility would depend upon the circumstances of each case. The only precautions that the Court should bear in mind while assessing a child's evidence is that the witness must be reliable, his/her demeanor must be like any other competent witness, and there is no likelihood of the child being tutored.

The absence of a comprehensive and common definition of the child creates confusion and dilemma. Though one may like to have a uniform age limit legally prescribed for the status of childhood, it may not be possible. Nevertheless, some rationalization is possible and certain norms must be laid down because some of the age limits in the laws appear to be arbitrary or based only on socio-cultural perceptions. If the "best interest of the child" interpretation were to be adopted, one could perhaps err on the side of a higher age limit for protective care and a lower age limit in respect to civil and cultural matters.

IV. Children in the Juvenile Justice System

Children come in contact with the juvenile justice system as "offenders" or as victims. The Juvenile Justice (Care and Protection of Children) Act (2000 and amended in 2006) deals with two categories of children: "the juvenile in conflict with law" and "the child in need of care and protection." The JJA is a piece of legislation that conforms to the Convention on the Rights of the Child and the United Nations Minimum Standards for Administration of Justice to Children (Beijing Rules).[27] As the JJA was specifically drafted to implement India's obligations under the CRC and other international instruments, in this Act juvenile or child means a person who has not completed the eighteenth year of age. Both boys and girls below the age of 18 enjoy the protection of this juvenile legislation. A total of 33,642 juveniles were apprehended during 2009, out of which 31,550 were boys and 2,092 were girls.[28]

Age determination of children in conflict with the law is a very complex issue. The largest number of cases that have come before the High Courts and the Supreme Court under this legislation and its predecessors is for determination of age. In the absence of a birth certificate, a child may easily be excluded from the operations of the JJA and denied its care and protection.[29] In the case of Ramdeo Chauhan,[30] the Supreme Court refused to determine the age of the accused on the basis of entries in the school register or medical evidence, both of which indicated him to be a child on the date of the offence. The Court confirmed the death penalty for the offence of murder even though one judge expressed doubt as to whether the boy was a child of legal age on the date of the commission of the offence. The governor later commuted his sentence to life imprisonment on the recommendation of the National Human Rights Commission.[31]

There have been some recent judgments on this issue. The Supreme Court has held that on the point of proof of age, a school leaving certificate is the best evidence. So far as the medical certificate is concerned, the same is based on an estimate and the possibility of error cannot be ruled out. However, the date of birth recorded in the Secondary School Certificate is not to be taken to be correct unless corroborated by parents who got the same entries made.

The children in need of care and protection include vulnerable children like street children; orphaned, abandoned, abused, and destitute children; child laborers; trafficked children; mentally ill children; HIV/Aids affected and infected children; and children who are victims of conflict and disaster situations.

An area of concern that recently came up is the vulnerability of mentally deficient children in institutions. Children with mental and other developmental disabilities in institutions are perfect targets for neglect, sexual abuse, and assault. A sexual assault is a severe, heinous breach of trust and faith for the mentally deficient victim children by persons who are their caretakers. It is a collective failure of the structures and system.

The particular case came to light when on August 23, 2010, the *Mumbai Mirror* reported that five children had died of malnourishment in an orphanage in Thane, a suburb of Mumbai. Some were sexually abused and more would have died if they had not been relocated because of the report. The report disclosed the unsanitary conditions in which the children had been housed and the lack of basic facilities. The children saw the institution as a place of refuge. They put complete faith and trust in their caretakers, but it resulted in abuse, starvation, and deaths.

The High Court of Mumbai took *suo motu* cognizance of this article and public interest litigation was initiated. The Court stated that:

> [T]he case highlights the plight of children desperately in need of care and protection. Their needs have been ignored in years of neglect. Their right to life under the Constitution has been brazenly infringed. The solemn covenants of the Convention on the Rights of the Child have remained an unachieved illusion. The Court has had to act suo motu because the mentally challenged are unable to secure the protection of their human rights or access to justice. The Court is constrained to intervene to ensure that those who are under a public duty act in accordance with law. Development without freedom is meaningless. A society which bears her children to die of starvation has unanswered questions which cannot be answered. Neither constitutional freedom nor growth in a global society can be achieved when the young die without a morsel of food and clean water. We write in great anguish over the deprivations faced by our young and the disabled but in the determined hope that judicial review can activate a democratic deficit of governance.[32]

The matter is now before the Bombay High Court and important directions are being given relating to evidence through video conferencing, whether a support person is permitted to be with the child, whether a psychiatrist is to remain present while recording statements, the need for individual care plans for each child, and 24-hour victim/witness protection.[33]

V. Rights Relating to Offences Against Children

Child abuse and exploitation can be physical, sexual, and emotional. An estimated 600,000–700,000 children are sexually abused annually in India.[34] Child sexual abuse occurs when a child is used for sexual gratification by an adolescent or adult. Regarding physical abuse, incidents of brutal corporal punishment in schools are on the rise. There is no national prohibition in law of such corporal punishment. The government has issued instructions to states to stop its use in schools and the National Policy on Education (1986, modified 1992) states in Section 5.6 that,

"corporal punishment will be firmly excluded from the educational systems." Some states have prohibited corporal punishment in schools. The Indian Penal Code sections relating to hurt and grievous hurt deal with offences relating to corporal punishment.[35] There is a need for a national law on corporal punishment. At present there are only the National Commission for Protection of Child Rights' guidelines.

The laws dealing with sexual offences do not specifically address child sexual abuse. In other words, there is no specific or comprehensive law on child sexual abuse. The Indian Penal Code does not recognize child abuse. Only rape and sodomy can lead to criminal conviction. Anything less than rape, as defined by the law, amounts to "outraging the modesty." The word "rape" is too specific; it does not even include abuse of boys.[36] For a girl child, Section 375 (rape) and Section 354 (outraging the modesty) are generally used. They are highly inadequate, as they do not cover the forms of sexual abuse borne by children. For lack of any section for boy children, Section 377 (unnatural offences) is presently being used for male child sexual abuse cases. This is an area of great concern.

Child marriage is also a form of sexual abuse of children. In Rajasthan on *Kashia Tritiya* Day, which is popularly known as the *Akha Teej,*[37] hundreds of child marriages are openly performed. *Akha Teej* is regarded as the most auspicious day for celebrating marriages. Even infants who have just been born or are only a few years old—and cannot even sit or walk—are married on this day. Under the Prohibition of Child Marriage Act (2006), the following are some of the shortcomings:

- Marriage voided only in cases of compulsion and trafficking;
- Onus of declaring void only if child or guardians file legal proceedings; parents may never take such a step;
- Implicitly acknowledging traditional marriages;
- No punishment of officials; and
- No incentives for traditional communities.

The Supreme Court of India, on February 14, 2006, made it mandatory for all marriages to be registered. It directed authorities across the country to amend their rules so that its order could be implemented within three months. This judgment could have a significant effect on child marriages.

VI. Child Trafficking and Child Prostitution

Under the Juvenile Justice (Care and Protection of Children) Act, child victims of trafficking are treated as children in need of care and protection. In the Indian Penal Code, there are also provisions for dealing with children who are trafficked. Girl children are often trafficked into prostitution. Boy children are trafficked into forced labour and sodomisation. Young women are also abducted and trafficked as domestic workers, unorganized labourers, or sex workers. They are victims of pornography and a vast array of cases involving "outraging modesty." Sexual trafficking involves business in brothels, massage parlours, and bars, and includes pornography and pedophilia. Commercial trafficking and exploitation involves industrial and domestic labour and extends to organ removal for transplants, illegal adoptions, beggary, and camel racing.

In 1986, the Immoral Traffic (Prevention) Act (ITPA) was enacted. As per the existing law, prostitution *per se* is not illegal. Prostitution becomes an offence when there is commercial

exploitation of a person. If a woman or child is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (CSE). Trafficking is the process of recruiting, contracting, procuring, or hiring a person for CSE. The offences envisaged under the ITPA are specific to the context of CSE, which include brothel keeping, living off the earnings of a prostitute, soliciting seducing for the purposes of prostitution, and seduction of a person in custody. Offences involving children are dealt with increased strictness by enhancing the period of imprisonment. (Yet the ITPA has to be broadened to cover the trafficking of children to beaches, hotels, and guesthouses, and their subsequent sexual abuse.)

Other significant provisions in ITPA are:

- Offences under the Act are cognizable;[38]
- Search without warrant;
- Rescue of victims;
- Intermediate custody of persons removed or rescued;
- Power to establish Special Courts; and
- Power of Court to try cases summarily.

First of all, the Act does not define trafficking. In addition, it has been found that through concerted efforts, traffickers and brothel owners, etc., make sure that the age of the rescued minor is entered as 18 years or above, thereby making her an adult in the records. When the youth are sent to jail, the traffickers and brothel owners bail them out and the victims are once again returned to their effective confinement. There is also a need to ensure the accountability of the doctors who carry out age verification and of the police officers that record the age immediately after rescue.

Poverty alleviation by population control is the key to prevention. Identification of vulnerable children as well as suspected traffickers at the source and transport locations by vigilant border squads results in prevention up to a point. Maintenance of a database of crimes and criminals as well as missing persons, the use of forensic science for obtaining fingerprints, DNA reports, and even stringent visa requirements are modes of restricting the crime of trafficking in persons, including the offence of pedophilia.[39]

While dealing with cases of sexual offences against children, courtroom conduct should require evidence to be recorded not only "*in camera*"[40] but also "in chambers," with a specific place delineated to all present. Also imperative is the maintenance of the victim's confidentiality; the recording of evidence in a friendly, gentle atmosphere, albeit to elicit the truth; and the provision of rest time and intervals to especially traumatized victims.[41] The entire exercise involves two essential aspects for victim protection: victim support and victim representation.[42] Victim support allows the victim to have the emotional support of a friend or relative. It may include a guardian *ad litem* appointed by the court, who may be a social worker or NGO. Victim representation involves allowing the victim to be legally represented.[43]

VII. Important Judicial Responses to Child Sexual Abuse and Exploitation

Regarding child prostitution in the light of *devadasi* and *jogins*[44] practices, the Supreme Court asked governments to set up advisory committees to make suggestions for the eradication of child prostitution and to evolve schemes for the rehabilitation of victimized children.[45] The Delhi High Court initiated several proactive steps by summoning NGOs and government officers to

ensure effective rescue, rehabilitation, and reintegration. Emphasis was laid on accountability of officers, empowerment of the survivors, and preventing prospects of their re-trafficking.[46] The Bombay High Court held that these requirements be met by the following practices:

- Medical examination of rescued girls to determine their age and to check if they are suffering from any medical ailment;
- Counseling and aftercare;
- Children rescued from brothels to be treated as "children in need of care and protection" under the Juvenile Justice (Care and Protection of Children) Act; and
- The lawyer representing the accused should not represent the victims.[47]

It has now been well established that all judicial proceedings relating to victims of sexual abuse must be conducted in an *in camera* trial.[48] The Delhi High Court allowed the evidence of victims of trafficking who had been rehabilitated in their home states to be recorded through video conferencing, in consonance with the judgment of the Supreme Court in the *State of Maharashtra v. Dr. Praful Desai*.[49] This is the first instance of a court allowing evidence to be recorded through video conferencing in a case of trafficking.

In the leading case of *Sakshi v. Union of India*, the court gave the following directions:

> In holding a trial in the case of child sex abuse or rape:
>
> (i) A screen or some such arrangements may be made wherein the victim or witnesses (who may be as equally vulnerable as the victim) do not see the body or face of the accused;
>
> (ii) The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
>
> (iii) The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.[50]

As previously discussed, the current laws dealing with sexual offences are outdated and do not specifically address child sexual abuse. It is strange but true that the Indian Penal Code does not recognize child sexual abuse. Only rape and sodomy can lead to criminal conviction. Anything less than rape amounts to outraging the modesty. The laws focus more on technicalities than the best interest of the child. The medical reports by some insensitive doctors are vague and inadequate. The absence of a proper medical report in the case of a sexual assault goes against the assaulted child. The insensitive interviewing of children by untrained police causes further trauma. A child has to give his/her evidence several times and relive the experience. The laws do not take into consideration the trauma of the child.

There is a need to amend both the substantive and procedural laws to ensure successful prosecution and protect the best interest of the child. The physical and psychological well-being of young sexual abuse victims and witnesses are sufficiently important to outweigh the technicalities of the law. In child sexual abuse cases, the child victim is the main witness. The

language of the child has to be understood by the interviewers. Children need legal protection right from the time of the incident, while filing the First Information Report, and during trial and post trial. Video recorded testimony (done only once) of child victims of sexual abuse must be admissible as evidence in courts. Protection orders must be issued by courts. Various professionals working together are essential. Area-wide Joint Investigation Committees must be formed. The team can have a trained police officer, mental health expert, social worker, child rights lawyer, teacher, government official, and a sensitive medical doctor. Such teams must be recognized by law and immediately swing into action as soon as a child sexual abuse case comes to light. There must be a list of responsible persons, like teachers and doctors, who have a duty to report. The state has a duty to protect minor victims from sexual abuse by foreigners and by pedophiles who run institutions in the name of charity. Many a time they escape even the minimal government inspections because they do not use funds from the state.

There is a Protection of Children Against Sexual Offences bill (2011) pending in the Parliament. Some significant provisions of the proposed bill are:

- The definition of sexual assault is widened to include all forms of sexual assault on children;
- Aggravated sexual assault is also defined in the bill. It occurs if sexual assault of a child is committed and then the child is killed, physically incapacitated or becomes insane or mentally unfit to perform regular tasks; commits the sexual assault with more than one person (gang sexual assault); or is related by blood or adoption, legitimately or illegitimately or as per the personal laws, is within the prohibited degrees of consanguinity or affinity (incest) and makes the child pregnant as a consequence of the sexual assault; inflicts the child with HIV/AIDS or any other life threatening disease or infection; commits the sexual assault on a person less than twelve years of age;
- Provisions for Child Trauma and Counseling Center for medical care and attention, and Formation of Emergency Response Team;
- Provisions for procedural safeguards for the child. All judicial proceedings must be conducted in an *in camera* trial. The identity of the victim child must be protected at all times during the judicial proceedings. The presiding Judge shall be a female in cases of a single bench or in cases of a larger bench, at least one of the presiding Judges shall be a female. Such cases shall be taken up as a priority and hearings shall be held on a day-to-day basis, as far as possible. The entire proceeding shall be concluded within four months. The presiding Judges shall ensure that no more than three adjournments shall be allowed in the entire proceedings to avoid unnecessary delay. Adjournments shall be allowed only in the most unavoidable situations.

The above bill has several lapses, which could be amended later but there is an urgent need for a comprehensive law on child sexual abuse. India today appears to be a haven for child sexual abusers and pedophiles.

VIII. Child Sex Ratio and the Right to Life

In the Indian context there is a strong preference for sons. The girl child's very existence is threatened. Female children are vulnerable to feticide and infanticide. The Indian Penal Code deals with these offences,[51] but there is hardly any prosecution or conviction under the IPC. The

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (1994) now stands renamed as The Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT) (2003). The PCPNDT Act provides for the prohibition of sex selection before or after conception and regulates the use of prenatal diagnostic techniques for the purpose of detecting genetic abnormalities or other sex-linked disorders in the fetus. The PCPNDT Act specifies that no person shall conduct or cause to be conducted any prenatal diagnostic techniques, including ultrasonography, for the purpose of determining the sex of a fetus. Several offences and penalties have been included in the PCPNDT Act. Every offence under this Act is cognizable, non-bailable[52] and non-compoundable.[53]

In order to implement the provisions of the PCPNDT Act more rigorously, the Supreme Court, in a landmark judgment, has issued a number of guidelines for the Central Government, the Central Supervisory Board, and the state governments.[54] The first conviction came in the case of *State through District Appropriate Authority-cum-Civil Surgeon, Faridabad v. Dr. Anil Sabhani, Kartar Singh and M/s Dr. Anil Ultrasound, Faridabad*.[55] In this case, the District Appropriate Authority-cum-Civil Surgeon, Faridabad, filed a complaint against the accused on the grounds that M/s Dr. Anil Ultrasound Centre, Faridabad, a registered genetic clinic, was engaged in illegal sex determination in violation of the Act.

A doctor and a decoy patient visited the clinic with marked currency notes. The doctor accompanying the decoy patient as her attendant carried a hidden tape recorder while other members of the team waited outside for the signal. While performing the ultrasound on the patient, the doctor prompted that he could disclose the sex of the fetus for an additional payment. On payment of the required amount, the doctor performed ultrasonography on her without any written consent and orally conveyed that it was a female fetus. No receipt for payment or any written report of sex determination was issued by the accused, except for a routine ultrasound report. After getting the signal, the entire team entered the clinic and took into their custody all files and records. The accused admitted to disclosing the sex of the fetus, which was video-recorded. On the basis of the above circumstantial and corroborative evidence, the accused was held guilty and convicted. There have been more convictions after this one.

Recently an area of concern emerged relating to the Right to Life of an unborn child in the case of Nikita Mehta, who moved the Bombay High Court seeking abortion of her 25-week-old fetus diagnosed with a congenital heart block. Mehta's plea to carry out the medical termination of pregnancy was rejected by the court, which upheld a law that bans termination of late-term pregnancies. India's Medical Termination of Pregnancy Act is not unlike abortion law in most European countries as it sets a gestation limit (in India's case, 20 weeks), before which abortions may be performed without being considered criminal, and then provides for exceptions in which abortions may be performed after the limit. In India as well as the United Kingdom, two registered medical practitioners must certify that an abortion is called for, with the exception that one medical practitioner may unilaterally decide to perform an abortion if he/she decides that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

IX. Rights against Economic Exploitation of Children: Child Labour

Another vulnerable group of children subjected to abuse and exploitation is child labourers. In almost all societies, children work in some way, although the types of work they do and the forms of their involvement vary. But many millions of children work under abusive and

exploitative conditions that are clearly dangerous to them. The census survey of 1991 indicates that there are around sixty million child labourers working in various sectors, which does not even count a large number of children employed in the unorganized sector and agriculture.

A new form of child labour seems to be emerging. Some visibly tired-looking children in daily soap operas are seen as the serial progresses. It is stressful for adults performing in daily soaps and there are reports of some of them fainting on sets. It is said that some children bring their homework to the sets. These tender minds are balancing both work and school and the stress associated with them, thus their tender age is abused and they cannot develop in a healthy manner. Though "hazardous" is not defined under the Act, any labour can be regarded as hazardous that hinders the education of the child.

The Child Labour (Prohibition and Regulation) Act (CLPRA) (1986) uniformly laid down the 14th year as the watershed for the definition of a child. A landmark judgment delivered in the case of *M. C. Mehta v. State of Tamil Nadu* (and others) held that:

- Offending employer must be asked to pay compensation of a sum of Rs. 20,000 for every child employed in contravention of the provisions of the CLPRA;
- Inspectors appointed under Section 17 of the CLPRA should be made responsible to see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000, which is to be deposited in the Child Labour Rehabilitation-cum-Welfare Fund. The income of the fund so generated shall be used only for the concerned child;
- The State should see that an adult member of the family whose child is in employment in a factory or a mine or in other hazardous work gets a job anywhere, *in lieu of the child*;
- In those cases where alternate employment is not made available, the parent/guardian will be paid the income, which would be earned on the "*corpus*," which would be a sum of Rs. 5,000 for each child per month;
- The employment given or payment made would cease to be operative if the child would not be sent to school for education by the parent or guardian;
- Creation of a separate cell in the labour department to deal with issues of child labour;
- The scheme will be monitored by the Secretary of the Department and by the Ministry of Labour of the Government of India; and
- Regarding nonhazardous jobs, the Inspector shall have to see that working hours of the child are not more than four to six hours a day and the child receives education for at least two hours each day at the cost of the employer.[56]

The implementation of this judgment, along with the right to education, will go a long way in reducing child labour. There are several factors contributing to poor enforcement, such as no witnesses, corruption, age determination questions, certain lacunae in the law, and the insensitivity of the civil society. The CLPRA does not cover the majority of child laborers, who are to be found in the unorganized sector. Children working in the agricultural sector and in home-based industries have been left out. The laws cover only the child labour force that is working in plantations or in the formal, industrial sector in occupations identified as "hazardous" under the law.

The word "hazardous" is not clearly defined in this Act. Several hazardous industries have been excluded. The notion of *hazardous* needs to be clarified. In addition, the physical and psychological implications for the child also have to be taken into consideration. The 1986 Act is

silent on the educational needs of the child, which is a key strategy for the elimination of child labour. It should integrate rehabilitation into its purview. The CLPRA also needs to work in co-ordination with other related legislation.

It is time we, as a society, take a stand against child labour.[57] Poverty can no longer be the excuse for child labour. We must put in place a legal framework with a child rights perspective that includes a time-bound complete abolition of child labour in all forms of employment, and which sends all children who are working to full-time formal school and ensures that their families are economically strengthened by providing employment to adults. The model law needs to define child labour as any child out of school and working, and hazardous work must be understood as work that interferes with a child's schooling and his or her physical, mental, psychological, and emotional well-being.

X. Child Rights and Personal Laws

Matters such as custody and guardianship are governed by Personal Laws in India. These are the statutes formulated on the basis of religion.[58] Religion has played a very dominant role and is the basis of various personal laws, including adoption, custody, and guardianship. The matrimonial courts/family courts are usually called upon to decide the question of child custody. All personal laws and matrimonial statutes make provisions for dealing with the issue of child custody. Their basic principle is that the welfare of the child must be of paramount consideration and that the views of the child must be taken into account (if he/she is capable of expressing such views). In practice, the child's views may be manipulated or he/she may be under duress.

Adoption of children also forms a part of the Personal Laws or Family Laws in India. The fact is that today a Hindu child is governed by the Hindu Adoptions and Maintenance Act (1956) and has the opportunity to be adopted under the Act only because he/she is a Hindu by religion. The children of other religions have to be taken as wards under the Guardians and Wards Act (1890). Since the JJA provides secular adoption only to certain limited categories of children, there is an urgent need to enact a special enabling law for adoption, which can be availed upon by any person irrespective of his/her religion for adopting children of any religion or sex.

Section 41 of the JJA provides for adoption and the procedure for adoption is laid down in the JJA Rules (2007). Rule 33(g) allows for the child's voice to be heard in adoption matters.[59] It has to be borne in mind that the law recognizes children as capable of expressing their opinion only after they attain a certain age. According to Rule 33(g), children older than seven years who can understand and express their opinion shall not be declared free for adoption without their consent. Though the law guarantees child participation in the adoption process, one needs to speculate about the possibility of manipulation. Often abandoned children, orphans, etc., who are identified for adoption are shown rosy pictures and given fancy ideas of being able to live a hassle-free life with parents who would provide them all the comforts of life. Children should be informed about the true implications of adoption.[60]

The issue of adoption must move beyond narrow political, religious, and patriarchal concerns. This legislation must ensure justice to the child and provide all the rights and privileges to the adopted child as those available to a child born in legal wedlock. In the case of Manuel Theodore D'souza and Mrs. Lourdes D'souza, the Bombay High Court held that the abandoned, orphaned, destitute, or similarly situated child has a right to be adopted as part of his/her fundamental right to life embodied in Article 21 of the Constitution. The right to life of these children includes the right to be adopted by a willing parent and to have a name and nationality. The right to be

adopted, therefore, is an enforceable civil right, which is justiciable in a civil court.[61] Consequently, the case for a secular, uniform law on adoption arises as part of the fundamental right to equality and life under Articles 14 and 21 of the Indian Constitution and also as per the numerous international instruments to which India is a signatory, like the CRC[62] and The Hague Convention, which recognize the right of every child to a family and to be adopted.

XI. Institutional Structures Relating to Protection of Children

Institutions and structures under the various laws have been provided to protect the rights of the child. The institutions and structures under the Juvenile Justice Act are: Observation Homes, Special Homes, Children's Homes, Shelter Homes, Juvenile Justice Boards, Child Welfare Committees, Special Juvenile Police Units, Child Protection Units, and After Care organizations. In addition, there are Family Courts established under the Family Courts Act (1984) and the National Commission for Protection of Child Rights (NCPCR) established under the National Commission for Protection of Children Act (2005).

Though the Juvenile Justice Act has rightly increased the age of childhood to eighteen years, keeping in conformity with the Convention on the Rights of the Child, the infrastructure as well as human resources under the Act were not upgraded and are grossly inadequate. The education, training, and recreational needs of children have not been provided for. In addition to basic school education, the higher education and training of these children have to be considered. Also, the educational and vocational facilities in the institutions need modernization. Age-old nonmarketable vocations, like making solely shirts or brooms, should be replaced with current marketable courses like computer education, certified courses on dress designing, and so on. The Open School and Open University educational systems should be made accessible to these children. Trained Duty Counsels have to be appointed by the State Legal Services Authority to represent the children in the courts. Some states, such as Maharashtra, have appointed Duty Counsels in the Juvenile Justice Boards. The institutional staff and the law enforcers, including the police and judiciary, need training so that the spirit of the Act can be followed. The Child Welfare Committees consist of part-time members and many of them are too busy to spare the time required to deal with the vast majority of cases. The law enforcers have to be made aware that children have a right to legal aid and other constitutional rights, like the right to counsel, the right to a speedy trial and disposal of cases, and the right to child-friendly proceedings.

Decisions in Family Courts cannot simply be decided on the basis of facts that are "proved" or "not proved." They touch upon sensitive and emotional issues. Such decisions necessarily involve lengthy investigations of the family, their personalities and their motivations. In Family Courts the principles of law, the conscience of the community, and the social sciences— particularly those dealing with human behavior and personal relationships—all work together. It is clear that successful innovations depend upon particular individuals being in the right place at the right time. Children's rights in Family Courts need to be protected. There is a need to provide quality intervention services to the Family Courts, like counseling, trauma treatment, a child access center, etc., so that justice is provided to women and children who are the victims of domestic violence, broken homes and marriages, and matrimonial disputes. Above all, the families must be made aware and avail themselves of these services.

Clearly, the "best interest" standard gives judges tremendous discretion. The background of the judges and their understanding of what constitutes the best interest of the child play an important role. There also appears to be tension between the apparent meaning of the best interest standard and its construction in legislative and court decisions. There are also risks to the child due to delays and adjournments that are a regular feature of the legal system.

Since the child is unrepresented in the Family Courts, it is up to the judge to ensure that the child's interests are not harmed or negated. The judges are not trained or sensitized to be friendly. Besides, even in those cases in which the courts have managed to determine the best interest of the child, the social, administrative, and enforcement machineries are neither sensitive nor trained well enough to implement them. The counselors play a very important role in Family Courts but in the absence of proper infrastructure and uniform rules with regard to remuneration of the counselors, etc., skilled counselors are either not available or are engaged on very small fees. Consequently, many of them feel demoralized and have little interest in giving quality time or attention to the cases.[63]

Legal institutions are important mechanisms for social change. They must be made child friendly. Proceedings in courts and other legal and administrative structures must be inclusive of child participation. Participation of children in court processes involves creating space in a system. In these spaces, they can understand, ask questions, share their views and observations about their own lived experiences, and have these views listened to in a respectful way and considered in decisions that affect them.[64] As of now, there is no legislation that specifically mentions the right of the child to express her/his views freely. The Constitution of India does, however, in Article 19 (1) (a), provide for the freedom of expression as a fundamental right to every person in India, and nowhere is it mentioned that children are to be excluded. Yet the exclusion does take place because of the patriarchal norms governing societal attitudes, which in turn also define the general attitude of the society, including parents, teachers, the judiciary, and government functionaries. Children, therefore, require varying degrees of protection, participation, and opportunity for autonomous decision-making in different contexts. In India most of the work has been focused on either inclusion of children's views in the democratic process of the country by constituting *Bal Panchayats, Bal Sansads*[65] or promoting children's representation through group actions, by encouraging youth clubs, child labour unions, etc. It is not very often that initiatives are taken to ensure child participation in the legal and administrative institutions and structures (i.e., where children have the right to participate by virtue of being children[66]). There have also been some important developments in the last few years to provide for children to be heard in court.[67] These developments must be included in the laws themselves.

Another statutory institution is the National Commission for Protection of Child Rights. This is a statutory body of the Government of India, set up in March 2007 to protect, promote, and defend child rights in the country.[68] India ratified the United Nations Child Rights Convention in the year 1992, and The Commissions for Protection of Child Rights Act (2005) is an important milestone in translating these commitments into action. The Act provides Children's Courts for the speedy trial of offences against children or of the violation of child rights. The Act empowers the state governments to designate a court in the state or a Court of Sessions in each district as a Children's Court, with concurrence of the Chief Justice of the concerned High Court. For every Children's Court, the state government is required to appoint a Public Prosecutor or an advocate who has been in practice for not less than seven years as the Special Public Prosecutor. The state Children's Commissions have yet to be constituted. Some significant tasks done by the National

Commission are to issue guidelines for corporal punishment in schools, investigate complaints of corporal punishment and child labour, and review laws relating to juvenile justice and child labour. The Commission has raised a lot of hopes among activists for protecting the rights of the child, and it must now act. There is also a need to enhance the powers and resources of the NCPCR so that it can work effectively. This Commission must be given independence from political pressures to work and act to protect children.

   Today India is registering 8–10 percent growth and claiming that it will be a world economic power by 2020. According to Macalester College Sociology Professor Eric Larson:

> [I]f India devotes fruits of this economic growth to change social organizations and institutions bound to childhood, it could result in the types of cultural changes that encourage people to view children as priceless. Second, the contemporary global construction of childhood focuses on developing human potential. The culturally legitimate treatment of children has shifted from understanding children as a resource for families and nations to understanding duties that we must fulfill to enable future aspirations. How we culturally organize and locate the institution of childhood projects a vision of the future. We seem to more readily celebrate and liberate those elements of childhood that help develop consumers and households as sites of consumption (albeit not as unequal as the patriarchal households of the past). At the same time, efforts based on presumed vulnerabilities of children to succumb to nefarious bad actors and criminal-law-based responses may draw our attention away from the broader social arrangements of childhood. Instead of collectively engaging in wider reform, a focus on eradicating bad actors may lead to laws that are misguided and counterproductive and continued hollow political platitudes about the sanctity and value of children. Realizing the promise of children's rights requires changes to the institutions on which such rights are contingent. Such change is not impossible—far from it, as the historical evidence indicates. Rather, true change requires that we invest the time and resources in well-focused efforts to alter culture, social organization and practices to make rights into realities.[69]

XIII. Law Reform in the Interest of Children

This decade has seen a spurt of legislative initiatives on the issue of child rights. Still, a lot needs to be done. The 1974 policy is outdated. It needs to be reviewed with a child rights perspective. The law on child sexual abuse and pedophiles is the need of the hour. India has become a haven for pedophiles because of its lax laws. Child labour is assuming new forms, like child artists and migrant child labour, and the law must be equipped to deal with them. Enacting child-friendly legislation to ensure a convergence of laws on education and child labour should also guarantee education of equitable quality to every child in India. There is also a need for national legislation on corporal punishment.

There are links between missing children, forced labour, and trafficking. There is no national database or uniform tracking procedure existing in India today that deals with missing children across the country. It is an issue of serious concern post-Nithari wherein out of the 38 missing children, many of them were later found to be killed.[70] The missing children issue can no longer be dealt with through knee-jerk reactions as in the recent Nithari killings. On average, more than 40,000 children in India are reported missing every year.[71]

Each year, thousands of women agree to carry the child of another woman for a fee. There is already an active international trade in the components of baby production—wombs, sperm, and eggs. There are rapidly advancing technologies that are certain to expand both the demand for surrogacy services and the supply of surrogate mothers. The presence of globalization and the development of Assisted Reproductive Technology (ART) have contributed to the emergence of a new reproductive concept, reproductive tourism, which is when couples travel outside of their country for fertility treatment. India is becoming the best option for fertility treatment for many reasons: inexpensive cost, many donors, and lenient legislation. Reproductive tourism has emerged as a popular means for infertile couples to overcome their fertility problems. Legal restrictions on fertility treatment in their home countries encourage infertile couples to go abroad. India must create surrogacy laws domestically. Citizens need to know the laws on infertility services in their country as well as the implications of seeking services abroad. India has at present only Indian Council for Medical Research (ICMR) guidelines regulating surrogacy arrangements. The failure to create legislation will further complicate the issues that the states and their citizens have to face. The rights of the child must also be taken into consideration while creating laws for national and transnational surrogacy arrangements.

The mental health treatment of rescued and victimized children is absent in Indian laws and judgments. In legislation concerning children and their rights, mental health considerations must become an inextricable component of law, and therapists must be included in the legal framework for the future benefit of the child, as a long-term remedy. We must move toward therapeutic jurisprudence. Alternate dispute resolution techniques must be developed for dealing with child-related issues. Children should be involved in conciliation and mediation services and in litigated/contested/defended court proceedings concerning their care arrangements or guardianship issues.

Child participation must be authentic and meaningful. It must start with children themselves, on their own terms, within their own realities and in pursuit of their own visions, dreams, hopes and concerns. Most of all, authentic and meaningful child participation requires a radical shift in adult thinking and behaviour—from an exclusionary to an inclusionary approach to children and their capabilities.[72] Legal reform must feature provisions inclusive of child participation in legal and administrative structures and institutions.

The change from a welfare approach to a rights-based approach in laws relating to children is still a distant dream. The United Nations Convention on the Rights of the Child was adopted and ratified by India almost nineteen years ago. India since then has taken measures to reform and amend national laws to include the principles laid down in the CRC. But these have been piecemeal attempts in certain statutes or provisions. What is required is a comprehensive review of ALL legislation relating to children in the context of a rights-based and gender-just perspective. The laws that do not conform to the international standards must be changed or amended or new laws formed.

XIV. Conclusion

Significantly, law is one of many responses to social change. In certain respects it is the most important since it represents the authority of the state and its sanctioning power. Through legislative or administrative responses to new social conditions and ideas, as well as through judicial reinterpretations of constitutions, statutes, or precedents, the law increasingly not only articulates but sets the course for major social changes. The legal response to a given social or technological problem is therefore in itself a major social action, which may aggravate a given problem or alleviate and help to solve it. Nonetheless, even when law cannot bring about change without social support, it still can create certain preconditions for social change.

Clearly, the prospects for change led by law may be limited because children's status depends on altering the connections between the family, society, and the economy more broadly. In this sense, realizing children's rights remains contingent on other social changes.[73] Both sociology and law are concerned with the nature of legitimate authority, the mechanisms of social control, issues of civil rights, power arrangements, and the relationship between public and private spheres.[74]

The lawmakers must understand the nature of complex social ties on which the cohesion of society depends. Law has come to be seen as an independent agent of social change and social direction. The holistic approach to the solution of the problem would run through the stages of prevention, protection, preparation, prosecution, participation, and finally punishment. No law can work in isolation. The need of the hour is, therefore, a synergy of all the stakeholders: parents, teachers, community (including diverse groups such as artists and inter-religious forums), police, *panchayat*,[75] NGOs, prosecution, government, media, corporations, industrialists, and the youth. This requires significant commitment and engagement from both state governments and civil society. The proposed Integrated Child Protection Scheme (ICPS) of the Government of India brings together multiple vertical schemes under one comprehensive child protection scheme, combining existing child protection schemes of the Ministry and integrating interventions for protecting children and preventing harm. This will be done through service delivery structures at the state and district level. Moreover, to also achieve the Millennium Development Goals, such a comprehensive approach to child protection is required. All budgets for child protection schemes and programmers should be in the plan category and not in the non-plan category.[76]

Awareness of the rights and laws by various stakeholders, including children, is essential. We have to recognize the enormity of the problem and tackle it politically, legally, and socially, with significant commitment from the state and civil society. The negative linkage of globalization and privatization on the rights of children in several countries across the world needs to be examined and addressed.

By their sheer resilience against all odds and their ability to laugh and to bring laughter to us, children never let us give up hope. Across the country, children are growing up facing the vagaries of nature and of humans. And yet they smile and look up to the sky in hope. Their smiles bring us hope, courage, and resolve in these bleak and uncertain times that are filled with violence and economic crisis.[77] It is this hope that fosters the strength to meet the challenges and fulfill our promises and legal obligations.

Notes

1. Shashi Tharoor, "India as a Soft Power," *IIC Quarterly*, India International Center, New Delhi (2008): 32.

2. "State of the World's Children," Report, UNICEF (2011).

3. Mehrotra Santosh, "Children of India, Rights and Opportunities," Working Paper Series (New Delhi: IHD-UNICEF, 2010).

4. "State of the World's Children," Report, UNICEF (2011).

5. Ibid.

6. Accessed online on 1 December 2011 at azadindia.org/social-issues/status-of-children.html.

7. Fundamental rights if violated can be brought before the Courts. A writ petition can be filed in the Supreme Court and High Courts.

8. The Directive Principles lay down the guidelines the governments have to follow. If they are violated, they cannot be taken before the Courts but because of judicial interpretation, many of the Directive Principles relating to children have now become enforceable through legal actions brought before Courts. Articles 39(e) and (f) instruct that the state policies be directed toward securing the tender age or small age of children.

9. Constitution of India, Article 15(3).

10. Article 23 prohibits trafficking of human beings, including children, and Article 24 mandates that no child below age 14 can work in any hazardous occupation or industry.

11. The right to equality.

12. Prohibition of discrimination on grounds only of religion, caste, sex, place of birth or any of them.

13. Promoting equality of opportunity for all citizens in matters of public employment.

14. "Untouchability" is abolished and its practice in any form is forbidden.

15. Right to life and due process of law.

16. Article 21A provides for free and compulsory education for all children of the age 6–14 years.

17. Articles 32 and 226 of the Constitution of India.

18. Child Budgeting is an attempt to examine what resources government is allocating to programmes that benefit children, and whether these programmes adequately reflect the needs and rights of children.

19. These include the Juvenile Justice (Care and Protection of Children) Act (2000); The Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act (2003); The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act (2003); Protection of Women from Domestic Violence Act (2005); The Commissions for Protection of Child Rights Act (2005); The Prohibition of Child Marriage Act (2006); and The Right to Free and Compulsory Education Act (2009).

20. These include the Juvenile Justice (Care and Protection of Children) Amendment Bill and The Protection of Children from Sexual Offences Bill (2011).

21. Asha Bajpai, "Who is a Child?," *Info Change News and Features*, Centre for Communication and Development Studies, 2007.

22. Ibid.

23. Asha Bajpai, "The Legislative and Institutional Framework for Protection of Children in India," New Delhi: IHD-UNICEF Working Paper Series, Children of India: Rights and Opportunities, 2010.

24. Asha Bajpai, *Child Rights in India—Law, Policy and Practice* (New Delhi: Oxford University Press, Second Impression, 2006).

25. Section 82 of the Indian Penal Code (1860).

26. Section 83 of the Indian Penal Code (1860).

27. Its objective is to provide for proper care, protection, and treatment by catering to their developmental needs and by adopting a child-friendly approach that is in the best interest of children and intended for their ultimate rehabilitation.

28. "Crime in India, 2009," National Crime Records Bureau, Government of India, New Delhi, 2009.

29. Kumari Ved, *Info Change News and Features* (June 2007).

30. [2001] 5 Supreme Court Cases 714 and 2000 II AD [Criminal] Supreme Court 801.

31. Ved 2007.

32. (PIL 182/2010). The author, Asha Bajpai, is appointed as the *amicus curiae* in this ongoing PIL in the Bombay High Court, India.

33. Ibid.

34. Online at www. chennaionline.com/society/06.

35. Indian Penal Code (1860), Sections 375, 376, 354, and 377.

36. Indian Penal Code (1860).

37. An Indian festival.

38. Section 2(c) of the Criminal Procedure Code (1973) defines cognizable offence. It is an offence for which the police officer may arrest an accused without a warrant and commence the investigation without an order from the Magistrate.

39. R. Dalvi, "Human Trafficking: The Angle of Victimology: A Commentary," *Law, Social Justice and Global Development Journal* 2 (2010), accessed online at go.warwick.ac.uk/elj/lgd/2010_2/dalvi.

40. *In camera* (Latin for "in a chamber") is a legal term meaning "in private." It is also sometimes termed "in chambers" or "*in curia*." *In camera* describes court cases (or portions thereof) to which the public and press are not admitted. *In camera* is the opposite of trial in open court where all the parties and witnesses testify in a public courtroom and lawyers make their arguments in public.

41. *State of Punjab v. Gurmit Singh*, 1996 2 Supreme Court Case 384; and *Sudesh Jakhu v. KCJ*, 1998 *Criminal Law Journal* 2428.

42. *Vijay Valia v. State of Maharashtra*, 1987 *Maharashtra Law Journal* 49 @ 58; *Zahira Habibullah Sheikh and anr. v. State of Gujarat* (2004) (4) Supreme Court Case 158.

43. *Sakshi v. Union of India*, *All India Reporter* 2004 Supreme Court 3566.

44. *Devadasi* literally means God's (*Dev*) female servant (*Dasi*). According to the ancient Indian practice, young pre-pubertal girls are "married off" or "given away" in matrimony to the local/religious deity of the temple. These girls are not allowed to marry, as they are supposedly married to the temple. *Devadasi* "serves" the priests and inmates of the temple, as well as the *Zamindars* (local landlords) and other men of money and power in the town and village. Though the *Devadasi* system has been abolished by law, it is reportedly still prevalent in some parts of India, especially in South India and States like Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka. In Andhra Pradesh, these *devadasis* are called *jogins*.

45. *Vishal Jeet v. Union of India*, 1990 (3) Supreme Court Case 318.

46. *Court on its own Motion v. UOI* (Criminal Motion No. 862/01) in a PIL: Crl. W. No. 532/92, filed in Delhi High Court for implementation of ITPA.

47. *Public at Large v. State of Maharashtra*, Writ Petition 112/92.

48. *State of Punjab v. Gurmit Singh*, 1996 Supreme Court Case (Criminal) 316.

49. *All India Reporter* 2003, Supreme Court 2053.

50. 6 Supreme Court Case 591 (1999).

51. Indian Penal Code, Sections 312–318.

52. Under the Code of Criminal Procedure, offences have been classified as "bailable" and "non-bailable" offences. In the case of bailable offences, it is binding upon the investigating officer to grant bail. However, in the case of a non-bailable offence, the police do not grant bail. The decision is made by a Judicial Magistrate/Judge only.

53. Non-compoundable offences cannot be withdrawn once filed, nor compromised or settled out of court by the parties to the dispute.

54. Centre for Enquiry into Health and Allied Themes (CEHAT); and *Ors v. Union of India* and *All India Reporter* 2003, Supreme Court 3309.

55. Case No. RBT-298/2 of 2001 decided on March 25, 2006, in the Court of Sub Divisional Judicial Magistrate, Paliwal.

56. *All India Reporter* 1997, Supreme Court 699.

57. Bajpai 2006.

58. Persons belonging to the Hindu, Muslim, Christian, and Parsi religions are governed by their own personal laws or family law.

59. The Juvenile Justice (Care and Protection of Children) Rules (2007), Rule 33 (g) (vii): no child older than seven years of age who can understand and express his opinion shall be declared free for adoption without his/her consent.

60. A. S. Shenoy, "Child Adoption Policies in India," A review paper presented by A. S. Shenoy, First International Conference on Inter-country Adoption, organized by Child NGO Federation-Nepal at Khattmandu, Nepal, on March 10–12, 2007.

61. (3) *Bombay Court Reporter* (2000), p. 243.

62. Article 9.

63. Bajpai 2006.

64. Suzanne Williams, "Through the Eyes of Young People: Meaningful Child Participation in BC Family Court Processes," International Institute for Child Rights and Development, The Law Foundation of British Columbia, University of Victoria, 2006.

65. *Bal Sansads* or *Bal Panchayats* mean a children's mock parliament, where they raise issues affecting them.

66. Neelam Singh, Ruchika Negi, and Subhashim Goswami, "Experiences in Engaging with Children in Developmental Processes: Process Documentation of Some Organizations and Networks," HAQ: Centre for Child Rights, UNICEF India (November 2006).

67. *State of Punjab v. Gurmit Singh and Others* (Manupatra/Supreme Court/0366/1996); *Freedy Peats and Others* (Sessions case No. 24/1992, Criminal Appeal No. 4/1996); and *Saakshi v. Union of India*, *All India Reporter* 2004, Supreme Court 3566, 2004.

68. The Act received the assent of the President on 20 January 2006.

69. Based on Professor Erik Larson's response to my essay at the Macalester Roundtable.

70. Noida and the surrounding area were for a long time haunted by incidents of kidnapping. Parents approached police officials for help but were always denied any support. The incidents of the kidnapping of little children, mostly girls, continued unchecked. On December 29, 2006, when police were investigating the kidnapping of a teenage girl, electronic surveillance brought them to an unoccupied house owned by Moninder. The electronic surveillance traced the cell phone of the kidnapped girl, who was sexually assaulted and killed in this house. When the police investigation progressed, skeletal remains of many more children were found in sacks in the drain that was situated behind the house. This is when the serial killings came to light. When the skeletal remains and other objects in the sacks were tested, it was found that they belonged to the children who went missing.

71. Haq Report on Child Rights, New Delhi (2005).

72. "The State of the World's Children 2003" (New York: UNICEF, 2002).

73. Response by Associate Professor of Sociology Erik Larson at the Macalester Roundtable.

74. Roger Cotterrell, *The Sociology of Law, An Introduction* (New Delhi: Oxford University Press, 2007).

75. *Panchayat* is the term used for local self-government at the village or small town level in India.

76. Ibid.

77. Enakshi Ganguly Thukral, Bharti Ali, and Emily Bild, *Still Out of Focus—Status of India's Children, 2008* (HAQ: Center for Child Rights, New Delhi, India, 2008).

Response

Hanna Zimnitzskaya

> *There's a radical—and wonderful—new idea here… that all children could and should be inventors of their own theories, critics of other people's ideas, analyzers of evidence, and makers of their own personal marks on the world. It is an idea with revolutionary implications. If we take it seriously.*[1]
>
> Deborah Meier, founder of the modern small schools movement

Professor Asha Bajpai's essay, "Children in India: Law, Policy and Practice," commences by stating that India is the largest democracy in the world, and that by virtue of this title, one of the country's main preoccupations is to remediate the law, policy, and practice related to the protection of children's rights. However, her discourse overlooks an essential component of a flourishing democracy: participation. A nation is democratic to the extent to which all of its citizens are involved. As Amartya Sen points out, "if people are involved in making their own decisions and running their own lives, their actions are more likely to result...in achievement of their well-being freedoms."[2]

Throughout her essay, the child is conceptualized as the recipient of a plentitude of legal protections, but is not granted sufficient recognition as the subject of *rights*. Thus, in this response, I will reflect upon the role of minors as active agents by assessing the powers codified in the Convention on the Rights of the Child, as well as the difficulty of effecting a fundamental shift in traditional attitudes toward minors. As an example of positive development of the child's status in India, I will bring forward the activities of the Indian organization Butterflies, founded on and guided by the primacy of children's active involvement. In the second part of this response, I will examine the Child Friendly Cities Initiative and participatory methods of researching children's well-being as examples of diverse strategies that aim to change the social representations of minors from the "not-yets" to the "fully qualified."[3]

Children are by nature an at-risk population, and for many years this has been the main factor underlying the welfare approach by which children are entitled to fulfillment of their social and economic rights, e.g., the right to education, to health care, and to an adequate standard of living.[4] However, minors have always remained unseen and unheard in the political arena. It is embedded in traditional attitudes that listening to children and recognizing the value of their perspectives would automatically undermine the monopoly held by adult judgment. As Peter Schrag pointed out in his provocative statement, "children are a nuisance to most adults; they are a particular nuisance to the democratic theorist who wishes to exclude them from having a voice in the direction of the polity with as much vehemence as he wishes to include every adult."[5] He laments the inability of democratic theorists to see beyond the issue of protection and their unwillingness to communicate with a diverse set of agents, which is a crucial step toward the achievement of collective well-being.

The codified intention of guarding the child dates back to the Geneva Declaration of the Rights of the Child that the League of Nations endorsed in 1924. It continued to evolve during the twentieth century up to 1989, the time of the adoption of The United Nations Convention on the Rights of the Child (CRC), whose universal standards justifiably reflect the widely held view

that children are in need of protection. Thirty-five of the forty-one substantive articles in Part I protect, secure, and guarantee welfare rights for minors. However, the remaining six articles, which specify a number of political rights, introduce a revolutionary shift in the overall legal culture by defining the child as an active agent who requires special forms of protection in light of his or her legal and developmental vulnerability. These entitlements include the right to be listened to (Article 12); the right to express their views (Article 13); the right to freedom of conscience, thought, and religion (Article 14); the right to join or form associations to represent their own interests (Article 15); the right to privacy (Article 16); and the right to information (Article 17).[6] The Committee on the Rights of the Child, which was created to monitor the implementation of the resolutions of the Convention, identifies the child's right to participation as one of the guiding principles.[7] In order for it to become a living reality, the governments that ratified the Convention are required to demonstrate a strong commitment by launching a dialogue in which children assume increasing responsibilities and more active roles. While adults are expected to provide a certain level of guidance, they must understand that by treating the child as an active agent they help him gain an understanding of why particular rules are to be followed. This shift in thinking about children's capabilities and contributions entails two-way communication in which minors are treated as equal partners.[8]

For a moment, let us hypothesize that the exclusion of children from politics is reasonable since minors by nature seem to lack the minimal level of cognitive capacity necessary for responsible participation in democratic procedures.[9] The prospect of two-year-olds voting is absurd indeed. Nevertheless, political maturity is continuous and developmental, and not something a person comes to possess suddenly by waving a magic wand. Ironically, in numerous cases the benefits of citizenship are of a discontinuous nature; in other words, they become available only at a fixed age as if the child can turn adult overnight. The failure to question and modify such abrupt acquisition of political maturity has resulted in the exclusion of children from politics even though listening to them seems to lead to better decisions.[10] Minors have a body of experience and knowledge that is unique to their situation, but many government policies related to children's lives are developed and delivered largely in ignorance of how they will affect the children's present and future. As striking examples, let us consider such practices as removing children from the streets and placing them in large institutions that deny them emotional and psychological well-being, or the practice of awarding post-divorce custody to the mother without asking the child. Although there is growing recognition that children have been more harmed than helped by such practices, in many instances they continue to be implemented.

Regrettably, in the majority of democracies, there is very little attention dedicated to designing participatory, transitional organizations to cultivate children's development into active citizens. As a result, many minors share the feeling of being left out. They regret the fact that they cannot influence outcomes, which makes them renounce democracy as an inefficient way of organizing a community's life. For instance, at the formal level, most children are excluded from the right to vote in elections until they are eighteen years old, and are thus unable to exercise any role in formal representative democratic institutions. The only countries that have altered this pattern by reducing the voting age to sixteen years are Brazil, Nicaragua, Austria, Estonia, and Ecuador. The voting age is especially significant for the problem of intergenerational domination.

According to Dennis Thompson's theory of popular sovereignty, citizens see themselves as a temporal series of sovereigns, in which the form of future democracy is left open. However, each action of the present generation will inescapably affect the future democratic sovereigns, thus the present generation embodies a community of "trustees of the democratic process,"[11] which is the

basis of the idea of an intergenerational polity. In order to create a rich pool of shared sovereignty, statuses and freedoms have to be shared as well.

Non-domination is crucial for distributing control over the citizens' own obligations and statuses in order to achieve democratic self-rule.[12] Together with stateless people, children are certainly among those who lack the key status of full citizenship or, more precisely, the communicative status of being heard and recognized in public, and the decisional status of making important choices about their lives and that of their community. The CRC's articles 12–17 establish a number of salient statuses for children, which are vital for their need to inhabit a healthy, non-dominated environment.[13] As a consequence, in both well-established and newly formed democracies, there is a growing imperative for minors to experience the implications of possessing such powers. Children must be provided with various opportunities to learn what their rights and duties are, and how their actions can affect the rights of others.[14] It is only by seeing respect for their own perspectives that children will acquire the competence to manage the intricate issues that will confront them as they approach adulthood.

<center>*****</center>

Having highlighted the importance of fostering children's participation, deeply entrenched in the Convention on the Rights of the Child, let us return to India, a country that, according to Professor Bajpai, aspires to be "the largest democracy in the world." Are the voices of minors beginning to emerge from a vast sea of laws and policies? One of the most outstanding case studies is the voluntary organization Butterflies, founded in Delhi in 1989, which has earned worldwide recognition for its innovative programs for street and working children. Its volunteers are in contact with more than 1,500 minors on a regular basis through twelve contact points in Delhi. The organization is committed to a non-institutional approach, thus promoting children's participation in the process of decision making as part of its program planning, monitoring, and evaluation.[15] Let us glimpse some main objectives, endorsed by the organization, that eloquently speak for themselves:

- Listen to children and let our work be guided by their views, suggestions and feelings;

- Empower street and working children with knowledge and skills necessary to protect their rights as children;

- Give vulnerable children a voice and the tools to raise issues which have a bearing on their lives and to facilitate the changes which will enable them to become valued and productive citizens;

- Encourage today's generation of children to have the confidence, motivation, and means to make the world a better place for themselves.[16]

The organization's activities are guided by a team of street educators who establish trusting relationships with the children and involve them in informal education, recreational practices, and health programs at the twelve contact points. The minors are encouraged to plan most of the activities through the Children's Council (*Bal Sabha*), attended by representatives who bring

issues raised by the children at each contact point. The Children's Council meetings are held every month, thus enabling children to discuss and share information, analyze various social and political events, and work towards collective action. Among the most discussed issues are drugs, police harassment, nonpayment of wages, and the need for better jobs.

Butterflies has encouraged high levels of child participation. The Council's forums have led to the emergence of a number of children's collectives such as the Child Workers' Union; *Child Workers' Voice*, a wall paper for and by children; the theatre group Butterflies; a health cooperative; and the Children's Development Bank, called *Bal Vikas* Bank**.** Interestingly, the wall paper *Child Workers' Voice* has evolved into national newspapers called *National Children's Times* and *National Children's Times and South Asian Children's Times*.[17] In addition, the children not only plan most of their activities but in some instances also contribute materially towards them. The members of Children's Development Bank have to pay a deposit, which enables them to make business plans and to earn interest. The obligation to contribute adds to the sense of ownership of the program and a commitment to ensuring its success.

By organizing the children through the method of nonintrusive guidance, Butterflies has succeeded in uncovering the immense creative potential of minors as active agents. The organization is an effective alternative to the traditional institutionalization of children because it operates in places where the street and working children live: bus terminals, railway stations, markets, and parks. It avoids the trauma of uprooting the child and forcibly putting him or her into a shelter (as the majority of "omniscient" adults would have done in this case). A non-institutional approach develops the child's capacity to adjust to various situations and empowers him or her to be independent. By organizing the community's life and delegating power to local self-government, the program facilitates a greater public outreach and in the long run proves to be one of the most efficient and practical approaches to granting children the political respect to which they are entitled while also asserting their economic and social rights.

Another example of a successful initiative to empower children as participating citizens is the Child Friendly Cities Initiative (CFCI).[18] It was launched in 1996 as a result of the resolution passed during the second United Nations Conference on Human Settlements (Habitat II) in order to make cities livable places for all. The Conference declared that the well-being of children is the ultimate indicator of a healthy habitat, a democratic society, and good governance. Child Friendly Cities' purpose is to advance the child rights agenda in both the developing world and the industrialized world by advocating for a governance approach and participatory urban management. The cities involved in the program must develop specific systems of local governance that fulfill minors' rights to influence decisions about their city; to express their opinions on the kinds of urban planning they prefer; to participate in family, community, and social life; to meet friends and to play; to take part in cultural and social events; and to be an equal citizen of their city regardless of ethnic origin, religion, income, gender, or disability.

A child-friendly city is the embodiment of the CRC at the local level; it is a space where children are active agents and their voices and opinions influence decision-making processes. Becoming a child-friendly city entails the fulfillment of nine components: ensuring children's participation, having a child-friendly legal framework, developing a citywide children's rights strategy, creating a children's rights unit or a coordinating mechanism, ensuring a child impact assessment and evaluation, having an appropriate children's budget, ensuring a regular state of the city's children report, making children's rights known among adults and children, and supporting independent advocacy for children.[19] In India, an example of a child-friendly city is

Calcutta, thanks to its City-Level Program of Action for Street and Working Children (CLPOA), which is a citywide coordinating mechanism for reaching urban children.[20]

The CLPOA is an umbrella organization uniting the government and non-government agencies that coordinate and extend a variety of basic services that address all deprived urban children. The partnership structure allows for a citywide holistic approach, thus overcoming a project-based approach to minors' rights. With the help of the CLPOA, forty-two police stations in Calcutta have become involved in the child-friendly police initiative, which consists of conducting training courses for police officers to sensitize them to the rights and needs of deprived children.[21] The police also issue Child Protection Cards and organize self-defense training for vulnerable children. Interestingly, despite being a typical initiative aimed at protection, this program establishes a dialogue between police officers and children, thus helping effectuate a shift in their traditional attitudes toward each other.

<p style="text-align:center">*****</p>

At the same time, as a side effect of organizing the nature of child-friendly cities, especially in the Western world, childhood has become increasingly structured and controlled to the extent that some critics suggest it no longer even exists. The child's development has been directly affected by the changing spaces of childhood since access to the outdoors is more limited and the use of structured places like schools, cars, or daycare has increased.[22] To avoid this problem, Italy, perhaps more than any other Western country, has dedicated a lot of effort to incorporating children into the process of planning its cities. Major architectural journals have devoted issues to child participation, which resulted in the fact that there are currently hundreds of Italian cities in which various forms of children's input influence the transformations of the urban landscape.[23]

The city of Empoli, situated close to Florence, is a clear example of how the child's creative potential to design his or her own space can contribute to improving the life of the entire community.[24] In 1999, Empoli's local officials developed a new city plan with a major investment in children's participation, which included neighborhood workshops and citywide surveys in high schools. The minors' ideas led to numerous changes in the city's original structure, such as increased pedestrian areas and greenways for children. This project turned out to be extremely successful, which brought it a first prize for "Sustainable Cities" among small cities. Importantly, the jury revealed that the child participation component of the plan was the most effective vehicle toward citywide acceptance of sustainable practices.

The prospects for the initiative's future are quite bright since child-friendly cities have started to organize themselves into networks, which is reflected in the example of the European Child Friendly Cities Network that links Swedish, Flemish, Greek, Irish, Spanish, and some Eastern European organizations. Their objectives are to promote the rights and interests of children in local communities and to involve the youth in discussing a variety of policies issued by local authorities. The political process of decentralization that is underway in many countries contributes to the transfer of responsibilities to local governments, which helps municipal frameworks include children in local provisions.[25] As we have seen in the example of Butterflies, children have concrete ideas of what is best for their well-being. When allowed to take the initiative and organize their communal life, they not only contradict the traditional image of minors as "irrational beings," but on the contrary, demonstrate an impressive ability to develop their potential as responsible citizens. The implementation of the rights of minors is a feature of

progressive societies that not only offers social protection but also promotes social integration by expanding open spaces and opportunities for reciprocal intergenerational dialogues.

After considering such inspiring examples, one cannot help asking a fairly logical question: how can we establish an efficient dialogue between policymakers and children? It seems that development policies and human rights belong to two different, and yet complementary, paradigms.[26] The human development realm's main preoccupation is the improvement of human capacities and quality of life. In contrast, the realm of human rights seeks to improve freedom and equality. The difference between the "top-down" approach that public institutions use and the "bottom-up" approach that the subjects of rights use makes it difficult for public policies and human rights to meet coherently in the public sphere.[27] They need to complement each other or the paradigms risk developing two divergent spheres: the "hard" reality of needs and the "soft" aspiration of rights.

A promising effort to reconcile the groups by reducing age-based inequalities lies in the domain of measuring and monitoring children's well-being. The recent interest in such indicators is caused by the fact that numerous policies require high levels of accountability, which in turn require policymakers to collect increasing amounts of data for program creation, implementation, and evaluation.[28] However, much research on children's lives has been delivered in the form of objective description wherein minors are treated as passive objects that are shaped according to the conceptions of the adult world.[29] The main problem is that we conduct most research *on* children instead of doing it *with* them: "To evaluate quality of life of any population we need to go and ask them. It is not appropriate to discuss children's quality of life without asking children about their own perspectives on their living conditions."[30]

Developing participatory methods of researching children's well-being will make adults understand that childhood is a phase in itself, and that it belongs to the child. By studying and interpreting minors' standpoints together with them, we take "one step forward in diminishing the ethical problems of imbalanced power relationships."[31] In a democratic society, the citizens themselves should provide the information necessary to improve our understanding of their realities. The importance of self-reported information on living conditions is connected with the right of children to participate in the democratic processes.[32] The knowledge of what issues are important for children and what their stances are in these matters are important for respecting them as persons, for informing policymakers, and for enhancing the legal and political socialization of children.

In conclusion, it should be emphasized that children's voices must become an indispensable component of any decision-making process that affects them, from planning and implementation to monitoring and evaluation. When minors engage in numerous activities, they begin to acquire and develop the knowledge and skills underlying the democratic processes of participation, thus making them self-advocating in the future. Professor Bajpai asserts that, "the need of the hour is a synergy of all the stake-holders—parents, teachers, police, NGOs, prosecution, government, media, corporates, industrialists, and the youth." It is true that without adopting a holistic approach to children's rights, it will be hard to ameliorate the status quo. The recognition of minors as stakeholders is a key factor defining what the future of Indian democracy will look like.

Notes

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4. A. Rehfeld, "The Child as Democratic Citizen," *The Annals of the American Academy of Political and Social Science* 633, no. 1 (2011): 142.

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9. Rehfeld 2011, p.144.

10. G. Lansdown, *Promoting Children's Participation in Democratic Decision-Making*. (Florence: UNICEF Research Center, 2001), p. 4.

11. D. Thompson, "Democracy in Time: Popular Sovereignty and Temporal Representation," *Constellations* 12, no. 2 (June 2005): 248.

12. J. Bohman, "Children and the Rights of Citizens: Nondomination and Intergenerational Justice," *Annals of the American Academy of Political and Social Science* 633, no. 1 (2011): 129.

13. J. Thompson, *Taking Responsibility for the Past: Reparation and Historical Injustice* (New York: Routledge, 2009), p. 111.

14. Rehfeld 2011.

15. Online at butterflieschildrights.org/.

16. Online at butterflieschildrights.org/objectives.php.

17. Online at butterflieschildrights.org/collectives.php.

18. Online at childfriendlycities.org/en/overview/the-cfc-initiative.

19. "Child Friendly Cities Fact Sheet," UNICEF National Committees and Country Offices (September 2009), online at childfriendlycities.org/en/overview/what-is-a-child-friendly-city.

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22. S. Holloway and G. Valentine, *Children's Geographies: Playing, Living, Learning* (New York: Routledge, 2000).

23. M. Francis and R. Lorenzo, "Seven Realms of Children's Participation," *Journal of Environmental Psychology* 22 (2002): 166.

24. Ibid., p. 166.

25. Riggio 2002, p. 50.

26. M. Mauras, "Public Policies and Child Rights: Entering the Third Decade of the Convention on the Rights of the Child," *The Annals of the American Academy of Political and Social Science* 633 (2011): 55.

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29. A. Ben-Arieh, "Where are the Children? Children's Role in Measuring and Monitoring their Well-Being, " *Social Indicators Research* 74, no. 3 (2005) : 570.

30. F. Casas, "Getting Children's Points *of* View *from* 12 *to* 16 Years Old through Group Administered Questionnaires," Research in International Comparison at Deutsches Jugendinstitut, Munchen (2003), p. 2.

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Response

Erik Larson

Professor Asha Bajpai's essay engages a multitude of issues that influence the well-being of people under eighteen years of age in India. It argues that legal and policy interventions in India can improve protection of children's rights. Her essay makes a number of contributions. First, the detail about the myriad influences on the status of 400 million young people in India provides a wealth of information about the real situations that influence people's life chances. Second, the focus on India provides insight about a case that is critically important for substantive and theoretical reasons. India is an emerging economic power, the world's largest democracy, and a diverse society; understanding the influences on children in India enables us to draw lessons that may apply elsewhere. Additionally, as I will briefly explain later, in some respects, India is an outlier in models that predict the pace of legal change. As such, understanding more about the country can build theoretical knowledge about how global developments influence national legal changes. Third, Bajpai's article provides details about a variety of legal processes that seek to improve the realization of children's rights. Analysis of how these legal processes have played out can yield insight about the prospects for legal change. Finally, uniting each of these contributions, the paper demonstrates a passionate commitment to the issues of the status of children.

In this response, I examine contexts in which ideas about children's rights and childhood have developed and how practices about children's well-being have changed to draw lessons related to Bajpai's essay. To telescope the argument: The prospects for change led by law are limited because children's status depends on altering the connections between the family and economy more broadly. In this sense, realizing children's rights remains contingent upon other social changes. Second, focusing on ending child labor elides the multiple ways that children are economic agents. Contemporary organization of children's economic activity has resulted in the institution of childhood becoming more expensive, making the prospects for realizing these rights more dependent on larger-scale changes. These conclusions notwithstanding, change is possible. It is, however, more likely if legal efforts follow, rather than lead, change.

Many of my comments concern how social life is institutionalized—or, in other words, how meanings and practices have become taken-for-granted ways to understand the world and taken-for-granted models for acting in that world.[1] During the past century, "global culture" increasingly became the source for such institutionalization. Global culture consists of models of how people and collectivities organize the world and act in it. These models, derived from rationalized scientific knowledge, have become pervasive in the world. Even in the face of global diversity, there are remarkably similar understandings of appropriate models for organizing society.[2] The prominence of global culture explains why

there is so much similarity across countries and why countries adopt policies and structures that do not respond to functional needs. Particularly since the middle of the twentieth century, models of human organization have increasingly emphasized individuals as the fundamentally real foundation of society, as creative agents, and as entitled to rights by virtue of being human.[3] Simultaneously, other models of organization—such as the patriarchal household as an actor in which women and children have no independent standing—have become illegitimate.[4] Global cultural models increasingly authorize nation-states to regulate populations, but in the name of promoting individual rights. Globally, regulatory governance (such as international conventions) creates normative models for states to follow, regardless of whether the population supports such changes.[5]

Professor Bajpai's essay rests on two understandings that derive from global culture: (1) children are universal bearers of rights and (2) states are the primary entities for ensuring these rights. While I do not question the veracity or normative implications of these cultural understandings, I argue that we need to understand how these ideas have been produced in global culture and how global culture diffuses to better apprehend the prospects for realizing the promise of children's rights. Bajpai's contribution presumes that the Indian nation-state should be the point-of-entry for the analysis of how to address these issues, reflecting the prevalence of models of social life in the contemporary world that authorize nation-states to organize and take responsibility for interventions to address problems.[6] Similarly, her analysis takes for granted that children are a distinct subgroup of people who deserve specialized protection. Both presumptions are widely accepted cultural beliefs that we take to simply describe reality; both also are relatively recent beliefs.

I. The Global Institution of Childhood and Limited Prospects for Legal-Led Change

Scientific knowledge and international law concerning children have become more universal. For instance, the International Labour Organization's Minimum Age Convention of 1919 restricted work for people under age fourteen, except for those in India and Japan, which had restrictions only for those twelve and younger. Contemporary international law no longer includes provisions for differences in age-grading across countries, because the rise to prominence of developmental models of childhood makes such exceptions illegitimate.[7] Similarly, the constitutions of nation-states have increasingly recognized childhood as a distinct life stage.[8] These universalizing trends indicate global cultural developments that influence law and how we understand childhood as an institution.

Although rooted in changes in global culture, legal strategies to enhance children's rights offer limited prospects for altering the status of children for two reasons. First, because childhood is a temporary status for individuals but enduring for society,[9] we need to distinguish between childhood as an institution and children as beneficiaries of rights.[10] Although children's rights have evolved internationally such that the United Nations Convention on the Rights of the Child holds children to be autonomous individuals,[11] these rights attach to particular individuals only for a limited time. Children's rights, as such, are a means to construct the institution of childhood in relation to other social institutions, such as the family, the economy, sexuality, and the state, to name a few.[12] Second, children's rights raise the questions of how to realize and enforce these rights. Due to limited material

and social resources, children have restricted bases for independently exerting these rights.[13] They must often rely on third parties and actors in the legal system to make rights claims on their behalf. The rights, therefore, may require additional enforcement efforts to have greater effect.[14]

Research on worldwide changes in law demonstrates both the importance of global culture in producing changes in law, but also the limited effects of such top-down legal changes. Certainly, there are global dimensions to changes in national laws that follow the overall development of global culture. For instance, cross-national analysis shows that national criminal laws about sex have become more similar as countries have decreased criminalization of adultery and sodomy and increased criminalization of rape and child sex abuse; these changes tend to happen in tandem.[15] Globally, national criminal laws about sex, therefore, have become more in line with notions that sex is an individual expressive activity rather than a procreative activity governed by the state or patriarchal family. This analysis shows that connections in a given country to global culture account for much of the variation in the pace and timing of such reforms. India's slow pace of reform, as discussed by Professor Bajpai and as indicated in Frank, Camp, and Boutcher's analysis, is surprising given the country's overall connection to elements of the culture of the global polity, suggesting that something about the Indian state or legal system slows the pace of change. While a full analysis is beyond the scope of these comments, possible explanations include a lack of state cohesion that may insulate the state from civil society[16] and the structure of state bureaucracies that may refract global culture in ways that limit the potential for change.[17]

Such globally inspired laws, however, do not often result in changes in behavior. University of Minnesota professor Elizabeth Heger Boyle and Macalester Sociology alumna Amelia Cotton Corl demonstrated that developing countries that passed laws to protect female children from genital cutting did so largely in response to global pressure due to conditions placed on international financial support. These laws, however, are rarely enforced.[18] Instead of change in practices of genital cutting coming from law, Boyle and Corl's evidence shows the importance of community-based work in conjunction with increased living standards in altering practices. Particularly when law is distant from everyday life, rights-based reforms will be a poor tool to promote change,[19] particularly when (as in India) much of the support infrastructure for rights-based mobilization is limited.[20] To be effective, rights require that people have experiences applying the law as agents. Without such experience, there is a risk that rights-based law reforms that seek to control people will simply provoke resistance and increase barriers to change.[21] These points help explain how the origin of laws result in the implementation gaps that Professor Bajpai identifies.

Three related lessons derive from this evidence about global culture and law. First, for international legal developments to have greater influence on India's law, the state and legal systems in India will either need to be more directly linked to global culture or be more open to influence from organizations, professions, and other civil society actors who are closely connected to global culture. The gap between the expected and actual rates of legal change in the country suggests that legislative and judicial institutions are more insulated from these global developments than in many other countries.

Second, mere legal change is not sufficient to bring about changes in the treatment of children. Bajpai's article highlights the many formal gaps in law as related to children's

rights. But the influence of law and rights on social change often is contingent upon changes in social organization and societal expectations.[22] Indeed, in her oral presentation, Bajpai discussed best practices of civil society organizations, demonstrating this point: building consensus and real impact happens when a community believes that things can be different. In this respect changing law will not likely change minds and will have a limited effect on changing behavior, particularly given a weak resonance of law. A change in minds, however, may change law. From this perspective, the gaps in law that Bajpai's essay identifies reflect the gap between cultural ideas about children in India and global ideals of childhood.

Third, in the absence of such larger cultural shifts in India, changes in laws may have limited but perverse effects. The example of the PCPNDT Act criminalizing ultrasound for the purpose of determining the sex of a fetus stands out in this respect. Merely using ultrasound to produce that information does not result in any harm. Rather, acting on that information is the problem. Convicting physicians for merely providing information misallocates responsibility. Similarly, analysis of laws passed to comply with external pressures demonstrates that such action can decrease the legitimacy of law and the state, thereby leading to reduced ability to pursue change later.[23] Similarly, providing for more "child friendly" practices in legal institutions, as Bajpai suggests, would seem unlikely to overcome the societal attitudes and patriarchal norms that impede incorporating considerations of the welfare of children into decision making. Indeed, such a formalist response may suggest that children's concerns were heard, even if the input they provide is legally irrelevant and not likely to influence actual decision making.

II. Children as Economic Actors and Prospects for Changing Children's Experiences

I now turn to a more extended consideration of child labor. I will use insights from the experience of the United States of America to build to more general ideas about children as economic actors and the cultural content of childhood as an institution. This analysis draws historical lessons about how actual changes in children's conditions occur and explains the prospects for such changes in the contemporary world.

Viviana Zelizer's scholarship on children shows how the United States changed from a country in which children participated in the general labor market as workers to one in which children were formally "priceless" and outside the labor market.[24] In the nineteenth century, the market value of children as workers actually increased when urbanization created more opportunities (and demand) for children to work in the formal labor market. By the 1900 census, one of every six children between the ages of ten and fifteen were employed—approximately the same ratio as in India today, according to Bajpai's evidence.[25] Fathers in the United States would collect children's earnings, highlighting again how children were subordinate to the patriarchal family. Zelizer notes that legal changes only came after fifty years of work by advocates. When change did occur, cultural influences were central: people's beliefs about appropriate combinations of children's labor transactions, financial flows, and social relations shifted. Indeed, publications demonstrate this cultural shift. From the 1880s until the 1890s, there was more than a five-fold increase in the percentage of books that referenced the "child's individuality." This shift was not merely a link to general trends in attributions of individuality because a similar spike in references to "man's individuality" happened about forty years earlier.[26]

The legal changes in the U.S. closely coincided with wider shifts in labor market organization. New regulations on child labor typically targeted the types of safety hazards and exploitation that more general labor regulations of the time addressed,[27] implying that the changes to child labor were part of larger shifts in labor market regulation. Even more importantly, new labor regulations enabled adult male workers to earn a wage sufficient to support a family. Therefore, it took both parallel changes in the social institutions of work, family, and the economy to enable child labor law changes *and* the investment of significant resources to alter beliefs about children and, therefore, child labor practices. These insights suggest that the holding in *Mehta v. Tamil Nadu*, discussed by Professor Bajpai, may not go far enough. The legal remedy in *Mehta*—that parents will receive a job or income support, as long as the child receives education—seems to address only cases in which parents do not currently work. Broader changes that enhance the ability of parents to earn a social wage sufficient to support a family would more likely result in the types of cultural changes that led to sentimentalizing children in the U.S. In this respect, the changes necessary to reduce the problems associated with child labor may be contingent upon changes in other social institutions.[28]

Zelizer's analysis also holds additional insights about children as economic actors and childhood as an institution. She points out that solely focusing on laws against child labor in the U.S. to end exploitative practices obscures the range of actual activities that children undertake as economic actors. In other words, despite formal laws against child labor in the United States, children's labor still provides a wide range of economically valuable products.[29] Children in immigrant families, for instance, may provide translation services at physician's offices or with authorities. Other children may contribute labor to family businesses. Outside the household, people may hire a child from the neighborhood to shovel a sidewalk or babysit. While the precise mix of labor and appropriate compensation varies by social relation, it is unmistakable that each of these children's labor has economic value.

Yet the cultural logic used to justify children's work as appropriate has shifted. Children now engage in work to build skill and character (at least that is the justification we put forth) or, on occasion, to support particular social relations (by giving care or by translating, for instance). Indeed, Article 32 of the Convention on the Rights of the Child indicates that children have the 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." Calls to end all child labor seem to go beyond the CRC's language. However, both these calls and the CRC raise questions about what bounds we set on child labor: How does one determine whether a particular activity helps or hinders development? How does one measure economic exploitation? What is it about market participation that harms children?

This final question extends the analysis of children as economic actors because they also exert tremendous influence as consumers. Children account for about ten percent of consumption in the United States.[30] Similarly, as consumer markets grow worldwide (especially in emerging economies like India), children's global influence on consumption increases.[31] In many respects, children have become more active economic agents, as they now influence or control resources that others bring into the household, rather than simply surrendering wages to a patriarch.

The cultural shifts in childhood concerning children as economic actors—decreasing and obscuring their instrumental economic value, substituting a priceless sentimental value, and nurturing and unleashing children's consumptive appetites—make children expensive. Despite their social origins, the resulting shift in childhood as an institution and its cultural manifestations appear natural and obvious. More deliberate attention to cultural scripts of what combinations of economic activity, types of compensation, and social relationships are legitimate can help illuminate the connections between childhood and other institutions. We should also account for how the costs and benefits of children's economic activity are distributed. Such analysis should examine both the institutional level—how much society collectively invests in (or takes from) childhood as an institution—and group inequalities—how stratification distributes these costs and benefits in domestic as well as global settings.

III. Conclusion

I want to conclude this consideration of childhood as an institution in comparative, global context by drawing out implications related to Professor Bajpai's analysis. She notes: "Today [India] is registering 8–10 percent growth and claiming to be a world economic power by 2020." In her presentation, she expressed the sentiment that no country should be a world economic power if it does not treat its children well. As Professor Jacquelynne Eccles' article (in this volume) demonstrates, however, the sentiment, sadly, is not a fact of life in the contemporary world. The economic power of the U.S. and its treatment of children indicate that, at best, there is a weak link between treatment of children and economic power. More likely, the causal order runs in the opposite direction, which is where the potential for India's growth can become a source of hope. If India devotes fruits of this economic growth to change social organization and institutions bound to childhood, it could result in the types of cultural changes that encourage people to view children as priceless.

At the same time, however, we need to consider how the cultural organization and location of the institution of childhood projects visions for the future. The contemporary global construction of childhood focuses on developing human potential. The culturally legitimate treatment of children has shifted from understanding children as a resource for families and nations to understanding duties that we must fulfill to enable future aspirations. We seem to more readily celebrate and liberate those elements of childhood that help develop consumers and households as sites of consumption, albeit not as unequal as the patriarchal households of the past. At the same time, efforts based on presumed vulnerabilities of children to succumb to nefarious bad actors and criminal-law-based responses may draw our attention away from the broader social arrangements of childhood. Instead of collectively engaging in wider reform, a focus on eradicating bad actors may lead to laws that are misguided and counterproductive, and continued hollow political platitudes about the sanctity and value of children. Realizing the promise of children's rights requires changes to the institutions on which such rights are contingent. Such change is not impossible—far from it, as the historical evidence indicates. Rather, true change requires that we invest the time and resources in well-focused efforts to alter culture, social organization, and practices in order to make rights into realities.

Notes

1. Hagan 2003, p. 7.

2. Meyer 2004.

3. Frank and Meyer 2002; Meyer and Jepperson 2000; and Meyer 2010.

4. Frank and Meyer 2002; and Boyle et al. 2006.

5. Boyle et al. 2006; Larson 2007; and Meyer et al. 1997.

6. Meyer et. al 1997.

7. Boyle, Smith, and Guenther 2006.

8. Boli-Bennett and Meyer 1978.

9. Corsaro 2005, p. 3.

10. Smith 2010, p. 23.
11. Boyle et al. 2006, p. 267.

12. Children's rights, therefore, draw inspiration from models of human development tied to individual sciences, which have gained authority in world culture. Education as a universal need for children represents a process through which individuals become linked to universalized, rational culture (see Frank and Meyer 2002; Meyer 2010; and Meyer and Jepperson 2000).

13. Boyle and Nyseth 2011.

14. Sutton 2001.

15. Frank, Camp, and Boutcher 2010.

16. Chibber 2002.

17. Larson, Johnson, and Murphy 2008.

18. Even in developed countries, law does not end unwanted practices. Using the numbers in Professor Bajpai's essay yields a rate of sexual abuse of children of 1.75 per 1000. Her essay notes there are 400 million children in India and cites a source from 2006 that estimated 600,000 to 700,000 incidences of child sexual abuse. Using the higher number yields the rate of 1.75 per 1000 children (700,000 / 400,000,000). In the United States, evidence from the National Crime Victimization Survey estimates a rape and sexual assault victimization rate for 12 to 17 year olds of 1.9 per 1000 (Douglas and Finklehor n.d.). The estimate is from the 2001 Survey, which

follows a period of significant decline in sexual assault victimization among that age group (Finklehor and Jones 2004).

19. Ewick and Silbey 1998.

20. Epp 1998.

21. Boyle and Corl 2010.

22. Sutton 2001.

23. Boyle and Corl 2010.

24. Viviana Zelizer's scholarship on children (1994, 2002, 2005).

25. Bajpai's article cites 60 million child laborers out of 400 million children, which is 15% of children or one of every 6.6 children. The number provided in Zelizer (1994) excludes children who were working and under age 10 and excludes children who worked with parents.

26. Cohen 2011.

27. Smith 2010, p. 57.
28. Sutton 2001.

29. Zelizer 2002.

30. Bureau of Labor Statistics 2011; *The Economist* 2006; Horovitz 2011; and Zelizer 2002. This estimate seems likely on the low end, since it is from James McNeal's analysis of the approximate dollar value of direct purchase ($40 billion) and direct influence ($340 billion) in 2006. It excludes indirect influence (e.g., parents thinking that they should buy something for their child). McNeal's estimate of children's influence (direct and indirect) has increased by more than 40% since 2006 (Horovitz 2011); the rate of increase of consumer spending accounted for by children's direct purchase and direct influence is greater than the rate of increase in overall consumer spending.

31. Schorr 2004; and McNeal 2007.

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