

State Obligation towards Children in a Conflict Situation: The Case of Ethiopia

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Abstract

The article examines the obligations of Ethiopia to protect children in conflict situations and the accountability framework against non-state actors in the context of armed conflict. It presents arguments on the various legislative, administrative and judicial measures the Government of Ethiopia is required to put in place to mitigate the impact of a conflict on children's rights. The article also explores the importance of a comprehensive, appropriate and inclusive accountability mechanism to address deliberate harm or failure to protect children and navigates the kinds of supports and services that should be availed for children affected by conflicts. The authors recognise that the intensity, scope and impact of the violence inflicted on children in conflict situations could fall under various governing laws, such as international humanitarian and criminal laws. However, it would be important to note that the arguments in the article are informed by a child rights-based approach to protecting children in conflict situations.

Keywords: *children, conflict, African children's charter, transitional justice, state obligations, Ethiopia*

Introduction

Conflict has become a gloomy reality in many African countries as a significant number of them are experiencing frequent and protracted conflicts. Children living in such situations bear the

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brunt as they are more likely to be killed, displaced, separated from their families, abducted, trafficked, sexually assaulted, and maimed. Beyond being passive victims in conflicts, children also become active participants as they could, and increasingly so, be recruited by armed forces with assigned combat roles. In Ethiopia, millions of children are being severely affected by the conflicts that erupted in the Northern part of the Country.

Against the backdrop of these facts, the article aims to preview the main aspects of violations faced by children living in conflict-affected areas as well as the impact it has on the rights and welfare of children in Ethiopia. The article takes stoke of the regional and international human rights instruments, standards, policy directions and initiatives that provide for the protection regime for the rights of children in conflict situations. In particular, the article explores the obligations prescribed in the African Charter on the Rights and Welfare of the Child and the principles in the ACERWC's General Comment on Article 22 of the African Children's Charter. The central argument of this article would be informed by a child rights-based approach to the protection of children in conflict situations focusing on international and regional child rights norms and standards.

Children in a Conflict Situation: Concepts and Impact

The protection of child rights in conflict situations is internationally recognized and founded in various international humanitarian laws and regional human rights laws. It is, however, imperative to set the context and scope of the group of children this article makes reference to while using the term 'children in conflict situations'. While international humanitarian law is mainly designed to govern situations of armed conflict, both international and non-international, international human rights law extends protection to children in armed conflict and other situations that can be assimilated to armed conflict in terms of their impact on the rights of children. In the African Charter on the Rights and Welfare of the Child (ACRWC), Article 22 provides that state party's obligation to protect children affected by armed conflict extends to situations of tension and strife. The extension of the protection of children's rights in these situations is guided by the similar impact it infuses on children and

the desire to accord higher protection in cases of tension and strife (ACERWC 2020: Para 18-19). The General Comment on Article 22 of the ACRWC further provides that the rules and principles of the protection of children's rights can be applied in cases of crises, emergencies, and national disasters where such circumstances also result in violation of children's rights (ACERWC 2020: Para 23).

The International Committee of the Red Cross uses the term 'other situations of violence' to refer to cases that are not classified as international or non-international armed conflict in line with the Geneva Conventions of 1949 and the Additional Protocol II,⁷ but require its similar response or intervention to affected persons (ICRC 2017). Therefore, for the purpose of this article, children in a conflict situation include those in international and non-international armed conflicts, children in situations of tension, strife, and other violent situations such as riots, demonstrations, mass arrests, sporadic violence and any other similar instances, which have large scale impact on the rights and welfare of children. A child rights-based approach to the protection of children in a conflict situation requires that emphasis is put on the impact of the situation than what the actual instance of violence means under international humanitarian law. In light of this, this section intends to shed some light on the impacts of conflict and violence on children's rights.

Any conflict has a ruinous effect on the realisation of children's rights enshrined under international and regional instruments. As the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) notes:

Conflict leaves societies, especially children, with devastating scars. Children suffer unspeakable violence and injustice, including injuries and death, displacement, loss of family, the trauma associated with witnessing acts of violence and recruitment into armed forces or groups. The involvement of children in armed conflict violates every right of the child, including the right to life, education, health and family (ACERWC 2016a: 1).

⁷ International Committee of the Red Cross (ICRC) 1949, art 2 and 3; ICRC 1977b, art 1

The 2022 report of the UN Special Representative of the Secretary-General for Children and Armed Conflict shows that the impact of conflicts on children has increased globally as the past few years marked increase in violations against children. These violations range from killings and maiming to recruitment and use of children, the denial of humanitarian access, and child abduction (UN SRSG CAAC 2022b).

Recruitment of children into armed forces is one of the common and direct impacts of conflict on children's rights. The involvement of children in hostilities takes various forms; they may take part in conflicts as direct combatants, or may be used to provide support to armed forces as cooks, porters, messengers, and very often used for sexual purposes (UN General Assembly 2007). Such involvement of children in an armed force (state military or security force or non-state actors with arms engaged in conflict) constitutes a violation of the rights of children enshrined under international human rights laws and amounts to a war crime under international humanitarian law.⁸

Killing and maiming of children in conflict and violence situations is identified as one of the six grave violations, as it also directly contradicts the protection under Article 5 of the ACRWC. The patterns of killings and maiming of children in armed conflict include "deliberate targeting, indiscriminate and excessive use of force, indiscriminate use of landmines, cluster munitions and other weapons and use of children as human shields" (UNSC 2009b: para 2). Children are also the most affected by landmines placed during conflicts as they do not take the precaution to avoid casualties after the active conflict has ended.⁹

Another threat posed on children during conflict is sexual violence, which has long been used as a weapon of war and takes various forms in conflict situations including rape, forced pregnancy, sexual

⁸ OAU 1990, art 22; UN General Assembly 1989, art 38(3); UN General Assembly 2000, ICRC 1949, ICRC 1977a, art 77 (2); ICRC 1977b, art 4(3)(c); International Labour Organization (ILO) 1999, art 1 and 3.

⁹ UN General Assembly 2022, para 111-113.

slavery, sexual humiliation, forced prostitution, and child marriage.¹⁰ Sexual violence is used with a motive to advance military objectives such as terrorizing, humiliating and punishing an enemy community, ensuring compliance of recruited children and others, and clearing a certain group of or place.¹¹ The impact of sexual violence in conflict situations leads to severe trauma and psycho-social impact on children and creates a sense of impunity and tolerance for such violence even after the conflict ends.¹² Survivors of sexual violence are unlikely to be provided with remedy and rehabilitation services due to the destruction or disruption of services as a result of conflict and violence. Even though sexual violence has not been recognized as a grave breach by the Geneva Conventions and the Additional Protocols, it has been recognized by the UN Security Council as a grave violation of children's rights in conflict situations.¹³

The denial of humanitarian access is another grave violation that is on the rise, as it has increased by over 300% between 2015 and 2017.¹⁴ Denial of humanitarian access to children in conflict situations can occur due to movement restrictions of aid workers and supplies, attacks on aid workers, insecurity due to continued hostilities as well as landmines, attacks on humanitarian assets, and bureaucratic administrative impediments.¹⁵ Moreover, counter-terrorism measures and related sanctions and donor requirements hinder the delivery of humanitarian aid to children.¹⁶ If a certain party in a conflict is designated as a terrorist group, counter terrorism measures do not allow humanitarian workers to provide goods and services to those communities due to the strictly applied clauses in counter terrorism measures.¹⁷ This denial of humanitarian access is one of the main factors, which puts children at risk of

¹⁰ UN Division for the Advancement of Women 1998, 3.

¹¹ Bastick, Grimm, and Kunz 2007, 14-15; UN General Assembly 1996, para 94.

¹² Ibid.

¹³ UNSC 2008; UNSC 2009a.

¹⁴ Save the Children 2019, 22.

¹⁵ Watchlist on Children and Armed Conflict and Institute of International Humanitarian Affairs 2022, 12-13.

¹⁶ Ibid.

¹⁷ Ibid.

dying in conflict situations as a result of disease and starvation.¹⁸ Furthermore, it leads to an increased recruitment and use of children for military purposes, sexual slavery, malnutrition, and disruption of education.¹⁹

Another impact is attacks on schools and hospitals, which affects the realization of children's right to education and health. Children's right to access education is hindered as schools are destroyed and/or occupied by militants, students and teachers are targeted and abducted.²⁰ Lack of access to health services also has a devastating impact including lack of immunization, malnutrition, untreated injuries, and exposure to resurgence of outbreaks, which further result in increased child mortality.²¹ Furthermore, conflict compromises food security of children as food production is interrupted; means of transportation is destructed, and cost of living increases.²²

Separation of children from their parents and caregivers takes places as conflicts and violence boom, which is a violation of the ACRWC.²³ Separation of children materializes in various instances such as recruitment of children, attacks and subsequent displacement, killing of parents and care givers, and abonnement of children born as a result of sexual violence during conflict.²⁴ When children are separated from their parents for any of the reasons and if they are not accompanied by an adult, they become highly susceptible to recruitment, abduction, sexual exploitation, child labor, trafficking, as well as malnutrition and infectious diseases.²⁵

It should be noted that while conflict disproportionately affects children in general, some situations further exacerbate the impact on children. Children in rural areas, girls, children with disabilities,

¹⁸ Save the Children 2018, 5.

¹⁹ Watchlist on Children and Armed Conflict and Institute of International Humanitarian Affairs 2022, 16-17.

²⁰ Save the Children 2013, 4.

²¹ ACERWC 2016a, 42-43.

²² Ibid 44.

²³ ACRWC, art 19.

²⁴ ACERWC 2016, 58.

²⁵ Ibid, 70-80.

children on the move, children of undocumented parents and children of economically disadvantaged parents/groups face additional vulnerabilities that increase the risk of violations.²⁶

Responding to the challenges that children in conflict situation are facing, a range of international and regional human rights laws are established. The section below examines selected instruments relevant to the protection of children in conflict situations.

International and Regional Legal Frameworks: Initiatives for the Protection of Children in a Conflict Situation

There are various areas of laws that regulate matters of children in conflict situations including humanitarian law, human rights law, and international criminal law. Applicable instruments include the four Geneva Conventions of 1949²⁷ and their two Additional Protocols,²⁸ the Convention on the Rights of the Child (CRC)²⁹ and its Optional Protocol on the Involvement of Children in Armed Conflict (OPAC),³⁰ the African Charter on the Rights and Welfare of the Child (African Children's Charter),³¹ and the Rome Statute.³²

Beyond these normative frameworks, various resolutions, standards, policies and programs have been established to respond to the challenges of children in conflict situation. Particularly, 1996 was a crucial year for the international child protection movement in the context of conflicts. Graça Machel presented her groundbreaking report to the UN General Assembly in 1996, highlighting the disproportionate impact of war on children and identifying

²⁶ UN Human Rights Council 2022, paras 21-26 and 34-36.

²⁷ ICRC 1949.

²⁸ ICRC 1977a; ICRC 1977b.

²⁹ UN General Assembly 1989.

³⁰ UN General Assembly 2000.

³¹ OAU 1990.

³² UN General Assembly 1998, The Authors note that Ethiopia is not yet a party to the Rome Statute, however, it is important to note that most of the major provisions of the Rome Statute reflect customary international law and, to that extent, are therefore binding.

them as the primary victims of armed conflict.³³ The UN Security Council (UNSC) has also passed a number of resolutions covering a wide range of protection issues concerning children affected by conflicts.³⁴

At regional level, the African Union Peace and Security Council (PSC) has been regularly engaging matters of children in conflict situations since 2014. The PSC has issued various communiqués and statements, drawing the obligations of members' states of the African Union towards children affected by conflicts.³⁵

The matter has also been dealt with global and regional development policies, such as the Sustainable Development Goals, where an agreement is reached to end the recruitment and use of child soldiers.³⁶ Similarly, targets for Goal 18 of Agenda 2063's First Ten-Year Implementation Plan include ending all forms of violence, child labor exploitation, child marriage, human trafficking and recruitment of child soldiers. Africa's Agenda for Children (Agenda 2040) also provides a useful guidance to states.³⁷

The above-mentioned normative instruments and standards provide states' obligations towards children in conflict situation. However, considering the relevance of the African Children's Charter and the CRC, the discussion below largely focuses on these two instruments and the work of their monitoring bodies. International humanitarian

³³ UNICEF 2015; Her report played a significant role in strengthening the applications of the international and regional normative frameworks through progressive policies, resolutions and standards geared towards protection of children in conflict situation both at the global and regional level. For instance, the global report led to the adoption of the General Assembly's Resolution 51/77, which created the mandate and recommended that the Secretary-General appoint a Special Representative on the impact of armed conflict on children. The resolution also requested that the Special Representative prepare reports on the situation of children affected by armed conflict to be presented to the UN General Assembly and Human Rights Council.

³⁴ UNSC 1999; UNSC 2000; UNSC 2001; UNSC 2003; UNSC 2004; UNSC 2005; UNSC 2009b; UNSC 2011; UNSC 2014; UNSC 2015; UN SRSG CAAC 2022b; and Mezmur 2005.

³⁵ AUPSC 2022; AUPSC 2021; AUPSC 2020); AUPSC 2019); AUPSC 2018; AUPSC 2017; AUPSC 2016; AUPSC 2016; AUPSC 2015; AUPSC 2014.

³⁶ United Nations 2015, Target 8.7.

³⁷ Aspiration 9 states, "Every child is free from the impact of armed conflicts and other disasters or emergency situations"; ACERWC 2016b.

law provisions pertaining to the protection of children are also discussed to the degree that they are applicable to the topic at hand.

The protection of children in the context of armed conflict is addressed under the ACRWC,³⁸ CRC³⁹ and OPAC. In addition, the monitoring bodies of these treaties, namely the ACERWC and the Committee on the Rights of the Child (CRC Committee), also contribute to strengthening the normative framework through their general comments and concluding observations. The ACERWC, in particular, has devoted a general comment to Article 22 of the Charter, which is solely concerned with the protection of children in armed conflict.⁴⁰ There is no derogation clause in the CRC or the ACRWC. In the absence of a derogation clause, the CRC and, by extension, the African Children's Charter are believed to be applicable at all times, including during emergencies.⁴¹ Hence, as stated by Graça Machel in her landmark study of the impact of armed conflict on children, CRC "recognizes a comprehensive list of rights that apply during both peacetime and war".⁴²

According to Article 22 of the ACRWC, the recruitment or direct participations in hostilities of any child under the age of 18 in both international and internal armed conflicts is prohibited.⁴³ This provision also applies to 'children in situations of internal armed conflicts, tension, and strife'.⁴⁴ While both the Charter and the CRC require for states to protect and care for children who are affected by armed conflict,⁴⁵ the later imposes an additional obligation on states to ensure their social reintegration as well as their physical and psychological recovery.⁴⁶ The provisions of the CRC are further reinforced by OPAC, which requires to take all feasible measures to demobilize or otherwise release from service persons under 18 and to provide all appropriate assistance for their physical

³⁸ OAU 1990, art 22.

³⁹ UN General Assembly 1989, arts 38 and 39.

⁴⁰ ACERWC 2020.

⁴¹ Aptel 2018; Kuper 1997, 46.

⁴² Machel 1996: para 227.

⁴³ OAU 1990, art 22(2).

⁴⁴ OAU 1990, art 22(3).

⁴⁵ OAU 1990, art 22(3) and UN General Assembly 1989, art 38 (4).

⁴⁶ UN General Assembly 1989, art 39.

and psychological recovery and their social reintegration, when necessary.⁴⁷

In its General Comment on children in conflict situation, the ACERWC stresses the importance of reading the clause in light of Article 1 of the Charter.⁴⁸ It has emphasized the importance of putting in place necessary administrative, legislative, and judicial measures to protect conflict-affected children and providing access to quality health care and education.⁴⁹ This obligation also requires that children who are allegedly associated with armed forces or designated terrorist organizations be treated first and foremost as victims,⁵⁰ and that special juvenile justice standards be applied when dealing with such children.⁵¹ The effective implementation of this provision also necessitates establishing accountability, monitoring, and reporting mechanisms as well as allocating adequate human and financial resources to children's rehabilitation, reintegration, reunion with their families, providing effective victim assistance as well as redress and compensation.⁵²

The CRC Committee has similarly expanded on the obligations under Articles 38 and 39 in its general comments and concluding observations. In particular, it has emphasized the importance of paying special attention to girls, who are especially vulnerable to gender-based violence in the context of armed conflict.⁵³ In the same vein, the Committee recommends the development of gender-sensitive mental health care in order to support the recovery and reintegration of children affected by armed conflict, as well as the provision of qualified psychosocial counselling.⁵⁴ The Committee has emphasized the importance of identifying and demobilizing unaccompanied or separated former child soldiers in order to facilitate their reintegration into society, as well as

⁴⁷ UN General Assembly 2000, art 6(3).

⁴⁸ ACERWC 2020,, para 43.

⁴⁹ ACERWC 2020, para 44.

⁵⁰ CRC Committee 2005, para 56.

⁵¹ ACERWC 2020, paras 26 and 44.

⁵² ACERWC 2020, para 48.

⁵³ CRC Committee 2005, para 47.

⁵⁴ CRC Committee 2005, para 48.

providing psychosocial support.⁵⁵ In addition, it urges states to establish a comprehensive system of age- and gender-appropriate psychological support and assistance for unaccompanied and separated children affected by armed conflict.⁵⁶

The Role of the General Principles in the Context of Children in Conflict Situations

Apart from the specific provisions dealing with children in armed conflict, the implementation of all rights recognized in the ACRWC and CRC including the protection of children in situations of conflict should be guided by the four General Principles found in both instruments, namely the (1) principle of non-discrimination, (2) the best interests of the child, (3) the right to life, survival, and development, and (4) child participation. The CRC Committee notes that the four general principles should not be subject to derogations even in times of emergency.⁵⁷ In its report of the 2017 Day of General Discussion on Children in Armed Conflict, for instance, the CRC Committee noted that none of the provisions in Articles 2, 3, and 4 “admits derogation in time of war or emergency”.⁵⁸

Regarding non-discrimination, both the ACRWC and CRC state that all children are entitled to the rights without discrimination on any grounds, including but not limited to parent’s or legal guardian’s race, ethnicity, gender, sex, language, religion, political or other opinion, national and social origin, disability, birth or other status.⁵⁹ The non-discrimination obligation extends to the duty of states to actively identify children and groups of children who need special measures to reduce or eliminate conditions that give rise to discrimination.⁶⁰ In the application of this principle in situations of conflict, the ACERWC has emphasized the importance of ensuring that vulnerable children, such as refugee and internally displaced

⁵⁵ CRC Committee 2005, para 56.

⁵⁶ CRC Committee 2005, para 60.

⁵⁷ Hodgkin and Newell 2017.

⁵⁸ CRC Committee 1992, para. 67; Hodgkin and Newell 2017.

⁵⁹ OAU 1990, art 3 and UN General Assembly 1989, art 2(1).

⁶⁰ ACERWC 2018b, para 4.1.

children, are not discriminated against when it comes to access to basic services such as education, health, birth registration and social protection.⁶¹ The CRC Committee has identified children in conflict or humanitarian disaster situations to whom special attention should be given in addressing their rights.⁶² It further emphasises special consideration need to be given to the rehabilitation and social reintegration of children with disabilities as a result of armed conflicts.⁶³ Applying the principle of intersectionality in addressing the particular vulnerability to multiple forms of discrimination, the CRC Committee highlights the need to provide special assistance to refugees and displaced girls with disabilities, such as preventative assistance, access to adequate health and social services, including psychosocial recovery and social reintegration.⁶⁴

In terms of the best interests of the child principle, states are required to ensure that the child's best interests is the primary consideration in all actions affecting them.⁶⁵ In the context of armed conflict, this obligation entails the prevention of recruitment and radicalization of children by armed groups, protection of children from the impacts of conflict, and the protection of children from violations such as abductions, killing, and maiming, sexual violence, and exploitation.⁶⁶ It also requires states to prevent the destruction of essential infrastructure for children, such as schools, as well as the obstructing of access to humanitarian assistance.⁶⁷ The best interests of children should also be upheld by intensifying the registration of births, which is crucial to access services such as immunization, maternal health care, and access to basic services.⁶⁸ Furthermore, adherence to the principle of the best interests of the child in conflict situations requires allocation of adequate resources to the justice

⁶¹ ACERWC 2020, para 39; ACERWC 2016, paras 3 and 57.

⁶² CRC Committee 2013.

⁶³ CRC Committee 2006b, para 78

⁶⁴ CRC Committee 2006b, para 79.

⁶⁵ The CRC requires that the child's best interests be *a* primary consideration in all actions concerning children, whereas the ACRWC requires that the child's best interests be *the* primary consideration. ACRWC, art 4(1) and CRC, art 3(1).

⁶⁶ ACERWC 2020, para 27.

⁶⁷ ACERWC 2020, para 27.

⁶⁸ ACERWC 2020, para 29.

systems to enable them investigate violations against children in armed conflict and bring the perpetrators to justice.⁶⁹

The only right defined as inherent in the ACERWC and the CRC is the right to life. This obligation is broader than the negative obligation of non-interference and imposes a positive obligation on states to take the necessary legislative, administrative, and other positive measures to ensure the child's inherent and inalienable right to life and survival.⁷⁰ In addition, ensuring that children develop their personalities, talents, and mental as well as physical abilities to the fullest in accordance with their developing capacities is essential to the effective implementation of this right.⁷¹ Hence, fulfilling the rights of a child under Article 22 entails creating an environment in which a child can exercise all of his/her rights, including the right to health, adequate nutrition, shelter, and education, as well as the provision of access to humanitarian assistance.

With regards to the principle of child participation, states are required to ensure participation of children in all matters affecting the child.⁷² In the context of conflict, the application of this principle necessitates that children's participation in conflict resolution, recovery, transnational justice, and reconstruction efforts should be ensured.⁷³ In this regard, the needs of vulnerable children, including those with disabilities, must receive special attention.⁷⁴

Other Pertinent Rights affected by Armed Conflict

In times of armed conflict or emergencies, the rights recognized by the ACERWC and CRC remain applicable where other provisions relevant to the protection of such children should remain in effect, such as the right to education⁷⁵, health,⁷⁶ adequate standard

⁶⁹ ACERWC 2020, para 26.

⁷⁰ OAU 1990, art 5(1); UN General Assembly 1989, art 6(1); Nowak 2005, 17-8.

⁷¹ ACERWC 2020, para 41.

⁷² OAU 1990, art 7 and UN General Assembly 1989, art 12.

⁷³ ACERWC 2020, para 34.

⁷⁴ ACERWC 2020, para 32.

⁷⁵ OAU 1990, art 11; UN General Assembly 1989, art 28.

⁷⁶ OAU 1990, art 14; UN General Assembly 1989, art 24.

of living,⁷⁷ protection from all forms of torture, inhuman or degrading treatment, physical or mental injury or abuse, neglect or maltreatment including sexual abuse,⁷⁸ and parental care and protection.⁷⁹

Protection of children's right to education in times of conflict requires the prevention of attacks on or targeting educational institutions, facilities, students, staff, as well the use of schools for military purposes.⁸⁰ To this end, as mentioned above, the AU Peace and Security Council and UN Security Council have both expressed concern about the attacks on infrastructures, in particular schools and health facilities, which prevent children from accessing social services.⁸¹ Furthermore, the militarization of schools is strongly condemned, and states are urged to take effective countermeasures.⁸² The importance of facilitating the continuation of access services, including education and health care, in times of armed conflict and post-conflict is emphasised and states are further urged to pay special attention to girls' equal access to education.⁸³

Moreover, states are under obligation to "take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse."⁸⁴ Establishing a child protection unit that looks into and gathers data relating to child abuse, exploitation, and sexual assault is one example of such measure.⁸⁵

Moreover, the realisation of children's right to health in the context of conflict situations necessitates that children have continued access to basic healthcare including sexual and reproductive health,

⁷⁷ UN General Assembly 1989, art 27.

⁷⁸ OAU 1990, art 16; UN General Assembly 1989, art 34 and 37.

⁷⁹ OAU 1990, art 19; UN General Assembly 1989, art 9.

⁸⁰ UNSC 2015, para. 7 and UNSC 2018, paras. 15-16 .

⁸¹ AU PSC 2021, para 3; UNSC 2015, UNSC 2018, para 14.; UNSC 2014, para 17.

⁸² AU PSC 2021, para 3; UNSC 2014, para 18.

⁸³ UNSC 2021; UNSC 2015; UNSC 2018, para 14.

⁸⁴ OAU 1990, art 16(1).

⁸⁵ ACERWC 2020, para 64.

maternal care, psychosocial support, HIV testing, basic nutrition, and immunizations.⁸⁶ The provision of services for sexual and reproductive health, therapy for trauma and counselling, and, if necessary, additional forms of assistance such as material and financial support must form part of demobilisation programs.⁸⁷

International Humanitarian Law

Both the ACERWC and CRC require states to commit to upholding the rules of international humanitarian law (IHL) in armed conflicts that affect children.⁸⁸ IHL provides protection for children involved in armed conflict, regardless of whether the conflict is international or not.⁸⁹ The 1949 Third and Fourth Geneva Conventions and its Additional Protocols of 1977 (API and APII) are the primary sources of IHL application to the protection of children.⁹⁰ These sources contain set of rules that provide children particular protection due to their specific vulnerability. In the case of non-international conflict, Article 3 of the Fourth Geneva Conventions and APII are applicable.

Article 3 of the 1949 Geneva Conventions is unique with its addition, where governments opted for the first time to control what they termed “armed conflict not of an international character” within the framework of an international treaty.⁹¹ The provision states that children must “in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”⁹² To this effect, some conducts are prohibited at all times and in all places, including violence against life and person, cruel treatment and torture,

⁸⁶ ACERWC 2020, para 68.

⁸⁷ ACERWC 2021.

⁸⁸ OAU 1990, art 22(1) and UN General Assembly 1989, art 38 (1).

⁸⁹ Aptel 2018.

⁹⁰ Aptel 2018.

⁹¹ ICRC 1949. Common article 3 was one of the first norms of international law to address what governments traditionally considered to be an exclusively domestic concern. Hence, the provision codifies basic safeguards in non-international conflict settings that would otherwise be beyond the purview of international law.

⁹² ICRC 1949, common art 3(1).

outrages to human dignity such as humiliating and degrading treatment, and the taking of hostages.⁹³

In addition, APII⁹⁴ to the Geneva Conventions provides special protection for civilian children in non-international armed conflicts. In particular, Article 4(3) of APII provides that children who are involved in non-international armed conflicts get education, family reunion, evacuation, protection against being recruited by armed forces, and protection from death sentence.⁹⁵

The Impact of Conflict on Children in Ethiopia: Setting the Context

The war which began in November 2020, between the Ethiopian government and Tigrayan forces, has garnered attention on a global scale.⁹⁶ By July 2021, the conflict had spilled over to the neighbouring regions of Afar and Amhara.⁹⁷ Although the conflict in the north received the majority of media coverage, disputes over regional borders and violence between communities and religions were on the rise across the country.⁹⁸ Allegations of serious violations of international refugee law, humanitarian law, and human rights law have been made against all parties,⁹⁹ including attacks on civilians and infrastructures, as well as delaying and preventing access to humanitarian aid.¹⁰⁰

As the report of the joint investigation conducted by the Office of High Commissioner for Human Rights (OHCHR) and the Ethiopian Human rights Commission (EHRC) indicated, children suffered disproportionately as a result of the conflict.¹⁰¹ They have been directly and indirectly affected by the conflict in Tigray and

⁹³ ICRC 1949.

⁹⁴ It is important to point out that APII has been ratified by Ethiopia.

⁹⁵ ICRC 1977, art 4(3).

⁹⁶ Human Rights Watch (HRW) 2022a.

⁹⁷ HRW 2022a; OHCHR and EHRC 2021; Global Centre for the Responsibility to Protect 2022.

⁹⁸ The Armed Conflict Location & Event Data Project (ACLED) 2022.

⁹⁹ OHCHR and EHRC 2021.

¹⁰⁰ OHCHR and EHRC 2021.

¹⁰¹ OHCHR and EHRC 2021, para 330.

surrounding regions, resulting in violations of rights recognised in international human rights standards, including the African Children’s Charter and the CRC, including but not limited to the right to life, survival and development, health, education, adequate standard of living, and family protection.¹⁰²

The recruitment of children to actively participate in hostilities is one of the conflict’s other direct effects in Ethiopia.¹⁰³ There have been reports of children allegedly being used as soldiers to form a ‘human wave’ to overpower opposing forces, resulting in numerous child fatalities and injuries.¹⁰⁴ Furthermore, children have been subjected to physical harm, sexual violence, and trauma as a result of the conflict, witnessing the killing or rape of close family members by opposing forces,¹⁰⁵ with millions of women and children requiring gender-based violence services.¹⁰⁶

The displacement of children has also been a devastating effect of the conflict. According to a report by the Internal Displacement Centre, 3.6 million people were forcefully displaced because of conflict and violence by the end of 2021.¹⁰⁷ Although the conflict in the north was the primary cause of internal displacement in Ethiopia in 2021, there were intercommunal violence in other areas.¹⁰⁸ Overcrowded IDP sites worsens the already subpar sanitation and hygiene conditions, increasing the risk of cholera and other disease outbreaks.¹⁰⁹ The destruction of basic services and lack of means to re-establish livelihoods pose additional risks to IDPs returning to their original homes.¹¹⁰ Aside from internal displacement, the conflict has forced thousands to seek refuge in Sudan.¹¹¹ As of February 2022, more than

¹⁰² OHCHR and EHRC 2021, para 341.

¹⁰³ BBC News 2021; Teshome 2021.

¹⁰⁴ AllAfrica 2022; OHCHR and EHRC 2021, para 330; HRW 2021b.

¹⁰⁵ OHCHR and EHRC 2021, paras 330 and 334-35.

¹⁰⁶ UNICEF 2022a.

¹⁰⁷ Internal Displacement Centre (IDMC) 2022.

¹⁰⁸ IDMC 2022.

¹⁰⁹ UNICEF 2021a.

¹¹⁰ United Nations Office for the Coordination of Humanitarian Affairs (OCHA) 2022a.

¹¹¹ USA for United Nations High Commissioner for Human Rights (USA for UNHCR) 2022.

23,750 Ethiopians, many of whom are separated or unaccompanied children, were registered in the Tunaydbah camp, in Sudan.¹¹²

Children have not only suffered the direct effects of the conflict, but also its indirect effects, such as separation from parents or caregivers and becoming orphans.¹¹³ According to recent estimates, at least 204,500 unaccompanied and separated children require family tracing.¹¹⁴ Many of these are living in unofficial camps, in unsafe and appalling conditions, where they are vulnerable to neglect and sexual and physical abuse in the absence of adult caregivers.¹¹⁵ Due to exposure to the widespread violence and lack of parental care, many children who have been separated from their parents also suffer from severe trauma and require psychosocial and other services.¹¹⁶

In addition, the destruction of infrastructure has resulted in children having less or no access to basic public services.¹¹⁷ In respect of children's access to education, the total or partial destruction of more than 8,660 schools in Ethiopia, 70 percent of which were in Afar, Amhara, and Tigray,¹¹⁸ has resulted in 2.53 million children not attending school nationwide as of May 2022.¹¹⁹ Many schools have also been converted into IDP shelters, temporarily depriving children of their right to education.¹²⁰

The looting and destruction of medical facilities has also made it difficult for children to access basic health care services such as medication and immunizations.¹²¹ According to recent estimates, 1.3 million children aged 6 and 59 months are not receiving routine vaccinations.¹²² Some children have also died as a result of insufficient healthcare or lack of life-saving interventions to combat

¹¹² USA for UNHCR 2022.

¹¹³ UNICEF 2021b.

¹¹⁴ UNICEF 2022a.

¹¹⁵ Save the children 2021.

¹¹⁶ OHCHR and EHRC 2021, para 330.

¹¹⁷ OHCHR and EHRC 2021, para 330; UNICEF 2020.

¹¹⁸ OCHA 2022b.

¹¹⁹ OCHA 2022a.

¹²⁰ UNICEF 2020.

¹²¹ OHCHR and EHRC 2021, para 339.

¹²² UNICEF 2022a.

malnutrition.¹²³ In Tigray, for example, nearly half of pregnant and nursing women were found to be severely undernourished, indicating a high risk of maternal deaths and low birth weight infants.¹²⁴ The conflict in Northern Ethiopia resulted in children under the age of five, an estimate of 1.2 million children, requiring treatment for severe acute malnutrition.¹²⁵ It is further estimated that 5.1 million children need clean water and sanitation.¹²⁶

Ethiopia's Legal Framework for Children in a Conflict Situation

Ethiopia's obligation towards children in general and to children in a conflict situation in particular is drawn from various legal instruments established both at international and domestic levels. Ethiopia is a party to major global and regional child rights instruments established to ensure the rights of children are protected in all circumstances, including in conflict situations. As a state party to global and regional treaties, Ethiopia is obliged to respect, protect and fulfil human rights of all persons, including children, within its territory and subject to its jurisdiction, without discrimination.¹²⁷

With regard to obligations under international criminal law, though Ethiopia is not yet a party to the Rome Statute of the International Criminal Court, it is important to note that most of the major provisions reflect customary international law and, to that extent, are binding in Ethiopia. Such principles, which remain binding as they form part of customary international law, include prohibitions against war crimes, crimes against humanity, and genocide.

As mentioned above, the most relevant provisions that are applicable to the protection of children's rights in a conflict situation are found in the African Children's Charter, the CRC and its Optional Protocols on the Involvement of Children in Armed Conflict. Ethiopia has ratified the African Children's Charter on 02 October

¹²³ OHCHR and EHRC 2021, para 341.

¹²⁴ UNICEF 2021b.

¹²⁵ UNICEF 2022a; UNICEF 2022b.

¹²⁶ UNICEF 2022a.

¹²⁷ OHCHR and EHRC 2021, para 29.

2002 and deposited the ratification instrument to the African Union Commission on 27 December 2002.¹²⁸ Similarly, it has also ratified the CRC and its OPCAC on 14 May 1991 and 14 May 2014 respectively.¹²⁹ These instruments, as discussed below, require state parties to take a range of measures to protect the rights of children, including the rights to life, education, health, adequate standard of living and development, and ensure protection and care of children who are affected by armed conflict.¹³⁰

At the domestic level, being the primary source of legislative authority, the Constitution of the Federal Democratic Republic of Ethiopia (the FDRE Constitution), prescribes provisions regarding some aspects of children's rights.¹³¹ Article 36 of the FDRE Constitution covers some fundamental rights of the child such as, the right to life, name and nationality; child care and parental responsibility; and the right not to be subjected to corporal punishment and exploitative practices. The best interests of the child and non-discrimination against children born out of wedlock are also part of Article 36 of the FDRE Constitution. Article 41 of the Constitution also provides additional protection in the context of economic and social rights.¹³² The Constitution, however, does not specifically address protection, which should be provided to children in a conflict situation, nor does it prescribe the age of recruitment to armed groups. Similar provisions are also prescribed in the Regional States Constitutions.¹³³

¹²⁸ See ACERWC Ratifications Table; FDRE 2003a.

¹²⁹ See OHCHR n.d.

¹³⁰ UN General Assembly 1989, art. 38(4); OAU 1990, art. 22(3).

¹³¹ It is important to note that in addition to what is provided under article 36, the FDRE Constitution enumerates fundamental rights and freedoms under its Chapter III covering the whole range of human rights, which could also apply to children's rights as necessary.

¹³² FDRE 1995, art 41(5).

¹³³ See for instance, article 36 of the Constitution of Amhara Regional State; article 36 the Revised Constitution of Oromia Regional State; article 36 of the Constitution of Harari Regional State; article 36 of the Constitution of Tigray Regional State; article 36 of the Constitution of South Nation Nationalities and Peoples Regional State; article 37 of the Constitution of Benishangul Regional State; and article 37 of the Constitution of Gambela Regional State.

The FDRE Constitution recognises that all international instruments ratified by Ethiopia form an integral part of the law of the land.¹³⁴ The Ethiopian Federal Supreme Court Cassation Bench¹³⁵ has interpreted the phrase “integral part” to mean that courts should interpret primary laws issued by the House of People’s Representatives in light of the principles contained in the FDRE Constitution as well as human rights conventions ratified by Ethiopia.¹³⁶ Furthermore, Article 13 provides that constitutional provisions on human rights shall be interpreted in line with international human rights instruments ratified by Ethiopia, and these are deemed to serve as general standards for interpretation of the law. As per the provision of Article 9(4) of the Constitution, ratified treaties automatically become part of the domestic legal system and prevail over national legislation in cases of conflict.¹³⁷ Therefore, being a state party to the African Children’s Charter and Optional Protocol to the CRC on the involvement of Children in Armed Conflict, Ethiopia is obliged to take all feasible measures to prevent the recruitment or use of children under the age of 18 by non-state armed groups and to ensure that members of armed forces under 18 do not take direct part in hostilities.

¹³⁴ FDRE 1995, art 9(4).

¹³⁵ FDRE 2021a, art 10(1)-(2).

¹³⁶ Tsedale Demissie vs. Kifle Demissie (Vol. 5, Case No. 23632).

¹³⁷ This implies that the international treaties ratified by Ethiopia can be invoked before domestic courts, but this rarely occurs in practice. This is mainly because the Proclamation establishing the *Negarit Gazette* requires all federal or regional legislative, executive and judicial organs as well as any natural or juridical person to take judicial notice of laws including international treaties ratified and promulgated on the national gazette of the country. As Birmeta and Alemu write ‘the effort geared towards giving legal effects to human rights conventions on children and women appears to be inadequate. A systematic attempt aimed at full domestication of the international instruments to which Ethiopia is a party to, leaves much to be desired’. This challenge is also noted by the CRC Committee where it states ‘Ethiopia has not yet promulgated the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child in its official law gazette, the *Negarit Gazet*’. See Alemu and Bir Studies 2012, 25; CRC Committee 2006a, para. 9.

In addition to the Constitution, provisions dealing with children's rights are available scattered in different legislation.¹³⁸ In addition, Ethiopia has established various policies and strategies. For instance, since 2002, where Ethiopia ratified the African Children's Charter, over fifty policies that are relevant to matters of child rights were adopted by the Government and its machineries.¹³⁹

The above-mentioned legislation, policies and standards, though they do not deal directly with children in conflict situation, consist of provisions and principles where Ethiopia's obligations towards children in such situations can be inferred. It is also important to note that, protections under the general bill of rights provided under Chapter Three of the FDRE Constitution,¹⁴⁰ and the criminal liabilities in the 2004 Criminal Code of Ethiopia¹⁴¹ also provide obligations of the state, which can also apply to children in conflict

¹³⁸ These include the Civil Code (FDRE 1960), the Criminal Code (FDRE 2004); the Criminal Procedure Code (FDRE 1961), Nationality Law (FDRE 2003b); the Revised Federal Family Code (FDRE 2000a), Public Health Proclamation (FDRE 2000); Proclamation concerning the Rights to Employment for Persons with Disabilities (FDRE 2008); Vital Event Proclamation on the Amendment of the Registration of Vital Events and National Identity Card Proclamation (FDRE 2017, as amended by FDRE 2002); Proclamation to Provide for the Prevention and Suppression of Trafficking in Person and Smuggling of Migrants (FDRE 2020a, repealed FDRE 2015, gives specific protection to children from trafficking, adopts a definition for a child in line with child rights standard); the Anti-terrorism Proclamation (FDRE Proclamation 2020b); Labour Proclamation (The new Labour Proclamation, FDRE 2019, has increased the minimum employment age from 14 years to 15 years to harmonize it with the international law); Refugees Proclamation (FDRE 2019); Proclamation on Organizations of Civil Societies (FDRE, Proclamation 2019b); the Food and Medicine Administration Proclamation (FDRE 2019a increased the alcohol consumption age to 21 years); and Ethiopia's Overseas Employment Proclamation.

¹³⁹ For detail list of policies and strategies relevant to children's rights see the FDRE first periodic report to the ACERWC on the Status of implementation of the African Children's Charter (2020).

¹⁴⁰ As noted in the report of the joint investigation by OHCHR and EHRC, while the Constitution envisages the provisional suspension of human rights in the event of a state of emergency, there are certain rights that are non-derogable, including freedom from inhuman treatment and the right to equality and non-discrimination. Criminal liability for gross violations of human rights which constitute crimes against humanity shall also not be barred by period of limitation or commuted by amnesty or pardon. See OHCHR and EHRC 2021, para 54.

¹⁴¹ Title II of the 2004 Criminal Code under 'Crimes in violation of international law' (arts. 270-280 of the 2004 Criminal Code) provides comprehensive provisions which, among others, cover war crimes.

situation. The 2004 Criminal Code specifically prohibits recruiting children as members of defence forces to take part in armed conflict. The Criminal Code prescribes that recruitment of children in armed conflicts amounts to a war crime committed against the civilian population.¹⁴²

Looking at child rights regime in Ethiopia, one may note the lack of a comprehensive and consolidated child rights law. It is in consideration of such gap that the ACERWC, in its concluding observations and recommendations to the Government of Ethiopia, states “the Committee notes with concern that there is no separate, comprehensive child law and thus recommends for the adoption of such law by the State Party”.¹⁴³ Despite the recommendations, the laws and provisions concerning children’s rights are found scattered in various domestic legislation including in the Constitution, family law, labour law, and criminal law. Considering this challenge, there is a need to ensure that every child across Ethiopia is given equal and effective protection and care regardless of the social background, economic condition, or religion of the child or the child’s family. Having a consolidated and comprehensive child rights law can be one way of addressing the challenge as it enhances synergy, inter-sectoral coordination and cooperation among all actors.

Ethiopia’s Obligations for Children Affected by Conflicts: From Prevention to Redress

As discussed in the previous sections, states are the primary duty bearers to undertake measures in favour of children in conflict situation. In situations where the conflict involves non-state actors, as noted in the ACERWC’s General Comment (Article 22), states have an obligation to protect children from violence perpetrated by these actors.¹⁴⁴ The obligation to prevent violations can be looked at from two approaches: (1) a holistic obligation to conflict prevention and (2) specific/targeted obligations to prevention of violence against children. The former requires identification of root

¹⁴² FDRE 2004, art. 270(M).

¹⁴³ ACERWC Insert year, para 5

¹⁴⁴ ACERWC 2020, para 52-53.

causes of conflicts, where the state assumes the obligation to adopt a comprehensive approach towards the prevention of conflict and its recurrence by including aspects of the rule of law, democracy, respect for human rights, ensuring development and national reconciliation in its prevention strategies.¹⁴⁵ Hence, addressing the root causes of conflicts requires the Government of Ethiopia to take strategic and practical responses to challenges of economic and social disparities, end impunity by strengthening national judicial institutions, and ensure accountability.

The specific/targeted aspect of prevention requires the Government of Ethiopia to take all possible measures to prevent violations of children's rights in conflict situations, including employing all its efforts to prevent the recruitment and use of children by all parties. The Government of Ethiopia has an obligation to train its military not to use children in any way in hostilities and about their obligations under international humanitarian and child rights laws.¹⁴⁶

The crucial step taken by the parties in the conflict to end the conflict in the Tigray region with the signing of the peace agreement, among others, provides respect for human rights, protection of civilians, humanitarian access and rehabilitation.¹⁴⁷ In the peace agreement, the parties agreed to end violation of children's rights including the recruitment of children, support family reunification, provision of humanitarian aid, and implementation of disarmament, demobilization, and reintegration programs.¹⁴⁸

As discussed in the previous sections, rape and other forms of sexual violence are one of the grave violations against children during conflict situations. The joint investigation report of the OHCHR and EHRC highlights that sexual violence has been used against children by the armed forces and groups in the conflict

¹⁴⁵ UNSC 2006, 2; African Union insert year, para 1.

¹⁴⁶ ACEWRC 2020, para 56.

¹⁴⁷ Agreement for Lasting Peace Through the Permanent Cessation of Hostilities Between the Government of the Federal Democratic Republic of Ethiopia and Tigray People's Liberation Front (TPLF), 02 November 2022, Accessed on 23 February 2023 <https://igad.int/wp-content/uploads/2022/11/Download-the-signed-agreement-here.pdf>

¹⁴⁸ Ibid.

in the Tigray Region. In this regard, the Government of Ethiopia has the obligation to provide instruction to its military, police, and security personnel, both at the federal and regional levels, on their responsibility to prevent sexual violence against children. As the UN Security Council's Resolution notes, an intentional and special measures for survivors of sexual violence and prosecution of perpetrators need to be in place.¹⁴⁹ Providing an easily accessible reporting mechanisms for victims is also a crucial intervention required from the state.¹⁵⁰ Such reporting mechanisms should be comprehensive and available to all children affected by the conflicts including those who have been displaced due to attacks.¹⁵¹ Lack of witness protection is one of the main reasons for lack of prosecution of perpetrators of sexual violence in conflict situations.¹⁵² Hence, the Government should ensure the protection of victims and witnesses as well as provide access to justice including reparations.

One of the main strategies for durable child protection in the aftermath of the recruitment and use of children in conflict situations is disarmament, demobilization, and reintegration (DDR) of children.¹⁵³ Pursuant to the peace agreement, comprehensive strategies need to be in place to free children from armed groups, disarm them and provide them with medical care, psycho-social support, and reunification services. Delivering an adequate DDR service for children requires for the Government to establish appropriate reception centres for disarmed and freed children as well as rehabilitation centres and train DDR officials. As the ACERWC notes, DDR processes need to make sure that children associated with armed groups are considered primarily as victims, thus, should not be detained for their mere association with such groups.¹⁵⁴

The Government of Ethiopia also assumes the obligation to rebuild and reconstruct affected communities and areas. Hence,

¹⁴⁹ UNSC 2008.

¹⁵⁰ Bastick, Grimm, and Kunz 2007, 200.

¹⁵¹ UN General Assembly 1996, para 110.

¹⁵² UN Division for the Advancement of Women 1998, 18-19.

¹⁵³ UNSC 2009b, 4.

¹⁵⁴ ACERWC 2020, para 58-59.

the reconstruction of communities affected by war have various components including but not limited to physical, economic, cultural, political and psychosocial aspects.¹⁵⁵ In ensuring reconstruction, special attention should be given to survivors of violence, their rehabilitation and reintegration into their communities and the continuation of their education. Focus should be on providing psychosocial support as part of the reintegration assistance, long-term and sustainable funding for mental health and psychosocial programming and integration of mental health and psychosocial services in all humanitarian responses for all children directly and indirectly affected by armed conflict.¹⁵⁶

Post-conflict Transitional Justice Processes

After two years of fighting in the north, there are now actions taken by the fighting parties to resort to peaceful means of resolving disputes. It is, however, a recurring challenge that parties in conflicts tend to neglect the role of children in peace processes, despite the disproportionate impacts that they face. Children should be able to exercise their agency in making themselves an integral part of efforts to prevent conflict and build peace.¹⁵⁷

Most of the peace initiatives in relation to the conflict in the North has been political talks led by continental bodies such as the African Union, which resulted in peace deal between the Ethiopian Federal Government and the TPLF concluded in November 2022 and the establishment of the National Dialogue Commission in the same year.¹⁵⁸ These processes, however, work better through translational justice programs and policies tailored to the Ethiopian context. In January 2023, the Ethiopian Ministry of Justice published a discussion paper titled “Ethiopia-policy options for transitional justice”. However, more needs to be done to rectify the overwhelmingly gross human rights violations, abuses, and distractions stemming mainly from the recent war as well as the ongoing conflicts. Hence,

¹⁵⁵ UN General Assembly 1996, 241.

¹⁵⁶ UNSC 2015; UNSC 2018.

¹⁵⁷ Ibid

¹⁵⁸ FDRE 2021b.

the authors argue, establishment of a transitional justice mechanism as defined by the AU Transitional Justice Policy (AU TJ Policy) plays a paramount role. As defined by the African Union Transitional Justice Policy,

[t]ransitional justice refers to the various (formal and traditional or non-formal) policy measures and institutional mechanisms that societies, through an inclusive consultative process, adopt in order to overcome past violations, divisions and inequalities and to create conditions for both security and democratic and socio-economic transformation.¹⁵⁹

Section 2 of the AU TJ Policy identifies what is considered to be the major elements of any Transitional Justice process in Africa; these include peace processes, transitional justice commissions, the African traditional justice mechanisms, reconciliation and social cohesion, reparations, redistributive (socio-economic) justice, memorialization, diversity management, justice and accountability, political and institutional reforms, human and peoples' rights. Guided by the principles included in the AU TJ Policy, it is high time for Ethiopia to install a comprehensive (involving all the elements mentioned above) and inclusive transitional justice policy. The inclusive nature of such policy requires, beyond involving warring, dissident groups, and marginalised groups, the active participation of children, with due consideration to their particular needs, challenges and rights of children. The AUTJ Policy recognizes that children are most vulnerable in situations of conflicts as they are affected in a particular manner, including as direct targets of violence through killings, acts of mutilation or torture, abductions, recruitment as well as enrolment as soldiers and sexual violence. The policy states,

All transitional processes, including peace and justice processes, should take account of the disproportionate impact of violence on children and youth...and make adequate

¹⁵⁹ African Union 2019, Sec 1(19).

*provision for children as victims, irrespective of their roles, in accordance with the African Charter on the Rights and Welfare of the Child.*¹⁶⁰

The principle of the best interests of the child should guide the measures that are adopted in transitional processes to cater for children affected by violence, including IDPs and refugees. As discussed in the sections above, and in accordance with the AU TJ policy, children who were forced into armed groups, the best interests of the child entail alternative accountability processes other than judicial proceedings.¹⁶¹

In operationalizing the national dialogue commission and reconciliation processes, child rights approach to transitional justice requires for a planned and targeted engagement of children in the procedures. Such engagements should be guided by the best interests of the child principle, including prioritizing the child's anonymity, privacy, and age appropriate and child-friendly consultations. The process should adopt child-centred approaches from the formulation of TJ processes to execution of all the elements. Particularly, children's participation in criminal proceedings as witnesses should be used only as a measure of last resort for major cases involving crimes against children and using child-friendly procedures.¹⁶²

The Ethiopian Government has an obligation to take concrete steps towards ending impunity to ensure that children in conflict or recovering from conflict get closure with past abuses committed and to prevent future instances of abuses.¹⁶³ Moreover, the Government should be invested in a full range of justice and reconciliation mechanisms, including the establishment of special courts and tribunals and truth and reconciliation commissions, as such mechanisms can promote not only individual responsibility for serious crimes, but also peace, truth, reconciliation and the

¹⁶⁰ African Union 2019, art 105.

¹⁶¹ African Union 2019, art 106.

¹⁶² Ibid.

¹⁶³ UNSC 2006, 3; ACERWC 2016b, Aspiration 9

rights of the victims.¹⁶⁴ Elements of a child-centred procedures require putting in place confidential, child-friendly and age-appropriate proceedings. Moreover, it is vital to draw lessons on how the procedures ensure participation of children, particularly girls, as well as greater accountability for crimes committed against children, whether by Government forces or non-state actors, in the justice and accountability processes.¹⁶⁵

Finally, this article argues that involving children in transitional justice systems not only enhances their agency and autonomy but also ensures the realisation of justice, as children are present in different capacities during conflicts. The words of children during the June 2004 children's summit in Rwanda are vital in this regard, they uttered "Gacaca (traditional judicial system) did not include the participation of children. Children mentioned that they saw what happened during the genocide of 1994 and knew that some of the adults were not telling the truth".¹⁶⁶

Conclusion

The article notes that ensuring the full spectrum of children's rights calls on various stakeholders. However, the principal duty bearer, which is responsible to uphold civil, political, economic, social and cultural rights of children, including in the context of conflict, is the state. The article examines the situation of children in the current conflicts in Ethiopia and highlights the major duties of the state as a party to major international and regional human rights instruments. As stated in Article 22 of the ACRWC and other international instruments, Ethiopia assumes the obligation to ensure that children benefit from the rights, protection, and care that they are entitled to in the context of armed conflict, in accordance with human rights and international humanitarian law. In the conflicts witnessed in the country, violations, including recruitment of children into the armed forces, killings, sexual violence, distraction of basic services, denial of humanitarian access and separation from families, have

¹⁶⁴ UNSC 2006, 3.

¹⁶⁵ African Union 2019, art 81(vii).

¹⁶⁶ UNICEF 2001.

been identified. Therefore, the state has the obligation to protect children from such violence in conflict situations. Beyond matters of protection, Ethiopia should also empower its children to be forces for peace and conflict prevention. Installing the transitional justice processes, normative and institutional measures must be in place to ensure that children are integral to successful efforts to prevent conflict and build peace.

References

- African Committee of Experts on the Rights and Welfare of the Child (ACERWC). 2015. *Concluding Observations and Recommendations to the FDRE on its Initial Report on the Status of Implementation of the African Children's Charter*.
- ACERWC. 2016a. *Continental Study on the Impact of Conflict and Crises on Children in Africa*. <https://bit.ly/3R88QJY>. Accessed 25 July 2022.
- ACERWC. 2016b. *Agenda 2040: Fostering an Africa fit for children*. African union; Addis Ababa.
- ACERWC. 2018a. *Mapping Children on the Move in Africa*. <https://bit.ly/3Tjv0Lr>. Accessed 25 July 2022.
- ACERWC. 2018b. *General Comment No. 5 on State Party Obligations under the ACRWC (Article 1) and Systems Strengthening for Child Protection*. <https://bit.ly/3ANqfCm>. Accessed 25 July 2022
- ACERWC. 2020. *General Comment on Article 22 of the ACRWC: "Children in Situations of Conflict"*. <https://bit.ly/3TuILHc>. Accessed 25 July 2022
- ACERWC. 2020. *Statement of the African Committee of Experts on the Rights and Welfare of the Child on the situation in the Federal Democratic Republic of Ethiopia*. <https://bit.ly/3AuWo0f>. Accessed 25 July 2022.
- ACERWC. 2022. *Concluding Observations and Recommendations on the First Periodic Report of the Federal Democratic Republic of Ethiopia*.
- The Armed Conflict Location and Event Data Project (ACLED). 2022. *10 Conflicts to Worry about in 2022: Ethiopia*. <https://bit.ly/3AmtCip>. Accessed 02 August 2022

- African Union. N.D. *Ratifications Table*. <https://bit.ly/3pPshvw>.).Accessed 02 August 2022
- African Union. 2017. *African Union Master Roadmap of Practical Steps to Silence the Guns in Africa by Year 2020 (Lusaka Master Roadmap 2016)*. <https://bit.ly/3PTJ9Md>.).Accessed 01 July 2022.
- African Union. 2019. “Transitional Justice Policy.” African Union ;Addis Ababa.
- African Union Peace and Security Council (AUPSC). 2014. *Press Statement. PSC/PR/BR.(CDXX)*. <https://au.int/en/psc>. Accessed 01 July 2022.
- AUPSC. 2015. *Press Statement. PSC/PR/BR.(CDXCI)*. <https://au.int/en/psc>. Accessed 01 July 2022.
- AUPSC. 2016. *Communique. PSC/MIN/COMM.2(DCLXI)*. <https://au.int/en/psc>.).Accessed 02 August 2022.
- AUPSC. 2018. *Press Statement. PSC/PR/BR.(DCCLVII)*. <https://au.int/en/psc>.).”Accessed 02 August 2022.
- AUPSC. 2019. *Press Statement. PSC/PR/BR.(DCCCXCI)*. <https://au.int/en/psc>.).”Accessed 02 August 2022.
- AUPSC. 2020. *Communique Adopted by the PSC of the AU at its 965th meeting held on 19 November 2020, on the protection of children in conflict situations in Africa. PSC/PR/COMM. (CMLXV)*.
- AUPSC. 2021. *Communique of the 994th meeting of the PSC held on 11 May 2021, on the protection of children in conflict situations in Africa. PSC/PR/COMM. (CMXCIV)*
- AUPSC. 2022. *Communique Adopted by the PSC of the AU at its 1070th meeting held on 29 March 2022, on the update on the policies on child protection in AU Peace Support Operations and mainstreaming child protection in the African Peace and Security Architecture. PSC/PR/COMM.1070*.
- Aptel, Cécile. 2018. “The Protection of Children in Armed Conflicts.” In *International Human Rights of Children*, Ursula Kilkelly and Ton Lifeward (Eds), 1-23. Springer, Singapore.

- BBC News. 2021. *Tigray crisis: Ethiopian teenagers become pawns in propaganda war*. <https://bbc.in/3PXxhIZ>. Accessed on 15 July 2022.
- Benyam Dawit Mezmur. 2005. *Children at Both Ends of the Gun: Towards a Comprehensive Legal Approach to the Problem of Child Soldiers in Africa*. <https://bit.ly/3dX14Ep>. Accessed 01 July 2022.
- CRC Committee (Committee on the Rights of the Child). 2005. General Comment No. 6: Treatment of Unaccompanied and Separated Children outside of their Country of Origin. *UN Doc CRC/GC/2005/6*, 1 September 2005.
- CRC Committee. 2006a. Concluding Observations of the Committee on the Rights of the Child: Ethiopia. *CRC/C/ETH/CO/.*<https://bit.ly/3e2OKma>. /. Accessed 01 August 2022
- CRC Committee. 2006b. *General Comment No. 9: The rights of children with disabilities*. UN Doc CRC/C/GC/9, February 27 2007.
- FDRE (Federal Democratic Republic of Ethiopia). 1960. *Civil Code Proclamation No. 165/1960*.
- FDRE. 1961. Criminal Procedure Code. *Proclamation No. 185 of 1961*.
- FDRE. 1995. Constitution of the Federal Democratic Republic of Ethiopia. *Proclamation No.1/1995*, Negarit Gazeta. 1st Year.
- FDRE. 2000. *Public Health Proclamation No. 200/2000*.
- FDRE. 2003a. Ratification Proclamation for the Convention on Forced or Compulsory Labour, *Proclamation No. 336/2003*.
- FDRE. 2003b. *Proclamation on Ethiopian Nationality No. 378/2003*.
- FDRE. 2004. Criminal Code, *Proclamation No. 414/2004*.
- FDRE. 2008. Right to Employment of Persons with Disability, *Proclamation No. 568/2008*.
- FDRE. 2017. Vital Events Registration and National Identity Card, *Proclamation No.1049/2017*.
- FDRE. 2018a. Revised Family Code (Amendment), *Proclamation No. 1070/2018*.

- FDRE. 2018b. A Proclamation to Establish Reconciliation Commission, *Proclamation No.1102 /2018*.
- FDRE. 2019a. Food and Medicine Administration *Proclamation No.1112/2019*.
- FDRE. 2019b. Organizations of Civil Societies, *Proclamation No. 1113/2019*.
- FDRE. 2020a. Prevention and Suppression of Trafficking in Persons and Smuggling of Persons, *Proclamation No. 1178-2020*.
- FDRE. 2020b. Prevention and Suppression of Terrorism Crimes, *Proclamation No. 1176/2020*.
- FDRE. 2021a. Federal Courts Establishment, *Proclamation No. 1234/2021*.
- FDRE. 2021b. A Proclamation to Establish the Ethiopian National Dialogue Commission, *Proclamation No.1265/2021*
- Federal Supreme Court Cassation Division. 2006. *Tsedale Demissie vs Kifle Demissie*. Vol. 5, Case No. 23632.
- Girmachew Alemu and Yonas Birmeta Center. 2012. *Handbook on the Rights of the Child in Ethiopia*. Centre for Human Rights, College of Law and Governance Studies. Addis Ababa University. Addis Ababa.
- Global Centre for the Responsibility to Protect. 2022. *Ethiopia*. <https://bit.ly/3pKM1jW>.
- Hodgkin, Rachel and Newell Peter. 2007. *Implementation Handbook for the Convention on the Rights of the Child*. Geneva: UNICEF.
- Human Rights Watch (HRW). 2022. *Ethiopia's other conflict: Ethiopia's Tigray War Overshadows Ongoing Cycles of Violence in Oromia*. <https://bit.ly/3PSb5QG>. Accessed on July 12 2022
- HRW. 2021. *Ethiopia: Unlawful Shelling of Tigray Urban Areas*. <https://bit.ly/3wAfot3>. Accessed on July 10, 2022
- International Committee of the Red Cross (ICRC). N.D. *Treaties, State Parties and Commentaries*. <https://bit.ly/3e3ARUV>. Accessed on July 12 2022
- ICRC. 1997a. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*.

- ICRC. 1977b. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*.
- ICRC. 2017. *Characteristics of Armed Conflicts and Other Situations of Violence*. <https://bit.ly/3QUNX5c>.
- Internal Displacement Monitoring Centre. 2022. *Children and Youth in Internal Displacement*. <https://bit.ly/3ARHjaE>.
- International Labour Organization (ILO). 1999. *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*.
- Romero, Joshua. 2004. "The Special Court for Sierra Leone and the Juvenile Soldier Dilemma." *Northwestern Journal of International Human Rights* 2(1) .
- Bastick, Megan, Karin Grimm, and Rahel Kunz. 2007 *Sexual Violence in Armed Conflict: Global Overview and Implications for the Security Sector*. Geneva Centre for the Democratic Control of Armed Forces. <https://bit.ly/3AM9wzn>. Accessed on 12 July 2022.
- Nowak, Manfred. 2005. *A Commentary on the United Nations Convention on the Rights of the Child, Article 6: The Right to Life, Survival and Development*. Brill: Nijhoff.
- OAU (Organisation of African Unity). 1990. *African Charter on the Rights and Welfare of the Child*.
- OCHA (UN Office for the Coordination of Humanitarian Affairs (OCHA)). 2022a. *Ethiopia Situation Report, 7 July 2022*. <https://bit.ly/3wtHfeo>. Accessed 01 August 2022.
- Office of the High Commissioner for Human Rights (OHCHR). N.D. *UN Treaty Body Database*. <https://bit.ly/3e4edf8>. Accessed 01 August 2022.
- OHCHR and EHRC. 2021. *Report of the Ethiopian Human Rights Commission (EHRC)/Office of the United Nations High Commissioner for Human Rights (OHCHR) Joint Investigation*. <https://bit.ly/3pPRS7H>. Accessed 01 July 2022.

- Save the Children. 2013. *Attacks on Education, the Impact of Conflict and Grave Violations on Children's Future*. <https://bit.ly/3AsstG3>. Accessed 01 July 2022.
- Save the Children. 2018. *Hunger – a Lethal Weapon of War: The Impact of Conflict-Related Hunger on Children*. <https://bit.ly/2EnSmNe>. Accessed 01 July 2022.
- Save the Children. 2019. *Stop the War on Children, protecting children in the 21st Century Conflict*. <https://bit.ly/3AOJXO3>.
- Save the Children. 2020. *Stop the War on Children: killed and Maimed: A generation of violations against children in conflict*. <https://bit.ly/3dZk1GP>. Accessed 25 July 2022.
- Save the children. 2021. *Six months on: Almost 5,000 children separated from parents by conflict in Tigray*. <https://bit.ly/3QRkkSo>. Accessed 20 July 2022.
- Teshome Metasebia. 2021. *Children rights infringed as TPLF deploys minors, Capital Ethiopia*. <https://bit.ly/3R9xt9h>. Accessed on 7 June ,2022.
- United Nations (UN). 2015. *Transforming Our World: The 2030 Agenda for Sustainable Development*. New York: UN Publishing.
- UN Division for the Advancement of Women. 1998. *Sexual Violence and Armed Conflict: United Nations Response*. <https://bit.ly/3AsgYOG>. Accessed July 12 2022
- UN General Assembly (UNGA). 1989. *Convention on the Rights of the Child*.
- UNGA. 1996. *Impact of Armed Conflict on Children: note / by the Secretary-General*.
- UNGA. 1998. *Statute of the International Criminal Court*.
- UNGA. 2000. *Optional Protocol on the Involvement of Children in Armed Conflict*.
- UNGA. 2007. *Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups*. <https://bit.ly/3KlspfP>. Accessed July 12 2022
- UN General Assembly Security Council. 2022. *Children and Armed Conflict: Report of the Secretary General. A/76/871-S/2022/493*.

- UN News. 2021. “*Free, Unfettered Access*” Needed to Assist Millions in War-Torn Tigray. . <https://bit.ly/3ww9ARa>. Accessed 27 July 2022
- UN Special Representative of the Secretary-General for Children and Armed Conflict (UN SRSG CAAC). 2022a. *Annual Report of the Secretary-General on Children and Armed Conflict*. <https://bit.ly/3KuY2Ub>. Accessed 27 July 2022
- UN SRSG CAAC. 2022b. *Children and Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*. <https://bit.ly/3dZ6H5b>.
- UNICEF. 2001. *Children and the Truth and Reconciliation Commission for Sierra Leone: recommendations for policies and procedures for addressing and involving children in the Truth and Reconciliation Commission*. UNICEF
- UNICEF. 2015. *Ending the Recruitment and Use of Children in Armed Conflict*. <https://bit.ly/3AyQQ53>. Accessed 01 July 2022.
- UNICEF. 2020. *Amid Conflict in Northern Ethiopia, Children Share their Dreams for the Future*. <https://uni.cf/3dNHAlA>. Accessed July 15 2022.
- UNICEF. 2021a. *As Ethiopia Conflict Rages On, Children Are Paying the Highest Price*. <https://bit.ly/3APIoQb>. Accessed on 13 July 2022
- UNICEF. 2021b. *Conflict and crisis in northern Ethiopia: Months of fighting have left hundreds of thousands of people facing life-threatening malnutrition.*” <https://uni.cf/3pMTYVL>. ” Accessed on July 17 2022
- UNICEF. 2022a. *Humanitarian Action for Children: Ethiopia*. <https://uni.cf/3cm6OHo>. Accessed 01 July 2022.
- UNICEF. 2022b. *Ethiopia Humanitarian Situation Report No. 3, March 2022*. <https://bit.ly/3AONI6c>. Accessed 01 July 2022.
- UNOCHA. 2022b. *Ethiopia - Humanitarian Update Situation Report, 27 Jun 2022*. <https://bit.ly/3PMlfCk>. Accessed July 12 2022
- United Nations Security Council (UNSC). 1999. Res. 1261 Adopted by the Security Council at its 4037th meeting, on 25 August 1999, *UN Doc. S/RES/1261*.

- UNSC. 2000. Res. 1314 Adopted by the Security Council at its 4185th meeting, on 11 August 2000, *UN Doc. S/RES/1314*.
- UNSC. 2001. Res. 1379 Adopted by the Security Council at its 4423rd meeting, on 20 November 2001, *UN Doc. S/RES/1379*.
- UNSC. 2003. Res. 1460 Adopted by the Security Council at its 4695th meeting, on 30 January 2003, *UN Doc. S/RES/1460*.
- UNSC. 2006. Res. 1674 Adopted by the Security Council at its 5430th meeting, on 28 April 2006, *UN Doc. S/RES/1674*.
- UNSC. 2008. Res. 1820 Adopted by the Security Council at its 5916th meeting, on 19 June 2008, *UN Doc. S/RES/1820*.
- UNSC. 2009a. Res. 1888 Adopted by the Security Council at its 6195th meeting, on 30 September 2009, *UN DOC. S/RES/1888*.
- UNSC. 2009b. Res. 1882 Adopted by the Security Council at its 6176th meeting, on 4 August 2009, *UN Doc. S/RES/1882*.
- UNSC. 2011. Res. 1998 Adopted by the Security Council at its 6581st meeting, on 12 July 2011, *UN Doc. S/RES/1998*.
- UNSC. 2014. Res. 2143 Adopted by the Security Council at its 7129th meeting, on 7 March 2014, *UN Doc. S/RES/2143*.
- UNSC. 2015. Res. 2225 Adopted by the Security Council at its 7466th meeting, on 18 June 2015, *UN Doc. S/RES/2225*.
- UNSC. 2018. Res. 2427 Adopted by the Security Council at its 8305th meeting, on 9 July 2018, *UN Doc. S/RES/2427*.
- UNSC. 2021. Res. 2601 Adopted by the Security Council at its 8889th meeting, on 29 October 2021, *UN Doc. S/RES/2601*.
- USA for UNHCR. 2022. *Ethiopia's Tigray Refugee Crisis Explained*. <https://bit.ly/3ciyIEt>. Accessed on July 14 2022
- Watchlist on Children and Armed Conflict and Institute of International Humanitarian Affairs. 2022. *Denial of Humanitarian Access for Children: Legal, Policy, and Operational Challenges*.