



Children's rights and armed conflict

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Overview

- Setting the context: GlobalChild and children's perspectives
- Outline of the key instruments governing status of children in armed conflicts
- Elaboration of implications of the CRC
- Priorities for the international community
- Proposed indicators



What is GlobalChild initiative?



- A multinational team of experts embarked on the task of operationalizing the substantive rights under the CRC and building the world's first comprehensive child rights monitoring platform
- Funded by a grant from the Canadian government
- The project is conducted under the auspices of the UN Committee on the Rights of the Child

Building indicator set for each substa article in the CRC

- Stage one: Identifying attributes for each right
- Stage two: Development of indicators based on identified attributes

Process for development



- Core attributes identified for each article:
 - Comprehensive analysis of prevailing jurisprudence
- Global review by experts and revisions
- Development of indicators
- Online consultation
- Children's consultation
- Revisions on the basis of feedback
- 5 day face to face with team to finalise each indicator

Indicator framework

- Identification of the structural, process, and outcome indicators for each attribute
- Suggested links with SDGs where appropriate
- Suggested source materials for data collection
- Glossary/key terms



Consultation with children (Global Child Rights Dialogue)



1. Preparation: The Center for Children's Rights, Queen's University, Belfast
 - A Youth Advisory Team was established
 - Child friendly versions of the attributes created
 - Workshop facilitators' guide was prepared
2. Consultations:
 - Save the Children, UK and Canada
 - "Zoom in on Article 12", Greece
 - 2000 children from 43 countries in 5 regions of the world
3. Findings: Children's views analysed
 - Amendments or additions to indicators made

Children's perspectives from consultation in relation to armed conflict



The problems

- Children recruited within camps
- Use of children as guards, spies
- Use of money to manipulate
- Role of social media to promote and instigate violence

The drivers of vulnerability

- Poverty
- Lack of hope and possibility
- Attraction and status of guns
- Boredom and lack of activities and distractions

The solutions

- F/t education and vocational training
- Awareness raising on risks and knowledge of rights
- Legal prohibition on recruitment
- Constructive activities
- Accountability by governments
- Meaningful rehabilitation with trained staff

So what are children's rights in the context of armed conflict?



Armed conflict: governing standards



- International humanitarian law
- CRC: Article 38 – plus all other relevant rights
- ACRWC: Article 22
- 1996 UN Report on Children and Armed Conflict - led to appt of UNSR
- 1999 ILO Convention on the worst Forms of Child Labour 182
- 2000 Optional Protocol on Children in Armed Conflict
- 2007 Paris Commitments and Principles

International humanitarian law



- Set of rules to address humanitarian problems in context of armed conflict
- Designed to protect people and limit methods of warfare
BUT does not prohibit warfare or killing
- Comprises Hague law, Geneva Conventions, ICC
- Monitored by the International Committee of the Red Cross –
no reporting mechanisms

CRC Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.


4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Context of Article 38

- Complexity:
 - Intertwines complex relationship between human rights and international humanitarian law:
 - IHL guides behaviour of those involved in armed conflict
 - HR informs relationship between states and individuals

 - Controversy:
 - Was hugely contested during drafting process
 - Only article in CRC that introduces a specific lower level of protection for under 18s
 - Provides a baseline that has largely been superseded

 - Scope:
 - Child soldiers or those associated with armed forces or groups
 - Children affected by hostilities

 - Significance:
 - Demands implementation in context of all other rights eg A39 reintegration, A37, prohibition of capital punishment or torture
 - Legally binding and accountable
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Attribute One: Respect for IHL relating to children



- Applies to all children whether combatants and civilians
- Only relevant in the context of 'armed conflict'
- Obligation to respect and ensure respect – must take action **both** to refrain from interference with child's rights **and** to take appropriate measures to secure rights
- Implies that States must take action to prevent non-state actors violating children's rights
- Actions include: challenging impunity, mechanisms for violations, training programmes, dissemination of information

Attribute Two: All feasible measures to ensure under 15s do not take direct part in hostilities

- Restricts participation in direct hostilities to those age 15 years and over
- BUT only requires States take '*all feasible measures*' – weak formulation
- Applies specifically to direct participation – not defined but implies indirect participation permitted
- Widely perceived as inadequate protection for children
- CRC Committee refuses to differentiate – advocates total prohibition for anyone under 18 years

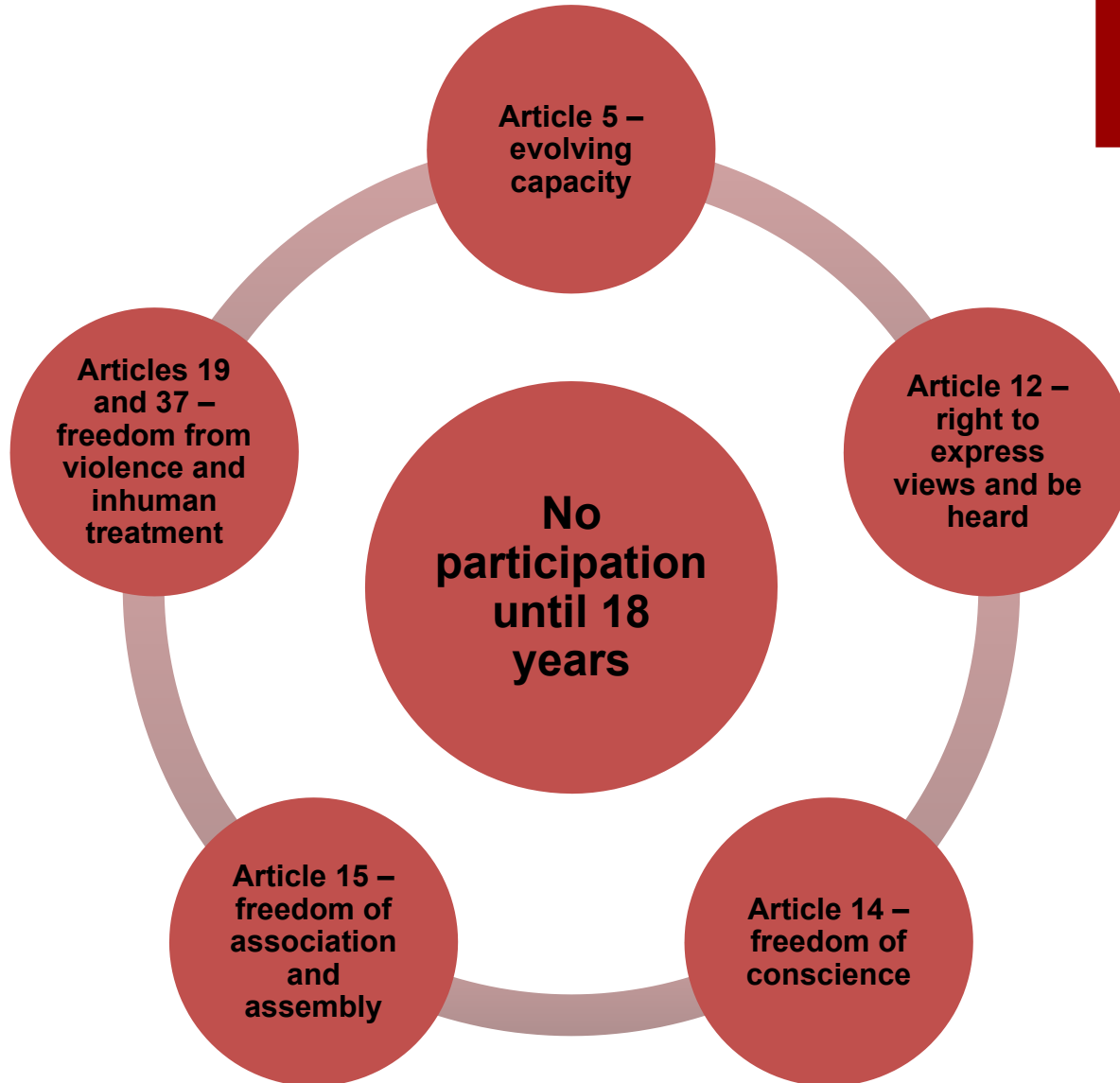


Attribute 3: States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces



- Recruitment: interpreted by the CRC Committee covers both conscription and enlistment - voluntary and coerced
- States are expected to 'endeavour' to give priority to the oldest
- Committee also consistently recommends State do not recruit at all under 18 years

Voluntary, capacity, protection



Attribute Four: All feasible measures to ensure protection of children affected by armed conflict under IHL



- Tension between IHL and A38
 - IHL: '*all necessary steps*' and prohibition on attacks on civilian populations
 - A38: '*all feasible measures*' – apparent weakening of language
- Wording appears to exclude child combatants
- Drafting history allows an interpretation that A38 was intended to build on IHL rather than diminish it
- Committee consistently presses for measures that interpret A38 in the context of IHL obligations and the CRC in its entirety.
- Also argues that protection of education is a core obligation in situations of conflict

Application of general principles of situations of conflict

- Article 2, non-discrimination
- Article 3, best interests
- Article 6, right to life
- Article 12, right to be heard



Additional relevant rights



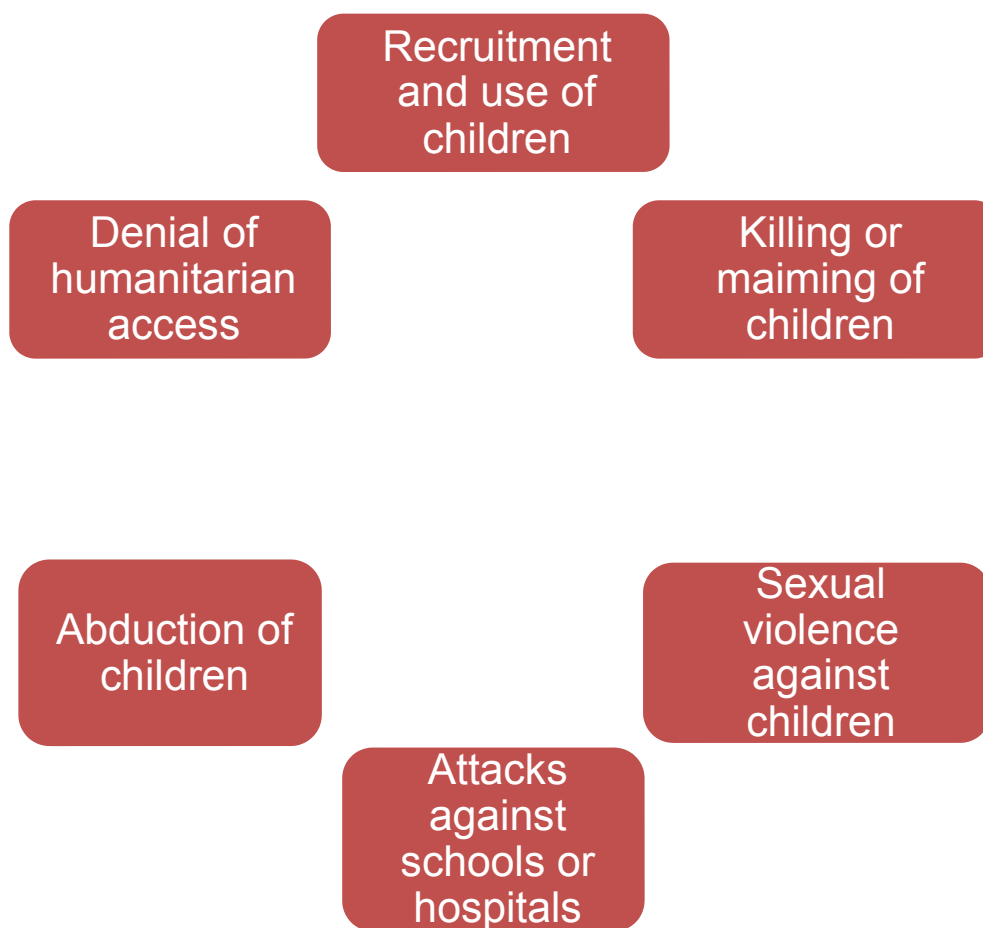
- Right to rehabilitation, de-mobilisation and reintegration - Article 39
- Right to life, restorative justice and judicial proceedings - Articles 37 & 40
- Right to family and identity – Articles 7 (birth registration) 8 (loss of identity) 10 (reunification)
- Right to protection as an asylum seeker – Article 22
- Rights to health, education and play - Articles 24 and 28
- Right to protection from violence and exploitation – Articles 19, 32, 34, 35 & 36

Current status of Article 38



- Has been strengthened by Optional Protocol on Children and Armed Conflict, 2000
 - Requires raising age of voluntary recruitment
 - Prohibits forcible recruitment under 18 years
 - Prohibits any recruitment by armed groups under 18 years
 - Requires measures to prevent under 18s taking direct part in hostilities
- Committee adopts an overall 'straight 18' approach
- A38 still relevant:
 - Fewer states have ratified OP (168 in Aug 2019)
 - A38 must be interpreted holistically through CRC

UN priorities: Six grave violations against children during armed conflict



Structural indicators

Legislative and policy commitments



Ratification of all relevant treaties

Signatory to Paris principles

Prohibition of all recruitment and participation of children under 18 years

Process indicators

Actions to implement commitments



Compliance
with IHL

Training
for armed
forces

Programmes
to raise
awareness
of risks,
rights to
protection
and
alternatives

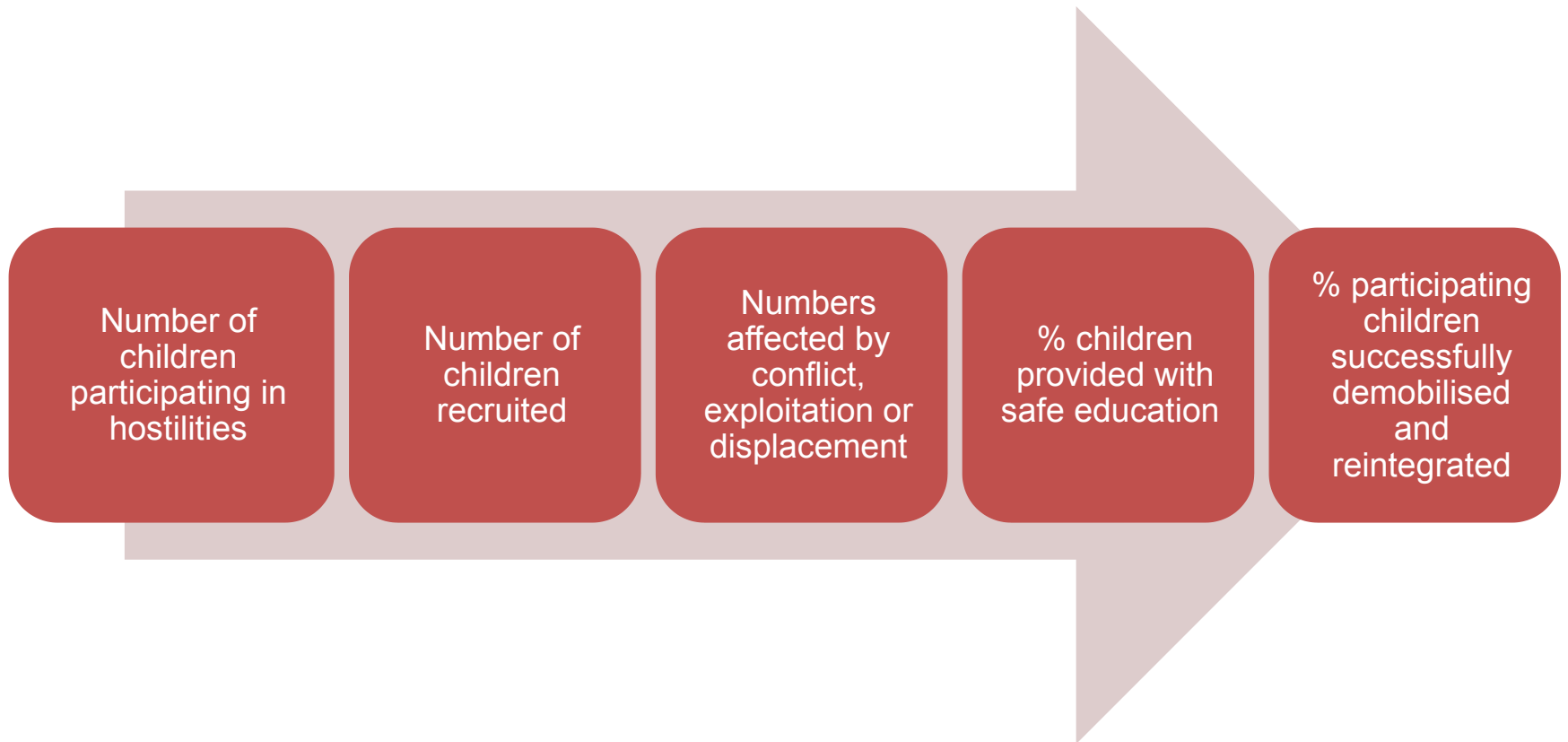
Views of
children
always
sought
and
given
due
weight

Measures
exist to
demobilise
and
rehabilitate

Child
accused
of crimes
treated
as
victims
not
perpetrat
ors

Outcome indicators

Changes as a result of measures taken



Conclusion



- Reality is grim
- 1 in 5 children living in situations of armed conflict (420 million)
- More children facing grave violations of rights – up from 10,000 in 2010 to 25,000 in 2017
- **BUT** human rights remain relevant - vital for health professionals to be aware of children's rights
- **MUST** continue to seek to hold States to account
- **NEVER** give up on our commitments to fight for human rights standards to be respected
- **HUMAN RIGHTS** remain the moral foundation of our mutual respect for dignity, justice, respect and equality