CHAPTER IX
RECOMMENDATIONS

Children’s vulnerabilities in these situations stem from an array of socio-economic and political disorders which has denied them the inherent right to live with basic dignity. Existing security situation has created development voids, increased governance gaps and limited the reach of child centric institutions. The findings of the study establish the ability of community based interventions to de-link with the law and order situation emanating from the civil unrest and exclusively focus on the rights of the children. Such interventions also help strengthen government capacity towards access to health and education as a key to the reconciliation process in areas of civil unrest through Community – State interface (C&S) by dovetailing the State's flagship programmes affecting children through community based interventions. It has also helped create a process of seamless transition for all categories of children (in need of care and protection and those in conflict with the law) without going through the traditional institutional process.

INTERNATIONAL LAW AND POLICY

De link the agenda of child protection with the existence of an internal armed conflict within the meaning of the Geneva Conventions.

International community should be selective in referring to localized situations as internal armed conflicts since localized situations in third world democracies pose different set of challenges as against international interventions in States which have witnessed a total collapse of the rule of law.

Direct reference to the existence of an internal armed conflict has led to many third world States not ratifying the relevant international Conventions referring to internal armed conflicts which risk a potential accountability and international intervention in the affected State like the ICC Statute or the Additional Protocols I or II to the Geneva Conventions (Afghanistan, Bangladesh, Bhutan, India, Indonesia, Iran, Iraq, Malaysia, Myanmar, Pakistan, Nepal, or Sri Lanka).

The international community has established high standards of accountability towards the protection of children by permitting international intervention when peace and security are at risk, under Chapter VII of the U.N. Charter, and the ability to declare
child recruitment a war crime under the Rome Statute of the ICC. In response, States are reluctant to recognize the problem.

Revisit the definition of a 'Child Associated with an Armed Force or Armed Group' in reference to civil unrest movements. The present definition not only refers to a children directly taking part in hostilities but also those involved as cooks, porters, messengers, spies or for sexual purpose. The all inclusive definition of child participant in the Paris Principles in principally aimed to include most children with the child protection mandate during the reconstruction/post conflict stage particularly in failed state situations. While the scope of international intervention is limited by the customarily principle of State sovereignty but if the definition if applied mechanically it obscures the very intent of child rights intervention as it risks redefining the nature of violence and threatens the affected State's sovereignty.

Encourage states to address the issue of children associate with armed groups within their respective domestic laws and well-established principles of international law on the administration of juvenile justice.

**THE AFFECTED STATE (INDIA)**

**India as a State Party**

Formally recognize child victimization as a consequence of the prevailing civil unrest and launch specific child centric rehabilitation and reintegration measures without changing the legal status of the civil unrest.

De-link child rights with the security situation in the civil unrest areas.

Recognize children as the victims of the civil unrest.

Make it binding up law enforcement officials to adhere to the 'Protocol for Police and Armed Forces in Contact with Children in Civil Unrest Areas' (http://nepcr.gov.in/view_file.php?fid=464).

Formally launch the Bal Bandhu Scheme for the Protection of Child Rights in Areas of Civil Unrest.

Create methods of community based interventions without any reference to the civil unrest.

Increase domestic capacity to meaningfully address the issue of child soldiers while respecting each state’s unique geographical, linguistic, and cultural diversity.
Raising the minimum age of criminal responsibility.

Recruitment of children to be treated as a criminal offence with no amnesty for commanders who recruit them.

Define the State's minimum core obligation towards the protection of child rights with respect to the right to health and education.

Training of judicial professionals, including in the area of rehabilitation and reintegration.

NATIONAL LAW MAKING AND REFORMS

National Policy Guidelines

The recent Protocol for Police and Armed Forces in Contact with Children In Areas of Civil Unrest and NCPCR document on the protection of Children's Rights in Areas of Civil Unrest are some of the key documents issued by the State on the protection and victimization of children. There is now a need for framing statutory rules and regulations affixing responsibility of law enforcement officials towards children. A child centered approach based on restorative justice, diversion needs to be implemented which include guidelines for all actors in the juvenile justice process. The policy should include:-

Treatment of children from the point of contact till the production of the child in front of the JJB.

Model rules for the law enforcement agencies including accountability guidelines (age determination, prohibition of ill treatment, no interrogation, no detention in Police station, explicit restrictions on the use of force, onus to inform the parents/guardians, etc). These guidelines should requires the Police to attest compliance of these rules at the time of producing the child before the JJB.

Guidelines for compulsory information and explanation to be given to the child on his/her rights, and on procedures and rules at each stage of the process.

Alternates to institutional care.

Distinct categorization of a child in conflict with the law from those in need of care protection.
Mandatory birth registration.

Rehabilitation and reintegration through financial empowerment.

Powers to divert and examine traditional dispute resolution mechanisms to include panchayats, school teachers, peer educators etc.\(^{837}\)

Good practices guidelines and partnership building initiatives for law enforcement agencies, judiciary, NGOs, village panchayats, teachers and care givers.

Functioning guidelines to JJB to reduce formality in procedures.

Coordinated reform strategies to include organization set up, functioning of JJB, juvenile police unit, financial capacity building initiatives closely integrated to rehabilitation and reintegration, monitoring and evaluation post release in such a manner that they are housed in once centre.

Capacity building initiatives to include advocacy, community sensitiveness and peer education through dialogue with media and civil society.

Guidelines for improvement in living conditions and maintenance of minimum standards of healthy living for all round development.

**Training and Accountability of Key Personnel.**

Children are most vulnerable to armed forces/Police apathy. Despite these legal protections and a strengthening consensus of states around the world, children continue to remain as the principal victims of war/conflict. Be it as a consequence of their vulnerability as victims or as alleged perpetrators as part of armed groups. An estimated 2 million children have died and 6 million have been wounded as a direct result of armed conflict\(^{838}\). At any one time over 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries around the world\(^{839}\). The Graca Machel Report on the Impact of Armed Conflict and Children also estimated that civilians made up for 90% of the war causalities and the largest portion of these victims was women and children. A century earlier this figure had been just 5%.\(^{840}\) Ironically, even while instituting accountability mechanisms in post

\(^{837}\) UN document, Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law (UNICEF, ROSA, 2006) at 19.


\(^{839}\) Ibid.

\(^{840}\) Rachel Harvey, Children and Armed Conflict, A guide to International Humanitarian and Human Rights Law, Children and Armed
conflict societies, atrocities against children and their recruitment have merely formed part of the crimes committed against civilian populations in general.

Training of key personnel involved in the juvenile justice process is the key for effective implementation. Police/armed forces, prosecutors, legal and other representatives of the child, judges, probation officers, social workers, peer educators and parent/guardians are important stakeholders towards an effective juvenile justice mechanism.

Accountability of the law enforcement agencies at the point of contact till the juvenile is produced from of the JJB is most critical. Model rules towards accountability must enumerate the undermentioned issues:

Caution at the point of arrest or apprehension with the onus to ensure subsequent detention is not arbitrary or illegal.

Age determination as a burden of proof on the Police/armed forces to establish that the individual is above the age of 21 years.

Direct obligation to inform the parents/guardians as soon as possible but not more than six hours.

Children not to be detained in police station under any circumstances. There will be a local elder/NGO representative or any responsible citizen like village panchayat, teachers, etc, during the time period when the juvenile is apprehended and is sent to an observation home.

Under no circumstances will the juvenile be ill treated, the onus of which is not limited to the juvenile police officer but to all personnel in the juvenile justice process.

The Police may dispose off the case against the juvenile without resort to judicial proceedings.

No interrogation, extraction of information, confessions/statements to be taken by the Police.

No illegal detention and arbitrary arrest of the child.

**Special Legislations**

Reinforce the supremacy of the Juvenile Justice (Care and Protection) Act 2000 viz. a viz. any special legislations in place in the country.
Recognize children as a special category as against extending protection within a category of ‘women and children’ or ‘vulnerable groups.

Age of these victims should be treated as an aggravating factor and to be taken into account in sentencing.

Re-examine the AFSPA in the light of the State's international treaty obligations.

**Juvenile Justice (Care and Protection) Act 2000**


Deprivation of liberty as a measure of last resort, for the shortest possible time, and that appropriate conditions are provided.

Alternative measures to deprivation of liberty.

Children are separated from adults in all places of detention and have legal access to independent and effective complaint mechanism.

Review and where necessary, amend all judicial, legal and protection procedures to ensure that children under 18 years who have broken the law are fully guaranteed the rights of fair trail and to legal assistance.

No death penalty or life imprisonment without possibility of release.

**Examine the Compatibility and Contradictions between the UN CRC and the JJ(C&P) Act 2000 and incorporate provisions which universally recognized:**

Article 38 of the UN-CRC specifically refers to the rights for the Protection of Children affected by armed Conflict. The Convention Article obligates State parties to ‘respect and ensure’ respect for the rules of international humanitarian law applicable to children in armed conflict and to take all feasible measures to ensure protection and care of children. While the convention makes no reference children to child participants in conflict alleged to have, or accused of or recognized as having committed grave acts but imposes limits upon state towards ill treatment, recognize the child’s inherent right to life, unlawful/ arbitrary arrest or deprivation of liberty
and the right to prompt access. The Convention also limits the age of direct participation in hostilities as above the age of fifteen.

The JJ(C&P) Act 2000, on the other side has no specific section dealing with children affected by armed conflict or on the question of their accountability. The only mention of children affected by armed conflict is in the preambular paragraph of the JJ(C&P) Act 2000 under the category of Children in need of Care and Protection. No substantive guarantees mentioned in the Act in terms Article 37 to 40 of the UN-CRC are in the JJ(C&P) Act 2000. The risk of coercion, ill treatment and the absence of substantive right and corresponding duties upon the law enforcement agencies manifestly risks the chances of abuse.

The UN-CRC obligates upon States that the deprivation of liberty will not be arbitrary, would be in conformity with the law and used as a mater of last resort for the shortest period of time. The child shall be treated with humanity and respect for the inherent dignity of the human person.

As per the JJ(C&P) Act 2000, a juvenile on apprehension shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the Juvenile Justice Board. The handling of the juvenile by the juvenile police unit in effect grants the custodian rights to the Police which manifestly dilutes the notion of the right not to be subjected to unlawful arrest and arbitrary deprivation of liberty. Section 11 of the JJ(C&P) Act, any person in whose charge a juvenile has been placed has the control over the juvenile ‘as if he were his parents.’ When such custodian rights are seen in the light of the section 13 of the JJ(C&P) Act, such a provision also denies a child the right to his family. The Police station or the juvenile police unit is obliged, as soon as may be after the arrest inform the parent or the guardian ‘if he can be found’. Without referring to the possibilities of arbitrary arrest or deprivation of liberty, once the children have been placed under custody, he is produced before the Juvenile Justice Board and during the pendency period he is kept in the Special Home.

Under Article 37(d) of the UN-CRC, the child has the right to prompt legal access and other appropriate assistance and, the right to challenge the legality of the deprivation of his or her liberty before the court or the other competent, independent and impartial authority. No such guarantees exist in the JJ(C&P) Act 2000, although the right to a legal counsel as to be represented in the court have been granted to the by the courts.
The right of the child not to be subjected to torture or other cruel, inhuman or degrading treatment or punished has been granted through Article 37(a) of the UN-CRC. There is no explicit guarantee in the JJ(C&P) Act 2000. Section 23 of the JJ(C&P) Act 2000 limits accountability upon the custodian having actual charge or control over the juvenile prohibiting any form of cruelty against the minor with punishment of a max of six months imprisonment, or fine or both. The absolute prohibition and sweeping state accountability prohibiting ill treatment, cruel inhuman degrading treatment is not there in the Act.

Administration of juvenile justice enshrined under Article 40 of the UN-CRC obligates upon State parties to ensure certain minimum guarantees like the presumption of innocence until proved guilty, to be promptly informed of the charges against him or her, the right to legal assistance for the preparation of defence, and the right not to be compelled to give testimony or confess guilt. It also obligates upon States to, wherever appropriate and desirable deal with children without resort to judicial proceedings and promote his/her effective rehabilitation into society through variety of dispositions. The JJ(C&P) Act 2000, on the other hand, addresses this issue in Chapter II while dealing with ‘Children in Conflict with the Law’. The right to be presumed as innocent is guaranteed in the JJ(C&P) Act 2000. The recourse to non judicial proceedings is also enshrined in the JJ (C&P) Act 2000, but there are no guarantees for the child in the preparation of his defence in front of the Juvenile Justice Board. However, once it is proved that the child has committed an offence, the Act gives out a variety of options. These include that a child can go home after advice or admonition with counseling to parent/guardian, kept under protective custody if above the age of sixteen years, sent to special home, can be made to do community service, or group counseling.

Examine wide disposition options within the Act to include children as part of armed groups or those abused as a consequence of the civil unrest.

Truth and Reconciliation should be an integral part of the child’s integration process and this should be controlled under the JJ Act for children in need of care and protection.
Ministry of Home Affairs (POLICE and other CPMF).

Make it binding up law enforcement officials to adhere to the 'Protocol for Police and Armed Forces in Contact with Children in Civil Unrest Areas'
Avoid security centric intervention since it risks alienation of communities and leads to the encroachment of development space.
No re location of schools and AGWs.
Avoid deployment of CPMF along line of communication since it risk leaving large tracts of remote areas unaddressed.

MHA/Ministry of Social Justice and Women Empowerment New Delhi.

Create strong Community- State (C&S) interface to reach out to children in areas of civil unrest.

Create a compliance tool for the State till the Block level through such community based intervention.

C&S interface has tremendous capacity to impact the lives of children. If formally recognized, the C&S interface should be integrated at the national level and State sponsored programmes should be dovetailed for implementation through this interface.

A special rehabilitation package in terms of employment, soft loans, scholarships, teaching of life skills, etc for youth should be launched.

The respective intervention Blocks are barely able to ensure the most basic requirement of regular attendance. Respective states must address the challenges more holistically in terms of infrastructure, accessibility, teacher-student ratio, delivery of services to include mid-day meal, school books, uniform etc in order to increase school attendance and enrolment.

Intervene into health and education as a state of emergency.

State Child Rights Commission should monitor the progress of the Bal Bandhu Scheme.

Modalities of expansion of the Bal Bandhu Scheme should be examined.

Formalize the mandate of the Bal Bandhu Scheme after examining the outcomes of the poliot project.

**STATE GOVERNMENTS**

Inter departmental collaboration headed by the Chief Secretary should be undertaken to map children, requirement of essential services like AWCs, Schools, Residential Schools, orphanages, institutions under the JJ Act for children in need of care and protection, Residential Bridge Course Centres must be carried. The committee should give out its recommendations on a roll on plan basis to make up for the deficient services in the State.

Child Rights training should be initiated with particular reference to the RTE in the State from all sectors. Such initiative should encompass both governmental and NGO members including JJ functionaries, teachers, health workers, medical personnel, anganwadi workers, District officials and Panchayat members.

Residential Schools, orphanages, institutions under the JJ Act for children in need of care and protection, Residential Bridge Course Centres should be immediately used to host children who are in distress. The Education Department, the Women and Child Development Department, Social Welfare Department and Tribal Department should form a coordination committee to discuss safety, security and developmental rights of children, especially health and education. Quaterly report of the minutes of the committee should be sent by the respective District Magistrates to the NCPCR, New Delhi.

More residential schools, KGBVs, Hostels, Ashramshalas for boys and girls need to be planned in unrest areas as a special initiative to prevent children from migrating, being trafficked or being recruited.

Special employment drive should be planned for youths in unrest areas.
Grievance and redress committee must be instituted at the District level headed by the District Magistrate to directly address issues relating to children.

Strong monitoring and assessment of standards of care in the AWCs and schools must be ensured through mechanisms of transparency and interface with professional/specialized agencies.

Development disparities are disproportionately affecting children residing in remote areas. Special efforts must be launched by the respective State Governments to ensure rural reach through good road communications and provision of essential services in remote areas.

Examine education as Part of IAP under Planning Commission for children between the age of 15-18 Years

No allotment of schools to the security forces.

**DISTRICT AUTHORITIES**

The receiving State should ensure child rights to health and education are extended to children displaced by the civil unrest.

Do not permit child labour and the same should be unequivocally mentioned in Government contracts.

Undertake measures to ensure attendance of AWC workers, school teachers, PHC employees and other such health and educational institutions.

Governance accountability towards the functioning of the schools particularly in terms of provision of nutritional and regular mid-day meals, student and teacher attendance, student teacher ratio, reduction in the dropout cases and re-integrating of non-school going children.

Practice of relocation of schools, AWCs, etc along the main communication lines away from subscribing population residing in remote areas should not be done. It is not only against the statutory provisions but also negates the prospects of development and alienates the population. District/Block centric clustering should be not be undertaken.
Deliberate efforts must be launched to revive non-functional schools.

Special drive under the District Magistrate must be launched to track out of school children, repatriation of trafficked children must be undertaken.

Records of children in the AWCs are either not available or poorly maintained. The same needs to be completed.

Public delivery in the AWCs and for mid-day meals in schools needs to be strengthened.

Carry out extensive mapping of children with the help of the local community/BMS.

Encourage convergence between the community and the State through the creation of a C&S interface.

Ensure toilets are constructed in all school/AWCs since they are one of the important factors to ensure universal access.

Recognize petitioning by the community as a process to self governance.

Emergent need to strengthen the care for malnourished children and prevent further deterioration by building systemic convergence between health and ICDS staff at all levels.

Mapping of AWCs and sanction Centres irrespective of the population size of scattered hamlets for effective reach of health and related services.

Open schools and support teachers to return to schools.

Provide support to Panchayats for construction of incomplete school buildings.

RBCs are ill-equipped to satisfactorily transfer a majority of the children to ashram schools for effective mainstreaming them into the formal education system on completion of their Bridge courses. It is more beneficial to conduct RBCs in the premises of ashrams to ensure easy tracking of children.
Severe lack of basis needs to cater food, clothing and shelter which is often difficult for the families to provide due to extreme poverty in the tribal areas exacerbated by the vagaries of civil unrest.

Create child protection committees through strong community empowerment and identify interface with the local administration responsible to respond to child rights petitions.

Create schools as ‘Zones of Peace’ through the initiation of talks through neutral third-party agencies to engage all stakeholders including the government, Naxals, Salwa Judum, the community etc to initiative a ceasefire

Monitor out-of-school children and the progress of those enrolled in formal education. This initiative should be supported by nodal officers at the block, district and state level to monitor, supervise and collate the data generated by the community.

Creation of a district level committee on child protection.

Create convergence not only between health and education but also between the community and the State by including select members of the community in the District level meetings.

Strengthen C&S interface to create a model for an education vigil with an education and health interface.

**NGOs**

Raise advocacy and awareness, strengthen international standards and norms, and increase monitoring and reporting.

Extensively interact with local communities to extend reach specially to those areas where State penetration is weak.

Dovetail where appropriate, the NGO activity with State sponsored projects.

Formalize means and methods to reintegrate and rehabilitate children who are part of the armed groups.
Create self sustaining community groups in the form of the BMS which can create capacity towards education and health vigil.

Revive capacity of homogenous groups like women, youth, teachers opinion makers, etc to address social practices which otherwise are in conflict with the universally accepted values towards the protection of child rights.

Encourage small group interventions.

COMMUNITIES

Create a demand for child rights within the community.

Create a moral space to act across parties to the civil unrest.

Extensively interact with the Block and District authorities to create a sustainable C&S interface.

Strengthen the process of petitioning to the State as a process to self governance.

Encourage small group interventions.