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## **Children's rights in crisis: multidisciplinary, transnational, and comparative perspectives**

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Salvador Santino F. Regilme

# CHILDREN'S RIGHTS IN CRISIS

Multidisciplinary,  
transnational,  
and comparative  
perspectives

# Children's rights in crisis



Manchester University Press



# Children's rights in crisis

Multidisciplinary, transnational, and  
comparative perspectives

Edited by Salvador Santino F. Regilme

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# Contents

<i>List of figures and tables</i>	vii
<i>List of contributors</i>	viii
<i>Preface and acknowledgments</i>	xiii
Introduction: Rethinking the crisis of children’s rights: multidisciplinary and transnational perspectives – Salvador Santino F. Regilme	1
<b>Part I: Promoting children’s rights through education and policy</b>	
1 Paddling the pupils: the legality (or not) of corporal punishment in schools – Lucy Sorensen, Charmaine N. Willis, Victor Asal, and Melissa L. Breger	23
2 False divisions and dubious equivalencies: children’s rights during the COVID-19 pandemic – Pantea Javidan	46
3 <i>Con Mis Hijos No Te Metas</i> : the fight for children’s access to comprehensive sexual education – Paola Fajardo-Heyward	71
4 Children’s Rights Convention and the United States amid the pandemic – Shani King	93
<b>Part II: Children’s rights in armed conflict and vulnerable contexts</b>	
5 “Chaos and cruelty”: family separations and the rights of immigrant children – Amy Risley	115
6 Children’s rights in Somalia: dignity under siege in armed conflict – Salvador Santino F. Regilme and Elisabetta Spoldi	135
7 Protecting a child’s right to education free from attack: the future of accountability – Allyson Bachta	171

**Part III: Sociocultural perspectives on children's rights**

8	When do “children” become “adults”? Transitions in children's rights and child marriage – Mies Grijns and Hoko Horii	195
9	Child trafficking and the complexities of implementing the CRC in West Africa – Daniel Ogunniyi	215
	Conclusions: Advancing children's rights amid a global order under siege – Salvador Santino F. Regilme	237
	<i>Index</i>	243

## Figures and tables

### Figures

1.1	Number of country legal bans on corporal punishment in schools 1970–2016	34
6.1	Child recruitment and use—highest numbers 2017 (UN General Assembly Security Council 2018)	136
7.1	A comparative interpretation of Richardson’s (1999) Schooling Disruption Model versus Davies’s (2006) Birmingham International Education Security Index	183

### Tables

1.1	Summary statistics by legal origin of country	35
1.2	Country-level predictors of ban on corporal punishment in schools	37
1.3	Effects of UN Convention on the Rights of the Child ratification (by country legal origin)	38
6.1	Differences in recruiting methods and use of children in al-Shabaab and the government armies	145
6.2	Signatures and ratification of Somalia	162

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## Preface and acknowledgments

The project was motivated by several notable observations. First, I noticed that children's rights are not given enough attention in contemporary social scientific scholarly literature on human rights. Second, as a Dutch scholar of international relations and human rights, I observed that European scholars who focus on children's rights primarily come from faculties of law, while other human rights scholars and social scientists who focus on children's welfare and dignity tend to operate within their own disciplinary silos. Third, I became more aware of the detrimental impact of the COVID-19 pandemic on children's well-being within a global order in which human rights norms are increasingly contested. Consequently, I felt the need for a scholarly anthology that reflects on various contemporary policy challenges faced by children, particularly those in world regions and policy areas that tend to be understudied in scholarly literature.

*Children's Rights in Crisis* emerged from multidisciplinary cooperation among scholars with diverse positionalities and disciplinary backgrounds or fields of inquiry. I extend my thanks to the chapter authors for their time, patience, and insightful contribution. I am grateful to Robert Byron of Manchester University Press for his interest in and support of this project, as well as Humairaa Dudhwala for her assistance during the review and production process. Commissioned by Manchester, external peer reviewers provided helpful and constructive feedback that significantly improved the manuscript. I also thank all the staff members at Manchester University Press who have been involved in the production of this volume. Thank you!

Many thanks go to all the contributors who generously shared their expertise and insights into this truly multidisciplinary and globally oriented volume. Their contributions have enriched our understanding of children's rights and complexities in diverse contexts.

I want to express my deep gratitude to my wife, Anh Loan, for her unwavering support and boundless love. This book is dedicated to children worldwide, including our sons, Ray and Rafael. Ray's brief presence, born prematurely, left an indelible mark on our hearts, and this volume pays

tribute to his enduring memory. Amidst the global challenges, we are grateful for the birth of our second son, Rafael, in 2023. Rafael has brought immense joy into our lives, and we eagerly anticipate the remarkable journey that lies ahead for him. It is the memory of Ray and the potential of Rafael that inspired this project, which is dedicated to advocating the dignity and rights of all children.

Every child, regardless of their background, deserves a world where their rights are respected and their dignity is upheld. As an academic, I hope that this volume serves as a humble contribution to the ongoing efforts to understand the human rights crises faced by children, who inspire us with their resilience, curiosity, and boundless potential. I hope that the insights shared within these pages will contribute to global efforts in which the rights and well-being of every child are at the forefront of collective priorities.

Salvador Santino F. Regilme  
Lansingerland, the Netherlands

# Introduction: Rethinking the crisis of children's rights: multidisciplinary and transnational perspectives

*Salvador Santino F. Regilme*

Children are not responsible for diseases, natural disasters, political conflicts, and wars; yet, children generally suffer the most.

(Levy et al. 2022, 1085)

## Introduction

In 2023, the United Nations Children's Fund (UNICEF), the world's preeminent intergovernmental organization dedicated to children's welfare, estimated that at least 657 million toddlers (under the age of five) and 1.3 billion adolescents (between ten and nineteen years of age) constitute 25 percent of the world's total population of nearly eight billion people (UNICEF 2023). Hence, UNICEF indicated that there are approximately 1.9 billion children in nearly 256 countries as of 2023. Across many contexts, children are generally considered more vulnerable to harm, damage, or abuse than most adults. In terms of human rights, vulnerability pertains to persistent exposure to the risks of undermining one's well-being. A child's susceptibility to harm increases when their socio-economic and physical well-being, cultural and political identities, and abilities are marginalized or undermined. This condition of vulnerability haunts children, in general, because of their young age, deprivation of political power, and limited life experiences and competencies to recognize and meaningfully assert their own rights. However, the persistent condition of vulnerability calls for stronger protection of children's rights by formulating and implementing transnational and domestic public policies that ensure that everyone can assert their rights based on the principle of political equality.

Children's well-being and dignity appear to face difficult challenges in many countries (Becker 2017; Cavallera, Nasir, and Munir 2020; Health 2020; Hiskes 2021; Levy et al. 2022; McIntosh et al. 2020; Park et al. 2020). In 2022, the global food crisis dramatically worsened to the extent that an extra 260,000 children—equivalent to one child every minute—were

experiencing severe wasting in fifteen countries that were most affected, such as those located in the Horn of Africa and the Central Sahel (UNICEF 2022). This further deterioration in acute malnutrition was added to the already existing levels of child undernutrition, which UNICEF had previously cautioned were very dangerous, likening the crisis to a “virtual tinderbox” (UNICEF 2022).

War and armed conflicts, as well as hostile policies on the part of refugee destination countries, gravely undermine children's well-being and human dignity. Since the 2022 Russian war of aggression in Ukraine, the armed conflict has generated severe and distressing effects for children residing in institutions in Ukraine, including being coercively relocated to Russia and being separated from their families in Ukraine (Human Rights Watch 2023). The damage caused to children living in Ukrainian institutions underscores the urgent and compelling need to move them out of coercive situations created by Russian aggressors. Human Rights Watch (2023) called on the international community to mobilize children who were coercively relocated to Russia to be repatriated without delay. Since 2016, disturbingly large numbers of refugee and migrant children have disappeared or been killed in Europe, with the suspicion that they had been exploited for labor and sexual purposes (European Parliament 2022). Consequently, the European Parliament underscored the urgency of resolving the issue, which coincided with the conflict in Ukraine. More than eighteen thousand migrant children disappeared or were killed in Europe between 2018 and 2020, with their disappearance attributed to inhumane conditions in their residence, inefficient procedures for family reunification and appointment of guardians, fear of detention and deportation, and an interest in joining family or trusted friends in another country (European Parliament 2022). According to the children's organization Save the Children, one in fifty refugees and migrants die or go missing on Mediterranean routes to Europe, and children face extreme violence and inhumane conditions upon arrival in European countries (Save the Children 2023). The treatment of child refugees from Ukraine, however, in 2022 suggests that such tragedies are avoidable. Owing to the absence of legal and safe mechanisms for children to seek asylum in Europe, nearly 90 percent of refugees face the only choice to traverse dangerous migrant routes. From 2019 to 2022, nearly eight thousand individuals have died or disappeared on the dangerous Mediterranean routes, while 20 percent of those were children who eventually reached Europe (Save the Children 2023). Besides these challenges, refugee and migrant children encounter other difficulties, including linguistic, social, and cultural challenges. It is notable that the EU Parliament did not mention that the racist policies of EU member states caused the deaths of refugee children who were desperately seeking refuge in Europe (Augustová 2022; Isakjee et al. 2020).

Moreover, many boys and male minors are coerced into military conscription in the context of armed conflict (Haer 2019; Regilme and Spoldi 2021).

Child marriage also poses challenges to the protection of children's human dignity. In the US, the self-proclaimed promoter of liberal democracy and human rights, nearly 232,000 minors (below eighteen years old) have entered into a legally recognized marriage; these marriages usually involve a minor girl and a much older man. In 2023, forty-three states in the US allowed child marriage, and only seven states, including Delaware, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, and Rhode Island, have set eighteen years as the minimum age for marriage, with no exceptions (Equality Now 2023). In addition, twenty states in the US failed to set a minimum age requirement for marriage, but marriage was permitted with a waiver granted by either a parent or judicial authority (Equality Now 2023). Child marriage, which pertains to marriage before the age of eighteen years, is widely considered a human rights violation that poses a substantial risk to the health and overall well-being of children worldwide (Koski and Heymann 2018). In many global South countries, girls face the prospect and pressures of early marriage, domestic abuse, and sexual harassment, while they are also deprived of various social and economic opportunities that are vital for character development: nutrition, education, parental care, and shelter. According to the 2022 Worldwide Assessment of Modern Slavery, the largest percentage of the world's minors has been involved in coerced matrimony, which accounts for nearly nine million children (Anti-Slavery International 2023). Approximately half of the children engaged in forced labor, which accounts for 3.3 million children, have been subjected to commercial sexual exploitation, while nearly 40 percent have been exploited in slave-like labor conditions in the private sector of the world's economy (Anti-Slavery International 2023).

The list of contemporary challenges facing children's rights is long, and the challenges mentioned earlier are just a few. In September 2022, the UN Child Rights Committee (UN CRC) published its findings concerning the plight of children's rights in several countries (UN Human Rights Office 2022). In the report, the UN CRC highlighted the wide variety of abuse against children across many different countries: pervasive sexual exploitation and online violence in Germany; non-Kuwaiti children who are systematically discriminated against in access to fundamental social services and are often targets of hate speech in Kuwait; alarming acts of violence committed against children in conflict zones in the Philippines (especially on the southern island of Mindanao) through conscription in armed conflict, sexual abuse, imprisonment, and violent attacks on educational institutions and medical facilities.

Despite these challenges to children's dignity, their rights have been formally and universally recognized by the international community. In 1989, the United Nations (UN) General Assembly adopted the Convention on the Rights of the Child (CRC) and introduced the document for signature to member states (LeBlanc 1991; Schaaf 1992; Vandenhole 2022). In September 1990, the CRC was ratified, and as of 2021, 196 states (or all members of the UN) formally recognized and signed it, except the United States. Since then, many global governance institutions, domestic state institutions, civil society activists, and other corporate organizations have invoked the importance of human rights and the dignity of children—or human individuals aged eighteen years and below—in various policy actions, government strategies, organizational missions, diplomacy, and public advocacy (Regilme 2021, 2022a, 2022b). It has become increasingly clear, however, that the degree to which children's rights are effectively observed and respected in global governance and national government strategies varies greatly within and between countries, as well as in policy issue areas. In public international law, the CRC's main addressees are states, yet the global and transnational dimensions that facilitate local problems fundamentally challenge not only the state's formal mandate, but also their capacities. For that reason, policy challenges concerning the rights and dignity of children should not be understood as mere outcomes and causes of domestic governance failures, but also as shortcomings of global governance, if not the normative structure of the contemporary global order. Often, contemporary policy problems within countries are produced through the complex interactions of local and global factors, as demonstrated by problems such as armed conflict and wars, labor rights abuses, poverty, extreme material inequality, human displacement from their natural habitat, and pandemics (Beck and Sznajder 2006; Regilme 2021, 2014).

Hence, this multidisciplinary and eclectic human rights anthology asks the following core questions: *Considering that more than three decades have elapsed since the CRC was first introduced globally, how and under which conditions are the rights and dignity of children under siege or in crisis? Why have such crises emerged?*

As such, this multidisciplinary volume examines the causes and consequences of contemporary crises in terms of children's rights and welfare. While various chapter contributors offer nuanced explanations that address the extent to which children's dignity and well-being are under siege depending on their chapter's empirical focus, this volume contends that systemic abuses of children's rights and welfare persist despite the existence and widespread acknowledgment of the CRC. Such abuses emerge from the complex constellation of domestic and transnational causes; therefore, an analytically eclectic, multidisciplinary, and geographically contingent explanation

is necessary. Despite the persistence of children's rights crises in various places, the CRC has provided a political framework that offers normative principles and broad aspirational goals that guide state and non-state actors' behavior and generate moral and legal responsibilities for them to comply with. Similar to other international legal instruments, the CRC serves as a tool for advocacy and mobilization of human rights advocates, civil society organizations, state actors, and intergovernmental organizations to protect the dignity of children (Howe and Covell 2021; Kilkelly and Bergin 2021; Miljeteig-Olssen 1990; Tobin and Cashmore 2020; Vandergrift 2017).

### State of knowledge: children's rights from a multidisciplinary perspective

The aforementioned puzzle concerning children's rights constitutes a more specific iteration of the broader question in the social science of human rights: do international treaties (or, broadly conceived, the global regime of human rights) improve human rights outcomes within a signatory state's territory? If so, how? Notwithstanding the proliferation of international human rights treaties, the scholarly literature is unsettled concerning the effectiveness of international human rights law in the prevention of state-perpetrated abuses (Regilme 2016, 2020). For decades, international human rights agreements have constituted a key and compelling concern at the global level. These agreements, conventions, and treaties attempted to provide a broad normative framework for the advancement and safeguarding of human rights. These treaties and other instruments of the global regime of human rights mandate states to uphold and ensure their citizens' rights and well-being, including that of children. Scholars, policymakers, and human rights activists have questioned the efficacy of these treaties.

Treaties and other instruments of international human rights law can have a significant impact on state behavior, both directly and indirectly. International human rights agreements facilitate the emergence of a global human rights culture that can transform societal attitudes toward human rights and create a supportive environment for human rights advocacy. Political scientist Beth Simmons (2009) contends that states' commitments to treaties may generate a conducive political climate for human rights. Simmons (2009) concedes, however, that her research only shows a correlation between treaty commitments and improved human rights practices and acknowledges that human rights violations often arise from complex domestic political and economic factors. Furthermore, another study affirms that these international human rights agreements often serve as superficial signaling measures of goodwill for signatory states, but human rights

activists use them to rally against abusive regimes (Merry 2006; Tsutsui and Hafner-Burton 2005). Sally Engle Merry (2006), an anthropologist of human rights, argues that international human rights law is insufficient in combating gender violence because of its detachment from local realities. She proposed a strategy that merges human rights principles with local norms and practices to create a more effective response to gender violence. Merry (2006) contends that this localization approach can bridge the gap between international law and local justice and consequently generate better human rights outcomes. Kathryn Sikkink (2017), a political scientist, challenges the claim that the international human rights movement is solely a Western construct; instead, she argues that political actors from both the global North and South have contributed to its emergence. Sikkink (2017) underscores the effectiveness of the human rights regime by pointing out a significant decrease in overall violence and human rights violations, which can be attributed to increased respect for human rights over the past four decades, including the ratification of the UN Convention against Torture, as suggested by Farris (2019).

Other scholars, however, expressed doubts concerning the effectiveness of international human rights treaties and agreements. Samuel Moyn (2018a, 2018b), a historian and legal scholar, contends that the current international human rights regime has neglected the essential goal of material equality, which has historically addressed people's demands for material security. The rise of neoliberalism in conjunction with human rights has generated a shift toward minimum material sufficiency, which has led to greater material inequality and precarity. Stephen Hopgood (2013), an International Relations scholar, argues that the global human rights regime is in decline, partly because liberal states use human rights to advance their interests, and non-Western powers challenge the US's dominant view of human rights. Legal scholar Eric Posner (2014) adopts a legal rationalist-realist perspective and emphasizes the challenges of enforcing often conflicting human rights values in international human rights treaties. In addition, the proliferation of human rights agreements in international law poses a significant challenge to the principle of state sovereignty, irrespective of their effect on actual human rights outcomes.

In view of the scholarly disagreement concerning the scholarly literature on international human rights regimes' effectiveness, this volume suggests that the challenges to the dignity of children require a more nuanced, geographically contingent, and empirically rigorous analysis of a specific instantiation of crisis or policy problems.

Meanwhile, the core questions of this volume invoke the concept of crisis. What is the crisis in the context of children's rights? Considering the wide variety of standpoints adopted by the chapter contributors, I adopt

a broad definition of crisis for the purposes of this volume, which involves scholars from various disciplines and with varying regional or area expertise. Although its definition depends on the chapter contributor's positionality concerning a particular children's rights situation, crisis refers to the acceptance or diagnosis of a situation in which there are pervasive, systematic, and persistent violations of children's rights, thereby causing various forms of harm to dignity as well as the current and long-term well-being of children and the communities where they belong (see also [Regilme 2023](#)).

Several key propositions are worth considering based on the definition of a crisis. First, accepting that a particular situation constitutes a crisis suggests that the current condition "could possibly be otherwise" ([Gilbert 2019](#), 10), which implies a yearning for a much more preferred condition in the past than in the present. Second, the construction of a crisis is a highly politicized act, considering that the features of any given situation could possibly be represented as *problematic*, thereby implying that crisis construction is highly contingent upon the normative interests and political commitments of those enacting the interpretation ([Walby 2015](#)). Third, the notion of crisis pertains to the political process of narration, or the discursive construction of a particular problem that requires transformative intervention. A crisis forces leaders and other relevant stakeholders to formulate "high-stakes decisions under conditions of threat, uncertainty, and time pressure" ([Lipsy 2020](#), 99). As Hay ([1996](#), 254) argues, a crisis is a social process that involves an object and a subject; the narration of a crisis may involve the target of a transformative intervention and the actor that enables the intervention. In 2015, for example, many officials of the EU and its constitutive member states described the comparatively large influx of refugees from Syria to the EU as the so-called European migrant crisis—also known globally as the Syrian refugee crisis—a highly challenging period when at least 1.3 million people claimed refugee status, and approximately one out of four of those was an underage individual or a child ([UNICEF 2015](#)). The emergence of the dominant term *migrant* instead of *refugee* as well as the construction of *crisis* to describe that phenomenon reflects the collective political choices and discursive acts that were dynamically enacted upon by political elites and other stakeholders in Europe. Fourth, the concept of a crisis also suggests prevailing uncertainties concerning the persistence of preferred norms at a particular moment ([Koselleck 2006](#), 399). Since the late 1980s, and the introduction of the CRC, an expanding global movement advocating for children's rights has emerged. In cases of pervasive violation of these rights and systemic deterioration of children's well-being, the widespread dissemination of information and awareness building could serve as a catalyst for activists, scholars, and policymakers to recognize the gravity of the situation and immediately take steps to address it as a crisis

in need of resolution (Becker 2017; Butler 2012). In doing so, the goal is to stop violations and consequently address the structural and agential causes of human rights abuses toward children. This desire for transformation confirms what Koselleck (2006, 399) calls critical juncture, another term used to refer to a crisis, which includes the presence of numerous potential courses of action for the future, leaving pertinent parties with challenging decisions to make (Koselleck 2006).

In this book, chapter contributors analyze the various challenges to children's rights across diverse geographical spaces in the contemporary period, from the start of the twenty-first century until the era of the COVID-19 pandemic (2019–2023). Despite the actively expanding scholarly literature on global human rights, children's rights remain a topic that is relatively within the margins of scholarly and policy debates on global governance and policymaking. As such, this anthology distinguishes itself from current scholarly literature on human rights in several ways. First, while children's rights are often studied within disciplinary silos, especially the dominance of legal scholars on this research front, this volume upholds an analytically eclectic and multidisciplinary outlook in examining contemporary crises that systematically violate the dignity of children. Second, this volume investigates the causes and consequences of understudied crises on children's rights, particularly thematic and policy blind spots that remain marginal in mainstream scholarly and public discourses. Third, rather than focusing on crises on children's rights as mere outcomes of local and national factors, as demonstrated by the methodologically nationalist bias of previous studies, this volume advocates a global and transnational perspective in understanding the challenges faced by children. As such, the book focuses on understudied topics on children's welfare in the American continent, the Asia Pacific region, and Africa. The overarching logic of the volume focuses on world regions that remain relatively understudied in terms of children's rights; therefore, a focus on crises of children's rights in the Americas, Asia, and Africa is more appropriate. The relevant scholarly literature has actively engaged with the crises of rights in Europe and some parts of the global South, but no other existing volume (except this volume) provides a thorough examination of children's rights in the US vis-à-vis other parts of the world, with a considerable scope that covers the substantive challenges to the dignity of children. Our approach is geographical diversity, but with a focus on the US, as the latter's aim is to demystify the limitations of the US as the most dominant state actor in international human rights.

This book seriously considers both the empirical scope and analytical diversity of children's human rights politics and practices; in doing so, we provide a much-needed space for examining how our current state of knowledge concerning global human rights protection and promotion can

be interpreted and theorized. Thus, while a variety of single-author books and several edited volumes cover some of our issues, this book is differentiated from other competing books in that it provides a broader range of themes, geographical coverage, and disciplinary approaches concerning the rights of children in the twenty-first century. The anthologies by Ruck et al. (2017), Fenton-Glynn (2019), and Hanson and Nieuwenhuys (2013) are good examples of the explanatory strengths of multidisciplinary research on children's rights; however, they do not necessarily examine the deep structural causes of human rights violations in the empirical cases covered in this study. The volumes by Fenton-Glynn (2019) and Hanson and Nieuwenhuys (2013) focus only on the relationship between children's rights and the politics of international development, but these works do not showcase the wide variety of contemporary crises in children's well-being across several world regions.

Moreover, it appears that none of the recently published books on children's rights explicitly approach the topic in conversation with contemporary global challenges brought about by enduring armed conflicts, the COVID-19 pandemic, refugee crises, and other transnational crises. In addition, this multidisciplinary volume examines children's human rights from different disciplinary perspectives other than mere law, politics, or international relations, and that diversity makes it possible to develop a critical and holistic yet realistic analysis that is crucial. The book addresses issues that concern the contestation of children's dignity both in the global North and South, and the roster of contributors represents a balance in gender representation, as well as diversity in disciplinary approaches and intellectual commitments to the academic study of children's rights. Other notable anthologies, such as Todres and King (2020) and Brems et al. (2017), focus on children's rights law, and do not thoroughly examine the multifaceted social, economic, and political conditions that impact the dignity of children (Brems, Desmet, and Vandenhole 2017; Todres and King 2020). Other recently published scholarly monographs and anthologies are written by legal scholars; therefore, law and legal institutions were used as the main explanatory lens for studying the factors that impact children's well-being (Barnett, 2022; Fenton-Glynn, 2019; Peleg, 2019; Tobin, 2019; Türkelli, 2020). As such, the most prominent and recent scholarly works on children's rights come from the field of law, although Hiskes's work is a notable exception. A political scientist and theorist, Hiskes (2021) provides what he claims to be the first comprehensive theoretical foundation for the human rights of children; offers an argument for their full citizenship rights, including the right to vote; and contends that bestowing full rights entitlement to children realizes the promise of universality of human rights. Overall, the works mentioned enrich our understanding of different aspects

of children's rights. However, the aforementioned scholarship has limitations in terms of its substantive scope and disciplinary focus. A more comprehensive understanding of children's rights requires a multidisciplinary approach that considers a range of factors that affect their well-being. As such, this volume is a timely intervention in scholarly literature, providing the first multidisciplinary anthology on children's rights during the COVID-19 pandemic era.

### **Organizational logic of the volume**

The organizational structure of the book is divided into three main substantive parts, in addition to the introductory and concluding chapters.

Part I of the book deals with the analytical, theoretical, and empirical perspectives pertaining to the global context of children's rights. The first part of the volume examines the critical roles of education and policymaking in upholding children's rights. The chapters therein examine the legal, policy, and practical aspects of ensuring that children's rights are upheld in educational settings and during policy decision-making processes. The chapters in this part collectively shed light on the challenges and opportunities associated with such efforts.

Focusing on corporal punishment in schools, [Chapter 1](#) was written by a multidisciplinary team of scholars: political scientist and education policy scholar Lucy Sorensen, political scientists Charmaine N. Willis and Victor Asal, and legal scholar Melissa L. Breger. Their chapter examines why some countries permit corporal punishment in schools, while others prohibit it. This chapter analyzes data on legal restrictions on corporal punishment in schools from 1970 to 2016, covering 192 countries. The dataset primarily emerges from two sources: the Global Initiative to End All Corporal Punishment of Children, and country reports from the UN Committee on the Rights of the Child. The researchers scrutinize every country's self-report submitted to the UN for any discussions on societal norms regarding corporal punishment and efforts to alter the beliefs and practices surrounding it. The chapter highlights the finding that over the years, the number of countries banning corporal punishment in schools has substantially increased, with over one hundred countries banning this practice by 2016. The authors deploy logistic regression and hazard modeling to ascertain the most relevant factors that contributed to the implementation of the bans. To determine the causal influence of countries ratifying the UN Convention on the Rights of the Child on subsequent legal measures to ban corporal punishment, the authors apply regression with country- and year-fixed effects in their quantitative analysis. The authors conclude that the country's

religious, legal, political, and social characteristics were key explanatory variables in determining whether corporal punishment would be prohibited in schools. Countries with comparatively strong democratic institutions and legal systems were more likely to ban corporal punishment, while countries that ratified the UN Convention on the Rights of the Child were more likely to pass legal measures prohibiting corporal punishment in schools. These findings are notable contributions to our scholarly understanding of children's rights protection in educational institutions, thereby offering potentially useful insights into children's rights and educational policy debates.

Written by an interdisciplinary scholar of sociology and law, Pantea Javidan, [Chapter 2](#) focuses on the impact of the COVID-19 pandemic on children's rights. This chapter focuses on children's rights to life, health, and safety in the context of education and schooling. This study examines the US (in comparison to other nations) as an example of minimal pandemic response measures. Using an intersectional framework to consider systemic inequities, Javidan reflects on the causes and consequences of policies related to school reopening and pandemic mitigation through an intensive examination of relevant media reports, surveys, statistical data, and public discourse to assess the impacts of the crisis on children's rights. Javidan contends that the prevailing narrative about pandemic schooling created a false dichotomy between different children's rights and allowed inadequate mitigation measures to continue. Various stakeholders uphold contending political and economic interests, including those upheld by policymakers, "expert" contrarians, and coopted technocrats who were supported by disinformation campaigns and moral panic. Such a confluence of factors undermined the well-being of children, scientific consensus, and public opinion, with the most significant impact felt by children coming from working-class families and minoritized racial identities.

Written by political scientist Paola Fajardo-Heyward, [Chapter 3](#) investigates Colombia's challenges in promoting children's rights and access to comprehensive sexuality education and the strategies used by conservative and religious groups to obstruct progress in this policy area. This chapter illustrates how these groups have changed their framing of and used political alliances to gain support for their agenda. This chapter reflects on how the efforts of transnational conservative groups, such as CMHNTM (*Con Mis Hijos No Te Metas*—CMHNTM: leave my kids alone, or don't mess with my kids), have undermined the accessibility of comprehensive sexuality education for children in Colombia. The Colombian government was required by the Constitutional Court to improve sexuality education programs in 1992 and 2015; however, in 2015, conservative and religious organizations opposed these efforts, which contrasted with the government's earlier adoption of sexuality education in the national curriculum.

By examining these two temporal periods, Fajardo-Heyward demonstrates how the political influence of transnational conservative networks and the portrayal of sexuality education as part of gender ideology can undermine children's rights to access sexuality education. Colombia's case highlights how internal tensions and disinformation can hinder the implementation of children's rights and the importance of accurate information in shaping public opinion. The chapter also emphasizes the need to protect all children from discrimination and violence, regardless of their background, and to reframe the debate about sexuality education to focus on promoting the dignity of all children.

Another chapter focusing on children's education is [Chapter 4](#) by legal scholar Shani King, who began his analysis of the heated debate in the US over whether schools should require students to wear masks during the COVID-19 pandemic. Some US states have passed laws barring schools from mandating masks. This policy dilemma exposed conflicts between different levels of government in the US as well as at the local level where school policy decisions are made. CRC includes rights related to health, education, and the well-being of students with disabilities, which could influence decision-making during the pandemic. Although the US has not ratified the CRC, local advocacy and civil society groups have expressed support. The protection of children's rights in a federalist system like the US can be complicated. King examines this policy issue, including the history of the US and the CRC, debates over school mask mandates, and the challenges of implementing international treaty obligations in a federalist context. King also emphasizes the necessity of balancing national oversight with local control over education and suggests that implementing the CRC will require addressing federalism and local governance in education.

The second part of the volume explores the challenging terrain of children's rights in contexts marked by armed conflict and vulnerability. Through the contributions of Amy Risley, Salvador Santino F. Regilme, Elisabetta Spoldi, and Allyson Bachtta, the chapters herein confront issues such as the rights and well-being of child migrants, the plight of children in armed conflict in Somalia, and the protection of children's rights in the face of violent attacks on education in Cameroon. The chapters here explore the unique challenges faced by children who are caught in situations of violence, displacement, and instability. The chapters in this part provide insights into the efforts to safeguard and uphold the rights of children who find themselves in precarious circumstances while also underscoring the complex interaction of transnational and local factors that impact the well-being of children.

[Chapter 5](#) focuses on the impact of the Trump-era immigration policies on child migration. Written by political scientist Amy Risley, this chapter

contends that the CRC remains an aspirational document, and that the consequences of Trump's immigration policies were catastrophic to the dignity and well-being of children. Risley refers to Trump's "zero tolerance" policy, which gained traction between April and June 2018 and involved the forcible separation of three thousand children from their parents and caregivers at the US–Mexico border. The policy deviated from previous practices and earned the nickname "zero humanity" due to its cruel and degrading treatment of families, inadequate record-keeping, and squalid conditions. Risley observed that anti-immigration hardliners maintained that child protection policies and asylum law loopholes motivated unauthorized migration from Central America. The separation and related policies violated children's rights and well-being, leading to a human rights crisis that killed children in the name of the government's bid to appear tough on immigration. This policy stance reflects the longstanding patterns of US immigration policy, where children are excluded from the benefits of the global rights regime.

In [Chapter 6](#), Elisabetta Spoldi and I examine the causes that facilitate the deployment of children in armed conflicts, particularly in Somalia. Despite well-established international laws protecting children's rights during armed conflicts, armed rebel groups and state forces persistently continue arming children amid bloody conflicts in Somalia. This part presents two key arguments. First, commanders often recruit children under duress, and these adult commanders emphasize that there is no other source of income or livelihood than fighting. By participating in the conflict, the children receive temporary material security and a sense of belonging. Second, many Somali children have grown up in an environment of pervasive violence and material insecurity, which has normalized violence and led them to see joining armed groups as necessary for their survival. The absence of social support and means of survival in a war-torn environment, combined with propaganda campaigns by armed groups that promise false benefits, drives some children to participate in armed conflicts. Our analysis highlights the two structural factors that make child recruitment prevalent in Somali conflicts. The deteriorating public goods provision system, extreme poverty, malnutrition, water scarcity, economic decay, and environmental devastation have contributed to the traumatization of children, making them more susceptible to joining armed groups.

In [Chapter 7](#), education policy researcher Allyson Bachta examines how violent attacks in educational institutions undermine children in the global South. Bachta underscores that children's rights to access quality education free from discrimination and violence is protected by various international conventions and principles. In conflict-affected areas, especially in the global South, millions of children are prevented from accessing education and are targets of violent attacks. Monitoring systems have failed to protect children

or hold perpetrators accountable. Bachta maintains that current monitoring mechanisms are insufficient and reactive, and that attacks against education should be deemed as serious acts of violent extremism. The international community must respond with urgency, and academics must identify early warning signs to predict attacks on education. The author seeks to understand the lack of accountability for such attacks and how civil society can formulate a more effective mechanism to protect children's rights to education.

Part III of the volume underscores the sociocultural dimensions that influence and shape children's rights. It explores how cultural norms, societal attitudes, and enduring traditions impact children's well-being and dignity. The chapters in this part examine the complexities of ensuring that children's rights are respected and upheld while considering the sociocultural factors at play.

In [Chapter 8](#), legal scholars Hoko Horii and Mies Grijns investigate the ethical, legal, and political dilemmas concerning child marriages in Indonesia. Horii and Grijns underscore the CRC principle of "evolving capacity," which is important and analytically useful but often neglected in global debates that draw a sharp line between childhood and adulthood at age 18. In Indonesia, various factors, such as cognitive, familial, material, bodily, mental, and spiritual development, contribute to the transition from childhood to adulthood, highlighting the often-overlooked category of "adolescent" or "youth." While global movements such as "Stop Child Marriage" aim to ban all marriages under the age of eighteen, a more flexible standard like *akil baligh* may be more consistent with the principle of evolving capacity, especially in societies where marriage is socially required in case of pregnancy. Horii and Grijns argued that a balance needs to be considered between protection and autonomy, assessing individual cases, and considering wider factors such as political economy, cultural-religious norms, and accessible education, including sexual and reproductive health education. They added that it is important to prevent forced marriages and ensure that the rights of the child and marriage laws provide a safety net, while also enabling progressive autonomy for adolescents to make decisions about their lives.

Focusing on the difficulties of implementing CRC principles, legal scholar Daniel Ogunniyi in [Chapter 9](#) acknowledges that despite the formal global abolition of slavery, child trafficking remains prevalent in West Africa. This chapter investigates the role of neoliberal economic policies such as structural adjustment programs (SAPs) promoted by institutions such as the World Bank and the International Monetary Fund (IMF). Accordingly, these policies perpetuate poverty among rural populations and indirectly induce child trafficking in postcolonial West Africa. Corruption and the poor training of judicial officers also contribute to this problem. Ogunniyi evaluates

the scope of child trafficking in the Gambia and Benin Republic, two West African countries selected based on linguistic considerations (Anglophone and Francophone countries) to reflect the dominant trends in the region. It also provides specific recommendations for improved anti-trafficking governance at regional and national levels. Ogunniyi contends that the CRC obligations on child trafficking are not fully implemented in West Africa and calls for a rethinking of the current neoliberal world order to address economic inequality in the sub-region and the political willingness to address child trafficking.

In the concluding chapter of this volume, I reflect on the central question: How have children's rights and dignity faced crises just over three decades since the CRC was introduced globally? The key argument is that safeguarding children's rights is challenging because of the complex governance issues rooted in the interplay of local and global factors. These challenges include dynamic political disputes, resource inequalities, norm conflicts, and cultural beliefs. Cultural norms can either hinder or support children's rights, while severe disparities in material resource distribution within and among nations can hinder children's access to education, health, and social protection. I underscore the volume's approach, which goes beyond state-centric and legalistic views and emphasizes multidisciplinary perspectives and geographical specificity. Moreover, I identify common themes among the chapters and discuss scholarly and political implications for ensuring a more dignified life for children worldwide.

This edited volume provides a comprehensive overview of the multifaceted challenges and opportunities related to children's rights and dignity in crisis situations. It offers a multidisciplinary and globally oriented perspective, ensuring that readers gain a holistic understanding of the diverse issues affecting children's rights across different domains and regions. Through these three parts, this volume aims to contribute to the ongoing discourse on how to address the complex and evolving landscape of children's rights on a global scale. Each of these chapters, in a diverse variety of forms, addresses the challenges and crisis conditions pertaining to the rights, welfare, and dignity of children. This book highlights challenges such as in the policy area of children's education: the legality of corporal punishment in schools, the safety of schools during the COVID-19 pandemic, violent attacks in schools, and access to comprehensive sexual education. Moreover, this book underscores the crisis in border regions, whereby state agents forcibly separate children from their parents in the context of overtly militarized and coercive migration policies. There are also important policy challenges that remain understudied in mainstream scholarly and policy discourses, and those problems include the deployment of children in armed conflict, the trafficking of children across borders, and the idea of the "evolving capacity" of

children in the context of child marriage. Taken as a whole, the perspectives offered by bringing these chapter contributions together, I hope, are much larger than each chapter considered individually. The chapters illustrate the explanatory benefits of combining empirical rigor and a multidisciplinary space, which makes conversations on children's rights more nuanced, productive, and insightful. Considering the wide diversity in the academic positionalities of the chapter contributors, I do not claim that chapters, taken together, fully complete the picture of children's dignity under deep crisis, despite the introduction of the CRC a few decades ago. What I do offer, however, is a book that functions as a multidisciplinary platform that helps us paint a more complex but meaningful analysis of the diverse challenges faced by children's rights in the twenty-first century. I hope that this anthology inspires readers to go beyond the traditional and legalistic appreciation of children's rights. As such, this anthology recognizes the socio-economic inequalities that underpin these policy challenges and encourages readers to consider them in their pursuit of effectively understanding and achieving the emancipatory promise of children's rights.

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# Part I

Promoting children's rights through  
education and policy



## Paddling the pupils: the legality (or not) of corporal punishment in schools

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International attention to the issue of children's rights and dignity has grown in recent years, both culminating in—and then drawing momentum from—the landmark United Nations Convention on the Rights of the Child (CRC) in 1989. The CRC represents a changing international consensus on the rights of children, emphasizing that children, as human beings, should have a certain level of autonomy and codified legal protections (Hammarberg 1990; Melton 2005; Reynaert et al. 2009). It is formidable in its range of provisions and its specificity: it states that children have the right to have their basic needs fulfilled (addressing issues of hunger, health care, education, and play); the right to participate in decisions affecting their own well-being; and the right to be free from harm (Hammarberg 1990; Melton 2005). Each United Nations (UN) member state except for the United States has ratified the Convention (Lansford et al. 2017; Melton 2005).

Despite this momentous sign of progress, children's rights are still under threat around the globe over three decades later. Our chapter focuses on one right specifically guarded under the CRC—protection of children from corporal punishment, or the use of physical discipline as a form of reprimanding children for misbehaviors (Zolotor and Puzia 2010). For instance, the CRC asserts that states shall take all appropriate measures to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation” (Article 19); ensure that “school discipline is administered in a manner consistent with the child's human dignity” (Article 28); and ensure that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment” (Article 37). Despite the growth in attention to children's rights and dignity globally, empirical research—especially in terms of quantitative analysis identifying factors that affect the legal status of corporal punishment of children across nations—remains scarce. While some work has focused on certain regions or countries (e.g. see Straus 2010), or in a broader context (Kury et al. 2004), very little research has examined corporal punishment cross-nationally (Zolotor and Puzia 2010).

We seek to understand why some countries legally permit corporal punishment of children while others do not—with a specific focus on the practice of corporal punishment in schools. We focus on the factors that help explain why certain countries ban corporal punishment in schools, while it remains legal in other countries. The results of our study hold value for understanding the nature of how legal and cultural norms surrounding a contentious issue such as corporal punishment in schools develop. They also inform our understanding of the role of high-profile international accountability efforts in promoting this development.

We collected and examined data on legal bans on corporal punishment in schools from 1970 to 2016, looking at 192 countries as to whether these countries have or have not banned this behavior, and if so, when. Specifically, several law students collected information about the legal status of corporal punishment by assessing reports from two existing sources: (1) reports on every state and territory from the Global Initiative to End All Corporal Punishment of Children and (2) country reports from the UN Committee on the Rights of the Child. The authors and our research team examined every existing country self-report submitted to the UN, looking for any discussion on societal norms regarding corporal punishment and attempts to modify beliefs and behaviors surrounding corporal punishment. Researchers additionally reviewed all reports submitted to the UN Committee on the Rights of the Child, searching for terms including “corporal punishment,” “discipline,” “hit,” “slap,” and “spank,” and reviewed all sections that addressed the disciplining of children. The number of countries that ban corporal punishment in schools has changed dramatically over the years; at the front end of our study (1970), there were fewer than ten countries, but by the final year (2016), the number had risen to more than one hundred countries. In the analysis below, we assess the factors contributing to the enactment of bans by examining key religious, legal, political, and social characteristics of the nation. We rely upon logistic regression and hazard modeling to determine descriptively which factors are most salient to predicting whether and when a country bans corporal punishment in schools. We further employ a regression with country and year fixed effects to determine causally the impact of countries ratifying the CRC on subsequent legal action toward banning corporal punishment.

In the sections below, we lay out the literature that serves to motivate our hypotheses regarding which types of countries ban corporal punishment of children in schools. We then discuss the data, as well as how the dependent variable was created, and offer a summary of the methods used to analyze the data. Finally, we discuss the results and their implications. Our findings suggest three main predictors of legal bans on corporal punishment in schools. First, we document that CRC ratification successfully accelerated

the adoption of corporal punishment bans internationally. Second, we observe that countries with common-law legal systems are less likely to adopt corporal punishment bans than countries with more flexible legal systems—even following CRC ratification. Third, we find that countries with higher levels of female political empowerment are more likely to adopt corporal punishment bans than countries with lower levels of female political empowerment. These patterns illuminate important remaining barriers to the legal protection of children against corporal punishment in schools. With the rights and dignity of children “under siege”—as this volume suggests—we believe a fuller understanding of these barriers can help to inform and strengthen future policy efforts.

## Literature review and hypotheses

### *Overview of the use of corporal punishment*

Corporal punishment can occur in both home and school settings and may include hitting with objects (sticks, straps, wooden boards, and rods); pinching; pulling ears; pulling hair; face scalding; slapping; spanking; shaking; and smacking (Dupper and Dingus 2008; Gershoff 2017; Straus 2010; Zolotor and Puzia 2010). Research has increasingly found that corporal punishment has negative physical, psychological, emotional, and mental effects on children’s well-being, causing it to be discredited as a disciplinary practice (Hyman 1995; Ogando, Portela, and Pells 2015; Straus and Paschall 2009).

In the school setting, school personnel use corporal punishment for a variety of infractions, ranging from giving incorrect answers to missing class (Gershoff 2017). The prevalence of corporal punishment in school varies widely across the globe. Gershoff (2017) concludes that 98 percent of students and 96 percent of administrators in South Korea report observing corporal punishment. Alternatively, in the United States, only 1 percent of students nationwide reported receiving corporal punishment, with the percentage varying across states.<sup>1</sup>

Norms surrounding the use of corporal punishment in the school setting also vary. Parents in the United States are more likely to support the use of corporal punishment if they believe that (1) the practice is approved by professionals (i.e., a physician or religious leader); (2) the practice is socially acceptable; and/or (3) the practice is supported by family members or friends (Taylor et al. 2011). Cross-national studies concur that parents are more likely to use corporal punishment if they believe it is a socially accepted parenting tool (Lansford et al. 2010). Furthermore, parents in countries where other forms of violence are prevalent (i.e., civil war) are more likely

to engage in corporal punishment against children (Lansford and Dodge 2008). Finally, in one of the few studies that focuses on school educators' and administrators' perceptions of corporal punishment, Bailey et al. (2014) find that support for corporal punishment in Caribbean countries primarily derives from the belief that it is effective and traditionally accepted by society. These studies suggest that both parents and school administrators employ corporal punishment when they believe it is a socially acceptable practice.

### *Corporal punishment bans and the CRC*

Because the corporal punishment of children has been linked to a bevy of detrimental side effects, countries have increasingly banned the practice in school and home settings. Sweden was the first such country to ban corporal punishment, which it did in the 1970s (Durrant 1999; Roberts 2000; Ziegert 1983). It was the CRC, however, that marked a turning point in the use of corporal punishment globally. Prior to the CRC, the international consensus was that child-rearing methods were the prerogative of the parents and that governments should respect parental autonomy except in cases of child abuse (Cohen and Naimark 1991; Howe 2001; Reynaert et al. 2009; Straus 2010). Under the doctrine of *in loco parentis*, teachers were expected to serve "in the place of the parent" and take on the parental rights of the students they were teaching. Schools were justified in using corporal punishment since parents also often used it (Dupper and Dings 2008). The CRC challenged the use of corporal punishment as it violates children's dignity, and it identified the practice as a form of violence against children. Several years after the passage of the CRC, the CRC committee stated that "Addressing widespread acceptance of corporal punishment and eliminating it is an obligation of States and a key strategy in reducing all forms of violence" (Committee on the Rights of the Child 2006 as quoted in Zolotor and Puzia 2010). Thus, the use of corporal punishment is against the spirit of the CRC.

Scholars and policy experts had concerns about the CRC at its onset: while it contained a plethora of provisions to protect children, the enforcement mechanisms enshrined in it were weak (Cohen and Naimark 1991; Hammarberg 1990). Accordingly, while 192 countries ratified the agreement, 68 still allowed corporal punishment in schools as of June 2018 (Global Initiative 2018). Furthermore, several European countries such as Sweden banned corporal punishment prior to the passage of the CRC. Thus, the CRC's impact on ending corporal punishment globally may have been more modest than its proponents had envisioned.

*English legal origin and the endurance of corporal punishment*

Despite international recognition of the harmful effects on children, why has corporal punishment endured as a practice? We hypothesize that solely ratifying the CRC will not lead a country to ban corporal punishment. Rather, whether a country bans corporal punishment is highly contingent on its legal system.

Legal systems can essentially be broken into primarily two categories: civil-law and common-law systems. In the former, law is primarily derived from codified legal codes passed by a country's legislative branch. In such systems, previously decided court cases are not recognized as sources of law, though judges may take precedent into consideration to a certain extent (Merryman 1969). Conversely, judicial precedent is a key source of law in common-law systems, along with legislation and constitutional provisions (Asal et al. 2013; Hathaway 2003; Merryman 1969; Shmueli 2010; Sommer et al. 2013). In common-law systems, the principle of *stare decisis* holds that similar cases should be decided upon similarly. In this sense, judicial precedent is as binding as laws passed through the legislature.

We hypothesize that once a civil-law country had ratified the CRC, it was more likely than its common-law counterparts to institute a ban on corporal punishment.<sup>1</sup> In civil-law countries, new laws are enacted via their passage through the legislature. Although this process can be arduous, the law is more adaptable and can change more easily according to new societal norms in the civil system as compared to common law. The important implication of the CRC for the practice of corporal punishment is that it explicitly took the position that children, like adults, have the right to be free from violence and inhumane treatment, which extends to corporal punishment. By adopting the agreement, countries who ratified the CRC inherently adopted the belief that children should not be subjected to corporal punishment. Civil-law countries should have been able to adapt more quickly to the changing norms regarding children's rights.

Yet several studies in the human rights literature find that common-law countries generally tend to have better human rights records than civil-law systems, especially regarding "personal integrity rights" or coercion on the part of the state such as murder, unlawful incarceration, and the repression of civil liberties (Poe and Tate 1994). Common-law countries perform better in this regard primarily due to the judicial independence inherent in these systems (Keith et al. 2009; Mitchell et al. 2013). Thus, an independent judiciary is better able to protect individuals' rights due to the presence of more checks and balances, or veto points, on other governmental branches (Conrad and Moore 2010; Mitchell et al. 2013; Tsebelis 2002). On the other hand, some studies find that a system with an independent judiciary

may maintain the status quo, potentially preventing countries from improving human rights protections. For example, Conrad and Moore (2010), drawing upon Tsebelis's (2002) veto point thesis, argue that the checks and balances in many liberal democracies prevent countries from terminating the use of torture, a form of personal integrity violation. This is because the use of torture is the status quo and, in a system with many veto points, changing the status quo is difficult. In a common-law system where there is less judicial independence from other governmental institutions, the chances of "vetoing" a change to the status quo are high. Drawing upon Conrad and Moore (2010), we argue that common-law countries are less likely to implement corporal punishment bans since the use of corporal punishment is the status quo and is difficult to change. As studies in other policy areas note, *stare decisis* creates a policy path dependency where policy on a given issue area becomes "locked in" (Asal et al. 2013; Hathaway 2003; Sommer et al. 2013). For better or worse, the implication of this system is that the initial judicial decision is reached in a certain temporal context and is resistant to changes in popular opinion on the issue (Asal et al. 2013). This is particularly problematic for human rights issues where contemporary social norms or research may not match antiquated and often unjust laws.

Thus, we have derived the following hypothesis:

*Hypothesis 1: Common-law countries are less likely to ban corporal punishment in schools and also less likely to ban corporal punishment in schools in response to CRC ratification.*

### *The role of religion in the use of corporal punishment*

Next, we test the relationship between country-level corporal punishment bans and two major world religions: Christianity and Islam. We believe that countries which have higher Christian populations will be less likely to ban corporal punishment. Several previous studies examine the relationship between religion and the use of corporal punishment of children at the family level in the United States, though none have analyzed this relationship at the country level. These studies find that conservative Christian schools are more likely to punish students physically than secular schools and schools affiliated with other religions (Bartkowski and Ellison 1995; Ellison and Sherkat 1993; Ellison et al. 1996; Grasmick et al. 1992;). These authors conclude that the positive correlation between conservative Christianity and the use of corporal punishment is derived from religious ideology (Bartowski and Ellison 1995). The underlying concept is the old adage "spare the rod and spoil the child." In this view, corporal punishment is not viewed as

physical abuse but rather as a tool to help a child's development. If a country has a large population of Christians with such a perspective, it is unlikely that legislation would be passed at a national level to ban corporal punishment because it is unlikely to receive broad social support.

Given the previous findings of a link between conservative Christianity and the use of physical punishment of children, we expect the following hypothesis.

*Hypothesis 2: Countries with a large percentage of Christians should be less likely to ban the corporal punishment of children in schools.*

We also anticipate that countries with large Muslim populations will be less likely to ban corporal punishment. This is due to contemporary applications of *Sharia* law in countries with a Muslim majority, where the courts are willing to enforce corporal punishment for crimes committed (Peters 2006). For example, "Muslim states have consistently challenged all efforts designed to abolish capital punishment, on the ground that *Sharia* mandates the death penalty for certain offenses" (Nanda 1993, 330). If Muslim countries are unwilling to eliminate capital punishment because it goes against religious teachings, they are also unlikely to abolish the corporal punishment of children if religiously prescribed.

*Hypothesis 3: Countries with a large percentage of Muslims should be less likely to ban the corporal punishment of children in schools.*

### *Gender and corporal punishment*

We believe that gender, as represented by female political empowerment, has a relationship with corporal punishment bans in schools for two primary reasons. Previous studies indicate that women are generally less likely to support the use of corporal punishment (Durrant 1999; Gracia and Herrero 2008; Hurwitz and Smithey 1998; Kennedy 1995). Generally, female educators find that corporal punishment is less effective at correcting misbehavior than other methods (Kennedy 1995). Furthermore, women are generally more averse to violence than men and tend to be more supportive of compassionate policies (Hurwitz and Smithey 1998). Several studies have found that women are less likely to support physical punishment than men (Hurwitz and Smithey 1998; Shapiro and Mahajan 1986; Stinchcombe et al. 1980). Although Hurwitz and Smithey (1998) find that women may be more accepting of punishing perpetrators in certain crimes, such as in instances of rape or domestic violence, women tend to be particularly averse

to using violence in the punishing of children. Therefore, a greater number of female voters or women in political positions may be associated with corporal punishment bans.

Secondly, female political empowerment may not simply reflect the values and attitudes of women but also reflect the progressiveness of society itself (Straus 2010). Studies have found clear links between women's rights and human rights issues. For instance, greater female political empowerment and women's rights protections are associated with lower state repression of dissent (Larsson 2018; Lv and Deng 2019). Given that there is a relationship between female political empowerment and progressive views on human rights, this further supports that there is likely to be a relationship between female political empowerment and corporal punishment.

*Hypothesis 4: Countries with high levels of female political empowerment are more likely to ban the corporal punishment of children in schools.*

## Data

To examine the contributing factors in countries' decisions to ban corporal punishment in schools, this study draws from a panel dataset of 192 countries spanning forty-six years, from 1970 to 2016. To build this dataset, we first collected comprehensive information from primary and secondary sources on whether each country had a legal ban on corporal punishment in schools in place each year. We then matched this data to key social, political, demographic, and economic measures from the Quality of Governance database (Teorell et al. 2016, 2017) that are theoretically hypothesized to be important predictors based on the literature. This section provides details on each measure used in the empirical analysis.

**Legal bans on corporal punishment in schools.** We collected information on the changing legal status of corporal punishment in schools by first accessing reports from two existing sources: (1) reports on every state and territory from the Global Initiative to End All Corporal Punishment of Children; and (2) country reports from the UN Committee on the Rights of the Child. These two organizations have assembled detailed information about children's rights and corporal punishment law across the globe. We then confirmed each data point and examined each missing data point, using deeper research into the historical legal codes of each country.

Out of this process, the final constructed indicator (which serves as our primary dependent variable) equals 1 if the country has an active corporal punishment legal ban in schools in that year, and 0 if it does not. In cases where a country bans the practice only in certain settings—for example, just

in public schools, or just in certain subnational regions—we conservatively code these as 0. Overall, 16.3 percent of country year observations in our data had active bans of corporal punishment in schools.<sup>2</sup>

**CRC ratification.** We collected data on the date of ratification of the UN CRC for each country from the Database of the UN Office of Legal Affairs. This database contains information on date of signature, date of ratification/accession, date of acceptance of individual communications procedure, and date of acceptance of inquiry procedure, representing different steps along the process of country involvement. We use the date of ratification/accession (available for all countries except for the United States, which has not ratified) to code an indicator variable of post-ratification.

### *Quality of governance data on predictors*

The final dataset merges collected information on the legal status of school corporal punishment and CRC ratification with time series Quality of Governance (QOG) data from both the 2016 and 2017 versions since they have slightly different variable availability (Teorell et al. 2016, 2017). The QOG project is an effort by the Quality of Government Institute to combine comparative data from numerous sources into one dataset and make them publicly available for researchers. We identified time series variables of interest according to our theoretical hypotheses, with the restriction that the variable must vary over time and be available over the observed time period of interest. The variables described here each have longitudinal coverage over at least the time period of 1970 to 2010, and most for the full coverage of years through 2016.<sup>3</sup>

**English legal origin.** Our legal origin variable, originally developed by La Porta et al., identifies the legal origin of the company law or commercial code of each country (La Porta et al. 1999). These authors matched each country to one of five potential legal origins: English common law, French civil law, German civil law, Scandinavian law, and socialist law. Based on prior research (Asal et al. 2013; Sommer et al. 2013), we predict English common law to have the largest influence on legal developments within human rights law, and therefore code a single binary variable equaling 1 for English common law, and 0 for any other form of legal origin. Several countries were missing legal origin data, which we supplemented through our own research from the CIA World Factbook.<sup>4</sup>

**Percentage of adherents Christian.** This variable captures the percentage of a population that adheres to the religion of Christianity, including among others Anglican, Roman Catholic, and Eastern Orthodox sects.<sup>5</sup> Maoz and Henderson (2013) developed this variable through the World Religion

Dataset (WRD), which contains information on religious adherence worldwide every five years since 1945. The measure spans from a value of 0, representing 0 percent adherence to Christianity, to a value of 1, representing 100 percent adherence.

***Percentage of adherents Muslim.*** This measure represents the percentage of a population that adheres to the religion of Islam, including Ahmadiyya, Alawite, Ibadhi, Nation of Islam, Shi'a, Sunni, and other sects. Maoz and Henderson (2013) developed this variable through the World Religion Dataset (WRD), which contains information on religious adherence worldwide every five years since 1945. The measure again spans from a value of 0, representing 0 percent adherence to Islam, to a value of 1, representing 100 percent adherence.

***Female political empowerment.*** Our next variable is drawn from the Varieties of Democracy Project, an international collaboration co-hosted by the Department of Political Science at the University of Gothenburg, Sweden and the Kellogg Institute at the University of Notre Dame, USA (Coppedge et al. 2016a, 2016b). Their constructed "Women Political Empowerment Index" seeks to measure how politically empowered women are in a given state and year. Female political empowerment incorporates three equally weighted dimensions: fundamental civil liberties, women's open discussion of political issues and participation in civil society organizations, and the descriptive representation of women in formal political positions. The continuous measure (ranging hypothetically from 0 to 1) is a simple average of three indices measuring those three dimensions.

***Democratic political system.*** We include as a control measure an indicator of whether or not a country was considered a democracy in the specified year. Boix and Rosato (2013), the original authors of this variable, define a country as democratic if it satisfies conditions for both contestation and participation. Specifically, democracies feature political leaders chosen through free and fair elections that satisfy a threshold value of suffrage. Furthermore, several studies in the human rights literature find that liberal democracies are a key indicator of greater human rights protections (Bueno de Mesquita et al. 2005; Conrad and Moore 2010; Henderson 1991; Davenport 1995; Poe and Tate 1994).

***Real gross domestic product (GDP) per capita.*** This variable captures real GDP per capita in constant US dollars at base year 2000 (Gleditsch 2002). Gleditsch imputed missing data using the CIA World Fact Book and extrapolated beyond available time-series. We include this control measure to account for the level of economic development and productivity of each country in each year.

***Total population.*** Our measure of population size is taken from the World Development Indicators (WDI) dataset (World Bank 2016), also available

through QOG. This total population count reflects midyear estimates of all residents regardless of legal status or citizenship. This variable controls for any within-country trends in population growth.

## Methods

Our first two questions are descriptive: (1) which country-level characteristics predict the likelihood of having a current legal ban on corporal punishment in schools, and (2) which country-level characteristics predict the likelihood of enacting a legal ban earlier, versus later, during the time period. For the first question, we perform logistic regression on a cross-sectional subset of the data from the most recent year, 2016. We regress the corporal punishment in schools legal ban indicator on an indicator of English legal origin, the percentage of the population adherent to Christianity, the percentage of the population adherent to Islam, the female political empowerment index, and a vector of other country-level characteristics including democratic governance, economic productivity, and population size.

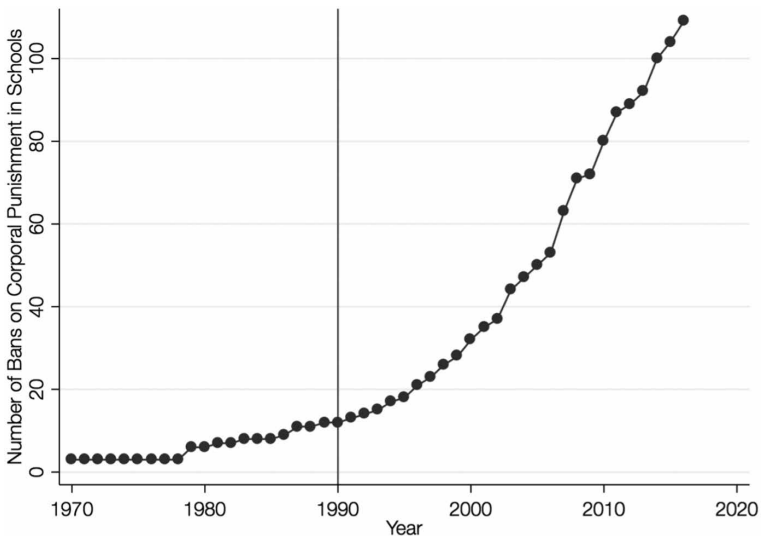
The second question of interest adds the dimension of time to predicting factors of how quickly (or slowly) different types of countries introduce corporal punishment in school bans. For this question, we use the full panel dataset from 1970 to 2016 with a Cox proportional hazards model (Cox 1972).<sup>6</sup> In this approach, the dependent variable is the hazard function for each country in each year conditional on all observed characteristics of that country. Specifically, we estimate which predictive factors are associated with the increased “hazard” of passing a corporal punishment ban at any given time.

We also explore whether countries’ ratifications of the CRC affected their subsequent actions on banning corporal punishment in schools, with attention to how responses to CRC differed for countries with English legal origin. Because both observable and unobservable factors are likely correlated with a country’s ratification of CRC, we prefer a model with country fixed effects, which can estimate the impacts of CRC using within-country variation across time. Therefore, we regress the corporal punishment ban indicator on an indicator of current CRC ratification status, an interaction term of current CRC ratification status with the country common-law origin indicator, country year fixed effects, year fixed effects, and all other country explanatory variables as defined above. In this way, we can estimate the distinct effects of CRC ratification on the likelihood of a corporal punishment ban for both non-common-law and common-law countries.

## Results

This study first considers how the legality of corporal punishment in schools has shifted internationally over the relevant forty-six years. As [Figure 1.1](#) suggests, prior to 1980, fewer than five countries banned corporal punishment in schools, and there was little movement toward introducing more legal bans. In 1990, twelve countries had active bans on corporal punishment in schools as global attention to the issue heightened. The CRC came into force in the same year, a key component of which urged countries to restrict the use of corporal punishment against children. Since 1990, the plot in [Figure 1.1](#) shows a subsequent rapid growth in country bans on corporal punishment in schools, increasing at a rate seven times greater than the rate prior to CRC. In 1970, only one country banned corporal punishment in schools, but by 2016, 56.8 percent of countries had done so.

[Table 1.1](#) provides summary statistics for the dependent variable and each of the independent variables in our full sample. Because of our particular interest in how English legal origin may dictate whether and when a country adopts a corporal punishment ban in schools, the table also presents summary statistics separately for countries with and without English



**Figure 1.1** Number of country legal bans on corporal punishment in schools 1970–2016. *Note.* According to our data collection, the very first country ban took place in 1970. The vertical red line represents the year in which the CRC became effective (1990). (Although the CRC was opened for signature in 1989, it only received enough signatures to become effective in 1990.)

Table 1.1 Summary statistics by legal origin of country

	(1)	(2)	(3)
	<i>Full sample</i>	<i>English legal origin countries</i>	<i>Other legal origin countries</i>
English legal origin (0 or 1)	0.301 (0.459)	1.000 (0.000)	0.000 (0.000)
Ratified CRC indicator (0 or 1)	0.503 (0.500)	0.493 (0.500)	0.508 (0.500)
Percentage adherents to Christianity (0 to 1)	0.563 (0.382)	0.553 (0.369)	0.568 (0.387)
Percentage adherents to Islam (0 to 1)	0.252 (0.368)	0.202 (0.323)	0.273 (0.384)
Female political empowerment index (0 to 1)	0.593 (0.281)	0.589 (0.217)	0.594 (0.300)
Dichotomous democracy measure (0 or 1)	0.503 (0.500)	0.556 (0.497)	0.479 (0.500)
Real GDP per capita (in thousands)	10.600 (21.467)	8.556 (11.200)	11.494 (24.596)
Total population (in millions)	28.398 (112.919)	35.296 (131.246)	25.415 (103.866)
Observations	9,024	2,716	6,308

Note. Unweighted means provided, standard errors in parentheses.

legal origin. Overall, 30 percent of countries in our sample have English legal origin. Approximately one-half of country-year observations exist after that country has ratified the CRC. Because our sample contains the vast majority of countries (192 countries), the summary statistics of our sample represent an unweighted view of countries of the world. Just over half of these countries are democracies across 1970 to 2016; 56 percent of countries' populations are Christian, 25 percent are Muslim; the average GDP is \$10,600 per capita; and the average population is 28.4 million. On a scale of 0 to 1, average female political empowerment for countries during this time period is 0.59. Common-law countries (column 2) are slightly more likely to have democratic governments, have somewhat smaller per-capita productivity, have larger populations, and have fewer adherents to Islam, but are otherwise quite similar to other countries across these metrics.

*Country-level predictors of corporal punishment bans*

Our findings examining predictors of state bans on corporal punishment in schools are presented in the table below. Column 1 of [Table 1.1](#) provides results from the cross-sectional logistic regression of an indicator of whether that country has an active ban on corporal punishment in schools in the year 2016 on the set of explanatory variables. The first four coefficient estimates listed correspond to the four main hypotheses: (H1) common-law countries are less likely to ban corporal punishment in schools; (H2) countries with a large percentage of Christians and (H3) countries with a large percentage of Muslims are less likely to ban corporal punishment in schools; and (H4) countries with higher levels of female political empowerment are more likely to ban corporal punishment in schools.

The coefficient on English legal origin is significant at 0.246 ( $p < 0.01$ ), indicating that common-law countries are 75.4 percent less likely to have a ban in 2016 than non-common-law countries. Neither coefficient on the religious adherence measures is statistically significant, rejecting both Hypothesis 2 and Hypothesis 3. Finally, an increase from 0 to 1 on the female political empowerment index corresponds to an 890 percent increase in the likelihood of having a ban on corporal punishment in schools in 2016 ( $p < 0.1$ ). A more moderate increase of 0.1 in the female political empowerment index would translate to an 89 percent increase in the likelihood of having a current corporal punishment ban. We include multiple control variables in the current ban regressions—indicator of democratic governance, real GDP per capita, and total population size—but none of those variables emerge as statistically significant predictors.

The results from column 1 confirm that common-law countries and countries with low levels of female political empowerment lag behind other nations in enacting bans on corporal punishment in schools. In column 2, we proceed to consider which types of countries enacted these bans earlier versus later using a Cox proportional hazards model. The coefficients presented are hazards ratios, and therefore should be interpreted as the relative increases or decreases in the “hazard” of a country implementing a ban on corporal punishment in schools each year. The significant coefficient on English legal origin ( $p < 0.01$ ) implies that countries of English legal origin have a 60.3 percent lower hazard of initiating a corporal punishment ban in each year. Neither Christian adherence of a state nor Muslim adherence significantly predict the timing of corporal punishment bans. And, consistent with the logistic regression results, states with high levels of female political empowerment have a much higher hazard of initiating a corporal punishment ban each year. More specifically, an increase of just 0.1 in the female political empowerment index, which spans from 0 to 1, would raise the

**Table 1.2** Country-level predictors of ban on corporal punishment in schools

<i>Variables</i>	<i>(1)</i> <i>Current ban</i> <i>(odds ratio)</i>	<i>(2)</i> <i>Time of ban</i> <i>(hazard ratio)</i>
English legal origin	0.2459*** (0.103)	0.3968*** (0.119)
Percentage adherents to Christianity	2.1604 (1.607)	1.6516 (0.739)
Percentage adherents to Islam	0.8156 (0.585)	1.0698 (0.500)
Female political empowerment index	8.8996* (11.245)	11.8046*** (9.721)
Dichotomous democracy measure	1.0278 (0.469)	0.8422 (0.245)
Real GDP per capita (in thousands)	1.0072 (0.017)	1.0054 (0.010)
Total population (in millions)	1.0002 (0.001)	1.0006 (0.001)
Constant	0.2665 (0.264)	
Observations	157	6,035
Number of countries	157	159
Number of “failures” (bans)	89	89

*Note.* In column 1, odds ratios are reported from a logistic regression of the cross-section of countries in 2016. In column 2, hazard ratios are reported from a Cox proportional hazards model from the panel dataset 1970–2016. Robust standard errors are in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ .

hazard of a corporal punishment ban by 118 percent. Again, none of the coefficients on our control measures are statistically significant from 0.

### *Effects of UN CRC*

Our final set of results tests whether countries are more likely to enact corporal punishment bans following their country’s ratification of the CRC from a model with both country and year fixed effects. Estimated coefficients can be interpreted as the within-country change in likelihood of banning corporal punishment following CRC ratification.

Table 1.3 presents results from these hypotheses. In column 1, the estimated coefficient on CRC ratification is 0.057 ( $p < 0.01$ ). This means that countries are 5.7 percent more likely to ban corporal punishment in schools

**Table 1.3** Effects of UN Convention on the Rights of the Child ratification (by country legal origin)

<i>Variables</i>	(1) <i>Current ban</i> <i>(odds ratio)</i>	(2) <i>Time of ban</i> <i>(hazard ratio)</i>
English legal origin	0.2459*** (0.103)	0.3968*** (0.119)
Percentage adherents to Christianity	2.1604 (1.607)	1.6516 (0.739)
Percentage adherents to Islam	0.8156 (0.585)	1.0698 (0.500)
Female political empowerment index	8.8996* (11.245)	11.8046*** (9.721)
Dichotomous democracy measure	1.0278 (0.469)	0.8422 (0.245)
Real GDP per capita (in thousands)	1.0072 (0.017)	1.0054 (0.010)
Total population (in millions)	1.0002 (0.001)	1.0006 (0.001)
Constant	0.2665 (0.264)	
Observations	157	6,035
Number of countries	157	159
Number of "failures" (bans)	89	89

*Note.* In column 1, odds ratios are reported from a logistic regression of the cross-section of countries in 2016. In column 2, hazard ratios are reported from a Cox proportional hazards model from the panel dataset 1970–2016. Robust standard errors are in parentheses.

\*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ .

following ratification of the convention as compared to the prior period. Column 2 provides estimates from a model examining heterogeneous effects of the convention by legal origin of the country. Here we find that non-common-law countries experience an increase of 8.8 percentage points in their propensity to ban corporal punishment following CRC ratification ( $p < 0.01$ ). This positive boost from CRC does not extend, however, to common-law countries, which have an 11.9 percentage point smaller boost from CRC ratification than other countries ( $p < 0.01$ ). In essence, CRC ratification has either no effect on initiation of corporal punishment legal bans for common-law countries, or even has a modest dampening effect.

### Concluding discussion

As the theme of this volume suggests, many different forms of children's rights remain vulnerable across the globe. In this chapter, we focused on

the protection of children from physical punishment and developed hypotheses concerning whether, when, and why countries outlawed corporal punishment in the school setting. Our main contention states that the English common-law legal system helps to explain cross-national patterns in corporal punishment bans, due to the nature of legal precedent and the corresponding development of social norms. We empirically tested this assertion through cross-sectional and hazard model analyses, which substantiated the key role that common-law legal systems play in the adoption of legal bans on corporal punishment in schools. Furthermore, even common-law countries that ratified the CRC agreement in apparent support of protecting children's rights were no more likely to subsequently outlaw corporal punishment in schools.

Thus, our findings contrast with other studies on common-law countries, which find that such countries tend to perform better in the area of human rights than civil-law systems (Keith et al. 2009; Mitchell et al. 2013; Poe and Tate 1994). There are, however, several explanations for this divergence. First, previous studies typically focus on individuals' "physical integrity violations," which include "murder, torture, forced disappearance, and the imprisonment of persons for their political views" (Poe and Tate 1994, 854). While children's rights to freedom from physical harm undoubtedly falls in the category of "physical integrity rights," the human rights literature does not often conceptualize it as such. Similarly, these studies use datasets like the Political Terror Scale (PTS), which focus solely on instances of state-perpetrated physical integrity violations (Haschke 2022). Thus, the corporal punishment of children at the hands of school officials is not included in most physical integrity rights datasets, if at all. In this sense, we suggest that human rights scholars think more carefully about their conceptualizations of "human rights" and "physical integrity violations." As our study suggests, a more inclusive conceptualization may challenge conventional understandings of human rights.

Our results also confirm the hypothesized effects of country ratification of the CRC and female political empowerment on legal bans, but do not support the hypothesized effects of religious adherence. A country's ratification of the CRC makes it significantly more likely to ban corporal punishment of students in subsequent years after the CRC is ratified. Similarly, increases in female political empowerment are associated with enhanced likelihood of corporal punishment bans, perhaps reflecting the fact that women are more likely to support a movement toward more progressive politics. No other measured covariates in our study significantly influenced the likelihood (or timing) of corporal punishment prohibitions.

This study has limitations. Our data on bans on corporal punishment in the school environment cannot inform which countries have enforced those bans, nor how they have done so. Without information on legal enforcement

and monitoring, we cannot know the extent to which changes in laws have resulted in actual changes in practice. We also lack information on how attitudes, beliefs, and values may have shifted during the period of study, which makes it difficult to ascertain whether changes in attitudes toward corporal punishment preceded these legal changes globally, or whether legal changes preceded attitude shifts. These questions provide ripe opportunities for future study.

Despite growing research that corporal punishment in schools is harmful to children, the practice still remains stubborn to resistance in some areas of the world while decreasing in others. Our research provides insight into the factors that explain this variance in laws against physical punishment against children within the school setting. From this work, we draw several practical implications. We find that international agreements such as the CRC are extremely effective at setting precedent and encouraging the adoption of laws to protect children's rights. However, they are not alone sufficient. Policymakers in countries with common-law systems will need to use different strategies if they hope to curtail the use of corporal punishment against children. Our research also suggests that increasing the involvement of women in government and in the political process will improve outcomes for the legal protection of children. Overall, this case study on the legality of corporal punishment in schools elucidates how progress toward the protection of the rights and dignity for children is possible at an international scale.

## Notes

- 1 We note that some countries have a mix of different law systems (like the Philippines), but here we are talking about countries that are primarily one or the other or neither—which is most countries in the world. The Philippines, given its mix, is not coded as being a common-law country.
- 2 Of these, we could not find the exact date of the legal ban for 8.9 percent of observations. The legal language on the type and seriousness of ban was not specific enough for 4.2 percent of observations. We test the robustness of our results by excluding these observations and determine no difference in findings.
- 3 For countries with select missing years of a measure, we used a linear interpolation method for filling in those years of data based on the years prior and following. We also linearly extrapolated missing values for countries missing the most recent one to five years. Our regression results described below are robust to using an alternative construction of the data set without any imputation of missing values.
- 4 Seven countries were reported as having “mixed” legal systems incorporating some elements from common-law and other elements from different legal

systems: Brunei Darussalam, Cyprus, Micronesia, Palau, Sudan, Vanuatu, and Yemen. We coded these countries as “1” for English legal origin, but our results were not sensitive to this choice.

- 5 We originally also included state religiosity, whether a state has an official religious affiliation, as a control variable; the variable was not statistically significant in any of our models and was dropped from our analysis to provide a more representative sample size.
- 6 To determine whether this model is appropriate for our data, we first test the proportional hazards assumption on the basis of Schoenfeld residuals after fitting the Cox proportional hazards model. Based on this test, we do not find evidence that the proportional hazards assumption is violated:  $\chi^2$  (7) 11.6 and  $p = 0.113$ . We find that a non-frailty model is preferred to the frailty model according to a likelihood ratio test comparing the variance components with and without shared frailty:  $\Pr(\chi^2 > 0.19)/2 = 0.499$  (Gutierrez, Carter, and Drukker, 2001).

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## False divisions and dubious equivalencies: children's rights during the COVID-19 pandemic

*Pantea Javidan*

### Introduction

In January 2022, nearly two years after the declaration of the COVID-19 pandemic by the World Health Organization (WHO), millions of students, educators, and parents around the world, including in the United States (US) protested that no student should have to risk their health for education ([Pinsker 2022](#)). However, many Western governments—led by Sweden, the United Kingdom (UK), and the US—have chosen to ignore calls for public health and safety. As Sweden adopted the least protective approach to community transmission, contrarian physicians in the US and UK advanced the anomalous Swedish example for in-person schooling without mitigations, particularly as soon as pediatric COVID-19 vaccines were in sight. Despite proving false for previously-vaccinated age groups, the most controversial and oft-mistaken contrarians—inexpert in social or behavioral sciences—claimed that ending school masking requirements would incentivize parents to vaccinate younger children, whose vaccine uptake never reached adequate levels despite the implementation of this advice ([MSNBC 2022](#)). Public admissions of such mistakes have never led to correcting the policies based on them. Instead, the lack of health and safety in schools resulting from zero-mitigation policies continues to cause great physical and psychosocial harms to children and families.

As a result of the COVID-19 pandemic—the worst global health crisis in over a century—at least 10.5 million children in the world have lost a parent or caregiver to COVID-19, tens of thousands of children have died, and millions have suffered disability ([Bellandi 2022](#); [UNICEF 2022](#)). The pathway of SARS 2 infection is through the respiratory system, but COVID-19 (or COVID) is a multisystemic, vascular, and neurotropic disease with immunological effects that often renders survivors vulnerable to other infections and morbidities ([Smadja et al. 2021](#); [Temgoua et al. 2020](#); [Zhou et al. 2020](#)). Although the vast majority of those infected live past the initial, acute phase of infection, survivors of COVID-19 are at substantial and cumulative

risk for Post-Acute Sequelae of COVID-19 (PASC), also known as Long COVID, regardless of age, vaccination, or health status ([Iacurci 2022](#)).

Life expectancy has fallen in four out of five OECD nations during the pandemic, and dramatically in the US, reversing decades-long gains ([British Medical Journal 2022](#)). Long COVID is a chronic manifestation of COVID-19 after the acute phase of infection with Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2, or SARS 2), with prolonged effects and substantial global prevalence ([Chen et al. 2022](#)). Each COVID infection carries between a one-in-five and a one-in-eight chance of progressing to Long COVID within about a month or more of infection, with recent studies reporting as high as nearly one-in-two prevalence ([Centers for Disease Control and Prevention 2022d](#); [Van Beusekom 2022](#)). Long COVID commonly causes chronic fatigue, neurological damage, psychological disorders, memory impairment, confusion, and numerous other serious and lasting sequelae in healthy people across age groups, such as blood clots, heart attacks, and a three-fold increased risk of death within a year of a non-severe infection ([Al-Aly, Bowe, and Xie 2022](#); [Salari et al. 2022](#); [Uusküla et al. 2022](#); [Xu, Xie, and Al-Aly 2022](#)). Long COVID experts admonish against current policies of mass infection, asserting the need to create awareness of this “urgent problem with a mounting human toll” ([Ballering et al. 2022](#); [Kikkenborg Berg et al. 2022](#); [Lopez-Leon et al. 2022](#)).

Princeton historian Keeanga-Yamahtta Taylor describes the US toll of death and disability as “surreal,” which official estimates undercount ([Taylor 2022](#)). More than one million Americans died in fewer than two-and-a-half years, exceeding four thousand deaths per day several times ([Taylor 2022](#)). More than 7 percent of the US population (twenty-three million people) suffer from disabling Long COVID, causing more than half a million Americans to become unemployed ([Iacurci 2022](#); [British Medical Journal 2022](#)). While comprising only 4 percent of the global population, the US has the highest COVID-19 death toll in the world, has fared worse than peer countries, and has accounted for approximately one-quarter of global COVID infections and one-sixth of deaths ([Bennett and Cuevas 2022](#); [World Health Organization 2022b](#)).

COVID-19 is the leading infectious cause of death in US children, and among the top five causes of pediatric death overall, even after vaccination ([White House 2022a](#)). US COVID mortality has exceeded four decades of AIDS mortality ([Thrasher 2022](#), 9–10). However, in the third year of the pandemic, 4,100 COVID deaths per week—more than a weekly September 11 mass casualty event—has been treated as unremarkable by US media and politicians ([Centers for Disease Control and Prevention 2022a](#); [British Medical Journal 2022](#)). Public health scientists, physicians, economists, and other experts representing the consensus view of the pandemic warn that

“Leaders and policymakers must not accept or normalise our dangerous current status quo,” including through minimization of hazards, which lead to widespread dissemination of false beliefs (*British Medical Journal* 2022). Yet, leading the way, after Sweden and the UK, the US government has ended effective COVID public health mitigations, despite ongoing and escalating need for public safety measures. Other nations, such as New Zealand and Singapore, loosened otherwise stringent national safety protocols only after achieving significantly lower per-capita death rates and making considerable public health investments to secure their populations during upcoming surges (*British Medical Journal* 2022).

In the US and UK, poverty, gender, and race are the strongest determinants of disease burden, encompassing public-facing workers in health, service, and retail sectors (*Sustainable Development Solutions* 2022; *Taylor* 2022). Those with fewest resources carry the greatest burdens. COVID fatality rates, and therefore COVID health concerns, are consistently far higher among Black, Latinx, and other US racial minority groups (*Pew Research* 2021b). Counties experiencing the highest death rates are those with average poverty rates of 45 percent (*Taylor* 2022).

Nations that consistently implement public health measures and/or have better infrastructure for health, safety, and education see more equitable outcomes across various socio-economic metrics. The zero COVID policies of New Zealand, Australia, China, and Pacific Island nations experienced relatively rare mortality and low morbidity overall in proportion to their populations than laissez-faire nations, translating to roughly eight to ten times lower case fatality rates (*Our World in Data* 2020–2022; *World Health Organization* 2022a). Nations in which mitigations are normalized, such as the Republic of Korea and Japan, have experienced remarkably lower mortality and morbidity (*Our World in Data* 2020–2022). Cuba took the approach of closing in-person schools indefinitely and used the widely accessible medium of state television to broadcast national curricula during school days so that schoolchildren could continue engaging educational material from home or settings outside of school (*Goodman* 2021a). Cuban leadership explained that they based this decision on epidemiological and experiential understanding that viruses transmit most efficiently among children in school settings, and as a result, focused on developing a COVID vaccine for children first.

Depending on the state and timing, US pandemic response has fallen along a continuum ranging from aiming to eradicate or contain the virus (most protective) to laissez-faire (least protective), the latter of which became the dominant national approach (*Bai et al.* 2022; *Gretchen* 2020; *Long et al.* 2022; *Normile* 2021; *Yang et al.* 2022). Laissez-faire refers to minimal regulations in the public interest by the state, and prioritization of “free

market” activity and individual “choice” (Scott and Marshall 2009, 405). Laissez-faire nations deprioritized children’s vaccination, focusing instead on protecting the elderly, who, in the US, enjoy far greater wealth, political power, and governmental spending and benefits than children (Corsaro 2015, 308–314).

Research on children’s rights during the pandemic inadequately addresses the ways children’s rights to life, health, and safety have been falsely rendered oppositional to education and child development under the guise of championing children, uncritically accepting dominant narratives underwriting laissez-faire policies (e.g., Adami and Dineen 2021). This chapter reviews scientific studies, news articles, surveys, and statistical data involving experts and policymakers, and finds that the dominant narrative of school reopenings manufactured a “debate” that created false divisions and dubious equivalencies between different sets of children’s rights. Despite scientific and international-legal consensus on children’s rights to life, health, and safety as fundamental, the protection of these rights during the pandemic was rendered adversarial to child development, psychosocial well-being, and children’s economic, educational, and social welfare rights. Dominant discourse also ignored socio-economic disparities or leveraged them in ways to promote in-person schooling without mitigations.

How and why this occurred is analyzed from an intersectional perspective, meaning that inequities and injustices resulting from harmful policies are understood as having systemic and historical roots along the lines of race, class, gender, and generational disparities, which are reproduced in and through law, politics, and policy (Crenshaw 1998). An intersectional approach shows that violations of children’s rights to life, health, and safety are occurring through the exploitation and reinforcement of longstanding structural inequities, while creating new ones. Laissez-faire policy regarding childhood education has been driven by politics and power, against scientific consensus and public opinion. Coordinated inauthentic actions, disinformation campaigns, and political violence are considered within the scope of politics and power disfiguring public policy in violation of children’s rights.

The adoption of laissez-faire pandemic policies has occurred through at least three primary means, including (1) minimization or denialism and mythologizing regarding the harms of COVID-19 to children and their network effects; (2) a moral panic of pediatric mental health and academic attrition blamed on mitigation measures; and (3) political prioritization of narrow, short-sighted economic aims that insist upon labor and schooling in unsafe spaces despite the availability of effective mitigations. A policy of no policy during a global public health emergency has created a crisis of children’s rights in which life, health, safety, and education are routinely undermined, with poorer socio-economic outcomes. This requires

corrective reframing of pandemic policy to combat disinformation, normalize mitigation of communicable disease, and prioritize children's rights, needs, and perspectives. This chapter aims to expose violations of human rights through laissez-faire pandemic policy within the larger goals of generating critical awareness of their modus operandi and prevention of further systemic harms.

### **Children's rights to life, health, safety, and education**

Causes and consequences of the current crisis in children's rights during the COVID-19 pandemic, specifically rights to life, health, and safety in the context of education and schooling, can best be interpreted through a global and intersectional lens. The United Nations Convention on the Rights of the Child (CRC) is the touchstone document for a conception of international children's rights, which enjoys broad global consensus as the most widely ratified human rights treaty in history. The US is the only nation that has not ratified the Convention, yet much of US child welfare law is governed along the same principles, which are compatible with the historical development of children's rights in the US (Grahn-Farley 2011). CRC is the first legally binding international instrument to provide the full range of human rights to children, including social, economic, civil, political, cultural, and health rights. It institutes children's legal rights to survival through the provision of essential needs such as food, clean water, and health care, as well as the rights to education and social participation (Uchitel et al. 2019).

The CRC outlines children's rights to life, health, and safety as well as education. It requires that all states "recognize that every child has the inherent right to life" (Art. 6). The guiding principle of the CRC is that all state actions impacting children must be guided by the best interests of the child (Art. 3). This includes institutions, services, and facilities responsible for the care and protection of children, which are required to "conform to standards established by competent authorities, particularly in the areas of safety [and] health" (Art. 3(3)). States are required to "recognize the right of the child to the enjoyment of the highest attainable standard of health," and to fully implement this right, including through taking appropriate measures to diminish infant and child mortality, combat disease, and develop preventive health care (Art. 24). Children's rights to education are also emphasized and elaborated in the CRC, including for children with disabilities (Arts. 24, 28, 29). The UNCRC should be understood as a minimal standard for children's rights—the floor, not the ceiling—of aspiration for the fulfilment of children's well-being and dignity (Gran 2021, 190). Children's health is directly related to their rights to life, survival, and development (Art. 6).

Children's rights to education include the right to an environment that is safe and not harmful to one's health (Art. 24). Lack of sanitation is an infringement on the rights to life, survival, development, and fulfillment of basic educational attainment. The right to education requires providing a basic standard of health to further the social and economic development of the child, and to be able to advance the realization of their other rights (Beiter 2006, 218). Children's rights to education requires states to facilitate its fulfillment, provide non-discriminatory access to education, and order the closure of schools with reasonable justification, such as during the COVID-19 pandemic (Strohwald 2021, 203).

Laissez-faire pandemic policies violate each of these basic, minimal rights, and reinforce long-standing patterns of adultism and childism—the de-prioritization of children's rights, needs, and perspectives on matters affecting them in favor of adult-centered interests, and the false assumption that adult decision-makers craft policies and resolve conflicts in the best interests of the child. Laissez-faire policies promote mass infection, which increases morbidity and mortality across all age groups and undermines key objectives of human rights to redress discrimination, marginalization, and vulnerability, while establishing dangerous precedents for responding to public emergencies of international concern. If “children's rights are the perfect means to determine whether human rights truly are meaningful,” then contemporary policies threatening the life, health, and education of children are cause for alarm among defenders of human rights (Gran 2021, 9).

### **Violations of health and safety**

The harms of COVID-19 must be understood not only in terms of mortality but also morbidity, and on a continuum of duration and severity, from the acute phase of infection to post-acute, long-term effects, and quality of life across the life course. Unmitigated in-person schooling has driven excess deaths and disabilities for children, and their families and communities. Safe education during a pandemic of a novel airborne virus requires a layered approach to mitigations that utilizes vaccination, well-fitted high-filtration masks, and indoor air-quality management (The Urgency of Equity 2022).

COVID is consistently a leading cause of US child mortality (fourth in 2022), and the primary cause of child mortality from infection or respiratory disease (Flaxman et al. 2022). It is the first or second leading cause of death among the age groups of children's parents, caregivers, and elders (Ortaliza, Amin, and Cox 2022). These ranks fall dramatically during summer school closures, and likely represent conservative lower bounds (Flaxman et al. 2022). The US government acknowledged that children play

a major role in facilitating transmission of SARS 2 when approving pediatric vaccines (Chatelain 2021). Child and adolescent mortality are rare in the US, making the COVID mortality burden concerning, particularly given that COVID amplifies severe impacts of other diseases, the transmissibility of new variants will increase, and the intrinsic severity of variants has often increased (Flaxman et al. 2022). Rather than improving, pediatric mortality has increased markedly with each year of the pandemic in the US, UK, and other countries, such that one-fifth of US pediatric deaths occurred during the Omicron wave (Schreiber 2022).

A public service announcement by the US Centers for Disease Control and Prevention (CDC) in August 2022 showed that 1,500 children have died, which increased to more than 1,800 two months later, and there have been more than 130,000 child hospitalizations from COVID (CDC 2022; Centers for Disease Control and Prevention 2022b). Laissez-faire nations such as the US, UK, and Sweden have had similar pediatric mortality patterns and the highest excess deaths among peer nations, alongside problems with tracking and undercounting deaths (Gretchen 2020). Yet in political discourse and mainstream media, child deaths have often been compared to higher death rates among adults and elders in order to minimize harm to children. When confronted with this comparison in July 2021, CDC Director Walensky emphatically stated, “Children are not supposed to die” (Mitchell 2021). COVID has also been falsely conflated with influenza, despite COVID being far deadlier, including for children (Hill 2022). The Delta and Omicron waves of the pandemic have killed far more children than flu ever does (Faust 2022). In 2022, ten times as many children died from COVID than influenza (Travis 2022; Centers for Disease Control and Prevention 2022e).

Pediatric COVID morbidity is also concerning. Despite vaccine development, effectiveness against infection wanes from about 53 percent to about 17 percent within three months of the initial dose, with merely 15 percent effectiveness for preventing Long COVID at the time of ending mitigations (Al-Aly, Bowe, and Xie 2022; Patalon et al. 2022; Reardon 2022). Public warnings were issued at the beginning of the 2020–2021 school year that children can contract and transmit SARS 2 and develop severe disease and long-term sequelae in at least 10 to 35 percent of cases (87 percent for inpatients), and that unsafe schools drive transmission rates, as the country experienced a five-fold increase in pediatric infections between April 2020–September 2020 due to school reopenings (CBS Boston 2020; Goodman 2020; Raveendran, Jayadevan, and Sashidharan 2021; Shet 2020). The reopening of unsafe in-person schools caused such a disproportionate increase in pediatric infections that children and youth became the drivers of the surge in infections (Pitman 2021). Children comprise 17 percent of the

US population and represented 2 percent of infections in July 2020, which increased to 24 percent the following year, a more than ten-fold increase (Goodman 2021b). This became a persistent pattern (American Academy of Pediatrics 2022). It was also becoming clear that thousands of children were losing their parents and primary caregivers (Goodman 2020). The Omicron surge of 2022 was accelerated in schools, proved much more severe and deadly for children than previous waves, and was associated with a three-fold increase in hospitalizations for Upper Airway Infection (Lorthe et al. 2022).

However, the mythologization of children's COVID immunity stymied medical care and research regarding children (Depeau-Wilson 2022). Contrary to common beliefs that children's immune systems are "better" than adults', children have underdeveloped immune systems that render them more vulnerable to infections, and COVID is shown to damage children's immune systems (Dowell et al. 2022; Lee et al. 2022).

### Modalities of violation

The current crisis of children's rights to life, health, safety, and education results from specific political-economic projects during the pandemic with ideological components and enforcement mechanisms, both legal and illegal. The campaigns to "Reopen America" and "return to normal" have involved business interests and government officials (Nichols 2022, 9–36). The Great Barrington Declaration (GBD) is a petition from a group of contrarian scientists opposing "lockdowns" and promoting a scientifically erroneous notion of "herd immunity" through mass infection of "the young," while claiming that protective measures against COVID-19 damage physical and mental health (New York Times 2020). GBD comprises three academics affiliated with elite universities, the right-wing libertarian research firm American Institute for Economic Research (AIER), and Dr. Scott Atlas, President Trump's dubious science adviser, one of the document's lead authors (Grothaus 2020). Originally an aspirational document, GBD has garnered sufficient support among political and economic elites to serve as an operational ideological blueprint underwriting national pandemic responses, including Reopen America (and Freedom Day in Britain), with its statement to prioritize unmitigated resumption of economic activity (Great Barrington Declaration 2020; Retsinas 2020).

The political-academic formation of Urgency of Normal—comprising a group of anti-vaccination and/or anti-masking physicians—perhaps best exemplifies the mobilization and enlistment of contrarian expertise against scientific consensus and US public opinion regarding school reopenings and

public health mitigations in service of GBD and Reopen America (Retsinas 2020). Technocrats in economics, media, and government are also instrumental in advancing these campaigns, while disinformation, astroturfing, and political violence simultaneously serve as enforcement and reinforcement mechanisms to facilitate non-consensual and inequitable policies.

### Political economy of pandemic policymaking

Political and economic interests in the US have exploited the pandemic to advance agendas that undermine science and public health, particularly in education, leveraging disinformation, astroturfing, and policy misdirection to serve private interests at the expense of children and marginalized communities.

As predicted by its lead theorist, Naomi Klein, the pandemic presented an ideal opportunity for disaster capitalism in line with the shock doctrine, a theory of political economy regarding the exploitation of disasters to redistribute wealth upward (Klein 2007). Disaster opportunists promote privatization—the private management of publicly funded goods and services—and the notion of personal preference as solutions to public emergencies. Media scholars explain that manufacturing consent for unpopular proposals that serve private interests, particularly in the digital age, is often achieved through disinformation and astroturfing (Arce-Garcia et al. 2022; Chan 2022; Ozdemir and Springer 2022; Sabrina Heike and Philipp 2022). Disinformation is the intentional provision of false information, which is often recirculated by those unintentionally misinformed by it (Ozdemir and Springer 2022). Political astroturfing involves inauthentic and often ephemeral organizational formations that mimic authentic grassroots movements for nefarious purposes. Right-wing libertarian think tanks and legal foundations in particular deploy contrarianism to promote ideologies that are unethical and incoherent, but committed to advancing corporate interests and privatization, i.e., securing social, economic, and political control at the expense of public interest and common welfare (Boston 2021).

In laissez-faire nations, politics and economic interests typically trump science and public health (Owermohle 2020). In March 2020, President Trump decided against school closures and other public health measures based on the views of his personal network, particularly business friends (Nichols 2022). The administration denied or minimized pediatric harms and racial disparities of disease burden, and, through laissez-faire policy and coercing children into unsafe schools, subjected the population to COVID eugenics, in which children were specifically targeted for “herd immunity” experimentation (Diamond 2020b, 2020a; McEvoy 2020; Select Subcommittee on

the Coronavirus Crisis [2022a](#), [2022b](#)). Government officials and contrarian experts disseminated the myth that children do not transmit, contract, or suffer from SARS 2, specifically for the purposes of reopening schools and to expedite mass infection, while they simultaneously professed contradictory beliefs that mass infection through in-school transmission would lead to herd immunity in the general population. While op-eds promoted the reopening of unsafe schools in the mainstream press, it came to light that the White House was specifically embracing GBD.

Witnessing this, the WHO denounced mass infection of children as unethical ([World Health Organization 2020](#)). However, in the US medical experts were selected and platformed in media based on political compatibility with the aims of Reopen America rather than the quality of their expertise. Government officials were aware that less mitigations would cause more infections, but some pressured others to deny or minimize pediatric harms, to suppress information regarding disproportionate impacts on communities of color, and to admonish against the promotion of mask-wearing by school children ([Diamond 2020b](#), [2020a](#)). Making political considerations paramount, Trump's scientific adviser instructed the CDC to withhold negative information, and to emphasize the public health threats of school closures instead ([Select Subcommittee on the Coronavirus Crisis 2020](#); [Diamond 2020a](#)). Government officials went so far as to commit unlawful acts of obstruction of justice and concealment or destruction of evidence of these actions ([Diamond 2020b](#)).

Based on existing science and pandemic conditions, GBD's notion of herd immunity, in which nearly all of the population was susceptible to the disease, lacked credibility from the outset. It has since been proven wrong, as individual- and population-level immunities from emergent SARS 2 variants continue to be elusive, whether from infection, current vaccines, or a combination ([Aschwanden 2021](#); [Kadkhoda 2021](#)). Nonetheless, GBD successfully implemented its policy by disseminating disinformation, particularly the stubborn myth that COVID-19 has little or no impact on children ([Gorski 2020](#); [Vogel 2021](#)). A feedback loop between GBD, aligned contrarians, government, media, and technocrats established a harmful paradigm eviscerating public health, to pursue a highly unethical, eugenicist policy ([Healy 2021](#); [Select Subcommittee on the Coronavirus Crisis 2022a](#)).

In 2020, presidential candidate Biden promised to take "steps necessary to get the virus under control, deliver immediate relief to working families, and reopen our schools and businesses safely," including the adoption of an emergency package to help schools protect against COVID-19, and the implementation of national mask mandates ([JoeBiden.org 2020](#)). One year into his presidency, Biden failed to acknowledge significantly increased deaths and disablements with the reopening of schools, and merely repeated

iterations of “We are in a better place” in the pandemic, without empirical support (Woolfolk 2022). Biden rationalized governmental policies regarding schools as pro-capitalist, emphasizing “We’re not going back to lockdowns. We’re not going back to closing schools. Schools should stay open ... Look, I’m a capitalist ... I’m not a socialist” (White House 2022b). Teachers, unions, and socialists criticized coercion into unsafe schools as motivated by maintaining business profitability, which requires schools to serve as holding pens for children so that adults continue working in similarly unsafe workplaces.

Beyond shaping harmful policies, GBD, aligned contrarian experts, and various opportunists promote extremism and radicalization via shared funding streams from right-wing libertarian foundations, astroturf organizations, and direct and indirect alliances with COVID denialists and skeptics (“hoaxers”), anti-lockdown/anti-mask movements, and anti-vaccination conspiracy groups (Ahmed and Bales 2021; Mogelson 2022). Aided by lack of rigor and uncritical exposure in media, during the earliest weeks of shelter-in-place or stay-at-home orders, these groups and individuals promoted economic primacy through cost-benefit analyses based on scientifically unfounded claims that alleged losses to national economies due to disease mitigation would be more harmful than the disease, that children and in-school transmission are not concerning risks, and that the population will soon reach herd immunity (University College London 2020; Ahmed 2020). Opportunistic, credentialed contrarians or those with concordant a priori political commitments provide the pseudoscience supporting these efforts. Although they tend to deny or downplay ties to extremists in order to maintain an appearance of neutrality and no conflicts of interest, they form part of the assemblage of far-right conspiracists and anti-science disinformation campaigns through participation in unifying conferences, shaping public discourse, legitimizing extremism, and mainstreaming fringe positions.

Historically, invoking “parental rights” as a binary opposition to children’s human rights has succeeded to deny such protections for US children, achieving their sole exclusion from the CRC (Grahn-Farley 2003; Gran 2021). An outgrowth of the “school choice” privatization movement (rooted in backlash against racial integration of schools), astroturf “parents’ groups” funded by dark money, were instrumental in enforcing unmitigated in-person schooling by protesting COVID testing, masking, and virtual learning at public meetings, using the slogan “my child, my choice” to assert the primacy of parental authority and personal preference over public health (Bowen et al. 2022; Bragman and Kotch 2022; Hemminger 2022; Ozdemir and Springer 2022; Save Our Schools 2021; Waitzman 2021). For example, Moms for Liberty emerged in 2021 to oppose COVID-19 school mandates, then broadened its influence to strongly oppose race and gender

identity education. Endorsed by Trump and Florida Governor DeSantis, the group has orchestrated harassment campaigns across the nation, targeting educators, parents, and school boards, and causing individuals to fear for their safety and lives (Gilbert 2023).

In these ways, the pandemic has exposed a globalized political economy that exploits public health crises to advance privatization and economic interests, with a *modus operandi* of leveraging disinformation and policy manipulation to prioritize elite political and economic interests over children's rights and the well-being and safety of young and marginalized populations.

### Moral panic

To advance these interests, a powerful coalition of actors and institutions generated a moral panic surrounding “learning loss” and children’s mental health to push for the reopening of unsafe schools. Against scientific evidence and the expressed needs of marginalized communities, such policy decisions cause irreparable harm and perpetuate existing inequities.

A moral panic is “the process of arousing social concern over an issue—usually the work of moral entrepreneurs and the mass media,” often involving social problems, contagious disease, and the young (Scott and Marshall 2009, 489). The media platformed and uncritically repeated talking points from Urgency of Normal academics, who claimed that an educational and psychiatric crisis was transpiring; they blamed this first on virtual learning, and then shifted blame onto masking once in-person schooling resumed. Moral entrepreneurs stirred fears regarding child maldevelopment to falsely claim that mask-wearing causes psychiatric disorders and speech delays (Howard 2023).

Grim predictions regarding catastrophic psychological outcomes caused by lack of in-person attendance did not materialize. To the contrary, research showed that pediatric suicides spike during school attendance (Pierre 2021). Recent research shows a small increase in mental health problems but not a measurable increase in psychiatric disorders, self-harm, or suicide rates at the population level, but demonstrates a concerning emergence of neurocognitive sequelae of COVID-19 (Penninx et al. 2022; Torales et al. 2020; Xiang et al. 2020). COVID-19 causes psychiatric disorders in a significant number of survivors and can lead to substantial cognitive deficits, including drops in IQ on par with lead poisoning (Halpert 2022; Hampshire et al. 2021; Henderson 2022). Narratives and claims supporting the mental health alarmism of reopening schools and ending masking ignored risks of neurocognitive damage and child traumatization from caregiver loss to

COVID-19, as well as recent psychiatric history. For over a decade before the pandemic, US adolescent mental health outcomes, including suicide rates, were increasingly worsening; these trends leveled off during pandemic school closures, as they do during school breaks, suggesting that school environments contribute to poor mental health (Keyes et al. 2019; Qin et al. 2021).

Self-proclaimed champions of educational equity with no previous interest in the matter suddenly appeared during this crucial moment in pandemic policymaking to promote in-person schooling. None had intervened even in recent pandemic-related issues, such as when Trump's Department of Education under Betsy DeVos—a prominent leader of the educational privatization movement—issued a directive that would effectively divert pandemic resources from school districts serving low-income students to very affluent private schools (Stratford 2020, in Regilme 2023, 565).

Nonetheless, the moral panic entrenched the idea that in-school mitigations, especially masking, are to blame for psychosocial and developmental harms to students. Research has confirmed that masks are not harmful to child development, and there is significant evidence that consistent indoor masking is effective at reducing SARS 2 transmission among adults and children, particularly when mandated (Centers for Disease Control and Prevention 2022c; Ladhani, Andrews, and Ramsay 2023). Universal mask mandates also prevent disruptions to school and care programs by preventing in-school transmission. Data pertaining to adolescents similarly indicates no evidence that universal masking causes psychiatric harm; in fact, mask wearing is associated with lower levels of psychological distress, and adolescents were vocal proponents of such mitigations, as expressed in youth protests for safe schools (Pinsker 2022; Yaqing et al. 2021).

Anchoring bias ensures that the first statements regarding a new event remain the strongest; for example, that children are immune to or at low risk of COVID is a cognitive bias that persists despite contrary evidence. Because disinformation spreads fast, and science takes time, an aim of disinformation is to require re-litigating what is already established scientific consensus, not out of genuine good faith, informed scientific query, or argumentation, but rather to advance contrary political or ideological commitments. When policymakers adopt a contrarian position, by the time scientific consensus is re-established, policies have had an opportunity to do irreparable harm. Since long before the pandemic, scientific consensus has been that unvaccinated children, regardless of the presentation of symptoms, are the primary transmitters of virus to their households, since children make better viral reservoirs compared to adults (Bhatt et al. 2022). However, contrarian academics such as neoliberal economist Emily Oster, funded by right-wing libertarian figures and organizations, successfully campaigned to reopen unsafe

schools by denying its risks (Cartus and Feldman 2022). Re-establishing the longstanding knowledge about schools as hubs of transmission specific to SARS 2 would only be able to materialize after implementing harmful policies of reopening unsafe schools (Johnson 2022). It is now shown that over 70 percent of household transmission began with children, corresponding with unmitigated in-person schooling (Van Beusekom 2023).

Once schools reopened, the moral crusaders who had argued for reopening schools for the sake of equity were nowhere to be found in struggles for equity, safety, welfare, and quality education in reopened schools, such as infrastructure improvement and more robust programs, and not even for resources to make up for alleged learning loss (Taylor 2022). They also claimed to champion educational equity and to be advocates for socio-economically disadvantaged students. However, once in-person school resumed, they merely set their sights on eliminating safety measures such as testing, quarantine measures, and masking.

A feature of narrative dominance is the ability to triumph as the final word despite going against the voices the speaker claims to represent, due to power imbalances. Long after the reopening of unsafe schools and ending universal masking, the dominant media narrative continues to reinforce claims that virtual instruction caused learning disruption, which is the worst problem Black and Latinx children have faced during the pandemic (Leonhardt 2022). This is despite existential threats to life, safety, and health, whereby Black and Latinx children continue to be twice as likely to be hospitalized and five times more likely to die compared to white children, and comprise 65 percent of American children orphaned by COVID-19 (Centers for Disease Control and Prevention 2022f). Official and elite pandemic discourse actively ignore how inequities in schools—not safety measures demanded by students, families, and educators—fueled further inequities during the pandemic (Harris, Kolodner, and Morton 2020).

Contrary to the master narrative, polls and surveys of parents of public-school children showed satisfaction with virtual instruction, mitigations, and/or how their schools were handling the pandemic (Khaled 2022; McClain et al. 2021; Pew Research 2021a). In a national parent survey, only one-third to one-quarter of parents believed their children attained too little preparation for the next school year, and a majority of lower-income families wanted schools to remain closed for the entire 2020–2021 school year due to greater risk of poor health outcomes among lower-income racial minorities (Hedt 2020). The vast majority surveyed (74 percent) wanted both options, virtual and in-person schooling, to be available (Hedt 2020). With adequate support measures, outcomes of both options are comparable, and virtual learning can even excel in accommodating diverse learning styles (Johnson et al. 2023). The policy implications were that virtual

instruction should be widely available with more live instruction and feedback from teachers, and high-quality technology and STEM instruction for the following school year, which the federal and state governments largely failed to provide (Hedt 2020). Failure to support virtual learning led to predictably poor educational outcomes, particularly for socio-economically disadvantaged students (Taylor 2022).

Thus, serving the interests of political and economic elites, a potent alliance constructed a moral panic to advocate for the hasty reopening of schools, disregarding scientific consensus and the critical needs of socio-economically and politically disadvantaged populations, thereby inflicting lasting damage and exacerbating existing social inequalities.

### Terror

Political violence aligned with the values and aims of groups that form an anti-mitigation assemblage greatly advanced the implementation, enforcement, and reinforcement of laissez-faire policies through the “anti-lockdown” movement (Mogelson 2022, 9–36). Just one month into the pandemic, “Operation Gridlock” surrounded the Michigan state capital with angry, armed anti-maskers warning of “revolt” against the extension of public health orders during dangerous levels of COVID transmission and deaths (Mogelson 2022, 9–36). The predominantly white, rural protesters resented having to protect those concentrated in urban Detroit, with its large percentage of racial minority residents. After two weeks of Governor Whitmer upholding public health orders, a much larger group of men with loaded guns rushed the state capitol building and squared against police, a prelude to the January 6 attempted coup at the national capitol. A group of participants planned to kidnap and murder the governor for COVID-19 public health orders (Mogelson 2022, 9–36).

Similar acts of intimidation were coordinated across the US against government officials or at capital buildings to force the shutdown of government activities and the resignation of civil servants on public health and school boards through threats of violence and death. At least 1,500 incidents of harassment and violence against public health workers occurred between March 2020 and January 2021 in efforts to delegitimize experts and create distrust as a result of coordinated inauthentic behaviors and disinformation (Select Subcommittee on the Coronavirus Crisis 2022b, 122). Concurrently, US- and UK-based anti-mitigation organizations emerged, using “freedom” in their branding and human rights language as a cover for their extremism and incitement of stochastic terrorism through conspiracist claims that “lockdowns” kill more people than COVID, and that health-care workers

should be hanged for committing genocide by vaccinating people (Amman and Meloy 2021; Institute for Strategic Dialogue 2021). Additionally, right-wing media pundits routinely encouraged non-compliance with masking requirements and vaccination. The confluence and coordination of these strategies successfully catalyzed radical policy change through shocks, microaggressions, and systematic erosion.

As the devastating Omicron wave caused the greatest spike in child COVID infections and deaths, a memorandum from the Biden administration's polling firm was circulated in February 2022, stating that for the administration to win swing voters, they should simply declare victory over COVID and end mitigations to support the appearance of this victory (Kapur 2022). Biden had previously declared victory over the pandemic on Independence Day of July 2021, while warning of the Delta variant and urging Americans to vaccinate; no pediatric vaccine was available (Jacobs and Cai 2021). Nonetheless, a coordinated set of announcements ensued from several Democratic state governors, using the language of personal choice regarding masking and various iterations of "we must learn to live with COVID," by which they meant ending public health and safety mitigations, including in schools. Despite running on a campaign platform of "following the science" to mitigate the pandemic, Biden's administration adopted and accelerated an unmitigated Reopen America political project, with no intention of reinstating mitigations regardless of high levels of transmission.

Through a confluence of political violence, disinformation campaigns, and extremist organizations, anti-mitigation forces successfully eroded public trust and influenced policy changes, culminating in the Biden administration's decision to prioritize political gains over science by declaring "victory" over COVID-19 and abandoning safety measures, even in the face of surging child infections and deaths.

## Conclusion

Children have been the shock absorbers of the COVID-19 pandemic. Forcing families to choose between biosecurity and education is one of the great injustices of our time, violating children's fundamental human rights to life, health, safety, and education. Similar to other *laissez-faire* nations that promised the safe reopening of schools, workplaces, and public spaces, the US continues to fare worse among peer nations for individual- and population-level outcomes of COVID-19. A range of means for creating a master narrative about COVID-19 as a negligible risk to children—denialism, minimization, mythologies, extremism, and violence—are used to rationalize, justify, and implement policies that violate fundamental human rights that

are necessary conditions for educational attainment. The political-economic projects of Reopen America and return-to-normalcy, aided by aligned technocrats, fueled by moral panic and disinformation campaigns, and catalyzed by organized violence, operate as powerful forces against public opinion, scientific consensus, people of color, children and youth, educators, and grassroots advocacy groups for health equity supported by community-based organizations with deep roots in the communities they serve. As [Regilme \(2023\)](#) argues, “the quintessential logic that underpins the pandemic politics of dehumanisation [is] the marriage of the state and corporate interests for consolidation of the transnational ruling class.” Due to the near-universal respect for human rights and children, demonstrated by widespread support for the CRC, the symbolic power of children is often exploited to advance regressive political agendas that ultimately harm children’s best interests. The pandemic response and children’s rights are politically embattled as part of a broader attack on public interest, collectivism, and social solidarity, as these are antithetical to privatization and authoritarian projects.

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## *Con Mis Hijos No Te Metas:* the fight for children's access to comprehensive sexual education

*Paola Fajardo-Heyward*

### Introduction

In August 2016, several cities in Colombia witnessed massive demonstrations led by parents, religious groups, and conservative organizations. The protesters rejected a manual for sexuality education issued by the government, arguing that it had devastating effects on children. Across the country, the banner *Con Mis Hijos No Te Metas* (CMHNTM; leave my kids alone) became the symbol of the battle between the government and the alliance of conservative and religious groups. The protests were both significant and surprising: sexuality education in Colombia has been required since 1994, and since then, the government has adopted several programs related to issues of sexuality, sexual health, sexual rights, and gender. Yet, due to the protests, the government was forced to withdraw the manual. The demonstrations witnessed in Colombia are another installment in a series of similar events organized by a powerful transnational network of conservative sectors against governments' attempts to adopt and enforce laws on sexuality education, reproductive rights, and LGBTQ+ rights.

This network of conservative and religious actors originated in Peru, where the CMHNTM movement was created. Since then, local organizations across the region have displayed CMHNTM's strategies: disinformation, mobilization, and targeting of the Ministry of Education. As with Colombia in 2016, the actions of CMHNTM stopped the government's initiative in its tracks. By impeding the institutionalization of sexuality education, this transnational conservative network is compromising children's rights to sexuality education and, in doing so, challenging children's access to their rights to sexual and reproductive health (Biroli and Caminotti 2020; Cerdas 2018; Ugarte 2017). The agenda advanced by the CMHNTM prevents states from fulfilling their responsibilities of ensuring that children have access to the information that is essential for their health and development. The creation and expansion of this religious transnational actor

presents a crisis for global governance of human rights that deserves additional attention by scholars and policymakers.

According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), comprehensive sexuality education (CSE) is “a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality” (UNESCO 2018, 16). This type of education empowers children by providing them with accurate information so they can exert their agency and make healthy and informed decisions. In addition, CSE challenges traditional gender roles, as well as sexism and discrimination. In so doing, CSE aims to prevent child exploitation and discriminatory practices, particularly in the case of girls and LGBTQ+ individuals (Education 2016). Children's rights to sexuality education derives from several international human rights norms. Landmark treaties like the United Nations Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and the International Covenant on Economic, Social and Cultural Rights, among others, highlight states' obligation to guarantee the rights to health, non-discrimination, education, and information. The CRC not only recognizes children's rights to access information about their physical health (article 17), but also stresses that states should provide education that allows children to achieve their fullest potential (article 29). In addition to the acceptance of sexuality education as a human right, there is plenty of evidence about its relevance in addressing discrimination, gender violence, and children's well-being (UNESCO 2021).

The right to sexuality education is also recognized in other non-binding frameworks such as the 1994 International Conference on Population and Development (ICPD), which called on states to provide children and adolescents with education that helps them experience their sexuality in a positive way (United Nations 1995). In 2010, the Special Rapporteur on the right to education stated that access to sexuality education should be “considered a right in itself” (United Nations 2010, 16). In addition to existing norms, organizations like the United Nations Population Fund (UNFPA) and UNESCO have provided governments with technical guidance and support on the adoption of the CSE curriculum (UNESCO 2018).

While norms on children's rights to sexual education have advanced at the global level, the progress of adopting programs for sexual education at the national level is uneven. During the 1990s, states in Latin America updated their sex education curriculum. This process was possible due to the domestic pressure from local actors as well as the support provided by international organizations. Yet opposition to sexuality education from religious and conservative organizations has grown steadily. Particularly in the last decade, religious organizations, parents' associations, and conservative

sectors have coordinated campaigns to oppose governments' efforts to adopt sexuality education in countries such as Italy, Croatia, Perú, Mexico, and Colombia (González and Castro 2018).

What changes made it possible for CMHNTM to effectively control the debate on sexuality education? I argue that the backlash against CSE can be explained by focusing on the conditions required to achieve broad political consensus about the content of sexuality education. Human rights literature highlights the role played by external and domestic actors in the process of achieving a broad coalition that can foster a consensus on the need to adopt domestic norms related to the enforcement of human rights treaties (Becker 2017; Grugel and Peruzzotti 2012; Htun and Weldon 2018; Riskey 2019). By taking advantage of their broad bases and the connections to the political system, the transnational religious movement CMHNTM prevents advocates from securing a consensus regarding the need for CSE. I argue that CMHNTM's strategy is successful when two conditions are met: first, when the movement is well connected to *both* members of the political elite and large sectors of the population; and second, when the movement can discredit sexuality education by linking it to *gender ideology*, a misnomer used to generate moral panic among the population. By framing CSE as a threat, the movement reinforces a model whereby children need to be protected, which in turn validates the parents' role in the political debate over CSE. If these two conditions are present, the likelihood of obtaining support to oppose CSE increases. By using the case of Colombia, this chapter illustrates this argument.

This chapter aims to contribute to existing studies that demonstrate the complex domestic process of compliance with children's rights, as well as the challenges posed by societies where traditional attitudes about children are deeply held by powerful actors, and also recent literature that explores the challenges to enforcing states' obligation to provide CSE (Daly and O'Sullivan 2020; Grugel and Peruzzotti 2012; Polonko, Lombado, and Bolling 2016).

This chapter is structured as follows: the first section describes the evolution of CSE, identifying the way in which this specific education derives from the main ideas advanced by the CRC. The second section provides an argument about the domestic conditions associated with the advance and resistance of CSE. This section also describes the genesis of the transnational actor CMHNTM. The third section illustrates the argument advanced in this chapter by using the case of Colombia. The selection of this case is motivated by several factors: sexuality education has been required in this country since the 1990s; also, CSE has been supported by several administrations in the past and by high-level courts, which indicates a high level of institutionalization. Yet, as aforementioned, Colombia is one recent example

of the strong debate between CMHNTM and advocates of CSE. The case reviews the progress of sexuality education curriculum in Colombia from the 1990s to the recent events of 2016. Finally, the chapter concludes by discussing the lessons derived from the case study, as well as the implications of the growing influence of conservative backlash against sexuality education for the rights and dignity of children.

### Sexuality education

Access to sexuality education was first recognized as a basic right during the 1968 World Conference on Human Rights (United Nations 1968, 4). The conference highlighted the connection between human rights, development, and population growth (Birke 2019). The International Conferences on Population that took place in 1974, 1984, and 1994 echoed this idea, yet the emphasis was placed on the role that sexuality education plays in addressing population growth and reproductive diseases (McIntosh and Finkle 1995). Thus, most of the sexuality education programs adopted during these decades focused on the biology of reproduction and highlighted abstinence, fidelity, and procreation. Other issues such as sexually transmitted diseases, pregnancy prevention, and sexuality identity were mostly ignored (Simonen, Sikes, and Palacio 1990). During the 1990s, changes at the global level made it possible for advocates of sexuality education to highlight the connection to human rights norms. First, the approval of treaties such as CEDAW and the CRC reignited the debate about the right to access reproductive health. Second, the plan of action derived from the 1994 ICPD emphasized reproductive education as a right itself that could enhance the well-being of children and women (Chandra-Mouli et al. 2014; McIntosh and Finkle 1995). Third, issues such as the HIV/AIDS epidemic and high rates of child pregnancy motivated activists from health sectors to demand policies to address these problems. The confluence of these circumstances made it possible for human rights movements and international organizations to pressure governments to adopt reproductive education into the national education curricula (Falconier 1997). The activism was particularly successful in Latin America; by the end of the 1990s, most of the countries in the region had included a form of sexuality education program in their national curricula (Canciano 2007; Moreno and Santibáñez 2021).

A decade later, international organizations sought to further position sexuality education under the framework of human rights. While most states developed some type of sexuality education program, issues related to sexuality identity, discrimination, and violence due to sexuality orientation remain unaddressed. Thus, health practitioners, along with the UNFPA

and UNESCO, developed the CSE program. According to UNESCO (2018, 16), CSE is “a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality.” In this approach, rights are fundamental: children and adolescents are perceived as individuals entitled to make their own decisions regarding their sexuality and their reproductive health (Berglas et al. 2014). Moreover, CSE encourages children and adolescents to respect and avoid discriminating against other individuals based on race, ethnicity, and sexual orientation, among other things (UNESCO 2018, 17). This new sexuality education approach goes beyond reproductive education and encourages states to address discrimination and to educate children and adolescents about their reproductive rights and the social construction of gender norms.

### **The institutional framework and the strategies to achieve consensus**

Since its inception, the advance of sexuality education has generated tensions between different groups. CSE defies existing notions of children’s agency and their sexuality as well as longstanding views on marriage, gender roles, and childbearing. Such changes can be threatening for conservative groups and religious organizations. These actors reject changes in education that challenge their values on sexuality and the role of family. For them, sexuality education should be restricted to a biological perspective that highlights family, procreation, and abstinence. On the other hand, children’s rights advocates argue that states are mandated to provide CSE due to the responsibilities derived from international treaties such as the CRC. Children’s rights advocates demand that states provide children with the highest standard of education so that they can enjoy their sexuality in a responsible and autonomous way (Daly and O’Sullivan 2020). These different interpretations of CSE generate conflicts between groups about the states’ responsibility in protecting children’s dignity.

Such tensions are framed by an institutional setting that provides different groups with opportunities to shape the policy process. As shown by Grugel and Peruzzotti (2012), incorporating children’s rights into domestic law depends on advocates’ capability to create a broad consensus within society. This is especially true in democracies. Research suggests that activists for human rights need to mobilize large sectors of society to effect change in domestic norms (Simmons 2009). Successful experiences in terms of women’s and Indigenous rights indicate that the political incorporation of the activists’ demands, whether it is via political parties, non-governmental organizations (NGOs), academics, and/or external organizations, increases the likelihood of changing human rights domestic norms (Falletti 2020;

Htun and Weldon 2018; Piscopo 2014). Thus, to generate a change in domestic policies, successful movements require both the strength of pro-rights mobilization and strategic connections to the political system. I argue that when both strategies are at play, there is an increased likelihood of the adoption of children's rights policies.

In addition, there is a need to secure a broad consensus about CSE. This is only possible when advocates of CSE can create alliances across different audiences. During the 1990s, advocates for children's rights mobilized a large network of support and incorporated their demands into the political system. Traditionally, advocates portrayed sexuality education as a tool to address problems such as population control, high levels of child pregnancy, and the spread of diseases. This allowed advocates to create alliances with health providers, medical professionals, educators, and policymakers. Yet the Plan of Action derived from the 1994 ICPD made it possible for advocates to stress the connection between CSE and the rights of children and adolescents. By framing sexuality education under the human rights umbrella, advocates were joined by supporters of women's rights, children's rights, and academics, among other sectors. Governments were also susceptible to these pressures: democratization opened the political space and legitimized civil society's demands to align domestic policies with international standards for children's rights and sexuality education. The combination of these audiences (health advocates and human rights advocates) under democratic conditions made it possible for advocates of sexuality education to create a broad consensus about the need to adopt sexuality education. This broad coalition neutralized the opposition coming from conservative groups and religious organizations (Moreno and Santibáñez 2021). Consequently, conservative actors were thwarted by the large coalition created by sexuality education advocates.

Decades later, when UNESCO and UNFPA launched CSE, advocates confronted a different scenario. First, in the last three decades, the size of religious organizations in Latin America has grown exponentially. While most of the population remains largely Catholic, recent data illustrates that on average, 20 percent of Latin Americans self-identify as broadly Christian (Latinobarómetro 2020). This growing trend has turned religious organizations into political machines across the region: they have permeated traditional parties and have created their own political organizations. Representatives from religious parties hold seats in the Congress in Brazil, Colombia, and Costa Rica, among other countries (Boas 2021). In addition, conservative and religious organizations have increased their levels of activism during recent years. The adoption of policies related to LGBTQ+ rights, gender equality, and reproductive rights across the region have generated a strong conservative backlash from religious and conservative

sectors (Biroli and Caminotti 2020; Corrales 2020). These groups advance a political agenda that includes the defense of traditional views regarding sexuality, heteronormative family, and the rights of parents to educate their own children.

As shown by research on the process of internalizing children's rights into national legislation, these transformations positioned conservative and religious groups to launch a powerful campaign against CSE. Once governments and advocates launched initiatives for CSE, conservative and religious groups hijacked the debate and framed the initiatives as an attack on family and the rights of parents. Protests took place in México, Colombia, and Perú, among other countries. The timing of the events as well as the similarity of the strategies deployed in all the different countries indicates that there is an effort at coordinating these protests, a regional movement coordinated by religious organizations that supplies domestic organizations with strategies and resources. The common message across all these efforts is clear: *don't mess with my kids*.

#### *Don't mess with my kids—Con Mis Hijos No Te Metas (CMHNTM)*

In 2016, protests erupted in Colombia, Ecuador, México, Panamá, Paraguay, and Perú. A common theme in these protests was the presence of the movement CMHNTM, a grassroots conservative and religious movement that argues that parents have the right to preside over their children's education to protect their innocence (Corredor 2019; Lopez Pacheco 2021; Martínez Osorio 2017; Tello 2019). The origins of this movement can be traced to the Peruvian leader Christian Rosas, the son of a congressman and a Pentecostal pastor. Mr. Rosas won national notoriety as a member of religious organizations that defended traditional views on families and opposed LGBTQ+ rights. Later, he became the leader and spokesman for CMHNTM (Tello 2019). Due to the political backing of his father and religious organizations, his movement became the main opposition to policies that advocated for the adoption of CSE. Mr. Rosas's frequent visits to other countries explains the creation of similar organizations in Bolivia, Argentina, Ecuador, Colombia, and México (Rousseau 2020).

One of the main strategies of CMHNTM is to portray CSE as the equivalent of *gender ideology*, a term used to misrepresent approaches that define gender as a social construction. The term can be linked to several religious documents that reject the inclusion of a gender perspective in public policies. The Vatican and pro-life activists argued that feminist and LGBTQ+ groups used global conferences such as the 1994 ICPD to advance their gender ideology (Vaggione 2020). Powerful figures including Pope Benedict

XVI and conservative actors such as the American College of Pediatricians reinforced this misconception, stressing the need to reject gender ideology since “facts, not ideology” should serve as a basis to formulate policies (Case 2019; Cretella, Van Meten, and McHugh 2016). By framing CSE under the umbrella of gender ideology, CMHNTM painted it as a damaging ideology, a new form of cultural imperialism that endangers children and erodes families’ rights to decide what is best for their children. The moral panic created by using gender ideology galvanized different sectors: conservative parties, parents’ organizations, and religious communities from both Catholic and Evangelical churches. Religious actors were instrumental in amplifying the disinformation among their followers, both online and at public events. Indeed, the use of new information technologies to emphasize the need to resist gender ideology has been distinctive of CMHNTM. These tactics have ignited several actors across Latin America, motivating them to resist governments’ efforts to adopt sexuality education. Massive protests subsequently took place in Perú, Costa Rica, Colombia, Ecuador, and Brazil (Corredor 2019; González and Castro 2018; Morán 2019; Moreno and Santibáñez 2021; Sequeira 2022).

The CMHNTM movement also secured the support of key political figures. Following the strategy employed in Perú, in each country the movement took advantage of existing connections between religious groups, particularly Pentecostals and Evangelicals, and the political system. While the Catholic Church has always enjoyed a close connection with political elites in the region, Pentecostal and Evangelical churches have turned into very efficient political machines (Boas 2021). This ensured the support of high-level figures, such as presidents Jair Bolsonaro in Brazil and Rafael Correa in Ecuador. These two presidents embraced the term *gender ideology* and expressed their opposition to changes in the education curriculum in schools (Clarín 2019; Infobae 2014). The legitimacy and visibility provided by the endorsement of presidents and other politicians made CMHNTM a powerful political movement capable of controlling the national debate on sexuality education and other issues as well. In Colombia, for instance, the high level of popularity of the movement compromised the approval of the Peace Agreement with the FARC guerrillas in 2016 (Rousseau 2020). In México, the movement targeted law initiatives to legalize same-sex marriage (González and Castro 2018). Due to the political salience of these conservative and religious groups, the adoption of CSE into the national curriculum became extremely costly for governments.

Scholarly work on children’s rights highlights the need to secure broad consensus in order to advance policies to ensure children’s rights. The support of a well-organized transnational movement such as CMHNTM has allowed domestic religious and conservative groups to monopolize the

national debate about sexuality education. By framing the debate under the banner of parents' fight against gender ideology, they successfully halted efforts to adopt sexuality education in the national curricula.

The remainder of this chapter uses the case of Colombia to further illustrate the impact of conservative and religious organizations on the debate about CSE. Colombia provides an interesting case as it demonstrates how the actions of well-organized conservative activism can halt the advance of CSE even in countries with legal frameworks that protect sexuality education as one of children's rights.

### Sexuality education in Colombia

#### *First act: the 1994 National Education Law 1994*

Similarly to other countries in the region, sexuality education in Colombia has changed substantially in the last four decades. Content related to reproduction was first introduced during the 1970s. The initiative *Comportamiento y Salud*, a two-year school-based program created by health professionals, focused on the biology of reproduction and was aimed at providing information to prevent pregnancy and disease among adolescents (Ministerio de Educacion 1995, 13). The program remained unchanged for decades, despite concerns raised by organizations within civil society, particularly from the health and educative sectors. These professionals raised their dissatisfaction with *Comportamiento y Salud* due to its content, which they deemed moralist (Useche Aldana 1994).

The 1990s proved to be auspicious for transformations in Colombia. In 1991, the government ratified the CRC, and the same year, the country adopted a new constitution that granted international human rights treaties priority over domestic law. The constitution also included mechanisms for filing complaints to the Constitutional Court to defend fundamental rights (Fox, Gallon, and Stetson 2010, 478). In 1992, an elementary school teacher filed a complaint insisting that she was unfairly fired by the school because she talked about sexuality with her students. The Constitutional Court sided with the teacher, and in its ruling ordered the Government to adopt a program for sexuality education for both public and private education (Barrantes and Sánchez 2016).

This triggered the adoption of several initiatives. In 1993, the Ministry of Education invited educators and psychiatrists to develop a new curriculum for sexuality education. Following the advice of the UNFPA, the Ministry of Education launched a series of meetings with sexuality experts, academics, health professionals, and representatives from the

Catholic Church (Guerrero 1998; UNFPA 2010, 18). As a result of these efforts, in 1993 the government launched the National Plan for Sexuality Education (NPSE), a new curriculum for all levels of education (from elementary to high school) that emphasized the development of positive sexuality and respectful relations. In addition, in 1994, the Government issued the National Education Law, which made sex education compulsory (Ministerio de Educación 2008, 5).

The approval of the NPSE and the 1994 Education Law placed the issue of sexuality education on the national agenda. This generated resistance from conservative sectors and the Catholic Church. In 1994, statements from religious groups attacked the program, accusing it of being an attempt to transform children's morality and the religious identity of the country (Guerrero 1998, 313). The opposition also targeted the media. In 1995, one of the most important newspapers in Colombia, *El Tiempo*, announced the publication of *El libro de la sexualidad* (The Book of Sexuality), which featured chapters by health professionals and academics. While at first the Ministry of Education sponsored the publication, the opposition from conservative groups forced the government to withdraw its support. One senator from the party *Laicos por Colombia* (Lay people for Colombia) called for the removal of the director of the sexuality education program (El Tiempo 1995).

After the approval of the 1994 law, attention to sexuality education subsided as Colombia confronted problems raised by drug trafficking and domestic conflict. The administrations of Ernesto Samper (1994–1998) and Andres Pastrana (1998–2002) paid little attention to sexuality education. In addition, the institutional changes that took place within the Ministry of Education negatively impacted the continuity of the policy for sexuality education (Morales 2010, 10). Nonetheless, sexuality issues received national attention as reproductive and LGBTQ+ advocates achieved important victories due to landmark rulings by the Constitutional Court (Lemaitre 2009).

Between 1998 and 2003, the UNFPA and the Ministry of Education developed several initiatives on sexuality education at national and local level (UNFPA 2014, 47). In 2005, and after a consultation process that involved scholars and NGOs for education as well as for human rights, the government launched the Program *Sexuality Education and Citizenship Building* (Programa de Educación para la Sexualidad y Construcción de Ciudadanía—PESCC). The program embodied the idea of CSE: it defined sexuality as a social construction and highlighted the connection between access to sexuality education and the respect for reproductive rights, gender equality, and women's rights. In addition, this new program linked sexuality education to individuals' autonomy, empowerment, and civic engagement (Ministerio Educación Nacional 2008; UNFPA 2010, 18). The advance of

PESCC met some resistance, demonstrating tensions between school administrators, health advocates, and public institutions. For instance, health institutions like the Hospital Cardio Infantil invited administrators and personnel from hundreds of schools in Bogota, Colombia's capital, to discuss sexuality education content. Only twelve schools attended the workshop ([El Tiempo 2007](#)).

Tensions over sexuality education increased as a result of litigation regarding access to abortion. Abortion became legal in Colombia in 2005, and the Constitutional Court has issued several rulings to ensure women's access to it. In 2009, the Court required the Ministry of Education, among other public institutions, to assess sexuality education programs and to develop education campaigns so that women and girls were knowledgeable about their sexuality and reproductive rights ([Corte Constitutional 2009](#)). The ruling, specifically the call for education campaigns, generated strong opposition among conservative sectors. Attorney General Alejandro Ordonez, a conservative politician known for his strong religiosity, contended that the Court had overreached with its decision about education, as the government was not required to develop what he called an *abortion asigature*. The use of this label proved effective: conservative organizations and religious groups, among them Catholic schools, raised their objections to the so-called *abortion asigature*. Parents' organizations pointed out that the ruling threatened their rights to educate their children ([El Espectador 2009](#); [El Tiempo 2009](#)). The Ministry of Education placated the opposition by allowing religious schools to discuss sexuality education and children's rights according to their religious views ([El Tiempo 2010](#)). While this appeased the opposition, the involvement of important actors such as the Attorney General signaled an important change within society ([Itrurralde 2009](#)).

### *Second act: the 2000s and the Ley de Convivencia Escolar*

Ten years after the adoption of PESCC, an assessment commissioned by the Ministry of Education and the UNFPA revealed low levels of implementation of the program ([Vargas Trujillo and Ibarra 2014](#)). In addition, sexual violence against children and adolescents has increased steadily since 2011: official statistics show that in 2013, 86 percent of sexual violence cases reported targeted children between zero and seventeen years ([Tello 2013](#), 425). Due to this, in 2013 the government of Juan Manuel Santos launched the National System of Schools of Coexistence (*Sistema Nacional de Convivencia Escolar*). This new initiative created a system to report and address violence within schools, particularly gender and sexuality

discrimination (Ministerio de Educación 2019). The program highlighted the links between sexuality education, reproductive rights, and children's well-being. The law also emphasized individuals' rights to reproductive and sexuality rights, and the role of education in the fulfillment of these rights.

Tensions between school regulations and children's rights became particularly salient as students resorted to legal mechanisms to denounce schools' discriminatory practices. In 2014, Sergio Urrego, a sixteen-year-old high-school student, committed suicide in a Bogota shopping mall. In several letters discovered after his death, Mr. Urrego stated that he could no longer endure the bullying and discrimination from his teachers and the school administration (*El Espectador*, September 7, 2014). The aftermath of Urrego's suicide caused a legal battle that captured national attention. The student's mother accused the school of discriminating against her son due to his sexual orientation. The lawsuit reached the Constitutional Court, which in 2015 ruled in favor of the mother, and instructed the Ministry of Education to produce guidelines to address discrimination against children within schools due to their sexual orientation. The Court's decision stressed the need for the Ministry to ensure that schools respected children's human, sexuality, and reproductive rights (Corte Constitucional 2015, 86). Advocates for human and LGBTQ+ rights celebrated the decision and called on the government to strengthen the existing sexuality education curriculum (Albarracín 2015; Rodríguez 2014). However, the ruling also provoked a strong reaction from conservative, religious, and parents' organizations, who perceived it as a threat to their religious values (Jiménez 2015). These claims were echoed by Attorney General Ordoñez, who stated that the ruling violated schools' autonomy as well as parents' rights to educate their children. Ordoñez opposed the ruling, arguing that schools, particularly religious institutions, could not be forced to change their views due to the sexual orientation of their students (*El Espectador*, September 29, 2016).

Tensions increased in 2016, when the Ministry of Education, along with the UNFPA, UNICEF, PNUD, and organizations such as *Colombia diversa* (known for its advocacy of LGBTQ+ rights), developed the manual *School Environments Free of Discrimination* (*Ambientes escolares libres de discriminación*). The manual stressed the need to respect children's gender and sexual diversity within schools and showcased best practices to support the well-being of children, particularly those who identified as LGBTQ+. At the same time, UNFPA and UNICEF held meetings with several schools to socialize the manual and discuss ways in which schools could change their norms so that children's sexuality orientation and gender identity were respected (Ministerio de Educación 2016).

Religious and conservative organizations opposed these efforts, portraying them as gender colonization and an overreach by the state over

schools' regulations (Martínez 2017). The opposition campaign revolved around two main ideas: gender ideology and the need to defend families and traditional values from states' intromission on schools' norms. At the grassroots level, organizations that defended traditional views on the family (*Foro Nacional de la Familia*, *Red Familia Colombia*, *Un paso al Frente*, among others) created a powerful network of civil society organizations that framed the manual as an attempt to spread gender ideology at schools and indoctrinate children (Silva 2019). Church leaders, parents' organizations, educators, and other public figures echoed the message, which helped them mobilize large sectors of the population across the country. Using the slogan *Con Mis Hijos No Te Metas*, these conservative actors successfully coordinated massive protests in major cities such as Bogota, Cartagena, and Cali (El Tiempo, August 10, 2016). The opposition also targeted *Colombia Diversa* and the UNFA, portraying these actors as strongholds of gender ideology whose goal was to use the manuals to indoctrinate children (Un Paso al Frente 2016).

In addition to the grassroots movement, the opposition also mobilized conservative politicians affiliated with religious organizations. Angela Hernandez, a Pentecostal local politician, reached national visibility by leading the attacks against the head of the Ministry of Education, Ms. Ginna Parody, an openly lesbian politician. Ms. Hernandez accused Ms. Parody of forcing her "gender ideology" on children (El Tiempo, August 20, 2016). Two renowned senators known for their support of Pentecostal churches questioned Ms. Parody's decision to invite only LGBTQ+ organizations to develop the manual (Beltrán and Quiroga 2017; El Heraldo 2016). These attacks were also echoed by important political figures such as Attorney General Ordoñez and a former president of Colombia, Alvaro Uribe. Mr. Uribe is well known for his conservative stance, as well as for his close connections with religious organizations. Via his Twitter account, Mr. Uribe took issue with the manual and stated that to present gender as a social construction was both child abuse and an attack on families (Beltrán and Quiroga 2017; Uribe, 2016). The support from high-profile members of the political elite provided national visibility and legitimized conservative actors' opposition to the manual.

The coordination of strategies at the institutional and grassroots levels positioned conservative and religious sectors for victory. Despite the efforts of NGOs, academics, and other personalities who advocated for sexuality education in news outlets, the opposition controlled the national debate, stressing parents' rights and the need to defend children's innocence from gender ideology (El Tiempo, August 14, 2016; Semana, August 11, 2016). The timing was important: the protests took place two months before a national plebiscite on the peace agreement between the Santos

administration and the Revolutionary Armed Forces of Colombia (FARC). The controversy generated by the manual negatively impacted the government's campaign for the approval of the agreement. In trying to appease the opposition, President Santos met with the heads of several churches, issued statements clarifying that the government was not promoting gender ideology, and announced the elimination of the manual. In October, Minister Parody stepped down from her position ([El País 2016](#); [Semana, October 4, 2016](#)).

The events that took place in Colombia in 2016 demonstrated the strength acquired by conservative and religious actors in the last decades. Their victory against the government's manual made evident the strong connections they had developed with key members of the political elite as well as their strength among large sectors of the population. While religious actors in Colombia have mobilized in the past, in 2016 the support of leaders from both Catholic and Evangelical churches secured the support of a diverse and substantive portion of the population. As CMHNTM has done in other countries, the strategic use of gender ideology, and the emphasis on family values and parents' rights, helped the opposition to successfully frame sexuality education as an attack on children's innocence and parents' rights. This strategy, particularly the insistence on the need to protect the children from the threat of CSE, engaged several sectors of the population and galvanized actors that had previously not engaged in these types of debates. In addition, the strong opposition to CSE from key members of the political elite made the issue highly salient to the political system, and extremely costly for an administration that could not afford to lose more political capital. In sum, the transnational conservative network CMHNTM has developed a toolkit that ensures the regression of children's access to sexuality education.

## Conclusions

This chapter provides lessons about the conditions associated with the lack of progress on children's rights, specifically their access to sexuality education. By contrasting the advance of sexuality education in two different moments, the different strategies deployed by religious and conservative groups are highlighted. Two key lessons are derived from this case study. First, while the tensions within civil society over sexuality education did not change, the changes in religiosity and the actions of a conservative transnational network created by religious groups provided domestic actors with important resources that secured the backing of broad sectors of the population. Second, by using the gender ideology framing, first developed in Perú and then extended to other countries, they changed the debate over sexuality

education. Religious groups and conservative actors opposed sexuality education during the 1990s, but failed to find supporters as their opposition was rooted in their conservative views. In 2015, conservative and religious organizations legitimized their opposition by using arguments such as the defense of the family, which appeared to be unconnected to religious identity. By presenting themselves as defenders of families and children, they created alliances with political actors and large sectors of the population, thus controlling the debate about CSE. Consequently, these groups were able to advance discriminatory views within society, which can potentially negatively impact the well-being of children and LGBTQ+ individuals.

The example of Colombia shows that governments' ratification of CRC does not always ensure the internalization of children's rights into domestic policies. Even though the Colombian government appears committed to adjusting domestic policies so that they are in line with the CRC, tensions between domestic actors with dissimilar understandings of children's rights has compromised the progress of sexuality education. More concerning, the case suggests that it was the progress achieved by activists in other sexuality issues that ignited tensions over the education curriculum. Future research should explore other instances in which children's rights have been contested and challenged by civil society, even after policies to enforce and promote such rights had been adopted.

The case of Colombia also suggests growing trends regarding civil society's attitudes toward children's rights. Research highlights the relevance of public opinion in the process of pressuring governments to formulate policies for human rights. This assumes citizens can access accurate information. As the case shows, the spread of disinformation impacted citizens' perceptions and their demands for government action. While supporters of CSE and even the government tried to inform the population, conservative and religious groups had already shaped the debate about sexuality education. As a result, the population's preferences shifted: access to CSE was no longer associated with children's dignity and empowerment; instead, CSE was perceived as a threat to children's well-being. Future studies should explore the role of social media and technology in public preferences regarding children's rights, women's rights, and other human rights.

As documented here and by others ([Boas 2021](#); [Mayka and Smith 2021](#); [Rousseau 2020](#)), conservative and religious activists have become a powerful force in Latin America. This is related to growing levels of religiosity in the region, as well as increasing levels of interest being paid by political parties to religious organizations. Additional research on similar movements in other regions can shed light on whether conservative and religious actors are deploying the same strategies described in this chapter, or if they are mostly advancing their agendas through popular mobilization.

Finally, the transnational campaign against sexuality education highlights the specificities of children's rights: advocates legitimize their activism by insisting on children's vulnerability. Rather than advancing a child-based model wherein children are seen as individuals with rights of their own, groups such as CMHNTM advance a traditional model where children are cared for by adults who control the children. This is challenging, first because several actors can claim they have the rights to decide what is best for children, but also because advocates can hold dissimilar interpretations of children's rights (Grugel and Peruzzotti 2012). In the case of CSE, transnational conservative actors question the legitimacy of both international organizations and communities of health practitioners, educators, and academics. This stems from the population's lack of understanding of both CSE and the role played by these actors. Every child has the right to an education that prepares them to make informed decisions and to expect respectful and positive relationships. International organizations and advocates' knowledge of best practices has helped governments to achieve that goal. Similarly, to counter the activism of conservative sectors, advocates of CSE could stress one of the core values of human rights: non-discrimination. Access to CSE ensures the rights of all children, regardless of their race, ethnicity, gender identity, and economic background. Whereas transnational conservatism insists on specific ideas of family and childhood, advocates for children's rights should highlight the need to protect all children from discrimination and violence. The emphasis on the need to ensure the dignity of all children can reframe the debate about CSE and hopefully increase the number of allies that can advocate for sexuality education.

Finally, this edited volume seeks to advance our understanding of the way in which the interactions between local and global factors are negatively impacting children's rights and the dignity of children. The case included here illustrates how the concerted actions of transnational actors are eroding the fulfillment of states' responsibilities as recognized by the CRC. By illustrating the specific conditions that make it possible for transnational movements to stop governments' efforts at advancing CSE, this chapter identifies a troublesome pattern of transnational activism that is creating barriers for children's rights to information and freedom of expression, their autonomy, and ultimately, their dignity.

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## Children's Rights Convention and the United States amid the pandemic

*Shani King*

During the COVID-19 pandemic, school masking policies became a matter of fierce debate in the United States (US), with some states going so far as to ban schools from imposing mask mandates on students. The issue highlighted conflicts between states and the federal government, as well as at the local level, where school policy decision-making primarily occurs in the US. The rights contained in the Convention on the Rights of the Child (CRC), such as the rights to health and education or the rights of students with disabilities, all can influence decision-makers assess how best to respond to the pandemic. While the US has not ratified the CRC, the treaty can still influence US policies, such as through the work of advocacy groups at the local level, as some cities and states have expressed support for the CRC. However, in the context of US federalism, protecting the rights of the child may involve complex dialogues between federal, state, and local governments.

This chapter explores these dynamics, beginning with an overview of the history of US engagement (or lack thereof) with the CRC, followed by a discussion of US federalism and the debates around bans on mask mandates in US schools during the pandemic. It then considers issues of federalism under the CRC and evaluates what lessons can be derived from the US experience for how international treaty obligations can be implemented in federalist contexts.

After three decades, the CRC has achieved broad support from states, but fierce debates over children's rights within states, including over the respective roles of families, local administration, school administration, and federal intervention, are creating new crises for children's rights. Like other human rights treaties, the CRC was designed as an intra-state mechanism. Educational rights, however, are typically implemented at a very local level. States must establish sufficient national oversight to ensure CRC compliance, while still respecting the crucial role of local communities and families in a child's education. Implementing the CRC will therefore require increased engagement with questions of federalism and local educational governance.

### The CRC in the US

In 1989, the United Nations General Assembly adopted the CRC. US delegations had participated actively in the drafting of the CRC (Cohen 2006, 190–192), but the US did not sign it until 1995, and it has never ratified the treaty. Since Somalia's ratification of the CRC in 2015, the US has been the only country in the world which is not a state party to the CRC.

The failure of the US to ratify such a widely accepted treaty has multiple causes. In general, treaty ratification is more difficult in the US than in many other countries. While the president can sign treaties, the US Constitution requires the consent of two-thirds of the Senate before the president may ratify a treaty (US Constitution, art. II, § II, cl. 2). In practice, broad bipartisan political support is necessary to meet this threshold, as well as sufficient advocacy and mobilization to ensure that treaty ratification remains on the political agenda. This reality has been a consistent challenge for US ratification of multilateral human rights treaties: the US has ratified only three of the nine core human rights treaties (the International Covenant on Civil and Political Rights, the Convention against Torture, and the International Convention on the Elimination of All Forms of Racial Discrimination), although it has signed four others, including the CRC. So far, no president has ever brought the CRC to the Senate for a vote on ratification.

Procedural issues alone do not account for US non-ratification of the CRC, however, as there is also domestic political opposition to ratifying the treaty. The Republican party's political platform has expressly opposed the CRC (Republican Party Platform 2012, 2016); in 2012, a Republican Senator proposed a Senate resolution opposing US ratification (S.Res.99, 112th Congress 2011). This opposition partly stems from objections on issues such as parental rights and homeschooling put forward by advocacy groups who believe the CRC would conflict with their interests (McKneely 2020; Parental Rights 2020). There is also a vocal contingent in US policy circles which is skeptical of international law and institutions generally, viewing treaties like the CRC and bodies not elected by Americans (like the Committee on the Rights of the Child) as a threat to US sovereignty (Rutkow and Lozman 2006, 175).

Another strand of opposition to the CRC focuses on concerns about federalism. Some critics of CRC ratification note that it would raise thorny questions about the CRC's interaction with domestic law and policy. Implementing some provisions of the CRC could require action on issues that are the responsibility of the fifty states rather than the federal government, such as in the areas of juvenile justice, child labor and education, welfare, custody and visitation, and adoption (Blanchfield 2015, 2). Other commentators have queried whether CRC ratification would be a successful

strategy for improving children's rights or have suggested it would be "pointless" as it would likely have little impact on US policy (Ku 2014).

Although the US has not ratified the CRC, it has ratified two of its optional protocols, which can be ratified independently of the CRC. These optional protocols, however, relate to children in armed conflict and child trafficking, prostitution, and pornography, and do not address issues related to school masking such as those addressed in this chapter.

Even should the US ratify the CRC, this would not automatically mean the CRC would be binding as a matter of domestic law. Under US law, some provisions of international treaties are "self-executing," meaning they can be directly applied by US courts, while others are "non-self-executing" and require implementing legislation to be enforceable. For the three human rights treaties it has ratified, the US has attached declarations stating it considers the treaty to be non-self-executing (United States, Declaration, 660 UNTS 195; Declaration 1, 999 UNTS 171; Declaration 1, 1465 UNTS 85). It would likely do the same should it ratify the CRC, which would likely also result in US courts considering CRC provisions to be non-self-executing (*Sosa v. Alvarez-Machain*, 542 US 692, 735 (2004); *Medellín v. Texas*, 552 US 491, 511–512 (2008)).

Arguably, some provisions of the CRC reflect customary international law. Customary international law, which arises from consistent state practice followed out of a sense of legal obligation, can bind states even in the absence of a treaty ratification. However, within the US, the status of customary international law is controversial. In terms of the CRC, a court found provisions of the CRC to constitute customary international law in at least one instance. The District Court for the Eastern District of New York, in an immigration case concerning whether hardship to US citizen children could block deportation of the parent, said that CRC provisions related to the best interests of the child and protection of the family constituted customary international law (*Beharry v. Reno*, 183 F. Supp. 2d 584 (E.D.N.Y. 2002), reversed on other grounds). This is, however, an exceptional case. Other courts addressing the same issue, for example, have avoided making determinations as to the CRC's status as customary international law (see, e.g., *Oliva v. US Department of Justice*, 433 F.3d 229 (2nd Cir. 2005); *Cabrera-Alvarez v. Gonzales*, 423 F.3d 1006 (9th Cir. 2005)).

The US also has an obligation "not to defeat the object and purpose" of the CRC. Any state that signs but does not ratify a treaty has this obligation while ratification is pending under Article 18 of the Vienna Convention on the Law of Treaties. (The US has not ratified this Convention either, but the US itself considers Article 18 to reflect customary international law (Bradley 2007, 315)). However, what precisely it means to avoid defeating the object and purpose of the CRC is highly unclear. Before the Supreme Court ended

imposition of the death penalty on juveniles, some advocates attempted to argue that the practice violated the object and purpose of the CRC (Bradley 2007, 315). Such arguments have remained largely theoretical, however.

Overall, the CRC does not have binding legal effect in the US, and any creative legal arguments based on customary international law or the US as signatory to the CRC have a low likelihood of success. The CRC may nonetheless still serve as a reference for courts and as a guidepost for policymaking. For example, the US Supreme Court referenced the CRC in two landmark cases that found the death penalty and life without parole (for non-homicide crimes) unconstitutional when imposed on juveniles. In those cases, it referenced the CRC as evidence of a consensus against imposing such sentences on youth. (*Graham v. Florida*, 560 US 48, 81 (2010); *Roper v. Simmons*, 543 US 551, 576 (2005)).

Notably, some states and local governments have engaged with the CRC even in the absence of federal ratification. These efforts include several city and state resolutions or governor proclamations, many of which are largely aspirational and express general support for CRC ratification (Human Rights Educators USA n.d.). Some, however, make concrete commitments to work toward meeting CRC goals or to use the CRC to inform policymaking. For example, New York City called on state agencies to ensure their activities comply with the CRC, San Francisco on agencies to ensure programs complied with and advanced the CRC, and Austin on city entities to seek to meet the goals of the CRC (City Council of New York 1989; City Council of the City of Austin 1991; San Francisco Board of Supervisors 2019).

### Federalism and education in the US

Within the US, authority to make decisions concerning public education has traditionally been vested in state and local governments. This deference to federalism has often been invoked as a barrier to implementing the CRC in educational settings because “[p]erhaps more than other human rights treaties, [the] CRC addresses areas usually considered to be primarily or exclusively under the jurisdiction of state or local governments” (Blanchfield 2015, 2).

However, there is also a history of federal involvement in education in the US, particularly around issues of racial inequality. The US Supreme Court’s decision in *Brown v. Board of Education* ending racial school segregation was met with sometimes violent opposition and, famously, required intervention by federal troops. The moment marked a major turning point for education federalism, and with the advent of the civil rights movement,

federal intervention became increasingly common on equality issues. For example, new federal laws prohibited sex discrimination (the “Title IX” program) and required accommodations for students with disabilities. On the other hand, continued affirmation of education federalism by the courts has also limited federal powers to ensure implementation of decisions such as *Brown* (*Milliken v. Bradley*, 418 US 717 (1974)).

The Supreme Court has also had a number of high-profile cases related to fundamental rights in the education context, such as around free speech or privacy rights of students, or religious rights in the context of public schools. Some of these cases are linked to deeply contentious issues in the US such as parental rights, school prayer, and school choice (the ability of families to select the school their child attends, potentially with the support of public education funding). They are one reason that education policy remains a common topic in national political debates, even though education governance is primarily local.

Importantly, however, there is no federally guaranteed right to education itself. All fifty states protect the right of education in their state constitutions, but no such right is enumerated in the US Constitution (Parker 2016). The Supreme Court has declined to read an implied fundamental right to education into the Constitution. In the landmark decision of *Rodriguez v. San Antonio Independent School District*, it declined to strike down a Texas system of financing school through a property tax, which, advocates argued, disadvantaged students from poor neighborhoods. Because there is no fundamental right to education, the court did not apply a “strict scrutiny” review to the system, which is the normal standard in the US for courts to review restrictions on fundamental rights (411 US 1 (1973)). Some litigation has attempted to carve out a basic minimum right to education such as a right to literacy within the *San Antonio* framework, but so far, such efforts have not been successful (*Gary B. et al. v. Whitmer et al.*, 957 F.3d 616 (6th Cir. 2020), vacated for rehearing en banc then dismissed due to a settlement).

Constitutional challenges to state education policy may still be successful if they argue that education is being discriminatorily denied. *Brown v. Board*, of course, prevents race-based denial of education, and the Supreme Court has also held that denying education to undocumented immigrant children is unconstitutional (*Plyler v. Doe*, 457 US 202 (1982)). Overall, however, the legacy of *San Antonio*, along with the limits imposed on Congress by the US federalist structure, means that the federal government cannot directly compel states to guarantee a minimum level of education for children.

Nonetheless, over the years, Congress has periodically expanded the federal role in educational policy. Its primary vehicle for this is to provide education funding to the states. By attaching conditions to this funding, it

can indirectly influence state educational policy. A federal education funding scheme was first introduced in 1965 via the Elementary and Secondary Education Act (ESEA). The Act, which allocated funding for poor schools, partly aimed to address deep racial inequalities in education that persisted following *Brown v. Board*. Over time, newer iterations of the Act increasingly sought to promote school reform and introduce academic standards (Black 2017, 1321–1323).

In 2001, under the second Bush administration, the ESEA was reauthorized as the No Child Left Behind Act (NCLB), which substantially expanded the policymaking role of the federal government. NCLB, seeking to reduce the educational achievement gap, required all states to adopt academic standards for students and run annual standardized tests to assess student progress toward those standards. If schools failed to demonstrate progress, they could be required to engage in a range of corrective measures. States were allowed to develop their own standards, however (partly out of concerns for federalism), and in practice, some set low, easy-to-meet standards instead of incentivizing reform (Robinson 2013, 325). On the other hand, NCLB's focus on meeting metrics put many schools at risk of a "failing" mark, and then imposed new burdens on already struggling schools. The law became highly controversial, with critics arguing that it deepened existing structural inequalities and had an overly heavy focus on standardized testing (Black 2017, 1326–1327).

By the time of the Obama administration, many states were on track to fail their NCLB targets, so the administration granted waivers. However, these waivers included conditions, such as to adopt "common core" requirements promoted by the administration (or equivalent alternatives). This was the farthest extension of federal authority yet, coming close to directly imposing standards on states, and was also highly controversial, partly because it was not clearly based on proper legal authority (Black 2017, 1330–1331; Heise 2017, 1871).

Ultimately, given the controversy over the NCLB and the subsequent waivers, the Obama administration did not seek its renewal. Congress replaced it with the Every Student Succeeds Act, which significantly rolled back federal education authority and gave states far greater discretion in setting standards. It also eliminated the possibility of similar waivers with conditions as had been offered under NCLB (Heise 2017, 1873). Currently, federal education policy is accordingly far less interventionist than in prior decades.

Overall, the US has a system of education federalism, but the national government has variably played a key role over the years, either as a result of major rights decisions from the courts or via Congressional intervention via funding schemes. Such federal expansions of power have frequently

been highly contentious and politically fraught. Against this backdrop, local school decisions have become increasingly impacted by national political debates in recent years, as exemplified during the COVID-19 pandemic by deep division over mask-wearing in schools.

### **Bans on school mask mandates in the US**

One of the most controversial issues concerning school operations during the pandemic has been whether or not students should be required to wear masks to prevent COVID-19 transmission. In the US, mask-wearing became highly politicized; school board meetings frequently became forums for heated and angry interventions on the issue (Wong 2021). Some conservatives oppose mask mandates as an infringement on the exercise of individual liberties, causing some predominantly Republican states to oppose mask mandates, whereas Democratic leaders have generally been more openly supportive of mask-wearing (Aratani 2022). According to a September 2019 analysis, most states allowed mask mandates in schools: seventeen plus Washington DC required masks, while twenty-three left the decision to local school districts (with many recommending mask-wearing). However, seven states explicitly banned schools from mandating masks (USA Facts 2021). By 2022, around ten states total had enacted such bans on mask mandates (Grzincic 2022).

At the federal level, the Center for Disease Control recommended mask-wearing in schools during the pandemic, and the Biden administration attempted federal interventions to discourage states from banning mask mandates. In August 2021, the Department of Education's Office for Civil Rights opened investigations into five states that had banned mask mandates on the grounds that the bans discriminated against students with disabilities (US Department of Education 2021a). Additionally, the Department of Education created a grant program known as "Project SAFE," funded under the Every Student Succeeds Act. This program offered grants to schools that had lost state funding as a result of taking COVID-19 precautions (US Department of Education 2021b). Such federal efforts were not always well received by states; Florida, which had banned mask mandates, retaliated against Project SAFE by withholding state funds from school districts in the amount equal to the federal aid they received (Ceballos 2021).

A number of lawsuits also challenged bans on mask mandates. The outcome of these lawsuits has been highly inconsistent and on varied legal grounds, partly because the bans themselves raised diverse legal issues depending on their nature. However, in most cases, mask advocates have been able to temporarily block or narrow the bans (Grzincic 2022).

Several of these lawsuits were brought by disability advocates who argued that such bans violated the Americans with Disabilities Act and the Rehabilitation Act because they created an unsafe environment which denied students with disabilities and a high risk of illness the ability to attend school. Such lawsuits successfully resulted in temporary injunctions on the mask mandate bans in Iowa, South Carolina, and Tennessee (*R.K. v. Lee*, No. 22–5004 (6th Cir., May 10, 2022) (Tennessee); *The Arc of Iowa v. Reynolds*, No. 21–3268 (8th Cir., Jan. 25, 2022); *Disability Rights South Carolina v. McMaster*, No. 21–2070 (4th Cir. Jan. 25, 2022) (vacating in part and remanding the lower court injunction, but on procedural grounds partly related to lack of enforcement of the ban against the student plaintiffs). On the other hand, the Fifth Circuit allowed a Texas mask mandate ban to stand, among other reasons because it found that the students could not sufficiently show that an actual or imminent injury would likely arise from the mask mandate ban (*E.T. v. Paxton*, No. 21–51083 (5th Cir. Dec. 1, 2021)).

Other litigation challenging mask mandate bans has rested on alternate grounds. In Arkansas, for example, a temporary injunction to a mask mandate ban was successful on equal protection (non-discrimination) grounds, allowing private schools to impose mask mandates but not allowing public schools to do the same (DeMillo 2021). In Utah, parents attempted to challenge a law restricting mask mandates on the grounds that it violated the right to education enumerated in the Utah state constitution, but a court dismissed the case as moot because the relevant school district subsequently imposed a mask mandate (*Concerned Coalition v. Cox*, No. 210904453 (3rd Judicial District Ct, Salt Lake County, Apr. 11, 2022)). Some injunctions have been on technical grounds, such as in Arizona, where the ban's inclusion in an unrelated budget bill violated the state constitution's "single-subject" rule for proposed bills (Christie 2021).

While this chapter focuses more narrowly on attempts to ban mask mandates in schools, it should be noted that there is also extensive litigation from parental rights groups attempting to challenge mask mandates, and from disability rights and other advocacy groups challenging decisions to lift mask mandates as pandemic concerns wane (Barthel 2022; Bishop 2022). The results of these lawsuits are also inconsistent, and this may be a major area of legal development in the coming years.

As this summary of legal and political disputes demonstrates, school mask mandates are highly contentious in the US. Although other countries have declined to require masks in schools, political advocacy to *ban* schools and localities from imposing such mandates appears to be unique to the US. One potential comparative international example was Brazilian President Jair Bolsonaro's veto of a law which would have required mandatory masks

in schools, but even in this case, states were still free to enact mandates (and indeed, the given justification for the veto was a concern for preserving state decision-making power) (Soares 2020).

One reason the issue has been so controversial in the US may be because the CDC took a much stricter approach to masking for young children compared to international counterparts: the European Centre for Disease Prevention and Control did not recommend mask use by primary school students because of challenges around them wearing masks correctly, while the World Health Organization also took a risk-based approach to masking for children younger than age twelve (ECDPC 2022; UNICEF and WHO 2020). Other parts of the world have also taken varied approaches to school policy during COVID-19, such as keeping schools closed longer in parts of Latin America (UNICEF 2021). Overall, however, a highly partisan environment in the US and a history of political controversy over education and parental rights also likely played a key role in the divisiveness of the masking issue.

### **International human rights law: rights implicated in bans on mask mandates**

The CRC protects a number of rights of children which are relevant to policy considerations around masking in schools during a pandemic such as COVID-19. Children have a right to the “highest attainable” standard of health under Article 24 of the CRC. States are supposed to work toward full implementation of this right, but are particularly responsible, per Article 24(2)(c), to take “appropriate measures ... to combat disease.”

In making health-related decisions impacting children as a group (as well as individuals), governing bodies should make decisions based on the best interests of the child. Such best interests should be based on the range of the child’s “physical, emotional, social and educational needs” as well as their relationships with parents and families and their social background (Committee on the Rights of the Child 2013a, para. 12). Further, states must ensure the right to health in a non-discriminatory manner, including on grounds such as disability, and states should prioritize the right to health for children in disadvantaged areas (CRC, article 2; Committee on the Rights of the Child 2013a, paras. 8 and 11).

Children also possess a right to education pursuant to Article 28 of the CRC. In human rights law, the right to education is understood to incorporate, at a minimum, the features of availability, accessibility, acceptability, and adaptability. This means that functioning education systems are available to students, they are accessible to everyone without discrimination, they meet

certain minimum standards of acceptability, and they are adaptable to changing societies and diverse social and cultural contexts. As with the right to health, the “best interests of the child” standard governs application of these criteria ([Committee on Economic, Social and Cultural Rights 1999](#), paras. 6–7).

The rights of children with disabilities may also be relevant to discussions of mask mandates in schools. Children with disabilities possess, and should be able to enjoy without discrimination, the same right to an education as children without disabilities. States should aim for inclusive education of students with disabilities, ensuring they are not excluded from the general education system by reason of their disability ([Committee on the Rights of the Child 2006](#), paras. 62 and 66). As affirmed in the Convention on the Rights of Persons with Disabilities, such persons should be able to “access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live.”

The standard for determining what changes schools should make to ensure education is available to children with disabilities is that of “reasonable accommodation.” The Convention on the Rights of Persons with Disabilities defines reasonable accommodation as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure [that] persons with disabilities” can equally exercise their human rights. Denial of reasonable accommodation to students with disabilities in the education context is a form of discrimination against children with disabilities ([Committee on the Rights of the Child and Committee on the Rights of Persons with Disabilities 2022](#), para. 9).

The CRC also acknowledges the rights of children to family, and the responsibilities and rights of parents in relation to their children. For example, Article 5 states that states “shall respect the responsibilities, rights and duties of parents” and other legal guardians or extended family. Article 18 affirms that parents have primary responsibilities for the child’s upbringing. The preamble to the CRC also acknowledges the family as the fundamental unit of society and the natural environment for the well-being of children. Overall, the CRC strongly protects the right to family life and parental authority over children against state interference, but parental rights are also not considered absolute and are subject to standards such as the best interests of the child ([UNICEF 2007](#), 79). For example, states have an obligation to ensure that parents do not prevent female children from attending school on account of their gender ([Committee on Economic, Social and Cultural Rights 1999](#), para. 50). Note, however, that the family’s role in the life of the child is itself a key element to consider when assessing what constitutes the best interests of a child ([Committee on the Rights of the Child 2013b](#), paras. 58–70).

In terms of parental authority over their children's education, Article 13 of the International Covenant on Economic, Social, and Cultural Rights expressly affirms the liberty of parents to "ensure the religious and moral education of their children according to their own convictions." Further, the right to education, which as noted above should mean acceptable education, includes education that is acceptable to both the child and "in appropriate cases" to their parents ([Committee on Economic, Social and Cultural Rights 1999](#), para. 6(c)). This means education should accommodate diverse cultural and social contexts and should not suppress minority languages, cultures, or religions ([UN Special Rapporteur on the Right to Education 2021](#), para. 21). Outside the context of such core beliefs and identity, however, human rights law has not extensively addressed the degree to which parental authority extends into the school setting itself, perhaps because the issue is simply less prominent outside the US. However, the Committee on the Rights of the Child has encouraged states to involve parents in school governance and in the school community ([UNICEF 2007](#), 444). Where conflicts arise between parental and school choices, a "best interests of the child" standard would likely govern.

In the context of the pandemic, a number of international human rights authorities expressed concern over the impact of the pandemic on children. The Committee on the Rights of the Child issued a statement which stressed the importance of any pandemic restrictions being necessary and limited in time, the need to maintain health services for children and ensure access to COVID-19 vaccines and treatment, and the need to ensure continuity in crucial social services for children; and warning of the inequalities which could result from use of online learning or school closures ([Committee on the Rights of the Child 2021](#)). The UN Special Rapporteur on the Right to Education has expressed concern over extended school closures, noting that particularly for socially vulnerable children, the effects of such closures can be "devastating," with serious repercussions for their right to education ([UN Special Rapporteur on the Right to Education 2020](#), para. 25).

As a final note, while this chapter focuses on children's rights, the question of masking in schools may also implicate the rights of adults. COVID-19 puts educators and school staff, for example, at risk. These workers hold the right to enjoy just and favorable conditions of work, including safe and healthy working conditions ([UN Special Rapporteur on the Right to Education 2020](#), paras. 53–55).

### **Issues of local and subnational responsibility in international human rights law**

International human rights law imposes obligations on the state as an entity. This may include a full range of horizontal state actors (executive, legislative,

or judicial) as well as vertical levels of government (both national and local). States are given flexibility in how they choose to implement human rights obligations internally, but they also cannot invoke internal governance arrangements as an excuse for non-compliance, based on a general rule of treaty interpretation found in Article 27 of the Vienna Convention on the Law of Treaties.

Some treaties include a “federal clause,” which limits state responsibility to implement the treaty where its constitution restricts its authority over matters reserved for subnational units of government. Most human rights treaties, however, instead include an anti-federal clause, explicitly stating that their obligations extend to “all parts of federal States without any limitations or exceptions” (see, e.g., International Covenant on Civil and Political Rights, art. 50; International Covenant on Economic, Social and Cultural Rights, art. 28).

Unlike many other human rights treaties, the CRC does not contain an anti-federal clause. During the drafting of the CRC, the US proposed including a federal clause. However, opponents noted that it would create a tiered system of obligations as between federal and non-federal states and would limit the scope of CRC obligations in federal states, and that the language proposed by the US did not reflect standard language used in treaties for federal clauses. A suggestion was made that federal states could attach reservations if needed related to their internal federal arrangements, and the US decided to withdraw the proposal (OHCHR 2007, 896).

The CRC is accordingly silent on the question of federalism, but the rejection of a federal clause during drafting, combined with Article 27 of the Vienna Convention on the Law of Treaties, would suggest federated states are still fully obligated to implement the CRC. The Committee on the Rights of the Child has itself affirmed this view. In its General Comment No. 5, it clarified that “(w)here a State delegates powers to legislate to federated regional or territorial governments, it must also require these subsidiary governments to legislate within the framework of the Convention and to ensure effective implementation” (Committee on the Rights of the Child 2003a, para. 20). Similarly, in its Concluding Observations to Canada, it urged the Canadian federal government to ensure provinces and territories were aware of and appropriately implementing their CRC obligations (Committee on the Rights of the Child 2003b, paras. 8–9).<sup>1</sup>

The CRC has offered further guidance on the scope of federal responsibilities in contexts of federalization or decentralization of state authority. Specifically, states should ensure that local authorities have “the necessary financial, human and other resources effectively to discharge responsibilities” for implementing the CRC. Governments should also retain sufficient authority to ensure full compliance with the CRC and should establish

permanent CRC monitoring mechanisms ([Committee on the Rights of the Child 2003a](#), paras. 40–42). Where services are decentralized, such as those to children with disabilities, the state has responsibility for ensuring sufficient funds are allocated and providing “strict guidelines for services delivery” ([Committee on the Rights of the Child 2006](#), para. 20).

While in terms of legal obligation, federal governments should act to ensure CRC implementation, international human rights law is generally neutral as to the precise internal arrangements for fulfilling legal obligations. The right to education includes certain minimum criteria which governments must meet as they work toward its progressive realization, some of which must be centrally led, such as developing a national education strategy ([Committee on Economic, Social and Cultural Rights 1999](#), para. 52). However, it is not a problem for education systems and policies to be highly localized under human rights law. Indeed, at times, the Committee on the Rights of the Child has expressly called for community-based educational services and increased cooperation with local authorities and communities or has criticized states for an overly centralized approach to education which does not account for diverse contexts (see, e.g., [Committee on the Rights of the Child 2014](#), paras. 50–51, [2010](#), paras. 10, 53). States should develop community-based early childhood programs that are reflective of diverse local contexts, for example, by working with local communities rather than imposing a standardized approach ([Committee on the Rights of the Child 2005](#), para. 31). Such local education approaches are particularly important for minorities. Indigenous children, for example, should have access to schools in their own communities that reflect their own culture and traditions ([Committee on the Rights of the Child 2009](#), para. 61).

### **Applying CRC principles to the US context**

Should the US ratify the CRC, as noted in the prior section, under international law the CRC's obligations would apply to the US as a whole. The US often attaches “federalism understandings” to its ratification of human rights treaties, which stipulate that treaty obligations will be interpreted within the bounds of American federalism. Many commentators consider such federalism understandings invalid, partly because they conflict with anti-federal clauses in other treaties. Given the lack of a CRC anti-federalism clause and the CRC drafting history described above, questions about the validity of any US CRC federalism understanding would perhaps have added complexities. Arguably, however, any such federalism understanding would still conflict with the object and purpose of the treaty, which, under

Article 19 of the Vienna Convention on the Law of Treaties, would render it invalid as a matter of international law.

As a matter of US domestic law, the question of whether the federal government's treaty power can preempt state laws has been a matter of lively scholarly debate. However, particularly since a 2014 Supreme Court decision, courts are unlikely to permit the federal treaty power to intrude on matters of state authority unless there is a clear indication of intent from Congress (*Bond v. United States*, 572 US 844 (2014)). Accordingly, federalism understandings and non-self-executing declarations that the US would likely attach to the CRC would probably prevent the federal government from relying on the CRC to expand its powers. Further, the US has a robust system of other "structural, political, and diplomatic" checks on the federal treaty power, beyond the courts themselves, which would make such an application of federal power highly unlikely (Hathaway et al. 2013, 239).

Accordingly, any US ratification of the CRC would likely see a conflict between international law obligations, which suggest the federal government may need to commandeer states if they are non-compliant, and its internal structure, under which the federal government most likely does not have this authority. Catherine Powell has suggested that a federal government can sidestep this "central dilemma" by playing a coordinating and cooperative role rather than a commandeering one (Powell 2001, 272). Indeed, in many countries (federated or not), incorporation of international law is often a matter of contestation and dialogue over norms and policies, rather than a strict direct application. For example, in the US, acceptance of human rights treaties may be bottom-up (such as when cities adapt pro-CRC resolutions) as well as top-down (Davis 2018).

Of course, the US has not actually ratified the CRC. Even without ratification, however, a similar dialogic and cooperative process could still advance children's rights in the US. The Committee on the Rights of the Child offers guidance on how this could occur (see the prior section). Providing financial resources, setting centralized guidelines, creating oversight bodies and mechanisms, drafting a national action plan, and other activities can all occur without endangering federalism, for example. A cooperative model of promoting children's rights is challenging, however, in a highly charged political context, as evidenced by clashes between the federal government and some state governments over school mask mandates.

In theory, the CRC could provide helpful guidance for a nuanced discussion about school masking policies. Mask policies in schools should consider the right to health of the entire student body, but also evaluate what reasonable accommodations can be made to protect students with disabilities or other health vulnerabilities that put them at high risk for COVID-19-related complications. Similarly, schools should also consider the right to education

of the students, including factors such as the impact of such policies on the quality of education, whether alternatives to masking (like remote learning) may harm the right to education, how parents can be involved in school governance decisions, and the risk that parents will withdraw children from school either out of anger about a mask policy, or out of fear for their child's health in an unmasked environment. Principles in the CRC could potentially also be useful in guiding a more nuanced discussion of the scope of parental rights in relation to school governance decisions and in a pandemic context.

In reality, because the CRC itself is politicized in the US, it may not always be the most helpful avenue for promoting dialogue. Notably, however, many CRC principles already align with US law. For example, on issues such as disability rights (like reasonable accommodation) and best interests of the child, there are significant overlaps between the CRC and US law. Advocates can use these principles to attempt to recenter dialogue on the rights and best interests of the child.

Critics of the CRC in the US often view it as endangering federalism or local decision-making over educational choices. However, as a counterpoint, the CRC as interpreted by the Committee on the Rights of the Child is often supportive of local decisions around schooling, but offers guidance on the limits of that local governance when the rights of the child are endangered, and recognizes that central resources and support are often needed to aid local entities in realizing children's rights. In the masking context, for example, bans on masks endangered children's rights by preventing local authorities from making choices about what policies could best guarantee children's health and educational rights.

Principles derived from the CRC would encourage states to enable local decision-making in this context. In the US, as noted above, federal treaty power overreach is unlikely in practice. The case of school mask mandate bans may serve as an illustration of how implementing the CRC in the US would not be a straightforward matter of extending federal authority, but rather would operate on multiple levels, including at times to support local decision-making power.

## Conclusion

Educational rights under the CRC often involve very local actors, including schools and local school governance. This means that, in the educational context, human rights law obligations set at the international level may be primarily implemented at the most local level. The process of translating a state's international obligations domestically may therefore require complex interactions across multiple levels of government, particularly for federalist states.

As illustrated by the US experience with mask mandate bans, protecting children's rights in federated contexts is not merely a question of the federated entity versus the national. Mask mandate bans sometimes pitted state governments against local school boards who wanted to introduce mask policies, with consequences for relations across three tiers of government—federal, state, and local. These debates rapidly became highly politicized. They also occurred in a broader context where US ratification of the CRC itself has become a partisan issue, blocking CRC ratification at a national level even as some states and localities have made commitments supporting the CRC.

Many features of the American mask mandate debates arise from a particular partisan cultural moment, but the US experience also reflects universal challenges for federated states. Contestations for control—of education or of other matters—between national and subnational governments are frequently politically fraught. In some countries, they are linked to complex histories of violence, civil war, and/or colonialism. Such issues are not new, but social media and the Internet have enabled these debates to invade the classroom much more easily. As evidenced by the rapid politicization of school board meetings in the US, very local fora can become theaters for contentious national issues, diverting attention from a proper focus on the educational needs of children.

The Committee on the Rights of the Child has specified that states must ensure subnational authorities have the necessary resources for implementing the CRC and retain sufficient authority and oversight to ensure compliance in contexts of decentralization. It also affirms, however, the importance of community-based education. Local participation in education is often tied to issues of respect for minority rights and culture, and commentary by the Committee has criticized central governments for failing to respect diverse local contexts. Beyond these basic guidelines, however, the Committee has not commented extensively on issues of federalism or local governance in the context of education. The Committee, like other treaty bodies, remains agnostic on the precise internal arrangements by which states choose to implement their CRC obligations.

This creates a persistent challenge for implementing educational rights under the CRC. States must impose sufficiently central or higher-level oversight systems to guarantee protection for children's rights. But they must also respect the cultural, social, religious, and other rights of communities (especially minority communities), the right to family life and parental rights, and the crucial role of local systems such as school boards, that may be better positioned than a national government to identify the needs and best interests of children in their locality.

Striking a balance between these concerns may be particularly difficult in federalist contexts as well as highly politicized ones, as evidenced by the US mask mandate debates. In the US, the federal government has relatively

little power to directly prevent states from enacting such bans. However, advocates were successful at using lawsuits around existing constitutional rights to challenge bans, while the federal government developed responses based on its funding powers and authority under anti-discrimination laws. In this respect, contention over mask mandate bans in the US may serve as an example of how, even within contexts of deep political divide where cooperation is unlikely, states with federal arrangements can find ways to promote children's rights. This process may involve multiple actors and a range of policy strategies, but in this respect, it is not so different from any efforts to incorporate international human rights locally.

After more than three decades, the CRC has achieved near universal ratification, with the US as the unfortunate remaining exception. The challenge for the next few decades will be translating CRC commitments into a domestic reality where the educational rights of children are respected. Ideally, educational policy debates between national and local actors should be grounded in the rights and interests of the child, rather than political showmanship. In reality, overcoming rancorous political or regional divides may require creative policy and advocacy strategies. At the international level, a more rigorous discussion of federalism and local educational governance in the context of the CRC could provide useful guidance to states experiencing difficult internal disagreement over educational policies.

### Note

- 1 Committee on the Rights of the Child, concluding observations: Canada, paras. 8–9, <https://undocs.org/CRC/C/15/Add.215>

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## Part II

Children's rights in armed conflict  
and vulnerable contexts



## “Chaos and cruelty”: family separations and the rights of immigrant children

*Amy Risley*

Lidia is one of the countless survivors of sexual and gang violence in her home country of Honduras. After suffering through the ordeal of being held hostage and assaulted, she received a death threat from gang members. Lidia fled to the United States with her two-year-old son and was taken into custody in Texas. When guards removed Lidia from her cell, they told her she would be able to return to her child, who was asleep. Instead, mother and son were separated. An agent reportedly warned, “This is what happens when you come to my country” (Muñiz de la Peña et al. 2019, 159).

An estimated three thousand children were forcibly separated from parents and caregivers at the US–Mexico border between April and June of 2018. The total number of separations enacted during Donald J. Trump’s presidency may exceed 5,400 (OIG 2021). The administration’s “zero tolerance” policy required each of the US Attorney’s Offices along the Southwest border to prosecute everyone referred by the Department of Homeland Security (DHS) for illegal entry violations. The decision to prosecute adults apprehended with children entering the US represented a break with longstanding practices (OIG 2021).<sup>1</sup> Zero tolerance quickly earned the moniker “zero humanity” (Thompson 2018). The American Academy of Pediatrics characterized the separations as “government-sanctioned child abuse” (Soboroff 2020, 246). The conditions of detention were often squalid. Record keeping and tracking of separated families were woefully inadequate. Viable plans for reunification were absent. The separations constituted cruel and degrading treatment and, in some cases, torture. The policy *deliberately* caused trauma to punish families and modify the parents’ behavior, contrary to treaty obligations and domestic laws. Parents’ substantive due process rights were violated. Tragically, six immigrant children had died in US custody as of May 2019 (Todres and Fink 2020).

Members of the administration sacrificed the rights and well-being—and even the lives—of children to appear “tough” on immigration and deter people from seeking entry to the US. The separations policy violated numerous rights enshrined in the Convention on the Rights of the Child (CRC),

which is undoubtedly the most authoritative word on states' obligations to children, including migrant children (Pobjoy 2017). These included the rights to be cared for by one's parents; to one's own identity; to be heard; to life, survival, and development; and to protection and humanitarian assistance (among others). The US government abandoned the principle of the best interests of the child and violated the right to family integrity. Immigrant children have rarely enjoyed the intended benefits of the global children's rights regime. This case demonstrates, moreover, that their rights and dignity were under siege.

The present chapter analyzes this crisis of children's rights and the "chaos and cruelty" of family separations (Committee on the Judiciary 2020, 13). I first investigate the policy's *origins*. Many of the punitive measures that the administration enacted can be traced to the discursive strategies and policy proposals of restrictionist interest groups. For years, anti-immigration hardliners had argued that child-protection policies and "loopholes" in asylum law had incentivized unauthorized migration from Central America. High-level government officials deployed similar discourses and implemented dozens of harsh policies targeting families and children from the region. People like Lidia and her young son bore the brunt of those decisions. The chapter also addresses the *consequences* of the separations and related policies. I argue that they led to a human rights catastrophe.

### Existing scholarship

Numerous studies have analyzed the rights and treatment of unaccompanied, refugee, and asylum-seeking children, especially in the European context (Brittle and Desmet 2020; Josefsson 2017). Much of the existing scholarship emphasizes the CRC. However, the Convention's practical realization has been limited (Bhabha 2014; Risley 2019). States have detained immigrant children and refused to provide legal representation. Unaccompanied child asylum seekers must navigate complex administrative and legal procedures alone (Bhabha 2014). Policymakers seem "torn between sympathy and hostility, between a concern to protect and a pressure to punish" (Bhabha 2014, 281).

The US is the only country that has not ratified the CRC.<sup>2</sup> The treatment of child migrants seldom conforms to global norms. Scholars have argued further that the immigration system "demonstrates a stark callousness toward children" (Thronson 2018, 161). Children who are eligible for different forms of protection face significant procedural and legal obstacles and high evidentiary standards that they have fled dangerous conditions in their home country (Frydman and Bookey 2018; Thronson 2018). Because

the government does not provide representation, many children rely on *pro bono* attorneys. The demand for their services usually exceeds the supply. In particular, children and teens seeking asylum after fleeing the Northern Triangle countries of El Salvador, Guatemala, and Honduras have faced an uphill legal battle. Their fears of gang violence, forced recruitment, threats, and reprisals are often legitimate, yet asylum is rarely granted (Bhabha 2014).

Following the end of the Cold War, the US, Australia, and some European countries embraced deterrence-based policies and devised strategies to repel asylum seekers (Hamlin 2014; see also Tazzioli and Stierl 2021; Triandafyllidou and Dimitriadi 2014). High numbers of migrants from developing areas, unanticipated types of persecution claims, sizeable backlogs, and limited political support have weakened states’ commitments to asylees and refugees. The Trump administration’s forcible separations at the border should be analyzed in the context of these broader shifts toward deterrence. Trump’s punitive migration policies should also be considered an integral part of the administration’s broader anti-human-rights agenda and the marked decline of the United States’ commitment to liberal internationalism—multilateralism, economic cooperation, and the promotion of human rights, democracy, and liberal values (Regilme 2019, 2022). Yet surprisingly few scholars have offered in-depth analyses of the separations policy, its origins, or its human rights implications (Frye 2020; Rislely 2021, 2023, forthcoming; Todres and Fink 2020). The present chapter contributes to this small (but growing) area of inquiry.

### Arguments

Drawing from constructivist approaches, I argue for the importance of ideational and discursive variables in explaining the policy’s adoption.<sup>3</sup> Key government officials, influenced by members of restrictionist interest groups, deployed racist-nativist discourses.<sup>4</sup> Representations of immigrants revealed animosity toward Latin Americans and immigrants of color more broadly. Such groups exercised significant influence over immigration hardliners within the Trump administration. One of their favored proposals was to eliminate protections for child migrants, including the provisions of the 1997 *Flores v. Reno* court settlement. A second priority was to end “catch and release,” the policy of releasing individuals until their immigration proceedings took place.

Next, the chapter traces the calamitous effects of the administration’s policies. Drawing from children’s rights-based perspectives, I contend that the forcible separations and detention policies violated a number of

fundamental rights recognized by the international community. As noted earlier, these rights are enshrined in the CRC: protection against being separated from one's parents against their will (Article 9); the right to be cared for by one's parents (Article 7); and the right to one's own identity (Article 8), which was jeopardized by the failures to properly document and track the separated children (Todres and Fink 2020). Children's rights to life, survival, and development (Article 6) were also threatened; the authorities inflicted severe trauma at every stage of detention, separation, and failed reunification. Refugee and asylum-seeking children were denied protection and humanitarian assistance (Article 22). Numerous child migrants were also denied the right to be heard and have their views considered during immigration proceedings (Article 12). Furthermore, the policies made a mockery of the best-interest principle (Article 3). One of the CRC's guiding principles is that the best interests of the child should be a primary consideration in all actions concerning children.

In summary, immigration policy became synonymous with human rights violations under Trump's leadership. Although the administration's actions were especially egregious, they exemplify longstanding patterns of US migration policy. Government officials in the US and in other countries across the globe are willing to sacrifice children's rights and well-being to deter migrants. Thus, immigrant children have often been excluded from the intended benefits of the global children's rights regime. Notwithstanding its near-universal ratification, the CRC remains an aspirational document.

### The policy's origins

As suggested earlier, the impact of interest groups' discourses should not be underestimated. This section emphasizes their persistent claims that child-protection policies and asylum loopholes were driving unauthorized migration from Central America. The analysis is organized as follows: I first provide a brief overview of several restrictionist think tanks and interest groups. I then discuss how the groups allied with then-Senator Jeff Sessions and his young staffer, Stephen Miller, prior to Trump's election. Their office became known as the unofficial headquarters for the restrictionist movement (Kulish and McIntire 2019). Sessions would eventually serve as attorney general under Trump; Miller became a trusted policy adviser. Several other people from Capitol Hill were hired to enact radical changes to immigration policy. Members of interest groups also joined the administration; they actively shaped policies and provided access to likeminded individuals.

*Restrictionist groups*

The Federation for American Immigration Reform (FAIR) seeks dramatic reductions to legal immigration and opposes efforts to legalize unauthorized immigrants. The Immigration Reform Law Institute (IRLI) serves as FAIR’s legal arm. The Center for Immigration Studies (CIS), meanwhile, positions itself as a leading think tank. The groups’ founders, members, and donors have varying reasons for opposing immigration, including concerns that “unbridled” immigration is economically and environmentally costly and that certain groups will not assimilate (e.g., O’Brien et al. 2016). Eugenicians who believed in the genetic superiority of whites and population control for non-whites played an outsized role in the early years of the restrictionist movement. Cordelia Scaife May, heiress to the Mellon fortune, was an “ardent nativist” who believed that the US was “being invaded on all fronts” by foreigners who “breed like hamsters” (Kulish and McIntire 2019). May helped create the contemporary restrictionist movement by bankrolling FAIR, CIS, and other groups; funding flows have continued via her Colcom Foundation, established in 1996. Fellow nativist John Tanton leveraged May’s millions in the 1980s and 1990s to build and sustain multiple organizations. He also had connections to white nationalists and eugenicians. Tanton voiced concerns over the “Latin onslaught” and insisted that the country needed “a European-American majority, and a clear one at that” (DeParle 2019).

Some Colcom-funded groups and their associates have exploited fears of immigration (and parallel demographic changes), disseminated racist ideas, and maintained ties to white nationalists. To illustrate, VDare, a white nationalist-friendly website, has published pieces on “white genocide” and “great replacement” conspiracy theories about whites being systemically replaced by non-whites (Hayden 2020; Kulish and McIntire 2019). FAIR’s members, meanwhile, have deployed racist nativist discourses. A television program produced by FAIR in 1996 featured interviews with Sam Francis, Jared Taylor, and Peter Brimelow; guests discussed the immigrant “invasion” that would destroy America (People for the American Way 2015, 8). During a different interview with a white nationalist guest, FAIR’s Dan Stein asked, “How can we preserve America if it becomes 50% Latin American?” (SPLC 2020b). Stein has also drawn attention to higher birth rates among Latinx immigrants compared to the native-born and suggested that immigrants are pursuing “competitive breeding” that will diminish the power of the white majority (People for the American Way 2015). In a piece for the *Wall Street Journal* published in 1997, Stein issued a dire warning: “Immigrants don’t come all church-loving, freedom-loving, God-fearing. ... Many of them hate America; hate everything that the United States stands for. Talk to some of these Central Americans” (SPLC 2020b).

*Anti-immigration discourses*

By the mid-2000s, Senator Sessions had made contact with restrictionist groups and fashioned himself as an opponent of immigration—including *legal* immigration (Hirschfeld Davis and Shear 2019). In 2009, Sessions hired Miller, who had become well known in anti-immigration, rightist circles. David Horowitz, a staunch Islamophobe, was his mentor. While earning his undergraduate degree at Duke, Miller engaged with other controversial figures, including Richard Spencer, who was destined to become one of the country's most recognizable white nationalists and "alt-right" leaders. In 2007, Spencer and Miller organized a debate on immigration featuring VDare founder Peter Brimelow (SPLC 2020a).

While Miller worked for Sessions, he collaborated with CIS, FAIR, and additional groups (Blitzer 2020). Sessions's staff, other congressional staffers, interest groups, and conservative and alt-right media—most notably Breitbart News—enjoyed a "symbiotic" relationship (DeParle 2019). Together, they helped defeat bipartisan immigration reform. They also tried to mobilize white, working-class voters by heightening (or creating) resentment toward immigrants. A policy analyst at CIS, for instance, warned that Mexicans and Central Americans posed an economic and cultural threat (People for the American Way 2015). Approximately nine hundred private emails that Miller sent to Breitbart news editors between March 2015 and June 2016 provide a glimpse into Miller's tireless efforts to stoke fears of ethnic "others" and his attraction to white nationalist ideas. Miller promoted content from VDare and similar sources that depicted people of color as violent criminals. In addition, he dabbled in the "great replacement" conspiracy theory by lamenting the "new America" that demographic change was creating (Hayden 2020).

Immigration hardliners shared other discourses in common. Restrictionists seldom emphasized the "push" factors driving migration out of the Northern Triangle countries, including high rates of political, criminal, gang-related, gender-based, and domestic violence. They argued instead that policy and legal "loopholes" were powerful "pull" factors. As noted previously, many used "catch and release" pejoratively and assumed that immigrants failed to appear in court for their proceedings (Shuchart 2019). In 2014, members of FAIR identified what they deemed as the most important pull factor driving Central American immigration to the US: the "perception that illegal aliens who show up at our borders will be admitted and allowed to remain here indefinitely—especially if they are minors, or families with children in tow" (Stein 2014). Another FAIR publication from that year concluded that "illegal aliens" rarely had legitimate claims to asylum; most were "economic migrants seeking greater opportunity—not fleeing persecution" (Martin 2014).

Sessions and Miller likewise disparaged catch and release (Blitzer 2020). In 2015, they circulated a document titled “Immigration Handbook for the New Republican Majority.” According to the Handbook, “immigration benefits for illegal immigrant minors (and their relatives) has [*sic*] created an enormous enforcement loophole and magnet” (Sessions 2015, 6). Sessions and Miller recommended repatriation of unaccompanied immigrant children, mandatory detention and expedited removal, and prevention of asylum fraud. They also discussed an ostensibly “illegal immigration surge from Central America” and claimed that around 99 percent of children and adults who had arrived with family members were “still in the United States” (2015, 6). It is telling that the document drew from multiple CIS analyses and cited their estimate that more than one hundred thousand “illegal immigrants who showed up at the border” that year had been released into the US (2015, 6). Catch and release was to blame. After hopping aboard the Trump campaign, Miller included each of these ideas and proposals in the candidate’s speeches. When Trump announced ten immigration proposals in August 2016, his speech mirrored the 2015 Handbook’s proposals. First on the list was “build the wall.” Ending catch and release was the second priority.

Meanwhile, CIS was recommending specific steps that the next president should take on immigration. Included in their April 2016 document were the very policies that the administration would eventually enact. They amounted to an assault on Central American (and other) immigrants. CIS called for detention of “individuals who lack legal status but who are seeking asylum ... Doing so will restore integrity to an out-of-control system that encourages both border surges and asylum fraud” (CIS 2016, 5). They proposed denying asylum “to any alien who could have sought asylum in countries through which he has traveled en route to the United States,” including Mexico (2016, 5). CIS also demanded expedited removals of “illegal aliens” from the US, “including the surge of arrivals on our southern border” (2016, 9). Elsewhere the document suggested that “many” Central Americans were economic migrants and therefore unable to establish a credible fear of persecution (2016, 6).

Similarly, FAIR published “Immigration Priorities for the 2017 Presidential Transition” in November 2016. The authors endorsed the following measures: decreasing the number of individuals receiving refugee or asylum status; denying asylum to individuals who could have sought protection from other countries they traversed en route to the US; and ending catch and release (O’Brien et al. 2016). The bottom line is that the Trump administration eventually tried to implement *all* of these proposed policies—and numerous others included on CIS’s and FAIR’s wish lists. Some policies were adopted but subsequently challenged in court; others actually went into effect.

*The “keys to the kingdom”*

Members of interest groups assumed important positions in the new administration following Trump's election in 2016. For instance, FAIR personnel seized control of US Citizenship and Immigration Services (USCIS), a DHS agency that works on applications for citizenship, visas, and asylum. Robert Law joined USCIS as a senior policy adviser. He had directed lobbying and government relations at FAIR and co-authored the above-mentioned “Immigration Priorities.” Elizabeth Jacobs, FAIR's government relations counsel, became USCIS Senior Adviser. Julie Kirchner, the group's executive director and a lobbyist, was eventually named as the USCIS ombuds. Additionally, FAIR's John Zadrozny took a position in the State Department, where he helped make refugee policy far less generous.<sup>5</sup>

FAIR's leaders were overjoyed. Stein remarked, “It certainly is delightful to see folks that we've worked with ... advance and contribute to the various efforts of the administration, most of which we support” (Hayden and Bejarano 2020). In contrast, immigrants' rights advocates were appalled. “These groups have spent 20 years looking for ways that they could hurt immigrants,” the deputy director of America's Voice observed, and “now they've been given the keys to the kingdom” (Bernal 2017).

Email records obtained by American Oversight reveal that members of groups shared news and analysis, hosted and/or attended meetings, signaled support for the administration's immigration agenda, and collaborated on policy (e.g., American Oversight 2021a, 2021b, and 2020). Already in 2017, a CIS blog post referred to themselves as the administration's “go-to source for immigration research” (Western States Center 2020). Moreover, individuals who had worked at FAIR kept various groups in the loop. In summary, members of interest groups eagerly supported the efforts of Sessions, Miller, and other hardliners, discussed below.

**A policy of “government-sanctioned child abuse” takes shape**

Miller was in regular contact with key officials during “critical moments” in the formulation of the separations policy (American Oversight 2021b). Sessions was also instrumental in its implementation (OIG 2021). Gene Hamilton was another important player. He had served as general counsel to Sessions when he chaired the Senate Committee on the Judiciary. In the administration, he was senior counselor to the homeland secretary in DHS and then counselor to the attorney general in the Department of Justice (DOJ) during the adoption of the zero-tolerance and separation policies.

After Trump’s election, Hamilton led a transition team on immigration that prepared several sweeping executive orders ([Hirschfeld Davis and Shear 2019](#)). Participants were reportedly eager to end catch and release ([Ainsley 2017](#)). The team included L. Francis Cissna, who had interacted with groups such as CIS while working with Senator Chuck Grassley. Other former staffers for Grassley and additional lawmakers participated. These individuals then joined the administration with positions in USCIS, Immigration and Customs Enforcement (ICE), and elsewhere ([Hirschfeld Davis and Shear 2019](#)). Soon after his inauguration, Trump issued the executive orders. A central priority was to end catch and release and detain all “unauthorized” immigrants apprehended at the border, including asylum seekers. The goal was to end the purported “abuse” of parole and asylum provisions.

Miller, Hamilton, and Sessions were convinced that Central Americans were exploiting legal “loopholes” while seeking entry into the US with children. The example they usually offered was the 1997 *Flores v. Reno* court settlement, which requires the government to release children from immigration detention to (in order of preference) a parent, other adult relatives, or licensed programs. If children cannot be released, they must be held in the least restrictive environment ([Committee on Oversight and Reform 2019](#)). According to a 2015 court decision, children could not be held for more than 20 days in detention with their parents. Importantly, the settlement’s protections applied to both accompanied and unaccompanied children. White House documents argued that *Flores* incentivized adults to cross with a child and gave them a “free pass” into the interior ([White House 2019](#)). It “hampered the Government’s ability to detain and promptly remove” families and unaccompanied children; these types of protections merely encouraged “more illegal immigration” ([White House 2018b](#)). Hamilton advocated for policies with “consequences for unlawful entry, especially if people were coming over with children” ([OIG 2021](#), 23). Miller was relentless in his quest to overturn *Flores*, allow lengthier family detention, and remove protections for unaccompanied children (American Oversight n.d.).

The administration considered separations without delay. On February 2, 2017, USCIS briefed asylum officers on a related proposal. On February 14, the acting Customs and Border Protection (CBP) commissioner met with representatives from ICE, DOJ’s Executive Office of Immigration Review, DHS’s policy office, and the Department of Health and Human Services’ Office of Refugee Resettlement (ORR). They discussed separations as a way to end catch and release ([American Oversight n.d.](#)). In April 2017, Sessions directed US Attorney’s Offices along the Southwest border to develop prosecution guidelines that would deter first-time entrants ([OIG 2021](#)). By July, an unannounced pilot project in the El Paso sector of the border was already being enacted. Policy memos, including “Policy Options to Respond to

Border Surge of Illegal Immigration,” dated December 16, 2017, called for a significant increase in prosecutions of family unit parents for illegal entry or re-entry and the separation of family units (OIG 2021).

The border “surge” remained squarely on the policy agenda in 2018. Members of interest groups tried to heighten the issue’s salience with warnings about “caravans” of Central Americans who were approaching the border. In March, CIS’s communications director emailed the White House suggesting that “1000–1500 Central Americans headed this way are being trained on what to say (credible fear) to be allowed entry” (American Oversight n.d.). Additionally, USCIS officials were circulating an analysis that CIS had prepared in 2017. According to CIS, smugglers and “economic migrants” were exploiting the credible fear process (Arthur 2017). Its members described credible fear screenings as the government “waving aliens through ports of entry ... simply because they utter magic incantations” (Cadman 2017).

Miller, who had Trump’s ear, repeated these claims. Migrants only had to say “certain magic words,” he explained (Hirschfeld Davis and Shear 2019, 242). He also continued to remind the president about catch and release and *Flores*. A White House briefing dated April 2018 warned that “waves” of migrant children and families were “exploiting” loopholes. After their release, they would fail to show up for court dates or comply with removal orders; they would remain in the US indefinitely. Meanwhile, the caravans contributed to a steady “flow of illegal aliens into American communities” (White House 2018a).

DOJ finalized the policy. Sessions instructed Hamilton to draft the final directives that would enact zero tolerance. On April 6, Sessions announced that each US Attorney’s Office along the Southwest border would prosecute all DHS referrals for illegal entry violations to the extent practicable under 8 USC § 1325(a). He insisted that the authorities “take away children” (OIG 2021, 39). Hamilton was adamant that an “illegal alien” should not get a “free pass” just because they had crossed with a child (2021, 30).

Members of FAIR and CIS heartily endorsed the policy. Stein defended separations during an appearance on Fox Business (2018). He offered the usual critiques of *Flores* and other “loopholes.” FAIR’s website also supported the elimination of *Flores* and the closure of “asylum loopholes which encourage illegal immigration by treating children as get-out-of-jail-free cards” (FAIR 2021). CIS’s Mark Krikorian similarly identified children as a “get-out-of-jail-free card for illegal border-crossers” (Krikorian 2018). He asserted that *Flores* and the release of children “enabled an increasingly large share of new illegal aliens to get past the border and embed themselves in our society.” The “policy of prosecuting all border-jumpers—including those bringing children with them—is a much-needed deterrent,” he concluded (Krikorian 2018).

Thus far, I have argued that restrictionist interest groups helped lay the foundation for an eventual family separations policy. Members of these groups had long influenced the political discourse and policy ambitions of the individuals destined to join the administration. They enjoyed unprecedented access during the campaign, the transitional period following the election, and multiple phases of policymaking. Some even assumed positions in the administration and became directly involved in formulating policies. Stated briefly, extremists previously dismissed as “fringe” political actors used their newfound authoritative power in government to enact extreme measures. The policy’s implementation was, in a word, disastrous. The remainder of the chapter will analyze how separations were enacted and examine their human rights consequences.

### **The policy’s consequences: “You don’t have any rights here”**

Government offices exercising their oversight role identified several factors that doomed the policy’s implementation. To begin with, the administration failed to provide advance notice of zero tolerance to front-line agents. This caused chaos and inconsistent implementation of the policy across border sectors ([Committee on the Judiciary 2020](#)). Other hindrances included poor interagency communication and coordination and a “deficient understanding of the legal requirements related to the care and custody” of children ([OIG 2021](#), i). These failures created logistical challenges for all involved and, in particular, hindered ORR’s efforts to identify and reunify separated children ([2021](#), 82). In May 2018, ORR was already operating at 87 percent capacity for unaccompanied immigrant children referred to its custody ([Committee on the Judiciary 2020](#)). The administration ignored warnings about its ability to handle an influx of children ([Committee on Oversight and Reform 2019](#)). Some children were moved around to different facilities, which added to the confusion and cruelty. Parents had no knowledge of their children’s whereabouts, and vice versa. Hundreds of parents were deported without their children while the policy was in effect.

Conditions at the temporary CBP facilities were, in a word, “alarming” ([Todres and Fink 2020](#), 391). Journalists painted vivid pictures of chain-link enclosures or “cages” holding unaccompanied and separated children. A pediatrician used the term “torture facilities” to describe the extremely cold temperatures, lights left on around the clock, and limited access to medical care, basic sanitation, hygienic supplies, water, and adequate food ([2020](#), 392). Overcrowding, violations of privacy, and severely restricted communication with family members were reported. Allegations of verbal,

physical, and sexual abuse and the forcible administration of psychotropic drugs surfaced immediately.

Existing studies have shown that sudden, chaotic, and/or prolonged separations adversely affect children (e.g., [Muñiz de la Peña et al. 2019](#)). Young people separated under zero tolerance exhibited greater fear and post-traumatic stress compared to children who had not been separated. Some suffered from acute grief and cried inconsolably. Those who could not understand what had occurred or who felt abandoned experienced severe distress. Two Honduran children were separated from their mother and placed in different foster homes; they had no contact with their mother for more than three months. Her son described the separation “as the most upsetting and lasting traumatic event” of his life despite having previously experienced multiple traumas and forms of violence ([Muñiz de la Peña et al. 2019](#), 160). The policy also created tremendous hardships for parents and guardians. They reported “extreme mental anguish” and feelings of helplessness since they could not protect their own children; some described their familial relationships as “damaged” ([Amnesty International 2018a](#), 36).

Facing condemnation from all directions, Trump reversed the policy on June 20, 2018. His executive order directed DHS to halt the separations. On June 26, the US District Court for the Southern District of California issued an injunction prohibiting DHS from detaining parents and children separately. The court ordered the government to reunite all separated children in custody with their parents or an appropriate sponsor ([Committee on the Judiciary 2020](#)). Not surprisingly, the administration failed to meet the mandated deadlines.

The separations policy violated the most basic human rights recognized by the international community.<sup>6</sup> According to Physicians for Human Rights (2022), the forcible separations constituted cruel, inhuman, or degrading treatment and met the criteria for torture, defined as an intentional act causing severe physical or mental suffering for the purpose of coercion or punishment and carried out by state officials (or with their consent). Amnesty International (2018b) reached a similar conclusion: the authorities “purposefully” inflicted “extreme suffering,” which in some cases amounted to torture under both US and international law. Legal experts concurred. Using separations to harm individuals with the goal of deterring immigrants fit the definition of torture under the UN Convention Against Torture, which the US had ratified and incorporated into domestic law ([Tumlin 2019](#)).

The separations policy violated rights included in the International Covenant on Civil and Political Rights, also ratified by the US. The Covenant protects immigrants’ due process rights in the case of expulsion as well as the right to the family ([Frye 2020](#)). The lawsuit *Ms. L. v. ICE* likewise invoked

the right to family integrity. It was filed in February 2018 on behalf of an asylum-seeking mother who had been separated from her seven-year-old daughter (Todres and Fink 2020).

Moreover, the Trump administration engaged in sustained efforts to block, expel, and criminalize asylum seekers, contrary to international and domestic law. The authorities separated families who were seeking protection and lawfully presenting themselves at a port of entry (Amnesty International 2018a). Multiple detainees separated from their children reported that CBP and ICE officials had used coercion. In some cases, parents were misled or induced into signing documents relinquishing their legal rights and their rights to asylum (Muñiz de la Peña et al. 2019). Under duress, detained parents gave up their parental rights and placed their children in the government’s custody; there were no guarantees that children would be returned to their care. A DHS officer reportedly told an El Salvadoran father and asylum seeker, “You don’t have any rights here” (Amnesty International 2018a, 6).

When the authorities separated families, they re-categorized the children as unaccompanied and processed their asylum cases separately. Children were forced to undergo immigration proceedings alone and out of touch with their parents, who might have much-needed information or documentation in their possession (Amnesty International 2018a). They had to represent themselves in court or find an attorney to do so. The very young could not fully understand, let alone articulate, the reasons why their families had fled (Muñiz de la Peña et al. 2019). The likelihood of a fair hearing was greatly diminished despite the fact that some individuals had valid claims to protection.

Additionally, the policy violated the terms of the *Flores* settlement and the court decisions interpreting it. Many children were not released from immigration detention in a timely manner nor held in the least restrictive environment, allowed contact with family members, or treated with dignity, respect, and concern for their special vulnerabilities as children. Safe and hygienic conditions were lacking. Lawsuits have alleged that both the length and the conditions of detention in CBP, ICE, and ORR facilities failed to comply with *Flores* (Todres and Fink 2020).

The policy was undoubtedly an affront to the best-interest principle, a cornerstone of the global rights regime. Punitive, forcible separations are “never in the best interest of the child” (Amnesty International 2018a, 27). The UN has encouraged states to incorporate the standard into immigration law and policy and, indeed, all procedures involving children. Article 3 of the CRC states that the principle be given “priority consideration” (Todres and Fink 2020, 411). Moreover, the separations and detention policies violated a myriad of rights enshrined in the CRC. As noted previously, these include (but are not limited to) the right to be cared for by one’s

parents (Article 7); the right to one's own identity, including nationality, name, and family relations (Article 8), which was undermined by the failures to properly document and track the separated children; and protection against being separated from one's parents against their will, unless it is in the child's best interests (Article 9). The policies also jeopardized the right to life, survival, and development (Article 6) considering the trauma inflicted during all phases of the policy. Officials likely violated the principle of non-discrimination on the basis of ethnicity or nationality (Article 2) by targeting immigrant and asylum-seeking families from Northern Triangle countries (Todres and Fink 2020). In addition, Article 22 recognizes that refugee and asylum-seeking children are entitled to appropriate protection and humanitarian assistance (Brittle and Desmet 2020). The right to be heard and have one's views considered is also relevant to immigration proceedings (Pobjoy 2017). The policy denied children these (and other) rights.

## Conclusions

During Trump's presidency, immigration policy became synonymous with human rights and due-process violations. Forcible separation from parents is one of the most significant traumas a child can experience. The Trump administration deliberately inflicted this trauma on children while also causing their parents, caregivers, and families to suffer. The policy violated basic human rights recognized by the international community, including the right to family unity and freedom from torture and ill-treatment. In addition to denying children their fundamental rights, the policy sought to deter immigrants and coerce asylum-seekers into relinquishing their claims to protection.

The trauma of separations is ongoing. After the policy formally ended, the authorities continued to separate children from their parents. By the end of 2019, the government had separated more than 1,150 children since June 2018, when the court ordered the practice to stop (KIND 2020). Officials stated that they had separated families out of concern for the child's safety or due to the parent's criminal background. Advocates challenged these claims and pointed out the CBP agents' scant expertise in child welfare (KIND 2020).

One of Joe Biden's first actions as President was to create an interagency task force to reunify separated families. Immigrants' rights groups have steadfastly supported these efforts. As of November 2021, the task force had facilitated the reunification of 61 children with their parents, and 206 additional children were undergoing the reunification process (KIND 2022). The process has been slow and arduous due largely to deficient recordkeeping under the previous administration. Biden administration officials have also taken steps to overturn some of the asylum-blocking measures enacted by

their predecessors. For instance, the Migrant Protection Protocols, launched in January 2019, had forced tens of thousands of people with a credible fear of persecution to await their court hearings in Mexico. The Biden government sought to end the policy. However, their actions were challenged in court, and they were ordered to resume the program. More troubling still, the exemption of unaccompanied children from the program led to more families breaking up, as parents sent their children to the border alone (KIND 2022).

This chapter has contributed to existing scholarship by offering a rights-based analysis of recent US immigration policies. I have also shed light on the political and ideological forces that are driving the contemporary crisis in children’s rights. More research is urgently needed to uncover other institutional, structural, and related causes. Additionally, future studies should consider Trump’s punitive policies in their broader historical context. The US government tore families apart when they sent Native American children to boarding schools. The institution of slavery notoriously entailed family separation. More recently, immigrant detention and deportations have jeopardized family integrity and heightened the vulnerability of children, including US-born citizen children. The best-interests principle has played a rather limited role in decisions to deport their parents (Pobjoy 2017).

Not surprisingly, advocates have long demanded legal and policy reforms, including child-centered due process, court-appointed representation, better translation services, and other measures that would align with regional and international legal standards regarding refugee rights and children’s rights. Personnel must be properly trained in child development, psychology, and post-trauma care. Separations should only occur in exceptional circumstances out of concern for the child’s well-being. Even then, a child welfare professional would be responsible for making such determinations according to explicit criteria and subject to supervisory review and approval (KIND 2020).

The lived experiences of the youngest migrants who traverse the globe underscore the disconnect between reality and the global children’s rights regime. At any given moment, migrant children, both accompanied and unaccompanied, find themselves in situations of precarity and vulnerability; many are subjected to state-sponsored rights violations. Thankfully, we can transform policies and institutions. Indeed, we *must* pursue change if we are to create immigration systems that respect human rights and human dignity.

## Notes

- 1 Previously, the family unit was placed in administrative deportation proceedings without referring adults to DOJ for criminal prosecution. DHS would usually detain and remove the adult and children together or release them until their immigration hearing.

- 2 The US also failed to ratify the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); additional examples include the Mine Ban Treaty, the Convention on the Rights of Persons with Disabilities, and the Convention for the Protection of all Persons from Enforced Disappearance (Human Rights Watch 2009). Additionally, the US is not a State Party to the Rome Statute of the International Criminal Court.
- 3 The process of data collection and analysis for this project entailed consulting hundreds of documents that American Oversight obtained through Freedom of Information requests, including internal government communications and draft policies and external communications between officials and members of restrictionist groups. I also analyzed more than 150 government documents published on the White House and Homeland Security Immigration websites and performed content analysis of articles, reports, and press releases published by interest groups. This analysis draws from Risley (2023).
- 4 Racist nativism describes ideas that a native person's right to dominance is justified by assigning values to real or imagined differences; natives are perceived as white, while non-natives are perceived as people of color (Pérez Huber et al. 2008).
- 5 Meanwhile, Jon Feere, a legal policy analyst at CIS, became a senior adviser at Immigration and Customs Enforcement (ICE).
- 6 See Risley forthcoming for a more in-depth analysis of the policy's consequences and the rights violations it entailed.

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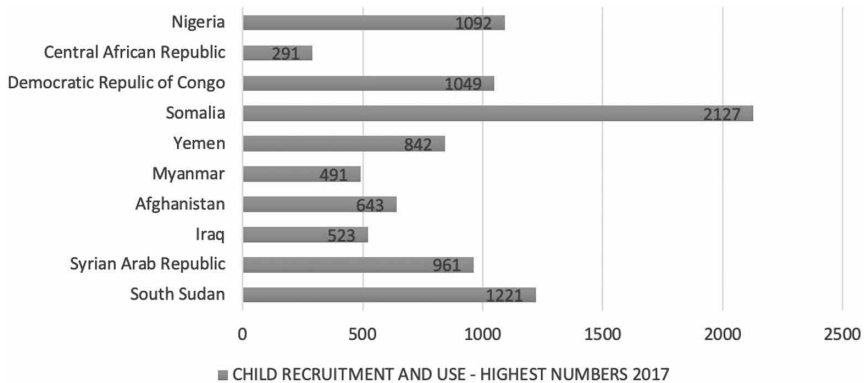
## Children's rights in Somalia: dignity under siege in armed conflict

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### Introduction<sup>1</sup>

In its 2021 report, Save the Children—the global civil society organization dedicated to children's rights and welfare—succinctly but insightfully describes the current state of the welfare of minors amidst multiple transnational crises: “as a result of climate change, conflict and COVID, a global hunger and food insecurity crisis is ravaging more than 40 countries, and nearly 200 million children are living in lethal war zones, experiencing life-changing consequences” (Save the Children 2021, 1). Remarkably, the groundbreaking report to the United Nations (UN) General Assembly contended that the presence of children in a conflict zone constitutes a violation of “every right of a child—the right to life, the right to be with family and community, the right to health, the right to the development of personality and the right to be nurtured and protected” (Machel 1996). The recruitment of children in wars is not historically new, considering that children have been deployed during the Second World War, the American Revolution, and the Civil War in Sierra Leone in the 1990s (Rosen 2015). These children have been recruited by government forces, armed rebel groups, and even paramilitary groups. There is a wide variation in their involvement in wars, as some of them are primarily engaged in the frontlines of armed conflict, such as in suicide missions, while some of them function as spies or messengers or are forced into sexual slavery. To recruit children, armed groups often abduct them, while other children join armed rebellion out of desperation, based on the belief that such groups offer their best chance for existential survival. The phenomenon of children associated with armed forces or groups (CAAFG) is not new, as it has evolved along with the changing characteristics of war.

Technological innovations generated weapons that are smaller, lighter, and easier to use (Kaplan 2005). This has allowed for the deployment of child soldiers with minimal training. The recent rise in child recruitment has fueled increased international attention to the issue. Figure 6.1 illustrates



**Figure 6.1** Child recruitment and use—highest numbers 2017 (UN General Assembly Security Council 2018)

that Somalia, South Sudan, and Nigeria had the highest number of reported child soldiers (UN General Assembly Security Council 2018). Child recruitment, however, is not limited to national borders, with both state and non-state actors coercing minors in armed conflict. For example, transnational armed rebel groups such as the Islamic State have been known to recruit children from the global North, as shown by the case of Shamima Begum from the United Kingdom (Masters and Regilme 2020). The deployment of children in armed conflict constitutes a grave violation of the right to life and well-being.

The CRC is supplemented by two additional protocol documents: The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC); and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC). The latter protocol addresses the issue of child soldiers, designating the minimum recruitment age at eighteen and mandating states to prevent and end the use of children in armed conflict (UN General Assembly 2000). Despite being widely recognized as a significant landmark in global child protection laws, progress within many countries has been limited, with confirmed cases of child soldiers decreasing only modestly in recent years (UN Human Rights Council 2019).

Over time, many states have committed to various international legal tools to prohibit and prevent child recruitment, included in both international humanitarian law, such as the Geneva Conventions and their Additional Protocols, and international human rights law, such as the CRC and the OPAC. In recent years, several UN resolutions and international treaties emerged in a bid to advocate for the dignity of children.<sup>2</sup> The

substantial majority of the world's national governments signed and ratified these treaties. While the CRC has been ratified by all UN members except for the United States (US), 170 countries have ratified the OPAC, and 196 countries have ratified the Geneva Conventions and its three protocols by 174, 169, and 77 respectively. Yet the CRC has its own limitations, considering that it has yet to become a solid, highly effective legal instrument (Vandenhole 2015).

Nevertheless, a number of these same states that formally agreed to comply with the set of rules outlined in the treaties clearly deviate from them, thus not only violating the international norms but also committing grave violations of human rights. The practice of recruiting children is unfortunately widespread in many African countries, where heads of state are not always compliant with their ratifications and, especially in countries afflicted by war, children's rights are often neglected. Achvarina and Reich (2006) argue that, since 1975, Africa has witnessed the largest number of conflicts, the increase of non-state armed groups, and consequently, the most rapid intensification in the recruitment and use of children, thus becoming the world's hub of child soldiering. In 2017, Somalia recorded one of the largest number of children killed at war (931), and the highest number of recruited and used children in conflict (2127) (UN General Assembly 2018). Once more, in 2019, the UN Human Rights Council reported Somalia as the state with the highest number of verified cases<sup>3</sup> of child recruitment (UN Human Rights Council 2019).

Somalis have experienced armed conflict in their land for decades. They endured a war with neighboring countries like Ethiopia, a civil war that ended in 1991 with the ousting of the then-dictator Siad Barre from power, and a famine that caused deaths and widespread diseases (Lee Hogg 2008). In 2007, a new extremist Islamist organization, al-Shabaab—"youth" in Arabic—emerged from the ashes of the "Islamic Courts Union" and opposed the government, prompting another conflict, first against the Transitional Federal Government (TFG) and then from 2012 onward, against the new Federal Government of Somalia (FGS) and its Somali National Army (SNA).<sup>4</sup> The war has also been fought by numerous Somali clans and smaller militias associated with either one of the factions and by external actors, such as the regional peacekeeping mission under the name of the African Union Mission in Somalia (AMISOM) (BBC 2018). In this constant climate of insecurity, whilst al-Shabaab continues to be the biggest recruiting group for deploying children in war, all the parties engaged in the conflict have actively recruited children in armed services (Human Rights Watch 2018). As such, the widespread deployment of children in armed conflict constitutes a grave human rights crisis, which pushes the Somalian state to comply with the relevant

international and regional human rights treaties and conventions that the country signed and ratified over the years.<sup>5</sup>

The core question of this chapter is the following: Despite the relatively consolidated body of public international law on children's rights and armed conflict, why do armed rebel groups and state forces deploy children in armed conflict, particularly in Somalia? Our core argument states that, among the various key factors that supposedly explain the causes of CAAFG in Somalia, only two are found to be demonstrably applicable for both the extremist organization al-Shabaab and the Somali government and their allied forces. First, children may voluntarily join the army or be recruited by the commanders because they lack alternatives for livelihood outside of the armed groups, which generates a temporal yet false sense of material security and group affinity. Second, Somali children were born in an environment of existential violence and material insecurity that normalized and routinized violence. That consequently reduced or removed their sense of morality, thereby causing them to view enlistment in armed conflict as morally permissible and necessary for existential survival. Both factors illustrate why recruiting children remains a common practice in the Somali conflict. We define recruited children<sup>6</sup> based on the 2007 Paris Principles:

any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities. (UNICEF 2007)

The recruitment of children is an extremely serious crime that still involves approximately two to five hundred thousand<sup>7</sup> children as victims worldwide (Benrey 2016). Singer (2010) estimates that children are part of 40 percent of the world armed forces, including state armies, insurgent groups, and non-state armed rebel organizations, and they fight in 75 percent of the conflicts taking place globally. By participating in armed conflict, children are subjected to potential mental and physical injuries, and in many cases, death. Interviews with former CAAFG, who escaped or were liberated by the armies, reveal that participation in armed conflicts and witnessing killings, rapes, beheadings of civilians, bombings, and other forms of blatant violence constitute traumatizing experiences, thereby leaving physical and mental scars long after these children have terminated their participation (Schauer and Elbert 2010).

Despite the large body of reports and articles produced by the UN and the transnational human rights organizations, child recruitment remains on the sidelines of the international community's political and security agendas, which have primarily focused on matters of national security, nuclear

weapons, and non-state terrorism (Achvarina and Reich 2006). Research on CAAFG has been conducted mainly by civil-society organizations or think tanks (Haer 2019; Tynes and Early 2015). However, in Somalia where, as in many other cases, the issue of child recruitment has been reported for decades, most studies available have been conducted by non-governmental organizations (Achvarina and Reich 2006). In addition, these reports and investigations always distinguish between the actions of al-Shabaab and the government. In contrast, we will first explain the factors of child recruitment for the two main sides involved in armed conflict, and then analytically describe the two elements common to both to understand the fundamental reasons for the widespread phenomenon in the country. The deployment of recruited children in armed conflict constitutes a global human rights crisis, on which global as well as regional human rights institutions and states have yet to focus. Indeed, the mobilization of children in armed conflict could generate a generation of society beset in violence, insecurity, and political instability (Achvarina and Reich 2006).

The next section reviews the relevant literature on CAAFG. The theory section discusses in more detail our theoretical arguments on child recruitment as well as the analytic approach, data sources, and methods used in our analysis. Next, the chapter will be divided into two substantive sections of our empirical analysis on the causes of the participation of children in armed conflicts in Somalia. The first will review the different rationales for each side to the conflict to explain their use and recruitment of recruited children. Subsequently, the second chapter will explore the findings of the research, namely the two common factors pushing children to “voluntarily” join either al-Shabaab or the government’s forces and allies. The first factor being that in the context of war, when children may have lost caregivers, they do not have external support and may see the army as a “safe” harbor to acquire food, shelter, and a minimum salary to help their families. The second factor is that Somali children have only ever experienced conflict in their country and have “normalized” violence, which brings about the idea that fighting is the only way to put an end to the war. The final section will present the conclusions of the article, where the findings will also be considered in the broader discussion of the international discourse of child recruitment and conflict studies.

### **State of knowledge: recruited children**

Child recruitment in armed forces is prohibited under different domestic, regional, and international treaties and conventions, and the recruitment of children in armed conflict constitutes a grave violation of human rights. Since the end of the Cold War, human rights have obtained increased international

attention, but universal compliance remains a key challenge for all states (Regilme 2022a). In recent years, human rights have been codified and institutionalized in domestic and international legal structures, and the number of related covenants and treaties has risen exponentially. Certain countries, however, have witnessed a deterioration of human rights standards (Regilme 2019). On the one hand, some scholars claim that domestic elements need to be closely observed to better understand the conditions under which governments comply with human rights norms (Hafner-Burton 2013; Regilme 2020a). Simmons (2009) theorizes that the most powerful mechanisms able to influence a state's decision to comply with human rights treaties are litigations, new agendas, and social mobilization. The author found that states were more likely to fulfil international norms, particularly concerning civil and political rights, when their populations had both reasons and means to succeed in fighting for their rights (Simmons 2009). On the other hand, others assert that, when analyzing human rights violations, it is necessary to consider the interdependence between domestic, regional, and transnational factors, which can be considered predominant causes for national political change (Regilme 2014, 2021). The hypothesis maintains that the analysis of human rights abuses cannot be entirely grounded in domestic politics. Instead, transnational and regional factors are important key elements that enable the academic as well as the international policy debates to discuss the role played by foreign aid, economic trade, and political interventions in human rights abuses, especially in weak and small states (Regilme 2014, 2021).

Multiple factors could explain the problem of CAAFG. These elements are conceptually distinct from each other, yet they can coexist in situations of conflict, and they usually overlap and mutually reinforce one another—thereby making the recruitment and use of children a persisting and evolving issue. These factors can be categorized into four clusters of literature: domestic factors, material factors, ideational factors, and inherent characteristics of children. In addition to these four categories, it is important to touch upon the academic debate on the international elements that affect the phenomenon. Notwithstanding the widespread adoption by states of relevant international treaties, it remains difficult to effectively implement such commitments in ways that could minimize the proliferation of recruited children (Francis 2007).

### Domestic factors

Domestic factors pertain to those variables within a country where child recruitment occurs. Many states in which this happens are considered in the literature as “fragile” or “failed states,” wherein violence, civil war, and

corrupt governments lead to weak institutions, the collapse of most infrastructures, negative economic growth rates, and the considerable lowering of the population's living conditions (Barma 2013). In conflict-ridden areas, children may join an armed group to seek food, a certain level of security that cannot be provided outside, money or material benefits, medical care, and more generally, a means to survive. In this context, children often lack a stable education and viable alternatives and see the militias as the only way to provide for themselves and their families (Wessells 2006). In a report on child combatants in Colombia, Brett found that most of the volunteer recruits joined the guerrillas to escape domestic violence, poverty, and/or lack of education, thinking that an armed group could improve their status (Brett 2003). When war is fought among civilians, children may witness their loved ones' deaths and suffering—another push factor to join the forces and fight the attackers (Beber and Blattman 2013). In literature, however, this factor has been debated among scholars. Achvarina and Reich (2006) argue that it is an oversimplified motive since in some war zones children are not in any case willing to join an armed organization, even when their living conditions could drive them to do so.

Material causes include those elements that generate financial advantages to the rebel army that recruits children, or that are push factors facilitating the use of minors in militias. For armed rebel groups, children are convenient, cheap, and expendable tools. Accordingly, children are viewed as having fewer material demands, as they are not paid as adults, do not need to be well-clothed or well-sheltered, and can be easily replaced (Dallaire and Humphreys 2011). Moreover, in the Global South, child recruitment in wars is also sustained by a demographic element, whereby the majority of the populations of these countries are children (Vautravers 2009). In this scenario, adolescent minors are at risk as militias often recruit them due to their physical resemblance to adults, which can, therefore, deceive monitoring mechanisms (Wessells 2006).

Another notable material factor refers to children's adaptability to succumb to authority. In fact, children are frequently used for non-combatant roles such as guards, cooks, spies, carriers, sex slaves, etc. (Kononenko 2016). As described by Becker (2010), Maoist forces in Nepal abducted a vast number of children and principally used them as porters, spies, and guards, and to help the militias with political mobilization during the civil war. Adult rebel leaders forcibly command girl soldiers to perform a range of duties, while such adult rebels objectify and exploit those girls for sexual pleasure (Masters and Regilme 2020). In Liberia and Uganda, boys were mainly deployed to the battlefield, while girls were coerced to carry out sexual services (Thompson 2001). In Sierra Leone, the commanders would raise their status by marrying the highest number of child brides (Mazurana and McKay 2001).

Some technological advancements in military weapons contributed to the widespread use of children in conflicts. Rosen links the phenomenon of child recruitment to the trade of small, lightweight arms. Children can carry, deconstruct, and assemble these weapons easily with their smaller hands, thereby making those weapons easy to use during combat (Rosen 2005). The 2000 Bamako Declaration on an African Common Position on Small and Light Arms Proliferation asserted that

we express our grave concern that the problem of the illicit proliferation, circulation and trafficking of small arms and light weapons continues to have devastating [...] consequences on children, a number of whom are victims of armed conflict, while others are forced to become child soldiers. (Organization of African Unity 2000)

Children have not yet completely built their own identities and are still searching for a set of beliefs to adhere to and a community in which to belong. In contexts of conflict, it is easier for commanders and armed groups to indoctrinate boys and girls and push worldviews that frame war as a necessary mode for their individual and collective survival. In Asian conflicts, indoctrination played an incisive role in the recruitment of children in armies due to the explicit political agenda of many militias (Becker 2010). Particularly, in Sri Lanka, the rebel forces opposed to the government carried out methodical propaganda campaigns in schools to indoctrinate and recruit children. The programs consisted of parades and special events for children exhibiting war equipment, describing the abuse and suffering that minors were forced to live through, and showing speeches or movies about their fight for independence portraying them as heroes (Becker 2010). At this age, children lack a sense of prudence and cannot often compellingly distinguish right from wrong, and once they have been coerced and persuaded of the belligerents' motives, the mere fact of pertaining to the armed organizations acquires meaning and purpose (Wessells 2006).

The last category of causal factors includes supposedly intrinsic features often attributed to children. Children are widely considered to be easily controlled, exploitable, and more responsive to threats and physical violence than adults, thereby making them pliable to orders. Furley's (1995) research in Mozambique revealed that the Mozambique National Resistance preferred children because commanders could intimidate them enough to avoid escape attempts, which in contrast, often occurred with adults. Furthermore, brutality and terror, as well as "spiritual magic" or voodoo rites, have been found to be effective in manipulating children and coercing them to follow the instructions from their officials, as well as elevating their loyalty to the troops and to the causes for the war (Dallaire and Humphreys 2011). In

several countries, including Liberia, Sierra Leone, the Democratic Republic of the Congo, and Colombia, small units of naked recruited children would be sent to initiate battles in order to confuse the enemy, who would be appalled, thus giving an advantage to the army using children (Singer 2005). In fact, taking advantage of the shock value, recruiters considered children as effective tools for sowing confusion during warfare.

### International elements

The three main instruments employed by the international community to prevent and stop the practice have been sanctions, including travel bans, economic restrictions, and arms embargoes, directed at perpetrators of child recruitment (Haer 2019). Another technique is “naming and shaming,” which involves the use of UN annual reports and official statements to call out the states violating the rights and dignity of CAAFG, to make those rebel groups and the relevant national governments accountable for their abuses (Lleshi 2018). Finally, the criminalization of the recruitment of children in armed conflict was accomplished by the International Criminal Court through the prosecutions, convictions, and sentences of Thomas Lubanga, a war criminal from the Democratic Republic of the Congo; and Charles Taylor, former president of Liberia (Haer 2019). However, this mechanism of prevention and eradication of child recruitment is highly contentious. Some scholars state that the criminal prosecution and potential conviction of CAAFG’s recruiters still represent only a minor progress toward the prevention of abuses or the promotion of justice (Drumbl 2012a). Meanwhile, Gates and Reich (2010) argued that tools such as criminalization may also become an obstacle in reaching peace agreements because, if perpetrators of child recruitment fear the possibility of prosecution once the war is over, then the probability of not resorting to arms disarmament increases. Other scholars such as Francis (2007) define conventions and treaties as “paper protection,” since it cannot be conclusively determined that they are effective in protecting children from recruitment and use in armed conflict. He also argues that many African states, to preserve their sovereignty, do not perceive themselves as subject to the law nor implement its rules in their domestic legislation (Francis 2007). Regarding child protection, Grover states that there is an urgency to incorporate the OPAC in international human rights law as an absolute prohibition of the use and recruitment of children in armed conflict by any actor involved (Grover 2013). He stresses the need to implement the Geneva Convention’s provision on the “genocidal forcible transfer of children” and use it to prosecute and convict the perpetrators of child soldiering (Grover 2013). On the other hand, Waschefort

(2014) argues that an implementation of norms concerning CAAFG does not require major changes in public international law but a constant reassessment and improvement of all the currently existing judicial instruments.

The aforementioned factors gather all the elements recognized as the main factors that facilitate the recruitment and mobilization of children in war. Nevertheless, not all factors are found in countries where child recruitment is a practice; generally, each case has distinctive characteristics, and the phenomenon can be affected by a unique set of domestic, cultural, social, and political conditions. Among the factors discussed above, it is possible to find two elements that are particularly relevant for understanding the political logic of CAAFG in the Somali conflict. The next section elaborates on the main theoretical arguments of this paper concerning recruited children.

### **Theory and arguments: recruited children in Somalia**

Our core analytic objective inquires on the causes of the deployment of children as agents of war in contemporary Somalia. Our main argument states that children have been recruited and mobilized in Somalia by the armed rebel group al-Shabaab and the government's forces and allies, for different reasons. Nevertheless, only two elements appear to be applicable to both groups.

First, the reasons for child recruitment and deployment differ for al-Shabaab and the Somalian government. The two sides and their associated militias generally employ children for different purposes and with different methods. On the one hand, al-Shabaab's commanders carry out forced recruitments and abductions in public spaces such as schools, markets, villages, and crowded streets (US Department of State 2011). After the recruitment, children are sent to training camps where they are taught how to fight and are assigned duties, such as taking part in combat, intelligence gathering, becoming suicide bombers, spying, cooking, carrying loads, or guarding the army's camps (Human Rights Watch 2012). On the other hand, although there have been few verified cases of abductions from the government security forces, children are still significantly present in the SNA. Amongst the government's troops, recruited children are largely used as regular soldiers or to guard checkpoints (Human Rights Watch 2012). In addition, it is difficult to ascertain whether all the militias supporting the state do comply with applicable laws that prohibit the deployment of children in armed conflict. This deficiency in information, together with the lack of methodical monitoring mechanisms that ensure minors are excluded from armed conflict, make it easy to keep children inside the troops (Amnesty International 2011).

Second, voluntary recruitment is found to be a shared feature, and two factors are common to both factions. First, children are recruited by the armed group or may join voluntarily, due to the lack of viable alternatives for means of survival. Many children in Somalia come from financially impoverished backgrounds or from villages that have been heavily devastated by war. Therefore, commanders persuade children through often false promises of money and other material benefits, and these children are consequently attracted by the idea of being able to provide for their families and acquire food, shelter, and a certain level of protection. In addition, Somali children have been born and raised in a persistent climate of insecurity and widespread violence, which motivates them to believe that war is the only feasible strategy to fight for their freedom, identity, and values, regardless of whether rebels or government forces help them fulfil a nationalistic sentiment that arises from wanting to protect their country and regions, and to take revenge for the recurring abuses perpetrated by the belligerents.

Table 6.1 shows the differences between al-Shabaab and the government armies and highlights their shared features, which will be further investigated in the analysis.

Conflicts often lead to violations of human rights, causing immense suffering for communities and undermining dignity. These abuses can be politicized, used as repressive measures by state actors to remove behavioral threats from opponents (Regilme 2014; Sriram, Martin-Ortega, and Herman 2018). Conflicts can be background conditions for crimes against humanity and war crimes (Hafner-Burton 2013). Conflict-ridden societies

**Table 6.1** Differences in recruiting methods and use of children in al-Shabaab and the government armies

	<i>Al-Shabaab</i>	<i>The government forces</i>
<b>Recruiting methods</b>	<ul style="list-style-type: none"> <li>• Abductions in schools, markets, crowded streets, public spaces</li> <li>• Recruitment through propaganda campaigns</li> <li>• Admission of voluntary child enlistees in the army</li> </ul>	<ul style="list-style-type: none"> <li>• Admission of voluntary child enlistees in the army</li> </ul>
<b>Reasons for use of child soldiers</b>	<ul style="list-style-type: none"> <li>• Suicide bombers to commit terrorist attacks in strategic locations</li> <li>• Domestic duties in al-Shabaab camps</li> <li>• Spies, guards, porters, intelligence gatherers</li> <li>• Combat duties (also used as “shields” to protect adult soldiers)</li> <li>• Girls are also given in marriage to officers or used as sex slaves</li> </ul>	<ul style="list-style-type: none"> <li>• Combat duties</li> </ul>

frequently generate human rights abuses, considering that violations are justified as security measures. Over time, violence can become routinized, leading to cycles of violence in society and undermining social controls within the community.

A shared notion when discussing child recruitment is that, although it is not a novel practice, it has notably increased during the twenty-first century. Rosen (2005) claims that “new” wars have drastically changed from the past. They are technologically more developed, but the proliferation of new, small, and light arms has made recruitment of children more widespread (Singer 2010). Taking this internal aspect into consideration, Samphansakul (2008) offers three hypotheses on the correlation between child recruitment in armed forces and civil wars. He claims that the ongoing civil war, the duration of it, and the death rate of the conflict are all elements affecting the possibility that CAAFG will be employed by non-state actors, as well as by the government (Samphansakul 2008). Finally, the number of internally displaced persons (IDPs) and refugees is strongly linked with a higher possibility that children will be recruited in the fighting (Samphansakul 2008).<sup>8</sup> A further global study found that oftentimes the incentives that push governments and insurgents to use children are influenced by rebel mobilization, the intensity of the conflict, and the government’s degree of militarization (Tynes and Early 2015). The research also suggests that the international community should have the duty to effectively monitor and intervene when internal conflicts are brutal and protracted, even though these are the same reasons why it can be difficult to interfere in such wars (Tynes and Early 2015).

This chapter focuses on a single case study: child recruitment in Somalia and the involvement of all key actors engaged in the armed conflict. We cover key political developments in Somalia from 2007 to 2017 because this time frame corresponds to the rise of al-Shabaab and to the peak of the war. This decade has seen a tremendous increase in the recruitment and use of children in armed conflict, yet, the phenomenon, in the Somali context, has been understudied in the scholarly literature. We refer to primary sources, including documents published by the UN (such as UNICEF) and verifiable and reliable news articles, as well as official texts of international law, such as the CRC and its Additional Protocol, the Paris Principles, the African Charter on the Rights and Welfare of the Child, and all other relevant open-access documents related to child recruitment in armed conflict. We also refer to secondary sources that include peer-reviewed articles; books; reports by international organizations working in the field of human and children’s rights, including Human Rights Watch (HRW), Amnesty International, World Vision, and Save the Children; and previously conducted research on the topic. Due to safety concerns, fieldwork in Somalia was not possible

in our analysis. To address this limitation, we employed data triangulation using reliable primary and secondary sources from diverse organizations. This crossverification helped us overcome the constraint and provide relevant data for our case study (Flick 2002).

### The case study explained: Somalia

After gaining independence from Italy and Great Britain in 1960, Somalia entered a phase of considerable political instability consisting of several changes at the highest level of power and of consequent fights for authority and control of the country. The first democratically elected president, Adam Abdullah Osman, united the Italian and British territories and governed for seven years (Al Jazeera 2016). Osman was succeeded by Ali Sharmarke, who was assassinated in 1969 and replaced by Mohamed Hussein, whose presidency lasted only six days and culminated in a military coup conducted by General Siad Barre. The coup terminated Somalia's democratic period and marked the beginning of a twenty-two-year-long dictatorship that ended in 1991 (Al Jazeera 2016).

Nonetheless, it was during these decades that Somalia underwent remarkable sociopolitical transformation, as Barre's regime facilitated the increase in the population's literacy level and received political support from the United States.<sup>9</sup> However, he suspended the constitution and dissolved the parliament, while also banning political parties and suppressing press freedom (Al Jazeera 2016). In 1977, General Barre's army invaded Ethiopia in the Ogaden region, thereby starting a conflict against the neighboring country. Ethiopia, backed by Soviet aid, which included Cuban troops and soldiers from Yemen and North Korea, forced the Somali army to withdraw, defeating Somalia in the war (Yared 2016). Consequently, the opposition against Barre gained momentum until 1988, when the Northern Somali tribes took control of the region now known as Somaliland.<sup>10</sup> In 1991, southern and northern militias finally deposed Siad Barre, ending his twenty-two years of absolute power (Al Jazeera 2016).

Nevertheless, the country did not return to a relatively peaceful period. The collapse of Barre's government resulted in the civil war, which brought about a serious humanitarian crisis and the deployment of a UN peacekeeping mission from 1992 to 1995 (UN.int n.d.). In 1998, a second northern region, Puntland, gained a semi-autonomous status, thereby providing a relatively safer setting for its population (UNICEF 2016).<sup>11</sup>

In 2001, the UN withdrew from the country, and the US, suspecting Somalia of being an al-Qaida hideaway, declared its intention to advance military operations in the country. A Transitional Federal Government

(TFG) for Somalia was elected in 2004 in Kenya to guide the country out of its crisis, and it only returned to Somali territory in 2006 (BBC 2018).

In 2007, the radical Islamist organization al-Shabaab transformed into the most powerful Somali rebel militant group (Wise 2011). In February of the same year, the African Union sent a peacekeeping mission, AMISOM, to support the federal government in its struggle against al-Shabaab. One year later, the US declared al-Shabaab as a terrorist organization, halting all financial aid to it. Since their emergence, al-Shabaab started a campaign largely made up of terrorist attacks in Somalia, as well as in neighboring countries (Rice 2010). The famine of 2011 drove the country into a more serious humanitarian crisis, while the war between the government and al-Shabaab kept advancing. In 2012, besides blocking the Red Cross and other aid sources from operating, al-Shabaab declared their affiliation with al-Qaeda, establishing an even more dangerous connection in terms of terrorism and resources.

After years of transitional governance, in 2012, Somalis elected Sharif Sheikh Ahmed president and adopted the provisional constitution of the Federal Government of Somalia, denoting a sign of hope both at the national and international level. The year 2013 marked the first international recognition of the Somali government since decades (Talsky 2018). Notwithstanding, peace and security did not endure, and armed conflict intensified in the following years.

Piracy contributes to further destabilization in Somalia. In 2008, the first UN resolution was issued to tackle the robbery and piracy crisis in the region. However, the lack of competent political parties able to address development and poverty left space for pirates to emerge and build their economic power by hijacking and attacking ships off the coast of Somalia, in the Indian Ocean (Reva 2018). These groups also make use of children as (pirate) soldiers and exploit them for their own interests (Drumbl 2013).<sup>12</sup>

In 2017, a new wave of hope was brought by the election of Mohamed Abdullahi "Farmajo." While al-Shabaab has lost control over several territories, the government and AMISOM have not yet gained control of the entirety of the country, which still suffers violence from both sides.

## **The differences in recruitment and deployment of children**

### *Al-Shabaab*

The growth of al-Shabaab intensified the conflict and triggered substantial risks for the population of being caught in the middle of the civil war. The rising number of children recruited by the group reflected its gain of control over territories in central and south Somalia, where they imposed strict rules

of conduct ([Amnesty International 2011](#)). Forced recruitment of adults and children became a regular practice in 2009. The following year, Amnesty International ([Amnesty International 2011](#)) interviewed Somali refugees, finding that the possibility of children being recruited was amongst the reasons for fleeing.

Initially, al-Shabaab targeted children from extremely poor districts, not only in Somalia but also in Kenya. However, as the group expanded its influence, it also started aiming at university students, offering them money and regular salaries ([West 2016](#)). The recruiting method used by al-Shabaab varies from luring children with gifts and money to directly threatening them or their families. In addition, militants started abducting children by raiding schools, markets, playgrounds, and crowded outdoor locations ([Kriel and Duggan 2016](#)). In particular, in the areas under al-Shabaab's influence, many of the men fighting for the group draft children from their own families to support the war. Furthermore, recruiters force clan elders to deliver a predetermined quota of children desired by the army ([Human Rights Watch 2012](#); [Maruf 2017](#)). Lastly, several children join the guerrilla, driven by the prospect of escaping poverty. A notable feature is that the al-Shabaab frequently punishes, flogs, or even kills children or members of their families in public when they refuse to enlist ([Human Rights Watch 2012](#)).

Al-Shabaab's brutal practices show that the main reasons for child recruitment are to replace and to increase the available soldiers. However, the organization also employs children for supporting roles, including cooking; gathering information; carrying water, ammunition, and heavy loads for other soldiers; guarding the camps; or pressuring potential recruits among their peers to join the army ([Human Rights Watch 2012](#)). Furthermore, al-Shabaab benefits from the ease of manipulating children through corporal punishment, demonstrations of violence, and executions to dissuade them from escaping or rebelling against the commanders' orders ([Human Rights Watch 2012](#)). Occasionally, children are ordered to punish other fighters or civilians that violate al-Shabaab's strict rules. As confirmed by [Betancourt et al.](#), the punishments include whippings, identifying lawbreakers, beatings, and sometimes killings, which have terrible psychological repercussions ([Betancourt et al. 2010](#)). In a study conducted with former recruited children years after their liberation, 48 percent of those who spent more than one month with a militia suffered from post-traumatic stress disorder, while one out of four confirmed that they were still severely tormented by their times with the armies ([Schauer and Elbert 2010](#)).

The al-Shabaab coercively recruited young girls for diverse purposes, including cleaning, washing, and performing other domestic duties, or to be sex slaves and wives to the army's soldiers. In her study on sexual violence toward girl soldiers, [Grey](#) states that these girls are highly vulnerable and

constantly face the risk of sexual violence inside the armed group (Grey 2014). Testimonies reveal that young girls are also recruited from Muslim and Christian communities, both in Somalia and Kenya, and promised the possibility of well-paid jobs in other cities or countries. These girls are then brought to brothels to provide sexual services for soldiers or forced into marriages with al-Shabaab militants, often giving birth to children who are automatically born and raised inside the organization (Attwood 2017).

Several scholars affirm that those aforementioned factors and traumatic experiences create stronger ties within the armed group because, as sometimes happens, children are convinced that they will not be accepted again in civilian communities, having committed and suffered such terrible acts, so they give up on a life outside the army (Denov 2010; Kiyala 2015). When children are abducted or forced to join an armed group, often the commanders sever the social ties of children with their respective communities and families, as recruiting forces send the children far from their hometowns to make them even more pliable to their orders (Grover 2014; Honwana 2011).

An additional reason for al-Shabaab to make use of CAAFG is their strategic and distinctive role in actual combat. Boys are frequently selected to fight against government forces, clan armies, or AMISOM to protect the more experienced soldiers and remove dead or injured bodies from the battlefield (US Department of State 2014). In training camps, al-Shabaab separates children into several groups and teaches them how to use hand grenades, firearms, or other explosive weapons, which are given to them according to their ability to carry different loads, ranging from AK-47s to small pistols.

Besides conventional battle, al-Shabaab uses children as suicide bombers to attack government's territories, officials, infrastructures, and the population to spread terror. One boy, interviewed by Somalia Report, recalled how al-Shabaab recruited him at thirteen, through the false promise of financial compensation. He stayed with the group for four years until his escape a few weeks before he would have had to commit a suicide bombing in Mogadishu Aden Adde International Airport (Roble 2011).

Finally, al-Shabaab deploys indoctrination and propaganda campaigns to recruit children. Specifically, al-Shabaab militants go to local mosques after prayers and enter duksis—Quranic schools—to convince boys and girls that the “holy” war is justifiable and would make them good believers, granting them an “entry into paradise” if they were to die as martyrs (Amnesty International 2011). Ideology constitutes a fundamental element for the organization, which has pledged allegiance to al-Qaeda. They use their fanaticism to take back Somali territories, enforcing their idea of holy law that should govern the cities they seized, as well as convincing recruited

children about the lawful fight they have to sustain in order to stop the supposed abuses perpetrated by the government.

To conclude, al-Shabaab mainly recruits and uses children for fighting, thereby confirming the existence of the many factors described in the general literature review on CAAFG. Al-Shabaab profits from domestic factors, luring children into their ranks by promising jobs, salaries, or a greater role in the so-called holy war. The recruitment of children provides material benefits to al-Shabaab because the former adds to the number of fighters and those performing other supporting duties in the context of conflict. The ideational factor is embodied in the religious and jihadi component. Finally, al-Shabaab exploits the inherent characteristics of children of being susceptible to coercion, thereby allowing the militants to coerce them into violent acts and control them through fear and corporal punishment.

Furthermore, al-Shabaab largely ignores public international law concerning children's rights and international norms on armed conflict. The group, guided by a strong religious-political ideology, seeks to acquire legitimacy in Somalia and establish itself as the only rightful regime, able to provide the population with societal, religious, military, and economic necessities without the assistance from external "apostate" actors.

### *The government and its allied forces*

The government of Somalia has a recent history of public promises and pacts, both internationally and domestically, pledging to stop the recruitment and use of children in their decades-long armed conflict. In 2012, the TFG signed an action plan with the support of the UN Political Office for Somalia (UNPOS). The plan included ending and preventing the use of children in the SNA, reintegrating released CAAFG, criminalizing the practice, and granting the UN access to verify the absence of minors in the forces ([United Nations Political Office for Somalia 2012](#)). In 2015, the FGS ratified the CRC, although the state never ratified the Optional Protocol on the involvement of children in armed conflict. Article 29(6) of the Somali Constitution (2012) states that children have the right to be protected from being exposed to and used in conflict. In November 2017, the FGS decided to start drafting the Child Rights Bill ([Cunninghame et al. 2018](#)).

Yet, the report of the Secretary-General about children and armed conflict with recorded data from 2017 declared once again that in Somalia, 2,127 children were recruited and used in conflict, a significant increase compared to 2016 ([UN General Assembly Security Council 2018](#)). The report also asserted that although al-Shabaab was the main recruiter, the SNA still enlisted 119 children. Ahl al-Sunna wal-Jama'a (ASWJ), a

moderate Sufis paramilitary organization opposed to radical groups like al-Shabaab, recruited sixty-six. Other armed forces in opposition to al-Shabaab, including the Galmudug, the Jubbaland forces, and the Somali Police Force, together recruited 91 children ([UN General Assembly Security Council 2018](#)).

Undoubtedly, the government forces have not yet implemented the CRC, nor have they made significant progress in the Action Plan signed in 2012. Furthermore, it is difficult to obtain reliable information from the SNA about the accurate number of children that may be part of the army.

The SNA and its associated forces do not apparently intend to abduct children. The main issue in this case is that Somalia does not have effective and complete birth registration mechanisms, making it extremely difficult to determine the age and prove the seniority of SNA recruits, as there are no birth certificates or documents officially stating their year of birth ([Gettleman 2010](#); [US Department of State 2017](#)). It is essential for teenagers to be registered, as they are the most vulnerable in terms of recruitment and cannot always rely on their appearance to prove their age. Although donor countries that are involved in cooperating with Somali soldiers in neighboring countries regularly carry out screenings to exclude minors from the troops, this process becomes difficult when recruits are incorporated in the SNA from other clans and militias that do not effectively monitor the age of their novices ([Amnesty International 2011](#)). The coalition of forces opposed to al-Shabaab does not have a formal and central command but consists of a mixture of militias integrated and coordinated in disparate ways ([Human Rights Watch 2012](#)). Somali government officials admitted that when they started building the army to counter al-Shabaab as fast as possible, they did not examine whether recruits were minors, as long as they could carry a gun ([Gettleman 2010](#)).

The SNA and their supporting forces generally permit children to join the army voluntarily. Whilst the SNA uses adolescents in direct combat against al-Shabaab, clan militias and smaller armies also assign children domestic tasks, such as food preparation and guarding checkpoints ([Gettleman 2010](#)).

Children primarily join the SNA and its allied forces in an attempt to escape from extreme poverty, seeking food, protection, money, and material benefits that could help them and their families survive. In addition, an important factor facilitating the enlistment of children in the SNA is that many see their classmates, relatives, or friends joining the army for financial compensation and better living standards.

Many adolescents are also driven by a sense of duty to their families and fellow citizens who have suffered from the oppression of al-Shabaab for many years and might want to take revenge. In an interview conducted

by *The East African* newspaper, a boy recollected how he decided to join the militias close to his town to take revenge for the death of his father at the hands of al-Shabaab. At the time, he did not have any education, and joining the armed group seemed the most logical decision (Barigaba 2018).

Thus, the Somali government forces take advantage of the domestic factors mentioned earlier in the article and employ the children mainly as regular soldiers, profiting from their participation as additional support in the war against al-Shabaab.

### The differences in recruitment and deployment of children

#### *Socio-economic factors: lack of external alternatives*

As mentioned earlier, one of the main reasons Somali children enlist in armed groups is that oftentimes they do not have viable options for existential survival and thus perceive recruitment as the rational choice. This absence of socio-economic opportunities is the result of interrelated factors, such as poverty, health issues, famine, and lack of education and social support. Furthermore, children are brought to believe that the armed group will provide them with material and social benefits that could help them survive and provide for themselves and their families (Dudenhoefer 2016; Honwana 2011).

#### *Poverty, famine, and insecurity*

For years, Somalia has been one of the most materially impoverished countries in East Africa due to decades of civil war and dysfunctional governance, which were facilitated by exploitative and violent European colonialism in the African continent.

The main cause of poverty and health issues harming children and vulnerable groups in particular is structural insecurity. After the ousting of Siad Barre from power in 1991, a power vacuum left the country without a central government that could lead the population out of the dictatorship and the crisis. In 2002, approximately 43 percent of the Somali population was living in conditions of extreme poverty, which practically meant surviving on less than \$1 per day (UNDP 2007). Moreover, malnutrition rates were increasing, with one out of four children dying before their fifth birthday (UNDP 2007). The escalation of structural insecurity that followed the emergence of al-Shabaab and the subsequent conflict resulted in the obstruction of public goods provision and the hindrance of investment, consequently throwing the country further into poverty, especially in the rural areas.

The year 2011 further deteriorated the situation, as the worst famine of the twenty-first century hit the country and took the lives of almost 260,000 people (Maxwell et al. 2016). Initially caused by production collapse and a drought, the famine was aggravated by the lack of preventive measures and by al-Shabaab restricting humanitarian aid from reaching the most afflicted areas. In order to follow anti-terrorism legislations, major international donors such as the US stalled humanitarian aid in the Southern parts of Somalia controlled by al-Shabaab (Seal and Bailey 2013). This catastrophe cost a substantial number of lives and caused hundreds of thousands of people to flee Somalia and seek refuge in neighboring countries.

The repercussions of the famine lasted for several years with two million people suffering from food insecurity, loss of livelihood, and the general deterioration of living conditions, which internally displaced more than one million Somalis (United Nations Office for the Coordination of Humanitarian Affairs 2014). Children have been among the most vulnerable groups. In 2017, 1.2 million children still suffered from severe malnutrition, with 65 percent of those being IDPs. 4.4 million people were left in need of water, hygiene, and sanitation services, and 24 percent of the total population of children under the age of five suffered from diarrhea at any one time (UNICEF 2017).

Along with the widespread poverty and famine, the conflict with al-Shabaab brought even more insecurity into Somali children's lives. In 2017, more than seven hundred thousand children were internally displaced, and 6.2 million people (of which 3.4 million were children) required humanitarian assistance (UNICEF 2017).

In most cases, children were left alone because their parents and caregivers had been killed or injured, and other families did not have enough resources to take on another member. When children did not flee their homes, they had to find a way to help their families survive. Especially in the most afflicted areas where agriculture and animal breeding were no longer possible, children often resorted to illegal means. Under these circumstances, the idea of joining an armed organization that (misguidedly) appeared to accommodate their needs became an attractive and necessary alternative to poverty and hunger.

### *Education*

Throughout the years, children's educational rights have been severely violated. Machel (1996) drew attention to the fact that when governments enter a civil war, the public spending on education lowers to a minimum to support the costs of the conflict. Therefore, the responsibility of education

falls on the communities that have enough resources to continue or resume it ([World Bank 2018](#)). Nonetheless, maintaining a high level of schooling is oftentimes challenging as access to education may be disrupted and both teachers' and children's lives put at risk. In 2007, right after the civil war erupted, Somalia's enrolment rate for primary school was marked as one of the lowest in the world at 19.9 percent ([Kirk 2007](#)).

With the escalation of the civil war, children's opportunities for a standardized education further declined. The Global Campaign for Education ([2010](#)) identified Somalia, together with Haiti, as the worst countries for a child to attend school. All the factions engaged in the war deliberately destroyed or attacked schools during combat. Even in the absence of an attack, schools closed down due to teachers and students fleeing their towns or not feeling secure enough to continue their studies ([Amnesty International 2011](#)).

Al-Shabaab raided academic institutions, thereby coercing teachers to either give a number of students up for recruitment or be killed if they refused. They restricted the teaching of certain subjects such as English, enforced strict rules on clothing, and banned non-Arabic signs ([Shil 2011](#)). Moreover, young girls were prohibited from receiving education and forced to either stay home and care for the household or be recruited in the organization ([Shil 2011](#)). The al-Shabaab also used schools for propaganda campaigns and taught classes on jihad led by members of the radical organization ([Human Rights Watch 2012](#)).

Interviews with children indicate the consequences of being directly affected by the conflict and experiencing the loss of relatives and structured education. This results in a relatively easier recruitment of children who either answer the enlistment campaigns or join the fight forcibly. Specifically, a fifteen-year-old boy described how his father's death left him to care for his mother and brothers and, with no possibility of continuing his studies or finding a job, he was taken by al-Shabaab and was able to escape only after having fought on the frontlines ([Shil 2011](#)). The aforementioned famine caused mass displacement and severe restrictions on water resources in proximity to schools, which brought about the closure of almost 400 public facilities in the country in just three months ([United Nations Office for the Coordination of Humanitarian Affairs 2011](#)). Despite the fact that al-Shabaab lost control over the majority of the territories, the FGS was not able to restore safe provision of education. In fact, in 2017, out of 4.9 million children, 60 percent were still out of school and 50 percent abandoned it entirely before the age of ten ([UNICEF 2017](#)).

The foregoing discussions on poverty, insecurity, and education demonstrate that children's rights in Somalia have been violated on multiple levels and aggravated by the longstanding armed conflict. We argue that, on the

one hand, al-Shabaab, the SNA and the other militias have exploited the extremely poor living conditions of children. Amidst this already complex scenario, children cannot be supported by teachers and cannot receive a proper education, which makes it more difficult for them to find safer means of securing material resources for survival. Consequently, the armed belligerents are able to allure them into taking up arms, in exchange for a salary or other material benefits, such as food or shelter, or the feeling of security and power that armed combat could possibly give to soldiers (Drumbl 2012b). In order to replenish their armies, armed groups do not carry out appropriate screening processes among the recruited soldiers. Screenings would allow them to identify those children that, left alone to face a crisis bigger than them, voluntarily enlist in an attempt to escape acute poverty, starvation, and oftentimes abandonment.

### Childhood in the midst of violence

Our second principal finding underscores that children may decide to become soldiers because they do not perceive war as entirely wrong; they normalized violence, and they want to help their families and communities to re-establish a peaceful existence, driven by a patriotic sentiment (Singer 2010). However, the only way they know to put an end to the perpetrated attacks is to fight back.

Childhood is an important formative period for emotional, cognitive, and physical and social development (Schauer and Elbert 2010). Klasen et al. (2010) claim that as children grow up, they learn and acquire knowledge from what surrounds them, which includes traumatic experiences that may have detrimental impact on their development. In Somalia, today's children were born and raised during a conflict of which they understand neither the initial causes nor the reasons for which it is still happening. The majority of them grew up constantly fearing for their own and their parents' lives, being forced to escape from their native communities and live in refugee camps, risking being recruited in armed forces or exploited for labor or sexual purposes, and ultimately trying to survive a dreadful war that has persistently characterized their everyday lives.

Several scholars have affirmed that the consequences of war for young boys and girls are immensely catastrophic: children become distressed, inert, and disorientated by the brutality they witness, which might create the opportune conditions for children to voluntarily enlist (International Labour Office 2003). Children's development is marked by what they are taught in their society. In Somalia, children have not been socialized to find solutions to end the evolving war but have rather been accustomed

to the prospect of becoming fighters and assuming belligerent attitudes, gangster-like culture, and a general approach leaning toward violence (Abdi 1998). Their understanding of violence and war makes children's approach to society and the establishment of healthy relationships with their peers and other adults vastly problematic (Tavares 2012). In addition to witnessing the destruction of their villages and lands on a daily basis, children have been victims of killings, torture, ill-treatment, and other abuses (Drumbl 2012b). In 2010, the International Committee of the Red Cross (2011) reported that the two main hospitals of the Somali capital, Mogadishu, received more than 2,300 children and women suffering war-related wounds, making up more than 40 percent of the entire number of patients in their clinics.

Especially in the areas controlled by al-Shabaab, children have been obliged to attend public punishments of relatives, friends, and people from their communities accused of violating the holy law, the Shari'a. Minors have been regularly sentenced to flogging, stoning, amputations, and beatings because they did not obey the rules. For instance, the dress code included a mandatory hijab and sometimes the abaya—the first is the Islamic headscarf, while the second is the traditional over-gown—for girls (Amnesty International 2011). To cite an example of a child's punishment as perpetrated by the extremist organization, Amnesty International (2008) described the death by stoning of a thirteen-year-old girl, who had previously been raped by three men, yet was accused by al-Shabaab of having been adulterous.

Another problem is that, although children are deeply disturbed by the armed conflict, once they have managed to find some sort of refuge, most often no professional help is available, leaving them alone to deal with their own traumas. This can only add to the multiple hazards that children have suffered in Somalia in the past decades.

We argue that, as children have seen their own lives disrupted and their country devastated by the different parties to the conflict, they have been brought to develop a sentiment of collective pride that propelled them to enlist, in one faction or the other, to put an end to the conflict. Perhaps the choice of becoming CAAFG came about on the grounds that Somali children have never experienced structural peace<sup>13</sup> during their lifetime. Even though they dream and want to eventually achieve a Somalia without armed hostilities, the only way familiar to them to fight for the freedom of their country, its people, and a non-violent future is through armed conflict itself. We maintain that, in regard to Somali children who voluntarily enlist, the traumatic experiences they have endured have led to a "normalization" of violence, which has brought them to believe that joining an army and participating in the war is a rational and natural choice.

To conclude, the factors discussed in this section—insecurity, poverty, malnutrition, lack of education, violent childhood, normalization of conflict, and a patriotic sentiment—are interrelated. Those factors explain why child recruitment remains a prevalent phenomenon in Somalia amongst all the fighting factions. We found that these factors are especially applicable in terms of voluntary recruitment, a phenomenon that is common to al-Shabaab, the SNA, and the other minor supporting forces. Furthermore, even though the term “voluntary” is used, we argue that the decision made by Somali children is not entirely a matter of free will but a combination of the various structural factors that enable Somali government agents and armed rebel leaders to forcibly recruit children as soldiers.

### Conclusions

Why do armed rebel groups and state forces deploy children in armed conflict, particularly in Somalia? This chapter evaluated the general literature on the role of children in armed conflict, and we analyzed how, and under which conditions, the Somalian stakeholders deploy children. The chapter illustrated how al-Shabaab has systematically violated relevant instruments of public international law that explicitly prohibit the mobilization of children in armed conflict.

The two main parties in the conflict have dissimilar methods and diverse motives in recruiting children into their ranks. On the one hand, al-Shabaab is more likely to abduct and to coerce children into becoming soldiers. On the other hand, although aware of the presence of minors among their armies, the SNA and associated forces generally do not implement any screening mechanisms that would systematically and accurately identify and therefore exclude children from fighting alongside adult soldiers.

Government forces treat and use children as if they were of legal age, mainly for combat purposes and to make sure they always have physically ready fighters. Meanwhile, al-Shabaab has exploited children not only through the deployment in the armed conflict's frontlines but also tasking such minors to serve as suicide bombers, camp guards, cooks, porters, spies, and, in the case of girls, as sex slaves (and being forcibly married to the rebel group's leaders).

Our analysis focused on the two structural factors that make child recruitment still prevalent in the Somali conflict. We contend that children are structurally driven to join al-Shabaab, the SNA, or the other militias because of two main reasons. The first is primarily correlated to domestic factors, whereby such minors face the absence of alternative sources of

social support and means of survival. The Somali civil war has resulted in the deterioration of the public goods provision system, which in turn, generated a structural condition of extreme poverty, malnutrition, water scarcity, economic decay, and environmental devastation. The enduring armed conflict has generated the traumatization of children, thereby normalizing violence that motivates some children to take up arms in a desperate attempt to put an end to a war. Indeed, Somali armed groups contribute to recruiting children, particularly through propaganda campaigns that falsely inform minors of the supposed material benefits and status recognition they could gain from participation in armed conflict.

As a caveat, our findings, however, have their own limitations: directly gathering official information from Somali sources is problematic. That is because of the absence of comprehensive numerical data on children, starting from birth registrations and updated data on deployed soldiers in the ongoing armed conflict. Somalia has not only been bearing the fight between government forces and al-Shabaab, but it has also witnessed internal disputes over territories and the involvement of other actors, such as pirates, who have contributed to the deepening of the country's fractures by allying with one faction or the other to mainly pursue their own financial interests. Additionally, international actors including AMISOM, the US, and the UN have also played a role in the civil war. All these different actors make it difficult to have a comprehensive and clear picture of the armed conflict in Somalia.

Our findings here contribute to existing policy and scholarly debates concerning children in armed conflict. First, we underscored how structural-material vis-à-vis ideational factors in a given society function as background conditions that facilitate the deployment of minors in wars. Second, the recruitment and mobilization of children in armed conflict constitutes a grave human rights abuse, and this particular problem should be taken up in key global governance agendas. Third, our analysis is fully embedded within the relevant literature on public international law on children's rights, international norms on armed conflict, and political violence—thereby demonstrating the need for a multidisciplinary sensibility in human rights law. Fourth, our analysis of recruited children in Somalia suggests that international human rights law, including children's rights, should be situated within the highly contested terrain of political contestations; compliance with human rights obligations is likely to succeed when policy approaches deal with the broader structural material and ideational conditions that could motivate actors from disengaging in armed conflict.

Finally, there are further questions and issues that may be taken up for future research on children in armed conflict. Policy approaches that deal

with children in armed conflict should adopt a more comprehensive strategy that strengthens national and regional judicial institutions and civil society activism that could facilitate criminal accountability as regards perpetrators. Notably, the Somali justice system has recently adopted a trend that has occurred in other countries perpetrating the crime of child recruitment, such as Uganda, where domestic courts aggressively prosecute recruited children after their exit from the armed groups (Rosen 2015). In the Somali judicial system, this allows the police to arrest and prosecute children for their involvement with al-Shabaab. This practice removes children's rights to be assisted and reintegrated into society, as was declared by the national program that stipulates the mandatory hand-over of released or escaped CAAF to UNICEF for rehabilitation within seventy-two hours (Human Rights Watch 2018). Instead, former child combatants have been detained and sentenced to spend time in prison varying from six years to life. The military court also sentenced ten children to death, violating the international norm that prohibits the execution of child criminals, to later commute the sentence on appeal (Human Rights Watch 2018). Thus, the prevention of children from becoming involved in armed conflict requires sustainable structural reforms that prevent all actors from taking up arms, thereby including policies that generate equitable economic growth and long-term investments in public goods provision. There should be a committed long-term institutionalization of programs that aim to reintegrate former soldiers in the wider society, particularly through public investments in mental and physical rehabilitation, economic livelihood, health, education, and public order. Future research and policymaking regarding Somalia should also concentrate on factors such as acute poverty, governance, the reconstruction of towns and farms in rural areas, and the birth registration mechanisms that could help the future generations exit the humanitarian and insecurity crisis through various correctional, vocational, and educational programs focusing on children's resilience in their post-traumatic growth (Blattman and Annan 2010; Drumbl 2012b; Werner 2012). In 2018, the Somali population between zero and fourteen years of age was estimated to be 46.57 percent of the total (World Bank 2018). In a country where almost half of the society is under fifteen years of age, international and regional cooperation efforts should focus first and foremost on establishing high-quality education and socio-economic welfare systems. In that way, the promotion of children's rights constitutes a holistic approach, ranging from the protection of their right to life and education to health care and a decent standard of living.

## **Appendix 1**

### *International humanitarian law*

Customary international humanitarian law<sup>14</sup>

- Statute of the International Court of Justice (1945)
- Geneva Convention I, II, III, IV (1949)
- Additional Protocols to the Geneva Conventions I, II, III (1977)
- Rome Statute of the International Criminal Court (1998)

### *International human rights law*

Customary international human rights law

- ILO Convention 29 (1930)
- UN Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- Convention Against Torture (1984)
- Convention on the Rights of the Child (1989)
- UNHCR Guidelines on the Protection and Care of Refugee Children (1991)
- UN Guiding Principles on Internal Displacement (1998)
- ILO Convention 182 (1999)
- Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)
- Paris Principles (2007)

### *Security Council Resolutions on Armed Conflict and Children*

- Res.1261 (1999)
- Res.1314 (2000)
- Res.1379 (2001)
- Res.1460 (2003)
- Res.1539 (2004)
- Res.1612 (2005)
- Res.1882 (2009)
- Res.1998 (2011)
- Res.2068 (2012)
- Res.2143 (2014)
- Res.2225 (2015)
- Res.2427 (2018)

## Appendix 2

Table 6.2 Signatures and ratification of Somalia

<i>Laws, conventions and treaties</i>	<i>Signed</i>	<i>Ratified</i>
Geneva Conventions I – IV	✓ 1962	✓ 1962
Additional Protocols I – III	–	–
Rome Statute of the International Criminal Court	–	–
Statute of the International Court of Justice	✓ 1960	✓ 1963
Convention on the Rights of the Child	✓ 2002	✓ 2015
Optional Protocol to the CRC on the involvement of children in armed conflict	✓ 2005	–
Covenant on Civil and Political Rights		✓ 1990
Covenant on Economic, Social and Cultural Rights		✓ 1990
ILO Convention 29	✓	✓ 1960
ILO Convention 182	✓	✓ 2014

## Notes

- 1 This chapter is a revised and updated version of the following open-access article: Salvador Santino Fulo Regilme and Elisabetta Spoldi, “Children in Armed Conflict: A Human Rights Crisis in Somalia.” *Global Jurist* 21(2) (2021): 365–402. <https://doi.org/10.1515/gj-2020-0083>
- 2 A list of the international norms, conventions, and treaties concerning the issue of child soldiering can be found in Appendix 1. For a more intensive discussion on dignity, please refer to Regilme (2022b) and Regilme and Feijoo (2021).
- 3 The information provided by the government and the other belligerents is not reliable; thus, the actual number of child soldiers is estimated to be much higher.
- 4 From this point on, both the TFG and the FGS forces will be referenced as “government forces,” unless otherwise specified.
- 5 A list of laws signed and ratified by Somalia can be found in Appendix 2.
- 6 The term also refers to minors who voluntarily decide to join an armed group.
- 7 This figure is an approximation since it is very problematic to have an accurate number of all children recruited in armies at a global level.
- 8 As Lischer (2006) explains, the higher possibility that children living in IDP camps in countries affected by conflicts will be recruited derives from the fact that in IDP camps, parents’ ability to provide for their families and their authority lessens. Moreover, in this context, children often do not receive education and have little prospects of permanent employment. Therefore, their vulnerability to being recruited by the armed forces increases (Lischer 2006).
- 9 For further discussions on how powerful states impact regime survival, see Regilme (2021).
- 10 Notwithstanding with several challenges, the newly independent Somaliland was able to keep a peaceful, self-governing, secure state during the conflict

that afflicted the rest of the country (Bradbury 2008). The government of Somaliland was a pioneer in guaranteeing protection to children from conflict and in giving them free education (Lasley and Thyne 2015; Save the Children 2021).

- 11 In recent years, the regions of Somaliland and Puntland have repeatedly clashed over territories. Although the two regions have managed to enjoy relative stability during the Somali fight against al-Shabaab, this new escalation of violence could destabilize the two regions, as well as the country even further (International Crisis Group 2018). For the purposes of this chapter, it will not take into consideration the new developments in Somaliland and Puntland, but it will focus on the Somali civil war against al-Shabaab.
- 12 Although child piracy is a further violation of children's rights by Somali armed groups, we will not consider the role of piracy, as pirates do not have political or ideological goals, and thus have not directly partaken in the conflict between al-Shabaab and the government.
- 13 For a more extensive discussion on peace, refer to Regilme (2020b).
- 14 International treaties bind only those states that have signed and ratified them. Customary law is universally binding.

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## Protecting a child's right to education free from attack: the future of accountability

*Allyson Bachta*

### Introduction

Multiple international conventions, declarations, and principles<sup>1</sup> have codified and claimed that accessing a non-discriminatory, high-quality education free from violent attack is a child's human right.<sup>2</sup> Yet there is a major gap between these declared rights and their actual enforcement—current global monitoring systems fail to protect children from violent attacks and hold perpetrators accountable. Millions of children in conflict-affected regions are actively and passively prevented from accessing their educational rights, and the true impact of conflict on education systems remains unclear.

Young students (and their educators) are impacted daily by violent conflict and have become direct or indirect targets of violent attacks on their way to, from, or while attending school. From 2015 to 2019, ninety-three different countries reported attacks against education with the highest total number of incidents occurring in Afghanistan, Palestine, the Republic of Cameroon, and the Philippines; at least twenty-two thousand students, teachers, and educators were harmed by these attacks during this time period (Tsolakis et al. 2020). Between 1970 and 2013, more than 3,400 attacks on education institutions occurring across 110 countries were categorized as incidents of documented terrorism (Carapic et al. 2016). Of these attacks, 96 percent took place after 2004, suggesting that their use by violent extremists is increasing globally (Carapic et al. 2016)—a factor perhaps motivating the international community to consider attacks on schools as “a distinct category of terror attack” (Grover 2011, 98).

Schools are “public spaces of evocative symbolic value” (Braithwaite 2013 in Petkova et al. 2017, 1; van Wessel et al. 2013), making them highly valued targets for violent extremism. As proxies of the physical, social and economic security of the state (Sinclair 2002), groups may be motivated to attack schools (and the children who attend them) as a way of declaring legitimacy as an organization (or by individuals within an organization seeking legitimacy); signaling commitment to their cause (as was the case

with the Beslan school massacre, which was as an act of commitment to Chechen independence); attempting to maintain societal and state security needs; or changing the status quo. With such acts, students, teachers, and families become “soft targets” for extremists seeking to obliterate a sense of normalcy for individuals and communities, as well as gain media attention for their cause. While non-state actors (NSAs) are more likely to be associated with violent extremist organizations (VEO), we must consider state actors as potential perpetrators of these attacks as well.

Terrorist attacks against educational institutions are more likely to occur when governments oppress civilians in ways that increase human rights grievances, such as those associated with freedom of religious expression and political and economic rights for women (Fahey et al. 2020). Close examination of the anti-civilian violence literature also suggests that such attacks could “be a tactic of early resort because civilians are readily accessible and attacking them pays immediate military and political dividends by removing threats of rebellion and subversion” (Downes 2006, 168). The element of surprise further exacerbates these atrocities; violent extremists don’t often follow the legal expectation to warn civilians of impending attacks (Baruch et al. 2011).

Given these statistics, why is there such an underwhelming lack of accountability for violent attacks on education, despite the international humanitarian law already in place? How can civil society along with affected community members co-design a more time-sensitive mechanism that protects the safety of children and their rights to access education free from violent attacks? Even with the codification of a child’s right to access education free from attack, and clear alignment with the UN Convention on the Rights of the Child (CRC), principles of non-discrimination and right to life and development, accompanying monitoring mechanisms are reactive, ineffective, and insufficient.

As an illustration, the United Nation’s Monitoring and Reporting Mechanism (MRM), established via the 2005 United Nations Security Council Resolution 1612, was designed to intervene *post-incident* (thus post-victimization). Furthermore, the MRM *depends* on perpetrators agreeing to co-produce action plans for amending their behaviors and assumes that the costs of being “norm-shamed” (Nyamutata 2013) in the Secretary-General’s Annual Report outweigh the benefits of committing this violence in the first place. Acting more proactively and preventatively to protect these rights of children requires more intervention than this! First, the international community must respond with the same gravitas as it does with other such targeted acts of violence against civilian populations and begin incorporating Conflict Early Warning and Early Response (CEWER)<sup>3</sup> principles and strategies into existing monitoring and reporting mechanisms; doing so

would be mutually beneficial. While CEWER is essential to monitoring conflict incidents that may escalate, currently these global and regional systems are not examining non-violent precursors, like policymaking, when considering how various forms of violence may emerge and evolve into other types of violent attacks, like those on education. Second, the audience for CEWER data is often government elites, not the actual communities facing the direct danger. While communities may be the providers of local perspectives and context to CEWER academics and professionals, they must also be the intended recipients of capacity building for community resilience. In relation to education, community resilience refers to community activities that “maintain or improve the educational situation under conflict” and “the ability of individuals, communities, or governments to prevent, mitigate, and recover from shocks and stresses that negatively affect education” (Utsumi 2022, 3). Just as communities receive preparedness training for maintaining essential service delivery during times of natural disasters, so might these skills transfer to support them in their duty to provide children access to a non-discriminatory, high-quality education free from violent attack.

This chapter makes a unique contribution to the global governance of children's rights, conflict early warning, and “education in emergencies” literature by reimagining how monitoring systems used for other purposes could also be used to protect children from violent attacks on education. To support this argument, I will provide a more substantial background on the efforts (and subsequent failings) of the international community in protecting this right; briefly summarize the evolution and codification of these rights; describe the monitoring and accountability structures and processes that exist to accompany them; and review the role that NGO stakeholders have recently played in bolstering these responses. Using the current state of violence against education in Cameroon as an illustration, I will highlight two theoretical frameworks that could prove useful in considering potential precursors for CEWER academics and practitioners to consider.

### **A child's right to education codified**

Marketed as a pathway to global peace, nation-states seeking to protect their economies and borders via sovereignty norms and free markets drove the formation of the League of Nations and subsequently the United Nations (Karns et al. 2015). The function of the League of Nations, as described in its covenant (1919), was “to promote international co-operation and to achieve international peace and security” (League of Nations 1920). Children were mentioned only twice: once as deserving of fair and

humane labor conditions and another as a potential commodity trafficked along with women, opioids, and other dangerous drugs. While not a centerpiece of the League's covenant, the vision of self-determination shared by US President Woodrow Wilson along with the advocacy of non-governmental organizations (NGOs) placed human rights on the agenda (Karns et al. 2015). In addition to discourse surrounding the rights of refugees, minorities, workers, and women, in 1924, the League approved the *Declaration on the Rights of the Child* (League of Nations 1924), which was first drafted by Save the Children, and placed the burden of children's care on all of "mankind." After the atrocities of the Holocaust and the mass casualties associated with both World War I and II, the international community continued to question its moral responsibility to protect all of humanity. The United Nations (UN) was formed in 1945, and its charter placed human rights clearly at the center of this newly established global governance institution.

The child's right to education was reaffirmed in the Declaration on the Rights of the Child (United Nations 1959) and specifically named parents, voluntary organizations, local authorities, and national governments as responsible duty bearers (Simmons 2009). After the initial framing of education as a tool for "international understanding" in the earlier post-World War II days of the United Nations (Martínez de Morentin 2011), attention shifted toward its use as a tool of development. Mid-twentieth-century economists recognized the positive relationship between stronger nation-state economies and higher levels of education (Wang, Ying, and Shasha Liu 2016)—more educated societies are more likely to have healthier populations (Barrera 1990) with longer life expectancies, and thus a greater number of years for workers to be economically productive. Yet despite global investments in development, hundreds of millions of children and adults remained illiterate and in poverty.

A major paradigm shift occurred with the ratification of the United Nations Convention on the Rights of the Child (CRC) (1989) by all member states except for the United States, Somalia, and South Sudan. This international law frames access to education as a human rights issue and names governments as the responsible parties for providing formal education *and* assisting individuals in accessing it during emergency contexts (i.e. "education in emergencies"), including violent conflict (Lerch et al. 2018). With the ratification of the 1989 convention, detailed language outlining the legal responsibilities of government was now available to support the demands of children's rights advocates (Simmons 2009). The development of "The Abidjan Principles" in 2019 further strengthened discourse surrounding education as a human right and amplified the obligation of states, not private actors with neoliberal motivations, as providers and *defenders* of public education. Clear action plans for protecting children's rights to education

made the development of accountability measurements the next logical step. With the CRC as its mandate, the international community declared “a renewed commitment to, basic education,” and in 1990, participants at the *World Conference on Education for All* in Jomtien, Thailand, designed the “Framework for Action to Meet Basic Learning Needs.” Having not achieved the vision of the 1990 declaration, a series of summits and conferences followed that eventually resulted in the development of specific goals linked to measurable indicators—the Millennium Development Goals (MDGs) ([United Nations General Assembly 2000](#)). Today, the Sustainable Development Goals (SDGs) are the most current iteration of these goals, which nation-states are using to track their progress toward achieving “education for all.” While great progress has been achieved globally in increasing access to and quality of education, “education for all” is unachievable without more intentional interventions in conflict-affected societies.

#### **Armed conflict: the “hidden crisis” of education in conflict-affected societies<sup>4</sup>**

Building off the activism of the previous years, the United Nations General Assembly (UNGA) turned its attention to the impact of violent conflict on children, and subsequently their access to education. In December 1993, two years into the Yugoslavian war and months before the genocide in Rwanda began, the UNGA adopted resolution 48/157 on the “Protection of children affected by armed conflict.” As part of this resolution, a request was made to the UN Secretary-General for an independent expert to research and evaluate the impact of conflict on children. Graça Machel, the former Minister of Education of Mozambique, was appointed to the role and, after a two-year period of research and consultation, produced a groundbreaking report (1996) titled “The Impact of War on Children,” which has been recognized globally as the primary catalyst for a major paradigm shift in child protection and humanitarian efforts. Not only did Machel’s assessment “led to a decisive moment in which the wider international community began to address the violence against [children impacted by armed conflict] with increasing activism and insight” ([Mendez 2007](#), 222), it became the impetus for ratifying a series of United Nations Security Council (UNSC) resolutions that finally prioritized the development of accountability mechanisms.<sup>5</sup> In 2005, the UNSC adopted Resolution 1612 ([2005](#)), which established a Monitoring and Reporting Mechanism (MRM) on six grave violations specifically committed against children in times of armed conflict: the killing and maiming of children; recruitment and use of children by armed forces and armed groups; sexual violence against children; attacks against schools

or hospitals; abduction of children; and denial of humanitarian access for children (Hodgson 2012).

To reduce and prevent attacks on education specifically, in 2007, a UNESCO publication argued that additional institutional steps should be taken, specifically, toward “setting up a global system for monitoring violent attacks on education, including attacks on teachers and academics, and support the establishment of a publicly accessible, global database to keep track of the scale of attack, types of attack, perpetrators, motives, impact on education provision and the nature and impact of prevention and response strategies” (O’Malley 2007, 43–44). The international community has attempted to respond to UNESCO’s call by collecting such relevant data. In 2015, academics and representatives from this global governance regime met to discuss the political, logistic, and systematic challenges of collecting data about attacks against education (Kalista 2015). These included verification of information, gaps in coverage, time-sensitivity, personal security risks associated with data collection, and the lack of consistency between organizations regarding common definitions that drive indicators. Discussions centered around creating a Global Data Service to streamline data collection and developing two-way partnerships between users and providers of data from the field. Today, UNESCO’s Institute for Statistics houses country-level data about the number of attacks on students, personnel, and institutions going back as far as 2015; this data is collated from the Global Coalition to Protect Education from Attack (GCPEA) database, which is built with data collected in the field and via publicly available sources by partner organizations like the Armed Conflict Location and Event Data Project (ACLED) and the Global Terrorism Database (GTD).

### **The Global Coalition to Protect Education from Attack (GCPEA)**

Just as civil society and non-governmental agencies spearheaded the Declaration on the Rights of the Child in 1924, today civil society has driven the next political evolution of protecting children from violent attacks on education. Furthermore, they are working on *preventing* school attacks through international collaborative, peer support networks. In 2010, “organizations working in the fields of education in emergencies and conflict-affected contexts, higher education, protection, and international human rights and humanitarian law that were concerned about ongoing attacks on educational institutions, their students, and staff in countries affected by conflict and insecurity” joined to form the Global Coalition to Protect Education from Attack (GCPEA) (Protecting Education 2022).

At their first international conference on Safe Schools in Oslo, Norway (2015), nation-states in attendance were urged by the leadership of Norway, Argentina, Cote d'Ivoire, Spain, Austria, New Zealand, Nigeria, and Jordan to endorse the Safe Schools Declaration and follow the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict* (“[The Oslo Conference Report](#)” n.d.); as of this writing, 118 states have officially endorsed the declaration, and military policy changes have already been noted by Norway, Denmark, the United Nations peacekeeping mission in the Central African Republic, Sudan, New Zealand, Switzerland, Argentina, the Palestinian National Security Forces in Lebanon, Italy, Luxembourg, Slovenia, Nigeria, and Mali (“[Safe Schools Declaration Endorsements](#)” 2022). In 2017, Argentina hosted the Second International Conference on Safe Schools; focused on sharing its recently developed toolkit for data collection (“[Toolkit for Collecting](#)” 2021), an emphasis was placed on the need to develop effective monitoring and reporting tools “to mount an effective humanitarian response and provide assistance to victims of attacks on education,” as well as pursue accountability (“[Second International Conference on Safe Schools](#)” n.d.). The third international conference, hosted by Spain, celebrated the thirtieth anniversary of the Convention on the Rights of the Child (“[Third International Conference on Safe Schools](#)” n.d.). In addition to highlighting the need to incorporate gender analysis in monitoring these attacks and developing prevention mechanisms, this community of practice was further formalized with the creation of a state-led implementation network, which provides resources and support for implementation and peer sharing ([Protecting Education](#) 2021). In a powerful reminder of what is at stake if states do not protect children and schools from attack, children’s voices were elevated throughout the fourth international conference held in Abuja, Nigeria, in 2021, as they shared their first-hand experiences of surviving such attacks (“[Outcome Report on the Abuja Conference on the Safe School Declaration](#)” 2022).

The UNGA affirmed the historical progress and intergovernmental collaboration that has taken place since 1924 to protect children’s rights to education in Resolution 74/275, which also requested that UNESCO and UNICEF organize a public awareness campaign around the issue. Since 2020, September 9 has been acknowledged as the International Day to Protect Education from Attack. In September 2022, The Education Above All (EAA) Foundation in Qatar, also a founding member of GCPEA, shared that it is in the early stages of developing a new open-access data portal to Track Attacks on Education (TRACE).<sup>6</sup> The goals of the TRACE data portal (Methodologies 2023) are to “ensure that quality data is available in an easy-to-use form to hold attackers accountable, advocate for the protection of education, and respond to attacks in a timely manner” (Relief

Web 2022). This initiative could also be a step forward in prevention, vis à vis prediction, as this data collected over time could be used by academics and practitioners to create, test, and validate *prediction* models.<sup>7</sup>

### The challenge of enforcing the child's rights to education free from attack

Despite the tremendous efforts of civil society and participating states described in the previous sections, as well as international law on the matter, progress in designing effective accountability mechanisms for those perpetrating attacks on education and grave violations against children is minimal. Formed at a time in history when geopolitical, international wars were center stage, many of the United Nations' frameworks and structures are no longer sufficient. "New" wars rooted in identity politics that are fought with "counter-insurgency techniques of destabilization aimed at sowing fear and hatred ... to control the population by getting rid of everyone with a different identity ... and by instilling terror" (Kaldor 2013, 9) need new strategies. The weapons of today's wars are less likely to be engaged on the battlefields by geopolitical superpowers, but aimed at civilians instead, despite international law designed to prevent otherwise.<sup>8</sup>

Particularly problematic for the issue of violent attacks against education and the grave violations against children that can occur during these attacks is the fact that most of these laws only apply to *interstate* conflicts and *state* actors, not intrastate violent conflicts or NSAs, which both greatly contribute to this global phenomenon. Research has also shown no evidence that "signatories of international treaties on the laws of war are significantly less likely to kill civilians in war than are non-signatories" (Valentino, Huth, and Croco 2006, 340). These two observations raise serious questions about nation-state accountability, especially given that governments are responsible for most civilian violence (Kalyvas 2006). Issues of state sovereignty further complicate holding state actors accountable for violating the rights and safety of children; because states are interested in maintaining good foreign relations with other states (and also avoiding accountability for human rights violations themselves), they are less likely to pursue action against other states that violate international law, whether children are the victims or not (Mendez 2007). This bias has also influenced the way that the UNSC "takes coercive (i.e. military) action under Chapter VII to deal with serious violations of rights (and) such action is often selective and driven by ad hoc geopolitical trends" (Brownlie 2003 in Mendez 2007, 237; Richardson 1999). These issues have even pervaded the international justice system, where prosecutors have prioritized which parties that have

participated in school attacks will actually be prosecuted (Human Rights Watch 2022; “Outcome Report on the Abuja Conference on the Safe School Declaration” 2022).

To date, the UN Monitoring and Reporting Mechanism (MRM) associated with Resolution 1612 is the *sole* accountability mechanism outside of criminal prosecution that is used to hold actors accountable for attacks on education that involve grave violations against children (United Nations Children's Fund 2014). Unfortunately, issues associated with how the MRM is “triggered” or initiated, focused, and implemented exist at multiple levels (Bennouna et al. 2018; Nyamutata 2013; Nylund et al. 2010), making this an unreliable accountability mechanism for retributive justice. First, it depends on identified perpetrators' active participation in an action planning process centered on avoidance and discontinuation of these activities. Motivations for participating in this process heavily rely on norm-shaming, likely ineffective against NSAs with nothing to lose. Second, the amount of time from violation to the UN's independent verification of the incident to the inclusion of the actors on both sides of the conflict in the MRM is excruciatingly long (Sloth-Nielsen 2018). Third, while external agencies like NGOs provide additional reporting to the UN that supports or contradicts the self-reporting of nation-states, unless an egregious violation has occurred it is more likely that incidents go “largely underreported and few actions are taken to ensure the protection of children and schools.” (Montjourides 2013, 96). Fourth, while the United Nations has emphasized the responsibility that NSAs hold for human rights violations, accountability mechanisms such as the MRM are only focused on those NSAs that are able to “(exercise) either government-like functions or defacto control over territory and population” (OHCHR 2021); this approach exposes a loophole in accountability mechanisms, as many violent extremist groups do not hold this power and legitimacy.

And finally, what ends up in the final report is unlikely a full representation of actual events. To illustrate, when Alfaro et al. (2012) compared the events that were included in MRM reports with the results of a population-based survey and interviews with stakeholders in the Democratic Republic of the Congo (DRC), only 1 percent of those events reported by locals were also incorporated in these MRM reports. While multiple motivations exist to underreport incidents (Hodgson 2012; Mendez 2007), it cannot be missed that those events that *are* documented are well past actionable steps of *immediate* intervention due to the two-year lag between when a report is submitted to when it actually gets read by the Committee (Sloth-Nielsen 2018). By the time that an event is recorded and reported by the Secretary General for Children and Armed Conflict (SRSG/CAAC), ceasefires and peace negotiations could already be underway, and interest

in pursuing such violations may no longer exist. These issues are all in addition to the challenges posed by conducting fieldwork in conflict regions, the lack of organizational/systematic collaboration among data monitors, and, importantly, an overall lack of political will to implement children's rights (Carvalho 2008).

In summary, while the UN MRM may be a tool for social norm leverage via "naming and shaming" (Mendez 2007), the MRM simply *records* events that have already occurred, as opposed to *predicting* and thus *preventing* acts of violence against education in the first place. More importantly, the MRM is a product of its UN creator, an institution designed to build international peace *between* nation-states. Holding perpetrators of violent attacks on education accountable becomes complex in the confines of this forum. Therefore, the international community must leverage the social capital and knowledge creation that is occurring across the NGO and civil society space (Dynes 2006), collaborate, and co-invest in developing prevention and intervention mechanisms to protect children's safety and access to education free from attack. To bridge the causal chains associated with the lack of accountability, in the next [section I](#) will specifically call on academics, practitioners, policymakers, and citizens to act with urgency and co-develop rigorous, community-led CEWER mechanisms. I will first provide a brief review of this approach to conflict and end by proposing two areas within the education sector that must be further interrogated statistically, as well as locally, as potential precursors of forthcoming violent attacks on education.

### Protecting violent attacks on education through coproduction

#### *The future of preventing education from attack*

CEWER and prediction modeling (also called fifth generation CEWER) approach data collection with more urgency than the UN MRM and may provide a more regional understanding of conflict drivers and activity;<sup>9</sup> however, warnings generated by these systems tend to be shared with elite actors in positions to take action, while "much less thought (is given) to *also* warning those who are about to be attacked" (Barrs 2006, 1)—the civilian populations in countries experiencing violent conflict. Preventing attacks on education is complex, but not impossible if local community-members are involved in time-sensitive data monitoring and reporting. Community-led CEWER, also referred to as community based, people based, fourth generation, people managed, local or community centered, or people centered (Díaz et al. 2022; Macherera et al. 2016), may be able to bridge the gaps

between early warning and early response via coproduction of data and reporting (Ostrom 1996). This strategy prioritizes the “(integration of) citizens ... in order to provide a better service to the community and to build more resilient communities, aware of the risks they might be exposed to and with capacity to recover effectively from disasters” (Díaz et al. 2022, 2452). The coproduction of CEWER methods for data collection *with* communities will give a more complete picture of imminent dangers (Díaz et al. 2018). Because community members are usually “the first-first responders in any catastrophic situation affecting their community,” any effective, conflict-sensitive prevention or intervention activities must mobilize their social capital (Díaz et al. 2018, 1). NGOs and IGOs could help build capacity for design, engagement, and implementation of these community-led CEWER systems via localized participatory action research, which is crucial for leveraging community social capital, designing context-specific systems, and building resilient communities (Díaz et al. 2018).

Emergency management early warning systems, which have traditionally monitored precursors associated with dangerous weather patterns and droughts, have become the model for these fourth-generation CEWER activities. Community-led CEWER differs from other more traditional geopolitical models in that volunteers transmit relevant data to other trusted community members volunteering in command centers who are also involved in response coordination with other agencies (Díaz et al. 2022). Similar to crowdsourcing, ICT technology is used to transmit crisis informatics (i.e. precursor data) to decision makers able to respond to validated information (Díaz et al. 2018; Díaz et al., 2022). Various levels of technology, from radio transmissions, email and SMS to social network messages and mobile apps, have been used with success to intervene in escalating situations of violent conflict in Chicago, Sri Lanka, Kenya, and East Africa (Bock 2012). Therefore, it also seems possible that a similar model could be designed and implemented to monitor and prevent children from violent attacks on education. Identifying trends and patterns surrounding the progression of violent attacks on education is crucial to developing community-led CEWER; doing so requires the collaboration of all stakeholders to map out the strategies used by violent extremists who seek to disrupt or destroy access to education.

In September 2022, the Track Attacks on Education (TRACE) data portal was introduced to the international community. While other organizations have monitored attacks on education and disseminated their trends for academics, practitioners, and policymakers, this new initiative specifically names advocacy, accountability, prevention, response, and planning as its key principles. It also names affected communities as key stakeholders and calls for their full engagement at each stage of development (“Trace Portal Launches” 2023).

*Identifying potential precursors for violent attacks on education*

Comparative case study research across various contexts would help support the identification of generalizable, progressive precursors that go beyond the traditional nation-state level measurements associated with access to education as a starting point for model development. Lynn Davies (2006) and Annette Richardson (1999) point toward potential precursors worth examining more closely. When examining patterns of attacks on schools in conflict regions over time, Richardson (1999, 731) found “a striking repetitive historical pattern of similar circumstances” associated with schooling disruptions by perpetrators of violence; she suggests that education systems are *disrupted and dismantled* by perpetrators before and during violent conflict. Davies (2006) suggests that education systems are leveraged as socialization machines by perpetrators wishing to produce populations willing to commit violence against others and that this leads to violent conflict.

By juxtaposing these two theoretical frameworks, we can see that they are working in opposite causal directions, with Richardson (1999) looking at the *impact of conflict* on education and Davies (2006) looking at the *impact of education* on conflict. Both causal directions are relevant to the study of violent attacks on education and must be more closely interrogated to exhaust the number of potential precursors worthy of testing in CEWER mechanisms, including predictive modeling. Multiple quantitative studies have examined the effect of education *on* conflict, which Davies considers (see also Østby et al. 2019 and Burde et al. 2017 for extensive literature reviews). But there is a major gap in literature examining this relationship in the other causal direction, or how Richardson (1999) examines the issue of attacks on education. Despite their different approaches to studying the nexus of conflict and education, there are overlaps in the precursors that Davies and Richardson consider.

Changes in curriculum and language policies are two potential indicators for academics, practitioners, and citizens to monitor more closely as potential precursors to violent attacks on education. Abadie's (2006) quantitative study on country-level determinants of terrorism examines the role of language on conflict, and thus at least serves as a potential starting point for prediction modeling and other CEWER activities. After testing the statistical significance of ethnic, religious, and linguistic fractionalization on terrorism, Abadie determined that the language indicator in his model was the sole determinant of conflict prediction, the significance of which became stronger when religion and ethnicity were eliminated from analyses. Just as in previous discussions about the need for context, Abadie's “p-values” can't be oversimplified; a danger exists in overemphasizing statistical significance and underemphasizing the need for and discovery of violent conflict predictors (Ward et al. 2010) *in situ*.

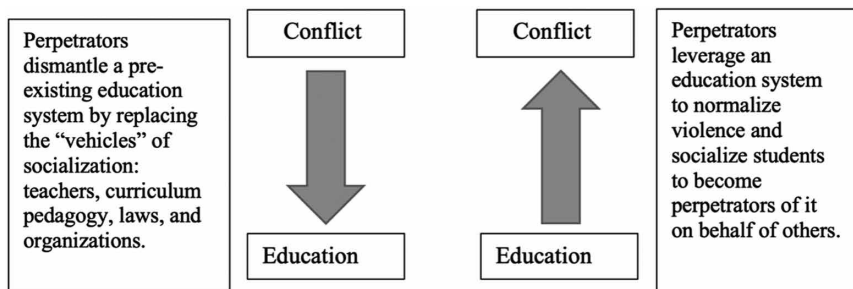


Figure 7.1 A comparative interpretation of Richardson's (1999) Schooling Disruption Model versus Davies's (2006) Birmingham International Education Security Index

Historical policy and conflict analyses will continue to remain crucial to considering the relevance of language and curriculum policy changes on conflict and acts of violent extremism. Language policies in conflict societies often have inflammatory impacts associated with generational historic oppression and cultural hegemony (May 2013). Both curriculum and the language of instruction can be associated with the language and narratives of the oppressor (May 2013). Textbooks are sources of contested histories, omitted facts, and locations of “chosen traumas” (Volkan 1979 in Zembylas 2021). Many identity-based conflicts have escalated into violence because of changes in one or both curriculum and language of instruction. Justified to increase economic opportunities for all, in 1956, Sinhala linguistic nationalist legislation passed and became a catalyst for violence when Tamil Separatist groups gained more popular support for their extremist views (Bandarage 2009). Changes in public policy are “done” by the government, and public education is an extension of government responsibility; therefore, violent attacks on education triggered by changes in language policy can be seen as a proxy war. Unfortunately, the government is only the *indirect* target, and children and their educators are the ones directly in harm's way.

### Violence against education in Cameroon: a closer look at precursors

Today's educational crisis in Cameroon can be traced back to a change in language policy that occurred shortly after the British and French regions of Cameroon merged in a referendum to become the Republic of Cameroon in 1961. A new French-English bilingual national policy became the foundation for half-hearted attempts to integrate the education systems in both regions and evolved into attempts at forced assimilation by the Francophones

toward the Anglophones. Transplanted educators from the French region refused to teach classes in English; state examinations were badly translated from French to English, leading to increased failure rates for Anglophones; and university entrance exams were administered in French, further preventing Anglophones' economic and social advancement (Kouega 2018). Violence sparked when English-speaking teachers and lawyers began protesting after receiving no response from the government over the continued posting of French-only speaking teachers and lawyers to Anglophone Cameroon (Solidarity and Development Initiative 2021). What began in October 2016 as a series of strikes and protests led to a successionist movement fueled by tactics of government oppression and violence toward protestors. Consequentially, violence against education ignited when non-state Anglophone actors began violently targeting education and its beneficiaries in the North West and South West who disobeyed their strike orders to close schools and/or not attend (Akame et al. 2021). Based on geographic location alone, it is more likely that minority English-speaking students' human rights to access education free from attack is being denied in this conflict. Since its start more than six years ago, over four thousand civilians have been killed across both regions; scores of attacks on schools by gunfire, raids, or arsons have occurred; and thousands of students and teachers have been abducted, killed, harassed, or threatened at or on their way to/from school (Marston and Tsolakis 2022).

## Conclusion

In the quest to better understand why there is such underwhelming lack of accountability for atrocities, such as violent attacks on education, this chapter has examined one of the main mechanisms for holding actors accountable: the United Nations Monitoring and Reporting Mechanism (MRM). While some progress has been made to uphold the non-discrimination and right to life and development principles of UNCRC by instituting the MRM, the timelines and strategies at its foundation are responsible for its ineffectiveness in prevention. Furthermore, its use as an accountability mechanism is tainted by political maneuvers and omits the wisdom of local populations, who are the experts of their conflict context and the realities of living in its shadow.

This chapter makes a unique contribution to the CEWER, children's rights, and "education in emergencies" literature by proposing the creation and use of community-led CEWER systems to protect children from violent attacks on education. To be effective and sustainable, local community engagement and capacity building for community-led CEWER must be

financially supported by IGOs and NGOs and become a norm of National Action Plans (NAPs) associated with strategies to prevent violent extremism.

Assessing the unique gaps in knowledge and capabilities of IGOs, NGOs, CEWER researchers, and communities in protecting children's rights suggests that stakeholder collaborations, like GCPEA, may better synergize the work that various organizations are attempting to do on their own. Furthermore, these collaborations can mitigate the ineffectiveness of bureaucratic monitoring systems, which do not prioritize prevention, by providing resources and capacity building to local communities to increase their resilience during times of heightened conflict and support them in their duty to provide education. As mechanisms like the TRACE data portal are developed, the international community must decenter itself from decision-making that should be in the hands of local communities. By not doing so, not only will conflict interventions across contexts likely be more culturally insensitive, but opportunities to support building collective resilience (Norris et al. 2008) against violent attacks on education within a community will be seriously missed.

## Notes

- 1 In chronological order, these include Declaration of the Rights of the Child (1924); Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Additional Protocols (1949, 1977); Convention relating to the Status of Refugees (1951); Declaration on the Rights of the Child (1959); International Covenant on Economic, Social, and Cultural Rights (ICESC) (1966); United Nations Convention on the Rights of the Child (CRC) (1989); Rome Statute of the International Criminal Court (1998); and the Guiding Principles on Internal Displacement (1998).
- 2 Defined by the Global Coalition to Prevent Education from Attack (Tsolakis et al. 2020) as: "any threat or actual use of force by state armed forces or non-state armed groups, on students, education personnel, or educational infrastructure or materials, for political, military, ideological, sectarian, ethnic or religious reasons." GCPEA further specifies and categorizes these attacks as attacks on schools; attacks on students and personnel; the military use of schools; child recruitment at, or on the way to or from, school; sexual violence at, or on the way to or from, school or university; and attacks on higher education.
- 3 Early Warning and Early Response (EWER) activities focus on "systematic data collection, analysis and/or formulation of recommendations, including risk assessment and information sharing, regardless of topic, whether they are quantitative, qualitative or a blend of both" (Austin 2004, 130). They contribute to conflict prevention initiatives meant to reduce, resolve, or transform a potential armed conflict.
- 4 For additional detail contextualizing the impact of armed conflict on global education attainment goals, see UNESCO (2011).

- 5 These include: S/RES/1261 (1999), S/RES/1314 (2000), S/RES/1379 (2001), S/RES/1460 (2003), S/RES/1539 (2004), S/RES/1612 (2005), S/RES/1882 (2009), and S/RES/1998 (2011).
- 6 To monitor progress of this initiative, visit <https://tracedataportal.org>
- 7 For a general description of prediction modeling, see [Kubben et al. \(2019\)](#).
- 8 The Hague Conventions (1899, 1907), the Geneva Conventions (1864, 1949, 1977), and Articles 7 and 8 of the International Criminal Court's Rome Statute set the boundaries of what is considered to be appropriate acts and weapons of war and differentiate between war crimes and other acts of violence against civilians ([Karns et al. 2015](#)).
- 9 Various international and regional CEWER systems have also been established, including CEWARN in 2002 by the Intercontinental Government Authorities Development (IGAD); ECOWARN in 1999 by the Economic Community of West African States (ECOWAS); and the African Union Continental Warning System (CEWS) in 2006. Global and national EWER traditionally communicate warnings down until they reach communities ([Macherera 2016](#)).

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# Part III

Sociocultural perspectives on children's rights



## When do “children” become “adults”? Transitions in children’s rights and child marriage

*Mies Grijns and Hoko Horii*

### Introduction

When Risky married Widi, the former was eighteen and the latter was sixteen or seventeen years old. They had been in a courtship (*pacaran*) since junior high school, and after four years of *pacaran*, Widi became pregnant. Widi did not tell Risky about the pregnancy at first, but eventually he found out about it through her parents, who came to tell him to take “responsibility.” He said he was “a little scared” at that time, but his father told him that he would “just have to accept it.” When we asked whether he thought about not marrying Widi after finding out about the pregnancy, he said “no, I have to marry (*harus nikah*), as his father.” We asked who said “*harus nikah*,” then he said “myself.” He was ready to marry Widi, and he *wanted to* marry her. It was Widi’s parents who initiated the discussion about marriage, and Risky’s father pushed for it. Risky, as his father’s *son* and still under his supervision, seemed to accept what his father said and further internalized the norm that it was necessary to marry when his girlfriend became pregnant. However, he was also already becoming a father. Risky was ready to marry Widi, to take his responsibility as the baby’s *father*—therefore, no longer a child.

In Indonesian society, children are no longer considered children when they marry, because then they start their own family and have to carry responsibilities as a husband/wife or father/mother. The transition is not just about physical age, but also includes mental maturity—*dakil baligh*.<sup>1</sup> We find that there is a similar concept in global children’s rights discourse: evolving capacity. The idea is to acknowledge that children are and should be able to decide on their own according to the development of their cognitive capacity.<sup>2</sup> It proposes to assess the decision-making by children not just in terms of physical age, but also in terms of cognitive capacity that gradually develops and individually differs. This principle is crucial for the realization of the rights of young adolescents who are transitioning into “adults.”

However, the current global children's rights/human rights regime tends to lean toward a paternalistic and protectionist approach (Cantwell 2016; Hopgood 2017) by setting a threshold between children and adults, and their cognitive ability, of eighteen years of age. Within the current regime, this principle of "evolving capacity" is difficult to implement in practice, and is perhaps the most unfulfilled aspiration in children's rights (Lundy 2007; Shier 2001; Tisdall 2017; Tobin 2015; Varadan 2019). We might say this is a silent crisis of rights for young adolescents.

The evolving capacity principle highlights that there is a gray zone, a transitional phase between what is called "childhood" and "adulthood," and that the process is gradual, individual, and contextual. When do children become adults? The struggle in implementing this principle perhaps stems from the complexity and sensitivity of addressing this question: the discussion on the transition from childhood to adulthood is loaded with the question of power, control, dependence, and independence in the interaction between children, their caretakers, and the state. Several scholars examined the transition to adulthood for young people with disabilities (Ferguson et al. 1988; Fish 1986; Mitchell 1998; Murphy et al. 2011; Osgood et al. 2010; Tyyskä 2001). Fish (1986, 16), for instance, identified a number of markers of adult status, including (1) employment, useful work, and valued activity; (2) personal autonomy and independence; (3) social interaction and community participation; and (4) roles within the family. Ferguson et al. (1988, 180–185), by studying the transition of young people with learning difficulties to adulthood, conceptualized their transition in terms of (1) bureaucratic transitions (shift to the adult service system); (2) family life transitions (changes in established routines and responsibilities within family units); and (3) status transitions (a series of events, such as leaving school, getting a job, and moving away from home). Mitchell (1998) points out that the concept of "transition" is often constructed by symbols and professionals involved, interring that the transition involves elements of power, independence, and autonomy. She criticizes the "traditional idea for sharp institutional status transition," as transition is more personal (Mitchell 1998, 250).

The term *adolescence* is often used to identify this transitional period between childhood and adulthood, but without unified definitions and with different categorizations of age groups. The dividing lines are confounded by general understanding, scholarly research, and official definitions used by the state and transnational organizations. In everyday usage in North America, for instance, the term *adolescent* is used for those between fifteen and twenty-four, and *teenager* for those between thirteen and nineteen (Tyyskä 2001, 8). The World Health Organization (WHO) defines an adolescent as those who are aged between ten and nineteen, and refers

to young people as individuals between ages ten and twenty-four (World Health Organization n.d.). The United Nations (UN) defines “youth” as those persons between the ages of fifteen and twenty-four (United Nations General Assembly 1981, para. 8). The UN Committee on the Rights of the Child (2016, para. 5) recognizes that puberty occurs at different ages and does not seek to define adolescence, focusing instead on “childhood” from the age of ten to eighteen. In the EU’s national legislation, the term *adolescence* is not often neither defined nor unified: only five Member States use it to describe children between the ages of twelve/fifteen/sixteen and eighteen years (European Union Agency for Fundamental Rights 2017).

In natural science research, adolescence represents a time of physical, psychological, cognitive, emotional, and social change. Medical studies define adolescence as the cessation of linear growth in the years following the attainment of final height, peak bone mass, and peak muscle mass (Gleeson and Clayton 2007). Psychologically, the adolescent moves from dependence on caretakers to achieve relative independence, and neuroscience and psychology is interested in cognitive and behavioral changes during this period (see e.g. Casey et al. 2010). Cognitively, adolescents are believed to develop abstract thinking and reasoning. Emotionally, they are supposed to develop a sense of identity during late adolescence; social involvement, peer interaction, as well as sexual interest, develop in this phase (Kar et al. 2015). Last but not least, adolescence is a phase of transition during which major developments in sexuality take place. Puberty is reached during adolescence, which is a major landmark in the development of sexuality under the influence of the hormone-releasing axis (Kar et al. 2015).

Some approach the concept of youth in relational terms, with reference to the social processes whereby age is socially constructed, institutionalized, and controlled in historically and culturally specific ways. For instance, Cote and Allahar (1996) argue that the position of youth is often manipulated by politically and economically powerful groups. Arnett (2004) has suggested that what is generally referred to as “late adolescence” is “emerging adulthood.” In 1950, Erik Erikson, a student of Freud, described adolescence in modern Western societies as a “psychosocial moratorium,” a period of freedom from pressures of adult responsibilities, which allows young people to experiment before settling on a lifelong career (Schwartz et al. 2018). This suggests that, against the backdrop of the development of the concept of transition period between childhood and adulthood, there are societal changes that took place in modern societies, marked by rapid changes in vocational opportunities and lifestyles.

While the literature on adolescence is mostly based in Western/developed countries, this chapter will turn to transition in Indonesia by examining the case of child marriage. Marriage is often seen as the threshold for entering

adulthood, so it is an apt case to analyze the transition. What are the markers of the transition? Are there definitive markers such as the age of eighteen, or is the transition perceived rather as stages and shades of gray, as “evolving capacity” suggests in principle? We will look at the concepts of childhood and adulthood and the transition between them at global, national, and local levels, which will allow us to reflect on what “evolving capacity” actually could mean.

## **Global and national concept of childhood/adulthood/transition**

### *Global minimum age standards*

The Convention on the Rights of the Child (CRC) defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Art. 1). Some articles in CRC call for the introduction of minimum ages without specifying what that age should be; e.g. Article 32 requires an age for the admission to employment, and Article 40 imposes an obligation to establish a minimum age below which children cannot be held criminally responsible. More generally, Article 37 requires that when children are deprived of their liberty, the needs of their age must be taken into account.

It is clear that the UN treaty bodies avoid controversial articles but compensate for this ambiguity with general comments issued by the committee. The UN Committee on the Rights of the Child (2007), in General Comment No. 10, recommends that the absolute minimum age of criminal responsibility should be twelve years. In General Comment No. 4, the Committee recommends that States increase the minimum age for marriage with and without parental consent to eighteen years, while allowing for exceptional circumstances, in which a mature and capable child over the age of sixteen may marry (UN Committee on the Rights of the Child 2003). It also entails the recommendation to set a minimum age for sexual consent, which should be equal for boys and girls, yet without specifying at what age this should be set (UN Committee on the Rights of the Child 2003). These general comments are not legally binding.

As these various age standards set by the transnational institutions suggest, minimum-age legislation essentially relies on chronological, linear definitions of childhood and adolescence. Such chronological age definitions miss out on important differences in the individual development and experience of these phases in life. For example, Huijsmans et al. (2014, 3) argue for a relational approach to age, pointing out that “chronological age is a form of ‘state simplification.’” Another critique is that the use of chronological

age definition reflects Western legal traditions and traditional psychological development discourses that assume that qualities of childhood and youth are universal and monolithic (Clark-Kazak 2009, 1308). However, in reality, “the experiences of children and young people vary widely in relation to social, political and environmental conditions, and individual characteristics” (Clark-Kazak 2009, 1308). Such a view hence questions the viability of global minimum ages from both an individual and a cultural perspective. Some scholars, indeed, criticize CRC as a representation of a Western vision of childhood, characterized as a state of undefined innocence and therefore in need of protection. It is seen “patronizing” (Desmet 2012), not fully respecting children’s agency. In sum, while most global legislation (if not all) seems to demarcate clear lines between childhood and adulthood based on chronological age, such an approach might be found to be in conflict with the concept of “evolving capacity.”

### *Indonesian state’s minimum age legislation*

In Indonesian state law, various legislation sets different minimum ages for different activities. For instance, one latest discussion is the age of criminal responsibility. In 2012, the Juvenile Justice bill was developed to replace the Juvenile Court Law, increasing the minimum age for criminal responsibility from eight to fourteen years old (Kusumaningrum 2012).<sup>3</sup> As for criminal activity against a child, the Penal Code criminalizes any sexual intercourse with those under fifteen under Article 287 (sexual intercourse with a child) and Article 290 (obscene acts against or seduction of a child). Another example is the Indonesian Residential Identity Card (*Kartu Tanda Penduduk*, KTP), which is issued upon reaching the age of seventeen or *of marriage*.<sup>4</sup> Consequently, seventeen is also the age one can apply for a driving license and various legal documents. Since 2019, the legal marriageable age has been nineteen for both women and men (the details will be explained below).

When it comes to child protection, there are laws and regulations that reflect the idea of a child that needs protection, but a child’s rights vaporize when they marry and instantly attain the status of adult. For instance, the Law on Human Rights of 1999<sup>5</sup> defines children as all *unmarried* persons under the age of eighteen and ensures their rights, such as the right to education, to information, and to rest and mix with children of their own age. According to this law, those who are married, regardless of their age, are no longer considered children, so they fall outside its scope of protection. The UN Committee on the Rights of the Child (2007) expresses its concern about this issue, stating that “in some State parties married children are legally

considered adults, even if they are under eighteen, depriving them of all the special protection measures they are entitled to under the Convention.”

The Indonesian government has ratified the Convention on the Rights of the Child (CRC) in 1990, and the Indonesian Child Protection Law of 2002 is clearly inspired by the CRC. The Child Protection Law defines a child as any person under the age of eighteen, and the rights stipulated in the CRC are all reflected through articles in the Child Protection Law. For instance, in line with Article 13 (CRC), Article 10 of the Act ensures the right “to express, and to be listened to about his/her opinion, to receive, seek and give information in line with his/her level of intelligence and age for the sake of his/her development in accordance with appropriateness and decency norms.” The right to education is also stipulated in Articles 48 and 49; however, in contrast to CRC, Article 50 further refers to the focus of education in broader sense, for instance in (a) developing the child’s behavior, personal capacities, talents, and intellectual and physical capacities; (here we omit item (b)) and (c) developing respect for elders, cultural identities, language, and values. Another significant difference is the emphasis on children’s connection with their families and communities. Particularly, Article 19 points out children’s obligations, such as (a) to respect their parents, guardians, and teachers; (b) to love their family and communities, and to care for friends; (c) to love the motherland, country, and nation; (d) to worship in accordance with religious teachings; and (e) to practice ethics and possess noble morals. An emphasis on religion is observed in several articles such as Articles 42 and 43. All the points above suggest that the Child Protection Law, while being inspired by CRC, significantly reflects on communitarianism, as well as strongly fixed morality and values to be respected.

As for the minimum age of marriage, increasing attention in Indonesia on child protection issues from the beginning of this century, combined with international debates on the prevention of child marriage, led to action (Bemmelen and Grijns 2019, 307–308). The 1974 Marriage Law stipulated a minimum age of marriage for women at sixteen and men at nineteen years old. It took forty years to get a judicial review that asked for a higher marriageable age for women. Religious leaders from all faiths agreed at the court with a minimum age of eighteen, or even higher, except for conservative Muslim leaders, who were against a fixed marriageable age. They preferred *baligh* (physical maturity) as the sign that a girl is ready for marriage. So, the age limit of sixteen as stated in the Marriage Law 1974 was acceptable to community and Islamic norms. Raising the minimum age was seen as delaying marriage, which would stimulate sinful extramarital sexual relations. Thus, the first review was rejected by the Constitutional Court (Bemmelen and Grijns 2019, 311).

The second judicial review took until 2019 to finally raise the marriageable age for women from sixteen to nineteen years in the Marriage Law. This time the argument was based on gender equality: for men the minimum age of marriage was already nineteen years old, so it had to be an equal age for women too. An important note since 2019 is that adolescents aged between nineteen and twenty still need the consent of their parents to get married, according to the Marriage Law (Bemmelen and Grijns 2019, 311–312). Further, Article 7 (2) still allows parents of underage parties to petition for a dispensation to the court. This means that, while Article 7 (1) sets a specific minimum age, anyone can marry below that age if the court gives its consent. This dispensation system is inherited from Dutch colonial times. Meanwhile, the Netherlands wiped out dispensation in 2015, when underage marriages were legally banned. Indonesian law continues to allow some leeway and flexibility regarding the legal marriageable age, and dispensation is indeed still used (Grijns and Horii 2018; Horii 2020b).

### Local concepts of childhood/adulthood/ transition (religious and cultural)

Following the previous section, which highlighted the global and national concept and standard of childhood, adulthood, and transition, this section turns to the local concepts. Indonesia is an extremely diverse nation with a large number of religions, beliefs, and ethnicities, so local concepts vary depending on the region and the prominent religion of the region. In this chapter, we will examine two examples: Sundanese (Muslim, bilineal) and Balinese (Hindu, patrilineal), based on socio-legal research. For our ethnographic fieldwork we used mixed methods, with both qualitative and quantitative data.

#### *Sundanese*

We start with the Sundanese case in rural West Java. Islam and customary *adat*—norms—are there intertwined with varying degrees of stern and mild faith. This has implications for young adolescents who get pushed into adulthood.

In the previous section we looked at *specific* ages in various laws. *Relative age* in Sundanese is a more important social marker, as reflected in the language: Sundanese grammar does not distinguish gender, but it does use different levels of speech, based on generations and social status. Childhood in Sunda does not have a fixed age limit. Toddlers and young kids are allowed

to play as they wish, both for boys and for girls. But around the age of seven, children are believed to really start following Sundanese values. This corresponds with their Islamic tradition (Kodir and Marcoes-Natsir 2022, 109), according to which children from the age of seven start learning the Quran and from the age of nine to begin daily prayers. Gender issues start around the same age, playing an important role in a child's life. This is marked in the division of labor in the household. Girls are more involved in household chores and babysitting; they are kept close to home, whereas boys can still freely play around. Girls are expected to be demure and modest in their behavior, and—very importantly—to remain a virgin till marriage. Their main future role, according to Muslim-Sundanese ideals, is that of mother and wife, while boys are trained to become the providers of their families. Van der Kooij (2016, 39) observed how teenage schoolgirls struggle to combine the ideals of “making their parents happy in life” (as a good daughter) and “continuing education” (as a modern girl).

The next stage of childhood is not marked by a chronological year, but is indicated by the onset of puberty: *baligh*, used for both girls and boys. From being called a child (*budak*), one now becomes a teenager (*rumaja*), getting ready for marriage. For orthodox Muslims, *baligh* is often seen as reason enough for getting married, in particular to preserve the virginity of the bride. *Baligh* can start at the age of nine and is certainly reached by the age of fifteen in orthodox Muslim belief. We mentioned *akil baligh* in our introduction, which indicates both mental *and* physical maturity and is a relative concept of age.<sup>6</sup> An eldest daughter is often considered to reach this stage earlier than her younger siblings, because she has had a more responsible role in the family (Grijns and Setiawati 2002, 5). The traditional *adat* requirement for a Sundanese marriage was not just the onset of puberty, but needed proof of adult skills. Girls had to be able to weave a good piece of cloth, but by around the 1970s this tradition was abandoned. “Ah, nowadays ...! As long as one can prepare *sambal* (spicy condiment), they now consider you mature enough to marry” (elderly lady in 1986).

Sundanese customs are closely linked to Islam, including *akil baligh*, the main requirement for marriageability and adulthood. The customary transition from child to adulthood, *sungkeman*, still happens a few evenings before *akad nikah*, the religious marriage ceremony.<sup>7</sup> The bride kneels down in front of her parents for consent and forgiveness from her sins. Her parents then pray for forgiveness and bless her. The same happens with the groom and his parents. After *akad nikah* the couple repeat *sungkeman*, each for their new parents-in-law, a deeply emotional ceremony and farewell to childhood.

From a local perspective, child marriage (under the age of eighteen) is a peculiar term for sixteen- or seventeen-year-olds, since the Sundanese word

for child (*budak*) is reserved for pre-puberty, and marriages under the age of around fifteen are called *nikah dini*, early marriage, but not child marriage. Although early marriage was common a century ago, with girls expecting to marry between the ages of seven and fifteen, it is now no longer so (Bemmelen and Grijns 2018). The emphasis is now on older adolescents, with women starting to get married in greater numbers around the age of seventeen and men around the age of nineteen.

It is clear that both early marriage and child marriage are gendered issues, involving women far more than men (Grijns and Horii 2018). In our case, with a rural setting, which in general brings a higher prevalence of child marriage than in the city, we found a prevalence of child marriage of 23 percent for girls and 1 percent for boys aged twenty to twenty-four whose first marriage took place when they were under eighteen years old. But at the same time, in 2014, 33 percent of the women in this village aged twenty to twenty-four years had never “yet”<sup>8</sup> been married. And for men of the same age, marriage means a more adult affair with 73 percent never married “yet.”

With a more mobile lifestyle, the ideas of current adolescents on marriage have changed too. On the one hand, there are still girls from orthodox families who marry early to avoid *zina*, the sin of pre-marital sexual relations. Usually, the girl and her parents agree on the marriage and on the choice of spouse, but we are aware of at least three cases of forced marriage (arranged by the parents and forced upon the girl), when we were in the field. On the other hand, dating seems to become a more accepted stage before marriage, with some space for agency of girls.<sup>9</sup> This is partly because for the current generation, secondary school is important and accessible, while their mothers’ generation had little more than primary school and their grandmothers had hardly any education. Today’s teenagers have more time to develop themselves compared to the older generations. Moreover, they have more mobility, which stimulates love matches, be it via travel outside the village to get to secondary school away from the control of their parents, and/or via mobile phones and social media. But for all adolescents lingers the acute fear of getting accused of *zina*, or even worse, extramarital pregnancy. Instant marriage, with at least the Muslim marriage contract (*akad nikah*), is then their only way out.

While the Sundanese term “child” (*budak*) only has the meaning of not yet having reached puberty, teenagers are in an unclear situation. It is only at marriage that they are considered adults. Previously this space between teenager and adult was only a small period, but nowadays teenagers are more often in the situation of longer-term adolescence, asking for more agency, either for continuing education or getting a paid job. Local customs actually do not care much about the minimum age of marriage but rather

stress the upper limit. Girls who are not married by the age of nineteen or twenty are considered old maids, a disgrace for the girl and her family. Child marriage here has nothing to do with a specific minimum age for marriage; it follows *akil baligh* and avoids *zina*. Marriage itself is the only proof of transition from childhood to adulthood.

### *Balinese*

In the Indonesian island of Bali, the majority of its population embraces the Hindu religion with patrilineal and caste systems. *Adat* communities, ceremonies, and law are important in the lives of Balinese people. Each village has *adat* councils and leaders, which have the ability to generate customary laws and decision-making. Existing *adat* law in Bali contains *awig-awig* and *pararem*, with which sanctions are imposed in the form of reprimands, fines, or warnings for those who commit a crime (Hamida 2022, 4).

In one of the village's *awig-awig*, it is written that marriage is an engagement between a *purusa* (male) and a *pradana* (female), with the condition that both parties are "adults." A professor of *adat* law in Bali, who was also involved in the codification of *awig-awig*, confirmed this and said that "In *awig-awig* I partly made, conditions of marriage are stipulated, such as 'already an adult,' '*suka sama suka* (based on mutual love).'"<sup>10</sup> He continued by specifying when one becomes an "adult":

According to *adat* law, someone is regarded as an adult through his/her physical changes. For a boy this can be seen from the changing in his voice while a girl can be regarded as an adult when she gets her first menstruation. Because in the *adat* law it is not mentioned about the age but only the physical characteristics, to be religiously valid then we should look at the religious text, *Niti Sastra*, on the minimum age for getting married. [...] Based on Hindu's concept in the *Niti Sastra* text, it stipulates that "*taki takining sewaka guna widya*" meaning that the age for pursuing education is from 0 to 19. Then, it is stipulated also that "*semara ruang puluhing yusa*" meaning that the ideal age for falling in love [get married] is 20 years old.<sup>11</sup>

On the interaction between *adat* and state law regarding the conflicting minimum age for marriage, he said the following:

From legal pluralism perspectives, there is a religious law mentioning the minimum age of marriage while the *adat* law only uses the physical characteristics to define adulthood. In order to prevent the conflict of norms to the state law that also has a different minimum age requirement, those laws need to be integrated. [...] If the physical changes come earlier than the minimum

requirements from the religious law and the state law, this should be resolved on a case-by-case basis. In the case of unwanted pregnancy, it will need an agreement and those underage couples should be brought back to their parents until their age is legally valid to get married so that they do not violate the state law. The position of *adat* law here is actually above the state law or at least equal to the state law so that they will create a conflict of norms.<sup>12</sup>

Indeed, when studying the case of marriage dispensation at a civil court in Bali, the judges justified their reasoning by showing that their decision did not conflict with state law. One judgment writes, “Granting marriage dispensation has been reasoned and is not against state law.”<sup>13</sup> Another judgment emphasizes that the decision is not in contradiction with Article 7(1) of the Marriage Law, as “the minimum age limit in the provision means that married persons are expected to have maturity, mental maturity and adequate physical strength.”<sup>14</sup>

As well as these codified customary laws, ceremonies are one of the important elements in the implementation of *adat* Hinduism. One important ceremony marking the transition from childhood to adulthood is *Menek Kelih* (also called *Ngeraja Swala* for girls and *Ngeraja singa* for boys). A medical doctor who engages in reproductive health issues for teenagers in Bali explained:

In Bali, there is a religious ritual called “*Menek Kelih*” (being a teenager) for Balinese Hindus to prevent underage marriage. This ritual aims at building awareness for growing up children who are in puberties, especially girls, that they have possibilities to get pregnant because they already had their first menstruation. The ritual is also to pray for God’s protection of the children from negative influences during their growing up process. The value of this ceremony also lies in creating a sense of responsibility for these young adults, as well as strengthening the feeling of brotherhood and solidarity in them.<sup>15</sup>

Eiseman (2011) explains that this ceremony is to mark children’s physical and biological changes: the first menstruation of a girl and the deepening of the voice of a boy, and the obvious development of the genitals. The ceremony is considered to raise the moral standards of the teenagers and thus to maintain their family’s righteousness and purity (Eiseman 2011).

Another important ceremony, a sign that someone is an adult, is marked by the teeth-filing (*potong gigi*, *Metatab*) ceremony (Bemmelen and Grijns 2018, 536). The tooth-filing ceremony is one of the obligations of parents to their children which must be carried out after the children reach adulthood (*akil baligh*)<sup>16</sup> (Anshori 2013, 6). The sign for children to be ready for this ceremony, again, is the first menstruation for girls and changed voice for boys. This ceremony is supposed to lead children to *niskala*, which is to live

as adults (Saputra 2018). It symbolizes responsibilities and transition from childhood to adulthood (Fischer and Andarawati 1998, 41). Filing teeth is both a physical and spiritual gesture which is believed to reduce bad traits, leading the person to be “more human” (Fischer and Andarawati 1998, 40). In tradition, parents will give advice that leads to becoming a more mature person (Kinapti 2021).

If these physical changes are the marker for adulthood, Balinese children's adulthood comes rather early. However, when we asked about people's experiences and opinions in Bali, they expressed adulthood in various different ways. For instance, some teenagers expressed in a focus group discussion, “But we are ashamed to buy condom, condom is only for adults!”<sup>17</sup> This shows that for them sexual activities are limited to “adults.”

Many informants mention studying and working as sign that they are becoming adults. Among today's “modern” youth in Bali, finishing education has become the norm, and their aspiration is to finish higher education to get “a good job” (Horii 2021). For example, a mother of a teenage girl who became pregnant said:

The boy's family came to our house to propose marriage, in order to save the status of the baby. But the marriage is purely for the status of the baby, so they will not live together, at least until they become “adult” after studying and working.<sup>18</sup>

When I asked what the minimum age for marriage under *adat* law is, a judge at the state civil court said:

According to national law, it's 19 for boys and 16 for girls. According to *adat*, on average (“*rata-rata*”) also 19 and 16. That's the age children become adults.<sup>19</sup>

This remark seems to suggest that the state law could also become the norm for how this judge perceives childhood and adulthood.

### Elements of “transition”

As this chapter has shown, the global age standards and legislation rely on chronological age, seeming to assume linear definitions of childhood. Such standards might be driven by the “protection”-focused policies concerning children (Horii 2020a), but they risk being dependent on Western legal traditions and traditional psychological development discourse. “Children” are uniformly defined as anybody under the age of eighteen ever since the

enactment of the CRC, despite the fact that the discussion in the drafting process shows that this age specification of eighteen was challenged by several member states (Horii 2019). Such sharp lines imply that the qualities of childhood are universal and monolithic, and they miss out differences in individual development as well as cultural and contextual perspectives. Some recommendations from the international institutions hint at some considerations for “evolving capacity,” but they are rather reluctant in acceptance of the gray zone, as their focus is consistently on “protection.” The global standards also represent a certain vision of childhood, characterized as a state of innocence, in need of protection. Relying on psychological development discourse, the global concept relies on *cognitive development*—when they are *considered* to be capable of rational reasoning; *reasonable* judgments (here, only what is socially accepted as the “right thing” to do (Hanson 2016); and *understanding* the consequences of their actions.

The Indonesian national standards have been influenced by the global standard. The national legislation sets various age limits for different activities, but a child as the subject of protection is defined consistently with the global standard of eighteen. The exception is marriage: in Indonesian standards, married persons are never a “child.” While the Indonesian Child Protection Law is clearly aligned with the CRC, the Law pays special attention to *familial/communal responsibility* and religious moral characteristics of the development of youth. Marriage being an exception for a path to adulthood, reflected in the national legislation, is also indicative of the idea that adulthood is marked by familial and communal responsibility. At the state marriage registration office for Muslims, officials (*penghulu*) give a mandatory lecture for a couple that is planning to get married, where there is a list of what the groom should know, but for the bride the only guidance is “serve your husband,” or as a popular saying goes, “*Sumur, Dapur, Kasur*” (cleaning, cooking, sleeping with your husband) (Grijns et al. 2016, 24).

The local accounts of the transition clarify that marriage is a clear transition from childhood to adulthood. People need to be married to be taken seriously, to be respected, and to start taking social responsibility. That is because adult status is directly associated with familial responsibility, such as cooking, earning a living for the family, and being a father/mother. For instance, an unmarried woman, even if she is an independent university professor, is still considered as a non-adult, seen as a child in the household of her parents.

Gender plays a role in the markers of transitions. Becoming an adult requires acquisition of “adult skills,” which are associated with gender. For girls, these skills include household chores and babysitting, and the norm is to be demure and modest in their behavior and remain a virgin until

marriage. For boys to be men, they are expected to be able to provide *material resources*: being a breadwinner, getting a job, earning a living for the family, being “responsible” as a father and a husband. This suggests that adulthood is marked not only by being married but also by being “a good husband” for boys and being “a good wife” for girls.

In today's Indonesian society, being resourceful also relates to the ideals of being “modern.” Children aspire to continue education as modern youth, while sometimes struggling to combine it with the ideals of being “a good daughter/son” as well as being “a good wife/husband.” Entering adulthood in this sense requires the completion of education and “getting a job.” With the demands of modern industrialized society with prolonged education periods for both girls and boys, it takes longer to become an adult. The higher threshold for “adulthood” explains the development of the concept of “adolescence” or “youth”: these concepts become needed as a transitional period between childhood and adulthood.

Leaving childhood is marked by puberty; in particular, the first nocturnal emission or change in their voice for boys and menstruation for girls. After they reach puberty, they are considered physically mature adults, ready to marry. This *bodily development* is referred to as *baligh*, but to truly and completely become an “adult,” children also need to be mentally mature, referred to as *akil* or mental development. These two elements, combined as *akil baligh*, set the condition for entering adulthood in local contexts. The local Balinese concept in particular also consists of a *spiritual* element: coming of age is marked by religious/customary ceremonies.

### **Conclusion: evaluation of the global, national, and local standards in light of evolving capacity**

One of the most important principles of CRC is “evolving capacity”—and it is in “crisis,” being perhaps the aspiration that has been least achieved or materialized so far. The principle points us to the shades of gray in regard to children's capacity and their accordant rights to decide on what matters for them. Nevertheless, global policies often seem to draw a very sharp line between the “incapable/immature child” and the “capable/known adult”—with a threshold of age eighteen. Various studies and empirical data from Indonesia presented in this chapter demonstrate that there are different ways to conceptualize the line between childhood and adulthood: cognitive development, familial/communal responsibility, material resources, bodily development, mental development, and spirituality. The evaluation of the various standards, in the light of the “evolving capacity” principle, highlights the often-neglected category of “adolescent” or “youth,” the

transitional period, which is increasingly important in the context of the demands from modern industrial societies. The concept of transition is contextual, and regulating children’s activities needs to strike a delicate balance between children’s rights to be protected and the recognition that they also have evolving capacities and should therefore have progressive autonomy in making decisions about their lives.

When it comes to young people’s marriage, “becoming an adult” often is continued after the wedding in cases where the young couple or the young bride with her older spouse did not get much time to prepare for a married life. The old-fashioned *kawin gantung* (suspended marriage) made the young couple stay apart with their own parents till they were mature enough to become a married adult couple and have a baby (Soepomo 1967, 50). But modern child brides and grooms usually move in with one of their parents, because most young couples cannot afford a house for themselves. The brides often still have to learn how to deal with pregnancy and deliver a baby, while being cut off from school and from friends of their own age.

The global “Stop Child Marriage” movement aims to ban and eliminate all marriages under the age of eighteen, setting a clear line between a potentially consensual marriage between capable adults and “forced” marriage, a human rights violation. But when we evaluate the threshold between childhood and adulthood in light of evolving capacity, *akil baligh* in fact is more consistent with the principle as it provides a more flexible standard (as far as it is used for *both* mental and physical capacity). The need for such a flexible standard, especially in a society like Indonesia where marriage is socially required in case of pregnancy (Grijns and Horii 2018, 9–10), is now managed by dispensation at the court or getting an informal wedding outside of the state law scheme. We should of course consider the risk of abusive and harmful cases and ensure that the Rights of the Child and the Marriage Law are able to provide a safety net to prevent forced marriage. What is necessary is to balance the need for protection and autonomy in a system where we can evaluate individual cases for both genders and where we look at agency and choice, versus the wider context of political economy, cultural/religious norms, and accessible and applicable education (including sexual and reproductive health education), in order to open up options for adolescents to choose not to marry just yet.

## Notes

- 1 *Akil baligh* is a term from Islam. Because of the large Muslim majority in Indonesia, this word is often used, but in regions with other religions, other terms are also used.

- 2 See for instance [Varadan \(2019\)](#) for a detailed interpretation of the principle of evolving capacity.
- 3 Law No. 11 of 2012 on The Juvenile Criminal Justice System (Undang-Undang Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak).
- 4 Law No. 23 of 2006 on Administration of the Populace (Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan).
- 5 Law No. 39 of 1999 on Human Rights (Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia).
- 6 Muslim law, *Fikih*, does not mention a specific age for signs of adulthood: there are views of fifteen years, eighteen years, and even nineteen years, both for men and women. But there are also views which differ between men and women, such as eighteen years for men and seventeen years for women, or nineteen years for men and seventeen years for women ([Kodir and Marcoes-Natsir 2022](#), 108–110).
- 7 The Marriage Law 1974 Art. 2 shows that the religious part of the marriage is always first, before the marriage registration.
- 8 Meaning not “yet” married comes from the norm that everyone should get married, whether it is early or late.
- 9 [Grijns et al. \(2016\)](#) mention two more types of child marriage: marriages to escape home because of extreme poverty or domestic violence and marriage of “social orphans” who have been neglected by (divorced, migrated, disappeared) parents and their community.
- 10 Interview with Sudiana, professor of *adat* law, Denpasar, May 25, 2017.
- 11 Interview with Sudiana, professor of *adat* law, Denpasar, May 25, 2017.
- 12 Interview with Sudiana, professor of *adat* law, Denpasar, May 25, 2017.
- 13 Dispensation case from Civil Court Bangli, judged in 2016 (13/Pdt.P/2016/PN.Bli).
- 14 Dispensation case from Civil Court Bangli, judged in 2016 (7/Pdt.P/2016/PN.Bli).
- 15 Interview with a medical doctor and professor at local university, Denpasar, April 14, 2017.
- 16 This is also a term and concept commonly used in Bali. Interview with local legal aid association staffs, Denpasar, August 5, 2022.
- 17 Focus group discussion with teenagers, Denpasar, July 8, 2017.
- 18 Interview in Denpasar, July 4, 2017.
- 19 Interview with a judge in Civil Court Semerapura, Semerapura, July 13, 2017.

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## Child trafficking and the complexities of implementing the CRC in West Africa

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### Introduction

Although numerous studies have been conducted on trafficking in persons in recent years (Hodge 2014; Hoffman and Abidde 2021; Stoyanova 2017; Weitzer 2015), the global and institutional forces reinforcing child trafficking in West Africa have, however, gained marginal attention in the literature. In many ways, child trafficking is among the clandestine crimes that directly challenge the dignity of the human person in its varied forms and manifestations (Montgomery 2007; Regilme 2022). Victims are often coerced into prostitution, forced labor, forced marriage, and other exploitative practices, which undermine their fundamental rights and freedoms (Winterdyk, Perrin, and Reichel 2012, 29). Generally, conditions that permit human trafficking also maintain status inequalities against persons being trafficked (Essien 2022, 284). The problem of human trafficking is particularly pervasive in the West African region and affects children disproportionately (Laurens ten Kate et al. 2021, 511–525; UNODC 2020).

Indeed, West Africa has long been characterized by high levels of intra- and extra-regional migration, a trend that predates the partitioning of states by Western powers (Olaosebikan 2014, 143). Pre-colonial migration in the region was never homogeneous—some instances were connected to trade and the search for subsistence food, shelter, and greater security, while others were induced by warfare and natural disasters (Baker and Aina 1995, 89–91). With increasing contact with Western countries, however, the migration patterns in West Africa began to change. For instance, the source countries for the transatlantic slave trade were predominantly from West Africa (Green 2012).<sup>1</sup> Although at the international level, the abolition of slavery and the slave trade was affirmed in the 1926 Slavery Convention and the Supplementary Convention that followed in 1956, human trafficking has slipped through the cracks and continues to plague many children in the West African region to this day. This has been characterized as a form of modern-day slavery (LeBaron 2020; Siller 2016). Thus, while the United

Nations (UN) Convention on the Rights of the Child (CRC) was adopted in 1989 as a global mobilization tool to protect children's rights and dignity, including the elimination of child trafficking, the implementation of this treaty has proved difficult in West Africa.

Although articles 32, 34, and 35 of the CRC<sup>2</sup> prohibit child trafficking and other exploitative practices, implementation of the treaty has been fraught with many challenges. This chapter examines the complexities around CRC implementation in the region, focusing specifically on child trafficking as evidence of a wider problem confronting children. One of the central arguments of this chapter is that although systemic and other local factors could be identified to account for the continued manifestation of child trafficking, the present economic configurations of the world are, in fact, highly implicated in the crisis. This study demonstrates that, in the post-colonial era, the neoliberal thinking around economic globalization, such as the Structural Adjustment Programmes (SAPs) promoted by powerful institutions like the World Bank and the International Monetary Fund (IMF), contribute to the cycle of poverty among rural populations and indirectly induce child trafficking. Institutional challenges on the ground, indeed, also create a climate for child trafficking to flourish. The study begins by attempting to contextualize the problem of child trafficking in West Africa, following which a regional assessment is undertaken vis-à-vis the globalization nexus. The study then assesses the extent of child trafficking in two West African countries (the Gambia and Benin Republic) and makes specific recommendations for improved anti-trafficking governance at regional and country levels.<sup>3</sup> The chapter concludes that effective implementation of the treaty requires a rethinking of the current neoliberal world order, which perpetuates economic inequality in the West African sub-region and elsewhere in the developing world. Also, the need for West African countries to strengthen their national institutions and show political willingness to address child trafficking is highlighted.

### **Contextualizing child trafficking in West Africa**

The West African region is recognized to produce some of the highest numbers of trafficking victims in destination countries outside Africa, especially in Europe and the Middle East, although most victims are trafficked within Africa (Ezeilo 2017, 52). A large proportion of trafficking flows in Africa further occur within the ECOWAS sub-region and often show age and gendered patterns. Indeed, human trafficking is among the more lucrative businesses undertaken by transnational criminal networks globally. Traffickers generate as much as US\$150 billion in annual profits worldwide (Human

Rights First 2015, 1), and are constantly seeking avenues to expand their business models. These gloomy estimates operate alongside legal standards adopted to protect children from exploitation, including child trafficking. It is now well over thirty years since the UN Convention on the Rights of the Child was adopted to protect children in diverse areas. Despite its adoption and ratification by all fifteen countries in West Africa, children's rights remain under siege in much of the region, and trafficking is among the notable factors undermining the treaty's implementation. The trafficking problem in West Africa is deeply entrenched and is symptomatic of certain national and global forces reinforcing the phenomenon. At the outset, it is worth stating that although human trafficking is a challenge that affects both children and adults globally (Bello and Olutola 2021, 1), the phenomenon is particularly pervasive in West Africa and affects children disproportionately (Laurens ten Kate et al. 2021, 511–525; UNODC 2020). As such, the promises contained in the CRC and the optimism that heralded its adoption in 1989 have largely evaded many of the children in West Africa. A recent study by the UN Office on Drugs and Crime (UNODC) shows that over 75 percent of the trafficking victims in West Africa, or three in every four victims, are children (UNODC 2020). Compared to other regions in Africa, evidence shows that West Africa has the highest number of trafficked children on the continent (UNODC 2020). The UNODC study shows that among detected populations, the practice disproportionately affects 1,164 girls and 1,389 boys in West Africa, compared to 49 girls and 109 boys in East Africa, and 62 girls and 60 boys in Southern Africa.

Indeed, West Africa has long had the dubious reputation of being a region with high numbers of human trafficking victims. Trafficking outflows from the region, especially from Nigeria, toward Europe have been extensively discussed in the literature (Baarda 2016, 257–273; Okunade and Shulika 2021). This phenomenon predominantly affects women and girls trafficked for commercial sexual exploitation in Italy and the rest of Western Europe. For instance, it has been noted that Nigerian sex slaves in Italy outnumber any other nationality (Kara 2009, 89). In Torino, “Nigerians own the Corso Massimo D’Azeglio in the same way that East European street prostitutes own the nearby Via Ormea” (Kara 2009, 89). Many of these victims are young girls below the age of 18. The extent of trafficking outflows to richer countries shows failures at national levels to translate relevant legal standards, especially the CRC, effectively (Okunade and Shulika 2021, 121). Indeed, as demonstrated further below, aside from institutional deficits and socio-economic problems at the national level, other external forces are implicated in the trafficking cycle.

Given that victims are often trafficked through irregular migration pathways, their journeys from West Africa to Europe are usually precarious.

The journeys often involve sham contracts, voodoo rituals (Baarda 2016, 257–273; Van der Watt and Kruger 2017, 70), and dangerous land and sea travel to the European continent (Kara 2009, 89, 90). While the majority of trafficking outflows from West Africa to rich countries originate from Nigeria, victims from Ghana (Adam et al. 2020, 3113), the Gambia (Williamson 2022, 94, 96), and other West African countries have been reported to be exploited in Europe and the Middle East. In particular, a 2017 study revealed that 39 percent of Gambian nationals who arrived in Italy by sea were unaccompanied children (RMMS 2017). Other countries with a high representation of unaccompanied children in Italy include Côte d'Ivoire and Guinea (RMMS 2017). While these individuals are more likely to be victims of migrant smuggling than human trafficking,<sup>4</sup> children caught up in these migration patterns may end up as trafficking victims due to their inability to pay smugglers the costs of their journey. They may thus be subjected to labor and sexual exploitation (Joint General Comment No. 3 (2017) CMW/C/GC/3-CRC/C/GC/22).

In many ways, the ECOWAS region is a huge trafficking hotspot (Ezeilo 2017, 52; UNODC 2020) and requires particular attention if any social change is to occur. Children in the region are exploited in different sectors including in forced labor and commercial sex. The exploitation of *talibe* children in Senegal (Zoumanigui 2016, 185–203) or *al majiri* children in northern Nigeria (Pham 2016) shows a unique form of child trafficking and exploitative work in the region.<sup>5</sup> Also, in Mali, younger children, especially boys, are usually trafficked and exploited in agricultural forced labor, domestic work, gold mines, or transportation or are trafficked to neighboring countries such as Senegal and Guinea, where they are exploited in the informal sector, including in salt mines (Gunther 2021). Aside from the immediate consequences, including disruption of their education, trafficking and exploitative work could have irreversible longer-term effects on children.

### The CRC and the global governance of child trafficking

The adoption of the CRC in 1989 was a watershed moment for children around the world. Before its adoption, children's rights had been protected through a variety of instruments with different focus and scope. The 1924 Geneva Declaration of the Rights of the Child for the first time recognized the rights unique to children. Also, the Universal Declaration of Human Rights (UDHR) of 1948, although a non-legally binding instrument (like the Geneva Declaration), further affirmed the “inherent dignity” and “freedom” of the human person, which includes children.<sup>6</sup> Article 25(2) UDHR

particularly recognizes the need to accord special attention and care to children. While trafficking in persons is not specifically mentioned in the UDHR, the document states in Article 4 that “no one shall be held in slavery or servitude.” Today the contents of the UDHR arguably constitute customary international law and have been codified in legally binding instruments such as the ICCPR and the CRC. Other instruments such as the Palermo Protocol<sup>7</sup> and ILO Conventions 138 and 182<sup>8</sup> further address the subject of trafficking in persons, either directly or indirectly. The Palermo Protocol is particularly relevant as it has been widely ratified by all fifteen states in West Africa and contains a legal definition of human trafficking, which could further clarify the scope of obligations spelled out in the CRC. Article 3(a) of the Palermo Protocol states:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3 clearly spells out the core elements of human trafficking i.e., the act, means, and purpose. The “act” elements are recruitment, transportation, transfer, harboring, or receipt of persons. The “means” include the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. The “purpose” element refers to exploitation in its varied forms (Bales 2007, 271). Generally, it is not a defense that a child has consented to the act, as they are generally not capable of giving informed consent. More so, article 3(b) states that consent is irrelevant in so far as the means elements are present. Article 3(c) further states that, where children are involved, the means element need not be present for the offense of child trafficking to be constituted. In other words, as far as the Palermo Protocol is concerned, child trafficking is the recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation, whether or not consent is given.

As indicated earlier, child trafficking in West Africa often takes the form of labor exploitation and sexual exploitation. It is noteworthy that article 32 of the CRC obliges states parties to combat child labor and to protect children from “performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health

or physical, mental, spiritual, moral or social development.” Article 34 further stipulates the obligation of states to “protect the child from all forms of sexual exploitation and sexual abuse,” while article 35 urges states to take appropriate measures to combat “the sale of or traffic in children for any purpose or in any form.” Also, the Optional Protocols to the CRC on armed conflict and the sale of children are equally relevant for preventing the trafficking of children for recruitment into armed organizations and sexual exploitation. A similar fate has befallen both the CRC and the Optional Protocols in terms of implementation challenges. For the most part, the goals contained in the instruments remain nothing but mere aspirations for ordinary children across West Africa, as many continue to be trafficked in differing exploitative conditions. Regarding the condition of children in street situations, such as *al majiri* and *talibe* children, for instance, the UN Committee on the Rights of the Child has affirmed the complementarity of ILO 138 (Minimum Age Convention) and ILO 182 (Worst Forms Convention) with article 32 of the CRC, which address the issue of child labor and child trafficking (General comment No. 21 (2017), UN Committee on the Rights of the Child, para 59). In particular, the UN Committee noted that actions against child labor that are less comprehensive and lack adequate support mechanisms may be ineffective (General comment No. 21 (2017), UN Committee on the Rights of the Child, para 59). Moreover, effective governance cannot be achieved without a meaningful engagement with the children themselves, who are important but often ignored actors in policy formulation. Aside from the full ratification of the CRC by all fifteen states in West Africa, all countries in the region have further adopted a national legislation and/or policy instrument to protect children although with varying degrees of domestic coverage. In Nigeria, for instance, contestations about childhood between the largely Muslim north and the majority Christian south have made the national Child’s Rights Act ineffective in the northern region. In what follows, relevant institutional challenges and the issue of globalization are assessed in light of the lingering child trafficking problems in West Africa.

### **Child trafficking and the globalization conundrum in West Africa**

Child trafficking and the global capitalist project are inextricably tied together in West Africa (Njoh and Ayuk-Etang 2012, 31). Although endogenous forces such as local cultures and traditions induce child trafficking in West Africa, evidence suggests that the practice is equally driven by external factors. In the ECOWAS region, trafficked children commonly end up in forced labor or as victims of sexual exploitation in diverse sectors. The

sectors with greater proclivity for the use of children in forced labor, such as agriculture and mining, often produce goods and services for foreign consumption as opposed to domestic use (Lawrence 2020, 371–382; Pokorny et al. 2019, 23–39). Relevant trends in West Africa affirm child trafficking as “one of the dark sides of globalization” (Cho et al. 2011: 2). With the development of new technologies and the collapse of national borders to foster trade, the illicit flow of children has become more dominant. Criminal networks in the ECOWAS region take advantage of the trade and market liberalization in the region to perpetuate their clandestine acts (Ogunniyi and Idowu 2022, 2).

Indeed, the influence of exogenous forces in the perpetuation of trafficking in persons is not new in West Africa. As mentioned earlier, its origin can be partly traced to the transatlantic slave trade era, where the forced migration of Africans was endorsed and actively pursued by Western countries. The mines, plantations, and other critical infrastructure required for the European colonial project to succeed relied heavily on the local labor force. This practice manifests itself to this day, although in different forms, including through child trafficking. Of course, poverty and repugnant cultures which exploit the services of children induce trafficking (Njoh and Ayuk-Etang 2012, 41). While these factors may be valid, overly focusing on them may distract attention from external factors which equally have grave consequences and should be captured in global normative responses. In many ways, transportation and communications have increased greatly in the globalized world. These developments have inevitable consequences for child trafficking. There is evidence of increased interest in Africa’s tourist sex industry, in which child commodification is rampant (Njoh and Ayuk-Etang 2012, 39). The hospitality industry is both consciously and unconsciously involved in the exploitation of women and children (Goh 2009, 271). Research demonstrates that the most vulnerable individuals in society, especially children and individuals from poorer socio-economic backgrounds, are most likely to be victims of sex trafficking in the tourism sector (Brooks and Heaslip 2018, 8). In the Gambia, for instance, visitors from the UK and northern Europe constitute the dominant forces behind child sexual exploitation. A UNICEF Report has noted that “sexual abuse and exploitation of children in Gambia is rising because of sex tourism from Britain and Northern Europe and ‘sugar daddy’ relationships with adult nationals of the West African country” (UNICEF 2004). The report further notes that “the Gambia is a vulnerable target for ... unscrupulous visitors such as suspected or convicted paedophiles who enter the country in search of a low-profile location to commit their crimes against children silently and with impunity” (UNICEF 2004).

Again, the current migration trends in West Africa, especially from landlocked countries such as Burkina Faso, Mali, and Niger to work in the agricultural sectors in countries such as Benin, Côte d'Ivoire, and Ghana dates back to the colonial era (Njoh and Ayuk-Etang 2012, 40). As Dougnon (2011, 96) pointed out, "the practice of [child] 'traffic' as it appears clearly in the tales of migrants was a widespread system of exploitation during the colonial period." Although the British colonialists in West Africa attempted to combat the human trafficking conundrum, this was not driven by altruistic reasons, but by the "desire to monopolize the supply of workers coming from the Northern Territories and from neighboring French colonies" (Dougnon 2011, 96). As developmental projects expanded, reliance on child labor emerged, displacing the Western romanticized variant of childhood as a phase of innocence. In this regard, "capital and the state gained access to children's labour through the continued existence of pre-capitalist ties and forms of labour control" (Grier 1994, 28). Accounts of children working extended hours became widespread in colonial West Africa. Grier rightly noted that "children were so integral to the labour force of the colony ... that their prohibition would cause considerable dislocation and resentment among employers" (Grier 1994, 28). The political economy of child trafficking and labor migration in present-day West Africa undoubtedly shows a strong connection to the colonial past, which is being re-enacted through globalization.

What the current reality of child trafficking shows is the complicity of global forces in the economic exploitation of West Africans, including children. In the post-colonial era, the Structural Adjustment Programmes (SAPs) proposed by International Financial Institutions (IFIs), which promote the neoliberal understanding of economic globalization, are directly implicated in the perpetuation of poverty among rural populations, and indirectly induce child trafficking (Kara 2009, 4). In the globalized world, sex trafficking, for instance, including that directed at children, has become one of the ugliest manifestations of global capitalism. As rightly pointed out by Siddharth Kara, sex trafficking is "directly produced by the harmful inequalities spread by the process of economic globalization" (Kara 2009, 4). In particular, the net extraction of wealth from poorer to rich countries has increased rural poverty and the economic disenfranchisement of the poor. Thus, while the integration of global economies that took off in the early 1990s had many benefits, including foreign investments and the expansion of international trade, globalization also had negative corresponding effects, such as the resurgence of global slavery and the widening of wealth inequality (Kara 2009, 24). It has indeed been noted that the neoliberal worldview "has prevented many vulnerable sectors from meaningfully articulating their claims for human dignity" (Regilme 2019, 288). This globalist paradigm has direct negative impacts on children's dignity through its perpetuation of poverty and, indirectly, child trafficking. Studies have

consistently demonstrated the asymmetrical power relations between countries in the global North and those in the global South and the negative consequences of globalization (Regilme 2019). The power imbalance continues to manifest itself in the modern capitalist world, with unending poverty in regions like West Africa. In short, the determinants of child trafficking must be properly contextualized. As poverty often features among the key drivers of this phenomenon in West Africa and elsewhere (ILO 2022, 48; Mlambo and Ndebele 2021, 20), relevant discourses must acknowledge the linkages between the current economic realities in West Africa today and the configurations originating from global entities.

Apart from the secondary effects through indirect causation of trafficking, globalization particularly makes children easier to procure, easier to transport, and easier to exploit in diverse sectors. Indeed, globalization is not the only culprit here; vulnerabilities may be worsened by household and institutional factors. In this regard, it has been noted that “children are mostly affected by human trafficking because of vulnerabilities faced as they depend on their parents for survival. Children who are excluded from the protection of their family for various reasons constitute an available pool of cheap labor and sex” (John 2019, 147). Also, there is evidence that in countries where child trafficking and other forms of organized crime are prevalent, governments are usually weakened and the rule of law is threatened (Jones et al. 2007, 117). The social order in such societies is often usually fractured and, in some cases, trafficking is integrated into the power structure of the country. In situations of this nature, corruption, which is prevalent in many African countries, becomes reinforced with governments having very little interest in controlling the phenomenon.

The implementation of the CRC in West African countries has therefore been fraught with many problems. Today, national laws are required to respond to problems which are not totally local, and the effectiveness of implementation measures is usually measured against partly globalized problems. For any meaningful solutions to emerge, however, the current globalist structure must change. More specifically, the issue of globalization must be re-interrogated vis-à-vis human trafficking with responsibilities correctly attributed to historically complicit sources, which include Western powers.

## **Barriers to effective child trafficking governance in West Africa**

### *The Gambia*

In addition to the various exogenous forces earlier discussed, the barriers to effective anti-trafficking governance tend to manifest themselves at the institutional levels in the Gambia. Although the key international instruments

on child trafficking, including the CRC and the Palermo Protocol, have been ratified in the Gambia,<sup>9</sup> some problems remain. Like many countries, the Gambia is both a source and destination country for human trafficking. Women and children from other West African nations are widely trafficked through or to the Gambia for labor and sexual exploitation, while as an originating country, Gambian children may be found in other West African countries, as well as in Western Europe and the Middle East. Given widespread poverty, children from the Gambia are sometimes encouraged by family members to endure trafficking exploitation for financial gain. The Gambia ranked 172 of 189 countries in the 2020 Human Development Index (UNDP 2020, 243). Evidence shows that about 48.6 percent of the total population live below the poverty line (UNDP 2020, 365), while children account for around 50 percent of the national population (Child Protection Alliance and ECPAT International 2019, 3). In this regard, economic inequality makes children extremely vulnerable to trafficking.

Among the differing exploitative forms, child sex tourism has in recent years gained a particular prominence in the country. Tourists from Western states such as Canada, the Netherlands, Germany, and the United Kingdom frequent the Gambia for sexual gratification (US Department of States 2021, 247). It is noteworthy that tourism, including both benign and exploitative types, is among the highest sources of foreign revenue in the Gambia. In this context, traffickers deploy several clandestine strategies to exploit the institutional frameworks in the country. Sometimes fictitious relationships are forged with registered local charities under the pretext of child educational sponsorships, while in other instances, the tourists themselves via the internet identify regions where children may be more easily accessed and exploited (US Department of States 2021, 247). In the Gambia, it is common for boys at sixteen years of age to have their own apartments separate from their parents, which could increase the prospect of exploitation by foreign visitors (Child Protection Alliance and ECPAT International 2019, 3). Indeed, as already noted, trafficking in the Gambia also manifests itself in other areas such as forced labor.

To address the problem of child trafficking and to implement obligations imposed by the CRC<sup>10</sup> and other relevant treaties such as the Palermo Protocol, the Gambia enacted the Children's Act in 2005, followed by the Trafficking Act in 2007. In particular, article 26 of the Children's Act prohibits the exportation and importation of children for the purpose of prostitution and makes it punishable by imprisonment for life. The procurement, enticement, deception, or coercion of children for sexual intercourse is further prohibited in article 27, and is punishable by imprisonment for ten years without the option of a fine. Article 39 of the act is more specifically dedicated to child trafficking. The article states that "a person shall not

engage in child trafficking, or recruit, transport, transfer, harbour or receive a child by means of threat, force, or other form of coercion, abduction, fraud, deception, abuse of power or position or otherwise, for the purpose of sexual exploitation or any other form of exploitation.” A violation of this provision attracts a punishment of life imprisonment. Further, article 41 prohibits all forms of exploitative labor.

Aside from the Children’s Act, the 2007 Trafficking Act contains a general prohibition of trafficking in persons, which is applicable to children and adults alike. The Act was amended in 2010 to increase the punishment for human trafficking from a minimum sentence of fifteen years to fifty years. If the act results in the death of the victim or if the victims are children, the statute amended the punishment from life imprisonment to the sentence of death.<sup>11</sup>

Although the assessment of the relevant laws shows a stringent approach to child trafficking, some contradictions are apparent. The offense of child trafficking attracts the death penalty under the amended 2010 Trafficking Act, whereas a similar act attracts life imprisonment under section 39 of the Children’s Act. The harmonization of these laws could further enhance effective prosecution of child traffickers in the Gambia. Despite these contradictions, what is clear is that child trafficking in the Gambia attracts a minimum sentence of life imprisonment if the death sentence is not pursued under the Trafficking Act. However, the prosecution records of the country and the experiences of ordinary children portray a different picture. Research shows that the relevant penalties are not sufficiently applied, which hinders enforcement and could possibly embolden traffickers ([US Department of Labor, Bureau of International Labor Affairs 2020b](#)). For instance, in 2015, the UN Committee on the Elimination of Discrimination against Women noted in its Concluding Observation that trafficking prosecutions in the Gambia were non-existent. The Committee specifically noted that there were “no prosecutions under the Trafficking in Persons Act (2007) and that only one investigation is currently under way” ([CEDAW/C/GMB/4-5](#), para 24). The Committee also expressed its concerns “about the lack of information on the number of victims of trafficking and on the measures taken to address exploitation of prostitution of women and girls and child sex tourism” ([CEDAW/C/GMB/4-5](#), para 24). However, as of 2021, there is evidence that five alleged traffickers were facing prosecution in the Gambia, although all five were granted bail, with one absconding. Also, during April 2022, a Magistrate Court in the Gambia convicted two individuals, one Senegalese and one Gambian citizen, of attempted trafficking—a crime recognized under section 35 of the 2007 Trafficking Act ([Jallow, 2022](#)). Although these individuals were charged under the Trafficking Act, their convictions were predicated on the Criminal Code, which was significantly less stringent than

the Trafficking Act. The Magistrate exercised his discretion to fine each of the accused persons D50,000 (\$US 917) in default of the 50-year minimum jail term specified in the Trafficking (amendment) Act, 2010 (Jallow 2022). The 2022 US Trafficking in Persons Report (US Department of States 2022), however, noted that three defendants have recently been charged and convicted under the 2007 Trafficking Act. The accused were sentenced to fifteen years' imprisonment and a fine. This is a significant improvement over previous years where no convictions were secured under the Trafficking Act (US Department of States 2022, 241).

It is worth stating that official complicity and corruption play significant roles in limiting law enforcement actions against traffickers in the country. In addition to other systemic problems, the capacity of judges in the area of human trafficking is severely limited. Specific problems in this regard include weak case management infrastructure and low judicial capacity (US Department of States 2021, 245). Thus, as far as child trafficking is concerned, available evidence shows that children's rights continue to be under siege in the Gambia.

The national anti-trafficking body, the National Agency Against Trafficking in Persons (NAATIP), seems to be greatly underfunded, while an effective mechanism for ensuring early identification of victims appears to be lacking. Underfunding of NAATIP hinders personnel training which consequently affects victim detection rates (US Department of Labor, Bureau of International Labor Affairs 2020b). Although the lack of disaggregated data on child labor and child trafficking makes progress difficult to assess, the minimal prosecution rates show a considerable deficit in the area of criminal justice. To address the problem of sex tourism, the Gambian Tourism Authority for the Protection of Children has trained hotel employees on the elements of child sexual exploitation, while the National Agency Against Trafficking in Persons has created a National Referral Mechanism (NRM) for trafficking victims (US Department of Labor, Bureau of International Labor Affairs 2020b). Despite these efforts, the Gambia has only achieved minimal progress, as relevant strategies are not comprehensive enough to eliminate child trafficking.

In the case of children trafficked for child labor, for instance, it is noteworthy that labor inspectors do not possess legal authorization to inspect agricultural farms or private homes to detect labor exploitation (US Department of Labor, Bureau of International Labor Affairs 2020b). Also, section 51 of the Children's Act of 2005 allows children as young as twelve years old to commence an apprenticeship, which could be a pretext for exploitation. Although the NRM includes a standard operating procedure for screening child migrants and other victims of trafficking, the government's ability

to effectively identify and support trafficking victims is limited, as officials require additional training in the new NRM procedure (US Department of Labor, Bureau of International Labor Affairs 2020b). Therefore, rescuing children from the current siege requires a new approach to children's rights protection, including increased prosecution of perpetrators, increased funding of the anti-trafficking body, harmonization legislation for uniform penalty, and training of personnel. Undertaking these efforts may help tackle the endogenous aspect of child trafficking, while international collaboration with relevant countries is required to combat the exogenous elements.

### *Benin Republic*

Child trafficking in Benin is complex and multifaceted. Like the Gambia, Benin Republic is a source, transit, and destination country for child trafficking. Benin's reputation as a key source country emerged in 2001 just after the adoption of the Palermo Protocol at the international level, when a shipping vessel conveying undocumented migrants to Gabon was found to contain at least forty-three children, of which twenty-three were aged between five and fourteen (Dottridge 2021, 11–27). Pressure from Western donors and international organizations later prompted the adoption of several anti-trafficking laws. In 2006, Benin adopted a law prohibiting individuals below the age of 18 from moving away from home without an official permit (Law 2006–04 Concerning the Movement of Minors and the Suppression of Child Trafficking in Benin). Moving children within the country without an official permit is an offense punishable with imprisonment of one to three years and a fine ranging from CFA 50,000 (\$US 80) to CFA 500,000 (\$US 800).<sup>12</sup> Moving children outside the country, over whom no parental or guardianship authority exists and without the necessary permit, is an offense punishable with imprisonment of between two to five years and a fine of CFA 500,000 (\$US 800) and up to CFA 2,500,000 (\$3,900).<sup>13</sup> Furthermore, where parents knowingly transport or consent to the trafficking of their children, the penalty is imprisonment for six months and up to five years.<sup>14</sup> It is, however, noteworthy that these practices are not strictly regarded as child trafficking under the 2006 law. The punishment for child trafficking under article 21 of the law is imprisonment of between ten and twenty years.<sup>15</sup> A sentence of life imprisonment may be given if trafficking results in the victim's death.<sup>16</sup> Thus, the difference in punishment shows that moving children for exploitative purposes within or outside the country is not considered child trafficking, even though many trafficking victims are caught up in this variant.

However, the offense of trafficking in persons is more explicitly captured in the Penal Code adopted in 2018. Article 499 of the Penal Code states that the

recruitment, transport, transfer, accommodation, reception of persons, by the threat of recourse or the use of force or other forms of coercion, by kidnapping, fraud, deception, abuse of authority or a situation of vulnerability, or through and the acceptance of payments or benefits to obtain the consent of a person having authority over another, for the purposes of exploitation constitutes an act of trafficking in persons.

Consistent with international law, the definition of trafficking in this provision contains the three core elements i.e., acts, means, and purpose. Article 499 further stipulates that exploitative means include the “use by a parent or a guardian of the services of a child under 14 years of age for lucrative purposes.” The offense of trafficking in persons under the criminal code is punishable with imprisonment of between ten and twenty years, or life imprisonment where it involves organ removal. The punishment section is largely consistent with the 2006 law Concerning the Movement of Minors and the Suppression of Child Trafficking in Benin, even though as earlier mentioned, the moving of children must be characterized as child trafficking in Benin.

However, many children have continued to be victims of trafficking several years after the adoption of both international and national legal standards in Benin. Research suggests that, in Benin, single-parent households and parent illiteracy increase trafficking vulnerabilities for children. Relatives and community members often use the promise of education or employment to recruit children both internally and externally outside the country. In particular, the traditional practice known as *vidomegon* has been a pretext for trafficking exploitation (Hoffman and Abidde 2021, 223). Under this traditional practice, parents send their children to more affluent families for educational or vocational training, many of whom are exploited in forced labor, including domestic work. There are reports that Beninese girls are sexually exploited locally in Malanville, Cotonou, and other parts of the country, while externally, children are often trafficked to countries in West and Central Africa, such as Gabon, Nigeria, and the Republic of Congo. Beninese children are also trafficked to Middle Eastern countries such as Saudi Arabia and Kuwait, where they are exploited in forced labor and sex work.

Many Beninese children are trapped in labor and sexual exploitation across the West African region, especially in neighboring Nigeria. The Seme–Saki border between Benin and Nigeria has been a trafficking hotspot for many years. Research shows that sometimes, trafficking recruitment in Seme often

starts with recruiters, who are usually financially stable and well-known in the community and sometimes a family relative (Modupe Adeleye 2017, 15; Suhana and Ali 2014, 66–74). These individuals often approach widows or guardians with a subtle suggestion of better financial prospects for female children in neighboring countries. After securing their release from parents or guardians, the children are transferred to other recruiters, who smuggle them via illegal border paths (Modupe Adeleye 2017). At this point, the elements of trafficking, including the threat or use of force and coercion, are usually introduced. It has been claimed that the Seme border is particularly riddled with criminal syndicates who are more dreaded than the state security agents. As such, the border is deemed to be a “lawless zone, lacking in social resources and justice system that a victim may rely on and turn to in hopeless and helpless situations like sexual servitude” (Modupe Adeleye 2017, 15).

In many ways, extreme poverty and corruption induce child trafficking in Benin Republic. The economic crisis faced in the country in the 1980s, owing to structural adjustment programs, damaged the Beninese economy and widened inequality. This also had an impact on the *vidomegon* practice, which was initially practiced for benign reasons, including the temporary giving away of children to more affluent families in exchange for money. This also helped to socialize and educate the children, as their work was carried out in exchange for education and vocational training, while the child’s biological family is also paid a specified amount of money (Asiyanbi 2021, 327). Asiyanbi has argued that this “ancestral and ideological practice is the most prominent traditional institution that has benefited and uplifted thousands of Beninese citizens out of the poverty circle. This practice was used to build an economic and political fortress for the Beninese society’s sustainability and development” (Asiyanbi 2021, 327). However, the *vidomegon* practice became extinct as the socio-economic crisis of the 1980s deepened. Also, Marxist-Leninist ideology coupled with modernization abolished many ancestral and sociocultural practices. This arguably was the genesis of contemporary child trafficking in Benin Republic. Thus, the cultural affinities which historically characterized the practice have become lost, while the current variant only serves the interests of criminal networks (Asiyanbi 2021, 327).

Beyond the vulnerabilities linked to poverty and culture, it is worth mentioning that although differing institutional mechanisms have been adopted to enforce relevant laws and policies, some gaps remain as regards the operations of enforcement agencies. For instance, the capacity of labor inspectors that may detect trafficking exploitation is severely limited. A 2020 report by the US Department of Labor noted the absence of inspections in the agriculture or mining sectors, due to the low number of inspectors relative to the country’s workforce (US Department of Labor, Bureau of International

[Labor Affairs 2020a](#)). This would increase the difficulty of child trafficking detection. The lack of financial resources also hampers the work of the country's labor inspectorate. Further, aside from labor inspectors, gaps also exist in the criminal justice sector. In this regard, many criminal investigators lack the required training to perform their roles efficiently, which may limit criminal law enforcement, including the prosecution of child traffickers ([US Department of Labor, Bureau of International Labor Affairs 2020a](#)). Nonetheless, it is worthy of note that a mechanism enabling criminal authorities and social services to refer child trafficking victims exists in Benin, and many civil servants use the referral mechanism regularly.

In sum, the crisis of children's rights in Benin Republic is induced by many factors, including legislative, economic, institutional, and cultural determinants. Child trafficking flourishes in this context, as national mechanisms do not sufficiently respond to local situations. These problems directly and indirectly undercut the aspirations contained in the CRC, making its relevance and utility less visible. For the CRC to fulfill its objectives in Benin Republic, the government should increase funding for broader anti-trafficking efforts and create stricter penalties for the transportation and trafficking of children. Interagency cooperation should also be strengthened, while efforts should be devoted to improving the capacities of relevant anti-trafficking actors, especially labor inspectors.

## Conclusion

Despite the adoption of the CRC more than thirty years ago and ratification by all states in West Africa, children's rights and dignity have come under siege across the region. During the decades since the treaty's adoption, child trafficking has featured prominently among the factors undercutting the rights contained in the convention. Generally, child trafficking diminishes the dignity of the child and exposes children to different exploitative forms in different exploitative sectors. This study has revealed that across the African continent, West Africa has the highest incidents of child trafficking—a problem which stems from economic, institutional, and global forces, among others. From an economic standpoint, examples from the Gambia and Benin Republic show poverty as a common pattern that induces child trafficking, and failures to address this problem have affected the aspirations contained in the CRC in terms of the protection of children's rights and dignity. This study indicated that poverty as a driver of child trafficking must be understood within the broader context of the neoliberal world order, which perpetuates economic inequalities in West Africa and elsewhere. Further, studies from the two countries also show some common

institutional challenges, such as corruption and complicity of public officers. Also, law enforcement agents and judges are not always sufficiently trained to respond to child trafficking. Thus, if the CRC is adequately implemented in West Africa, there is need to address the problems of child trafficking. Addressing this problem would require strong regional coordination at the ECOWAS level, specifically to improve border controls and fight poverty. Legal reform must also be undertaken to ensure that crimes are clearly defined and that offenders are not prosecuted for lesser offenses. In Benin Republic, for instance, the idea of “moving” children bears the features of child trafficking and must be characterized and prosecuted as such.

Beyond the domestic measures, the external factors linked to globalization must also be prioritized in anti-trafficking responses. This research has highlighted that trafficking is not purely a localized problem but has deep connections to socio-economic policies emanating from Western institutions and nations, and globalization itself has increased the ease of accessing children for trafficking exploitation. Thus, solutions must be collective. Western nations and countries in West Africa must devise means to cooperate to address this problem, which ultimately would improve implementation of the CRC and protection of children’s dignity. In sum, child trafficking remains a complex problem in West Africa, and relevant anti-trafficking obligations contained in the CRC are far from being fully implemented. To address the key issue of poverty, questions around globalization must be re-interrogated vis-à-vis child trafficking with financial responsibilities correctly attributed to sources/entities implicated in the process, which include Western powers. West African countries must also redouble their efforts at the domestic level to strengthen their institutions and show political willingness to address the challenge.

## Notes

- 1 It is worth mentioning that slavery in Africa predated the contact with Westerners. Evidence overwhelmingly suggests that the commodification of Africans by Africans had existed in Senegambia when the Portuguese began their raids in the region during the fifteenth century and before the transatlantic slave trade (Schwarz 2022, 27, 28).
- 2 Article 32 obliges states parties to prohibit child labor, while article 34 prohibits the sexual exploitation of children. The core prohibition of child trafficking is contained in article 35, which expressly mandates states to prohibit the “the sale of or traffic in children for any purpose or in any form.”
- 3 The West African region consists of 15 countries including Benin, Burkina Faso, Cabo Verde, Côte D’Ivoire, the Gambia, Ghana, Guinea, Guinea Bissau,

Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. These countries have membership in the sub-regional body the Economic Community of West African States (ECOWAS).

- 4 Although human trafficking and smuggling both involve the movement of people, the two terms differ in meaning and in scope. Generally, while the term *smuggling* is often associated with the movement of people across international borders, human trafficking can happen within one country or across international borders. Another difference relates to consent. Smuggling is usually a service the victim consents to with the payment of a fee; trafficking does not require the victim's consent. Also, while smuggling is usually limited to one specific financial transaction which ends after the illegal entry to a country, trafficking victims can continue to be exploited after transportation and entry into another country or place. While exploitation is a constitutive element of trafficking, smuggling may not involve exploitation. See generally, Herkes (2018).
- 5 *Talibes* are children usually trafficked from within Senegal or from other West African countries to receive religious education in Senegal where they often end up on the streets begging for money and food, which they must deliver to their masters, known as *marabouts*. The *al majiri* system, on the other hand, encourages parents to leave parental responsibilities to informal Islamic schools. Many of these children, sometimes as young as three years of age, become street children begging for alms and exploited by the Islamic teachers.
- 6 See Preamble and Article 1 UDHR.
- 7 The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.
- 8 C138—Minimum Age Convention, 1973 (No. 138); C182—Worst Forms of Child Labour Convention, 1999 (No. 182).
- 9 The Gambia ratified the CRC on August 8, 1990, while the Palermo Protocol was ratified on May 5, 2003.
- 10 Article 4 of the CRC provides that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.” In this regard, the protection of children from trafficking requires the adoption and/or strengthening of administrative, legislative, and institutional mechanisms.
- 11 Section 28(4) and (5) Trafficking in Persons (Amendment) Act, 2010.
- 12 Article 17, Law 2006–04.
- 13 Article 18, Law 2006–04.
- 14 Article 16, Law 2006–04.
- 15 Article 21, Law 2006–04.
- 16 Article 21, Law 2006–04.

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# Conclusions: Advancing children's rights amid a global order under siege

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The core analytic puzzle of this volume starts with the idea that it has been more than three decades since the Convention on the Rights of the Child (CRC) was first globally introduced, and it is worth asking how and under which conditions the rights and dignity of children are in crisis. Considering the diverse chapter contributions, the overarching argument of this volume states that the objective of upholding children's rights faces serious challenges. Such governance challenges are rooted in the interactive processes of local and transnational factors, and these dynamics constitute political contestations, uneven distribution of resources, conflicts in normative justifications, and cultural beliefs. Within this complex weave are the numerous threads of cultural beliefs and norms, which, while richly diverse, can become points of contention that can either hinder or reinforce the full realization of children's rights. In addition, severe inequalities in the distribution of material resources and socio-economic opportunities, both within and across nations, undermine the dignity of children's lives, particularly by obstructing their access to education, health, and social protection.

The volume's overall approach transcends the parochial state-centric views and dominant legalistic insights on children's rights that are often found in mainstream scholarly analyses, emphasizing the necessity for multidisciplinary perspectives that acknowledge geographical specificity, thereby mapping out how various actors, institutions, and rule-based frameworks uniquely interact in ways that impact the welfare of children. Embracing this holistic approach to children's rights scholarship allows us to untangle the web of factors that shape a particular facet of children's dignity during a specific temporal moment and within a distinctive geographic place. To that extent, it is fair to say that this volume is part of a pioneering movement on children's rights scholarship that is multidisciplinary and global in terms of analytic orientation, focusing on the experiences of children both in the global South and North.

In this concluding reflection, I discuss the common themes shared by many chapters and lay out some notable scholarly and political implications in the pursuit of a more dignified existence for our young global citizens.

The introductory chapter laid the foundation for our multidisciplinary investigation, thereby situating children's rights in a broader global context. I reflect on the multifaceted factors shaping children's rights on a global scale, revealing the ever-evolving nature of these rights. While the large majority of recent anthologies on children's rights have been written from the perspective of legal scholarship, I emphasized the need for a multidisciplinary analysis of the challenges and successes in protecting the welfare of children in the contemporary era. I hope that this volume can inspire many scholars from other fields of inquiry or disciplines to further investigate how non-legal factors at various geographic scales of analysis interact with each other in ways that impact a specific facet of the dignity of children. This volume committed itself to a multidisciplinary analysis that comprehensively investigated the complexities, contestations, and successes that characterize the global governance landscape of children's rights in the contemporary world.

Part I delved into the critical intersection of education and policy in promoting and protecting children's rights. The authors Lucy Sorensen, Charmaine N. Willis, Victor Asal, and Melissa L. Breger critically analyzed the legality and impact of corporal punishment in schools, whereby they underscored the need for alternative disciplinary measures that respect children's dignity. Pantea Javidan, meanwhile, examined the challenges faced by policymakers during the COVID-19 pandemic in balancing children's rights, emphasizing the importance of holistic approaches that protect their well-being and education. Paola Fajardo-Heyward investigated the global discourse on comprehensive sexual education, shedding light on the role of cultural and religious factors while advocating for children's sexual health within a rights-based framework. Shani King reflected on the complexities of integrating the CRC into the US federalist system and offered insights into the tensions and opportunities inherent in protecting children's rights within a dynamic policymaking landscape.

Part II highlighted the complicated terrain of children's rights within contexts characterized by armed conflict and systemic vulnerability. Shani King examined the Trump-era immigration policy that forcibly severed migrant families at the US–Mexico border, intertwining historical echoes of reparations with the contemporary imperative to address systemic marginalization. Amy Risley, in turn, analyzed the rights and well-being of child migrants ensnared in the “zero-tolerance” era, unveiling the insidious role of anti-immigration rhetoric and punitive policies in perpetuating grievous violations. The narrative then shifts to my co-authored contribution with

Elisabetta Spoldi, wherein we unveiled the harrowing realm of children's involvement in armed conflict within Somalia, laying bare the transnational and domestic forces that propel their participation and urging resolute international and national action.

Meanwhile, Allyson Bachta's piece analyzed the innovative realm of predictive modeling and early warning systems to shield children's rights in Cameroon from the threats of violent attacks on education, weaving a tapestry of variables and strategies to preserve the sanctity of learning.

Part II underscored the sociocultural underpinnings that influence children's rights, thereby interrogating our notions of transitions to adulthood in the context of child marriage, as well as the problem of child trafficking. Legal scholars Mies Grijns, Hoko Horii, and Daniel Ogunniyi examined these issues, often obscured by conventional analyses, particularly by underscoring the contestations between sociocultural norms *and* legal frameworks. Grijns and Horii introduced the concept of evolving capacity within children's rights, thereby problematizing the rigid age-based distinction between childhood and adulthood. With a keen focus on the journey to adulthood, their chapter navigates the contextual factors and cultural considerations that intricately mold this transition, especially in relation to child marriage. Daniel Ogunniyi's contribution delves into the intricate networks of child trafficking in West Africa, challenging simplistic attributions to poverty and local customs. Instead, Ogunniyi highlights the systemic and global underpinnings that perpetuate this grave violation of children's rights, and he probes the patterns and dynamics of child trafficking, thereby exposing its disproportionate toll on the most vulnerable groups.

This multidisciplinary, comparative, and globally oriented investigation reveals the urgent need to prioritize children's inherent dignity, agency, and well-being. Human rights defenders should advocate for widely accessible, transformative, and inclusive education that fosters empathy, resilience, and a deep-rooted understanding of rights (Grover 2007; Howe and Covell 2021; Jerome 2016). We must reimagine education not merely as a conduit for knowledge transfer but also as a transformative force that instills values of compassion for and respect in our youth.

There are notable themes on children's rights that have emerged in several, if not all, chapters. First, policy challenges within the education sector, from corporal punishment to pandemic-related disruptions, underscore the critical role of educational environments as contested spaces for upholding children's rights (Bhatt 2023; Knox 2010; Koller et al. 2022; Lenta 2012; Riduansyah et al. 2021; Tisdall and Morrison 2022; Vohito 2021). Second, this volume sheds light on the morally horrendous crises faced by children in border regions, notably the forced separations in the context of militarized migration policies by the US government (Amuedo-Dorantes and

Bucheli 2023; Oliveira, Barbieri, and Alex 2021). This theme underscores the urgency of protecting children's rights amid the coercive practices of the state while also highlighting the power dynamics at play within these situations. Third, this volume underscores the policy issues that have been relatively understudied in mainstream scholarly discourse on children's rights. For instance, the chapters on the deployment of children in armed conflict, cross-border child trafficking, and the concept of "evolving capacity" within child marriage were fully explored here in ways that were not treated seriously in other similar anthologies on children's rights. Fourth, the chapters consistently underscore the profound impact of socio-economic inequalities on children's rights challenges. These inequalities are foundational factors that undermine children's dignity and well-being. Children's dignity cannot be disentangled from the social, economic, and political contexts in which they unfold. The unequal distribution of material resources, socio-economic opportunities, and power to influence policy inevitably shapes the ways in which children's rights are protected or undermined.

Notably, the CRC strives for the universal recognition of children's rights and dignity, yet this perspective somehow stands in conflict with diverse cultures and beliefs. For example, some regional adaptations are emerging, as exemplified by the African Charter on the Rights and Welfare of the Child, which emphasizes communal responsibility. According to the African Charter on the Rights and Welfare of the Child (see Article 31: "Responsibilities of the Child"), children have responsibilities toward family, society, the state, and international communities (African Union 1990; Chirwa 2002; Vohito 2021). Such duties include respecting and assisting parents, contributing to the nation's well-being through their abilities, upholding social and national solidarity, and promoting African cultural values and societal moral progress. Scholars and human rights advocates must continue to reflect on the broader question of the relationship between rights and responsibilities, considering that human rights can only flourish when the rights holder acknowledges their moral duty to uphold the dignity and rights of all peers within the community (Flynn 2005). After all, the exercise of some rights must be considered in light of their impact on others in the community, thereby emphasizing the interconnectedness of individuals within a community. In addition, the challenge remains to implement uniform rights among all children amidst pronounced economic, social, and political disparities between and within countries. The chapter contributions here do more than merely highlight inequalities and the interdependent relationship between rights and politics; rather, I urge scholars and human rights defenders to address these imbalances as an urgent and compelling ethical imperative for the protection of children's rights.

In conclusion, this edited volume is a testament to the resounding call to advance the dignity of children in a world facing diverse governance challenges. As we navigate a global order with human rights norms persistently under siege (Regilme 2022a, 2023), we must ensure a more dignified existence for young members of humanity. Children must be considered full human persons, and as unique individuals, they deserve respect equal to that accorded to adults and protection, as deemed necessary (Regilme et al. 2021, 2022b; UNICEF 2023). Children, however, usually begin their lives dependent on adults for care, a duty that can extend to the state, intergovernmental organizations, and other public-interest organizations when needed. The impact of government decisions, as well as global structural conditions (e.g., global policies on poverty, inequalities, global economic governance, armed conflict), on children is extremely important, as they are almost all aspects of children's lives. We must seriously consider children's perspectives on matters that directly concern them, even when they seem to lack a political voice that is often attributed to fully functioning adults. Amidst global policy challenges, children are usually vulnerable and require protection. Their well-being is pivotal for a thriving society, and systemic neglect of their welfare produces heavy costs for both present and future generations of humanity.

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## Index

- adolescence 196–198, 203, 208  
adulthood 14, 196–209  
Afghanistan 171  
American Academy of Pediatrics 53, 115  
American Oversight 122–124, 130  
Americans with Disabilities Act 100  
Amnesty International 126, 127, 131, 144, 146, 149, 150, 152, 155, 157  
Armed Conflict Location and Event Data Project (ACLED) 176  
armed groups 13, 135, 137  
asylum 2, 13, 116–118, 121–124, 127–128
- Benin 15, 22, 216, 227–231  
Biden, Joe 55, 61, 99, 128, 129  
Bolsonaro, Jair 78, 100
- Cameroon 12, 171, 173, 183, 239  
Catholic Church 76, 78, 80, 81, 84  
Center for Disease Control 52, 55, 99, 101  
child mortality 50, 51  
children associated with armed forces or groups (CAAFG) 135, 138, 143, 150, 151, 157, 160  
Christianity 28, 29, 32, 33, 35, 38  
civil law 27, 31, 39  
civil society 4, 12, 14, 15, 31, 32, 76, 79, 83–85, 135, 139, 160, 172, 176, 178, 180  
Colombia 71, 73, 74, 76–85  
common law 25, 27, 28, 31, 33, 35, 36, 38–40  
Conflict Early Warning and Early Response (CEWER) 170, 172, 181, 184
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 72, 74, 130, 225  
Convention on the Rights of the Child (CRC) 25–28, 33–35, 37, 38, 40, 50, 56, 62, 72–75, 79, 85, 86, 94–96, 101–109, 116, 127, 136, 146, 151, 152, 161, 174, 185, 188, 198, 200, 215–231, 237, 238, 240  
corporal punishment 10, 11, 15, 23–45, 149, 151, 238, 239  
courtship 195  
COVID-19 pandemic 8–12, 15, 46–70, 238
- democracy 3, 32, 35, 41, 117  
Department of Homeland Security 115  
dignity 116, 117, 129, 135–160, 215–216, 218–222, 230–231  
disinformation 11, 12, 49–58, 61–62, 71, 78, 85  
drugs 12, 174, 217
- European Centre for Disease Prevention and Control 101  
evolving capacity 14, 15, 195, 196, 198, 199, 207–210, 239, 240
- federalism 12, 93–98, 104–109
- Gabon 227, 228  
Gambia 15, 216, 218, 221, 223–227, 230, 232  
gender 6, 9, 12, 29, 48, 49, 56, 71–73, 75–86, 102, 120, 177, 201–203, 207, 209, 216

- Geneva Conventions 136, 137, 161, 162, 186  
 Ghana 218, 222, 231  
 Global Coalition to Protect Education from Attack (GCPEA) 176  
 Global Initiative to End All Corporal Punishment of Children 10, 24, 30  
 globalization 217, 220–223, 231  
 Global Terrorism Database (GTD) 176  
  
 immigration 12, 13, 95, 115–123, 127–130, 238  
 imprisonment 3, 39, 224–228  
 Indonesia 14, 195, 197, 199–201, 207–210  
 International Conference on Population and Development (ICPD) 72  
 International Covenant on Economic, Social and Cultural Rights 72, 103, 104, 161, 185  
 International Monetary Fund (IMF) 14, 216  
 Islamic State 136  
  
 Japan 48  
  
 Latin America 72, 74, 76, 78, 85, 101, 107, 109  
 LGBTQ+ 71, 72, 76, 77, 80, 82, 83, 85  
  
 marriage 78, 145, 150, 195–210, 215, 239, 240  
 masking 46, 53, 56–59, 61, 93, 95, 101, 103, 106, 107  
 material resources 156, 208, 237, 240  
 Mexico 13, 73, 77, 115, 121, 129, 238  
 Millennium Development Goals 175  
 Mozambique 142, 175  
 multilateralism 117  
 Muslim 29, 32, 35, 36, 150, 203–207, 209, 210, 220  
  
 New York City 96  
 New Zealand 48, 177  
 Nigeria 136, 177, 217, 218, 220, 228, 232  
  
 Obama administration 98  
 OECD 47  
  
 Palestine 171  
 parents 100–104, 107, 115, 116, 118, 123–129  
  
 poverty 4, 13, 48, 141, 148, 152–156, 158–160, 174, 216, 221–224, 229–231, 239, 241  
  
 Quality of Governance database 30  
  
 Rehabilitation Act 100  
 Republican party 94  
 responsibility 75, 94, 103–105, 154, 174, 179, 195, 198, 199, 205, 207, 208  
  
 Safe Schools Declaration 177  
 Save the Children 2, 135, 146, 163, 174  
 slavery 3, 14, 129, 135, 215, 219, 222, 231  
 Somalia 12, 13, 94, 95, 135–162, 174, 239  
 South Sudan 136, 174  
 sovereignty 6, 94, 143, 173, 178  
 Sustainable Development Goals 175  
 Sweden 26, 32, 46, 48, 52  
  
 Tamil 183  
 teenager 152, 196, 202, 203, 205, 206, 210  
 torture 6, 23, 28, 39  
 trafficking 80, 95, 142, 215–231  
 Trump, Donald 12, 13, 53–55, 57, 58, 115, 117, 118, 121–124, 127–130, 238  
  
 UN Committee on the Rights of the Child 10, 24, 30, 197–199, 220  
 United Kingdom (UK) 46, 136, 224  
 United Nations Educational, Scientific and Cultural Organization (UNESCO) 72, 75, 176, 177  
 United States 4, 23, 25, 28, 31, 46, 93–109, 115, 117, 119, 121, 137, 147, 174  
 US Citizenship and Immigration Services (USCIS) 122–124  
  
 West Africa 14, 15, 186, 215–233, 239  
 World Bank 14, 32, 155, 160  
 World Health Organization (WHO) 46–48, 55, 101, 196, 197  
  
 youth 14, 52, 58, 62, 96, 137, 197, 199, 206–208