

Engaging armed non-State actors on the prohibition of recruiting and using children in hostilities: Some reflections from Geneva Call's experience

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Abstract

Despite the existence of a comprehensive international legal framework protecting children in armed conflict, ensuring its respect by armed non-State actors (ANSAs) still remains an important challenge. This can be linked to several circumstances, such as their lack of knowledge of the law, the absence of an incentive to abide by the applicable rules, their fragmented structure and their lack of capacity to implement the applicable framework. Certain practical cases, however, show that ANSAs' behaviours may vary throughout armed conflicts. While certain groups

have, at a given moment, breached some of their international obligations, others have shown some degree of commitment to respecting children's safeguards. When addressing the prohibition of recruiting and using children in hostilities, the reasons behind these variations have remained insufficiently explored. This article reviews some of the lessons learned from Geneva Call's experience when engaging ANSAs towards their compliance with child protection norms.

Keywords: armed non-State actors, child recruitment and use, engagement, ownership, international law, compliance, Geneva Call.

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In 2017, two armed non-State actors (ANSAs)¹ from the Central African Republic issued internal command orders prohibiting the recruitment and use of children in armed conflict.² Similarly, the Coordination des Mouvements de l'Azawad (Coordination of Azawad Movements) in Mali and the Civilian Joint Task Force in Nigeria signed action plans with the United Nations (UN) to release children from their ranks and to prevent future recruitment.³ Also in 2017, more than forty children left ANSAs fighting in the North Kivu region of the Democratic Republic of the Congo (DRC) after engaging with Geneva Call.⁴ In Colombia, between September 2016 and August 2017, 135 children were formally released from the Revolutionary Armed Forces of Colombia–People's Army in the context of the commitment the group had undertaken with the government as part of the peace process.⁵ In the same vein, the Moro Islamic Liberation Front was delisted from the UN Secretary-General's 2017 annual report on the recruitment and use of children following the completion of its action plan with the UN, which resulted in the disengagement of 1,869 children from its ranks.⁶

- 1 Although the international law and political sciences literature normally refers to “non-State armed groups”, “armed opposition groups”, “armed groups”, “rebels” and “insurgents”, sometimes interchangeably, this article will use the term “armed non-State actors”. This term encompasses organized armed entities that are not operating under State control and lack the legal capacity to become party to relevant international treaties. ANSAs comprise different types of actors, such as opposition and insurgent movements, dissident armed forces, *de facto* authorities, paramilitary groups and self-defence militias. See, generally, Annyssa Bellal, “What Are ‘Armed Non-State Actors’? A Legal and Semantic Approach”, in Ezequiel Heffes, Marcos D. Kotlik and Manuel J. Ventura (eds), *International Humanitarian Law and Non-State Actors: Debates, Law and Practice*, T. M. C. Asser Press, The Hague, 2020.
- 2 *Report of the UN Secretary-General: Children and Armed Conflict*, UN Doc. A/72/865–S/2018/465, 16 May 2018, p. 3, para. 13, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1815109.pdf> (all internet references were accessed in January 2020).
- 3 *Ibid.*
- 4 Geneva Call, “DR Congo: Child Soldiers Leave Armed Groups Following Geneva Call's Awareness-Raising Efforts”, 1 February 2017, available at: <https://genevacall.org/dr-congo-child-soldiers-leave-armed-actors-following-geneva-calls-awareness-raising-efforts/>.
- 5 *Report of the UN Secretary-General*, above note 2, p. 36, para. 263.
- 6 *Report of the UN Secretary-General: Children and Armed Conflict*, UN Doc. A/72/361–S/2017/821, 24 August 2017, p. 36, para. 246, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1726811.pdf>. See also Office of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG CAAC), “Philippines: MILF Completed Disengagement of Children from Its Ranks”, 18 December 2017, available at: <https://childrenandarmedconflict.un.org/philippines-un-officials-congratulate-milf-completion-disengagement-children-ranks/>.

Although these examples show some promising steps towards the protection of children in armed conflict, millions of children around the world are still affected,⁷ either directly or indirectly, including an estimate of more than 300,000 child soldiers.⁸ Children are being killed and maimed, abducted and raped, recruited and used in hostilities. They are also denied access to health care and education. ANSAs are responsible for many of these grave violations.⁹

Through the development of different mechanisms and legal instruments, the international community has recognized the importance of protecting children in armed conflict. International humanitarian law (IHL) and international human rights law (IHRL) prohibit, in particular, their recruitment and use in hostilities, and also include provisions on their access to basic needs.¹⁰ The Statute of the International Criminal Court has included as a war crime the conscription, enlistment or use of children under the age of 15 to participate in hostilities, both in international and non-international armed conflicts.¹¹ The UN has also taken an active role in this field by creating the UN Monitoring and Reporting Mechanism (MRM) to address six grave violations committed against children in times of war: killing or maiming; recruiting or using child soldiers; attacks against schools and hospitals; rape or other forms of grave sexual violence; abduction; and denial of humanitarian access.¹²

Despite these mechanisms and instruments, generating respect for international law still remains an important challenge, especially when dealing with ANSAs. While some armed groups have shown a certain level of respect for

- 7 Karim Bahgat *et al.*, “Children Affected by Armed Conflict, 1990–2016”, 2018, available at: www.prio.org/utility/DownloadFile.ashx?id=1551&type=publicationfile; Save the Children, *The War on Children: Time to End Grave Violations against Children in Conflict*, 2018, pp. 15–17, available at: https://resourcecentre.savethechildren.net/node/13150/pdf/war_on_children-web.pdf.
- 8 University of Iowa Center for Human Rights, “Human Rights Index #47: Children in Armed Conflict”, 2016, available at <https://iowareview.org/blog/human-rights-index-47-children-armed-conflict>.
- 9 See *Report of the UN Secretary-General*, above note 6, p. 5, where it is highlighted that in 2016 there were at least 4,000 verified violations by government forces and more than 11,500 verified violations by ANSAs. The SRSG CAAC has, in fact, affirmed that ANSAs “have systematically constituted the vast majority of parties listed for grave violations against children in the annual reports of the Secretary-General on children and armed conflict”. See SRSG CAAC, “Engagement with Parties to Conflict Who Commit Grave Violations Against Children”, available at: <https://childrenandarmedconflict.un.org/tools-for-action/engagement-with-parties-to-conflict/>.
- 10 Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), Art. 4(3); Convention on the Rights of the Child, 1989, Art. 38; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, Arts 4, 6(3), 7(1).
- 11 Rome Statute of the International Criminal Court, 1998, Arts 8(2)(b)(xxvi), 8(2)(e)(vii).
- 12 *Report of the UN Secretary-General: Children and Armed Conflict*, UN Doc. A/59/695–S/2005/72, 9 February 2005, p. 16, available at: www.refworld.org/docid/49997ae55.html. Interestingly, this framework includes not only IHL but also IHRL provisions, such as the prohibition against using and recruiting children below the age of 18 years old. For more information, see SRSG CAAC, *The Six Grave Violations against Children during Armed Conflict: The Legal Foundation*, Working Paper No. 1, October 2009 (updated November 2013), available at: https://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf; Marcos D. Kotlik, “Compliance with Humanitarian Rules on the Protection of Children by Non-State Armed Groups: The UN’s Managerial Approach”, in E. Heffes, M. D. Kotlik and M. J. Ventura (eds), above note 1, in particular pp. 392–394.

children's safeguards, even as providers of health care¹³ and education,¹⁴ others have deliberately disregarded these norms.

Created in 2000 by members of the International Campaign to Ban Landmines, Geneva Call is a humanitarian non-governmental organization (NGO) that promotes respect by ANSAs for international humanitarian norms in armed conflict and other situations of violence. The following pages provide an overview of Geneva Call's approach to child protection issues, including its *Deed of Commitment for the Protection of Children from the Effects of Armed Conflict* (Deed of Commitment for the Protection of Children), launched in 2010. Subsequent sections focus on concrete cases experienced by Geneva Call in the course of its work and lessons learned from engaging ANSAs on the prohibition of recruiting and using children in hostilities. The article concludes with some reflections as to why ANSAs comply, or do not comply, with international law.

Geneva Call's approach to child protection issues

While initially focusing on the prohibition of anti-personnel mines, Geneva Call began to work on child protection issues in 2006. Together with the Coalition to Stop the Use of Child Soldiers, it co-organized in July of that year an International Forum on Armed Groups and the Involvement of Children in Armed Conflict.¹⁵

Following this event, and almost in parallel to the establishment of the UN MRM process by Resolution 1612,¹⁶ the United Nations Children's Fund (UNICEF) funded Geneva Call to develop a programme aimed at engaging ANSAs on the protection of children, including the development of a specific Deed of Commitment on this theme. As the Coalition to Stop the Use of Child Soldiers would report, UNICEF realized that while progress was being achieved by States to prevent the recruitment and use of children in hostilities, ANSAs' practices were "far less positive".¹⁷ At the time UNICEF approached Geneva Call, there were already thirty-four ANSAs that had signed the *Deed of Commitment for*

13 See, for instance, Centre on Global Health Security and Chatham House, *Non-State Armed Groups, Health and Healthcare*, 2015, available at: <https://tinyurl.com/shvjs9a>; Daragh Murray, *Human Rights Obligations of Non-State Armed Groups*, Hart, Oxford and Portland, OR, 2016, p. 255.

14 Geneva Call, *In Their Words: Armed Non-State Actors Share Their Policies and Practice with Regards to Education in Armed Conflict*, 2017, p. 8, available at: https://genevacall.org/wp-content/uploads/dlm_uploads/2017/12/GC-research-on-education.pdf. See also International Committee of the Red Cross (ICRC), *Framework for Access to Education*, 2017, p. 11, available at: www.icrc.org/en/document/framework-access-education; and, generally, Protect Education in Insecurity and Conflict and Geneva Call, *PEIC/Geneva Call Workshop on Education and Armed Non-State Actors: Towards a Comprehensive Agenda*, 2015, available at: www.genevacall.org/wp-content/uploads/dlm_uploads/2015/12/Geneva_Call_Paper1.pdf.

15 See Coalition to Stop the Use of Child Soldiers, *International Forum on Armed Groups and the Involvement of Children in Armed Conflict: Summary of Themes and Discussions*, London, 2007, available at: https://archive.crin.org/en/docs/CAAC_forum_0807.pdf.

16 UNSC Res. 1612, UN Doc. S/RES/1612, 2005.

17 Coalition to Stop the Use of Child Soldiers, *Child Soldiers: Global Report 2008*, 2008, p. 22, available at: <https://tinyurl.com/sscgba5>.

*Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action.*¹⁸ In addition to UNICEF, a number of ANSAs also expressed their support for the development of a new Deed of Commitment on child protection in a meeting gathered in 2009 by Geneva Call. Although there was some disagreement over the minimum age for recruitment,¹⁹ a consensus was reached to support Geneva Call's proposal to expand its work to child protection.

The Deed of Commitment for the Protection of Children was officially launched in 2010.²⁰ In signing this document, ANSAs commit to prohibiting the use of children in hostilities, to ensuring that children are not recruited into their armed forces, and to never compelling children to associate with, or remain associated with, their armed forces. For the purposes of the Deed of Commitment, children “are defined as persons under the age of 18, and where there is a doubt as to whether a person has reached the age of 18, (s)/he will be treated as a child”. ANSAs that have signed the Deed of Commitment also commit to “treat[ing] humanely children who are detained or imprisoned for reasons related to the armed conflict, in accordance with their age and gender specific needs, recognizing that deprivation of liberty may be used only as a measure of last resort and for the shortest appropriate period of time”;²¹ and to releasing or disassociating children from their armed forces “in safety and security, and whenever possible, in cooperation with child protection actors”²² such as UNICEF, Save the Children and other specialized NGOs. The Deed of Commitment also contains positive obligations for ANSAs, such as protecting children living in areas under their control from the effects of military operations, facilitating children's access to the aid and care they need (food, shelter, health care, education, etc.), and avoiding the use of schools for military purposes.²³

Since 2010, Geneva Call has engaged more than eighty ANSAs from all around the world on children's safeguards. Twenty-nine of them have signed the Deed of Commitment for the Protection of Children, while others have made

18 Geneva Call, *Deed of Commitment under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action*, 2000.

19 Jonathan Somer, “Engaging Armed Non-State Actors to Protect Children from the Effects of Armed Conflict: When the Stick Doesn't Cut the Mustard”, *Journal of Human Rights Practice*, Vol. 4, No. 1, 2012, pp. 113–114 (stating that “[i]t was also evident that there was no clear consensus on age standards. Many ANSAs agreed with a straight-18 position—that is, a straightforward prohibition of all recruitment and participation in conflict, whether compulsory or voluntary, of persons below the age of 18. Others opposed it on religious or cultural grounds. Interestingly, Islamic-based ANSAs had different interpretations of whether Islam allowed for a straight-18 position”). For other views shared by ANSAs, see Geneva Call, *In Their Words: Perspectives of Armed Non-State Actors on the Protection of Children from the Effects of Armed Conflict*, 2010, pp. 10–31, available at: https://resourcecentre.savethechildren.net/node/13768/pdf/2010_gc_cansa_intheirwords.pdf.

20 Geneva Call, *Deed of Commitment under Geneva Call for the Protection of Children from the Effects of Armed Conflict*, 2010 (Deed of Commitment for the Protection of Children), available at: www.genevacall.org/wp-content/uploads/dlm_uploads/2013/12/DoC-Protecting-children-in-armed-conflict.pdf. For further information on the Deed of Commitment development process and content, see J. Somer, above note 19, pp. 106–127.

21 Deed of Commitment for the Protection of Children, above note 20, Art. 5.

22 *Ibid.*, Art. 6.

23 *Ibid.*, Arts 4, 7.

similar pledges and raised the age limit for fighters to 18 years old.²⁴ As a result, and as will be seen below, hundreds of child soldiers have been released from the ranks of ANSAs.

Geneva Call's experience in engaging ANSAs on child protection issues

While a number of studies have been made on the use of violence against civilians by parties to armed conflict,²⁵ such as on sexual violence and on attacks against health-care personnel,²⁶ ANSAs' reasons for not complying with the prohibition of recruiting and using children in hostilities have been insufficiently explored.²⁷ Violations against children do not simply happen; they are the result of complex mechanisms entailing a variety of explanations. These include accruing the resources necessary for ANSAs' survival,²⁸ the fact that international standards do not match with local customs or norms,²⁹ and the fact that children are seen as easily influenced and recruited. Other explanations are related to ANSAs' lack of knowledge of international standards, their insufficient capacity to verify the age of individuals, and the lack of socio-economic alternatives for children.³⁰

This section will draw on Geneva Call's experience when engaging with three ANSAs on the prohibition of recruiting and using children in hostilities: the Karen National Union/Karen National Liberation Army (KNU/KNLA) in Burma/

24 See, for instance, Geneva Call, "Palestinian Factions in Lebanon Adopt a Declaration on the Protection of Children", 29 January 2014, available at: <https://genevacall.org/palestinian-factions-lebanon-adopt-declaration-protection-children/>.

25 ICRC, *The Roots of Restraint in War*, Geneva, 2018, p. 18.

26 See *International Review of the Red Cross*, Vol. 95, No. 889, 2013, specifically dealing with the violence against health care; and with respect to sexual violence cases, see Elisabeth Jean Wood, "Conflict-Related Sexual Violence and the Policy Implications of Recent Research", *International Review of the Red Cross*, Vol. 96, No. 894, 2014.

27 For an exception, see Bernd Beber and Christopher Blattman, "The Logic of Child Soldiering and Coercion", *International Organization*, Vol. 67, No. 1, 2013.

28 Reed M. Wood, "Understanding Strategic Motives for Violence against Civilians during Civil Conflict", in Heike Krieger (ed.), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, p. 30. See also Hyeran Jo, *Compliant Rebels: Rebel Groups and International Law in World Politics*, Cambridge University Press, Cambridge, 2015, p. 6.

29 For instance, although a spokesman for the Moro Islamic Liberation Front stated that the group was indeed committed to not recruiting persons under 18 into its ranks, the group "insisted that there were differences in cultural definitions. Boys older than 13 are normally considered adults in local Islamic law, and if born into families involved in the fight for independence, are duty-bound to help in the struggle." *The New Humanitarian*, "Moves to End Use of Child Soldiers, but Problem Persists", 8 April 2011, available at www.thenewhumanitarian.org/feature/2011/04/08/moves-end-use-child-soldiers-problem-persists.

30 Further reasons include the following: (1) children require less food and lower salaries, thus costing less for ANSAs; (2) they are somewhat protected by the reluctance of adults to attack them; and (3) ANSAs' members may not have internalized the prohibition against recruiting and using children at an individual level, as they could have themselves been recruited while they were under 18 years old. Together with certain disadvantages to using and recruiting children in hostilities, some of these reasons are listed in Olivier Bangerter, "Reasons Why Armed Groups Choose to Respect International Humanitarian Law or Not", *International Review of the Red Cross*, Vol. 93, No. 882, 2011, p. 371.

Myanmar; the People's Alliance for a Free and Sovereign Congo (Alliance du Peuple pour un Congo Libre et Souverain, APCLS) in the DRC; and the People's Protection Units/Women's Protection Units (Yekîneyên Parastina Gel/Yekîneyên Parastina Jin, YPG/YPJ) in Syria.³¹

Enforcement challenges: The KNU/KNLA case

Formed in 1947, the KNU is a political organization drawn from Burma/Myanmar's Karen people, the second-largest ethnic group in the country. In 1949, the KNU created the KNLA to fight on its behalf. The conflict between the government of Myanmar and the KNU/KNLA continued for decades until both parties declared a bilateral ceasefire in 2012. This was followed, in October 2015, by the signing of the Nationwide Ceasefire Agreement by the government, the KNU and other ANSAs active in that country.³²

During the first few decades of the conflict, the KNLA openly accepted children into its ranks. Although this trend was acknowledged by its leaders, they contended that child recruits were in fact volunteers.³³ According to an interview by Human Rights Watch (HRW) with the former KNU secretary-general Padoh Mahn Sha Lah Phan, in the late 1980s the KNLA even formed a "boy's company" of about 100 children aged between 15 and 17, but "disbanded it after two years because it was deemed not useful; most child soldiers after that were sent into regular units".³⁴ Despite the KNU's claim about the voluntary nature of child recruitment, a quota system was seemingly applied to villages in the territories controlled by the group, at least until the early 1990s. Families with several sons were reportedly obliged to provide at least one of them to the KNLA.³⁵

Based on these and other similar findings, HRW recommended in 2002 that ANSAs, including the KNU, "develop and enforce clear policies ... to prohibit the recruitment of children under the age of eighteen", and that they [e]nsure that such policies are widely communicated to members of the armed forces and to civilians within the group's area of influence".³⁶ Possibly in

31 This section is based on earlier work conducted by Geneva Call as part of a research project led by the University of Geneva and ETH Zurich on "Civilian Victimization and Conflict Escalation". See Swiss Network for International Studies, *Civilian Victimization and Conflict Escalation: Executive Summary*, April 2017, pp. 11–16, available at: https://snis.ch/wp-content/uploads/2020/01/2014_Cederman_Executive-Summary.pdf.

32 For a brief summary of the conflict, see H. Jo, above note 28, pp. 203–205.

33 Human Rights Watch (HRW), "My Gun Was as Tall as Me": *Child Soldiers in Burma*, 2002, p. 121, available at: www.hrw.org/reports/2002/burma/Burma0902.pdf.

34 *Ibid.* There seem to be divergent views regarding the exact number of children and their age, as some internal documents from this ANSA refer to eighty children between 14 and 17 years old. See, in this sense, statement of the KNU regarding child soldiers, 15 August 2005, and letter from KNU secretary-general Padoh Mahn Sha Lah Phan to Ms Radhika Coomaraswamy, Special Representative of the Secretary-General for Children and Armed Conflict, 31 July 2006. Documents on file with the authors.

35 HRW, above note 33, pp. 121–122. See also Child Soldiers International, *A Law Unto Themselves? Confronting the Recruitment of Children by Armed Groups*, 2016, p. 15, available at www.refworld.org/pdfid/574809d24.pdf.

36 HRW, above note 33, pp. 11–12.

response to this report, the then KNU secretary-general Padoh Mahn Sha Lah Phan issued in January 2003 a directive to notify the KNU district chairmen and the KNLA brigade commanders that they “shall not accept youths of 18 or under in the Karen National Liberation Army”.³⁷ The directive justified this by stating:

1. Many countries have traditions, rules and laws designating youths of 18 and under as children, who have not reached maturity. For that reason, children of 18 and under are not allowed by law to vote, to marry, to drink or buy alcohol. Accordingly, children as defined by law, shall not be recruited into the army or trained for military service.
2. The Karen revolution shall also appreciate international laws, protect the rights of children and respect the rules followed by many countries.³⁸

Positively, the KNLA made efforts to promptly disseminate this directive within its structures. On 28 January 2003 the adjutant-general issued an “Informing Directive” to notify KNLA departments, branches, battalions and officers that they were “required to read [the directive] thoroughly, understand, obey and further instruct [their] subordinates at all levels so that [they] may not be in breach”.³⁹

Later that year, however, the persistent presence of children in the KNLA came to the attention of the UN, and the KNU was listed by the UN Secretary-General in the annex of his report on children and armed conflict as being a group that recruits and uses under-18s in hostilities.⁴⁰ In 2005, the UN introduced an expanded listing process on the basis of UN Security Council Resolution 1539, adopted the previous year.⁴¹ Under this mechanism, the KNU/KNLA has since then appeared every year in the UN Secretary-General’s report.⁴²

Geneva Call began engaging KNU/KNLA in 2006, focusing initially on the promotion of a ban on anti-personnel mines. When it expanded its thematic areas in 2010 to include the protection of children in armed conflict, Geneva Call collaborated with the Human Rights Education Institute of Burma (HREIB), an NGO that had been working from Thailand for several years to raise awareness

37 KNU, “Recruiting”, 2003, available at: <https://tinyurl.com/tdm2z3n>. In a response to a report of the UN Secretary-General in 2009, the KNU issued a public statement in which it acknowledged that it had previously accepted children above the age of 16 years into its ranks, but also pointed out that it had revised its policy in 2003 to set the minimum age for recruitment at 18. See KNU, “KNU Press Statement on the Report of the UNSG”, 27 April 2009, available at: <https://tinyurl.com/wblk7ul>.

38 KNU, “Recruiting”, above note 37.

39 KNLA, “Informing Directive”, 2003, available at: <https://tinyurl.com/rmpt5p8>.

40 *Report of the UN Secretary-General: Children and Armed Conflict*, UN Doc. A/58/546–S/2003/1053, 10 November 2003, p. 22, available at: <https://tinyurl.com/vvo2goe>.

41 In Resolution 1539, the UN Security Council requested the Secretary-General to “devise urgently” an action plan for a comprehensive monitoring and reporting mechanism that could provide accurate and timely information on grave violations against children in armed conflicts. The resolution also called on listed parties to prepare concrete “action plans to halt the recruitment and use of children in violation of the international obligations applicable to them”. UNSC Res. 1539, UN Doc. S/RES/1539, 2004. See also M. D. Kotlik, above note 12, p. 391.

42 For the most recent report, see *Report of the UN Secretary-General: Children and Armed Conflict*, UN Doc. A/73/907–S/2019/509, 20 June 2019, p. 40, available at: www.un.org/ga/search/view_doc.asp?symbol=S/2019/509&Lang=E&Area=UNDOC.

of international standards amongst ANSAs active in Burma/Myanmar. Building on previous advocacy work conducted by HRW and UNICEF, Geneva Call and the HREIB carried out several rounds of high-level dialogue and two training workshops with the KNU.

In 2013, the KNU/KNLA signed the Deed of Commitment for the Protection of Children and expressed the need for technical support for both the implementation and monitoring of this commitment.⁴³ While, at that time, the KNU/KNLA asserted that there were no children within its ranks, it did admit that children below the age of 18 were sometimes voluntarily associated with the KNLA in non-military roles. When providing an explanation, the KNU identified that a lack of ground-level awareness of international rules was a significant obstacle to achieving full compliance. It also acknowledged difficulties in training its own forces, which were spread over a large geographical area and located mainly in remote locations with poor internal communication capabilities.⁴⁴ In addition, its organizational structure allowed considerable autonomy to KNLA brigade commanders, some of whom have strained relationships with the central leadership, and certain NGOs had noted that the disciplinary sanctions which the KNU had reportedly instituted for child recruitment appeared not to have been enforced.⁴⁵

In response, Geneva Call provided training to KNU/KNLA representatives on several occasions. The signing ceremony for the Deed of Commitment, in this sense, facilitated training sessions on its provisions for focal points from most of the areas controlled by the ANSA. This was soon followed by trainings of trainers – consisting mainly of brigade-level KNLA officers – with the expectation that they would trickle down the training in their operational areas. Geneva Call learned of a positive development related to one of the subsequent trainings when a children’s boarding house was moved away from a military camp, an obligation contained in the Deed of Commitment to protect children from the effects of military operations.⁴⁶ To address the decentralized nature of the ANSA, Geneva

43 Geneva Call, “The KNU/KNLA Commits to the Protection of Children and the Prohibition of Conflict-Related Sexual and Gender-Based Violence”, 24 July 2013, available at: <https://genevacall.org/knuknla-commits-protection-children-prohibition-conflict-related-sexual-gender-based-violence/>.

44 This information was conveyed by the KNU on several occasions to Geneva Call. See, for instance, Geneva Call, *Armed Non-State Actors Speak about Child Protection in Armed Conflict*, 2016, pp. 20-21, available at: https://genevacall.org/wp-content/uploads/dlm_uploads/2017/09/CansaReport_web.pdf.

45 Child Soldiers International, *Chance for Change: Ending the Recruitment and Use of Child Soldiers in Myanmar*, 2013, p. 30, fn. 164, available at: <https://tinyurl.com/rpajbtl>. In 2007, the KNU secretary-general issued a new directive to reiterate the prohibition on child recruitment and warn KNLA brigade commanders and special battalion commanders that those found in violation would “face appropriate action in accordance with army regulations”: see KNU, “Child Soldier”, 2007, available at: <https://tinyurl.com/qtbb5gc>; HRW, *Sold to Be Soldiers: The Recruitment and Use of Child Soldiers in Burma*, 31 October 2007, available at: www.hrw.org/report/2007/10/31/sold-be-soldiers/recruitment-and-use-child-soldiers-burma. HRW researchers speculated about the leaders’ possible reluctance to alienate ground-level forces by imposing policies and threatening disciplinary procedures. In 2007 and 2009, the KNLA adjutant-general issued a directive and a reminder, respectively, to KNLA commanders regarding their obligations not to recruit or use children. See KNLA, “Informing Directive Concerning Child Soldier”, 10 November 2007, available at: <https://tinyurl.com/yx6vo286>; KNLA, “Reminder and Statement”, 12 May 2009, available at: <https://tinyurl.com/qvndvqo>.

46 Deed of Commitment for the Protection of Children, above note 20, Art. 4.

Call not only provided further training for high-ranking KNU/KNLA officers⁴⁷ but also initiated brigade-level training⁴⁸ and partnered with the Karen Women's Organization (a community-based organization with a wide reach across KNU's controlled areas) to raise awareness about the Deed of Commitment at the community level.⁴⁹ As a result, some measures were taken to end the use and recruitment of children, such as the amendment of the KNLA Army Act to include the age of 18 as the minimum age for new recruits.⁵⁰

Ongoing contact with Geneva Call has proven instrumental in dealing with alleged cases of violations that have arisen since the signing of the Deed of Commitment. During 2018 and 2019, for instance, specific allegations were collected by Geneva Call and discussed with the KNU/KNLA. In response, the group admitted two cases of recruitment and explained that "the commanders did not know the [children's] age when they joined the military because their parents had brought them".⁵¹ They added that at the moment of receiving the allegation, those children who had already turned 18 "would finish their service".⁵² Based on Geneva Call's experience, this example shows that, although KNU/KNLA policy has improved over time and actual cases of child recruitment have dramatically declined, ensuring full compliance has remained challenging and depends on a number of factors. Three can be identified: the need for continuous dissemination and training at the rank-and-file level on the prohibition of using and recruiting children in hostilities; strong internal mechanisms within the KNLA to monitor compliance; and effective disciplinary sanctions to be enforced in case of violations. As Bangerter has explained, "[a] better respect for international humanitarian law is primarily the result of inside action, and no one can respect international humanitarian law in the stead of parties to a conflict".⁵³ Geneva Call's view with respect to the KNU/KNLA case is that prevention and accountability mechanisms should be made more robust in order to ensure that no children are recruited or used.

The age assessment challenge: The case of the APCLS

The APCLS is a Mai-Mai militia group operating in North Kivu in the DRC.⁵⁴ Originally part of the Coalition of Congolese Patriotic Resistance, it was officially

47 Geneva Call, "Burma/Myanmar: 40 High-Ranking Officers from the Karen National Liberation Army are Trained on Child Protection", 25 November 2015, available at: <https://genevacall.org/burmamyanmar-40-high-ranking-officers-karen-national-liberation-army-trained-child-protection/>.

48 Geneva Call, "Burma/Myanmar: Update of Geneva Call's Latest Activities on Gender Equality and the Prevention of Sexual Violence", 21 June 2016, available at: <https://genevacall.org/burmamyanmar-update-geneva-calls-latest-activities-gender-equality-prevention-sexual-violence/>.

49 *Ibid.*; Geneva Call, above note 47.

50 Information on file with the authors.

51 Information on file with the authors.

52 Information on file with the authors.

53 Olivier Bangerter, "Comment – Persuading Armed Groups to Better Respect International Humanitarian Law", in Heike Krieger (ed.), *Inducing Compliance with International Humanitarian Law: Lessons from the African Great Lakes Region*, Cambridge University Press, Cambridge, 2015, p. 113.

54 The term Mai-Mai (*Mayi-Mayi*) refers to a range of ethnically defined ANSAs that usually claim autochthony and have operated in the DRC since the 1960s on all sides of the political spectrum. The

founded in Nyabiondo, Masisi, in 2008, when it refused to sign the Goma Accords and to be integrated into the DRC's armed forces. It is led by "General" Janvier Buingo Karairi and draws most of its support from the local Hunde population.

The APCLS has been listed in the annual reports of the UN Secretary-General since 2013 as responsible for using and recruiting children in hostilities.⁵⁵ When Geneva Call began engaging this group, it was difficult to estimate the number of children incorporated into its forces. It had been reported that much of the recruitment was "voluntary" and was generally done with the tacit acquiescence of parents and/or guardians.⁵⁶ In many cases, families did not prevent their children from joining, often even encouraging them to do so.⁵⁷ It appears that the real or perceived threat of other armed actors was a strong driving factor for child recruitment. For instance, when the Nyatura group, a Congolese Hutu militia, was created, the Hunde community provided the APCLS with many children to defend the local population.⁵⁸ Thus, forced recruitment seemed to coincide with an escalation of hostilities and periods of heavy and deadly fighting. In an interview in 2012, a former member of the group explained that "[i]n general, we did not force people, but as soon as the number of effectives diminished through combat, we took the young by force".⁵⁹

The first interaction between Geneva Call and the APCLS was established in 2015 through a local community-based organization. Since then, Geneva Call has conducted a number of trainings on international law, including on child protection norms, for both officers and fighters of the APCLS. During these sessions, the APCLS shared its policies and practices, in particular in relation to military recruitment. Though it claimed not to recruit individuals under 18 years old, the ANSA agreed to amend its internal code of conduct to include a specific provision on the minimum age of recruitment.⁶⁰

Since the early stage of its engagement, Geneva Call has raised concerns about alleged violations of children's rights, in particular cases of recruitment and use in hostilities as detailed in the UN Secretary-General's annual reports on children and armed conflict. The APCLS claimed that it was unaware of these reports and of its inclusion in the list of parties that have committed such violations. In September 2015, "General" Janvier Buingo Karairi wrote a letter to

term means "water" and relates to supposed magical powers that protect fighters from enemy bullets. Zachariah Mampilly, *Rebel Rulers: Insurgent Governance and Civilian Life during War*, Cornell University Press, Ithaca, NY, 2011, p. 180, fn. 13.

55 For the most recent report, see *Report of the UN Secretary-General*, above note 42, p. 40.

56 UN Security Council, "Letter dated 22 January 2014 from the Coordinator of the Group of Experts on the Democratic Republic of the Congo Addressed to the President of the Security Council", UN Doc. S/2014/42, 2014, p. 35, available at: <https://tinyurl.com/uz95m7j>.

57 Coalition to Stop the Use of Child Soldiers, *Briefing Paper: Democratic Republic of the Congo: Mai Mai Child Soldier Recruitment and Use: Entrenched and Unending*, 2010, p. 9, available at https://www1.essex.ac.uk/armedcon/story_id/000910.pdf.

58 Information on file with the authors.

59 Joanne Richards, "Forced, Coerced and Voluntary Recruitment into Rebel and Militia Groups in the Democratic Republic of Congo", *Journal of Modern African Studies*, Vol. 52, No. 2, 2014, p. 317.

60 APCLS, *Règles de la Guerre dans le Mouvement Alliance du Peuple pour un Congo Libre et Souverain*, 2015, Art. 6, available at: <https://tinyurl.com/rh69k2t>.

the UN Secretary-General denying the allegations, recalling the APCLS' 18-years-old recruitment policy and inviting the UN to conduct field investigations in areas under its control.⁶¹ The invitation was reiterated in person to the Special Representative of the UN Secretary-General on Children and Armed Conflict in the context of a meeting on child protection issues organized by Geneva Call in November 2016.⁶²

Despite these steps, the ANSA's leadership shared with Geneva Call that age verification during the recruitment of new members remained challenging. This is a practical difficulty faced by many ANSAs, particularly in countries with low birth registration rates or where there is no other documentary evidence of age (such as official identity cards, school diplomas or medical records). In the absence of such documents, children are "more vulnerable to under-age recruitment by non-state armed groups".⁶³ Considering that these documents are generally issued under governmental authority, children living in the territories controlled by ANSAs often do not have them.⁶⁴ The issue of age assessment was importantly discussed with more than twenty ANSAs and specialized agencies at the above-mentioned meeting in 2016.⁶⁵ During this event, several groups asked for guidance and trainings on age assessment methods and processes, as they were lacking the capacity to carry them out. Yet, it was clearly underlined that these processes should only be undertaken as a measure of last resort, considering that when there is a doubt over the person's age, the individual should not be recruited.⁶⁶ The challenge, however, still persists in different contexts. In the absence of qualified experts, it was advised that age assessment protocols should be developed and carried out by designated focal persons who have previous training on the issue and are aware of the local culture or context.

Like other ANSAs, the APCLS acknowledged that it had difficulties in assessing the age of new recruits, notably due to the malnutrition of young

61 Information on file with the authors.

62 Information on file with the authors.

63 UNICEF, *Innocenti Insight: Birth Registration and Armed Conflict*, 2007, p. 7, available at: [www.unicef.org/protection/birth_registration_and_armed_conflict\(1\).pdf](http://www.unicef.org/protection/birth_registration_and_armed_conflict(1).pdf). This difficulty was also pointed out by the ICRC when dealing with child detainees: "In some circumstances, for example where births are not registered, official documents or records may not exist to help check the age of individuals facing detention, execution or other legal measures, thereby reducing their chances of being treated properly." ICRC, *Children and Detention*, Geneva, 2014, p. 3, available at: www.icrc.org/eng/assets/files/publications/icrc-002-4201.pdf.

64 There are, of course, exceptions. In Aleppo, the United Courts Council, a temporary judicial council, was reported to issue birth and death certificates: see Ivan Watsin and Raja Razek, "Rebel Court Fills Void Amid Syrian Civil War", *CNN*, 26 January 2012, available at: <https://edition.cnn.com/2013/01/25/world/meast/syria-rebel-court/index.html>. It has been also reported that the Islamic State group issued birth certificates printed on Islamic State stationery to babies born in the territories that it controlled: see Rukmini Callimachi, "The ISIS Files: We Unearthed Thousands of Internal Documents that Help Explain how the Islamic State Stayed in Power So Long", *New York Times*, 4 April 2018, available at: <https://www.nytimes.com/interactive/2018/04/04/world/middleeast/isis-documents-mosul-iraq.html>. See also Nabih Bulos, "Born Under a Bad Sign: Mosul Residents with Islamic State Birth Certificates Need a Do-over", *Los Angeles Times*, 6 March 2017, available at: www.latimes.com/world/middleeast/la-fig-iraq-mosul-court-20170306-story.html.

65 Geneva Call, above note 44, pp. 10-11.

66 See *ibid.*, p. 10, for the methods and standards that were shared with ANSAs participating in the meeting.

people, which made them appear older than their real age. The group admitted relying mainly on physical appearance but also claimed to recruit only those who possessed birth certificates or electoral cards. In cases where such documents were not available, the APCLS would check with their relatives and local communities. Hence, in addition to training the ANSA with respect to its obligations under international law, Geneva Call also provided a briefing on how to verify the age of an individual. In November 2016, the APCLS signed the Deed of Commitment for the Protection of Children, confirming its pledge to prohibit all forms of child recruitment and use in hostilities. This case shows from a practical perspective how important it is that ANSAs receive training not only on the relevant legal framework but also on the various technical issues, such as age assessment methods, that could assist them in acquiring the necessary capacity to implement their obligations.

Drivers of recruitment and lack of alternatives for children in conflict settings: The YPG/YPJ case

The YPG was originally created after the Qamishli uprising in 2004, but only officially emerged when the unrest erupted in Syria in 2011. Together with its female branch, the YPJ, it has been the dominant military force in the Kurdish-populated areas since the withdrawal of most government forces in 2012. The YPG/YPJ has been mainly fighting against Islamist ANSAs, especially the Islamic State group, although clashes against Syrian armed forces as well as Turkey have occurred occasionally.⁶⁷ In October 2015, the YPG and YPJ, some Free Syrian Army (FSA) brigades and the Syrian Military Council created a multi-ethnic and religious alliance called the Syrian Democratic Forces (SDF), which has been supported by certain States, including the United States.⁶⁸

The YPG/YPJ has been listed in the annual reports of the UN Secretary-General since 2013 as responsible for recruiting and using children in hostilities. In the 2018 report, it was stated that

[t]he recruitment and use of children by YPG/YPJ increased almost fivefold (from 46 to 224) compared to 2016. Nearly one third of the verified cases of children recruited by the group were girls (72) and 16 per cent were of Arab origin.⁶⁹

In response to this scenario, the YPG/YPJ-led SDF signed an action plan with the UN in July 2019 “to end and prevent the recruitment and use of children, to identify and separate boys and girls currently within its ranks and to put in place preventative,

67 For a brief explanation, see Anne Peters, “The Turkish Operation in Afrin (Syria) and the Silence of the Lambs”, *EJIL: Talk!*, 30 January 2018, available at: www.ejiltalk.org/the-turkish-operation-in-afrin-syria-and-the-silence-of-the-lambs/.

68 See, for instance, Jonathan Horowitz, “The Challenges of Foreign Assistance for Anti-ISIS Detention Operations”, *Just Security*, 23 July 2018, available at: www.justsecurity.org/59644/challenge-foreign-assistance-anti-isis-detention-operations/.

69 *Report of the UN Secretary-General*, above note 2, p. 25, para. 185.

protection and disciplinary measures related to child recruitment and use”.⁷⁰ Indeed, this commitment follows the listing of the YPG/YPJ for the recruitment and use of children,⁷¹ and allows this ANSA to be currently included under the heading of “[l]isted parties that have put in place measures during the reporting period aimed at improving the protection of children”.⁷²

Geneva Call’s experience with this ANSA evidences that in many cases, children, including some younger than 15 years old, have been used to man checkpoints and transfer information and military supplies. They have also served in combat roles, and indeed, during the battles for Kobane and Raqqa,⁷³ several of the “martyrs” who died in combat were children. While much of the recruitment appears to be “voluntary”, allegations of “conscription” policies targeting children were also levied against the YPG/YPJ, and several cases of abduction were reported.⁷⁴ Similarly, between July 2014 and July 2015, HRW compiled fifty-nine cases of children who were recruited by or volunteered for the YPG/YPJ, of which ten were under the age of 15.⁷⁵

Geneva Call initiated dialogue with the YPG/YPJ in October 2013. In response to allegations of child recruitment reported in various sources, the YPG/YPJ stated that, under their rules of procedure, only persons above 18 years old could become members,⁷⁶ but admitted that some of its units had breached this rule. Geneva Call noted, however, that under these rules, girls under the age of 18 could be admitted to the YPJ in some circumstances (such as when they had been subjected to forced marriage). Geneva Call also inquired what standard procedure was in place to prevent the recruitment of children below 18, raising concerns on the use of children at checkpoints by the Asayish police force. On 15 December 2013, the YPG/YPJ replied that while individual cases of recruitment of minors may have happened, these had been investigated and those responsible held accountable. Regarding the girls below 18 who had joined the YPJ to avoid being forcibly married, it was explained that they were placed in special training centres located away from the front lines, where they received education. Geneva Call was invited to visit these centres. The YPG/YPJ also shared that on 14 December 2013, the General Command issued a “circular” to all commanders of recruitment centres and heads of battalions and brigades in which it reiterated the strict prohibition against “recruit[ing] or join[ing] any person to YPG ranks

70 SRSR CAAC, “Syrian Democratic Forces Sign Action Plan to End and Prevent the Recruitment and Use of Children”, 1 July 2019, available at: <https://childrenandarmedconflict.un.org/syrian-democratic-forces-sign-action-plan-to-end-and-prevent-the-recruitment-and-use-of-children/>.

71 *Ibid.*

72 *Report of the UN Secretary-General*, above note 42, p. 42.

73 *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 5 February 2015, p. 7, para. 42, available at: www.refworld.org/docid/54e74b777.html.

74 *Report of the UN Secretary-General: Children and Armed Conflict*, UN Doc. A/68/878–S/2014/339, 15 May 2014, p. 30, para. 145, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1431583.pdf>.

75 HRW, “Syria: Kurdish Forces Violating Child Soldier Ban”, 15 July 2015, available at: www.hrw.org/news/2015/07/10/syria-kurdish-forces-violating-child-soldier-ban-0.

76 The YPG rules of procedure are included in HRW, “Under Kurdish Rule: Abuses in PYD-Run Enclaves of Syria”, 19 June 2014, available at: www.hrw.org/report/2014/06/19/under-kurdish-rule/abuses-pyd-run-enclaves-syria.

without his completion of the legal age of 18 years”.⁷⁷ It further claimed that a violation would lead to sanctions, in accordance with the internal rules of the group. Following the command order, the YPG/YPJ announced that seventeen children had been “disqualified from YPG military operations” and sent to “service-based institutions such as the media, or educational and political training centers”.⁷⁸

In July 2014, the YPG/YPJ signed the Deed of Commitment for the Protection of Children. The group’s signature publicly formalized its policy to prevent children under 18 from taking part in hostilities, and to protect them from the effects of the conflict. Geneva Call agreed to a temporary reservation to Article 2 of the Deed of Commitment, according to which

persons who have reached their 16th birthday will be allowed to voluntarily join, or remain in, the YPG/YPJ forces, under a non-military active category of membership, meaning without the authorization to participate in hostilities – both directly and indirectly – until they are 18 years old.⁷⁹

This reservation was due to the practical difficulties that the ANSA had at the time of signing the Deed with regard to immediately sending certain children back to their families. Nonetheless, the YPG/YPJ would increase the protection of its 16- to 18-year-old members, as it committed to separating them from the active armed forces, relocating them to safe areas, providing them with education and allowing Geneva Call to visit them.

In order to ensure the implementation of the Deed of Commitment, Geneva Call and the YPG/YPJ agreed to a series of measures, which included training and dissemination, a review of the age verification and screening processes in place, strengthening of the group’s internal monitoring, reporting and investigation mechanisms, and provisions on the release of children in safety and in collaboration with actors who could facilitate their return and reintegration. On the day the Deed was signed, 149 children were demobilized.⁸⁰ A number of them returned to their families, while the majority joined youth centres established by the YPG/YPJ. In 2015, sixty-five additional children were released.⁸¹ Geneva Call was able to visit the centres and mobilize an international NGO to carry out

77 See YPG, “Circular Issued by the General Command of YPG”, 2013, available at: <https://tinyurl.com/uhqn7fo>.

78 HRW, above note 76.

79 See the Deed of Commitment as signed by the YPG/YPJ, p. 5, available at: https://genevacall.org/wp-content/uploads/dlm_uploads/2014/07/2014-5july-YPG-YPJ-syria-children.pdf. Article 15 of the Deed of Commitment allows the entering of a reservation under certain strict conditions: “Any reservation to this Deed of Commitment must be consistent with its object and purpose, international humanitarian law, and the minimum obligations of State parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It must be expressed in writing upon signature and will be periodically reviewed towards attaining the highest possible respect for the rights of children. Geneva Call will be the final arbiter on the permissibility of any reservation.”

80 Geneva Call, “Syria: Kurdish Armed Forces Demobilize 149 Child Soldiers”, 7 July 2014, available at: <https://genevacall.org/syria-kurdish-armed-forces-demobilize-149-child-soldiers/>.

81 Geneva Call, “Syria: Kurdish Forces Take Further Measures to Stop the Use of Children in Hostilities”, 29 May 2015, available at: <https://genevacall.org/syrian-kurdish-forces-take-measures-stop-use-children-hostilities/>.

medical check-ups. It further informed specialized child protection agencies of the need to support the centres, notably in terms of teaching and educational material as well as leisure activities. Unfortunately this did not materialize, and thus Geneva Call decided to temporarily support the centre that hosted children under 16 in order to ensure that they would receive appropriate education.

Geneva Call has had the opportunity to meet the commanders of the YPG/YPJ on several occasions to discuss the persisting recruitment and use of children in breach of the Deed of Commitment.⁸² Despite the measures taken to address these compliance issues,⁸³ the YPG/YPJ admitted that it was facing difficulties in its efforts to refuse and send back all children, in particular those between 16 and 18 years old. This was because, according to the group, some of the children wanted to defend their communities against the Islamic State group's attacks or to take revenge for the loss of their family members. There were also several cases of girls joining the YPJ to seek protection from domestic violence and forced marriage.⁸⁴

As can be seen, there are a number of factors that may push children to join ANSAs. These include living in poor conditions and a lack of education and economic opportunities. In situations of armed conflict, access to basic services and employment can be difficult, particularly in areas controlled by armed groups. Orphans, homeless children or other vulnerable children may seek shelter from the local authorities, without necessarily distinguishing whether it has a State or non-State nature. In many cases, ANSAs provide protection for children from opposing forces, even evacuating them to safer areas. This has notably been the case because other alternatives are absent, such as a child protection agency.⁸⁵ Other reasons that may

82 See Geneva Call, "A Report from Inside Syria: A Visit to Monitor the Prohibition on the Use of Child Soldiers in Kurdish Areas", 10 February 2016, available at: www.genevacall.org/report-inside-syria-visit-monitor-prohibition-use-child-soldiers-kurdish-areas/; Geneva Call, "Syria: New Measures Taken by the Kurdish People's Protection Units to Stop Recruiting Children under 18", 22 June 2018, available at: <https://genevacall.org/syria-new-measures-taken-by-the-kurdish-peoples-protection-units-to-stop-using-children-under-18/>.

83 Following a field visit to Syria in 2017 to monitor compliance with the Deed of Commitment, Geneva Call confirmed the existence of cases of violation of the prohibition on child recruitment and use in hostilities. In an official response, the YPG/YPJ admitted responsibility and announced a series of measures that would be included in its internal regulations in order to address these violations, such as the establishment of "[n]ew and rigorous internal investigation mechanisms to follow up violations resulting from recruiting or using children aged under 18 years in combat positions" and the issuing of "an internal circular notice to all its units, forces and centres to explain their new policies and request them to abide by these new instructions": Geneva Call, "Syria: New Measures Taken", above note 82. The YPG General Command had already issued, in 2015, an internal circular to commanders and heads of recruitment centres instructing them not to recruit or accept any person under 18. See YPG, "Circular", 2015, available at: <https://tinyurl.com/vv6gp4t>. The YPG/YPJ also established a monitoring committee responsible for inspecting military camps, recruitment centres and front lines and investigating all complaints and allegations of child recruitment made by families, media and human rights organizations. The committee had full authority to demobilize persons who did not meet the membership conditions according to their ages and sanction officers responsible for these violations. Information on file with the authors.

84 This information was collected through interviews conducted by Geneva Call's staff directly with children who have joined the YPG/YPJ. See, for example, Geneva Call, "A Report from Inside Syria", above note 82.

85 Adrian Goodlife, "Armed Non-State Actors and Child Protection", in Mohamed A. Babiker, Maxence Daublain and Alexis Vahlas (eds), *Enfants-soldats et droits des enfants en situation de conflit et post-conflit*, L'Harmattan, Paris, 2013, p. 179.

drive children to join a group include political motivation, indoctrination and family or community pressure. In some cases, impoverished parents may also encourage their children to fight. Some children may join ANSAs in search of empowerment or to avenge the loss of family members, while others may live with their relatives who are active within an ANSA or in communities where the separation between fighters and civilians is practically non-existent. These drivers should be acknowledged and addressed when designing strategies of humanitarian engagement with ANSAs, and as much as possible, viable solutions should be provided for in order to prevent future child recruitment and facilitate the sustainable reintegration of former child soldiers.⁸⁶

Concluding remarks: Some reflections on ANSAs' compliance with the prohibition against recruiting and using children

As illustrated in the above cases, ANSA compliance with the prohibition against recruiting and using children can be a long and challenging process. While various authors have tried to explain why ANSAs abide by their obligations or not, the cases show that these are not entities that either violate or respect international law at large; rather, they may follow certain rules while disregarding others.⁸⁷ A group may recruit and use children in hostilities but at the same time decide not to attack schools, even providing education. The UN MRM process seems to follow this logic, and ANSAs (and States) are only listed for violations of specific norms. Colombia's Ejército de Liberación Nacional (National Liberation Army), for instance, is included in the 2019 report for recruiting and using children, and not as a party responsible for rape and other forms of sexual violence against children, or as a party that engages in attacks on schools and/or hospitals.⁸⁸

Furthermore, these non-State entities often modify their behaviours throughout the conflict, reflecting an increase or decrease in their level of commitment and compliance with humanitarian provisions.⁸⁹ A group going through a peace process, possibly looking for political recognition or legitimacy, might adopt a different attitude than a group whose main goal is to show its strength to the local population.⁹⁰ ANSAs, in this sense, may weigh the costs

86 See concrete suggestions in Geneva Call, above note 44, pp. 9, 11–12.

87 Michael L. Gross, *The Ethics of Insurgency: A Critical Guide to Just Guerrilla Warfare*, Cambridge University Press, Cambridge, 2015, p. 74, referring to different behaviours of Kosovar and Aceh guerrillas and the Taliban in Afghanistan. This does not exclude the fact that a number of ANSAs still reject international law or some of its norms, such as the 18-year standard, for ideological, military or other reasons.

88 *Report of the UN Secretary-General*, above note 42, p. 39.

89 Jessica A. Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law*, Cambridge University Press, Cambridge, 2016, pp. 221–233, for an analysis on the variation of behaviours by the Frente Farabundo Martí para la Liberación Nacional in El Salvador.

90 In this sense, Jo has argued that compliant ANSAs emerge when they seek legitimacy, which in turn is “typically politically situated and audience specific. Compliant rebels are those that want to enhance the ‘legitimacy’ of their own organization and movement in the eyes of key political ‘audiences’ that care about values consistent with international law at domestic and international ‘levels’”. H. Jo, above

versus the benefits of complying with international law,⁹¹ and the results will vary depending on the goals of the group and the moment in time in which the behaviour in question takes place. For example, although children may be easier to indoctrinate, they could also be difficult to train; or while they can be used as an easy way of filling the ranks, their forced recruitment could create problems with local communities.

ANSAs' behavioural variations may also depend on their level of organization and internal dynamics. It is expected that a relatively stable group with a vertical command structure will behave differently than one with various autonomous factions struggling to lead the movement or operating under a loose coalition.⁹² As the International Committee of the Red Cross has recently put it, “[a]n armed group’s organizational structure is an important determinant of its behaviour”.⁹³ The decentralized nature of some ANSAs, such as the KNU/KNLA, can indeed make the enforcement of organizational policies in the field more difficult. These complexities require a long-term vision of “sustained dialogue with those identified as having influence on violence and restraint at a particular time”.⁹⁴

Other arguments explaining ANSAs' level of compliance relate to the way in which the group in question has actually been conceived. Those non-State entities constituted around “economic endowments are predicted to exhibit much higher levels of indiscriminate violence, looting, and destruction, while rebellions rooted in social endowments are expected to demonstrate restraint and discipline”.⁹⁵

Alternative causes stem from the lack of capacity and resources allowing ANSAs to realize and implement some of their obligations. The APCLS' lack of an age assessment mechanism that could assist them in respecting the prohibition against using and recruiting children below the age of 18 is a case in point. Exchanges between Geneva Call and different ANSAs have confirmed that their organizational capacity is a key factor in their level of compliance with international law provisions.⁹⁶

note 28, p. 13. In any case, this scenario will depend on each context. In Sri Lanka, for instance, it was claimed that the Liberation Tigers of Tamil Eelam (LTTE) were responsible for war crimes during the final months of the conflict, including the use of civilians as human shields, shooting civilians as they tried to flee LTTE control, deploying artillery near civilians and forcibly recruiting children. Meenakshi Ganguly, “Sri Lanka Takes the Wrong Road to Peace”, 17 May 2011, available at: www.hrw.org/news/2011/05/17/sri-lanka-takes-wrong-road-peace.

91 Tanisha M. Fazal, *Wars of Law: Unintended Consequences in the Regulation of Armed Conflict*, Cornell University Press, Ithaca, NY, 2018, p. 59.

92 See Kristin M. Blakke, Kathleen Gallagher Cunningham and Lee J. M. Seymour, “The Problem with Fragmented Insurgencies”, *Washington Post*, 13 May 2015, available at: www.washingtonpost.com/news/monkey-cage/wp/2015/05/13/the-problem-with-fragmented-insurgencies/?noredirect=on&utm_term=.7c8f0edbf751. A large body of conflict research, it is affirmed, “demonstrates that [ANSAs’] fragmentation makes conflict more violent, longer lasting and harder to resolve”.

93 ICRC, above note 25, p. 21.

94 *Ibid.*, p. 65.

95 Jeremy Weinstein, *Inside Rebellion: The Politics of Insurgent Violence*, Cambridge University Press, Cambridge, 2006, p. 210.

96 Geneva Call, *Administration of Justice by Armed Non-State Actors: Report from the 2017 Garance Talks*, 2017, available at: https://genevacall.org/wp-content/uploads/dlm_uploads/2018/09/GaranceTalks_Issue02_Report_2018_web.pdf. See also Ezequiel Heffes, “Administration of Justice by Armed Groups: Some Practical and Legal Concerns”, *ICRC Humanitarian Law and Policy Blog*, 22 November 2018,

Moreover, the local context and the relationship of the ANSA with local communities may have an impact on the group's actions. In this sense, some children may voluntarily decide to join an ANSA, for instance, to escape forced marriage or for economic reasons. The YPG/YPJ example shows the importance of understanding and addressing the root causes of recruitment and use of children. Domestic violence and the lack of livelihood opportunities or access to education are causes that often remain neglected.

To conclude, ANSAs should be conceived as dynamic and evolving entities, and compliance in their contexts should be seen as a spectrum rather than a “two-way switch that is either on or off”.⁹⁷ By reflecting on the notion of a spectrum, we can see ANSAs' actions as “a matter of degree varying with the circumstances of the case”.⁹⁸ All three cases examined above show that, to some extent, ANSAs have changed their policies over time and have improved their levels of compliance with certain norms. All three ANSAs agreed, in the first place, to relinquish their practice of recruiting and using children in hostilities. Ensuring full compliance will be a long journey, but Geneva Call's experiences suggest potential pathways and show that ANSAs are more likely to comply when (1) they are aware of their obligations throughout the entire chain of command; (2) they have the capacity to actually implement those obligations; and (3) the factors leading to violations, such as the lack of alternatives for children, are actually addressed.

available at: <https://blogs.icrc.org/law-and-policy/2018/11/22/administration-of-justice-armed-groups-some-legal-practical-concerns/>.

97 Richard A. Falk, “On Identifying and Solving the Problem of Compliance with International Law”, *Proceedings of the American Society of International Law at Its Annual Meeting (1921–1969)*, Vol. 58, 1964, p. 5.

98 *Ibid.*