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A Balancing Act: Analyzing Children's Rights in UK and Australian Counterterrorism Policies

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Abstract

As concerns about terrorism and nations' right to protect themselves from such threats have increased, nations around the world have implemented a variety of counterterrorism and national security policies. However, following the adoption of the United Nations Convention on the Rights of the Child, and the increasing use of children associated with armed groups and armed forces during armed conflict and by groups labeled as terrorists, counterterrorism policies have failed to adapt to modern issues. As such, this paper reviews counterterrorism legislation from the UK and Australia to highlight shortcomings in protecting their international human rights obligations to protect children. In this analysis, it has become clear that outdated counterterrorism policies are leading to the violation of children's rights, specifically as they are detained in Syria despite being UK and Australian nationals.

Keywords

Counterterrorism, children's rights, Syria, UK, Australia, policy, national security, children associated with armed groups and armed forces

Introduction

This November, the Convention on the Rights of the Child celebrates its 35th anniversary. As the most widely ratified convention, it has led to important dialogues around children's rights in various contexts.¹ Additionally, this anniversary comes at an important point in international history, as children are becoming more widely impacted by armed conflict, both as intentional victims of attacks and as child soldiers.² The Convention on the Rights of the Child prohibits the recruitment and use of children under the age of 15 in armed conflict.³ Additionally, the United Nations (UN) has listed the recruitment and use of children in armed conflict as one of the six specific grave violations against children during armed conflict.⁴ Despite this prohibition, armed groups and armed forces have continued to recruit and use children during armed conflict internationally. To address this use and monitor the six grave violations against children, the UN has established a Special Representative for Children and Armed Conflict under the UN General Assembly which requires that states view children associated with armed forces and armed groups (CAAFAG) as victims, not security threats.⁵ However, the UN Security Council's counterterrorism agenda, along with individual state counterterrorism policies, has led to the detention of former CAAFAG in a variety of conflicts.⁶ The detention of these children is a violation of their right to freedom, access to education, health, and the best interests of the child.

In Syria, there are child nationals from a variety of countries who have been sentenced to life in detention as their nations fail to repatriate them, including the UK and Australia.⁷ It has been reported that there are more than 20 British nationals in camps and detention centers

¹ Doebbler, "Protecting Children in Armed Conflict," p. 87.

² Kehris, "Children affected by armed conflict and violence."

³ United Nations. "Convention on the Rights of the Child."

⁴ Francis, "Paper Protection Mechanisms," p. 220.

⁵ United Nations Security Council, "Resolution 1261."

⁶ Harper, "Solutions for Children Previously Affiliated with Extremist Groups."

⁷ Becker and Tayler, "Revictimizing the Victims: Children Unlawfully Detained in Syria;" and Harper.

throughout Syria.⁸ There are reportedly more than 40 Australian nationals also being detained.⁹ The majority of those detained are mothers and their dependents, highlighting how children have become victims of these countries' failure to protect their citizens.¹⁰ The UK and Australia have justified their actions for the sake of national security concerns and the UK has even gone as far as providing funding to expand a Syrian Democratic Forces detention facility where widespread human rights abuses have been documented.¹¹

In the UK and Australia, counterterrorism policies that were intended to address adults are being expanded to include children. Increasingly, children who have been recruited and used by armed groups designated as terrorists, are being detained as security threats under counterterrorism legislation despite specific prohibitions against the indefinite detention of children.¹² In response to this detention, governments need to repatriate and reintegrate their child nationals who had become associated with groups designated as terrorists. As a result, vast inconsistencies in how policies have been applied have occurred, leading to discrimination and the further violation of these children's rights. The selective application of counterterrorism policies and failures of federal policy to adapt to current situations pave the way for human rights violations to occur, particularly impacting the rights of children.

As a result of these rights violations, I am examining the extent to which the tensions between written counterterrorism policies and their practical implementation violate children's rights. To answer this question, I investigate how children who were recruited and used by ISIL in Syria have been impacted by states' exploitation of this tension to dissolve their human rights obligations under the CRC. In doing this research, I have found that policies in the UK and

⁸ "Syria: tens of thousands marooned in detention camps and facilities where death, torture, and disease are rife."

⁹ "Australia: Many Children Returned from Syria Detention Doing Well."

¹⁰ Ibid.

¹¹ "Australia," and Siddique, "US and UK complicit in detentions at Syrian camps."

¹² Harper.

Australia have failed to adapt to increasingly concerning issues like the increased recruitment and use of children and the foreign fighter phenomenon, allowing children to be detained indefinitely and creating stateless populations which include children previously associated with ISIL.

Note on Organization

To begin this research, I provide a literature review on children's rights, armed conflict, and human rights and counterterrorism. The methods statement then introduces how this research was done using a policy analysis. Following the methods statement, this paper is broken into four analytical chapters. First, I look at children's rights and counterterrorism. This will introduce the issues associated with counterterrorism and how counterterrorism decisions restrict children's rights. The second chapter addresses broad counterterrorism policies employed by the UK and Australia. The third chapter analyzes financial counterterrorism policies, like donor conditionality clauses, sanctions, and federal legislation. The final chapter reviews citizenship and repatriation policies employed by the UK and Australia. This chapter will also address the inconsistencies that have resulted from these policies. The paper will conclude by offering policy and legal recommendations that must be taken to address the issues outlined.

This research is necessary due to the increasing use of children in armed conflicts globally and the worsening of armed conflicts (both national and international).¹³ The issues presented here highlight the tension between national security and human rights which has become increasingly apparent in contexts of armed conflict where organizations labeled as terrorist groups are active. Additionally, most of the research addressing human rights or

¹³ "A New Era of Conflict and Violence."

children's rights alongside counterterrorism is done from a security lens, not a child-centric lens. As this issue becomes more prevalent, it deserves the increased attention of scholars.

Literature Review

I have organized the literature into four themes to address the key aspects of my research question: children, armed conflict, international protections, and counterterrorism. I begin by reviewing the literature on children in armed conflict, broadly. This helps provide a background on how children are impacted by armed conflict and how they become recruited and used in armed conflicts. The second category of literature I look at centers on protections for children during armed conflict internationally. In looking at these protections, I highlight how the recruitment and use of children in conflict is a human rights violation. The third category of literature I analyze addresses children's rights and how these may be violated or protected during armed conflict. This section aims to establish a baseline understanding of the serious violations that occur against children during armed conflict. The final category of literature that I have reviewed is the intersection between human rights and counterterrorism. This category is vital considering how counterterrorism legislation has been used to justify human rights violations in many countries. These categories highlight the key aspects of my research question while illuminating gaps in the research that need to be addressed.

Children in Armed Conflict

The effects of armed conflict disproportionately impact children, whether they are used as child soldiers or become victims of the other hardships of war.¹⁴ The recruitment and use of children associated with armed forces and armed groups (CAAFAG) is a historical and

¹⁴ Lee-Koo, "The Intolerable Impact of Armed Conflict on Children."

worldwide problem.¹⁵ Rosen notes that CAAFAG have been used in armed conflict for many years, including in the American Revolution in 1776, as many of the combatants were under the age of 18.¹⁶ Rosen also notes that a shift in the eighteenth and nineteenth centuries changed the discourse around using child soldiers and yet the issue persists.¹⁷ Today CAAFAGs are most commonly used in poor countries, and CAAFAGs are typically present in civil wars or non-international armed conflicts.¹⁸ Concerningly, the presence of CAAFAGs in armed conflicts has increased in the last twenty years.¹⁹

The structural conditions of society have often been argued as leading to increased recruitment and use of CAAFAG during armed conflict. These structural conditions include poverty, being orphaned, and globalization.²⁰ In this literature, it is argued that poverty and a lack of parental support may make it appear as if there are no other options for the child besides joining an armed group or armed force.²¹ Other scholars have argued that globalization has created structural issues that have led to an increase in the use of CAAFAG.²² While this argument is related to the poverty a child may experience, it also argues that globalization has led to increased inequality within poorer countries that has led them to not be able to provide for and protect children in the same way that a more wealthy state may be able to.²³ Other structural issues include the decline in educational and economic opportunities during armed conflict that may encourage children to seek out other opportunities or to escape situations of abuse,

¹⁵ Rosen, *Child Soldiers in the Western Imagination.*”

¹⁶ Rosen, *Child Soldiers in the Western Imagination.*

¹⁷ Ibid.

¹⁸ Rosen, *Child Soldiers in Historical and Comparative Perspective.*

¹⁹ Bloom, “Child Soldiers in Armed Conflict.”

²⁰ Haer, “Children and Armed Conflict;” Goodwin-Gill and Cohn, *Child Soldiers*; Singer, *Children at War*;” McManimon and Stohl, “Use of Child Soldiers.”

²¹ Goodwin-Gill and Cohn.

²² Haer.

²³ Ibid, p. 76.

oppression, or poverty.²⁴ While at the surface these structural issues may appear to explain why some countries experience high rates of child soldiering, other scholars have complicated this claim, arguing that these structural factors alone are not enough to explain why there are variations in the use of CAAFAG internationally.²⁵ These authors argue that only looking at structural factors ignores the agency of individuals who may choose to join armed groups or armed forces, and structural factors fail to explain why the use of children can be so prevalent in one conflict, but practically non-existent in another.²⁶ These authors argue that, as of yet, there is no clear reason as to why the use of children in armed conflict occurs in some cases and not others.²⁷ As such, there is no agreement as to why children are recruited and used in some conflicts and not others.

Protections for Children in Armed Conflict

Due to the unique ways that children experience armed conflict, there is a large body of law that aims to protect children. These protections are outlined in international human rights law through the CRC, international humanitarian law through the four Geneva Conventions and two Optional Protocols, international refugee law via the UN Convention relating to the Status of Refugees, and in international criminal law as listed in the Rome Statute for the International Criminal Court.²⁸ Throughout these protections, much of the focus is on children who are nationals of the country where the conflict is occurring or CAAFAGs.

²⁴ Peters, “Re-examining Voluntarism;” Tynes and Early, “Governments, Rebels;” Achvarina and Simon, “No Place to Hide.”

²⁵ Haer; Achvarina and Simon.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Doebller, “Protecting Children in Armed Conflict;” Francis; Schaer, “Protecting Children in War;” and Udombana, “War is not Child’s Play.”

In international refugee law, there are some legal protections for children. In the 1961 Convention relating to the Status of Refugees, the protections for children are implicit as there is no distinction made between children and adults who are seeking refugee status.²⁹ The only explicit mentions of children in this Convention are in Articles 4 and 17 regarding access to religious education and wage-earning employment, respectively.³⁰ This convention does not include any reference to armed conflict nor is armed conflict enough to protect children seeking refugee status as the requirements mandate proof of a well-founded fear of persecution based on a membership of an identifiable group.³¹

International human rights law includes substantive protections for children during armed conflict through the Convention on the Rights of the Child and the International Labor Organization.³² The CRC is the most widely ratified international treaty and it does not allow for reservations or derogations of rights and has been ratified by every UN member state except for the US.³³ In the CRC, states are obligated to respect the best interests of the child.³⁴ The CRC also states that children under the age of 15 cannot be used or recruited in armed conflict.³⁵ The first additional protocol to the CRC expands this requirement to say that no child under the age of 18 may be recruited or used in armed conflict while the second optional protocol states that states must protect children from the worst forms of exploitation, including their use in armed conflict.³⁶ Additionally, the International Labor Organization has stated that child soldiering is a banned form of child labor.³⁷ Through these mechanisms, the protections for children in human

²⁹ Doebbler, p. 85.

³⁰ Ibid.

³¹ Ibid, p. 86.

³² Ibid, 87.

³³ Ibid.

³⁴ Doebbler; Francis; and Udombana.

³⁵ Ibid.

³⁶ Doebbler, p. 88.

³⁷ Udombana, p. 90.

rights law are abundant, yet child soldiering and the impacts of armed conflict on children remain widespread.

In the law of war, or international humanitarian law, the four Geneva Conventions and their Additional Protocols include a variety of protections for children. In the Fourth Geneva Convention, it is mandated that children must be made the special object of respect during war and that children are defined as those who are under the age of 15.³⁸ In International Humanitarian Law, states are expected to support the reunification of families and protect the family unit, evacuate children when necessary, respect their right to education, and ensure that children are protected through access to humanitarian aid.³⁹ Protections for children also include protections for civilians and the First Additional Protocol states that children may not be soldiers, extending the principle of distinction to children explicitly; the Second Additional Protocol extends this protection to non-international armed conflict.⁴⁰

International Criminal Law also includes protections for children in armed conflict. For example, the Rome Statute for the International Criminal Court criminalizes the recruitment and use of children under the age of 15 in armed conflict.⁴¹ Using this law, people like Charles Taylor and Thomas Lubango Dyilo have been held accountable for their crimes against children during armed conflict.⁴² However, some have argued that the ICC's limited use of this protection for children signifies the politicization of the issue of children in armed conflict and that the international community is failing to uphold its standards by not prosecuting more people through the ICC specifically relating to the recruitment and use of children during armed conflict.⁴³

³⁸ Doebbler, p.88; Francis, p. 217; Schaer, p. 60; Udombana, p. 73.

³⁹ Doebbler p. 89; and Schaer p. 59.

⁴⁰ Udombana, p. 72.

⁴¹ Francis, p. 219; Udombana, p. 84.

⁴² Francis, pp. 224-226.

⁴³ Ibid, p. 227.

In addition to the various legal protections for children in armed conflict, organizations play an important role in protecting children. The ICRC and UNICEF play important roles in the field when it comes to protecting children. The ICRC protects and aids children who have been impacted by armed conflict, works to identify unaccompanied children, restores families, and controls the conditions of detention, nutrition, medical care, and access to education.⁴⁴ UNICEF works to protect children by organizing humanitarian aid organizations and working on the ground to protect children in armed conflict through its Child Protection Clusters and emphasis on the prevention of all forms of exploitation, violence, and harm towards children.⁴⁵ These additional protections for children are vital considering states' failures to uphold the other various forms of protection, as listed above.

Children's Rights

Despite the above protections for children and armed conflict, their rights are often violated because of the conflict. This has become a more popular area of research as violations are increasing, including the recruitment and use of children, the failure of states to repatriate their citizens due to national security concerns, and other violations of rights like access to education and health care, gender-based violence, sexual exploitation and abuse, and mental health.⁴⁶

The broad violations of rights that children experience is due to the overall impact of armed conflict. In modern conflicts, it should be noted that children have become intentional

⁴⁴ Schaer, pp. 59-60.

⁴⁵Wessels and Edgerton, "What is Child Protection?" p. 11.

⁴⁶Machel, "The Impact of Armed Conflict on Children;" Ingram, et al. "The Repatriation & Reintegration Dilemma;" Grover, "Child soldiers as 'Non-Combatants;'" Davis, "Lost in Doctrine;" Everett, "The Battle Continues;" Happold, "Excluding Children from Refugee Status;" Maystre, "The Interaction between International Refugee Law and International Criminal Law."

targets as there has been a breakdown in the distinction between combatants and civilians.⁴⁷

Children also make up roughly half of displaced persons, often leading to separation from their families and making them more likely to experience hunger, violence, recruitment, and use in armed conflict, or sexual assault.⁴⁸ Girls also become significantly more vulnerable to domestic violence, sexual exploitation, and abuse.⁴⁹ As armed conflict disrupts daily life, children are more likely to experience malnutrition and psychosocial issues due to the experiences they may have during the armed conflict, including the development of PTSD, learning issues, or aggressive tendencies, among many other consequences.⁵⁰

When studying the impact of using children during armed conflict, there has been little analysis done regarding the impact on these children's rights and what happens to children outside of these more broad effects. One scholar investigated these issues and argued that the "foreign terrorist fighter" label is being applied to some of the children who were recruited and used by ISIL.⁵¹ As "foreign terrorist fighters," these children experience human rights violations due to their treatment as potential national security threats.⁵²

Relating to issues of repatriation and reintegration, most states tend to follow patterns determining whether or not they will repatriate their citizens following an armed conflict; indicators include addressing the number of citizens that participated in the conflict, the legal basis for repatriation, a desire to demonstrate the power of the state in dealing with returnees, and the state's reintegration infrastructure.⁵³ As such, states with few citizens that participated in the

⁴⁷ Machel, p. 5.

⁴⁸ Ibid, p. 12.

⁴⁹ Ibid, pp.18-20.

⁵⁰ Ibid.

⁵¹ Duffy, "Foreign Terrorist Fighters."

⁵² Ibid.

⁵³ Ingram, et al.

conflict, and strong systems to reintegrate and legally address these citizens' actions are more likely to repatriate their citizens who traveled internationally to join an armed conflict.

Another often ignored consequence of child soldiering that is linked to the state's failure to repatriate their citizens is the creation of large and long-lasting refugee camps, often in poorer countries.⁵⁴ As a result, some literature has argued that this leads to increases in food prices in the country that is hosting these refugees and also creates a demand for more international humanitarian aid in this region as the country may need help supporting this increased population through the development of infrastructure and economies that can support such an influx.⁵⁵ As such, one may think that repatriation would be preferred to offering long-lasting financial assistance to countries hosting refugees following armed conflicts, but the prioritization of national security has made it easier to justify assistance compared to repatriation.

This research is also linked to the growing argument that the Refugee Convention Exclusion Clause is not relevant to CAAFAG as they are victims, not combatants.⁵⁶ Children are being denied refugee status around the world due to the Refugee Convention's Exclusion Clause that prohibits combatants from obtaining refugee status.⁵⁷ This is based on the idea that CAAFAG have served as combatants in an armed conflict and therefore are not eligible to receive refugee status, ignoring that children under the age of 15 cannot be used in armed conflicts and first and foremost victims of recruitment.⁵⁸

⁵⁴ Maystadt, et al., "Impacts of Hosting Forced Migrants in Poor Countries."

⁵⁵ Maystadt, et al.

⁵⁶ Grover; Davis; Everett; Happold; and Maystre.

⁵⁷ Grover, p. 54.

⁵⁸ Ibid.

Counterterrorism and Human Rights

It is widely agreed upon that modern counterterrorism legislation violates state human rights obligations.⁵⁹ However, in response to this increase states have begun implementing draconian-level counterterrorism legislation that has resulted in serious violations of human rights, both for citizens and foreigners suspected of being involved in terrorism.⁶⁰ While the UK had implemented most of its counterterrorism policies before 9/11 due to terrorism in Northern Ireland, the other countries implemented most of their modern counterterrorism legislation following 9/11.⁶¹ The rights that these policies violate include the right to due process, the freedom from torture, the right to privacy, the freedom from indefinite detention, the right to seek asylum, and freedom from discrimination.⁶²

The issue of counterterrorism had been on the UN's agenda much before the 9/11 terrorist attacks.⁶³ Before 1972, the UN's main concern was the protection of aircraft from terrorism, but in 1972, the UN shifted to address the terrorism that occurred during the Munich Olympics targeting Israel.⁶⁴ In 1993, the UN's counterterrorism agenda shifted to become more focused on the linkage between human rights and counterterrorism, both as terrorism as a violation of human rights and the need to avoid counterterrorism legislation violating human rights.⁶⁵ This change in 1993 is also associated with a growing emphasis on respect for individual lives following the end of the Cold War, leading to a human security focus where the state is the subject of protection for its citizens as opposed to traditional security where the state aimed to

⁵⁹ Foot, "The United Nations, Counter Terrorism, and Human Rights;" Kielsgard, "A Human Rights Approach to Counter-Terrorism;" Lumina, "Counter-Terrorism Legislation and the Protection of Human Rights;" Prezelj, "Relationship Between Security and Human Rights in Counter-Terrorism;" Foot, "Human Rights and Counterterrorism in Global Governance."

⁶⁰ Lumina; and Prezelj.

⁶¹ Lumina, pp. 36-37.

⁶² Foot, "The United Nations," p. 501-507; Prezelj, pp. 150-151.; and Lumina, p. 67.

⁶³ Kielsgard.

⁶⁴ Ibid, p. 273.

⁶⁵ Ibid, p. 275.

protect its own borders.⁶⁶ From 2001 to today, the UN Security Council has emphasized the designation of international terrorism as a threat to international peace and security which has allowed the UN Security Council to mandate economic sanctions and to intervene for the sake of counterterrorism.⁶⁷ This shift in the UN's handling of terrorism is also associated with an increase in acts of terrorism.⁶⁸

The UN has also attempted to respond to violations of human rights due to counterterrorism legislation through UN Secretary-General Kofi Annan's creation of the High-Level Panel on Threats, Challenges, and Change which specifically called for the UN to align counterterrorism actions with human rights obligations.⁶⁹ Despite this attempt to intertwine human rights and counterterrorism, the Security Council's modern counterterrorism resolutions have solidified this divide by prioritizing states' rights regarding counterterrorism.⁷⁰ Further, the UN's Counter-Terrorism Committee (CTC) has been tasked with guiding states regarding terrorism prevention but has been critiqued for failing to encourage states to uphold their human rights obligations in counterterrorism.⁷¹ The CTC has consistently given deference to states regarding their counterterrorism actions which has further allowed for human rights violations to occur.⁷² The UN's failure to address this issue, coupled with state counterterrorism policies that ignore human rights violations should increasingly be of concern and need to be addressed both through academic research, and policy changes at the national and international levels.

⁶⁶ Prezelj, p. 511.

⁶⁷ Kielsingard, p. 276; and Foot, "The United Nations," p. 492.

⁶⁸ Prezelj, p. 146.

⁶⁹ Ibid, p. 149.

⁷⁰ Foot, "The United Nations," p. 512.

⁷¹ Ibid, pp. 490-491.

⁷² Ibid.

Conclusion

Much of the existing literature reviewed here analyzes counterterrorism and the rights of child soldiers from a security lens. As such, I aim to apply a human rights lens to this issue and highlight how human rights and counterterrorism must coexist to protect children. This paper will also focus on the actions of a “terrorist organization” that is party to a non-international armed conflict, not a single act of terrorism or a traditional armed force or group, which differs from much of the literature on the topic. The children this paper focuses on also addresses a gap in the literature. This research centers on the rights of children who have traveled to join an armed group or armed force, or who are brought to a new country for an armed conflict by their family. These children are often overlooked by literature analyzing the legal protections for children in armed conflict. This paper will also focus specifically on how children’s rights are violated by counterterrorism policies while most existing literature looks at rights more broadly and typically centers on the experiences of adults or children who are witnesses to an armed conflict.

Lastly, the literature was conclusive that counterterrorism legislation has largely been used to violate state human rights obligations and as such, this paper will dig more deeply to address the extent to which these counterterrorism policies are a violation of children’s rights or whether there is a balance between human rights and counterterrorism on paper that is not occurring in practice. In looking at states’ specific policies and actions for counterterrorism purposes, this paper will analyze whether the patterns listed in this literature are codified violations or issues relating to how the policies are implemented.

Methods Statement

For this research, I will be doing a policy analysis on state counterterrorism policies and court cases where children's rights have been litigated associated with counterterrorism issues in Syria. I focus on policies and court cases in the UK and Australia. The court case that I looked at in the UK was decided in 2024, and the court case I examined in Australia was litigated in 2023. The UK and Australia were chosen for review due to their accessibility as English-speaking nations and their comparable criminal law systems under Common Law. Additionally, as Cephas Lumina noted, the UK and Australia both revamped their counterterrorism legislation following 9/11.⁷³

Cephas Lumina's article "Counter-terrorism Legislation and the Protection of Human Rights: A Survey of Selected International Practice" provides a detailed account of the key counterterrorism policies for a variety of countries, including the UK and Australia.⁷⁴ Using Lumina's analysis of these policies as a starting point, I reviewed the key policies for both countries. In doing so, I read each policy entirely and noted mentions, or lack thereof, of keywords like human rights, minimum age of responsibility, the rights of children, and the financing of terrorism. After researching these aspects of the policies, I expanded my search to include citizenship policies, financial policies, or repatriation policies; I completed the same process of reading and noting any mentions of the key terms I was looking for in these policies. The UK and Australia each have search platforms for current and past federal policies, so using this search feature I was able to find the policies I was looking for. The case information was available publicly for both court cases (*Begum vs. Secretary of State for the Home Department*,

⁷³ Lumina, "Counter-Terrorism Legislation and the Protection of Human Rights."

⁷⁴ Ibid.

and *Minister of Home Affairs vs. Save the Children Australia*) used in this research. As such, I did not encounter issues finding and accessing the data necessary to complete this thesis.

To supplement this research, I also relied on reports from UN agencies, humanitarian agencies, advocacy and human rights organizations, existing legal frameworks, media reports, and academic peer-reviewed articles to highlight the inconsistencies and issues that arise between children's rights and counterterrorism. All the sources that I will be using are readily accessible via internet searches using keywords such as Al-Hol, Roj, Syria, ISIS, ISIS children, ISIL, ISIL children, Shamima Begum, Syria and UK, Syria and Australia, and repatriation. Through these search results, I noted inconsistencies in the application of counterterrorism policies that violate children's rights in the UK and Australia. I conducted this research from a human rights perspective, complicating the commonly used security lens as noted in the literature review.

While it may have been beneficial to have interviewed practitioners in the field who have spent time in either of these camps, children who have been repatriated or who are stuck in a detention center in Syria, or the people who have led efforts towards the repatriation of children in Syria, due to time and resource constraints these ideas were not feasible for this project. I understand that this may limit some triangulation of the data that I collected and will restrict the claims that I can make, but this possible limitation has been mitigated through the consultation of a wide variety of other sources, as I have listed above.

Another limitation of this research is that there is limited peer-reviewed research on the issue of the recruitment and use of CAAFAG, particularly in the Southwest Asian region. As such I will incorporate a wide variety of sources to supplement this gap as humanitarian aid organizations, human rights organizations, and the news media have published substantial data

on the topic that is easily accessible. When reviewing peer-reviewed and media sources, I took into consideration potential Western biases in writing and the labeling of ISIL as a terrorist group as this is not a legal term in international humanitarian law and is not an internationally agreed upon definition. It is also important to note that the policies and issues examined in this paper have also led to the violation of the rights of adults associated with armed groups designated as terrorists, but the scope of this paper is limited to an analysis of the impact on children's rights. Because I completed a policy analysis, I did not submit an IRB protocol.

Note on Definitions

In this research, two definitions need to be clarified because they are limited in scope and may lead to a restricted understanding of the issue. These two terms include "terrorism" and "child soldiers" both of which have been weaponized and are inaccurate for the context of this paper. Both terms also have wider implications when addressing counterterrorism as they have been used to restrict access to funding or rehabilitation, highlighting the need to problematize these terms and introduce more appropriate vocabulary.

The term terrorism is problematic because there is no internationally agreed-upon definition. As such, states may label an armed group a terrorist organization for political purposes. Often, this term is weaponized against Islam or Muslim-identified armed groups. However, as this paper is based on human rights and international humanitarian law, the accurate terminology for these groups is "armed group." This paper will not be engaging in the term terrorism so there is no need to clarify which definition would be used. When it is necessary to differentiate between armed groups and potential terrorist groups, I will be using the term "armed groups designated as terrorists," as this differentiation impacts how child soldiers are treated following the conflict.

Additionally, the term child soldier is problematic because it leads to a limited understanding of the experience of children recruited and used by armed forces or armed groups. The term child soldier often creates the impression that only children explicitly used for combat are being addressed, but armed forces and armed groups use children in a variety of ways, including as cooks, sexual slaves, spies, drone operators, and combatants, among many other examples. Furthermore, the term child soldier often excludes girls as they are not viewed as combatants and then risk being silenced as child soldiers. For this paper, it is important to note that children associated with armed forces or armed groups (CAAFAG) will also be used to address children who are brought into an armed group or armed force by their families. For these reasons, the term that this thesis will use is the official term for child soldiers as designated by the UN which is “children associated with armed forces or armed groups” (CAAFAG).

Children’s Rights and Counterterrorism

Counterterrorism policies and state actions impact children’s rights in a myriad of ways. Actions taken under the guise of counterterrorism may restrict who receives funding and may lead to the drafting of legislation that restricts rights. States have a legal obligation to protect their citizens from terrorism, yet the expectation is that any actions taken to prevent terrorism will be in line with human rights obligations and international humanitarian law.⁷⁵ States must balance human rights and counterterrorism because, in the same way that children are disproportionately impacted by armed conflict and acts of terrorism, their rights can be unjustly restricted due to counterterrorism policy restrictions.

⁷⁵ United Nations Security Council, “Resolution 1456.”

When addressing counterterrorism, the CRC has mandated that states must uphold a special duty of care toward children.⁷⁶ Within this duty of care, states are required to ensure the survival and development of children to their fullest extent, while also keeping in mind that the right to education is non-derogable.⁷⁷ In line with their rights, states have implemented a variety of counterterrorism policies to protect their citizens and prevent their radicalization. These policies include sanctions, donor conditionality clauses, deterrence, and defense. On paper, these policies do not explicitly impact children's rights, but on the ground, violations are occurring. Unfortunately, these violations risk revictimization of children as they occur at a time when children impacted by actions deemed to be terrorism are at an all-time high, highlighting the urgency of state action to address these violations.⁷⁸ States must view children associated with groups designated as terrorists as victims and witnesses, not as perpetrators, to uphold their human rights obligations and provide children with access to necessary assistance to begin the process of reintegration and rehabilitation.

Foreign Fighters and Children

In this paper, the children that I am most concerned with are those who have crossed international borders and are now considered to be children associated with armed forces or armed groups (CAAFAG). As a result of their travel, these children are being treated like foreign fighters or foreign terrorist fighters and are being unlawfully detained.⁷⁹ As a result of their perceived or real association with ISIL, their nations of origin have increasingly treated them with suspicion under the policy of countering terrorism.⁸⁰ To address this growing issue, the UN

⁷⁶ United Nations, "Convention on the Rights of the Child."

⁷⁷ Ibid.

⁷⁸ Eckert, "Counterterrorism, sanctions, and financial access challenges."

⁷⁹ Becker and Tayler.

⁸⁰ Ibid.

Security Council has recognized that children may be affected by the foreign fighter phenomenon as they are recruited by armed forces or armed groups, are brought abroad by their parents, or are born while their parents are abroad.⁸¹ It is important to note that the children of foreign fighters do not necessarily become CAAFAG, but are at an increased risk of recruitment due to their close association with the armed force or armed group.⁸² Children are particularly vulnerable to this phenomenon as they are often dependent on the decisions of their parents, or may be manipulated and exploited by the recruiting party. This is especially of concern when looking at the case in Syria as the UN has documented 76 instances of children who are verified nationals of 17 different countries being recruited by ISIL.⁸³ Many of these children remain in detention in camps like Al-Hol and Roj, or prison facilities as their nations of origin fail to repatriate them due to security concerns.⁸⁴

In response to this issue, the UN Security Council has called for Member States to take into consideration their nationals who may become foreign fighters including their children in Resolution 2396(2017).⁸⁵ Resolution 2388(2017) highlights that children's rights must be respected and that Member States must separate foreign fighters from those who were accompanying them, such as spouses and children.⁸⁶ This Resolution is an important step towards recognizing the differentiation between adult foreign fighters and children, highlighting the need to reintegrate and rehabilitate children who have been affected by the foreign fighter phenomenon. However, this Resolution appears to assume that those who accompanied the foreign fighters have not become associated with the group themselves. While state action to

⁸¹ United Nations. "Resolution 2398."

⁸² United Nations General Assembly, "Terrorism and Human Rights."

⁸³ United Nations Office of Counter-Terrorism. "Children Affected by the Foreign Fighter Phenomenon: Ensuring a Child Rights Based Approach," p. 13.

⁸⁴ Becker and Tayler.

⁸⁵ United Nations. Security Council, "Resolution 2398."

⁸⁶ Ibid.

prevent terrorism is justified, it is vital to consider the success and necessity of reintegrating children associated with armed groups labeled as terrorists in a variety of settings.

Treatment of Children under Counterterrorism Actions

Internationally, the treatment of children associated with armed groups labeled terrorists has become concerning due to the labeling of children as perpetrators of acts deemed to be terrorism. This has resulted in the arbitrary detention, and restriction of freedom for these children, further violating rights including health, education, and the prioritization of their best interests.⁸⁷ A report done by the Watchlist on Children and Armed Conflict found that states are expanding counterterrorism legislation to encapsulate all people potentially associated with terrorism, including children.⁸⁸ Through this broadening, children are becoming victims of policies designed to address the actions of adults due to the idea that children previously associated with extreme ideologies will be resistant to rehabilitation, ignoring the success of reintegration and rehabilitation in a variety of settings.⁸⁹

The shift from viewing children as victims to children as perpetrators allows states to justify the violation of their rights by expanding counterterrorism policies to encapsulate children. While children are protected under the various bodies of international law noted in the literature review, they are being detained as security threats in at least 15 countries, including Syria.⁹⁰ Here there are reports of abuses against children as young as 8 being subjected to torture.⁹¹ It is estimated that over 100 children have died while in detention in Syria.⁹² Despite

⁸⁷ “Countering Terrorism and Violent Extremism: The Erosion of Children’s Rights in Armed Conflict,” p. 2.

⁸⁸ “Countering Terrorism and Violent Extremism: The Erosion of Children’s Rights in Armed Conflict.”

⁸⁹ “Australia: Many Children Returned from Syria Detention Doing Well.”

⁹⁰ Becker, “Extreme Measures: Abuses against Children Detained as National Security Threats.”

⁹¹ Ibid.

⁹² Ibid.

the evidence of these abuses and violations, states continue to decline to repatriate their nationals, including children, citing security concerns.

Current Debates Around Children and Counterterrorism

Among the international community, issues around the way children associated with armed groups or armed forces are treated have become of interest as human rights violations are being brought to court. As such, debates around how children should be viewed and treated, and the legal definition of what constitutes a child have gained attention, often leading to disagreements. These debates include what the age for determining a child should be, and whether children should be viewed as victims or perpetrators.

In addressing the legal age that differentiates between being a child or an adult, discrepancies in international documents add to the disagreement among scholars. For example, the Convention on the Rights of the Child states in Article 1 that a child is anyone under the age of 18.⁹³ Article 38 of the CRC permits states to recruit children between the ages of 15 and 18, as long as they prioritize older people.⁹⁴ The Committee on the Rights of the Child has attempted to address this contradiction through the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC) which 173 of 193 member states have signed. OPAC declares that states must ensure that children under the age of 18 do not participate directly in hostilities, and are not compulsorily recruited into the armed forces or armed groups.⁹⁵ While OPAC does make clear that the international community aims to prevent children under the age of 18 from participating in armed conflicts, questions remain regarding

⁹³ United Nations, "Convention on the Rights of the Child."

⁹⁴ Ibid.

⁹⁵ United Nations, "Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflict."

Article 3 which permits children under the age of 18 to voluntarily join an armed force as agency may be restricted during times of conflict.⁹⁶

Further, a new debate as to the psychological development of a child's brain has arisen, calling into question whether 18 is the appropriate age for children to be viewed as adults, or if people between the ages of 18-21 should be viewed with similar status as those under the age of 18. UNICEF has officially recommended that people who come into contact with the law but who are between 18-21 years of age should be afforded the same provisions as children.⁹⁷ This recommendation aims to take into consideration the impacts of trauma on development and shift the legal culpability for children or juveniles to be focused on the development of their brains which we know occurs at the age of 21.⁹⁸ Further, this conversation is important regarding the issue of the detention of children associated with ISIL in Syria because many of these children were under the age of 18 when they entered Syria but are now considered adults in judicial proceedings.

The age of CAAFAG comes into question again when determining whether they are victims or perpetrators following the close of the armed conflict. This issue has led to immense disagreement amongst the international community because, on one hand, these children should not have been recruited or used in the armed conflict, but, on the other hand, many of these children have committed atrocities for which victims may seek justice. As such, the labels of victim and perpetrator must be viewed on a spectrum in which children are a complex issue. This spectrum needs to take into consideration the constrained agency of children and the immense exploitation that has occurred due to their recruitment and use. Further, when former CAAFAG are viewed as perpetrators, restorative justice must be prioritized, and proceedings must occur in

⁹⁶ Ibid.

⁹⁷ "Global Declaration on Justice with Children."

⁹⁸ Ibid.

a juvenile justice system that employs a child-centric lens to ensure both community healing and reintegration can occur. The labels assigned to former CAAFAG have serious implications as their rights may be more likely to be violated for the sake of national security and counterterrorism when they are viewed as perpetrators as opposed to victims.

Conclusion

In addressing the protection of children's rights while engaging in counterterrorism, there are a variety of counter-recruitment strategies that states must employ. These include ensuring that children's basic needs are being met and addressing structural issues like inequality and discrimination. Acknowledging that these are not changes that can be made overnight, states must work to ensure that children's rights are upheld, and children associated with groups designated as terrorists are singularly viewed as witnesses or victims, not as perpetrators themselves. The deprivation of children's rights for the sake of countering terrorism is the most compelling reason why states must ensure they are balancing human rights with their counterterrorism policies. The most impacted rights include the child's right to education, and health, the upholding of the best interest of the child, freedom from child soldiering, the right to repatriation, and the right to freedom. Children are being detained or refused access to principled humanitarian aid because broad counterterrorism policies that were implemented to prevent adults from committing acts of terrorism are being expanded to violate children's rights. The following chapters address specific policies employed by the UK and Australia to violate children's rights under counterterrorism actions.

Broad Counterterrorism Policies

Considering the various issues that arise in balancing children's rights with counterterrorism, it is important to look at specific policies to see the context in which they were written, what they include, and how they are being implemented today. In looking at the UK and Australia, both countries' modern counterterrorism policies stem from a roughly ten-year period between 1995-2006. The UK has an immense documented history of acts labeled terrorism, much of which is associated with the actions of the IRA and linked to the Troubles.⁹⁹ Australia's history of acts labeled as terrorism is more commonly linked to neo-Nazism in the 1980s.¹⁰⁰ Upon reviewing their policies, it became evident that both countries updated and enacted new policies following the 2001 terrorist attacks on the US by al-Qaeda, widely referred to as 9/11.

UK Counterterrorism Policies

The UK's counterterrorism legislation consists of four main acts, the Terrorism Act of 2000, the Anti-Terrorism Crime and Security Act of 2001, the Terrorism Act of 2006, and the Terrorism Prevention and Investigation Measures Act of 2011.¹⁰¹ The Terrorism Act of 2000 replaced the Prevention of Terrorism Act of 1974. Each act is void of any mention of the UK's policies for repatriation or citizenship. Additionally, the mention of age is limited to the detention of children in Scotland. It is important to note that the Human Rights Act of 1998 is cited in each act, highlighting the UK's written acknowledgment of the role of human rights in counterterrorism action. However, faults with each policy arise upon reviewing them more closely.

⁹⁹ McGrattan, "The Northern Irish Troubles."

¹⁰⁰ Elias, Amanuel, et al., "Media Public Discourse and Racism," pp. 228-229.

¹⁰¹ Lumina.

The Terrorism Acts of 2000 and 2006 outline how a person may appeal the decision determining they have been convicted of an offense concerning a group listed as a terrorist organization by the UK.¹⁰² Included offenses include membership to a proscribed group, or support (expressed or financial) of a proscribed group.¹⁰³ The Acts do explicitly state that UK nationals who commit any act that is illegal as outlined in the Act in a different nation will still be guilty of a UK offense.¹⁰⁴ Section 78 of the Terrorism Act of 2000 did initially include the sentencing of children convicted of scheduled offenses, but this was repealed by the 2006 Act; this section is also listed under the Northern Ireland chapter, further restricting its applicability.¹⁰⁵ Children are also noted in the detention chapter of this Act, particularly around the detention of children in Scotland.¹⁰⁶ The 2000 Act defines children as anyone under 16 years of age.¹⁰⁷

The Anti-Terrorism, Crime, and Security Act of 2001 was passed to further add to the 2000 Act.¹⁰⁸ It specifically makes provisions regarding immigration and asylum, expanding prevention efforts, and extending the power of criminal law in prosecuting terrorism.¹⁰⁹ This Act also allows for the UK to enact policies under the Third Pillar of the European Union's counterterrorism obligations program.¹¹⁰ This Act's only note of the Human Rights Act of 1998 is to note their shared definition of public authority.¹¹¹ There is no mention of age or citizenship.

The Terrorism Prevention and Investigation Measures Act of 2011 repealed the Prevention of Terrorism Act of 2005 which established powers to impose control orders.¹¹²

¹⁰² United Kingdom Terrorism Act 2000; United Kingdom Terrorism Act 2006.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ United Kingdom Terrorism Act 2000.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ United Kingdom Anti-Terrorism, Crime and Security 2001.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² United Kingdom Terrorism Prevention and Investigation Measures Act 2011.

Control orders were used to restrict a person's liberty when they were suspected of terrorist activity to protect national security.¹¹³ These orders restricted a person's ability to appeal a decision and failed to protect from double jeopardy.¹¹⁴ A broad order that restricts a person's liberty is a violation of human rights. As such, the 2011 Act aimed to create more specific terrorism prevention "notices" to restrict a person's rights when specific conditions are met that may serve as evidence for their involvement in terrorist activity.¹¹⁵ The 2011 Act does note that under section 7 of the Human Rights Act of 1998, the court is the tribunal that will oversee all proceedings related to "TPIM" notices, ensuring appropriate court procedures are followed.¹¹⁶ This Act does not make any distinctions for age.

Considering these acts stem from the UK's experiences with the Republic of Ireland and the attacks on 9/11 in the US, it can be inferred that the UK assumed adult men would be the target of much of this legislation.¹¹⁷ However, in modern conflicts, the increase in the foreign fighter phenomenon and the recruitment and use of children has complicated this idea as women and children are increasingly being perceived as being involved with groups labeled as terrorists. As such, the failures of these policies to explicitly differentiate between adults and children, outside of the example of children in Scotland, has allowed for loopholes to be created when dealing with UK nationals detained in Syria.

Australian Counterterrorism Policies

Australia's main counterterrorism policies include five acts originating from 1995 and 2002 which include the Criminal Code Act of 1995, the Suppression of the Financing of

¹¹³ United Kingdom Prevention of Terrorism Act 2005 (repealed).

¹¹⁴ *Ibid.*

¹¹⁵ United Kingdom Terrorism Prevention and Investigation Measures Act 2011.

¹¹⁶ *Ibid.*

¹¹⁷ McGrattan; and Lumina.

Terrorism Act of 2002, the Security Legislation Amendment Act of 2002, the Border Security Legislation Amendment Act of 2002, and the Telecommunications Interception Legislation Amendment Act of 2002.¹¹⁸ The Suppression of the Financing of Terrorism Act of 2002 will be analyzed in the following section.

The Criminal Code Act of 1995 has been amended a variety of times but remains Australia's main national security legislation.¹¹⁹ The Act covers everything from liability and criminal responsibility to various offenses associated with terrorism, and foreign recruitment.¹²⁰ The Act states that Australian nationals who commit any act that is illegal as outlined in the Act in a different nation can still be guilty of an Australian criminal offense.¹²¹ In addressing criminal responsibility, the act states that a child under ten is not criminally responsible for an offense.¹²² Furthermore, children between the ages of 10-14 can only be held accountable for an offense if the child is aware that their conduct is wrong.¹²³ This creates room for the prosecution of CAAFAG 15 years or older despite international standards to view children as victims first and foremost.

The Security Legislation Amendment (Terrorism) Act of 2002 aims to strengthen Australia's ability to counter terrorism and treason.¹²⁴ As such, the definition of treason is expanded to include groups Australia is at war with, likely in response to Australia's invasion of Afghanistan during the War on Terror.¹²⁵ The definition of terrorism is also further developed to include receiving training connected with terrorist acts, possessing items connected with terrorist

¹¹⁸ Lumina.

¹¹⁹ Australian Criminal Code Act 1996.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Australian Security Legislation Amendment (Terrorism) Act 2002.

¹²⁵ Ibid.

acts, or collecting documents to facilitate a terrorist act.¹²⁶ Concerningly, the Act defines members of terrorist organizations to include informal members, which in practice could be used to include the children of foreign fighters.¹²⁷ While the Act does include a note that if a person can prove they took all reasonable steps to leave the organization upon realizing it was a terrorist organization they will not be held criminally responsible, this creates concerns regarding a child's ability to do so if their family members remain with the organization or for their safety.¹²⁸

The Border Security Legislation Amendment Act of 2002 is less relevant to the topic of children's rights and counterterrorism but is important to note briefly as it expands the Australian government's right to monitor citizens in airports, and passengers of ships and aircraft which could serve to monitor the movement of potential foreign fighters aiming to leave the country.¹²⁹ The Telecommunications Interception Legislation Amendment Act of 2002 changes procedures for issuing warrants to monitor telecommunications.¹³⁰ Overall, Australia's policies are broad in scope and fail to account for human rights and the special needs of children.

Conclusion

When analyzing these two countries' counterterrorism policies a few key themes arise. First, it is concerning that almost all of the policies analyzed here fail to note the rights of children who may be recruited and used by armed groups labeled as terrorist organizations. While this may stem from an assumption that children would not be involved in acts of terrorism, the use of child soldiers in armed conflict is not new, nor is the use of children to commit crimes new, as there are reports of children being used by Al Qaeda throughout the War

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Australian Border Security Legislation Amendment Act 2002.

¹³⁰ Australian Telecommunications Legislation Amendment Act 2002.

on Terror, which both the UK and Australia were partners in with the United States.¹³¹

Additionally, as the use of children to commit acts labeled as terrorism increases, the UK and Australia's failure to incorporate child-specific measures into these broad policies has allowed them to exploit this gray area and leave their citizens in detention in Syria.¹³² Considering the UK is a permanent member of the UN's Security Council and the Security Council itself has called for the balancing of human rights with counterterrorism, the UK's failure to amend its policies to align with Resolution 2617(2021) that enforced the idea that human rights and counterterrorism are necessarily complementary highlights an international tendency to prioritize counterterrorism over human rights.¹³³

In failing to account for the rights of children, the UK and Australia are violating their obligations as parties to the Convention on the Rights of the Child by failing to uphold the best interests of the child. It is widely agreed upon that long-term detention is not appropriate nor healthy for children.¹³⁴ Despite this agreement, the UK and Australia are each actively participating in the violation of the child's right to freedom, protection from indefinite detention, access to education, and health. Additionally, long-term detention, as is occurring in Syria, can lead to increased exposure to radicalization, gender-based violence, and mental health issues as children may be exposed to trauma or not adequately treated for trauma endured while being associated with armed groups designated as terrorists.¹³⁵ Considering the failures of these broad policies to incorporate a child-specific lens, both the UK and Australia must address these shortcomings to align with their international obligations.

¹³¹ Singer, "Talk is Cheap: Getting Serious about Preventing Child Soldiers."

¹³² Harper; and Prezelj.

¹³³ United Nations Security Council Counter Terrorism Committee, "Human Rights."

¹³⁴ "Countering Terrorism and Violent Extremism: The Erosion of Children's Rights in Armed Conflict;" United Nations Office on Drugs and Crime, "Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups."

¹³⁵ United Nations Office on Drugs and Crime, "Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups," pp. 97-103.

Financial Counterterrorism Policies

Policies and government actions that place financial restrictions on the funding of terrorism can take on a variety of different forms. Restrictions may be imposed through sanctions or federal legislation. Additionally, independent donors to organizations or grants may impose restrictions on who the funding may be used to assist to prevent the aiding of groups designated as terrorists. These policies are seemingly disconnected from the issue of children being detained in Syria for real or assumed association with ISIL. However, the reality is that humanitarian aid organizations' work is restricted by these policies, disproportionately impacting children in armed conflict. Children are one of the largest recipients of humanitarian aid in conflict settings.¹³⁶ When restrictions are imposed to prevent people associated with terrorist actions from receiving the benefits of this aid, children are directly harmed.

Donor Conditionality Clauses and Children

Humanitarian action is a key target of counterterrorism policies, as donor conditionality clauses and sanctions restrict access to humanitarian aid in areas where groups designated as terrorists are located. Restrictions on financial aid due to counterterrorism policies is one example of a policy that on paper does not necessarily target the rights of children, but in action often restricts their access to necessary assistance. The goal of donor conditionality clauses is to prevent people associated with groups designated as terrorists from receiving humanitarian aid.¹³⁷ The restrictions imposed by donor conditionality clauses disproportionately impact children as children are prioritized in principled humanitarian action as one of the most vulnerable communities during emergencies, like armed conflict.¹³⁸

¹³⁶ UNICEF, "Humanitarian Action for Children 2024," p. 7.

¹³⁷ "Donor Conditions and Their Implications for Humanitarian Response." pp. 7-8.

¹³⁸ "Global Humanitarian Overview."

By requiring organizations to ensure that people who are associated with groups designated as terrorists do not receive aid, CAAFAGs are increasingly stigmatized within their communities as they are turned away from receiving the resources they need to reintegrate and rehabilitate. Sanctions and donor conditionality clauses also impact the impartiality of the work of humanitarian organizations by preventing them from aiding certain people.¹³⁹ The impartiality of these organizations is vital for their safety and continued operation in certain areas, yet state policies put this at risk through their broad and overarching counterterrorism measures. To address the impact that these actions have on children, sanctions and donor conditionality clauses must differentiate between members of armed groups labeled as terrorists and children who have become victims of the group through their recruitment and use, or perceived association due to familial ties.

Sanctions and Children

The goal of sanctions is broader than that of donor conditionality clauses as they are often used to prevent specific groups, nations, or people from having access to certain resources, like an arms embargo.¹⁴⁰ Sanctions may be imposed by an individual country, a regional organization, like NATO, or an international body, like the UN.¹⁴¹ When the UN Security Council places sanctions on a country, all UN member states are obligated to follow these measures.¹⁴² When the sanctions are upheld by all countries, they are significantly more impactful as the target state cannot turn elsewhere to get the items they may seek. However, in the case of smart sanctions, where one state is placing sanctions on another, or even if a smaller international body of states

¹³⁹ Eckert, "Counterterrorism, sanctions, and financial access challenges."

¹⁴⁰ Zyberi, "Enforcement of Humanitarian Law."

¹⁴¹ Ibid.

¹⁴² "Sanctions."

were to implement sanctions, like NATO, sanctions become less effective.¹⁴³ States can often turn elsewhere to find the supplies they need. Further, these sanctions risk leading to human rights violations against the civilian population in the country and are often indiscriminate, as these sanctions may restrict access to things like medicine that impact the civilian population and combatants.

In the case of the UK and Australia, as they are both members of the UN, they are obligated to uphold any sanctions imposed by the Security Council.¹⁴⁴ The UK is also a member of NATO which has previously employed sanctions.¹⁴⁵ Concerning Syria, the UN Security Council has not mandated sanctions against the country as a whole but has sanctioned ISIL, including many of its members and other associated entities.¹⁴⁶ While the engagement of sanctions is increasingly being done with consideration for the broader impacts that they may have on the rights of people impacted, there needs to be a child-centric lens applied to the imposed sanctions. Financial sanctions can restrict the access to resources for children associated with the impacted group, further victimizing these children.

Furthermore, in reviewing the UN Security Council's list of individuals associated with ISIL who have been sanctioned, it is concerning how many of the people had been registered between the ages of 18-21.¹⁴⁷ It also raises questions regarding the age of these people when they became involved with ISIL, and whether their recruitment and use initially occurred before they were 18 years old. Finally, many of the people who were added to the sanctions list when they were between 18-21 years old are from a variety of countries, including the UK, France, and Morocco, but are listed as being involved with ISIL in Iraq and Syria, highlighting the role of the

¹⁴³ Gordon, "Smart Sanctions Revisited."

¹⁴⁴ "Sanctions."

¹⁴⁵ Plakhav, "NATO Sanctions Policy."

¹⁴⁶ United Nations Security Council, "United Nations Security Council Consolidated List."

¹⁴⁷ Ibid.

foreign fighter phenomenon amongst young people.¹⁴⁸ While these people are no longer children, UNICEF has called for the acknowledgment that this age group may require special protection, similar to that of those under the age of 18, due to the experiences they may have had during armed conflict.¹⁴⁹ In reviewing this list, it becomes evident that while sanctions may financially impact children currently associated with groups labeled as terrorists, sanctions may also fail to consider the age at which these people became associated with the group, further violating these people's rights.

Federal Financing Policies

In their counterterrorism policies, both the UK and Australia have adopted legislation that specifically addresses the financing of terrorism. These policies are commonplace, with the UN Security Council also affirming the need to criminalize the funding of terrorism internationally. Both countries' policies are similar in that they detail what is included in the definition of providing financial support and how groups are labeled as terrorists.

Australia's Suppression of the Financing of Terrorism Act of 2002 is the main document that controls how funding an organization labeled a terrorist group is prosecuted.¹⁵⁰ It is important to note that the document primarily addresses the funding of a terrorist action that would impact the safety of the Commonwealth of Australia, but does also include actions that would violate international law and actions committed by Australian citizens abroad.¹⁵¹ Offenses include the potential use of funds to facilitate or engage in a terrorist act, highlighting how this could be expanded upon to include the use of humanitarian resources to support children

¹⁴⁸ Ibid.

¹⁴⁹ "Global Declaration on Justice with Children."

¹⁵⁰ Australian Suppression of the Financing of Terrorism Act, 2002.

¹⁵¹ Ibid.

associated with armed groups designated as terrorists.¹⁵² The Security Legislation Amendment (Terrorism) Act of 2002 also includes amendments to Australia's policies on funding.¹⁵³ In the Act, it is stated that a person commits an offense if they intentionally make funds available to an organization, the organization is a terrorist organization and the person is reckless as to whether the organization is a terrorist organization, the same application is applied in the distribution of resources that may aid an organization.¹⁵⁴ In the application of such a provision, humanitarian aid workers are increasingly burdened to ensure they do not provide resources to children associated with armed groups labeled terrorist organizations.

The UK's policies are similar and are predominately outlined in the Terrorism Act of 2000.¹⁵⁵ In Part III of this act, giving money, receiving money to give, or convincing someone else to give money to an organization labeled as a terrorist is prohibited.¹⁵⁶ In Part VI, the jurisdiction of the UK is noted to clarify that all British citizens, British Nationals, and British Overseas citizens are to follow these laws.¹⁵⁷ The Proceeds of Crime Act of 2002 and the Criminal Finances Act of 2017 also address the crime of financing organizations that are labeled as terrorists but predominantly address the forfeiture of property.¹⁵⁸ The 2002 Act expands upon the actions that are deemed to include financing a terrorist organization, like trafficking of people, slavery, and money laundering.¹⁵⁹ Overall, these policies are extremely similar to Australia's in that how they are worded creates a gray area regarding the rights of humanitarian aid workers when working with children formerly associated with armed groups designated as terrorists.

¹⁵² Ibid.

¹⁵³ Australian Security Legislation Amendment (Terrorism) Act, 2002.

¹⁵⁴ Ibid.

¹⁵⁵ United Kingdom Terrorism Act, 2000.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ United Kingdom Proceeds of Crime Act, 2002; United Kingdom Criminal Finances Act, 2017.

¹⁵⁹ United Kingdom Proceeds of Crime Act, 2002.

Conclusion

In looking at counterterrorism actions that serve to address the financing of terrorism, states must simultaneously protect their citizens and prevent their citizens from partaking in such actions. However, how these actions are exercised today violates the rights of children impacted by armed conflict. State policies and UN Security Council Resolution 1373 that prohibit the financial support of groups deemed terrorist organizations further restrict the work of humanitarian organizations as they are often imposed in broad and sweeping manners, creating a concern amongst humanitarian actors that they could be charged under counterterrorism policies.¹⁶⁰ As children are primary recipients of humanitarian aid, restricting access to this aid due to real or perceived association with a group labeled as terrorists further places children at risk. Humanitarian aid during armed conflict often provides education, health care, and other services, like ensuring adequate nutrition, and in restricting who in a community may receive this aid, children associated with armed groups designated as terrorists are stigmatized and may be further radicalized against the nations failing them. As such, actions aimed at preventing the financing of terrorism must employ a child-centric lens in analyzing how donor conditionality clauses, sanctions, and federal legislation may be disproportionately and unjustly impacting children.

Citizenship Policies Related to Counterterrorism

Following the Syrian Civil War, both the UK and Australia have been forced to grapple with the issue of their citizens being detained in Syria. As such, the citizenship and repatriation policies of both countries come into question regarding the nations' official duties to their

¹⁶⁰ Mackintosh and Duplat, "Study of the Impact of Donor Counter-Terrorism Measures on Principled Humanitarian Action."

citizens, particularly their children. Considering each country's explicit counterterrorism policies' failures to mention the issues of repatriation or citizenship, I analyzed their citizenship and repatriation policies to review the legal basis for revoking some associates of ISIL's citizenship while making others quasi-stateless through indefinite detention abroad.

UK Citizenship and Repatriation Policies

Despite the CRC's declaration that children have a right to be protected from statelessness, citizenship and repatriation policy failures have led to a violation of this protection. The UK's citizenship and repatriation policies are older than their counterterrorism policies. As such, they appear to be even less equipped to deal with children's rights and the current crisis in Syria.

The Repatriation of Prisoners Act of 1984 and the Repatriation of Prisoners (Overseas Territories) Order of 2017 are the most relevant federal legislation when looking at the rights of British children detained in Syria.¹⁶¹ In the 1983 Repatriation of Prisoners Act, it is outlined that when a foreign government and the UK agree, a British citizen can be transferred into the UK from another country with a warrant.¹⁶² The UK has used the provisions of this Act to repatriate some citizens, including a British woman and five children from Syria.¹⁶³ On the other hand, the UK has failed to enact the provisions of this act in the case of Shamima Begum, highlighting inconsistencies in how the UK has enacted its policies on the ground.¹⁶⁴

The Repatriation of Prisoners Act of 1984 also only details the rights that children have when being transferred out of the UK for having committed grave violations, or that consent of the prisoner when being transferred into the UK does not need to be given when the person is a

¹⁶¹ Repatriation of Prisoners Act, 1984; and The Repatriation of Prisoners (Overseas Territories) Order, 2017.

¹⁶² Repatriation of Prisoners Act, 1984.

¹⁶³ "UK Repatriates One Woman and Five Children from Northeast Syrian Camps."

¹⁶⁴ Shamima Begum vs. The Secretary of State for the Home Department, UKSC 163/2019, 2024.

child.¹⁶⁵ The Act states that in situations of repatriation if the relevant court does not typically have jurisdiction due to the age of the person in question, it does have criminal jurisdiction in dealing with the repatriation of youth.¹⁶⁶ Interestingly, this Act does not refer to the UK's obligation to protect its children from indefinite detention or detention in facilities with adults, as is occurring to British children in Syria currently. In addressing the role of this policy in UK counterterrorism, the Act solely mentions terrorism concerning how sentences would be served for people returned to the UK after having been tried and convicted for terrorist actions.¹⁶⁷ It does not address the role that repatriation can play in preventing further radicalization. The Act also assumes that the British national being detained by a foreign government has been tried and convicted, but that is not the case in Syria, further illuminating an inadequacy of this policy in addressing modern issues.¹⁶⁸

The UK does protect the right of the government to revoke the citizenship of its nationals through the 1981 British Nationality Act.¹⁶⁹ The Act states that the Secretary of State may revoke the citizenship of a person if it is determined that doing so would be in the best interest of the public good.¹⁷⁰ While there is a provision prohibiting the Secretary of State from making someone stateless via the deprivation of citizenship, this is void if it is ruled that the person has conducted themselves in a manner that violates the interests of the UK, implying potential terrorist actions as national security is listed as a reason this action may be taken.¹⁷¹ The issue of the age of the person being deprived of citizenship is not addressed in this section, nor is the human rights violation that arises when a person is made stateless.¹⁷² In the case of Shamima

¹⁶⁵ Repatriation of Prisoners Act, 1984.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ British Nationality Act, 1981.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

Begum, the UK ruled that due to her association with ISIL, which began at the age of fifteen, the Secretary of State can legally revoke her British citizenship.¹⁷³ As such, Begum is currently stateless and detained in Syria, not only violating her rights and raising serious questions about her status as a victim of child soldiering but also further burdening Syria as a seemingly permanent host for Begum.

Australian Citizenship and Repatriation Policies

The Australian Citizenship Act of 2007 is similar to the UK's citizenship policies but differs in that it does address the rights of children, to an extent. The Australian Act allows the government to revoke the citizenship of a child if the citizenship of their parent(s) is revoked. However, the Minister may not revoke the child's citizenship if that would make the child stateless. Additionally, the Act allows the Minister to revoke the citizenship of anyone aged fourteen or older if they commit a serious offense that brings into question their allegiance to Australia. Simultaneously, this section notes that if the person who is to lose their citizenship is under the age of 18, the Court must take into consideration the best interests of the child. These two obligations are seemingly contradictory as the deprivation of citizenship, particularly if Australia is the country where the child was born and raised, would be against the best interests of the child.

Australia's laws regarding repatriation differ from those of the UK as they do not enforce a formal policy of repatriation. Instead, Australia would employ a writ of habeas corpus to bring to court the issue of unlawful detention of an Australian citizen in another country. The employment of habeas corpus by Australia is rooted in its background as a common law country. The federal courts would have jurisdiction over issues of habeas corpus in other countries as a

¹⁷³ Shamima Begum vs. The Secretary of State for the Home Department, UKSC 163/2019, 2024.

matter of national security, as outlined in the Judiciary Act of 1901. This policy has become the topic of debate recently as an Australian Court ruled that Australia is not obligated to bring a writ of habeas corpus for Australian nationals being detained in Syria. This was decided despite the Court recognizing that the Australian government did repatriate thirteen other children who were Australian citizens in Syria previously.¹⁷⁴ The main difference that the Court noted in deciding this case is rooted in the claim that they do not have control or de facto control over the women and children in question.¹⁷⁵ However, Save the Children Australia has argued that a writ of habeas corpus should be issued to bring forth the women and children in question to test the Australian government's ability to end their detention in Syria.¹⁷⁶ The issue as to why the government was able to control the detention of some citizens to repatriate them, but not others was not addressed by the Court.¹⁷⁷ As such, these inconsistencies highlight the need for Australia to enact a clear policy relating to the repatriation of its nationals who are detained in foreign countries.

Conclusion

Both the UK and Australia appear to fail their child nationals through their citizenship and repatriation practices and policies. While in the case of financial policies, gray areas lead to the restriction of children's rights, these policies simply ignore the issue of children's rights altogether. Despite acknowledging issues of minimum age requirements and the special interests of children, both countries' citizenship policies allow for the deprivation of citizenship for children. Additionally, while both countries' citizenship policies note the need to prevent statelessness, in practice the employment of these policies has allowed people to become

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

stateless as they are stuck in detention facilities in Syria. The cases of these children highlight an international failure to consider the rights of children and the special status of children who have been recruited and used by armed groups in citizenship and repatriation decisions. Furthermore, in Australia's complete disregard for its obligation to repatriate its citizens, despite its acknowledgment of upholding the best interests of the child, the lack of legal policy and the reliance on Court opinions regarding habeas corpus is especially concerning for the state of Australian children stuck in Syria. Finally, the lack of consistency from both the UK and Australia is concerning. In sensitive situations such as this, consistency in the application of policy is necessary. As such, the UK and Australia must consider the discriminatory ways in which they are choosing to repatriate and reintegrate their citizens.

Conclusion

After reviewing the counterterrorism policies in the UK and Australia, it is evident that they are inadequate for handling the modern security issues the international community is facing. In failing to provide child-specific provisions within their counterterrorism policy, national security is prioritized over children's rights, failing to address how the two can go together to protect children while also practicing the state's right to employ counterterrorism policies. To account for these failures, the UK and Australia must systematize children's rights to be in line with their human rights obligations as parties to the CRC.

In systemizing children's rights, the UK and Australia must adopt a new definition of terrorism and terrorists. While defining these two categories is difficult due to the lack of an internationally agreed-upon definition and the political employment of the terms, a definition that excludes children associated with armed groups designated as terrorists must be incorporated into national legislation. By filing amendments through their national legislatures, each country

could feasibly adapt its existing counterterrorism legislation to incorporate the rights of children to be protected from their recruitment and use by armed groups and armed forces. In doing so, the UK and Australia would begin to balance the rights of children with their right to promote national security. Furthermore, this caveat in the definitions would help to account for the constrained agency of children associated with armed groups in acknowledging that they are victims of violations of their human rights.

In addition to changing the definition of terrorism and terrorist to address the increasing role of children in modern conflicts, the UK and Australia need to amend their broad counterterrorism policies to incorporate an acknowledgment of a minimum age of responsibility. This will help to ensure children are not swept into prosecution due to a lack of protections for age, as the policies stand today. Furthermore, these policies need to address the role of their human rights obligations in the protections provided to people accused of being a threat to national security. This must include an acknowledgment of the unjust practice of indefinite detention as is being used against children, and many adults, being detained in Syria. These current policies must be modified to better protect the human rights of foreign fighters and children who have been recruited and used by armed groups. Additionally, future research should analyze the role of these policies in the violations of rights against adults being detained for association with ISIL in Syria.

To address the potential issues with financial counterterrorism actions and policies, the UK and Australia need to set a precedent that humanitarian aid work is protected and that children, no matter their potential association with armed groups, are necessary recipients of such aid. As such, a standard must be established to protect humanitarian aid workers when providing aid to children. In the case of the employment of sanctions, the UK, as a permanent

member of the Security Council, must call for the UN Security Council to further research the people placed on their sanctions list to ensure that no person who has previously been recruited and used as a child by an armed group is targeted and is instead provided the opportunity to receive assistance with rehabilitation and reintegration into their community as a victim of this grave violation of their rights.

Furthermore, the UN Security Council, under the guidance of the UK, needs to consider adopting the standards supported by UNICEF in creating a special category of people aged 18-21 who may need assistance as juveniles who have potentially experienced a traumatic armed conflict and violations of their rights, now facing judicial proceedings. In doing so, the UN Security Council could prove its dedication to the issue of children in armed conflict while also highlighting how counterterrorism and children's rights can be balanced to serve as an example for all member states.

The selective application of counterterrorism laws, particularly around the repatriation and deprivation of citizenship need to be righted immediately by both the UK and Australia. In the case of the UK, some adults and children are being welcomed home, while others are made stateless or quasi-stateless. The inconsistency in addressing the needs and rights of their nationals highlights a failure of the UK's citizenship policies that allow for the creation of a stateless people on the grounds of national security while the UK's repatriation policies permit the UK to ignore the rights of its citizens being detained in foreign countries without having been prosecuted for any crime.

Australia is similarly guilty of discriminating against specific groups of citizens detained in Syria. Australian courts have permitted the country to leave some children in detention facilities in Syria while previously repatriating over a dozen women and children from Syria.

Australia's failure to employ a repatriation policy and rely on a writ of habeas corpus is dangerous as it has allowed for the further violation of these children's rights. Furthermore, Australia's citizenship policies that allow children to lose their Australian citizenship if their parent is to be deprived of citizenship fail to address the best interests of the child, an obligation Australia has as a party to the CRC. In permitting these children to remain in detention, both the UK and Australia are risking the radicalization and (re)traumatization of their child nationals. The inconsistencies in how the UK and Australia are handling the cases of their foreign nationals permit discrimination and raise questions about their dedication to children's rights and national security.

While this paper has focused on the UK and Australia, there are flaws in the balancing of children's rights and counterterrorism in a vast number of countries throughout the world. Increasingly, practices that center on national security while violating human rights are becoming mainstream as counterterrorism has become politicized. As such, all countries must adapt their counterterrorism policies to employ a child-centric lens that emphasizes balancing children's rights with counterterrorism. In doing so, they will better serve their nationals and protect their national security by supporting their younger populations. Children's rights and counterterrorism are not inherently dichotomous and can instead be implemented together to protect all populations better and emphasize lasting peace and stability internationally.

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