



**Alternative report to the
Committee on the Rights of the
Child**

Sri Lanka

2017

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1. Summary of core questions and recommendations

Child Soldiers International submits the following report in advance of the Committee on the Rights of the Child's ('the Committee') consideration of the combined fifth and sixth reports of Sri Lanka. The report focuses on reforms to independent monitoring mechanisms; awareness raising and training on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC); missing children; the need to ensure accountability for the recruitment and use of children; detention of children suspected of security-related offenses; and the recovery and reintegration of former child soldiers.

Recommendations

The state party should:

- Ensure that the National Human Rights Commission (NHRC) is provided with the necessary resources to carry out its responsibilities effectively, including the review of legislation and draft legislation, and effectively implement its recommendations;
- Immediately establish an effective justice mechanism to investigate abuses of international human rights and international humanitarian law by all sides of the conflict, including the recruitment and use of children, in line with the 2011 recommendation of the UN Secretary General to implement its "zero tolerance" position on child recruitment;¹
- Implement its pledge to repeal the Prevention of Terrorism Act (PTA) without further delay;
- Ensure that any new counter-terrorism legislation introduced meets international standards, and in particular, that children who have been associated with armed forces or armed groups are not prosecuted or punished, or threatened with prosecution or punishment, solely for their membership of those forces or groups, and that children who are accused of crimes against international law after being unlawfully recruited by armed forces or armed groups are considered primarily as victims of violations of international law and not only as alleged perpetrators.

Questions

- How many cases of missing children reported as having been associated with armed groups remain open?
- How many individuals formerly associated with armed groups who were recruited as children but are now adults are currently detained under the PTA?
- What steps has the state party taken to ensure that all individuals recruited as children by armed groups, including all those who were adults by the end of the armed conflict in 2009, receive age and gender-appropriate recovery and reintegration assistance?

¹ Report of the Secretary-General on children and armed conflict in Sri Lanka, UN Doc. S/2011/793, 21 December 2011, para 48(b): https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2011/793

2. General measures of implementation

Independent monitoring

In its Concluding Observations on Sri Lanka's initial report submitted under article 8 of OPAC, the Committee urged Sri Lanka to take the necessary measures to ensure the independence of the NHRC, and ensure that the NHRC is provided with the necessary human, financial and technical resources to carry out its responsibilities effectively.² In its combined fifth and sixth periodic reports submitted under article 44 of the Convention on the Rights of the Child (CRC), Sri Lanka notes that the nineteenth amendment to the constitution, enacted on 15 May 2015, restores the independence of the process by which NHRC members are appointed through the re-establishment of the Constitutional Council.³ However, while expressing its appreciation for the appointment of new commissioners in October 2015 via this process, the Committee Against Torture noted its concern that the NHRC "has not always been able to visit police stations or prisons immediately after receiving an allegation of violation of a detainee's rights, owing to various administrative and logistical factors."⁴ Furthermore, in its report on progress made in the implementation of Human Rights Council resolution 30/1, on promoting reconciliation, accountability and human rights in Sri Lanka, the Office of the United Nations High Commissioner for Human Rights (OHCHR) noted that "even though the Human Rights Commission has been vocal and active with regard to crucial issues, its potential in advising on legislative processes remains underutilized."⁵

Recommendations

The state party should:

- Ensure that the NHRC is provided with the necessary resources to carry out its responsibilities effectively, including the review of legislation and draft legislation, and effectively implement its recommendations, in line with the

² Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding Observations: Sri Lanka, UN Doc. CRC/C/OPAC/LKA/CO/1, 19 October 2010, para 7:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPAC%2fLKA%2fCO%2f1&Lang=en

³ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, Combined fifth and sixth periodic reports of Sri Lanka, UN Doc. CRC/C/LKA/5-6, 1 March 2017, paras 13 and 24:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLKA%2f5-6&Lang=en

⁴ Committee against Torture, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the fifth periodic report of Sri Lanka, UN Doc. CAT/C/LKA/CO/5, 27 January 2017, para 33:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fLKA%2fCO%2f5&Lang=en

⁵ OHCHR, report to the Human Rights Council on the implementation of Human Rights Council resolution 30/1, on promoting reconciliation, accountability and human rights in Sri Lanka, UN Doc. A/HRC/34/20, 10 February 2017, para 28: [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/030/56/PDF/G1703056.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/G17/030/56/PDF/G1703056.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/030/56/PDF/G1703056.pdf?OpenElement)

previous recommendations of the Committee as cited above, the Committee Against Torture,⁶ and OHCHR;⁷

- Consider reinforcing the mandate of the NHRC by legislating on its powers to refer cases directly to the courts, as recommended by the Committee against Torture and OHCHR;⁸
- Ensure that the NHRC is able to conduct unannounced visits to all places where individuals, including children, are deprived of their liberty.

Dissemination, awareness and training

In its combined fifth and sixth periodic reports, Sri Lanka notes that it has carried out several activities and developed plans to raise awareness of the CRC among children; raise awareness of child protection issues among “medical, educational, police officers, and transporters of school children” and notes that “based on recommendations submitted by [the Human Rights Commission of Sri Lanka], human rights are incorporated into secondary school curricula.”⁹

Questions

- Does the human rights element included in secondary school curricula include information on the principles and provisions of OPAC?
- What steps has the state party taken to ensure that the principles and provisions of OPAC specifically are widely disseminated to the general public, relevant professional groups working with children, notably law enforcement officers, social workers, medical professionals, teachers, media professionals and local and district officials, and among children, in line with the previous recommendations of the Committee?¹⁰
- What steps has the state party taken to ensure that members of the armed forces, the police and other security personnel and those working for the administration of justice receive specific training on the principles and provisions of OPAC, in line with the previous recommendations of the Committee?¹¹

Missing children and data collection

In its Concluding Observations on Sri Lanka’s initial report under OPAC, the Committee urged Sri Lanka to “ascertain the whereabouts of all the children whose fate remains unknown and to this end collect accurate data on all areas covered by OPAC, including

⁶ Op Cit, UN Doc. CAT/C/LKA/CO/5, 27, para 34.

⁷ Op Cit, UN Doc. A/HRC/34/20, paras 62 and 66(d).

⁸ Op Cit, UN Doc. CAT/C/LKA/CO/5, 27, para 34; OHCHR, Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, UN Doc. A/HRC/30/61, 28 September 2015, para 91(e):

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_61_ENG.docx

⁹ Op Cit, UN Doc. CRC/C/LKA/5-6, paras 38 - 41.

¹⁰ Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, paras 9 and 11.

¹¹ Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, para 11.

children recruited and used in armed conflict.”¹² The 2012 annual report of the UN Secretary General on children and armed conflict noted that, as of December 2011:

“the whereabouts of 1,373 children of a total of 6,905 who had been recruited by the Liberation Tigers of Tamil Eelam (LTTE) remains unknown, and the location of five boys previously recruited by the Tamil Makkal Viduthalai Pulikal (TMVP), three of which have been traced to the forces of Inya Bharathi, is also unknown ... The National Child Protection Authority has undertaken an independent investigation and made recommendations to the Government of Sri Lanka which are being pursued by the Criminal Investigation Division of the police. To date, no prosecution has been initiated.”¹³

The report also notes that:

“in December of 2009, the Vavuniya Government Agent and the Probation and Child Care Commissioner (Northern Province) jointly established the Family Tracing and Reunification Unit for unaccompanied and separated children, with UNICEF support. At the time of writing, 736 tracing applications had been registered concerning children, the majority of whom were recruited by LTTE. To date, 139 children have been matched and referred to the Unit for tracing and verification, of which 42 have been reunited with their family members.”¹⁴

The final report of Sri Lanka’s commission of inquiry on lessons learnt and reconciliation (LLRC) released in December 2011 emphasised that “the relatives of missing persons shall have the right to know the whereabouts of their loved ones. They also have the right to know the truth about what happened to such persons, and to bring the matter to closure.”¹⁵

In its combined fifth and sixth periodic reports, Sri Lanka notes that while monitoring and reporting of grave violations of child rights ended soon after the conclusion of the war, the Department of Probation and Childcare Services (DPCCS) continued family tracing work until 2014, when the task was delegated to the provincial department of DPCCS in the Northern Provincial Council with some 739 open cases remaining. The reports further note that “tracing efforts are ongoing.”¹⁶ Any international efforts towards achieving accountability for serious violations of international humanitarian and human rights law in Sri Lanka should include effective, independent investigations into grave violations against children, including the widespread recruitment and use of children by armed groups whose whereabouts may be unknown.

¹² Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, para 15.

¹³ Report of the Secretary-General, children and armed conflict, UN Doc. A/66/782-S/2012/261, 26 April 2012, para 154: https://www.un.org/en/ga/search/view_doc.asp?symbol=S/2012/261

¹⁴ Ibid, para 156.

¹⁵ Report of the commission of inquiry on lessons learnt and reconciliation, December 2011, Para 5.37: <http://slembassyusa.org/downloads/LLRC-REPORT.pdf>

¹⁶ Op Cit, UN Doc. CRC/C/LKA/5-6, para 140.

Recommendation

The state party should:

- In line with the previous recommendation by OHCHR, “operationalize the Office of Missing Persons Act and provide the Office of Missing Persons with sufficient resources and technical means; create the conditions necessary for the implementation of its mandate by, inter alia, passing enabling legislation to domesticate the International Convention for the Protection of All Persons from Enforced Disappearances and including the criminalization of enforced disappearances in the Penal Code.”¹⁷

Questions

- How many cases of missing children reported as having been previously associated with armed groups remain open?
- What steps have been taken to implement the recommendation of the UN Secretary General that the state party “strengthen a coordinated and comprehensive child-tracing network in the former conflict areas of the country, launch an investigation to establish the whereabouts of all children who were recruited, including those who are now over 18 years of age and whose fate remains unknown, and continue to facilitate full access by the United Nations and its specialized partners to information sources and allow them full freedom of movement in the north of the country”¹⁸?

3. Prohibition and related matters

Legislation

In its Concluding Observations on Sri Lanka’s initial report under OPAC, the Committee expressed serious concern that there had been no prosecutions for the recruitment and use of children under the Penal Code (Amendment) Act No. 16 of 1 January 2006 and that perpetrators continued to enjoy impunity. The Committee also noted with particular concern the slow progress in investigating the whereabouts of the remaining cases of children associated with the TMVP and the allegations of government officials’ complicity in the recruitment of children by the Karuna group.¹⁹

As noted in the report of the OHCHR investigation on Sri Lanka mandated by UN Human Rights Council Resolution 25/1, the LLRC “recommended that complaints of alleged child recruitment by ‘illegal armed groups affiliated with the LTTE or any political party should be investigated with a view to prosecuting offenders.’”²⁰ The report also noted that the investigation was

¹⁷ Op Cit, UN Doc. A/HRC/34/20, para 68(a).

¹⁸ Op Cit. UN Doc. S/2011/793, para 48(e).

¹⁹ Op Cit. UN Doc. CRC/C/OPAC/LKA/CO/1, para 22.

²⁰ Report of the OHCHR Investigation on Sri Lanka, UN Doc. A/HRC/30/CRP.2, 16 September 2015, para 723:

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A.HRC.30.CRP.2_E.d ocx

“not aware of any prosecutions for child recruitment against former LTTE members, such as Elilan and Papa, or against TMVP/Karuna Group or other paramilitary leaders. Elilan and Papa were last seen in Government custody on 18 May 2009. Karuna and Pillayan have since served in ministerial positions at the central and provincial level. This is all the more inexplicable given the criminalisation of child recruitment from 2006 and the fact that the recruitment took place in Government-controlled territory.”²¹

This finding led OHCHR to conclude:

“on the basis of the information gathered by the investigation team, there are reasonable grounds to believe that government security forces may have known that the Karuna Group recruited children in areas under its control ... The High Commissioner also notes the State’s failure to date to prosecute those responsible, including individuals widely suspected of child recruitment, some of whom have since been appointed to public positions.”²²

To date, Child Soldiers international is not aware of any action that has been taken to hold perpetrators of the recruitment and use of children accountable.

Recommendations

The state party should:

- Immediately implement the previous recommendation of the Committee to “establish as a matter of priority the whereabouts of the remaining cases of children associated with the TMVP as recommended by the Special Envoy of the Special Representative of the Secretary-General for children and armed conflict in his December 2009 report,”²³ and should ensure that the scope of any such investigations include individuals who are now adults but were recruited as children;
- Immediately establish an effective justice mechanism to investigate abuses of international human rights and international humanitarian law by all sides of the conflict, including the recruitment and use of children, in line with the previous recommendation of the UN Secretary General that Sri Lanka implement its “zero tolerance” position on child recruitment, including systematic and vigorous investigations for every reported case, past and present, followed by prosecutions and convictions of responsible perpetrators.²⁴ The state party should seek advice and technical assistance in establishing such a mechanism, and in accordance with previous recommendations by OHCHR, “should draw on the lessons learned and good practices of other States that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators.”²⁵

²¹ Ibid, para 724.

²² Op Cit, UN Doc. A/HRC/30/61, para 41.

²³ Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, para 23.

²⁴ Op Cit, UN Doc. S/2011/793, para 48(b).

²⁵ Op Cit, UN Doc. A/HRC/30/61, para 88.

Question

- In line with the Committee's previous recommendation,²⁶ what steps has the state party taken to eliminate the root causes of and prevent the recruitment and use of children by armed groups?

Military school activities

Question

- What steps has the state party taken to implement the Committee's previous recommendation to prohibit the handling and use of firearms for all children enrolled in the cadet corps in line with the spirit of OPAC?²⁷

4. Protection, recovery and reintegration

Protection of victims of crime and witnesses

Sri Lanka promulgated the Assistance to and Protection of Victims of Crime and Witnesses Act in 2015, which provides that "where the victim is a child victim, to be treated in a manner which ensures the best interests of such child."²⁸ However, OHCHR previously raised concerns regarding composition of the National Authority for Protection of Victims of Crime and Witnesses, the location of the victims of crime and witnesses assistance and protection division within the police department, the prohibition on accepting assistance from foreign governments, and the requirement that public officials be present when witnesses testify from remote locations, severely constraining the possibilities for evidence to be taken by video-link from abroad.²⁹ According to OHCHR, these concerns had not been addressed as of February 2017.³⁰

Recommendation

The state party should:

- Implement the recommendation of OHCHR to "review the Victim and Witness Protection Act with a view to incorporating strong safeguards for the independence and effectiveness of the victim and witness protection programme, in accordance with international standards,"³¹ including by ensuring

²⁶ Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, Para 17.

²⁷ Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, paras 26-27.

²⁸ Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of March 13, 2015, section 3(b): http://www.srilankalaw.lk/gazette/2015_pdf/4%20of%202015.pdf

²⁹ Oral update of the High Commissioner for Human Rights on promoting reconciliation, accountability and human rights in Sri Lanka, UN Doc. A/HRC/27/CRP.2, 22 September 2014, para 25: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.CRP.2_EN.doc

³⁰ Op Cit, UN Doc. A/HRC/34/20, para 44.

³¹ Op Cit, UN Doc. A/HRC/30/61, para 91(k).

appropriate procedural safeguards are in place to protect child victims and witnesses.

Detention of children under emergency regulations

The Committee previously expressed deep concern that children suspected of security-related offenses have and may still be detained under the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 and the PTA.³² Despite the lifting of the emergency regulations in 2011, the PTA remains in force. Several other UN human rights bodies,³³ international NGOs³⁴ and the NHRC³⁵ have raised concerns regarding restrictions of freedom of expression and association, arbitrary detention and torture under the PTA have called for its review and repeal, which Sri Lanka has not yet carried out despite pledges³⁶ to do so. With a view to amending Sri Lanka's counter-terrorism legal framework, the Cabinet approved the third draft of the Counter Terrorism Act (CTA) on 3 May 2017. According to Human Rights Watch, while the bill includes several improvements over the PTA, it also raises several concerns. These include a vague definition of terrorist acts; a lack of clarity as to how envisaged procedural safeguards will be implemented; the granting of authority to police and military officers to make arrests without a warrant and detain suspects for 12 months without charge and with bail only granted in exceptional circumstances; and the prohibition of a range of conduct with "Proscribed Terrorist Organizations" that violate the right to freedom of association, which would prohibit ordinary dealings with many ethnic Tamil organizations which

³² Op Cit, UN Doc. CRC/C/OPAC/LKA/CO/1, para 32.

³³ See for example, the Committee against Torture: Sri Lanka "should take prompt legislative measures to repeal the Prevention of Terrorism Act and abolish the regime of administrative detention, which confines individuals outside the criminal justice system and makes them vulnerable to abuse." Op Cit, UN Doc. CAT/C/LKA/CO/5, para 22; The Human Rights Committee: Sri Lanka "should take all measures, including amending its legislation, to ensure that all security measures comply with the provisions of the [International Covenant on Civil and Political Rights] and contain clear prohibitions against arbitrary arrest and detention as well as clear safeguards against torture and protections of the rights to freedom of expression and association. Furthermore, it should try those arrested under emergency and/or counter-terrorism laws by independent and regularly constituted courts with adequate safeguards." Concluding observations on the fifth periodic report of Sri Lanka, UN Doc. CCPR/C/LKA/CO/5, 21 November 2014:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLKA%2fCO%2f5&Lang=en; OHCHR: Sri Lanka should "initiate a high-level review of the Prevention of Terrorism Act and its regulations and the Public Security Ordinance Act with a view to their repeal and the formulation of a new national security framework fully compliant with international law" and "Review all cases of detainees held under the Prevention of Terrorism Act and either release them or immediately bring them to trial." Op Cit, UN Doc. A/HRC/30/61, paras 91(j), 91(q).

³⁴ See for example, Amnesty International, 'Sri Lanka: The conflict's legacy of impunity endures', 18 May 2017: <https://www.amnesty.org/en/latest/news/2017/05/sri-lanka-the-conflicts-legacy-of-impunity-endures/>; Human Rights Watch, 'Sri Lanka: Pledge to End Police Abuse Not Met: Repeal Prevention of Terrorism Act, Prosecute Torture', 20 February 2017: <https://www.hrw.org/news/2017/02/20/sri-lanka-pledge-end-police-abuse-not-met>; International Crisis Group, 'Sri Lanka's Transition to Nowhere', May 2017: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/286-sri-lanka-s-transition-nowhere>

³⁵ Report of The Human Rights Commission to the Committee Against Torture for the Review of the 5th Periodic Report of Sri Lanka, October 2016, para 38: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_NHS_LKA_25601_E.pdf

³⁶ Resolution adopted by the Human Rights Council on 1 October 2015, Promoting reconciliation, accountability and human rights in Sri Lanka, UN Doc. A/HRC/RES/30/1, 14 October 2015, Operative Paragraph 12: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf?OpenElement>

remain proscribed even if they never engaged in any terrorist activity.³⁷ The bill contains the offense of “Abetting Terrorism, Terrorists and Proscribed Terrorist Organizations,” which includes anyone who “recruits, selects, incites, induces, forces, preaches or trains, children to join a proscribed terrorist organisation, or to commit terrorism, or any other offence contained in this Act.”³⁸

Questions

- How many individuals formerly associated with armed groups who were recruited as children but are now adults are currently detained under the PTA?

Recommendations

The state party should:

- Implement its pledge to repeal the PTA without further delay, review the cases of all individuals currently detained under the PTA and either release them or charge and bring them to trial in independent and regularly constituted courts with adequate safeguards;
- Ensure that any new counter-terrorism legislation introduced meets international standards, and in particular, that children who have been associated with armed forces or armed groups are not prosecuted or punished, or threatened with prosecution or punishment, solely for their membership of those forces or groups, and that children who are accused of crimes against international law after being unlawfully recruited by armed forces or armed groups are considered primarily as victims of violations of international law and not only as alleged perpetrators, in line with the state party’s endorsements of the Paris Commitments to protect children from unlawful recruitment and use by armed forces or armed groups and the Paris Principles and Guidelines on children associated with armed forces or armed groups, and its previous policy not to “prosecute any child under the age of 18 for ‘terrorism-related crimes.’”³⁹

Rehabilitation centres

In its combined fifth and sixth periodic reports, Sri Lanka notes that during the reporting period (September 2010 to June 2016), as of 30 September 2015, 594 former child combatants had been reintegrated into their communities after undergoing rehabilitation programmes, and states that “all children who were forcibly recruited by the LTTE during the war and who underwent rehabilitation by the State were released to their families upon completion of rehabilitation.”⁴⁰ The report of the OHCHR Investigation on Sri Lanka documented incidents of torture at a number of rehabilitation

³⁷ Human Rights Watch, ‘Sri Lanka: Anti-Terror Bill Revives Concerns of Abuse - Draft Law Falls Far Short of Colombo’s Pledges to United Nations’, 18 May 2017: <https://www.hrw.org/news/2017/05/18/sri-lanka-anti-terror-bill-revives-concerns-abuse>

³⁸ Prime Minister of Sri Lanka, Note to Cabinet, Policy and Legal Framework relating to the Proposed Counter Terrorism Act of Sri Lanka, PMO/A6/C3/CM/LA/2CL7, 24 April 2017, section III(B)(e)vi: http://www.sundaytimes.lk/170430/Policy_Legal_Framework.pdf

³⁹ Op Cit, UN Doc. S/2011/793, para 39.

⁴⁰ Op Cit, UN Doc. CRC/C/LKA/5-6, paras 7, 45.

sites,⁴¹ and also noted that there was no provision for individuals who had been conscripted by armed groups as children but who were adults by the end of the conflict.⁴²

Question

- What steps has the state party taken to ensure that all individuals recruited as children by armed groups, including all those who were adults by the end of the armed conflict, receive age and gender-appropriate recovery and reintegration assistance which promotes their physical and psychological recovery, and social reintegration in an environment which fosters the health, self-respect and dignity of the individual? Please specify what psychosocial support has been offered to these individuals, including follow-up after their return home to their families and communities.

5. International assistance and cooperation

Recommendation

The state party should:

- In line with the Committee's previous recommendation, ratify the Rome Statute of the International Criminal Court.

⁴¹ Op Cit, UN Doc. A/HRC/30/CRP.2, para 547.

⁴² Op Cit, UN Doc. A/HRC/30/CRP.2, para 709.