

# GUIDE TO THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT



COALITION TO  
STOP THE USE OF CHILD SOLDIERS

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During a demobilization ceremony near the town of Rumbek, Sudan, adolescent boys walk away from the weapons they once carried as child soldiers. The discarding of their weapons and uniforms symbolizes the end of their military service and the start of their civilian lives. UNICEF and partners were instrumental in removing thousands of former child soldiers in Sudan from conflict, providing rehabilitation and family-tracing assistance and supporting long-term care.

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A 13-year-old Somali boy, AK-47 in hand, rests on a concrete ledge at a military checkpoint.

# INTRODUCTION

# 1

As armed conflict proliferates around the world, increasing numbers of children are exposed to the brutalities of war. In numerous countries, boys and girls are recruited as child soldiers by armed forces and groups, either forcibly or voluntarily. Children are susceptible to recruitment by manipulation or may be driven to join armed forces and groups because of poverty or discrimination. Often they are abducted at school, on the streets or at home. Once recruited or forced into service, they are used for a variety of purposes. While many children participate in combat, others are used for sexual purposes, as spies, messengers, porters, servants or to lay or clear landmines. Many children serve multiple roles.

Children may be recruited for several reasons. In countries that are already poor, war tends to deteriorate economic and social conditions, thereby forcing families into further economic hardship. As a result, children may join armed forces or groups to secure daily food and survival. Conflict is also likely to disrupt children's education. When schools are closed, children are left with few alternatives and may be more easily swayed to join armed groups or forces.

When a conflict is prolonged, armed forces and groups are more likely to use children to replenish their ranks. This trend is facilitated by the availability of light, inexpensive small arms and light weapons that can be easily handled by children aged 10 and younger.

Children who are used as soldiers are robbed of their childhood and are often subjected to extreme brutality. Stories abound of children who are drugged before being sent out to fight and forced to commit atrocities against their own families as a way to destroy family and communal ties. Girls are frequently used for sexual purposes, commonly assigned to a commander and at times gang-raped.

The number of children who have been recruited and used in hostilities is difficult to quantify. Although research suggests that 300,000 child soldiers are exploited in over 30 conflicts around the world,<sup>1</sup> in fact, no one knows the real number. Efforts are under way to collect more reliable information on the use of child soldiers and to gather data systematically on the impact of war on children.



## The global campaign and the Optional Protocol

Despite progress achieved over the last decade in the global campaign to end the recruitment and use of child soldiers, large numbers of children continue to be exploited in war and placed in the line of fire. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>2</sup> – entered into force on 12 February 2002 – is a milestone in the campaign, strengthening the legal protection of children and helping to prevent their use in armed conflict. (See Annex I for the full text of the Optional Protocol.)

The Optional Protocol raises the minimum age for direct participation in hostilities to 18 years from the previous minimum age of 15 years specified in the Convention on the Rights of the Child and other legal instruments. The treaty also prohibits compulsory recruitment by government forces of anyone under 18 years of age, and calls on State Parties to raise the minimum age above 15 for voluntary recruitment, and to implement strict safeguards when voluntary recruitment of children under 18 years is permitted. In the case of non-state armed groups, the treaty prohibits all recruitment – voluntary and compulsory – under age 18.

The Optional Protocol's entry into force represents a great achievement on behalf of children, but is not a sufficient response to the human rights abuses suffered by thousands of child soldiers each day. Instead, it should be seen as an important step in a process that includes widespread ratification of the Optional Protocol and its systematic implementation. The ultimate objective is to end the recruitment and use of children as soldiers. There are several key elements that are essential to realizing this objective: close monitoring of, and reporting on, States' compliance with the Optional Protocol, political leadership, and a strong focus on the rights of all children not only during conflict but also after it ends.

## Guide to the ratification and implementation of the Optional Protocol

UNICEF and the non-governmental organization Coalition to Stop the Use of Child Soldiers have developed this Guide to the Optional Protocol on the involvement of children in armed conflict as a contribution to the campaign to prevent and end the use of child soldiers.<sup>3</sup> It is hoped that this publication will be useful for mobilizing national and international efforts in support of that goal.

The Guide is intended to assist non-governmental organizations, child protection agencies, other child rights advocates and government officials in their efforts to ensure ratification of or accession to the Optional Protocol and the treaty's full implementation. It is also intended to be useful for UNICEF staff and human rights and humanitarian agencies, in particular those involved in national coalitions or as partner organizations of the Coalition to Stop the Use of Child Soldiers.

This publication contains essential information on the Optional Protocol: the context surrounding its adoption, efforts supporting its objectives, its key provisions, the processes for signature and ratification or accession and measures needed for

effective implementation. Emphasis is placed on the monitoring and reporting requirements and the role of the Committee on the Rights of the Child. Recommended strategies and concrete actions to promote ratification and implementation of the Optional Protocol are provided. Local, national and regional partners can adapt these strategies and actions for use in awareness-raising, training and advocacy.

The Guide is not intended to provide an exhaustive interpretation of the language of the Optional Protocol, or to explain all the possible legislative steps and measures in great detail. Rather, it is meant to be a practical tool.

#### BOX 1

### **Sometimes I'm too afraid to sleep**

Visna was 16 when he was interviewed in a remote area west of the town of Battambang, Cambodia. At the time the boy was registered in the Royal Cambodian Armed Forces as an adult soldier. The youngest of three children, Visna had never gone to school because his parents couldn't afford to send him. Instead, he helped his father fish. Visna was 12 when his father died. Too young to fish as competently as his father had, the boy soon saw himself as a burden to his mother.

"Through village gossip, my mother learned an army officer was looking for an aide. When my mother suggested that I apply, I wasn't interested. But after a quarrel with her, I sought out the officer. I was recruited to be the man's bodyguard. I had no idea what the job would require. When my commander went to the front, I went too. I was so frightened even though there were many soldiers nearby. I was given an AK-47 to carry. Sometimes I was told to fire it, but I don't know if I ever shot anyone. My duties included cleaning guns, patrolling and cooking rice for my unit. I sent my salary to my mother through my brother....

"The nights are the worst. Sometimes I am too afraid to sleep, for when I sleep, I dream I am dead. In my dream, a soldier in uniform comes to find me. He is angry with me and I am arrested and taken away. The soldier questions me for a long time. I say I don't know what I have done. No one listens to me. I see someone take a gun and then they shoot me – not just once but three times..."

Source: *Adult Wars, Child Soldiers: Voices of children involved in armed conflict in the East Asia and Pacific Region*, UNICEF 2002, p. 6.



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The Bangladesh Coalition for Child Rights sponsored rallies in front of the National Parliament House and the National Press Club on 12 February 2002 to mark the coming into force of the Optional Protocol.



# A GROWING CONSENSUS

# 2

The changing nature of warfare in the post-cold-war era has dramatically increased the number of civilian deaths. Internal conflicts, often fuelled by resource exploitation, are characterized by protracted disorder and widespread vulnerability of children and women to the worst possible forms of violence and abuse. Civilians, especially children, have been deliberately targeted by armed forces and groups, and the easy availability of inexpensive light weapons has led to additional recruitment of child soldiers.

The increasingly widespread exploitation of children as soldiers has triggered several landmark achievements to protect children from use in armed conflict. These achievements, outlined below, are due in part to the international campaign to end the use of child soldiers that has brought growing attention to the issue.

## The drafting process of the Optional Protocol

The initial standards prohibiting child recruitment were established by the 1977 Additional Protocols to the four Geneva Conventions of 1949<sup>4</sup> and by the Convention on the Rights of the Child of 1989,<sup>5</sup> which established 15 years as the minimum age for recruitment and participation in hostilities.

For many years, child rights advocates sought to raise the standard from age 15 to age 18 by creating a new international treaty to that effect. However, given the strong support for the Convention on the Rights of the Child, the idea arose to draft an Optional Protocol to the Convention focusing specifically on the involvement of children in armed conflict.

In 1994, the United Nations Commission on Human Rights formed a working group to draft the text of the Optional Protocol on the involvement of children in armed conflict. For the next six years, the working group – representatives of many countries, non-governmental organizations, United Nations agencies and independent experts – participated in discussions and refined the draft text.

The working group concluded its work in 2000. On 25 May of that year, the Optional Protocol was formally adopted by the United Nations General Assembly. After receiving the first 10 ratifications needed for its entry into force, the Optional Protocol became legally binding on 12 February 2002.

This successful campaign in support of the Optional Protocol was due to close and effective cooperation among governments, United Nations agencies, non-governmental organizations, in particular the Coalition to Stop the Use of Child Soldiers, UNICEF, the United Nations Special Representative of the Secretary-General for Children and Armed Conflict, the Office of the United Nations High Commissioner for Human Rights, the United Nations Committee on the Rights of the Child and many others.

The Coalition to Stop the Use of Child Soldiers, established in 1998, has made adoption, ratification and implementation of the Optional Protocol one of the key objectives of its global campaign to protect children from being used in armed conflict. The Coalition carries out advocacy, research, monitoring and capacity-building through its work with regional coordinators and non-governmental organizations in the Great Lakes region of Africa, Asia and the Pacific, Europe, Latin America, North America and the Middle East.

### **A landmark study by Graça Machel**

Another important development in the campaign to protect children was the 1994 appointment of Graça Machel, former Minister of Education in Mozambique, as the United Nations Secretary-General's independent expert to undertake a study on armed conflict's effects on children. In her landmark report *The Impact of Armed Conflict on Children* published in 1996, Ms. Machel makes an urgent call to end the cynical exploitation of children as soldiers.<sup>6</sup>

One year later, the United Nations Secretary-General appointed a Special Representative for Children and Armed Conflict with a mandate to promote the protection, rights and well-being of children at every phase of conflict. The Special Representative functions as a public advocate for war-affected children. The role of the Special Representative has centred on building greater awareness, mobilizing action, promoting the application of international standards that provide for the protection of children in armed conflict, proposing initiatives that engage parties to conflict to make specific commitments to protect children, and making children's protection a priority in peace processes and peace operations.

In October 1998, the United Nations Secretary-General also established a new policy that would require that civilian police and military observers in United Nations peacekeeping operations are at least 25 years old. Troops in national contingents are to be at least 21 years old, but not less than 18.

## Children's issues on the Security Council agenda

Support for children's issues within the United Nations Security Council has also been strengthened. Since 1999, the Security Council has adopted four resolutions on children and armed conflict – 1261 (1999), 1314 (2000), 1379 (2001) and 1460 (2003). These constitute major advances in the effort to stop the use of children in armed conflict and ensure that the issue is firmly placed on the Security Council agenda.

In resolution 1261 the Security Council “strongly condemns” the abduction and recruitment of children in armed conflict.<sup>7</sup> The following year, the Council urged Member States in resolution 1314 “to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.”<sup>8</sup>

Resolution 1379 introduced a ground-breaking measure in the monitoring of recruitment and use of children in hostilities. In it, the Security Council requested that the Secretary-General prepare a list for the Council naming parties to armed conflict that recruit or use children in violation of their international obligations.<sup>9</sup> In January 2003, the list was submitted for the first time as an annex to the Report of the Secretary-General on children and armed conflict.<sup>10</sup> Parties to armed conflict that recruit and use child soldiers had never before been ‘named’ in such a way.

In 2003, resolution 1460 called for the preparation of a report on the progress made by the parties listed in the previous report in stopping the use of child soldiers. The Security Council also pledged that it would consider taking “appropriate steps” to further address the issue if, upon reviewing the next report of the Secretary-General, it deems that insufficient progress is made.<sup>11</sup>

Several non-governmental organizations are involved in monitoring and reporting on children's rights in conflict situations and their work helps inform the efforts of the Security Council. For example, in 2002, in response to resolution 1379, the Coalition to Stop the Use of Child Soldiers prepared an alternative or ‘shadow’ report on the recruitment and use of child soldiers. The Coalition also publishes a global report on child soldiers every three years. The Watchlist on Children and Armed Conflict is another network of non-governmental organizations that monitors and reports on child rights violations in specific countries.<sup>12</sup>

## United Nations Special Session on Children

World leaders renewed and strengthened their commitments to children during the United Nations General Assembly Special Session on Children in May 2002. In the outcome document of the Special Session, ‘A World Fit for Children’, they committed to “end the recruitment and use of children in armed conflict contrary to international law, ensure their demobilization and effective disarmament and implement effective measures for their rehabilitation, physical and psychological recovery and reintegration into society.”<sup>13</sup>

## Other recent international legal instruments

In addition to the Optional Protocol on the involvement of children in armed conflict, three other instruments relating to child soldiers were adopted and entered into force in recent years. All three support, and in one case strengthen, the standards set by the Optional Protocol.

The African Charter on the Rights and Welfare of the Child, which entered into force in November 1999, was the first regional treaty to establish 18 as the minimum age for all recruitment and participation in hostilities.<sup>14</sup>

Convention No. 182 of the International Labour Organization concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted in June 1999 and entered into force in November 2000.<sup>15</sup> International Labour Organization Convention No.182 declares that forced or compulsory recruitment of children for use in armed conflict is among “the worst forms of child labour,”<sup>16</sup> and calls for programmes of action to eliminate child soldiering with “all necessary measures to ensure the effective implementation and enforcement...including the provision and application of penal sanctions or, as appropriate, other sanctions”.<sup>17</sup>

Finally, the Rome Statute establishing the International Criminal Court reflects an historic development in the campaign against the use of children in armed conflict. It defines the following acts as war crimes: “conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities” in an international armed conflict and “conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities” in a non-international armed conflict.<sup>18</sup>

## BOX 2

### **Girl soldiers in Colombia**

According to a recent Human Rights Watch report, girls are recruited and used by irregular armed groups in Colombia's armed conflict. Some groups are from one-quarter to nearly one-half female and may include girls as young as eight years old.

Girls are spared none of the hardships of military life. Their role is the same as that of boys. They are taught to handle weapons, collect intelligence and take part in military operations. Like all combatants, they are frequently injured or killed.

In addition, girls in rebel forces face gender-related pressures. Although rape and overt sexual harassment are usually not tolerated, many male commanders use their power to form sexual liaisons with under age girls. "They take the prettiest girls...and give them gifts and privileges" one girl stated in the Human Rights Watch report. These relationships may not appear to be forced, but they take place in a context in which the commanders may have life-or-death authority over their charges. Girls as young as 12 are required to use contraception and must have abortions if they become pregnant.

The Government of Colombia is in the process of ratifying the Optional Protocol on the involvement of children in armed conflict. However, the provisions of the Optional Protocol have already been incorporated into domestic legislation that has been in force in the country since 14 July 2003. Under the provisions of the Optional Protocol, non-State actors are prohibited under any circumstances from recruiting and using children under 18. The challenge will be in the implementation of these provisions.

Source: Human Rights Watch, *"You'll Learn Not to Cry": Child combatants in Colombia*, chap. 7, 'Girls', September 2003.





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Paramilitary groups (Autodefensas Unidas de Colombia, Bloque Central Bolívar) hand over some 40 child soldiers to UNICEF and national authorities in Colombia.

# KEY PROVISIONS

# 3

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict represents a leap forward in international law to protect children from the harmful effects of recruitment and use in hostilities.

In this section, the Optional Protocol's most substantive provisions regulating the participation and recruitment of children in hostilities are reviewed. A good understanding of these provisions is crucial to promoting ratification and implementation of the treaty by States. (*See Annex 1 for the full text of the Optional Protocol.*)

## Direct participation in hostilities

### ARTICLE 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years *do not take a direct part in hostilities*. [Emphasis added.]

Article 1 raises the minimum age of direct participation in hostilities from 15 years to 18 years. Initially, the minimum age for direct participation in hostilities was set at 15 by Protocol I – Protocol Additional to the Geneva Conventions of 1949 – and the Convention on the Rights of the Child. Additional Protocol II to the Geneva Conventions also sets the standard at 15, but does not make a distinction between direct or indirect participation.<sup>19</sup>

One of the key issues that arose during the negotiations on the drafting of the Optional Protocol concerned the age limit for participation in hostilities. The majority of delegations expressed their support for a clearly designated limit of 18 years for participation,<sup>20</sup> and a number of delegations believed that the age limit of 18 years should not only apply to participation in hostilities but also to all forms of recruitment. The latter view was also held by the Committee on the Rights of the Child, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UNICEF, United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees<sup>21</sup> and the Coalition to Stop the Use of Child Soldiers, which believed that a 'straight

18' ban would provide the broadest protection for children. This would be consistent with the general age of majority specified in the Convention on the Rights of the Child as well as most national legislation.

Compromise language was eventually agreed upon in the final text, limiting the application of the Optional Protocol to children's "direct part in hostilities." This compromise accommodated the interests and concerns of delegations whose national laws and practices permitted recruitment of children under 18 years of age.<sup>22</sup>

And while the phrase "direct part in hostilities" was agreed upon and included in the final text, the Optional Protocol and its *travaux préparatoires* (preparatory documents) do not provide guidance on the definition of "direct part in hostilities," nor do they define the difference between "direct" and "indirect" participation.

Direct participation may be interpreted to encompass not only active participation in combat but also military activities and direct support functions. These functions might include scouting, spying, sabotage and acting as decoys, couriers, porters, cooks or assistants at military checkpoints. They might also include use of girls for sexual purposes or in forced marriages.

This broader definition of child soldiering is reflected in the definition of a "child soldier" contained in the 'Cape Town Principles', which are used to prevent the use of child soldiers as well as for disarmament, demobilization and reintegration. This definition is for programmatic purposes and is not a legal definition. The Cape Town Principles, adopted at an international conference on child soldiers held in South Africa in 1997, have been widely accepted by child protection agencies, non-governmental organizations and United Nations agencies, including UNICEF and the World Bank.

The definition of 'child soldier' that was adopted reads: A child soldier is "any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and anyone accompanying such groups, other than family members. The definition includes girls recruited for sexual purposes and forced marriage." Thus, 'child soldier' does not only refer to a child who is carrying or has carried weapons. The definition is intentionally broad so as to extend protection to as many children as possible and to ensure their inclusion in demobilization and reintegration programmes.

In this context, it is interesting to note that the *travaux préparatoires* of the Rome Statute of the International Criminal Court also provide a broad interpretation of the participation of children in hostilities.<sup>23</sup>

The key point in all cases is to ensure that children are given the broadest possible protection under international human rights and humanitarian law.

## Voluntary and compulsory/forced recruitment

Although the negotiations on the Optional Protocol failed to establish a 'straight 18' ban for both voluntary and compulsory recruitment by States, the Optional Protocol raises the previous standards set by international law. It prohibits the involvement of children in hostilities and sets an age limit of 18 for compulsory recruitment by governments. It also raises the standard for voluntary recruitment by government forces beyond the age of 15. In addition, it outlaws all recruitment below age 18 for non-state groups.<sup>24</sup>

Recruitment covers any means by which a person becomes a member of the national armed forces or of an armed group. The Optional Protocol makes two important distinctions with respect to recruitment by States Parties versus non-state armed groups or entities; and the implications of compulsory versus voluntary recruitment. These distinctions and the underlying reasons are discussed in detail below.

### I) RECRUITMENT BY ARMED FORCES

#### ARTICLE 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

#### ARTICLE 3

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:
  - (a) Such recruitment is genuinely voluntary;
  - (b) Such recruitment is done with the informed consent of the person's parents or legal guardians;
  - (c) Such persons are fully informed of the duties involved in such military service;
  - (d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 3 raises the minimum age for voluntary recruitment in armed forces beyond 15 years. Voluntary recruitment is understood to mean that children are under no compulsion to join armed forces and that safeguards are in place to ensure that any voluntary recruitment is genuinely voluntary.

In practice, the distinctions between voluntary and compulsory recruitment may be difficult to implement. For example, volunteers might be coerced by lack of food, the need for physical protection, poverty or revenge. It may also be difficult to verify age in war-affected states, where reliable birth registration systems are not in place. If a state with limited birth records allows voluntary recruitment at 16 years of age, it is possible that a child 15 years or younger could slip through the safeguards and volunteer for military service.

A number of safeguards are required by article 3(3) to ensure that any voluntary recruitment is genuinely voluntary. In particular, recruitment must be undertaken with the informed consent of the person's parents or legal guardians. In addition, information must be provided on the duties involved in military service and reliable proof of age must be obtained. At the time of ratification or accession to the Optional Protocol, a State must submit a binding declaration specifying the safeguards being taken and the minimum age at which the State will permit voluntary recruitment into the national armed forces.

The requirement to raise the minimum age for voluntary recruitment included in article 3 allows an exception. Schools operated by or under the control of the armed forces of the States Parties are not required to raise the age for voluntary recruitment (article 3(5)). The below-18 age minimum set for voluntary recruitment and the exemption made for military schools were included at the behest of delegations who argued that in many countries the function of military service is not limited to defence. They also thought that it gives young people an opportunity to acquire knowledge and skills, and provides access to education that may be useful to them in the future.<sup>25</sup>

## **II) RECRUITMENT BY NON-STATE ARMED GROUPS**

### **ARTICLE 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.



2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

Article 4(1) of the Optional Protocol prohibits armed groups from recruiting children under 18 years of age either forcibly or voluntarily and from using them in hostilities.

The clause preventing child recruitment and use by armed groups is an important feature of the Optional Protocol, given that most armed conflicts today are internal conflicts involving warring factions and that the majority of children used in armed conflicts are recruited – often forcibly – by non-state armed groups. However, article 4(1) does not require armed groups to be actively engaged in an armed conflict before its provisions apply. Recruitment of children under 18 prior to the outbreak of hostilities is also prohibited.

The text of article 4(1) reflects the traditional view that only States have obligations under international human rights law and can become parties to treaties, whereas the behaviour of non-state entities is to be regulated by domestic law. The Optional Protocol uses “should not” instead of ‘must not’ or ‘shall not’ to outline the prohibitions against recruitment or use of persons under 18 years by armed groups, reflecting the strong views of the international community without conferring any legal status on such armed groups. Further care was taken in article 4(3) to ensure that the application of article 4 would not confer legal status on an armed group.

In addition to prohibiting all recruitment of children into non-state armed groups, article 4(2) imposes a duty on all States Parties to regulate the behaviour of armed groups, including by prohibiting and criminalizing the recruitment and use of children under 18 years. This regulation of activities might include the adoption of domestic legislation.

It is important to point out that the Optional Protocol permits States Parties to recruit voluntarily under 18 years, provided that certain safeguards are taken, while non-state armed groups are prohibited from all recruitment of those under 18. According to Graça Machel in her book *The Impact of War on Children*, the fact that governments are not bound by the same strict standard applied to non-state actors may undermine the Optional Protocol’s intent.<sup>26</sup>

The Optional Protocol and other international legal instruments can serve as tools to engage non-state groups in dialogue for the purpose of obtaining commitments that ensure better protection for children and security for humanitarian workers. This engagement includes negotiations to obtain access to children by humanitarian workers and to advocate for the respect of children’s rights. It can also help arrange for the early release and demobilization of child soldiers, even in the absence of a peace agreement. Such engagement does not imply political recog-

dition of the non-state groups. In a number of countries, non-state armed groups have given oral or written commitments to release and demobilize children or to refrain from the recruitment and use of child soldiers. On several occasions commitments have been made to United Nations officials, such as the Special Representative of the Secretary-General for Children and Armed Conflict and to UNICEF's Executive Director, and as a result, children held by armed groups have been released to child protection agencies.

## Greater protection

The Optional Protocol allows for the possibility that States Parties may bind themselves to standards on the recruitment and use of children in hostilities that surpass those outlined in the Optional Protocol, or that provide greater protection for children's rights, whether through national legislation or other international treaties. A similar provision is contained in article 41 of the Convention on the Rights of the Child.<sup>27</sup>

### ARTICLE 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Accordingly, in its declaration, to be deposited together with the instrument of ratification or accession, a State may choose to adopt a 'straight 18' policy prohibiting both compulsory and voluntary recruitment of children under 18 into armed forces. This policy goes beyond the minimum terms of the Optional Protocol. A number of States Parties have adopted such policies in their declarations, which can then be implemented at the national level through legislation (*see Chapter 5, Binding declaration*).

A 'straight 18' ban is also found in article 22(2) of the 1990 African Charter on the Rights and Welfare of the Child. The African Charter prohibits the use and recruitment of children below 18 years and member states of the African Union who ratify the Charter bind themselves to this higher standard.<sup>28</sup>

It should be noted that where there is a discrepancy between two or more legal obligations held by a State, it is a general principle of international law that the State observes the obligation that provides the greatest protection to human rights and the best interests of the child.

### BOX 3

#### **Demobilization, disarmament and reintegration in Sierra Leone**

The creation of an official programme for demobilization, disarmament and reintegration in Sierra Leone was a central tenet of the Lomé Peace Accord signed in July 1999. The accord was the first such agreement to recognize the special needs of children in the process of demobilization and reintegration. UNICEF was the lead agency for child protection during the process, which took place from 1998 to 2001. Children who were demobilized were transferred to interim care centres where they received health-care services and psychosocial counselling, and participated in educational and recreational activities while family tracing and reunification were in progress.

Disarmament has consistently failed to attract female combatants, in particular girls who have been abducted and forced to provide sexual services to armed groups. This was also the case in Sierra Leone, where thousands of girls who were abducted and used for sexual purposes were left out. These girls – ‘camp followers’ – were often under the watchful and controlling eye of their commanders and were afraid to step forward to claim their place in the demobilization process. Because disarmament is the first step towards reintegration, it is essential that strategies are developed to ensure girls’ full participation.

An important lesson learned from the demobilization exercise in Sierra Leone is the need to be especially proactive in involving girls during all stages. Accordingly, a national campaign has been undertaken to reach girls who did not participate, and new programmes promoting girls’ education and family reunification have been developed by UNICEF and partner non-governmental organizations.

Source: UNICEF.



# RATIFICATION AND ACCESSION

# 4

There are two ways for a State to become a party to the Optional Protocol: by ratification or accession. Both of these acts signify an agreement to be legally bound by the terms of the Optional Protocol. This chapter explains these two options and provides information on the necessary steps in the process.

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict establishes rights and obligations additional to those established by the Convention. The Optional Protocol is considered independent of the Convention and must be ratified or acceded to in a separate process.

Optional Protocols enable parties to the underlying treaty to establish among themselves a framework of obligations that go beyond the general treaty itself and to which not all parties to the general treaty consent, creating a two-tier system. Most Optional Protocols are open to ratification only by States Parties to the underlying treaty. However, the Optional Protocol on the involvement of children in armed conflict is not only open for signature and ratification by any State that is a party to the Convention on the Rights of the Child or has signed it, but it is also open for accession by any state.

## ARTICLE 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

In western Afghanistan, between Herat and Farah Provinces, this child soldier awaits demobilization. UNICEF provides reintegration assistance.



## Signature

Signature constitutes a preliminary endorsement of the Optional Protocol by the signing country. Signing the treaty does not create a binding legal obligation but rather demonstrates the State's intent to examine the treaty in good faith to determine an official position towards it. Nor does signing the Optional Protocol commit a State to proceed to ratification. However, it does oblige the State to refrain from acts that would defeat or undermine the treaty's objective and purpose. A State that has signed the Optional Protocol, for instance, should not then pass legislation that lowers the age for voluntary recruitment of children into armed forces.

## Ratification and accession

Ratification or accession signify an agreement to be legally bound by the terms of the Optional Protocol. Though accession has the same legal effect as ratification, the procedures differ. In the case of ratification, the State first signs and then ratifies the treaty. There is no signature prior to accession.

In the case of human rights treaties such as the Optional Protocol, there is generally no fixed period during which the instrument is open to signature. It is a matter of State preference whether to sign and ratify or to accede to the treaty. Many States prefer to sign to reflect public endorsement of the treaty relatively soon after its adoption, whereas accession (like ratification) may take much longer due to a State's particular domestic procedural requirements. In addition, signature gives States the opportunity to indicate their support for the treaty without becoming full States Parties with the corresponding legal obligations. (In comparison to human rights treaties, most treaties relating to international humanitarian law have a specific period during which they are open for signature, with accession permitted once this period has closed.)

The formal procedures for ratification or accession vary according to the requirements of national legislation. In some countries, the Head of State or Government is constitutionally empowered to ratify or accede to a treaty without involving legislative authorities. In others, the agreement of the legislative branch is required. Very often, a combination of these two systems is used. Prior to ratification or accession, a country normally reviews the treaty to determine whether national laws are consistent with its provisions and to consider the most appropriate means of promoting compliance. Sometimes the principal civil society partners, such as non-governmental organizations working for child rights, are consulted. While it is not obligatory for States to adopt all legislative and other measures outlined by the Optional Protocol prior to ratification or accession, they are expected to comply with the treaty's obligations within a reasonable time thereafter.

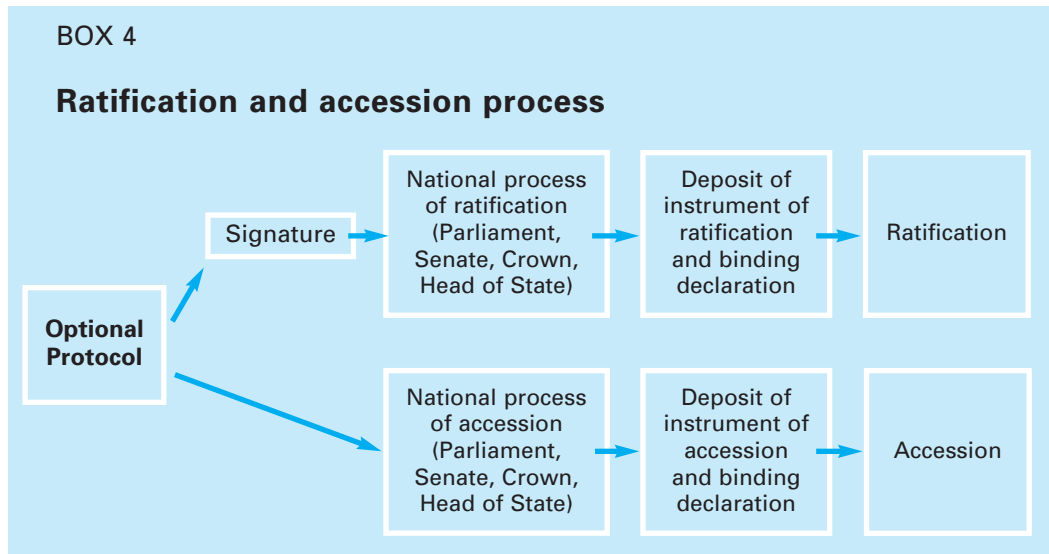
Both ratification and accession involve two steps (*see Box 4*). First, the appropriate organ(s) of the country – Parliament, Senate, the Crown, Head of State or Government – make(s) a formal decision to be a party to the treaty in accordance

with relevant domestic constitutional procedures. Second, the instrument of ratification or accession is prepared. This is a formal sealed letter referring to the relevant decision and is signed by the country’s responsible authority.

In addition, each State seeking to ratify or accede to the Optional Protocol must deposit a binding declaration that “sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced” (article 3(2)). The government – normally through the Ministry of Foreign Affairs – then deposits the instrument of ratification or accession together with the binding declaration with the United Nations Secretary-General in New York.

Following receipt of the instrument of ratification or accession, the treaty specifies the time period before it goes into effect. In case of the Optional Protocol, the treaty becomes binding on the State one month after the deposit of the instrument of ratification or accession.<sup>29</sup> The instrument of ratification or accession for the Optional Protocol must also contain the mandatory declaration under article 3(2) before it will be accepted by the depositary (see Boxes 5 and 6).

The Optional Protocol also provides for denunciation (formal announcement of withdrawal from the treaty) and amendment procedures (see articles 11 and 12).<sup>30</sup>



## Reservations and interpretative declarations

At the time of signature, ratification or accession of a treaty, a State may file one or more reservations on specific provisions unless prohibited by the treaty. Reservations must be compatible with the “object and purpose” of the treaty as interpreted by the Vienna Convention on the Law of Treaties and the States Parties to the treaty.<sup>31</sup> If no States raise objections, the reservation will be accepted. States that do have reservations may withdraw them at a later date.

A State may also make a declaration at the time of signature, ratification or accession, reflecting a statement of intent, or an interpretation of the treaty or of a particular provision. However, declarations must not diminish the obligations of the State under the treaty and may not exclude or modify its legal effects. Declarations – no matter how they are phrased or named – that intend to exclude or modify the legal effect of a treaty provision for the States making the declarations, are in fact reservations.<sup>32</sup>

Upon ratifying the Optional Protocol on the involvement of children in armed conflict in June 2003, for instance, the United Kingdom declared that it would not exclude the deployment of members of its armed forces under the age of 18 under certain conditions, such as when there is a “genuine military need to deploy their unit or ship to an area in which hostilities are taking place.” In addition, the declaration states that in hostilities those under 18 may be deployed where excluding them would “undermine the operational effectiveness of their ship or unit...and put at risk the successful completion of the military mission and/or the safety of other personnel.”<sup>33</sup> The Coalition to Stop the Use of Child Soldiers and other child rights advocates consider this declaration to be contrary to the object and purpose of the Optional Protocol.

## Effects of ratification or accession for a State

Once the State has become a party to the Optional Protocol, it has a legal obligation to implement the treaty, including to reform domestic law to ensure its conformity with the Optional Protocol’s provisions.

The relationship between the Optional Protocol and domestic law will depend on the State’s legal system. In States with a ‘monist system’, the treaty is automatically incorporated into national law upon ratification. In fact, monist States tend to have constitutional provisions that give precedence to ratified international treaties over existing domestic law. In the case of a discrepancy, the international treaty prevails. These States tend to follow a civil law system.

In comparison, States with a ‘dualist’ system must incorporate the treaty into domestic law through explicit legislation to make the treaty locally enforceable. These States tend to follow a common law system.

Regardless of whether a country follows a monist or dualist system, certain Optional Protocol provisions require specific implementing legislation to ensure that States Parties are able to respect and fulfil their obligations under the treaty. Such provisions are known as ‘non self-executing’. It may be argued that most of the Optional Protocol’s provisions are non self-executing because they require States Parties to take specific action. For instance, the provisions of the Optional Protocol that forbid or criminalize the conscription of those under the age of 18 should be implemented to allow States to address the technical nature of their obligations. These steps include designating appropriate institutional bodies to handle the issue, fulfilling the State’s obligations through its national legal system, and fostering a national dialogue on the Optional Protocol and the nature of State responsibility.

BOX 5

**Model instrument of ratification**

[To be signed by the Head of State, Head of Government or Minister for Foreign Affairs]

WHEREAS the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted in New York on 25 May 2000,

AND WHEREAS the said Optional Protocol has been signed on behalf of the Government of [name of State] on [date],

NOW THEREFORE, I [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that the Government of [name of State], having considered the above-mentioned Optional Protocol, ratifies the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of ratification at [place] on [date].

[Signature]

BOX 6

**Model instrument of accession**

[To be signed by the Head of State, Head of Government, or Minister for Foreign Affairs]

WHEREAS the Government of [name of State] [is a party to/has signed] the Convention on the Rights of the Child,

AND WHEREAS the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted in New York on 25 May 2000,

NOW THEREFORE I, [name and title of the Head of State, Head of Government, or Minister for Foreign Affairs], declare that the Government of [name of State], having considered the above-mentioned Optional Protocol, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at [place] on [date].

[Signature]

## Binding declaration

As part of the ratification or accession process, article 3(2) of the Optional Protocol requires States to deposit a “binding declaration” whose purpose is to establish the minimum age for voluntary recruitment into the State’s national armed forces. A State may strengthen its declaration at any time by notifying the Secretary-General of the United Nations.

The Optional Protocol permits the voluntary recruitment of children who are 16 and 17 years old. However, many child protection organizations, including UNICEF and the Coalition to Stop the Use of Child Soldiers, advocate for a ‘straight 18’ ban on all participation and recruitment. States are encouraged upon ratifying or acceding to the Optional Protocol to adopt a binding declaration establishing a clear, unequivocal and universal standard of 18 as the minimum age for all recruitment. Some States Parties have adopted such declarations (*see Box 9*).

If States fail to submit a binding declaration, the instrument of ratification or accession will not be accepted in deposit, but will instead be held pending until the binding declaration is submitted. It is important, therefore, that government authorities are aware of the need to deposit a binding declaration at the time of ratification or accession. A number of States have had the process delayed because their declaration was missing or incomplete.

A model of a binding declaration is provided in Box 7. In addition to the required elements, examples are given of additional information that may be provided at the State’s option.

## BOX 7

### **Elements for a binding declaration under article 3(2)**

#### Required elements:

- \* Name of State
- \* Minimum age for voluntary recruitment
- \* In the case of States recruiting children under the age of 18 years, a description of safeguards to ensure, as a minimum, that:
  1. Recruitment is genuinely voluntary, not forced or coerced.  
(Information is provided on recruitment procedures, advertising methods, etc.)
  2. Recruitment is carried out with the informed consent of the potential recruit's parents or legal guardians.  
(Information is provided to parents or guardians, e.g. the Code of Practice used by recruitment officers.)
  3. Potential recruit is fully informed of the duties involved in such military service.  
(Information is provided to potential recruits, e.g. brochures and films on the duties involved in military service, the Code of Practice used by recruitment officers.)
  4. Potential recruit provides reliable proof of age prior to acceptance into national military service.  
(Birth certificate.)

#### Optional elements:

- \* Additional safeguards ensuring that recruitment is voluntary.
- \* Information about schools operated by or under the control of the armed forces, including students' minimum age for entry and whether or not they belong to the armed forces.
- \* A detailed description of the armed forces (e.g. divisions, units, etc.)



Following is an example of a declaration submitted by Canada pursuant to article 3(2) of the Optional Protocol:

BOX 8

### **Canada's binding Declaration on voluntary recruitment**

"Pursuant to article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts, Canada hereby declares:

1. The Canadian Armed Forces permit voluntary recruitment at the minimum age of 16 years.
2. The Canadian Armed Forces have adopted the following safeguards to ensure that recruitment of personnel under the age of 18 years is not forced or coerced:
  - (a) all recruitment of personnel in the Canadian Forces is voluntary. Canada does not practice conscription or any form of forced or obligatory service. In this regard, recruitment campaigns of the Canadian Forces are informational in nature. If an individual wishes to enter the Canadian Forces, he or she fills in an application. If the Canadian Forces offer a particular position to the candidate, the latter is not obliged to accept the position;
  - (b) recruitment of personnel under the age of 18 is done with the informed and written consent of the person's parents or legal guardians. Article 20, paragraph 3, of the National Defence Act states that 'a person under the age of eighteen years shall not be enrolled without the consent of one of the parents or the guardian of that person'.
  - (c) personnel under the age of 18 are fully informed of the duties involved in military service. The Canadian Forces provide, among other things, a series of informational brochures and films on the duties involved in military service to those who wish to enter the Canadian forces; and
  - (d) personnel under the age of 18 must provide reliable proof of age prior to acceptance into national military service. An applicant must provide a legally recognized document, that is an original or a certified copy of their birth certificate or baptismal certificate, to prove his or her age."

## BOX 9

### Examples of 'straight 18' declarations

#### MOROCCO

"Pursuant to paragraph 2 of the article concerning the involvement of children in armed conflicts, the Kingdom of Morocco declares that the minimum age required by national law for voluntary recruitment in the armed forces is 18 years."

#### PERU

"In depositing the instrument of ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Government of Peru declares that, in compliance with its article 3, paragraph 2, the minimum age for voluntary recruitment into the national armed forces, under national legislation, is 18 years."

#### PORTUGAL

"Concerning article 2 of the Protocol, the Portuguese Republic considering that it would have preferred the Protocol to exclude all types or recruitment of persons under the age of 18 years – whether this recruitment is voluntary or not, declares that it will apply its domestic legislation which prohibits the voluntary recruitment of persons under the age of 18 years and will deposit a binding declaration, in conformity with paragraph 2 of article 3 of the Protocol, setting forth 18 years as the minimum age for voluntary recruitment in Portugal."

## BOX 10

### **Guinea's ratification of the Optional Protocol**

During the armed conflict in Sierra Leone, when the border areas with Guinea were threatened by rebel forces, many Guinean children – some as young as 13 – were recruited into the armed forces. After a high-level advocacy campaign was launched by the Ministry of Social Affairs and UNICEF, the Government of Guinea ratified the Optional Protocol on the involvement of children in armed conflict on 10 December 2001.

Following the ratification of the Optional Protocol, a committee for the demobilization and reintegration of child soldiers was established under the presidency of the Ministry of Social Affairs to prevent the further recruitment and use of children into armed forces and to ensure the demobilization and reintegration of under age soldiers. The committee comprises representatives of the Ministries of Defence, Security and Technical Education.

A presidential decree was issued establishing the Optional Protocol as law. It was distributed to communities and translated into national languages. Key articles from the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflict have also been printed on posters and displayed. In addition, UNICEF and the Ministry of Social Affairs instituted two-day training sessions for soldiers from military garrisons throughout the country on the provisions of the Convention on the Rights of the Child and the Optional Protocol on the involvement of children in armed conflicts, as well as the incorporation of the treaty's provisions into Guinea's military regulations and practices. The military press attaché participated in these training sessions and reported on them in the country's military journal, helping to reach a larger audience.

Following the training sessions, the military recommended that local authorities and religious leaders also learn about these treaties. Round-table discussions were held. Communities, local child protection committees and parents are now aware that the enlistment of children under 18 is illegal. This advocacy has acted as a deterrent to under age recruitment, especially along the border areas with Côte d'Ivoire and Liberia where children are most vulnerable. For example, the local authorities in the border prefecture of Nzerekore, established a project on child soldiers and ex-combatants.

Source: UNICEF Guinea.

## BOX 11

### **Paraguay's campaign for ratification**

The Coalition to Stop the Use of Child Soldiers, with support from UNICEF, started its campaign for ratification of the Optional Protocol in Paraguay in September 2001. At the beginning of the campaign a country profile was prepared. It took into account several factors: existing legislation relating to children and armed conflict, the age limit for compulsory recruitment in the armed forces, and the different government departments and organizations in the country working for the protection of children.

The campaign used several strategies. Resource material on the Coalition was developed and a CD-ROM was produced containing relevant national, regional and international legislation. Once the resource material was ready, the Coalition engaged in a dialogue about ratification of the Optional Protocol with parliamentarians and key actors in different ministries, including the Ministries of Defence, Justice, Foreign Affairs and Labour.

When the ratification of the Optional Protocol was discussed in Parliament, the Coalition organized awareness-raising workshops for teachers, religious leaders, military and policy officials and youth throughout the country. During the campaign, the Coalition collaborated with other civil society and human rights organizations.

In December 2001, the Senate asked the Parliament to approve ratification. Ratification occurred on 27 September 2002. One year later a project was initiated to reform the national judicial system to be in compliance with the Optional Protocol.

Source: Coalition to Stop the Use of Child Soldiers.

## **Belgium Takes Steps to Ratify the Optional Protocol**

The Coalition to Stop the Use of Child Soldiers started its campaign for the ratification of the Optional Protocol in Belgium at signing on 6 September 2000. The Coalition developed contacts with government officials and the media and immediately after signing sent letters to government officials and the press welcoming the signing of the Optional Protocol and requesting a quick ratification. Follow-up letters were written, and in April 2001, several activities were organized celebrating the first anniversary of the adoption of the Optional Protocol by the General Assembly. At the same time, the Coalition members sent similar letters to members of Parliament dealing with defence, international cooperation and foreign affairs.

Child rights agencies also developed advocacy material during the campaign. The Coalition co-published a book in French and Dutch entitled *Admitting Children in War* and the Belgian Committee for UNICEF published a leaflet on child soldiers. The Coalition sent these materials to members of Parliament and followed up with phone calls. In February 2002, an advocacy event was organized for the Ministry of Foreign Affairs calling for speedy ratification of the Optional Protocol. The campaign achieved its goal on 28 March 2002, when Parliament voted to adopt the Optional Protocol, and in April the King of Belgium signed it. The ratification process was completed on 6 April 2002.

While the Belgian Government has ratified the Optional Protocol, the Coalition and UNICEF continue to advocate for its implementation. In April 2002, the Coalition organized an exposition on child soldiers that has travelled throughout Belgium. In October 2002, the Coalition and the UNICEF Committee organized an international conference on girl soldiers. On 16 June 2003, the Day of the African Child, a round table took place on child soldiers in the Great Lakes region. The round table ended with the adoption of recommendations that had been presented to the prime minister on the same day. Meanwhile, the Belgian Coalition has created a website on child soldiers <[www.kindsoldaat.be](http://www.kindsoldaat.be)> and <[www.enfant-soldat.be](http://www.enfant-soldat.be)> and is working on an alternative report on the Belgian policy regarding child soldiers and the implementation of the Optional Protocol. The report will be presented to government officials, the UN Committee on the Rights of the Child and the media in early 2004.

Source: Coalition to Stop the Use of Child Soldiers, Belgium.

## BOX 13

### **United States: Campaign to Stop the Use of Child Soldiers**

The United States Campaign to Stop the Use of Child Soldiers began in 1998. Nearly 60 local and national non-governmental organizations lobbied the United States Government to support the Optional Protocol on the involvement of children in armed conflict.

US Campaign members held meetings with officials at the United States Departments of State and Defense, wrote letters to policy makers and organized briefings for members of Congress. At the Campaign's request, dozens of members of Congress wrote to President Clinton to urge his support for the Optional Protocol. In early 2000, the United States Government agreed to support 18 years as the minimum age for participation in armed conflict. Later that year, President Clinton signed the Protocol on behalf of the United States.

The Campaign then advocated for ratification. Representatives of the Campaign met individually with members of the Senate Foreign Relations Committee, which is responsible for recommending treaties for ratification to the full Senate, and testified at a formal hearing by the Committee to consider the Optional Protocol. The Campaign mobilized its members to make phone calls to the Senate Committee and on 12 February – the anniversary of the entry into force of the Optional Protocol – demonstrated on the steps of the United States Capitol Building with placards and depictions of large red hands, the symbol of efforts to end the use of child soldiers. On 23 December 2002, the United States Senate unanimously agreed to ratify the Optional Protocol.

Previously, volunteers from the age of 17 were deployed by the United States in conflict situations, including during the Gulf War, in Bosnia and Herzegovina and Somalia. The ratification of the Optional Protocol raised the standard age for deployment in hostilities from 17 to 18 years.

Sources: Coalition to Stop the Use of Child Soldiers and Human Rights Watch.

#### **FOR MORE INFORMATION CONTACT:**

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New York, NY 10017, United States of America  
Tel: 1-212-963-5047 Fax: 1-212-963-3693  
E-mail: [treaty@un.org](mailto:treaty@un.org)  
E-mail registration questions: [TreatyRegistration@un.org](mailto:TreatyRegistration@un.org)

The United Nations Office of Legal Affairs provides technical assistance in connection with a range of legal matters and maintains a website to this end at:  
<<http://www.un.org/law/technical/technical.htm>>

In addition, detailed instructions and advice on ratification and accession can be found in the United Nations Office of Legal Affairs Treaty Handbook:  
<<http://untreaty.un.org/English/TreatyHandbook/hbframeset.htm>>





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This 7-year-old girl in Panama is one of thousands of children affected by war throughout the region.

# MONITORING AND REPORTING

# 5

All States Parties to the Optional Protocol are required to report regularly to the Committee on the Rights of the Child on the measures taken to bring their legislation and practice in line with the requirements of the Optional Protocol. In this way, States are accountable to the international community for any violations.

The Committee on the Rights of the Child is an international body of 18 independent experts elected by States Parties to monitor compliance with, and implementation of, the Convention on the Rights of the Child. The Committee reviews reports submitted at regular intervals by States Parties and makes recommendations on how States can better implement the Convention's provisions. After the adoption of the two Optional Protocols to the Convention (on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography), the Committee's mandate was extended to monitor implementation of these treaties.

## Reporting to the Committee on the Rights of the Child

### ARTICLE 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Each State Party is required to submit an initial report to the Committee within two years of the entry into force of the Optional Protocol. Thereafter, the States are to submit follow-up reports along with their report on the implementation of the Convention on the Rights of the Child. Any State that has not ratified the Convention should submit subsequent reports on the Optional Protocol to the Committee every five years.

UNICEF country offices often assist governments in understanding, and sometimes in carrying out, their reporting obligations. UNICEF encourages an interactive process, involving the consultation and participation of many actors in civil society, including non-governmental organizations and children themselves.

As this publication goes to press, the Committee has not determined its exact working methods for reviewing reports on the Optional Protocol. It is expected, however, that whenever possible, the Committee will consider the States' regular reports on implementing the Optional Protocol with their reports on implementing the Convention. For countries not in conflict, the Committee will conduct a technical review of the country report. For countries considered to be in a pre-conflict, conflict or post-conflict states the Committee will hold a session with government officials to discuss their report on the Optional Protocol.

## Reporting guidelines

The Committee on the Rights of the Child has developed comprehensive guidelines for the preparation of initial reports of States Parties (*see Annex II*). In their reports, States Parties are requested to provide information on the measures taken to implement the Optional Protocol, such as the procedure for determining whether a potential recruit to the armed forces meets the age requirement. States are also asked to report any difficulties or special circumstances affecting the implementation of the Optional Protocol.

In addition, the Committee may request other pertinent information – copies of principal legislative texts and judicial decisions, administrative and other instructions to the armed forces, statistical information, indicators and other research. The State should also describe the process involved in preparing the report, including the governmental actors and non-governmental organizations involved in drafting and disseminating the report.

In its reviews, the Committee considers not only compliance with each article of the Optional Protocol but also adherence to the Convention's general principles – non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the views of the child.

The reporting guidelines are useful tools for programming and advocacy. They provide details on steps required to implement the Optional Protocol, and enable child rights advocates to point to specific measures required of the State to fulfil its obligations.

## Concluding Observations, General Comments and Days of General Discussion

After the Committee examines the State's reports under the Convention on the Rights of the Child, it publishes its concerns and recommendations in a document called Concluding Observations. A similar procedure will be followed for the concluding observations for the initial reports on the Optional Protocol.

The Committee also publishes General Comments, which give guidance on the implementation of various provisions of the Convention. It may also do so for the Optional Protocol once jurisprudence is established. The General Comments are not linked to a specific country report but rather address themes that are relevant to all countries.

In addition, the Committee holds public discussions or 'Days of General Discussion' on particular issues related to the Convention, and then makes 'General Recommendations' on those issues. Non-governmental organizations are invited to participate in this exchange of ideas. In fact, the idea for drafting an Optional Protocol on the involvement of children in armed conflict dates back to a recommendation made in 1992 by the Committee on the Rights of the Child following a Day of General Discussion on the theme 'children in armed conflict'.<sup>34</sup>

## The role of non-governmental organizations

In addition to the State Party's report, the Committee also welcomes information and reports from other sources, including civil society and non-governmental organizations, United Nations agencies, other intergovernmental organizations and academic institutions.

The Coalition to Stop the Use of Child Soldiers, for example, submits briefings to the Committee about the recruitment and use of children when States Parties' reports are being considered. These parallel or 'shadow' reports submitted to the Committee give non-governmental organizations and coalitions an opportunity to raise issues that they believe have not been adequately addressed in the State report, and to highlight concerns regarding implementation of the Optional Protocol. The liaison unit of the NGO Group for the Convention on the Rights of the Child provides guidance to non-governmental organizations on how to prepare and submit information to the Committee.

Non-governmental organizations and coalitions can also give their alternative reports to other groups and organizations concerned with protecting children in armed conflict. These may include government officials, international non-governmental organizations and United Nations departments and agencies, including the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Office of the United Nations High Commissioner for Refugees and UNICEF. Non-governmental

organizations can also distribute the alternative reports to special interest groups and the general public.

In the country of the reporting State Party, the preparation of alternative reports by non-governmental organizations provides opportunities for advocacy, public debate, awareness-raising, media attention and children's participation.

Non-governmental organizations can help improve a country's follow-up to the reporting process by disseminating the Committee's recommendations and observations on the State's report to child rights advocates concerned with the issue of children in armed conflict. They can also discuss future actions to be taken with the government, United Nations agencies and other non-governmental organizations.

#### BOX 14

### **Advocacy for abducted children in Uganda**

Data are being collected on abducted children in Uganda. The registration of abducted persons started in 1997, following the intensification of raids carried out by the Lord's Resistance Army in northern Uganda. The registration exercise seeks to support international and national advocacy for ensuring the safe return of abducted children and preventing any further violations against children, and to inform tracing and reunification programmes and psychosocial support and advocacy activities.

Source: UNICEF.

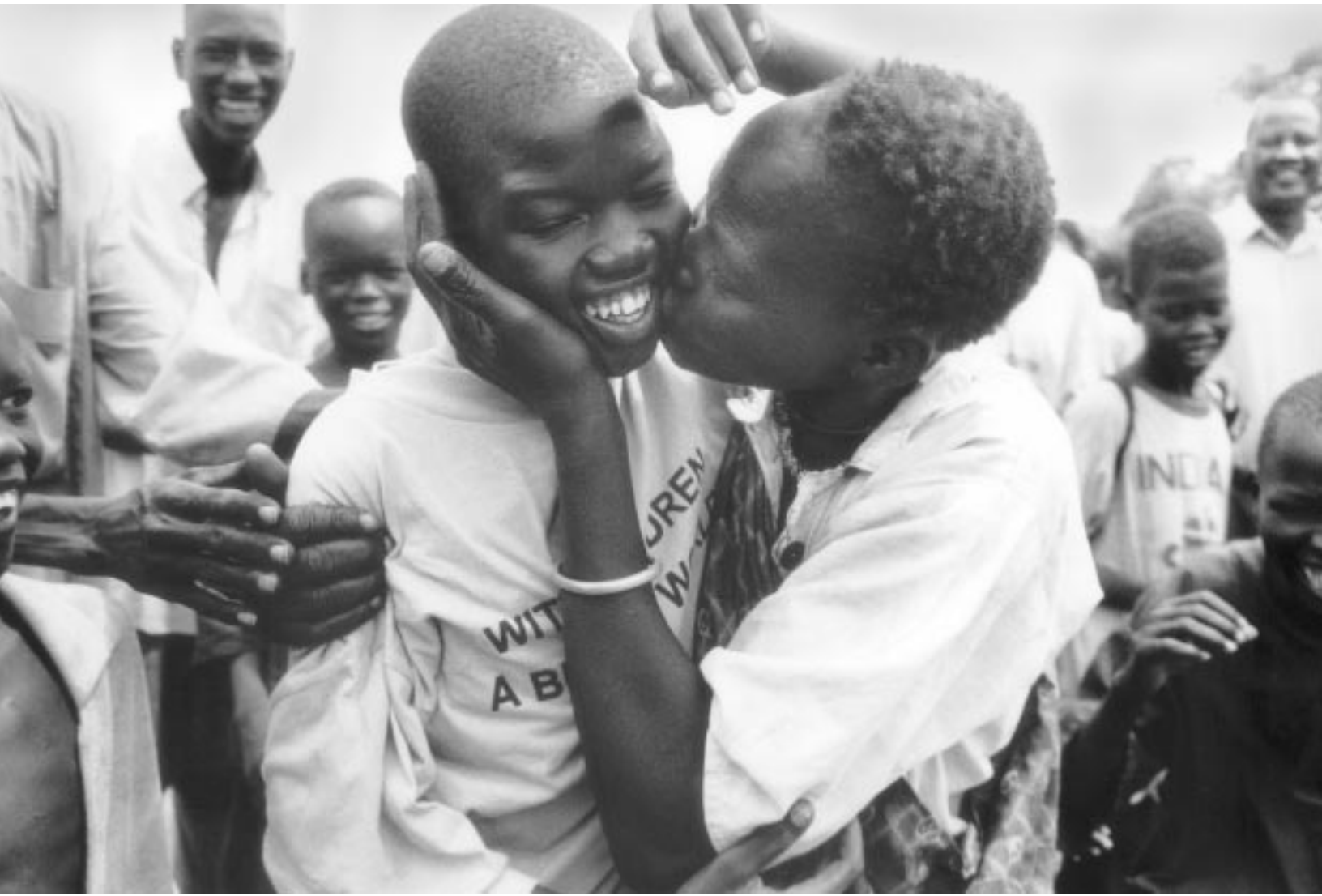
**FOR MORE INFORMATION ABOUT THE COMMITTEE  
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Website: <<http://www.crin.org/NGOGroupforCRC>>





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A demobilized child soldier is welcomed home with a kiss from a relative after he disembarks from a transport plane that has arrived from Rumbek, Sudan.

# IMPLEMENTATION

# 6

States Parties are required to take several steps to implement the Optional Protocol. Child rights organizations and child rights advocates can play a critical role in supporting governments in these efforts.

## **Effective implementation and enforcement**

Article 6 of the Optional Protocol requires States Parties to reform and enforce domestic laws and procedures. Child protection and child rights advocates can assist by providing legal expertise to ensure that domestic legislation is compatible with the Optional Protocol. The process of national law reform can create opportunities for broader reforms or revisions of child rights laws. Activities such as the training of government, military and law enforcement officials as well as the development of a national plan of action can strengthen implementation and help build partnerships between government agencies and civil society.

Additional measures include publicizing the rights and obligations under the Optional Protocol and ensuring the demobilization and reintegration of children who have been recruited or used in hostilities. Children who are being released from the control of armed forces or groups must be transferred as soon as possible to civilian control. Once they are in civilian care, child protection agencies need to be involved in providing them with health care, counselling and other support. A first priority is family tracing and reunification.

It is crucial that children are not required to turn in a weapon in order to participate in a remobilization programme. In addition, specific efforts must be made to ensure that girls are not left out, especially those who have been abducted or sexually exploited. It is essential that girls who have been sexually abused are not stigmatized.

States are also responsible for children who have been recruited by any party, including on the territory of another State, but who are now within the jurisdiction of the State Party.

## ARTICLE 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

### **Technical cooperation and assistance**

Article 7 spells out the actions States Parties should take to support the reintegration of children who have been recruited or used in hostilities. These actions include providing technical and financial support and assistance, such as education and 'catch-up' learning, life skills and vocational training, psychosocial support and community development projects.

Reintegration activities need to be carried out in consultation with child protection organizations and other international institutions. For example, child rights experts and protection agencies estimate a three-year time frame for the commitment of resources and staff to provide for children's long-term reintegration needs. These include education, vocational training and psychosocial support. Experience has shown that education through learning, recreation and life skills is a most effective way to reintegrate children and help provide a stable environment within the community. Children who have been uprooted by war and forced to commit acts of violence must be supported to overcome the obstacles they face in a post-war environment. Reconciliation is crucial to the process. Through traditional forgiveness rituals and ceremonies, children who have been with fighting forces can be accepted back into their families and communities.

In addition, the Optional Protocol recommends that States with sufficient resources assist with financial and technical support for children's demobilization in war-affected countries.

## ARTICLE 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through

technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, *inter-alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

BOX 15

### **Demobilization in Afghanistan**

In 2003, UNICEF, in coordination with the Afghanistan New Beginnings Programme, began working to support the community-based demobilization and reintegration programme for soldiers under 18 years old. The programme includes child soldiers who have been informally demobilized but not yet fully reintegrated into society. It aims to reach an estimated 8,000 child soldiers over a three-year period.

The demobilization and reintegration of all child soldiers will take place at the community level and will encourage the involvement of family members and local community leaders. In each location, members of a Local Verification Committee and a child protection demobilization agency will talk with families about the programme. This discussion will help prevent unrealistic expectations among former child soldiers and communities participating in the programme. This community-based approach is intended to improve the programme's screening, monitoring and accountability.

The reintegration process will provide broad support to children and young people affected by armed conflict, including child soldiers, children living or working on the street, the internally displaced and young returning refugees. Reintegration assistance will include, among other activities, formal education and accelerated learning, apprenticeship and livelihood support, the provision of vocational start-up kits, psychosocial support, non-formal education, life skills training, and community and family support projects.

Source: UNICEF Afghanistan.

## BOX 16

### **Sri Lanka's Action Plan for Reintegration of Children**

During more than two decades of armed conflict in Sri Lanka, both boys and girls have been recruited by the Liberation Tigers of Tamil Eelam and other armed groups for use as child soldiers. The ceasefire agreement between the Government of Sri Lanka and the Tamil Tigers in February 2002 presented an opportunity to improve the situation of children.

Under age recruitment was recognized as a key child rights issue in the peace process. The two parties agreed to a multi-agency, integrated Action Plan for children affected by war to address the needs of the most vulnerable children, including child workers, children living or working on the street and child soldiers. At the peace talks in Oslo and Berlin, UNICEF was asked to facilitate the development and implementation of the Action Plan, working with the Government of Sri Lanka, the Tamils Rehabilitation Organisation, International Labour Organization, International Save the Children Alliance, United Nations Development Programme and other local and international organizations to provide 50,000 war-affected children with education, vocational training, income-generating programmes and psychosocial counselling. The Action Plan also calls for the setting up of three transit centres to facilitate the return of child soldiers to their communities and their reintegration into family and community life. Child rights training is being provided to a range of service providers and community leaders, and for cadres, lawyers and judges of the Tamil Tigers.

There are, however, some challenges. While work on implementation of the Action Plan has begun, the recruitment of children is still being reported. UNICEF has increased its monitoring capacity and advocacy efforts, calling for an immediate end to all under age recruitment.

Source: UNICEF Sri Lanka.

## BOX 17

### **Multi-Country Demobilization and Reintegration Programme**

The World Bank launched a joint international effort in December 2001 involving governments, donors, United Nations agencies and programmes, regional organizations and international financial institutions in support of a regional Multi-Country Demobilization and Reintegration Programme for the greater Great Lakes Region. The programme outlines a comprehensive regional strategy framework for disarmament, demobilization and reintegration of ex-combatants – including child soldiers – in seven countries: Angola, Burundi, the Central African Republic, the Congo, the Democratic Republic of the Congo, Rwanda, Uganda. The World Bank and programme partners have made a commitment to give priority to the unconditional and child-specific demobilization and social reintegration of child soldiers. In 2003, specific projects for the demobilization and reintegration of child soldiers were developed within the framework of the programme in Burundi and the Democratic Republic of the Congo.

Source: UNICEF.





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Just hours after their release from the Tamil Tigers, girls play sports at a transit centre for child soldiers in Killinochchi, Sri Lanka.

# TAKING ACTION

# 7

Governments and child rights organizations can play a critical role in influencing and supporting the ratification process and the implementation of the Optional Protocol. Partnerships between government ministries and civil society organizations can strengthen the efforts of both. Young people can also become key actors and help initiate local and national support for the Optional Protocol.

The following recommendations cover a broad range of possible actions to be considered. Specific strategies can be identified and adapted to fit the particular needs of a country context.

## ACTIONS FOR RATIFICATION OR ACCESSION

### Recommendations to States moving towards ratification or accession

#### Analysis and assessment

- Review existing national legislation and recruitment practices to determine compatibility with obligations that will arise from ratification of or accession to the Optional Protocol, as well as with applicable international human rights and humanitarian law.
- Obtain information on recruitment practices of armed groups, if any, operating on the territory of the State.
- Collect data on the situation of current and former child soldiers at the national level with a view towards ending their recruitment and use.

#### Legislation

- Draft legislation to prohibit the direct participation of those under the age of 18 in hostilities and legally define 'direct participation'.
- Draft legislation to set the minimum age at which the government will permit

voluntary recruitment into its national armed forces, and institute safeguards to ensure that such recruitment is genuinely voluntary. These safeguards should be reflected in the country's binding declaration submitted upon ratification or accession to the Optional Protocol.

- Draft legislation to criminalize the voluntary and forcible recruitment and use in hostilities of those under the age of 18 by non-state armed groups.
- Issue military regulations prohibiting compulsory recruitment of those under the age of 18 and stating the age at which voluntary recruitment is permitted, along with the requisite safeguards to ensure that it is genuinely voluntary.

## **Recommendations to child protection agencies and child rights advocates for ratification or accession**

### **Analysis and assessment**

- Using available quantitative and qualitative information, assess the situation of children affected by armed conflict – in particular child soldiers – and determine the direct impact the Optional Protocol may have in a particular country.
- Review existing national legislation and recruitment practices to determine their compatibility with obligations that will arise from ratification of or accession to the Optional Protocol, as well as with applicable international human rights and humanitarian law.

### **Advocacy**

- Advocate with public officials and government actors – e.g. Ministry of Foreign Affairs, Ministry of Children's Affairs, parliamentarians, the judiciary, the military – for the State to become a party to the Optional Protocol and to raise the age for both compulsory and voluntary recruitment and participation of children in hostilities.
- Refer to international human rights and humanitarian law and United Nations Security Council resolutions to support advocacy efforts to end the recruitment and use of child soldiers.
- Form alliances and networks with key actors, non-governmental organizations and United Nations and other international organizations working on the issue of children affected by armed conflict. Use these networks to build a national campaign to end the recruitment and use of child soldiers and to lobby the government to sign and ratify or accede to the Optional Protocol.
- Develop advocacy materials, such as brochures, videos, posters and websites, to inform the general public, particularly children, of the significance of the Optional Protocol.

- Organize awareness-raising campaigns and events, including conferences, seminars and public debates, on the importance of becoming a State Party to the Optional Protocol.
- Provide information to the media on the impact of armed conflict on children, especially on the situation of child soldiers. Emphasize the ways in which the Optional Protocol will protect children.

## Legislation

- Become knowledgeable of the political and legislative processes for adopting and amending laws, and provide technical assistance to the State during the ratification or accession process in accordance with national procedures.

## ACTIONS FOR MONITORING AND REPORTING

### Recommendations to States for monitoring and reporting

- Assign a specific government body or office to monitor State compliance with and progress towards fulfilling obligations under the Optional Protocol.
- Use the reporting guidelines of the Committee on the Rights of the Child as the basis for preparing the State report under the Optional Protocol and for monitoring its implementation.
- Work with civil society and child rights organizations in the reporting process.
- Use the Concluding Observations of the Committee on the Rights of the Child as a basis for developing or reforming government policies.
- Translate the Concluding Observations of the Committee on the Rights of the Child into local languages and disseminate the document to key actors and the general public.

### Recommendations to child protection agencies and child rights advocates for monitoring and reporting

- Work with governments to provide timely reports to the Committee on the Rights of the Child, which should follow the reporting guidelines.
- Use the Concluding Observations of the Committee on the Rights of the Child to monitor the State's implementation of the Optional Protocol.
- Prepare and publish a 'shadow', or parallel, non-governmental organization report on issues related to the recruitment and use of child soldiers in specific countries.

- Assist in the translation of the Concluding Observations of the Committee on the Rights of the Child into local languages and disseminate the document to key actors and the general public.
- Lobby government officials to implement the Concluding Observations of the Committee on the Rights of the Child and work with government officials towards this end.
- Monitor violations of the obligations enshrined in the Optional Protocol and work with key actors, such as government officials, United Nations and other international agencies, non-governmental organizations and the Committee on the Rights of the Child, to make sure that obligations are fulfilled.

## ACTIONS FOR IMPLEMENTATION

### Recommendations to States for implementation

#### Legislation

- Adopt legislation to prohibit the direct participation of children under the age of 18 and legally define 'direct participation'.
- Adopt legislation to set age 16 or above as the minimum age at which the government will permit voluntary recruitment into its national armed forces, and institute safeguards to ensure that such recruitment is genuinely voluntary. These should be reflected in the country's binding declaration upon ratification of or accession to the Optional Protocol.
- Adopt legislation to criminalize the recruitment – voluntary or forcible – and use of children under the age of 18 in hostilities by non-state armed groups.
- Develop birth registration programmes, which will improve the means to enforce the minimum age limits for recruitment and use of children in armed conflict.

#### Administrative, institutional and policy reform

- Assign a specific body or government office to evaluate and support implementation and State compliance with the Optional Protocol's obligations.
- Develop a national plan of action for the protection of children against recruitment and use in armed conflict, in collaboration with key actors, international and local non-governmental organizations, United Nations and other international organizations.
- Develop partnerships with intergovernmental and non-governmental organizations working to protect children from being used in armed conflict.

- Develop appropriate regulations and administrative systems to ensure compliance with the Optional Protocol. These would include systems to ensure that the minimum age for recruitment and use of children is respected, such as procedures that provide and verify birth certificates or other officially recognized means of proving identity and age.
- Take steps to make certain that underage child soldiers are immediately released from the armed forces.
- Establish procedures for voluntary recruitment that are consistent with the Optional Protocol and develop safeguards to guarantee that any voluntary recruitment under the age of 18 is genuinely voluntary, such as ensuring that parents and legal guardians have given their informed consent.
- Develop programmes to prevent recruitment or use of children, particularly those at high risk of recruitment — refugees, internally displaced children, children without primary care givers or children living or working on the streets.

### Awareness-raising and capacity-building

- Translate the Optional Protocol into local languages and ensure its wide dissemination, including to all relevant government departments, military recruitment agencies and officials working for and with children.
- Provide information to children volunteering for military service and to their parents or legal guardians about the duties involved.
- Develop awareness-raising campaigns to inform local communities and armed groups of the importance of stopping the recruitment and use of children in armed conflict, emphasizing the State's obligations under the Optional Protocol.
- Develop information and advocacy materials on implementing the Optional Protocol, such as brochures, videos and posters for the general public — particularly for children.
- Ensure that schools provide information to children about the Optional Protocol and about related human rights and humanitarian law.
- Provide training for relevant government officials, recruiting officials, judges, social workers, police officers and others about the provisions of the Optional Protocol.

### Demobilization and reintegration

- Establish child soldier demobilization and reintegration programmes in co-operation with United Nations agencies and child protection organizations. Monitor the situation of demobilized children to ensure that they are not re-recruited.

- Make sure that demobilization and reintegration programmes provide children with psychosocial counselling and health care and focus on social reintegration that includes access to education and skills training.
- Provide for the specific needs and capacities of girl soldiers in demobilization and reintegration programmes.
- Involve children in the planning of disarmament, demobilization and reintegration programmes to ensure that these programmes are responsive to their needs.

### Technical cooperation and assistance

- Seek technical and financial assistance from other governments, inter-governmental and non-governmental organizations for implementing the Optional Protocol, including provisions related to the disarmament and reintegration of former child soldiers.
- States in the position to do so may provide assistance to other countries through bilateral and multilateral programmes.

### Recommendations to child protection agencies and child rights advocates for implementation

#### Legislation

- Provide technical assistance to governments to help ensure the compatibility of national laws with the obligations set forth in the Optional Protocol.
- Help establish enforcement mechanisms for national legislation to end the recruitment and use of children in armed conflict.
- Advocate with States to ensure that domestic judicial systems relating to child soldiers fully respect the rights of the child and maintain international juvenile justice standards.
- Encourage governments to withdraw reservations to the Optional Protocol.

#### Developing strategies and programmes

- Develop strategies and programmes to implement the Optional Protocol, including contributing to a national plan of action in collaboration with key partners, government officials, relevant non-governmental networks, the United Nations and other international organizations.
- Develop programmes that focus on the prevention of recruitment – especially re-recruitment – and use of children in armed conflict. Reach out particularly to adolescents and children at high risk – those who are refugees, internally displaced, living or working on the street, orphaned or separated from parents and primary caregivers.



- Advocate for governments that have already ratified the Optional Protocol to honour their obligations and take measures to prevent armed groups from recruiting child soldiers inside their territory.
- Engage with armed groups in order to get commitments for the respect of human rights and humanitarian law, in particular with regard to children.

### Awareness-raising and capacity-building

- Develop advocacy materials, such as brochures, pamphlets, posters, videos and websites on preventing the recruitment and use of children in armed conflict, and on the protection offered to children by the Optional Protocol. Translate these materials into local languages and prepare child-friendly versions.
- Organize awareness-raising campaigns and events, such as panel discussions, seminars, conferences, on preventing the use of child soldiers and on issues concerning the implementation of the Optional Protocol.
- Disseminate copies of the Optional Protocol and relevant national legislation in all local languages to key actors: government officials, the judiciary, military groups, school officials and teachers, community leaders, parents and young people.
- Inform and educate children through child-friendly publications, radio, community theatre and other media about the Optional Protocol and children's rights protected in the treaty.
- Work with local officials to provide training for relevant government officials, recruiting officials, judges and social workers, police officers and others about the Optional Protocol and other international standards for protecting children in armed conflict.

### Disarmament, demobilization and reintegration

- Support demobilization and reintegration programmes for former child soldiers in cooperation with government officials, United Nations agencies and child protection organizations with expertise and experience in this area.
- Help to ensure that programmes for the demobilization and reintegration of child soldiers address the specific needs and rights of girl soldiers, including psychosocial support, education, life skills and vocational training.
- Collect lessons learned from other countries regarding disarmament, demobilization and reintegration programmes for child soldiers and share this information with other child protection agencies for the development of new programmes.
- Involve children in the planning of disarmament, demobilization and reintegration programmes to ensure that their views are taken into account.

## Technical cooperation and assistance

- Advocate for the allocation of sufficient financial and human resources to support programmes to end the recruitment and use of children in armed conflict.
- Remind governments that are geographically removed from conflict zones that they too bear a responsibility for contributing to ending the use of children as soldiers.

The Coalition to Stop the Use of Child Soldiers has developed campaign guidelines providing further information and suggestions for activities that may be undertaken by national coalitions and non-governmental organizations to advocate for the ratification and full implementation of the Optional Protocol. These guidelines are available on the Coalition's website at <[www.child-soldiers.org](http://www.child-soldiers.org)>.

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# OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Adopted and opened for signature, ratification and accession  
by General Assembly resolution A/RES/54/263 of 25 May 2000 and  
entered into force on 12 February 2002

## *The States Parties to the present Protocol,*

*Encouraged* by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

*Reaffirming* that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

*Disturbed* by the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

*Condemning* the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,

*Noting* the adoption of the Statute of the International Criminal Court and, in particular, its inclusion as a war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

*Considering*, therefore, that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

*Noting* that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

*Convinced* that an optional protocol to the Convention raising the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

*Noting* that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, *inter alia*, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

*Welcoming* the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, *inter alia*, forced or compulsory recruitment of children for use in armed conflict,

*Condemning with the gravest concern* the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

*Recalling* the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

*Stressing* that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

*Bearing in mind* that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

*Recognizing* the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to this Protocol owing to their economic or social status or gender,

*Mindful* of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

*Convinced* of the need to strengthen international cooperation in the implementation of this Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

*Encouraging* the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

*Have agreed as follows:*

## **Article 1**

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

## **Article 2**

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

## **Article 3**

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.
3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:
  - (a) Such recruitment is genuinely voluntary;
  - (b) Such recruitment is done with the informed consent of the person's parents or legal guardians;
  - (c) Such persons are fully informed of the duties involved in such military service;
  - (d) Such persons provide reliable proof of age prior to acceptance into national military service.
4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

#### **Article 4**

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

#### **Article 5**

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

#### **Article 6**

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of this Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.



## Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with concerned States Parties and relevant international organizations.
2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes, or, *inter alia*, through a voluntary fund established in accordance with the rules of the General Assembly.

## Article 8

1. Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

## Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

## Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

## Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

## Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States

Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

### **Article 13**

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

# REPORTING GUIDELINES

## **Guidelines regarding initial reports of States Parties under article 8(1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

CRC/OP/AC/1

COMMITTEE ON THE RIGHTS OF THE CHILD

Adopted by the Committee at its 736th meeting  
(twenty-eighth session) on 3 October 2001

### **Introduction**

Pursuant to article 8 paragraph 1 of the Optional Protocol, States Parties shall, within two years following the entry into force of this Protocol for the State Party concerned, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol. Thereafter, pursuant to article 8, paragraph 2 of the Optional Protocol, States Parties shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44, paragraph 1(b) of the Convention any further information with respect to the implementation of the Optional Protocol. States Parties to the Optional Protocol, who are not parties to the Convention, shall submit a report every five years, after the submission of the comprehensive report.

The Committee may, in the light of article 8, paragraph 3 of the Optional Protocol, request from States Parties further information relevant to the implementation of the Optional Protocol.

Reports should provide information on the measures adopted by the State Party to give effect to the rights set forth in the Optional Protocol and on the progress made in the enjoyment of those rights and should indicate the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol.

Copies of the principal legislative texts and judicial decisions, administrative

and other relevant instructions to the armed forces, both of a civil and military character, as well as detailed statistical information, indicators referred therein and relevant research should accompany reports. In reporting to the Committee, States Parties should indicate how the implementation of the Optional Protocol is in line with the general principles of the Convention on the Rights of the Child, namely non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child. Moreover, the process of preparation of the report should be described to the Committee, including the involvement of governmental and non-governmental organizations/bodies in its drafting and dissemination. Finally, reports should indicate the date of reference used when determining whether or not a person is within an age limit (for instance, the date of birth of the person concerned or the first day of the year during which the person concerned reaches that age limit).

## Article 1

Please provide information on all measures taken, including of a legislative, administrative or other nature, to ensure that members of the armed forces who have not attained the age of 18 years do not take a direct part in hostilities. In this respect, please provide information notably on: The meaning of “direct participation” in the legislation and practice of the State concerned; The measures taken to avoid that a member of the armed forces who has not attained the age of 18 years is deployed or maintained in an area where hostilities are taking place and the obstacles encountered in applying these measures; When relevant, disaggregated data on members of the armed forces below the age of 18 years who were made prisoners, whereas they did not directly participate in hostilities;

## Article 2

Please indicate all the measures taken including of a legislative, administrative or other nature, to ensure that persons who have not attained the age 18 years are not compulsorily recruited into the armed forces. In this regard, reports should indicate among others:

Detailed information on the process of compulsory recruitment (i.e. from registration up to the physical integration into the armed forces) indicating the minimum age linked to each step and, at what time in that process, recruits become members of the armed forces; The reliable documents to verify age, which are required prior to acceptance into compulsory military service (birth certificate, affidavit, etc.); Any legal provision enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency). In this respect, please provide information on the age it can be lowered to, the process and the conditions for that change. For States Parties where compulsory military service has been suspended but not abolished, the minimum age of recruitment set up in the previous regime and how, and under what conditions, this previous system can be reinstalled.

### Article 3 para 1

Reports should notably indicate:

The minimum age set out for voluntary recruitment into the armed forces, in accordance with the declaration submitted upon ratification or accession or any change thereafter; When relevant, disaggregated data on children below the age of 18 years voluntarily recruited into the national armed forces (for example, by gender, age, region, rural/urban areas and social and ethnic origin, and military ranks); When relevant, pursuant to article 38, paragraph 3 of the Convention on the Rights of the Child, the measures taken to ensure that in recruiting those persons who have attained the minimum age set out for voluntary recruitment but who have not attained the age of 18 years, priority is given to those who are the oldest. In this respect, please provide information on the measures of special protection adopted for the under-18-years-old recruits.

### Article 3, paras 2 and 4

Reports should notably provide information on:

The debate which has taken place in the State concerned prior to the adoption of the binding declaration and the people involved in that debate; When relevant, the national [or regional, local, etc.] debates, initiatives or any campaign aiming at strengthening the declaration if it set out a minimum age lower than 18 years.

### Article 3, para 3

With regard to the minimum safeguards that States Parties shall maintain concerning voluntary recruitment, reports should provide information on the implementation of these safeguards and indicate among others:

A detailed description of the procedure used for such recruitment from the expression of intention to volunteer until the physical integration into the armed forces; Medical examination foreseen before recruitment of volunteers; The reliable documentation used to verify the age of the volunteers (birth certificate, affidavit, etc.); Information that is made available to the volunteers, and to their parents or legal guardians allowing them to formulate their own opinion and to make them aware of the duties involved in the military service. A copy of any materials used for this information to be annexed to the report; The effective minimum service time and the conditions for early discharge; the use of military justice or discipline to under-18-years recruits and disaggregated data on the number of such recruits under-trial or in detention; the minimum and maximum sanctions foreseen in case of desertion; The incentives used by the national armed forces for encouraging volunteers to join the ranks (scholarships, advertising, meetings at schools, games, etc.).

### Article 3, para 5

Reports should indicate, among others, information on:

The minimum age of entry into schools operated by or under the control of the armed forces; Disaggregated data on schools operated by or under the control of

the armed forces, including numbers, type of education provided, proportion between academic education and military training in the curricula; length of this education; academic/military personnel involved, educational facilities, etc.; The inclusion in the school curricula of human rights and humanitarian principles, including in areas relevant to the realisation of the rights of the child; Disaggregated data on the students in these schools (for example, by gender, age, region, rural/urban areas and social and ethnic origin); their status (members or not of the armed forces); their military status in the case of a mobilisation or of an armed conflict, a genuine military need or any other emergency situation; their right to leave such schools at any time and not to pursue a military career; All appropriate measures taken, to ensure that school discipline is administered in a manner consistent with the child's human dignity and any complaint mechanisms available in this regard.

#### Article 4

Please provide information on, *inter alia*:

The armed groups operating on/from the territory of the State concerned or with sanctuary on that territory; Update on the status of the negotiations of the State Party with armed groups; Disaggregated data on children who have been recruited and used in hostilities by the armed groups, and on those who have been arrested by the State concerned (for example, by gender, age, region, rural/urban areas and social and ethnic origin, time spent in the armed groups, and time spent in hostilities); Any written or oral commitment made by armed groups aiming at not recruiting and using children below the age of 18 years in hostilities; Measures adopted by the state concerned aiming at raising awareness amongst armed groups and within the communities of the need to prevent recruitment of children below the age of 18 years and of their legal duties with regard to the minimum age set up in the Optional Protocol for recruitment and use in hostilities; The adoption of legal measures which aim at prohibiting and criminalizing the recruitment and use in hostilities of children under the age of 18 years by such armed groups and the judicial decisions applying to this issue; The programmes to prevent notably children who are at highest risk of recruitment or use by such armed groups, such as refugee and internally displaced children, street children, orphans (e.g. birth registration campaigns) from being recruited or used by armed groups.

#### Article 5

Please indicate any provision of the national legislation and of international instruments and international humanitarian law applicable in the State concerned, which are more conducive to the realization of the rights of the child. Reports should also provide information on the status of ratification by the State concerned of the main international instruments concerning children in armed conflict and on other commitments undertaken by that State concerning this issue.

#### Article 6, paras 1 and 2

Please indicate the measures adopted to ensure the effective implementation and



enforcement of the provisions of the Optional Protocol within the jurisdiction of the State Party, including information on:

Any review of domestic legislation and amendments introduced into it; The legal status of the Optional Protocol in national law and its applicability before domestic jurisdictions, as well as, when relevant, the intention of the State Party to withdraw existing reservations made to this Protocol; The competent governmental departments or bodies responsible for the implementation of the Optional protocol and their coordination with regional and local authorities as well as with civil society; The mechanisms and means used for monitoring and periodically evaluating the implementation of the Optional Protocol; Measures adopted to ensure the relevant training of peacekeeping personnel on the rights of the child, including the provisions of the Optional Protocol; The dissemination in all relevant languages of the Optional Protocol to all children and adults, notably those responsible for military recruitment, and the appropriate training offered to all professional groups working with and for children.

### Article 6, para 3

When relevant, please indicate all measures adopted with regard to disarmament, demobilization (or release from service) and to the provision of appropriate assistance for the physical and psychological recovery and social reintegration of children, taking due account of the specific situation of girls, including information on:

Disaggregated data on children involved in that proceeding, on their participation in such programmes, and on their status with regard to the armed forces and armed groups (e.g. when do they stop to be members of the armed forces or groups?); The budget allocated to these programmes, the personnel involved and their training, the organizations concerned, cooperation among them, and participation of civil society, local communities, families, etc.; The various measures adopted to ensure the social reintegration of children, e.g. interim care, access to education and vocational training, reintegration in the family and community, relevant judicial measures, while taking into account the specific needs of children concerned depending notably on their age and sex. The measures adopted to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation; The legal provisions adopted criminalizing the recruitment of children and the inclusion of that crime in the competence of any specific justice seeking mechanisms established in the context of conflict (e.g. war crimes tribunal, truth and reconciliation bodies). The safeguards adopted to ensure that the rights of the child as a victim and as a witness are respected in these mechanisms in light of the Convention on the Rights of the Child; The criminal liability of children for crimes they may have committed during their stay with armed forces or groups and the judicial procedure applicable, as well as safeguards to ensure that the rights of the child are respected; When relevant, the provisions of peace agreements dealing with the disarmament, demobilization and/or physical and psychological recovery and social reintegration of child combatants.

## Article 7

Reports should provide information on cooperation in the implementation of the Optional Protocol, including through technical cooperation and financial assistance. In this regard, reports should provide information, *inter alia*, on the extent of the technical cooperation or financial assistance, which the State Party has requested or offered. Please indicate, if the State Party is in a position of providing financial assistance, the existing multilateral, bilateral or other programs that have been undertaken for that assistance.

## ENDNOTES:

- 1 Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report*, London, May 2001.
- 2 Throughout this publication, unless otherwise specified, 'Optional Protocol' refers to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which entered into force on 12 February 2002.
- 3 The founding members of the Coalition to Stop the Use of Child Soldiers include: Amnesty International, Defence for Children International, Human Rights Watch, International Federation Terre des Hommes, International Save the Children Alliance, Jesuit Refugee Service, the Quaker United Nations Office, Geneva, and World Vision International. The Coalition's website is <[www.child-soldiers.org](http://www.child-soldiers.org)>.
- 4 Article 77(2) of Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) states: "The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest." Article 4(3) of Additional Protocol to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), states: "Children shall be provided with the care and aid they require, and in particular: ... (c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."
- 5 Article 38(2) of the Convention on the Rights of the Child, which entered into force on 2 September 1990, states: "States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities."
- 6 United Nations, Report of the Independent Expert of the Secretary-General, Ms. Graça Machel, 'Impact of Armed Conflict on Children', A/51/306, United Nations, New York, 26 August 1996.
- 7 United Nations, Security Council Resolution S/RES/1261 of 30 August 1999, operative paragraph 2.
- 8 United Nations, Security Council Resolution S/RES/1314 of 11 August 2000, operative paragraph 4.
- 9 United Nations, Security Council Resolution S/RES/1379 of 20 November 2001, operative paragraph 16.
- 10 United Nations, 'Report of the Secretary-General on children and armed conflict', S/2002/1299, United Nations, New York, 26 November 2002.
- 11 United Nations, Security Council Resolution S/2002/1460 of 30 January 2003, operative paragraphs 6 and 16(a).
- 12 For more information on the Watchlist on Children and Armed Conflict, see <<http://www.watchlist.org>>.
- 13 United Nations, 'A World Fit for Children'; Part III, B3, para. 22 (Plan of Action; Goals, strategies and actions; Protecting against abuse, exploitation and violence; Protection from armed conflict).
- 14 Article 22(2) of the African Charter on the Rights and Welfare of the Child, 1990, states: "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child."
- 15 International Labour Organization Convention No. 182 – Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999, is supplemented by Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Recommendation 190) and should be applied in conjunction with it. ILO's Recommendations are not open to ratification, but lay down general or technical guidelines to be applied at the national level. They often supplement principles set out in Conventions, and set out guidelines that may orient national policy and action.
- 16 International Labour Organization Convention No.182, op. cit., states in article 3: "For the purposes of this Convention, the term "the worst forms of child labour" comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and

- forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.”
- 17 Ibid., article 6(1) states: “Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.” Article 7(1) states: “Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.”
- 18 Article 8(2)(b)(xxvi) and (2)(e)(vii) of the Rome Statute of the International Criminal Court, UN Doc. A/CONF/183/9, entered into force 1 July 2002 .
- 19 See endnotes 3 and 4 above for the exact provisions.
- 20 United Nations, Report of the Working Group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its sixth session, E/CN.4/2000/74, United Nations, New York, 27 March 2000, para. 23 (i). United Nations, Report of the Working Group on a draft optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts on its fourth session, E/CN.4/1998/102, United Nations, New York, 23 March 1998, para. 19.
- 21 Joint statement entitled ‘UN bodies call for a prohibition on the recruitment and participation of children under age 18 in armed conflict’ by the Committee on the Rights of the Child, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, UNICEF, United Nations High Commissioner for Human Rights, Office of the United Nations High Commissioner for Refugees, released to the press 13 January 2000.
- 22 United Nations, E/CN.4/2000/74, op. cit., paras. 57-59.
- 23 See commentary on article 8(2)(b)(xxvi) of the Rome Statute of the International Criminal Court by Charles Garraway in *The International Criminal Court: Elements of crimes and rules of procedure and evidence*, eds. Roy S. Lee et al., Transnational Publishers, Ardsley, New York, 2001, p. 205.
- 24 Note that a distinction is drawn between ‘compulsory’ recruitment, which generally refers to recruitment by States through national legislation or policies on military service, and ‘forced’ recruitment, which is used more appropriately in the context of non-state armed groups, which do not have legitimate or legalized recruitment programmes. Some governments however, still forcibly recruit children.
- 25 United Nations, E/CN.4/1998/102, op. cit., para. 30.
- 26 Machel, Graça, *The Impact of War on Children: A review of progress since the 1996 United Nations report on the impact of armed conflict on children*, Hurst & Co., London, 2001, p. 20.
- 27 Article 41 of the Convention on the Rights of the Child, which entered into force on 2 September 1990, states: “Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State Party; or (b) International law in force for that State.”
- 28 As of 19 August 2003, the following countries have ratified or acceded to the African Charter on the Rights and Welfare of the Child: Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Egypt, Equatorial Guinea, Eritrea, Ethiopia, the Gambia, Guinea, Kenya, Lesotho, Libya, Malawi, Mali, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, United Republic of Tanzania, Togo, Uganda and Zimbabwe.
- 29 See article 10(2) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
- 30 A State may denounce (that is, formally announce its withdrawal from) the Optional Protocol at any time by written notification to the Secretary-General of the United Nations (see article 11 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict). The denunciation will take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation will not take effect before the end of the armed conflict. Article 12 of the Optional Protocol deals with amendment procedures. Proposed amendments to the Optional Protocol may be submitted to the Secretary-General. The Secretary-General will then communicate the proposed amendment to the States Parties of the Optional Protocol, requesting them to indicate whether they favour a conference of States Parties for the purpose of considering and adopting the proposals. If at least one third of the States

Parties agree, then a conference will be held for the purpose of voting on the proposals. Any amendment to the Optional Protocol that is adopted by the majority of States Parties present and voting at the conference will be submitted to the General Assembly of the United Nations for approval. Once an amendment has been approved by the General Assembly and accepted by a two-thirds majority of States Parties, it will enter into force only for those States Parties that accepted it.

- 31 Article 2(1) (d) of the Vienna Convention on the Law of Treaties of 1969 defines "reservation" as "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."
- 32 Ibid.
- 33 United Kingdom, Declaration made upon signature and confirmed upon ratification of the Optional Protocol to the Convention on the

Rights of the Child on the involvement of children in armed conflict: "The United Kingdom of Great Britain and Northern Ireland will take all feasible measures to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: a) there is a genuine military need to deploy their unit or ship to an area in which hostilities are taking place; and b) by reason of the nature and urgency of the situation: i) it is not practicable to withdraw such persons before deployment; or ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and-or the safety of other personnel."

- 34 See excerpt from the Report of the Committee on the Rights of the Child on its second session, Geneva, 28 September – 9 October 1992, CRC/C/10, 19 October 1992, at: <<http://www.unhchr.ch/html/menu2/6/crc/doc/days/conflict.pdf>>.





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