

CHILD SOLDIERS

INTERNATIONAL

India

Report to the Committee on the Rights of the Child in advance of
India's initial report on the Optional Protocol to the
Convention on the Rights of the Child
on the involvement of children in armed conflict

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Who are child soldiers?

Child Soldiers International considers the term child soldier to be equivalent to the following description of children associated with armed forces or groups:

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

Child Soldiers International was formerly the **Coalition to Stop the use of Child Soldiers**. Child Soldiers International is an international human rights research and advocacy organization. Child Soldiers International seeks to end and prevent the military recruitment and use in hostilities of child soldiers (boys and girls below the age of 18), and other human rights abuses resulting from their association with armed forces or groups. It seeks the release of child soldiers from armed forces or groups, promotes their successful return to civilian life and accountability for those who recruit and use them. Child Soldiers International promotes global adherence to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

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Introduction and principle recommendations

Child Soldiers International submits this report for consideration by the Committee on the Rights of the Child (the Committee) in advance of its examination in October 2013 of India's initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

This report was compiled through desk-based research conducted in April-July 2013, gathering information through discussions with representatives of national and international non-governmental organizations (NGOs), UNICEF, journalists and other national stakeholders.

On the basis of the information gathered, this report summarises Child Soldiers International's concerns about India's implementation of its obligations under OPAC, including in relation to:

- The absence of effective procedures to verify age of recruits to the armed forces, police forces and other paramilitary forces.
- The absence of legislation explicitly criminalising unlawful recruitment and/or use of children by state armed forces, paramilitaries, and village defence militias, as well as non-state armed groups.
- The continued recruitment and use of children in a variety of roles by armed opposition groups, and the risk of their participation in hostilities.
- The absence of adequate programs to support the release, recovery and reintegration of children recruited into, or otherwise associated with, state armed forces, paramilitaries, village defence militias or armed opposition groups.
- The administrative detention of children suspected of association with armed opposition groups, under the Armed Forces Special Powers Act (AFSPA), Jammu & Kashmir Public Safety Act (PSA) and other emergency legislation.

In light of these concerns, Child Soldiers International makes the following main recommendations for immediate action by the government of India:

- Ensure that the minimum age for membership to armed forces, paramilitaries, police forces and other defence militias is explicitly set by law at 18 years or above and that effective age verification procedures are applied at the point of recruitment.
- Explicitly criminalise in law the unlawful recruitment of children or their use in hostilities by state armed forces, paramilitaries, police forces, village defence militias, and non-state armed groups.
- Amend the Armed Forces Special Powers Act (AFSPA), Jammu & Kashmir Public Safety Act (PSA) and other emergency legislation to explicitly prohibit the detention of children under these laws. Issue a military order to ensure all military personnel are aware of this prohibition.
- Take all necessary measures to prevent the recruitment of children by armed opposition groups in Jammu & Kashmir, areas affected by "Naxal violence"¹ and Northeast India, including by undertaking a comprehensive assessment of the extent and causes of children's involvement in such groups.
- Facilitate access to UNICEF and other child rights and child protection organisations to monitor areas where children may be recruited or used. Develop and implement assistance programs where necessary.

¹ This is the Indian government's description of the conflict between Indian armed forces and the Maoist armed opposition groups.

- Implement mechanisms for the systematic identification of former child soldiers among those who surrender to state security forces under the scheme for surrender-cum-rehabilitation, and ensure all appropriate assistance for their physical and psychological recovery and social reintegration.

Background and context

International treaties

India is party to the Convention on the Rights of the Child (CRC) and acceded to OPAC in November 2005. India has ratified the Rome Statute of the International Criminal Court (ICC) and is state party to International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour. India is party to the 1951 Refugee Convention, and has signed the 1967 Protocol Relating to the Status of Refugees.

Situations of armed conflict or protracted armed violence - Jammu & Kashmir, areas affected by "Naxal violence" and Northeast India

Several regions/states in India are experiencing or have recently experienced armed conflict or protracted armed violence between state armed forces (army and paramilitaries) and armed opposition groups.

The 197 districts which are considered as conflict affected include: 20 districts in Jammu and Kashmir²; 106 districts declared as "Left Wing Extremism"³ affected in nine states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Uttar Pradesh and West Bengal⁴; and 71 districts declared as "disturbed areas" under the AFSPA in Assam, Arunachal Pradesh, Manipur, Meghalaya, Nagaland and Tripura in Northeast India.⁵

Because of the risk of children's involvement in hostilities, this report focuses on the armed actors active in these regions. Below is a brief analysis of the causes of conflict and current developments in these regions.

Jammu & Kashmir: India's northernmost state, Jammu & Kashmir, lies in the Himalayas and borders Pakistan, Tibet, and China. The state comprises the administrative regions of Jammu, Ladakh, and the Kashmir valley.⁶ With a Muslim population of over 6 million, Jammu & Kashmir is the only Muslim majority state in India. It has witnessed prolonged violence between armed groups and Indian security

² National Commission for Protection of Child Rights, *Protocols for Police and Armed Forces in Contact with Children in Areas of Civil Unrest*, http://www.ncpcr.gov.in/Protocols_for_Police_and_Armed_Forces.pdf.

³ According to the Indian Ministry of Home Affairs website, "Several Left Wing Extremist groups have been operating in certain parts of the country for a few decades now. In a significant development in 2004, the People's War (PW), then operating in Andhra Pradesh, and the Maoist Communist Centre of India (MCCI), then operating in Bihar and adjoining areas, merged to form the CPI (Maoist). The CPI (Maoist), is the major Left Wing Extremist outfit responsible for most incidents of violence and killing of civilians and security forces and has been included in the Schedule of Terrorist Organisations along with all its formations and front organisations under the Unlawful Activities (Prevention) Act, 1967", Naxal Management Division, Ministry of Home Affairs, http://mha.nic.in/uniquepage.asp?Id_Pk=540.

⁴ Lok Sabha Unstarred question No. 1374 answered on 5 March 2013, Ministry of Home Affairs, Government of India, <http://mha.nic.in/par2013/par2013-pdfs/ls-050313/LSQ.1374.Eng.pdf>.

⁵ Ministry of Home Affairs, Government of India, *Annual Report 2011-2012*, <http://mha.nic.in/pdfs/AR%28E%291112.pdf>.

⁶ The Planning Commission of India, *Jammu and Kashmir Development Report, Executive Summary*, September 2003.

forces since 1989 although the seeds of conflict in Kashmir are rooted in the state's accession to India in 1947.⁷

The Indian government has responded to the ongoing conflict by a continued high level deployment of army troops⁸ and an increase in the strength of the state police.⁹ Extensive human rights abuses by security forces, state-linked militias and various armed opposition groups have been widely documented.¹⁰ Human rights violations by state authorities have been facilitated by the enactment of special legislation. The Jammu & Kashmir PSA, enacted in 1978, has been used to secure the detention of individuals without trial for up to two years to prevent them from "acting in any manner prejudicial to the security of the state or the maintenance of public order."¹¹ The Armed Forces Jammu and Kashmir Special Powers Act, promulgated in 1990, authorises the state government, governor, or central government to declare the whole or part of the state to be a "disturbed area" if it is determined to be in such a "disturbed and dangerous condition" that "the use of the armed forces in aid of the civil power" is necessary to prevent "secessionist" or "terrorist" acts.¹²

Areas affected by "Naxal violence": The term 'naxalite' has been used to describe a range of Maoist armed opposition groups which operate in 20 of India's 28 states, but are most prevalent in Bihar, Jharkhand, West Bengal, Orissa, Chhattisgarh, Andhra Pradesh and Maharashtra. The movement originated in an armed uprising in May 1967 in Naxalbari in West Bengal and is based on a Maoist revolutionary ideology, which calls for a transformation of the existing political system to create a new social order seeking to end the exploitation of marginalised communities.¹³ In 2006, the

⁷ See for instance: Human Rights Watch (HRW), *Everyone Lives in Fear*, 12 September 2006, p.18, <http://www.hrw.org/sites/default/files/reports/india0906web.pdf> which notes: "As colonial rule came to an end in South Asia, the British decided to create two separate countries, India and Pakistan. The smaller kingdoms that were part of the British "Raj," having accepted the suzerainty of Britain, were offered the choice of resuming their independent status or joining with either Hindu-majority India or Muslim-majority Pakistan. Most chose to accede based on geography or religious majority. However, Kashmir was a problem because it was a border Muslim-majority state ruled by a Hindu king. The British left its fate for future negotiations because the Maharaja of Kashmir had failed to decide whether to accede to either India or Pakistan. Kashmir immediately became the subject of conflict between the two new countries. ... Believing that it had already received an unfair division of territory, soon after the end of British rule in the subcontinent, Pakistan backed an invasion of Kashmir by Pakistani tribesmen. Unable to defend his kingdom, the Maharaja of Kashmir, Hari Singh, sought India's assistance, and on October 26, 1947, signed an Instrument of Accession, paving the way for Indian soldiers to come to his aid. The first war between India and Pakistan had begun."

⁸ *Zee News*, "No plan to withdraw Army from J&K: Govt", 27 February 2013, http://zeenews.india.com/news/jammu-and-kashmir/no-plan-to-withdraw-army-from-jandk-govt_831880.htm.

⁹ *Press Trust of India*, "J&K Police strengthening its infrastructure: DGP", 3 March 2012, <http://www.dailypostindia.com/news/13431-j-k-police-strengthening-its-infrastructure-dgp.html>.

¹⁰ See for instance: International People's Tribunal for Human Rights and Justice in Indian-Administered Kashmir and Association of Parents of Disappeared Persons, *Alleged Perpetrators: Stories of Impunity in Jammu and Kashmir*, December 2012, http://kashmirprocess.org/reports/alleged_perpetrators.pdf; HRW, *Everyone Lives in Fear*, 12 September 2006, <http://www.hrw.org/sites/default/files/reports/india0906web.pdf> which; Amnesty International (AI), *A 'Lawless Law': Detentions under the Jammu and Kashmir Public Safety Act*, 21 March 2011.

¹¹ Jammu and Kashmir Public Safety Act (22), 1978, <http://jkhome.nic.in/PSA0001.pdf>.

¹² The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 No. 21 of 1990, 10 September 1990, http://mha.nic.in/pdfs/Armed%20forces%20J&K_%20Spl.%20powers%20act.%201990.pdf.

¹³ See for instance: HRW, *Dangerous Duty*, 5 September 2008, <http://www.hrw.org/en/reports/2008/09/05/dangerous-duty>; HRW, *Being Neutral is Our Biggest Crime*, 15 July 2008, http://www.hrw.org/node/62132/section/6#_ftn3; MacRae, P, "Poverty at root of deadly Maoist insurgency, says Gandhi", *Agence France Presse*, 15 May 2010, <http://www.google.com/hostednews/afp/article/ALeqM5gjDwBfKUwzLcDhs4TFBI9f0qoCeg>; Asian Centre for Human Rights (ACHR), *India Human Rights Report 2009*, 29 May 2009, <http://www.achrweb.org/reports/india/AR09/AR2009.pdf>.

Chhattisgarh government introduced special security legislation, the Chhattisgarh Special Public Security Act 2005 that allows detention of up to three years for "unlawful activities."¹⁴ Various human rights organisations have reported wide-spread human rights abuses by state forces and armed opposition groups. While there has been only limited independent monitoring of the level of violence, government statistics claim 3,607 persons, including civilians and security forces personnel, were killed in the regions affected by the "Naxal violence" between 2008 and 2012.¹⁵

Northeast India: This region comprises the state of Sikkim and parts of West Bengal and the seven bordering states of Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura. The government claims 19 large armed opposition groups operate in these states in addition to splinter organisations.¹⁶ The drivers of the conflicts are complex and varied but a growing sense of alienation and resentment towards the political responses and counter insurgency strategies of the Indian government are common factors. The entire State of Manipur (except Imphal Municipal area), Nagaland and Assam, Tirap and Changlang district of Arunachal Pradesh and a 20 km belt in the states of Arunachal Pradesh and Meghalaya that have a common border with Assam, have been declared 'disturbed areas' under the AFSPA. In Tripura, 34 police districts have been declared "disturbed areas".¹⁷

Prevention

Articles 1 and 3

Recruitment and use by national armed forces, paramilitaries, police forces and village defence militias

Child Soldiers International has serious concerns about the lack of effective age verification measures in place during recruitment in state armed forces, including paramilitaries and police forces. This is particularly problematic given the low rate of birth registration in the country. The prevalence of armed conflict or intensive armed violence in some states in India exacerbates the risk of the participation of under-18s in state armed forces in hostilities or otherwise being exposed to the risk associated with conflict. This risk is particularly manifest in areas affected by "Naxal violence", where there have been past reports of children in the ranks of the Special Police Officers (SPOs), who have been known to be involved in counter-insurgency operations. In 2011 the Supreme Court of India ordered the demobilisation of SPOs but the order has not been fully implemented, and no process has been put in place to verify the presence of children in their ranks.

National armed forces

The minimum age for recruitment into the armed forces in India varies between 16 years and six months for the Navy, 17 years and six months for Army and 17 years for the Air Force. Child Soldiers International has been unable to confirm whether the minimum age for recruitment into the armed forces is established in law. The government maintains it sends recruits to operational areas only after they attain 18 years of age.¹⁸

¹⁴ Chhattisgarh Special Public Security Act 2005, Act 14 of 226. The term 'unlawful activities' includes a broad-sweeping range of activities, for instance peaceful activities of individuals and civil society organisations, and allows for arbitrary detention for alleged participation in such activities.

¹⁵ Statistics of Naxal Violence, Naxal Management Division, Ministry of Home Affairs, Government of India, <http://mha.nic.in/pdfs/SWENV-2008-12.pdf>.

¹⁶ Ministry of Home Affairs, *Annual Report 2010-2011*, <http://mha.nic.in/pdfs/AR%28E%291011.pdf>.

¹⁷ Ministry of Home Affairs, *Annual Report 2010-2011*, <http://mha.nic.in/pdfs/AR%28E%291011.pdf>.

¹⁸ Ministry of Women and Child Development, Government of India, State party report on the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, 2011.

The government suggests that the period of training needed before recruits are ready to participate in military operations is sufficiently long to preclude any under-18s from being directly involved in hostilities.¹⁹ However, reliance on periods of training to ensure that recruits reach age 18 prior to deployment is an inadequate safeguard against child soldier use for two reasons: For one, the period of training is not always sufficient to bring recruits up to the age of 18. Secondly, even in situations where sufficient training time is allotted, there is a likelihood of under-18s being militarily deployed prior to the completion of training in the event of a crisis. For this, prohibition in law of direct and indirect participation in hostilities is needed and must be backed up by pre-deployment screening systems,²⁰ which are lacking in India.

Child Soldiers International remains concerned about the lack of effective procedures to verify the age of recruits. General duty soldier (*jawan*) recruitment begins with the ‘checking of documents’ intended to establish age and educational status. In the absence of an official birth certificate, the documents that are accepted include the Class X Matriculation (Matric) certificate (which includes the date of birth), Class X/XII marks sheet, Domicile Certificate and National Cadet Corps (NCC) Certificate (A/B/C variants), which together are intended to verify age and identity.²¹ While a birth certificate is required to establish the age of a child for gaining admission into school, a clause in the Right of Children to Free and Compulsory Education Act 2009 provides that children without birth certificates can still gain admission into schools and the age recorded at entry to school is treated as their official age.²² The date of birth provided at entry to school is noted in class X Matriculation certificates, which are then treated as proof of age.²³ Hence, admission to the Indian army can be based on a school certificate with an estimated date of birth, even if this cannot be corroborated by an official birth certificate.

Central Armed Police Forces

The Indian government maintains that only over-18s are recruited in the Central Armed Police Forces (CAPF)²⁴, which includes the Central Reserve Police Force (CRPF), the Border Security Force (BSF), Indo Tibetan Border Police, Sashastra Seema Bal, Central Industrial Security Force, Railway Protection Force and National Security Guards. Each force has its own recruitment procedures but information available from forces’ websites shows that procedures to verify the ages of those seeking entry into the CAPF are not clearly laid down.

¹⁹ Ministry of Women and Child Development, Government of India, State party report on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children In Armed Conflict, 2011.

²⁰ See: Child Soldiers International, *Louder than words: An agenda for action to end state use of child soldiers*, September 2012, http://www.child-soldiers.org/global_report_reader.php?id=562.

²¹ Ministry of Defence, *Recruitment of personnel below officer rank*, http://indianarmy.nic.in/Site/RTI/rti/rect_procedure_offrs&or_army.pdf.

²² Section 14 (1) of the Right of Children to Free and Compulsory Education Act, 2009, lays down: “For the purposes of admission to elementary education, the age of the child shall be determined on the basis of the birth certificate issued in accordance with the provision of the Births, Deaths and Marriages Registration Act, 1886, or on the basis of such other documents, as may be prescribed”; Section 14 (2) states that, “no child shall be denied admission in a school for lack of age proof”. Right of Children to Free and Compulsory Education Act, 2009, no. 35 of 2009, available at <http://www.delta.org.in/form/rte.pdf>.

²³ In an August 2011 judgment, the Supreme Court of India “treated the date of birth in School Leaving Certificate as valid proof in determining the age”. *Shah Nawaz v. State of UP & ANR*, (Criminal Appeal No. 1531 of 2011), 5 August 2011, http://supremecourtofindia.nic.in/scr/2011_v9_piv.pdf.

²⁴ See for instance: Dholabhai, N, “For the paramilitary, all’s in a new name”, *The Telegraph*, 25 March 2011, http://www.telegraphindia.com/1110326/jsp/nation/story_13768094.jsp, which notes that in March 2011, the names of five central paramilitary forces (CPMFs) the Border Security Force (BSF), Central Reserve Police Force (CRPF), Central Industrial Security Force (CISF), Indo Tibetan Border Police (ITBP) and the Sashastra Seema Bal (SSB) were officially changed to central armed police forces (CAPFs).

The CRPF, administered by the Ministry of Home Affairs, is an armed police paramilitary force whose primary role is to bolster state police forces in maintaining law and order in times of crisis-- such as elections or riots--and in counter-insurgency operations against armed opposition groups.²⁵ In this latter capacity the CRPF plays an active role in anti-Naxalite operations in states affected by the Maoist insurgency, and has also been deployed to troubled areas in Northeast India.

According to the CRPF Rules, 1955, the minimum age of recruitment for Head Constables and all support staff is clearly specified at 18.²⁶ However, the procedure for age verification is not stipulated in detail in the CRPF Rules, except for the following: “As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time.”²⁷ However, this procedure is undertaken after enrollment and not as part of the recruitment process. Available information shows that the CRPF Rules do not specify a procedure to verify age prior to enrolment, other than candidates should be ‘not less than 18 years of age’.

The verification process appears to include submission of the data provided by the recruit to the authorities in the district where the recruit resides. However, no clear guidelines exist to assess the age of the applicant and it is not clear how the district authorities vouch for the accuracy of the information. The issue of age verification for entry into the CAPF is of particular concern given the recent recruitment drive initiated by the force in 26 districts across seven states--Chhattisgarh, Jharkhand, Bihar, Odisha, Andhra Pradesh, West Bengal and Maharashtra--where armed opposition groups are highly active.²⁸ The government states that recruitment guidelines have been revised to permit 40 per cent recruitment in CAPFs from the border areas “in order to wean away potential youth...”²⁹ from armed opposition groups. Child Soldiers International has no information about these revised recruitment guidelines. However, the approach seems to target ‘youth’ which poses risks of under-18s being recruited in the forces.

State police forces, SPOs and Village Defence Militias

Beyond the national armed forces and the CAPF, each state in India has exclusive power to legislate regarding its state police forces and also enjoys full administrative control over the police and maintenance of public order in the state.³⁰ As a result, there is no uniformity in recruitment processes and minimum age for police forces in different states in India.³¹

²⁵ Role and functions of CRPF, <http://crpf.gov.in/Pages/HistoryRoles.aspx>.

²⁶ Ministry of Home Affairs, Department of Central Reserve Police Force, The Central Reserve Police Force Rules/Regulations/Scheme, 1955, http://www.crpf.nic.in/crpf_k.htm.

²⁷ Ministry of Home Affairs, Department of Central Reserve Police Force, The Central Reserve Police Force Rules/Regulations/Scheme, 1955, http://www.crpf.nic.in/crpf_k.htm.

²⁸ *Khabar South Asia*, “Recruitment drive blunts Maoist appeal among tribal youth”, May 2013, http://khabarsouthasia.com/en_GB/articles/apwi/articles/features/2013/05/16/feature-02.

²⁹ Government of India, Ministry of Home Affairs, Departments of Internal Security, States, Home Jammu & Kashmir Affairs and Border Management, Annual Report 2012-13.

³⁰ State List, Seventh Schedule (Article 246) of the Indian Constitution, lays down: 1. Public order (but not including the use of any naval, military or air force or any other armed force of the Union or any other force subject to the control of the Union or any other contingent or unit thereof in aid of the civil power); 2. Police (including railway and village police) subject to the provisions of entry 2A of List I.

³¹ On 30 May 2013, the Office of the Director General of Police, Arunachal Pradesh advertised for the post of lady constables where “the age of candidates should be between 17 and 21 years as on 01-01-2013”, Government of Arunachal Pradesh, Office of the Director General of Police, Police Headquarters, <http://police recruitment.co.in/wp-content/uploads/2013/06/Arunachal-PRADESH-police-recruitment-2013.pdf>. In other states, the minimum age limit is 18 years.

Child Soldiers International has particular concerns related to the risk of recruitment of children in the SPOs who have been used in counter-insurgency operations.

Section 17 of the Police Act, 1861, empowers local magistrates to temporarily appoint “residents of the neighborhood” as SPOs to perform the role of “officers of police”.³²

SPOs were created in the state of Chhattisgarh in June 2006 and since then in the states of Jharkhand, Orissa, Andhra Pradesh and Maharashtra “for strengthening the intelligence network and as greater support to the security forces to launch anti-naxal operations”.³³ In addition, village defence parties, village guards and SPOs have been deployed in Maharashtra³⁴, Assam³⁵, Meghalaya³⁶, Manipur, Nagaland, Tripura and Jammu & Kashmir.³⁷ According to available figures, there were around 6,500 SPOs in Chhattisgarh³⁸ and up to 23,783 in Jammu & Kashmir.³⁹ In September 2011, the West Bengal government issued a notification for recruiting 5,000 youths as special police constables to counter the Naxalites in Junglemahal area.⁴⁰

Regulations for the appointment of SPOs do not specify minimum age. Concerns about the recruitment of under-18s into the SPOs first surfaced in Chhattisgarh and Orissa in 2006.⁴¹ In some cases, children associated with Naxalite armed opposition groups who surrendered to government forces were also used as SPOs, despite being underage.⁴² The Chhattisgarh police claimed that by

³² Section 17 & 18, Police Act, 1861, Sec. 17 of the Police Act empowers the local Magistrate to appoint SPOs "for such time and within such limits as he shall deem necessary" when "it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the police-force ordinarily employed for preserving the peace is not sufficient..." Sec. 18 of the Police Act states that SPOs shall have the "same powers, privileges and protection ... as the ordinary officers of police."
http://mha.nic.in/pdfs/police_act_1861.pdf.

³³, Government of India, Ministry of Home Affairs Outcome Budget, 2011-2012,
<http://mha.nic.in/pdfs/OB%28E%292011-12.pdf>.

³⁴ The Bombay Police Act, 1951 [Bombay Act No. XXII of 1951, 11 June 1951],
http://mahapolice.gov.in/mahapolice/jsp/temp/html/bombay_police_act_1951.pdf.

³⁵ The Assam Village Defence Organisation was constituted under The Village Defence Organisation Act, 1966 for assisting the Police in the maintenance of law and order, peace and tranquility in the State of Assam.

³⁶ Meghalaya Village Defence Organisation Rules, Government of Meghalaya Home (Police) Department, Orders by the Governor Notification, Shillong, 29 May 2008,
http://meghpol.nic.in/acts/state/Megh_VDO_Rules_2008.pdf.

³⁷ Annual Report, Ministry of Home Affairs, 2012-13, Government of India,
<http://mha.nic.in/pdfs/AR%28E%291213.pdf>.

³⁸ AI, *India urged to implement court ban of anti-Maoist militias* 7 July 2011, <http://www.amnesty.org/en/news-and-updates/india-urged-implement-court-ban-anti-maoist-militias-2011-07-07> and *Tehelka Magazine*, ‘No more special police. Says the judge’, Vol 8, Issue 28, 16 July 2011,
http://tehelka.com/story_main50.asp?filename=Ne160711No_more.asp.

³⁹ *DNA India*, “SC’s Salwa Judum judgment reverberates in Jammu and Kashmir” 8 July 2011,
http://www.dnaindia.com/india/report_scs-salwa-judum-judgment-reverberates-in-jammu-and-kashmir_1563859.

⁴⁰ *The Indian Express*, “Cop-hiring drive a hit in Junglemahal”, 2 January 2012,
<http://www.indianexpress.com/news/cophiring-drive-a-hit-in-junglemahal/894683/>.

⁴¹ HRW, *India: don’t recruit children into special police*, 27 January 2009,
<http://www.hrw.org/en/news/2009/01/27/india-don-t-recruit-children-special-police> and HRW, *Being neutral is our biggest crime. Government, vigilante and Naxalite abuses in India’s Chhattisgarh state*, 14 July 2008,
<http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0>.

⁴² HRW, *Being neutral is our biggest crime. Government, vigilante and Naxalite abuses in India’s Chhattisgarh state*, 15 July 2008, <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0>. See also HRW, *Dangerous Duty* 5 September 2008, <http://www.hrw.org/en/node/75148/section/8>.

January 2009 all minors had been removed from SPOs ranks⁴³ and that the lapses occurred due to absence of age documentation.⁴⁴

In July 2011, the Indian Supreme Court ordered that SPOs in Chhattisgarh state disband and disarm.⁴⁵ The Supreme Court's ruling is widely interpreted to be applicable beyond the regions affected by the "Naxal violence".⁴⁶ However, appropriate implementation of the judgment is patchy.⁴⁷ There are indications that the SPOs are now being absorbed within the police force in Chhattisgarh.⁴⁸

Similarly, 1,852 SPOs had been incorporated into the Jammu & Kashmir state police since 2009.⁴⁹ It is not known whether any mechanism to verify ages have been applied to ensure any under-age SPOs were identified before they were incorporated into the police forces.

Furthermore, the Draft Jammu & Kashmir Police Bill⁵⁰ maintains the possibility to recruit "any able-bodied and willing person to be a SPO to assist the police."⁵¹ The Draft Jammu & Kashmir Police Bill fails to specify recruitment age and procedures, qualifications and other pre-requisites for selection of SPOs.

The Draft Jammu & Kashmir Police Bill also empowers the Director General of Police to constitute, with the approval of the state government, "as many Village Defence Committees as he may deem necessary...for the protection of life and property of the inhabitants of that particular village." These committees "may also be issued suitable arms and ammunition."⁵²

Since the 1990s, the Indian army's practice of using Village Defence Committees in various parts of Kashmir to assist in security operations has led to serious human rights violations. Members of Village Defence Committees have allegedly been responsible for summary executions, "disappearances", torture, and unlawful detention of those perceived to have links with armed groups.⁵³ The Draft Jammu & Kashmir Police Bill seeks to regularise the use of Village Defence Committees without providing details on minimum age, qualification, training and accountability. This opens up the risk of enabling the recruitment of under-18s.

⁴³ HRW, *India: don't recruit children into special police*, 27 January 2009, <http://www.hrw.org/en/news/2009/01/27/india-don-t-recruit-children-special-police>.

⁴⁴ HRW, *India. Events of 2008. Naxalite conflict*, 2009, http://www.hrw.org/sites/default/files/reports/wr2009_web.pdf.

⁴⁵ "The arming of untrained, barely educated tribal youth as SPOs is unconstitutional, irrational, arbitrary, capricious, a degeneration of their dignity as human beings and in violation of Article 14 and 21 of the Indian Constitution that guarantee equality before the law and protection of life and liberty," Supreme Court of India, Writ Petition (Civil) No(s). 250 of 2007, Nandini Sundar & others versus State of Chhattisgarh, 5 July 2011.

⁴⁶ *Tehelka Magazine*, "No more special police. Says the judge", Vol 8, Issue 28. 16 July 2011, http://tehelka.com/story_main50.asp?filename=Ne160711No_more.asp.

⁴⁷ *The Telegraph*, "Salwa stares at bleak future", 27 May 2013, http://www.telegraphindia.com/1130527/jsp/nation/story_16941348.jsp#.UbZDY8pLb1U.

⁴⁸ *Tehelka Magazine*, "No more special police. Says the judge", Vol 8, Issue 28. 16 July 2011, http://tehelka.com/story_main50.asp?filename=Ne160711No_more.asp.

⁴⁹ *Tribune News Service*, "1,852 SPOs absorbed in police: Omar", 22 March 2013, <http://www.tribuneindia.com/2013/20130323/j&k.htm#10>.

⁵⁰ The Draft Jammu & Kashmir Police Bill, 2013 has been prepared by the Home Department of the Jammu & Kashmir Government in compliance with a 2006 Supreme Court judgement that directed state governments to enact reforms in the police system in order to 'secure the rights of the citizens under the Constitution for the rule of law', *Prakash Singh & Ors vs Union of India*, (2006) 8 SCC 1, <http://www.indiankanoon.org/doc/1090328/>.

⁵¹ Section 63, Draft Jammu & Kashmir Police Bill, 2013, <http://jkhome.nic.in/h0me.pdf>.

⁵² Section 62, Draft Jammu & Kashmir Police Bill, 2013, <http://jkhome.nic.in/h0me.pdf>.

⁵³ HRW, *Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue*, 1 July 1999, <http://www.hrw.org/reports/1999/kashmir/>.

Birth registration

Child Soldiers International is concerned about the low levels of birth registration as they negatively impact the possibility of implementing effective age verification mechanisms. According to UNICEF, from 2005-2011, 41 per cent of total births in India were registered—59 per cent in urban areas and 35 per cent in rural areas.⁵⁴

The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules 2003⁵⁵ stipulate that every citizen of India must be included on the National Register of Indian Citizens, also known as the National Population Register.⁵⁶ In mid-2009, the Indian Registrar General of Citizen Registration began a census of its citizens, which recorded dates of birth.⁵⁷ Media reports indicate that initial progress in the implementation of the census has been met with political resistance to the scheme.⁵⁸ The programme, already underway, is using biometric data (fingerprints and possibly iris scans) to substantially improve accuracy in establishing identity.⁵⁹ However, when official birth registration is not available, individuals are allowed to simply declare their age, or to have a family member vouch for their age.⁶⁰

Questions

- Is minimum age for recruitment in the armed forces specified in law? If so, please provide copies of the relevant legislation.
- What age verification procedures are in place to verify the age of recruits into state armed forces, paramilitaries and police forces?

Recommendations

- Raise the minimum age of voluntary recruitment to the national armed forces to 18 years.
- Ensure that the minimum age for membership to paramilitaries, police forces and village defence militias is explicitly set in law at 18 years or above.
- Ensure that effective age verification procedures are applied at the point of recruitment into national armed forces, paramilitaries, police forces and village defence militias.
- Ensure that the regulations prohibiting unlawful recruitment of children are duly disseminated among recruiting agents and appropriate sanctions are established for those failing to uphold these provisions.

⁵⁴ UNICEF, 'Child Protection' India Statistics, http://www.unicef.org/infobycountry/india_statistics.html#81.

⁵⁵ Ministry of Home Affairs Notification, New Delhi, 10 December 2003, http://mha.nic.in/pdfs/citizenship_rules2003.pdf.

⁵⁶ Ministry of Home Affairs, Office of the Registrar General and Census Commissioner, India,

⁵⁷ *The Independent*, "ID cards planned for India's 1.1 billion; Hi-tech entrepreneur will lead operation to create huge database", 27 June 2009, <http://www.independent.co.uk/news/world/asia/id-cards-planned-for-indias-1-1-billion-1721552.html>.

⁵⁸ *The Economic Times* "Question mark over issuing resident identity card plans", 25 March 2013, http://articles.economictimes.indiatimes.com/2013-03-25/news/38010112_1_resident-identity-card-national-population-register-npr.

⁵⁹ Ministry of Home Affairs, Office of the Registrar General and Census Commissioner, India, <http://censusindia.gov.in/2011-Common/IntroductionToNpr.html>.

⁶⁰ See Resident Enrolment Process Version 1.3, undated, http://uidai.gov.in/index.php?option=com_content&view=article&id=148&Itemid=41. Refer particularly to section ER 5.1.1 on page 43 and ##notes on pages 43-44.

- Ensure that officials who recruit or allow the unlawful recruitment of children are subject to adequate legal proceedings and appropriate sanctions, including suspension from duty and removal from office.
- Ensure that any child found to be, either formally or informally, associated with any state armed force (including paramilitaries, police forces and village defence militias) is immediately assisted to leave with guaranteed access to appropriate recovery and reintegration support.
- Ensure that birth registration is free and compulsory in practice; establish birth registration facilities, including mobile birth registration units, at the local, community and village levels; and conduct awareness-raising campaigns, with the active support of community leaders, to promote birth registration.

Article 3.5

National Cadet Corps

The NCC, which is run by the Ministry of Defence, aims to motivate youth from age 13 to take up a career in the armed forces (Army, Navy and Air Force) and Territorial Army.⁶¹ The NCC is headed by a serving army general and staff includes serving officers from all three branches of the military.⁶² Activities focus on social service and leadership skills, but cadets also receive some basic military training in the form of weapons training and firing exercises and arms drill.⁶³

During ‘attachment training’ cadets live and work with regular service units for periods of approximately 15 days. These include deployment to naval ships and air force stations; although reportedly not to regular army bases (cadets are attached instead to Indian Military Academy (IMA)⁶⁴, Dehradun or to the Officer Training Academy at Chennai).⁶⁵ Presence in navy ships and air force stations means that cadets could be exposed to military operations in case of a sudden outbreak of hostilities.

NCC certificate holders are given preferential consideration when joining the armed forces as officers, Non-Commissioned Officers (NCOs) and general soldiers, but this does not appear to affect minimum recruitment ages.⁶⁶ It is not clear whether cadets are currently used or considered eligible to

⁶¹ Child Soldiers International, *Child Soldiers Global Report 2008*, http://www.child-soldiers.org/global_report_reader.php?id=97.

⁶² National Cadet Corps, <http://nccindia.nic.in/index.htm>.

⁶³ National Cadet Corps, <http://www.psgtech.edu/ncc/02NccInfo.html>.

⁶⁴ In paragraph 9 (i), initial report to OPAC, the Indian government states: “Permanent Commission means a career in the Army till one retires. For a Permanent Commission, one needs to join the National Defence Academy (NDA) or the Indian Military Academy (IMA). One can take the NDA entrance exam right after class XI. After clearing the exam and a five-day Service Selection Board (SSB) interview and passing through medical tests, recruits inducted into the NDA. There are four main entries to get into the IMA. In the final year of graduation, one needs to pass the Combined Defence Services Examination, be medically fit and join IMA as a direct entry if one comes in the merit list. The other entries are 10+2 Technical Entry, wherein one can apply after class XII examinations, and University Entry Scheme for those, who wish to apply for the Army in Pre-Final/Final Year of Engineering. The selection procedure is same as for IMA (Direct Entry), except that there are no written exams. The duration of training is 1½ years for IMA, five years (one year at IMA and four years at Cadet Training Wings) for 10+2 Technical Entry (including one year after commissioning) and one year for all other entries”, <http://www2.ohchr.org/english/bodies/crc/crcwg66.htm>.

⁶⁵ National Cadet Corp, Specialist Training, http://nccindia.nic.in/attachment_training.htm.

⁶⁶ National Cadet Corps, Institutional Training, http://nccindia.nic.in/institutional_training.htm and Indian Army website, NCC (SPL) Entry Men, <http://indianarmy.nic.in/Site/FormTemplete/frmTempSimple.aspx?MnId=Haiwbvn++9U=&ParentID=LwoZAzLgsAg>.

participate in patrols for military tactics or to assist in the supply of arms and ammunition to the front as they were during the 1965 and 1971 wars with Pakistan.⁶⁷

Questions

- What is the minimum age limit for cadets participating in military training?
- Are cadets classified as members of the armed forces?
- What measures are in place to remove cadets from military sites in the event of an attack?
- Can cadets under the age of 18 who are undertaking, or have undertaken, military training be deployed into active service, for example, in times of national emergency?

Recommendations

- Ensure that cadets are recognised as civilians and are not legally classified as members of the armed forces.
- Prohibit the training of children on the use of firearms or other weapons and from conducting training in military bases, including navy ships.
- Prohibit the deployment of under-18s into active service or supply to frontlines in time of crisis.

Article 4

Recruitment and use by armed opposition groups

According to the Ministry of Home Affairs, as of 29 March 2012, a total of 35 Indian organisations remained banned under the Unlawful Activities Prevention Act 1967 (UAPA).⁶⁸ These organisations are armed opposition groups operating in the states of Jammu & Kashmir, Punjab, Rajasthan in the north; Bihar, Orissa, Jharkhand and West Bengal in the east; Assam, Manipur and Tripura in the Northeast; Uttar Pradesh, Chattisgarh and Madhya Pradesh in central India; Maharashtra in the west; and Kerala, Tamil Nadu, Andhra Pradesh, Karnataka and Kerala in the south. The UAPA was amended by the Parliament in December 2008, following attacks by militants on Mumbai that month. The amendments introduced a loose definition of “terrorism” which could cover a wide range of non-violent political activity; and the authorisation of the police to conduct warrant-less searches and arrest and detention of suspects without charge for up to 180 days.⁶⁹

Several NGOs continue to document and report that children are recruited and used by armed opposition groups in India.⁷⁰ However, the government has conducted no systematic investigation into these reports, nor has it introduced effective policies to prevent the association of children with armed opposition groups and provide them with adequate assistance, including recovery and reintegration. Below is a short summary of concerns related to three areas: Jammu & Kashmir, areas affected by “Naxal violence” and Northeast India.

⁶⁷ National Cadet Corps PSG College of Technology, <http://www.psgtech.edu/ncc/02NccInfo.html>.

⁶⁸ Government of India, Ministry of Home Affairs, List of banned organisations, http://www.mha.nic.in/uniquepage.asp?Id_Pk=292.

⁶⁹ Human Rights Watch, *Back to the Future India's 2008 counterterrorism law*, July 2010, http://www.hrw.org/sites/default/files/reports/india0710webwcover_0.pdf.

⁷⁰ See for instance: ACHR, *India's Child Soldiers*, March 2013, <http://www.achrweb.org/reports/india/JJ-IndiasChildSoldiers2013.pdf>; HRW, *Being Neutral is Our Biggest Crime, Government, vigilante and Naxalite abuses in India's Chhattisgarh state*, 15 July 2008, <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0>; HRW, *Dangerous Duty Children and the Chhattisgarh Conflict*, 5 September 2008, <http://www.hrw.org/reports/2008/09/05/dangerous-duty-0>.

Jammu & Kashmir

There has been a marked decrease in the overall numbers of members of armed groups operating in Jammu & Kashmir, with reportedly only around 500 members of armed opposition groups now operating in the Kashmir valley.⁷¹

Information gathered by the Asian Centre for Human Rights (ACHR) indicates that a range of armed opposition groups operating in Jammu & Kashmir continued to recruit under-18s and use them in a variety of roles.⁷² The scale and exact nature of the children's involvement in armed opposition groups in Kashmir remains unclear because of their highly secretive nature and the lack of data collection.

Areas affected by "Naxal violence"

The UN Secretary-General's May 2013 Annual Report on Children and Armed Conflict notes that: "recruitment and use of children by Maoist armed groups otherwise known as "Naxalites" is alleged to have continued during the reporting period [i.e. 2012]. Reports alleged that the "Naxalites" resorted to large-scale recruitment of children aged between 6 and 12 years into their so called children's units (*Bal Sanghatans*) in the affected states. Children were reported to have performed various tasks, including fighting with crude weapons such as sticks or acting as informants. Children as young as 12 years were reported present in Maoist youth groups and allied militia, and handling weapons and improvised explosive devices. Children were reportedly not allowed to leave these associations and faced severe reprisals, including the killing of family members, if they did so."⁷³

According to Human Rights Watch (HRW), "Naxalites organize children between ages six and twelve into balsangams (village-level children's associations). Depending on their skills and aptitude, children from a balsangam are "promoted" to other Naxalite departments: sangams (village-level associations), chaitanya natya manch (street theater troupes), jan militias (armed informers who travel with dalams), and dalams (armed squads)". Information gathered by HRW showed that all former Naxalites who served in sangams, chaitanya natya manch, jan militias, or dalams said that they had received weapons training when they were children.⁷⁴

In 2013, the Indian government acknowledged the existence of the practice of "forced recruitment of children from families of poor and marginalized segments of the society by the Maoists".⁷⁵ The government notes that the issue was brought to the notice of the National Commission for Protection of Child Rights (NCPCR), which is implementing the 'Bal Bandhu Project'⁷⁶ in areas of civil unrest.⁷⁷

⁷¹ *The Times of India*, "Only 500 militants active in Kashmir: J&K police chief", 15 June 2010, http://articles.timesofindia.indiatimes.com/2011-01-03/india/28379682_1_militants-infiltration-bids-terror-infrastructure.

⁷² ACHR, *India's Child Soldiers: Government defends officially designated terror groups' record on the recruitment of child soldiers before the UN Committee on the Rights of the Child*, March 2013, <http://www.achrweb.org/press/2013/IND19-2013.html>.

⁷³ UN Secretary-General, Secretary-General's Annual Report on Children and Armed Conflict, UN Doc. S/2013/245, 15 May 2013.

⁷⁴ HRW, *Being neutral is our biggest crime. Government, vigilante and Naxalite abuses in India's Chhattisgarh state*, 15 July 2008, <http://www.hrw.org/en/reports/2008/07/14/being-neutral-our-biggest-crime-0>.

⁷⁵ Press Information Bureau, Government of India, Ministry of Home Affairs, written reply by R.P.N. Singh, Minister of State in the Ministry of Home Affairs to a question by Kumari Saroj Pandey in the Lok Sabha, 12 March 2013, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=93525>.

⁷⁶ The Bal Bandhu Project is funded by the central government and aims to protect the rights of children in areas affected by unrest through community intervention and thereby is meant to enable children's access to education, health, nutrition and protection.

However, it is not clear whether there has been any concerted effort by the Indian government to gather information on how Naxalite armed opposition groups recruit children living in areas affected by “Naxal violence”.

Northeast India

Reports of underage recruitment and use in the Northeastern states of Manipur and Meghalaya were received by the NCPCR, with information of children reportedly being used as fighters by armed opposition groups such as the Garo National Liberation Army (GNLA).⁷⁸ In January 2013, it was reported that the state government of Meghalaya had agreed to institute a ‘high level-inquiry’ by an Inspector General of Police to investigate the recruitment and use of children as “child soldiers” by armed groups.⁷⁹ In Manipur, children are known to be forcibly recruited and trained as fighters by various armed opposition groups, most notably by the Revolutionary People’s Front.⁸⁰

Lack of systematic monitoring

Precise and current patterns of recruitment and use of children by armed opposition groups in India is difficult to access in the absence of domestic and international monitoring. Despite consistent, credible reports by NGOs of recruitment and use of children by armed opposition groups, the government has not put in place any systematic monitoring of the issue. As a result, the government has failed to develop comprehensive strategies to protect and prevent the recruitment and use of children by armed opposition groups. Instead, it has relied on emergency and security legislation, including by detaining children suspected of association with armed opposition groups (see section on ‘Protection, recovery and reintegration’ below).

Questions

- Do the authorities collect data on the recruitment and use of children by armed opposition groups in India? If so, please share them with the Committee.
- What measures aimed at making children and adults aware of the harmful consequences of being associated with armed opposition groups have been taken by the Indian authorities?
- What are the resources and assistances available to prevent child recruitment by armed opposition groups?

⁷⁷ Press Information Bureau, Government of India, Ministry of Home Affairs, written reply by R.P.N.Singh, Minister of State in the Ministry of Home Affairs to a question by Kumari Saroj Pandey in the Lok Sabha, 12 March 2013, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=93525>.

⁷⁸ *Meghalaya Times*, “NCPCR concerned over child soldiers in Manipur, Meghalaya”, 20 May 2012, <http://meghalayatimes.info/index.php/28-archive/front-page/may-2012/1281-ncpcr-concerned-over-child-soldiers-in-manipur-meghalaya>.

⁷⁹ *Meghalaya Times*, “High level inquiry to probe ‘child soldier’ reports: NCPCR”, 9 January 2013, <http://meghalayatimes.info/index.php/10-front-page/front-page/17581-high-level-inquiry-to-probe-child-soldier-reports-ncpcr>.

⁸⁰ See for instance: Roy, E, “A missing girl, a known militant story in Manipur”, *Indian Express*, 29 April 2013, <http://www.indianexpress.com/news/a-missing-girl-a-known-militant-story-in-manipur/1109055/0#sthash.AOat99iK.dpuf>; *E-PAO*, “CORE Press Statement on child recruitment by RPF”, 6 April 2013, http://e-pao.net/epSubPageExtractor.asp?src=news_section.Press_Release.Press_Release_2013.CORE_Press_Statement_on_child_recruitment_by_RPF_20130406; Nongmaithem, B, “Manipur ultras recruiting kids as soldiers?”, *The Sunday Indian*, 27 April 2012, <http://www.thesundayindian.com/en/story/manipur-ultras-recruiting-kids-as-soldiers/14/34014/>; Mazumdar, P, “A budding archer once, Manipur girl is a child soldier today”, *DNA India*, 15 June 2013, <http://www.dnaindia.com/india/1848207/report-a-budding-archer-once-manipur-girl-is-a-child-solider-today>.

Recommendations

- Take all necessary measures to prevent the recruitment of children by armed opposition groups in Jammu & Kashmir, areas affected by “Naxal violence” and Northeast India, including by undertaking a comprehensive assessment of the extent and causes of children’s involvement in such groups.
- Facilitate access to UNICEF and other child rights and child protection organisations to monitor areas where children may be recruited or used and develop assistance programs where necessary.

Prohibition and related matters

Articles 1, 2 and 4

Criminalisation and prosecutions

The Indian Penal Code does not explicitly criminalise the recruitment or use in hostilities of persons under-18 years by state armed forces (national armed forces as well as paramilitaries, police forces or village defence militias) or non-state armed groups.

With the exception of the inquiry in Meghalaya (mentioned in the section above on Northeast India), Child Soldiers International is not aware of any steps taken by the government of India to conduct effective investigations into reports of recruitment or association of children under the age of 18 years by paramilitaries, village defence militias or armed opposition groups. Child Soldiers International found no information to suggest that individuals suspected of recruiting and using children under the age of 18 years have been held accountable.

Recommendations

- Explicitly criminalise in law the unlawful recruitment of children or their use in hostilities by state armed forces, paramilitaries, police forces, village defence militias, and non-state armed groups.
- Ensure effective investigations are conducted into reports of unlawful recruitment of children or their use in hostilities, and individuals suspected of such acts are duly held accountable for their conduct under relevant legislation.

Protection, recovery and reintegration

Article 6.3

Administrative detention of children under emergency laws

Juvenile justice is governed by the national Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006⁸¹ (JJ Act), and the Penal Code 1860. The JJ Act defines a child or juvenile as under 18 and a juvenile in conflict with the law as “a juvenile who is alleged to have committed an offence and has not completed [the] eighteenth year of age as on the date of commission of such offence”.⁸²

⁸¹ The Juvenile Justice (Care and Protection of Children) Amendment Act (JJ Act), 2006, (No. 33 of 2006), 22 August 2006, <http://www.haqcrc.org/sites/default/files/jjactamedment1.pdf>.

⁸² Amendment of Section 2, The JJ Act 2006.

The JJ Act deals with children ‘in need of care and protection’ and those ‘in conflict with the law’. The JJ Act applies to all states and Union Territories except Jammu & Kashmir where until recently the relevant laws on juvenile justice were the Juvenile Justice Act 1997, the Juvenile Justice Rules 2007 and the Ranbir Penal Code. In March 2013, the Jammu & Kashmir Legislative Assembly raised the bar of juvenile age from 16 to 18.⁸³

However, the protection and procedures envisaged in the JJ Act are not implemented, particularly in areas affected by armed conflict or protracted armed violence. As a result, children suspected of association with armed opposition groups are administratively detained under the various special legislation applicable, or are detained like and with adults.

Despite orders by the Supreme Court⁸⁴ requiring Child Welfare Committees and Juvenile Justice Boards (JJBs)⁸⁵ to be set up in every district under the JJ Act, only 14 states and 4 Union Territories are reported to have established such bodies. Out of 197 conflict afflicted districts, 151 districts i.e. 76.64 per cent do not have Observation Homes⁸⁶ and Special Homes⁸⁷, which are designed by the JJ Act to hold children in conflict with the law. Numerous cases of juveniles being taken into custody and being detained in police lock ups and camps have been recorded by the ACHR.⁸⁸ Particularly in conflict affected areas, the NCPCR noted with concern that “the rhetoric of defending national security is so compelling that children are often treated as adults, allegedly waging war against the State, and the protection of their inherent rights by virtue of them being children, is, more often than not, compromised”.⁸⁹

On 18 April 2012, the Jammu & Kashmir government amended the Public Security Act through the Jammu and Kashmir Public Safety (Amendment) Act, 2012 to prevent in law the administrative detention of under-18s.⁹⁰ However, evidence gathered by human rights organisations indicates that authorities continue to detain children under the Public Security Act by falsely recording their age as being above 18.⁹¹

The Indian government has instituted surrender-and-rehabilitation schemes in the areas of Jammu & Kashmir⁹², areas affected by “Naxal violence”⁹³ and the Northeast⁹⁴, with each state implementing its

⁸³ The Jammu & Kashmir Juvenile Justice (Care and Protection of Children) Bill, 2013, <http://jklegislativecouncil.nic.in/Governor/BILLS%20TRANSMITTED/Bill%20No.8.pdf>.

⁸⁴ *Sampurna Behura v. Union of India and Others* [WP (Civil) No. 473/2005] and *Bachpan Bachao Andolan v. Union of India* [WP (Civil) No. 51/2006].

⁸⁵ JJBs have to deal with all crimes allegedly committed by children, children’s right to bail, speedy inquiry and suitable rehabilitation.

⁸⁶ Observation Homes are set up under the jurisdiction of the state governments to temporarily keep any juvenile in conflict with law during the pendency of any inquiry. Children can be kept in Observation Homes for a period of four months.

⁸⁷ Children convicted under section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment Act, 2006, are admitted to Special Homes for long term rehabilitation.

⁸⁸ ACHR, *Nobody’s children: Juveniles of Conflict Affected Districts of India*, March 2013, http://www.achrweb.org/reports/india/JJ-Nobodys_Children2013.pdf.

⁸⁹ National Commission for Protection of Child Rights, *Protocols for Police and Armed Forces in Contact with Children in Areas of Civil Unrest*, http://www.ncPCR.gov.in/Protocols_for_Police_and_Armed_Forces.pdf.

⁹⁰ Section 8 of the PSA was amended to provide that no person under the age of 18 may be detained under the PSA for offences under sections 8(a) and (a-1) of the PSA.

⁹¹ AI, *Still a Lawless Law, Detentions under the Jammu and Kashmir Public Safety Act, 1978, 2012*, <http://www.amnesty.org/fr/library/asset/ASA20/035/2012/en/807ef797-3994-4d2b-9469-f2e2456d91ef/asa200352012en.pdf>; ACHR, *Juveniles of J&K: Unequal before the Law & Denied justice in Custody*, 16 November 2011, www.achrweb.org/reports/india/JJ-J&K-2011.pdf.

⁹² Government of Jammu & Kashmir, Home Department, Rehabilitation Policy, 31 January 2004, <http://mha.nic.in/pdfs/JK-RehabilitationPolicy.pdf>.

own policies on the surrender and rehabilitation of those suspected of belonging to armed opposition groups. The surrender and rehabilitation policies provide for monetary compensation for those who surrender, vocational training programs and incentives for surrender of weapons. However, despite reports of children being recruited and used by armed opposition groups, no policies have taken into account the issue of recovery and rehabilitation of children associated with these groups.

Questions

- What steps is the government taking to fully implement the provisions of the JJ Act?
- How many children have been detained under the AFSPA, PSA, 1978 and under the Ranbir Penal Code since 2005?
- On what grounds, where and for how long were children detained?
- Were the children given access to their family, lawyer and International Committee of the Red Cross (ICRC) representatives?
- What measures are in place to provide appropriate assistance for the recovery and reintegration of children associated with armed forces or groups in line with article 6.3 of the OPAC? How many children have benefitted from such assistance?

Recommendations

- Amend the AFSPA, PSA and other emergency legislation to explicitly prohibit the detention of children under these laws. Issue a military order to ensure all military personnel are aware of this prohibition and of the consequences of non-compliance.
- Ensure that children are not criminalised solely for the fact of having been recruited or used by armed groups and are not subjected to any form of arbitrary detention.
- Ensure that any detention of children complies with the requirements of Article 37 of the CRC, including separation of children from adults, access to lawyers, families and other appropriate assistance.
- Take all necessary measures for the effective recovery and reintegration of children found to have been recruited into, or associated with, an armed opposition group, including suitable support to continue their education or to find employment.
- Implement mechanisms for the systematic identification of former child soldiers among those who surrender to state security forces under the scheme for surrender-cum-rehabilitation, and ensure all appropriate assistance for their physical and psychological recovery and social reintegration.

⁹³ Naxal Management Division, Ministry of Home Affairs, Government of India, http://mha.nic.in/uniquepage.asp?Id_Pk=540.

⁹⁴ See for instance; Special scheme for the surrender-cum-rehabilitation of militants in the state of Manipur, Ministry of Home Affairs, <http://mha.nic.in/pdfs/nenl0313.pdf>.

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