



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

XVI

**GUIDING PRINCIPLES
FOR THE DOMESTIC
IMPLEMENTATION OF A
COMPREHENSIVE SYSTEM
OF PROTECTION FOR
CHILDREN ASSOCIATED WITH
ARMED FORCES OR
ARMED GROUPS**

Presentation

Recruiting children into armed forces or armed groups and forcing them to get involved in the fighting is a recurrent practice in contemporary armed conflict. The consequences in humanitarian terms are often tragic and irreversible, for the children concerned and for their families and communities. Children who take part in fighting and witness atrocities, or themselves commit atrocities, may unwittingly destroy their childhood and be marked for life.

The issue of children's association with armed forces or armed groups is one to which the International Committee of the Red Cross (ICRC), a humanitarian organization and the custodian of international humanitarian law, devotes particular attention. It does this not only in the context of its operational activities to benefit victims but also in its work to promote and spread knowledge of humanitarian law and to ensure its implementation and respect by States involved in armed conflicts.

The protection of children affected by armed conflicts, international and non-international, has been a source of concern for many decades. A significant number of legal instruments, binding and non-binding, have been gradually adopted with a view to minimizing the risks to such children. These instruments pay particular attention to the question of the minimum age of involvement of children in hostilities and to the types of activity that should be prevented.

The gradual process of codifying the regime of protection for children has undoubtedly contributed to improving the general protection for them against the effects of conflicts. It has however also led to practical difficulties because, depending on the legal framework applicable in a given context, the types and extent of the obligations of the parties involved in the conflict may vary considerably.

Together with a number of international and non-governmental organizations, the ICRC has actively contributed to the development of international rules protecting children against the effects of armed conflicts. The ICRC is also investing a great deal of effort in promoting the ratification of relevant treaties, as well as their extensive implementation.

The ICRC is committed to helping States – through its Advisory Service on International Humanitarian Law – to establish domestic frameworks for implementing and enforcing, and thus ensuring respect for, the law. It should be noted that the need for such normative frameworks exists in *all countries*.

On the basis of its legal work and its activities in conflict situations, the ICRC has reached the conclusion that, although some important questions have not yet been fully addressed in legal instruments, most of the suffering endured by children during armed conflicts can be prevented or alleviated if there is greater respect for and more scrupulous implementation of *existing* rules. Unfortunately, experience clearly demonstrates that, in the absence of practical measures of implementation developed at the domestic level, accepted rights and obligations are often a dead letter.

It was with this in mind that the ICRC decided to work on the development of a set of *Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Groups*, presented for the first time in this publication.

The Guiding Principles are the result of a consultation process that included detailed examination of the various rules and principles relevant to the protection of children affected by armed conflicts. They also benefited from the work carried out during a meeting of experts organized by the ICRC in December 2009 (Children Associated with Armed Forces or Armed Groups: Implementation of International Norms on the Recruitment and Participation of Children in Armed Conflicts, Geneva, 7-9 December 2009).

The general objectives of these discussions with government officials, representatives of the various UN agencies, and experts from non-governmental organizations engaged in securing protection for children during armed conflicts were:

- to analyse the international legal framework applicable to the involvement of children in armed conflicts and the commitments made in this regard on the international and regional levels, as well as the implications for the laws and the domestic practice of States; and
- to encourage the development of, and compliance with, legislative and other national measures for implementing the international rules relating to the recruitment and use of children in hostilities by armed forces and/or armed groups, with a particular focus on the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict.

A series of presentations introduced a number of different topics, which were eventually discussed in small working groups. Participants based their discussions on a detailed questionnaire whose purpose was to raise pertinent legal and policy issues.

The Guiding Principles, which were drafted by the ICRC, draw heavily on the views expressed at the meeting of experts in 2009.

Although a number of experts made extremely useful contributions during the drafting phase, the ICRC takes full responsibility for the final version of the Guiding Principles.

The specific aim of the Guiding Principles is to suggest practical and detailed measures for effective domestic implementation of the international rules protecting children affected by armed conflict.

The Guiding Principles emphasize the *obligations of the States party to international treaties*, but that in no way alters the fact that these obligations also apply to armed groups involved in armed conflicts.¹

Finally, it must be noted that the Guiding Principles are not aimed at *developing* new law. They are intended a) to **clarify existing obligations** (taking into consideration the fact that the degree of ratification of the applicable treaties is uneven); b) **to facilitate** – through legislative, administrative and practical measures – **respect for existing obligations**; and c) to **serve the purpose of promoting, disseminating and, in particular, implementing the relevant provisions**.

The Guiding Principles, and the laws, regulations and other measures already adopted by States may be found in the 'National Implementation Database' on the ICRC website (<http://www.icrc.org/eng/resources/ihl-databases/index.jsp>).

¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Optional Protocol), Art. 4(1).

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Introduction: Purpose and methodology

These Guiding Principles are intended to serve the purpose of promoting and spreading knowledge of international humanitarian law and, in particular, of implementing the provisions protecting children affected by armed conflicts, especially children associated or previously associated with armed forces or armed groups.

The Guiding Principles suggest a number of practical, regulatory and legal measures as means to encourage States to improve such protection. They are based mainly on binding international rules (taking into account the specific obligations of all relevant treaties and of customary law). They also refer to widely accepted instruments of a non-binding character ("soft law"). A checklist of the main obligations regarding children associated with armed forces and armed groups is provided in Annex IV.

In the Guiding Principles, measures based on binding international rules can be recognized by the use of the word "must." Recommendations based on soft law instruments, "best practices," or proposals made during the meeting of experts mentioned in the preceding pages can be recognized by the use of the words "should" or "could."

The aim of the Guiding Principles is to recommend practical and detailed measures for the effective domestic implementation of the international rules protecting children affected by armed conflicts and thus enhancing the protection afforded to children. Although the emphasis is on the *obligations of States party to international treaties*, the obligations of armed groups have also been mentioned when appropriate. Many of the proposed measures could be applied, *mutatis mutandis*, by and to armed groups; others clearly depend on the existence of a State apparatus.

Although the Guiding Principles will have to be applied in accordance with the domestic legal orders and drafting traditions of the countries where they are used, they provide specific directions on how laws, regulations and other measures can ensure respect for recognized international legal standards. They should not, however, be viewed as a model law. Legislative traditions are too various and no single format can accommodate all the differences. Furthermore, the task of protecting children affected by armed conflict involves a number of different problems that should be tackled separately. Finally, it is important that all the laws, regulations and other measures that are developed to protect children against the effects of hostilities should emerge from a process of analysis and assessment that includes all interested parties.

The measures proposed are preventive, suppressive, educational and rehabilitative in nature. It is important that they be implemented through the most suitable legal channel. The Guiding Principles are designed to facilitate the work of national committees on international humanitarian law (where such bodies have been established) as well as to serve as a guide for national authorities and for commanders of armed groups in developing and adopting legislation or codes of conduct regarding the recruitment and participation of children in armed conflict.

The Guiding Principles cover the fundamental aspects of the law and propose a graduated approach to providing the strongest protection for children associated – at present and in the future – with armed forces or armed groups. They include a commentary that sets out, principle by principle, the rights, obligations and responsibilities under international law of responsible authorities or commanders.

As has already been mentioned, the Guiding Principles are the result of a consultation process that involved detailed examination of the various rules and principles relevant to the protection of children affected by armed conflicts. The legal framework proposed here has its basis in a number of international instruments – specifically, the following provisions (See Annex I: Applicable law [extracts]):

International humanitarian law: Treaty law

- Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, (GCIII) – Articles 4, 16, 49;² *universally ratified*³
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (GCIV) – Articles 14(1), 23(1), 24, 38(5), 40(3), 50, 68(4), 76, 89;⁴ *universally ratified*⁵
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (API), of 8 June 1977 – Articles 43, 44, 48, 51, 70(1), 75, 77, 86;⁶ *170 States Parties*⁷
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (APII), of 8 June 1977 – Articles 4(3), 6, 13.⁸ *165 States Parties*⁹

International humanitarian law: Customary law

ICRC Study – Rules 135-137.¹⁰

International human rights law

- Convention on the Rights of the Child (1989) – Articles 1, 37, 38, 40, 44;¹¹ *193 States Parties*¹²
- The African Charter on the Rights and Welfare of the Child (1999) – Article 22;¹³ *45 States Parties*
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000);¹⁴ *141 States Parties*¹⁵
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) – Article 11(4);¹⁶ *46 States Parties*
- Ibero-American Convention on the Rights of Youth (2005) – Article 12;¹⁷ *17 States Parties*
- United Nations Committee on the Rights of the Child General Comment No. 10 (2007): Children's rights in Juvenile Justice, 25 April 2007, CRC/C/GC/10.¹⁸

Other relevant instruments (including regional codes)

- International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour: C182 (1999) – Articles 3(a-d), 7;¹⁹ *173 States Parties*

² Available at <http://www.icrc.org/ihl.nsf/FULL/375?OpenDocument> (last visited 10 June 2011).

³ Detailed listing of States party to these conventions, dates of signature and ratification/accession, and text of declarations and reservations is available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P> (last visited 25 March 2011).

⁴ Available at <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument> (last visited 10 June 2011).

⁵ See above note 3.

⁶ Available at <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument> (last visited 10 June 2011).

⁷ Detailed listing of States party to this protocol, dates of signature and ratification/accession, and text of declarations and reservations is available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=470&ps=P> (last visited 25 March 2011).

⁸ Available at <http://www.icrc.org/ihl.nsf/FULL/475?OpenDocument> (last visited 10 June 2011).

⁹ Detailed listing of States party to this protocol, dates of signature and ratification/accession, and text of declarations and reservations is available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=475&ps=P> (last visited 25 March 2011).

¹⁰ Available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule135, http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule136 and http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39_rule137 (last visited 10 June 2011).

¹¹ Available at <http://www.icrc.org/ihl.nsf/FULL/540?OpenDocument> (last visited 10 June 2011).

¹² Detailed listing of States party to this convention, dates of signature and ratification/accession, and text of declarations and reservations is available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=540&ps=P> (last visited 25 March 2011).

¹³ Available at http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf (last visited 25 March 2011).

¹⁴ Available at <http://www.icrc.org/ihl.nsf/FULL/595?OpenDocument> (last visited 10 June 2011).

¹⁵ Detailed listing of States party to this convention, dates of signature and ratification/accession, and text of declarations and reservations is available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=595&ps=P> (last visited 10 June 2011).

¹⁶ Available at http://www.achpr.org/english/_info/women_en.html (last visited 10 June 2011).

¹⁷ Available at <http://www.unhcr.org/refworld/publisher,OJ,,,4b28eefe2,0.html> (last visited 10 June 2011).

¹⁸ Available at http://www2.ohchr.org/english/bodies/crc/docs/GC10_en.doc (last visited 10 June 2011).

¹⁹ Available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> (last visited 10 June 2011).

- Statute of the International Criminal Court (1998) – Articles 8(2) (b xxvi), 8(2e vii), 25, 26, 31(1a-b-d);²⁰ *114 States Parties*²¹
- Guidelines on Children and Armed Conflict adopted by the European Union (2003, updated 2008);²²
- United Nations Security Council resolution 1612 on Children and Armed Conflict (S/RES/1612 [2005]);²³
- United Nations Security Council resolution 1882 on Children and Armed Conflict (S/RES/1882 [2009]);²⁴
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice [Beijing Rules] (General Assembly resolution 40/33 of 29 November 1985);²⁵
- The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups [Paris Commitments] (2007);²⁶
- The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups [Paris Principles] (2007) – Articles 2 and 8;²⁷
- N'Djamena Declaration on Ending Recruitment and Use of Children by Armed Forces and Groups (2010) – Article 4.

1. Legal protection for children in armed conflicts: A summary

International humanitarian law provides broad protection for children. In the event of armed conflict, whether international or non-international, children benefit from the **general protection** provided for civilians not taking part in the hostilities. Civilians are guaranteed humane treatment and covered by the legal provisions on the conduct of hostilities. Given the particular vulnerability of children, the Third and Fourth Geneva Conventions of 1949 (hereafter GCIII and GCIV) and their Additional Protocols of 1977 (hereafter API and APII) lay down a series of rules according them **special protection**. Children who have taken a direct part in hostilities do not lose that special protection. In particular, the 1977 Additional Protocols, the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the involvement of children in armed conflict also set limits on children's **recruitment and participation in hostilities**.

General protection

In an **international armed conflict**, children who are not members of the armed forces of a State are protected by GCIV on the protection of civilians and by API. They are covered by the fundamental guarantees that these treaties provide, particularly the right to life, the prohibition of coercion, corporal punishment, torture, collective punishment and reprisals (Art. 27-34 of GCIV and Art. 75 of API) and by the rules of API on the conduct of hostilities, including both the rule that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians not taking part in hostilities (Art. 48 and 51).

In a **non-international armed conflict**, children are covered by the fundamental guarantees for persons not taking direct part in the hostilities or having ceased to taking part (Art. 3 common to the Geneva Conventions and Art. 4 of APII). They are further protected by the principle that “the civilian population as such, as well as individual civilians, shall not be the object of attack” (Art. 13 of APII).

Special protection

In an **international armed conflict**, GCIV guarantees special “care” for children, but it is API that lays down the principle of special protection: “Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason” (Art. 77). This principle also applies to **non-international armed conflict** (Art. 4[3] of APII). The provisions setting out

²⁰ Available at <http://www.icrc.org/ihl.nsf/FULL/585?OpenDocument> (last visited 10 June 2011).

²¹ Detailed listing of States party to these conventions, dates of signature and ratification/accession, and text of declarations and reservations is available at <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=585&ps=P> (last visited 29 March 2011).

²² Available at <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf> (last visited 10 June 2011).

²³ Available at <http://www.unhcr.org/refworld/docid/43f308d6c.html> (last visited 10 June 2011).

²⁴ Available at http://www.un.org/children/conflict/_documents/SC-RESOLUTION1882-2009.pdf (last visited 10 June 2011).

²⁵ Available at <http://www2.ohchr.org/english/law/pdf/beijingrules.pdf> (last visited 10 June 2011).

²⁶ Available at http://www.un.org/children/conflict/_documents/pariscommitments/ParisCommitments_EN.pdf (last visited 10 June 2011).

²⁷ Available at <http://www.un.org/children/conflict/english/parisprinciples.html> (last visited 10 June 2011).

this protection include rules on evacuation,²⁸ assistance and care;²⁹ identification, family reunification and unaccompanied children;³⁰ education;³¹ arrested, detained or interned children;³² exemption from the death penalty and protection against recruitment and participation in hostilities.³³

The principle of special protection for children affected by armed conflict is considered as a customary rule of international law.³⁴

Recruitment and participation in hostilities

The 1977 Additional Protocols

Children frequently take part in armed hostilities. Their participation may range from aiding combatants (bringing them weapons and munitions, carrying out reconnaissance missions, etc.) to being recruited to serve as combatants in national armed forces or fighters in armed groups. Article 77 of API obliges the States to take all feasible measures to prevent children under 15 years of age from taking direct part in hostilities. It expressly prohibits their recruitment into the armed forces and advises the parties to conflict to give priority in recruiting, among those aged between 15 and 18, to the eldest (Art. 77). APII goes further, prohibiting both the recruitment of children under 15 years of age and their participation – direct or indirect – in hostilities (Art. 4[3c]).

Members of armed forces involved in an international armed conflict – children included – *are considered as combatants* and in the event of their capture are entitled to prisoner-of-war status under GCIII and customary law.³⁵

The Additional Protocols stipulate that children taking a direct part in hostilities under the age of 15 are entitled to privileged treatment: in the event of capture they continue to benefit from the special protection accorded to children by international humanitarian law (Art. 77[3] of API and Art. 4[3d] of APII).

The 1989 Convention on the Rights of the Child

This treaty covers all the fundamental rights of children. Article 38 refers to the applicability of international humanitarian law and urges the States Parties to take all feasible measures to ensure that those less than 15 years old do not take direct part in hostilities (para. 2) and to ensure that recruiters give priority to the oldest of those aged between 15 and 18 (para. 3). The article applies to all States Parties irrespective of the existence of hostilities. The Convention on the Rights of the Child does not contain a derogation clause.

The treaty also provides for a monitoring mechanism that is strengthened by the States Parties' obligation to report on the national measures they have adopted (Art. 44).

The 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

The Optional Protocol strengthens protection for children involved in armed conflict:

- The States Parties are required to take all feasible measures to ensure that members of their armed forces who have not reached the age of 18 do not take direct part in hostilities (Art. 1).
- Compulsory recruitment into State armed forces of persons under 18 years of age is prohibited (Art. 2).
- The States Parties are required to raise the minimum age for voluntary recruitment from 15 years. This rule does not apply to military academies (Art. 3).
- The States Parties are required to deposit a binding declaration upon ratification or accession that sets forth the age at

²⁸ GCIV, Art. 14, 17, 24 (para. 2), 49 (para. 3) and 132 (para. 2); API, Art. 78; APII, Art. 4 (para. 3e).

²⁹ GCIV, Art. 23, 24 (para. 1), 38 (para. 5), 50 and 89 (para. 5); API Art. 70 (para. 1) and 77 (para. 1); APII, Art. 4 (para. 3).

³⁰ GCIV, Art. 24-26, 49 (para. 3), 50 and 82; API, Art. 74, 75 (para. 5), 76 (para. 3) and 78; APII, Art. 4 (para. 3b) and 6 (para. 4).

³¹ GCIV, Art. 24 (para. 1), 50 and 94; APII, Art. 78 (para. 2); API, Art. 4 (para. 3a).

³² GCIV, Art. 51 (para. 2), 76 (para. 5), 82, 85 (para. 2), 89, 94, 119 (para. 2) and 132; API, Art. 77 (para. 3 and 4); APII, Art. 4 (para. 3d).

³³ GCIV, Art. 68 (para. 4); API, Art. 77 (para. 5); APII, Art. 6 (para. 4).

³⁴ ICRC Study, Rule 135.

³⁵ ICRC Study, Rules 136 and 137.

which they will permit voluntary recruitment (Art. 3[2]).

- Armed groups distinct from the national armed forces should not, under any circumstances, recruit (on either a compulsory or a voluntary basis), or use in hostilities, persons under the age of 18. The States Parties are required to take all feasible measures to prevent, prohibit and criminalize such practices (Art. 4).

The 1998 Statute of the International Criminal Court

This Statute, also known as the Rome Statute, includes in its list of war crimes within the Court's jurisdiction the use of children under 15 years of age to participate actively in hostilities or their conscription or enlistment into national armed forces during an international armed conflict (Art. 8 [2b xxvii]) or into the national armed forces or other armed groups during a non-international armed conflict (Art. 8 [2e vii]).

In accordance with the principle of complementarity on the basis of which the Statute is framed (Art. 17-19), the Court has jurisdiction in situations where a State is unwilling or unable genuinely to carry out the investigation or prosecution. In order to take advantage of this principle and to ensure – at the national level – the suppression of such crimes, States should adopt legislation enabling them to prosecute perpetrators.

As the Court focuses on the prosecution of the most serious crimes and the most serious offenders, a lack of appropriate national law may result in some violators escaping prosecution.

The 1999 International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C 182)

Article 3(a) of the Convention No. 182³⁶ considers the forced recruitment of children to be a form of slavery and includes it amongst the worst forms of child labour. Under Article 7, the States Parties are required to take measures to ensure the effective implementation and enforcement of the Convention's provisions.

Other norms

In addition to these treaty provisions, children are also protected by a number of rules of customary international humanitarian law and by several instruments of “soft law” (See Annex I on applicable law).

³⁶ ILO Convention No. 182 has been ratified by 173 of the 183 ILO member States (as of December 2010).

2. National measures to incorporate legal protections

National implementation

Despite the rules laid down by international law, thousands of children are today taking an active part in and are victims of hostilities.

The States have a responsibility to put an end to this situation. They are therefore urged to *ratify the treaties* protecting children in armed conflict and to *take national measures adapted to their legal systems* to implement those treaties. Whether in legislative or other form, such measures are needed to enable the States to respect and to ensure respect for the rules laid down by the treaties.

It is suggested that priority be granted to implementing the rules listed below.

Recruitment and participation in hostilities

- A State bound by the **Optional Protocol** to the Convention on the Rights of the Child must take legal, administrative and other measures to ensure effective implementation of the Protocol's provisions (Art. 6). This implies that all feasible measures must be taken to ensure that children under 18 years of age do not take direct part in hostilities (Art. 1) and to ensure that there is no compulsory recruitment of children under 18 years of age (Art. 2). Since armed groups that are distinct from the national armed forces should not recruit or use children under 18 years of age in hostilities (Art. 4[1]), the States Parties must adopt legal measures to prohibit and criminalize such recruitment and use (Art. 4[2]).
- The States party to the **Convention on the Rights of the Child** (Art. 38[3]) or to **API** (Art. 77[2]) must take legislative, administrative and other measures in accordance with Article 4 of the Convention on the Rights of the Child prohibiting the recruitment into their armed forces of children under 15, and measures ensuring that recruiters give priority to the oldest among those between 15 and 18 years of age.
- The States party to **API** must take all feasible measures to suppress the recruitment in their armed forces of children under 15 (Art. 86).
- The States party to **APII** must take all feasible measures (in non-international armed conflicts) to prohibit the recruitment of children under 15 years of age and their participation in hostilities (Art. 4[3c]).
- In order to take advantage of the principle of complementarity, the States party to the **ICC Statute** should ensure that their national criminal legislation makes it possible to prosecute persons who have conscripted or enlisted children under 15 years of age or who have used children under 15 as active participants in hostilities (Art. 8[2b-xxvi, and e-vii]).

Detention and internment

- The States party to the 1977 **Additional Protocols** must take all feasible measures to ensure that any child under 15 years of age who is arrested, detained or interned for reasons relating to conflict enjoys the special protection provided by international humanitarian law (Art. 77[3] of API and Art. 4[3d] of APII).

Death penalty

- The States party to **GCIV** (Art. 68[4]) and the 1977 **Additional Protocols** (Art. 77[5] of API and Art. 6[4] of APII) and the **Convention on the Rights of the Child** (Art. 37) must take the measures needed under penal and military law to prohibit the pronouncement or carrying out of a death sentence against anyone less than 18 years old at the time of the offence, when the offence is related to an armed conflict.
- The States party to the **Convention on the Rights of the Child** (Art. 37) may not impose capital punishment for offences committed by persons below 18 years of age.

3. Definitions

For the purpose of this document, the following definitions (mostly taken from the Paris Principles, see Annex I) are used: The word **child** refers to every human being below the age of 18 years.³⁷

A child associated with armed forces or armed groups refers to any person below 18 years of age who is, or 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, messengers and spies or for sexual purposes.³⁸

Recruitment refers to the involvement of children in any kind of armed force or armed group.³⁹

- **Enlistment or voluntary recruitment** occurs when persons facing no threat or penalty join armed forces or groups of their own free will.⁴⁰
- **Conscription** is compulsory recruitment into armed forces.
- **Forced recruitment** is a form of forced labour: it takes place without the consent of the person joining the armed forces or an armed group.⁴¹ It is achieved mainly through coercion, abduction or under threat of penalty.
- **Unlawful recruitment** is recruitment of children under the age stipulated in the international treaties applicable to the armed forces or armed groups in question or in domestic law.⁴²

Armed forces of a Party to a conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates. Such armed forces shall be subject to an internal disciplinary system.⁴³

Armed groups refers to groups distinct from the armed forces of a State.⁴⁴

“Straight 18 Approach” means the prohibition of recruitment and use of children in hostilities under 18 without exception.⁴⁵

Commentary

There is no comprehensive definition of the term “child” in international humanitarian law. The Geneva Conventions and their Additional Protocols, however, provide different rules with a different scope of application depending on the age. Three main rules can be easily extrapolated from an interpretation of some articles of the 1949 Geneva Conventions⁴⁶ and the 1977 Additional Protocols: 1) these treaties differentiate between children under the age of 15, to whom special protection must be accorded and children between the age of 15 and 18; 2) neither compulsory labour nor a death sentence may be imposed to children; 3) special protection is provided for younger children.⁴⁷

Article 1 of the Convention on the Rights of the Child (CRC) has for the first time enshrined a definition of the word “child” in an internationally binding instrument of almost universal validity (a claim based on the extent of its ratification). Therefore, the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict sets provisions using this definition as a starting point.

Generally speaking, the term “recruitment” means the entire process of recruiting military personnel for the armed forces or armed groups and takes in all the phases of selection and training. Enlistment, conscription and forced recruitment are

³⁷ Unless, under the law applicable to the child, majority is attained earlier. (UN Convention on the Rights of the Child, Art. 1).

³⁸ Paris Principles 2007, Art. 2.1.

³⁹ Paris Principles 2007, Art. 2(4).

⁴⁰ Optional Protocol, Art. 3(2).

⁴¹ ILO Convention 182, Art. 3(a).

⁴² Paris Principles 2007, Art. 2(5).

⁴³ API, Art. 43(1).

⁴⁴ Optional Protocol, Art. 4.

⁴⁵ Optional Protocol, Arts 1, 2 and 3.

⁴⁶ More specifically, a number of articles in GCIIV contain provisions on children under 15 years of age (Arts 14[1], 23[1], 24, 38[5] and 50) and to those under the age of 18 (Arts 40[3] and 68[4]).

⁴⁷ See for instance: Art. 24(3) of the GCIIV for children less than 12 years of age.

governed by international law as follows. Recruitment of children under the age of 15 is prohibited by API and APII, by the CRC, and by customary international humanitarian law.⁴⁸ It is a crime under the Rome Statute. Conscription and forced recruitment of children less than 18 years of age are prohibited by the Optional Protocol (Art. 2) and ILO Convention No.182 (Art. 3[a]). Under the Optional Protocol, the age for voluntary recruitment of children must be raised above 15 years (Art. 3). In recruiting among persons who have attained the age of 15 but who have not yet attained the age of 18, the States must endeavour to give priority to the oldest (CRC Art. 38, API Art. 77[2]). The Optional Protocol imposes an absolute obligation on States Parties to raise their minimum age for voluntary recruitment from 15, as well as to consider a graduated process of working toward the goal of fully complying with the "straight-18" approach. (It is important to bear in mind that the "straight-18" concept refers to the principle that, "under the CRC, persons under the age of 18 are entitled to special protection."⁴⁹)

The obligations regarding unlawful recruitment thus vary from State to State depending on their national legal framework, and particularly on the age at which recruitment is prohibited.

When it is not already the case, the Committee on the Rights of the Child recommends to States Parties that they raise the minimum age for recruitment into armed forces to 18 years.

Any State that cannot effectively differentiate between different regimes of obligations based on the various treaties to which it is party is strongly advised to take the "straight-18" approach.

⁴⁸ See Annex I, ICRC Study, Rules 136-137.

⁴⁹ See Optional Protocol, Art. 3.1.

4. Children associated with armed forces

States bound by **API** must take all feasible measures to ensure that children under the age of 15 do not take direct part in hostilities.⁵⁰ They must also refrain from recruiting them into their armed forces.⁵¹ When children between the ages of 15 and 18 are recruited and used in hostilities, priority should be given to the oldest.

States bound by **APII** must ensure that the recruitment of children under the age of 15 and their participation in hostilities – direct or indirect – are prohibited.

States bound by the **Optional Protocol** must ensure that the compulsory recruitment of children under the age of 18 is prohibited.⁵² They must also take all feasible measures to ensure that children do not take direct part in hostilities.⁵³ The States Parties must take all feasible measures to prohibit and criminalize recruitment and use of children under the age of 18 by armed groups distinct from the armed forces, in accordance with Article 4. As stipulated in Article 3(1) of the Optional Protocol, they must raise the minimum age for voluntary recruitment from 15 while taking all feasible measures to guarantee that special protection is given for persons under 18 years of age. When becoming bound by the Optional Protocol, the States must deposit a binding legal declaration of their minimum voluntary recruitment age.

Commentary

States must adopt comprehensive measures at the domestic level to meet their obligation on the recruitment and participation in hostilities of children. Implementation of international obligations at the domestic level undeniably begins with legislation from which subsequent regulatory and practical measures must be derived. These legal tools are at the core of effective protection.

A State that wishes to ban the recruitment of children under the age of 18 and their direct participation in hostilities can do so by adhering to the Optional Protocol and depositing a binding declaration as required in Article 3, setting 18 as the minimum age for voluntary recruitment. The declaration should express the State's commitment to not recruiting children under a fixed age either within its territory or on that of another State, regardless of whether they enlist voluntarily. Further, it must describe the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.⁵⁴ As a minimum, safeguards must ensure the genuineness of consent, the informed consent of the parents or legal guardians, the full disclosure of the duties involved in the military service, and a reliable proof of age.⁵⁵

The obligations relating to the prohibition of recruitment and participation of children in hostilities differ somewhat from one document to the other. While the States are encouraged to prohibit all types of recruitment and participation of children under 18 in armed conflicts, they are bound by the treaties to which they adhere. While API requires the States Parties to take all feasible measures to ensure that children under 15 do not take direct part in hostilities, APII extends this rule to all forms of participation in non-international armed conflict. For instance, while performing services for an armed group is indirect participation, involvement in combat is unequivocally considered direct participation.

When children between the ages of 15 and 18 are nevertheless recruited and used in hostilities, it is strongly recommended that priority should be given to the oldest among them.

⁵⁰ API, Art. 77(2).

⁵¹ API, Art. 77(2).

⁵² Optional Protocol, Art. 2.

⁵³ Optional Protocol, Art. 1.

⁵⁴ Optional Protocol, Art. 3(2).

⁵⁵ Optional Protocol, Art. 3(3).

5. Recruitment

• Forced recruitment / compulsory recruitment / conscription

In States bound by **API** and **APII**, measures must be taken to prohibit all forms of recruitment (including forced recruitment, compulsory recruitment and conscription) of children under the age of 15.

States bound by the **Optional Protocol** must take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the prohibition of compulsory recruitment or conscription of children under the age of 18.⁵⁶

State authorities should ensure that the relevant legislation requires registration for conscription to take place only the year when individuals reach the age of 15 or 18, as the case may be. While ascertaining an individual's ability to undertake military training, through a full medical examination, recruiters should also verify the reliability of his or her identification documents.

States bound by **ILO Convention 182** must take all measures needed to ensure the effective implementation and enforcement of the prohibition and suppression of forced recruitment of children under the age of 18.⁵⁷

• Voluntary recruitment / enlistment

States bound by **API** and **APII** must take measures to ensure that all forms of recruitment, including voluntary recruitment or enlistment in the armed forces of children under the age of 15, are prohibited.⁵⁸

The States party to the **Optional Protocol** are obliged to make a declaration raising the minimum age for such recruitment higher than 15 years.⁵⁹

State authorities should enact legislation providing minimum safeguards in order to verify that the recruitment of children is genuinely voluntary in every instance.

• Recruitment or use in hostilities by armed groups distinct from the national armed forces

States must take all feasible measures to prohibit and criminalize the recruitment and use of children less than 18 years by armed groups distinct from the armed forces.⁶⁰

Commentary

Forced recruitment

Article 3(a) of ILO Convention No. 182⁶¹ considers the forced recruitment of children to be a form of slavery and includes it amongst the worst forms of child labour. The States Parties must therefore take all measures needed to ensure the effective enforcement of the prohibition of this practice, including the application of penal sanctions (Art. 7.1).

Compulsory recruitment / Conscription

International humanitarian law prohibits the recruitment, voluntary or compulsory, of children under the age of 15.⁶² In recent decades, the State practice prohibiting the recruitment of children under the age of 18 has been abundant, reflecting an

⁵⁶ Optional Protocol, Art. 6.

⁵⁷ ILO Convention 182, Art. 7(1) in relation to Art. 3 (a).

⁵⁸ API, Art. 77 (2) and APII, Art. 4 (3) (c).

⁵⁹ Optional Protocol, Art. 3.

⁶⁰ Optional Protocol, Arts 4 (1) and (2).

⁶¹ ILO Convention No. 182 has been ratified by 173 of the 183 ILO member states (as of December 2010).

⁶² API, Art. 77; APII, Art. 4 (3).

emerging "straight-18" approach, which is gradually gaining support. Undoubtedly, it constitutes a good practice. States still obliging children between the ages of 15 and 18 to be recruited but who want to comply with the prohibition could do so by specifying in the relevant legislation that the registration process should take place the year in which an individual reaches the age of 18. Military authorities bear responsibility for verifying the age of recruits through medical examinations and other legal means: identity cards, birth certificates, and so on.

An alternative to military service should be offered when possible.

Voluntary recruitment / Enlistment

Under Article 77 of API and Article 4(3) of APII, the minimum age for the recruitment, voluntary or obligatory, of children into armed forces is 15. Under Article 3(1) of the Optional Protocol, however, the States Parties are required to raise the minimum age for voluntary recruitment above 15 years. Article 3(1) of the Optional Protocol reflects the compromise reached during the negotiation phase, when it was decided that States Parties could each establish a minimum age, between 16 and 18, in their domestic legislation. The majority of States Parties established 18 in their domestic legislation as the minimum age for voluntary recruitment. This shows that a trend towards a "straight-18" approach is developing at the international level. Only a small minority of States does not adhere to the "straight-18" approach.

Since children are entitled to special protection, the national authorities should adopt appropriate practical, regulatory and legal measures. When effective implementation appears to be challenged, the States should embrace the "straight-18" approach. It is critically important that the military authorities receive the necessary documents well before determining whether to approve the voluntary recruitment of a child. Those documents should include a written declaration attesting to the child's willingness to volunteer; a written statement (supported by a valid identity card or birth certificate) attesting to the child's age, and the written consent of the parents or guardians. At least two measures to strengthen protection for children are available to the military authorities: (1) a medical examination to ascertain the child's ability to perform military activities; and (2) psychological tests to ascertain the child's aptitude to military life. Asking the right questions can also help to determine whether the child genuinely wants to enlist and the reasons why the child has decided to do so.

Recruitment methods should be designed and implemented so as to make compliance with the law practicable. All recruitment should be done in a transparent manner, explaining all the implications of commitment. Such commitment should be reasonable, especially in duration.

In addition, the national authorities should provide information concerning the rights and obligations of potential voluntary recruits. The legislation should include pre-established conditions concerning duties, duration, discharge and sanctions, of which the child and its parents or guardians have to be fully aware. Competent authorities should establish a mechanism for lodging complaints, in order to protect children from any abuse.

States and armed groups should consider avoiding recruitment campaigns that target children, especially in schools. Furthermore, precautions should be taken to ensure that the premises used for recruitment are not attacked afterwards. Civilian sites of recruitment campaigns should retain their civilian character.

6. Juvenile justice

a) Arrest and detention

Children deprived of their liberty must be treated with humanity.

Children accused of crimes under international or domestic law, allegedly committed while associated with armed forces or armed groups, must be detained only as a last resort.⁶³ In cases where detention is unavoidable, it must be imposed only for the shortest possible time⁶⁴ and be accompanied by the right to challenge its legality before a court or other competent, independent and impartial authority and the right to a prompt decision on any such action.⁶⁵ Children must have the right to maintain contact with their families through correspondence and visits.⁶⁶

Considering the vulnerability of children, States should refrain from prosecuting them for mere association with an armed group and in such cases consider granting them amnesty.⁶⁷

No matter the reason for their detention, special measures should be implemented to benefit detained children, such as educational programs, medical care, psychological support, adequate legal assistance and access to a mechanism for lodging complaints in the event of torture or other cruel, inhuman or degrading treatment or punishment.⁶⁸

Children must be held separately from adults unless they are held together with their family. Boys should be separated from girls. Special attention should be paid to the needs of girls who are detained.⁶⁹

While detention must be used only as a last resort, pre-trial detention must be avoided completely.⁷⁰ Collective punishments are prohibited.⁷¹

Commentary

Children may have been deprived of their liberty by simple association with armed groups; as civilian internees; or on accusation of committing crimes.

International humanitarian law, the CRC, other instruments of human rights and soft law (see *The United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty*),⁷² require that detained children accused of violations of the law be treated with humanity and dignity. This starts by ensuring that any detention of a child is in conformity with the law. Hence, no child must be deprived of liberty in an unlawful or arbitrary manner. Children must be given the opportunity to challenge the legality of that deprivation and therefore be given access to legal counsel. The detention of a child must be a last resort and limit itself to the shortest period of time. Indeed, alternatives to detention should be sought.

Children should also be accorded a number of practical benefits, such as educational programs combined with recreational activities and physical and psychological support to help them recover from the traumatic experience of conflict. Detained children should only be restrained in cases where they pose a threat to themselves or others. Therefore, detention must be used in the best interests of the children rather than as a means of punishment.⁷³

⁶³ CRC, Art. 37(b); General Comment No. 10, para. 79.

⁶⁴ CRC, Art. 37(b).

⁶⁵ CRC, Art. 37(d).

⁶⁶ CRC, Art. 37(c); GCIII Art. 71; GCIV, Art. 116; APII, Art. 5(2).

⁶⁷ APII, Art. 6(5); N'Djamena Declaration on Ending Recruitment and Use of Children by Armed Forces and Groups (2010) – Art. 4; Paris Principles, Art. 8, para 7.

⁶⁸ CRC, Arts 39 and 40(4).

⁶⁹ AP1, Art. 77(4); CRC, Art. 37(c).

⁷⁰ General Comment No. 10, paras 80-81.

⁷¹ GCIV, Art. 33 (para. 1).

⁷² Available at <http://www.un.org/documents/ga/res/45/a45r113.htm>.

⁷³ General Comment No. 10, para. 89.

Under the CRC, family visits and correspondence must be authorized except in the legally prescribed exceptional circumstances.⁷⁴ Under the Third and the Fourth Geneva Conventions, prisoners of war and civilian internees are entitled to correspond with family members.⁷⁵ Under Additional Protocol II⁷⁶ persons whose liberty has been restricted shall be allowed to send and receive letters.

Following their arrest, children should be turned over as quickly as possible to a rehabilitation and reintegration agency. The States party to the CRC must acknowledge the right of every child to be treated consistently with his dignity and worth, thereby promoting alternatives that favour rehabilitative measures over punitive measures.⁷⁷ States should also encourage the use of close supervision, intensive care and placement in a home or educational setting.⁷⁸

During international armed conflicts, States must grant the ICRC regular access to children detained in connection with the conflict.⁷⁹ During non-international armed conflicts, the States should regard with favour such offers by the ICRC or other impartial humanitarian organizations.⁸⁰

While children must be separated from adults (unless detained in family units),⁸¹ it is also recommended that girls be separated from boys. Such decisions must be made case by case according to the child's best interests.⁸² The aim of detention being rehabilitation and reintegration into society, children must be granted care and protection based on their specific needs. Thus, offenders must receive special care that addresses their past involvement in armed conflict and their need for rehabilitation and reintegration. All children must receive fair treatment and not be placed under the negative influence of adults detained in the same facility.⁸³

b) Criminal responsibility

Children alleged to have committed crimes under international or domestic law while associated with armed forces or armed groups must be treated in accordance with international norms and standards for juvenile justice, keeping in mind that the principle of the best interests of the child must be a primary consideration in the administration of juvenile justice.⁸⁴

Commentary

The States must fix a minimum age for criminal responsibility, which should not be less than 12 years (CRC General Comment No. 10). Below the age of criminal responsibility, no prosecution must take place.

Children who are alleged to have committed war crimes should be primarily considered as victims and should be treated as such. On the other hand, to ignore their criminal responsibility could imply impunity and have the reverse and perverse effect of rendering them attractive to armed forces and armed groups since crimes committed by them would go unpunished. A solution to this problem has yet to be found by the international community.

In cases where persons under 18 are prosecuted, the fact that the prosecuted person is a minor must be taken into account in all aspects of the process. All relevant international norms set in the CRC must be taken into account with due consideration for their legal status as children. Other standards, as set out in the Beijing Rules and CRC General Comment No. 10, should also be considered.

The States party to the CRC must promote special procedures adapted to the children's specific needs. This means appropriately adapting the guarantees to a fair trial; the presumption of innocence, the right to be heard, the right to effective participation

⁷⁴ CRC, Art. 37 (c); General Comment No. 10, para. 87.

⁷⁵ GCIII, Art. 71; GCIV, Art. 116.

⁷⁶ APII, Art. 5 (2) b.

⁷⁷ CRC, Art. 40(1).

⁷⁸ General Comment No. 10, para. 23.

⁷⁹ GCIII, Art. 126; GCIV, Art. 76(6) and 143.

⁸⁰ GCI-IV, Common Art. 3.

⁸¹ CRC, Art. 37(c); AP1, Art. 77(4).

⁸² General Comment No. 10, para. 85.

⁸³ "Beijing Rules", Art. 26.

⁸⁴ CRC, Arts 3 and 40(1).

in the proceedings, prompt and direct information on the charges, legal or other appropriate assistance, decisions without delay and with involvement of parents or guardians, freedom from compulsory self-incrimination, presence and examination of witnesses, the right to appeal, free assistance from an interpreter, as well as the attention to the special needs of children.⁸⁵

It is imperative that the child's best interests and well-being be considered in all circumstances. Age should be regarded as a mitigating circumstance. The use of age as a mitigating circumstance has gained international approval.⁸⁶

Finally, the principle of the child's best interests dictates that the aim of criminal justice for children should shift from repression and retribution to rehabilitative and restorative justice. Diversion mechanisms should thus be allowed and utilized as appropriate.

There is an emerging consensus that international courts have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime. This consensus is based on the statute of the International Criminal Court and the practice of the Special Court for Sierra Leone amongst others. However, serious violations of international humanitarian law remain a matter of jurisdiction and do not exclude the legality of criminal prosecution under other courts, especially domestic ones.

Any child alleged to have committed, accused of committing, or recognized as having committed a war crime must be treated in a manner consistent with promoting that child's sense of dignity and worth. Whatever action is taken to ascertain the child's accountability, his or her age must be taken into account as well as the obligation to promote his reintegration into society. Due consideration must be given to the likelihood that the child has been a victim of war crimes. Whenever appropriate and desirable, such action should not include judicial proceedings. International human rights standards and legal safeguards should be fully respected at all times.

c) Criminal proceedings

When prosecuted for crimes under international or domestic law allegedly committed while associated with armed forces or armed groups, children must be tried before domestic courts or other independent and impartial judicial bodies affording all judiciary guarantees that are generally recognized as indispensable.⁸⁷ In addition, the States party to the CRC must ensure that children receive a fair trial⁸⁸ and that neither capital punishment nor life imprisonment without possibility of release is imposed.⁸⁹

The judicial bodies should not be military in nature. The States should establish a separate justice system for children.⁹⁰ In addition, whenever appropriate, measures for dealing with children without resorting to judicial proceedings should be taken.⁹¹

Where large numbers of people are facing criminal proceedings as a result of armed conflict, the processing of cases involving children should take priority.⁹²

Commentary⁹³

Juvenile justice is intended to promote the physical and psychological recovery of children as well as their reintegration into society. Criminal proceedings should be adapted to those objectives and take into consideration the special needs of children as victims.

⁸⁵ CRC, Art. 40(2)(b).

⁸⁶ For example, in 1998 the International Criminal Tribunal for the former Yugoslavia considered youth as a mitigating factor in the case of *Prosecutor v. Furundzija* (1998), available at <http://www.icty.org/case/furundzija/4> (last visited 10 June 2011).

⁸⁷ GCIV, Common Art. 3; CRC, Art. 37(d).

⁸⁸ CRC, Art. 40.

⁸⁹ GCIV, Art. 68(4); CRC, Art. 37; General Comment No. 10 (2007), Children's rights in Juvenile Justice: 25 April 2007, paras 23-27.

⁹⁰ CRC, Art. 40(3), General Comment No. 10 (2007), Children's rights in Juvenile Justice: 25 April 2007, para. 30-31.

⁹¹ CRC, Art. 40(3b).

⁹² Paris Principles, Art. 8.10. The prioritization of prosecution of children has been practised in several countries (Burundi, Timor-Leste, etc.) and is considered good practice.

⁹³ See also Chapter 7(c) on Transitional Justice.

Children prosecuted under a domestic judicial system should be granted protection specific to their age. Should judicial proceedings be initiated, the principles of a fair trial as well as other relevant applicable standards and guarantees must be applied.⁹⁴ Proceedings relating to children who are alleged to have infringed, accused of infringing, or recognized as having infringed criminal law must take social and/or educational measures and strictly limit deprivation of liberty, particularly pre-trial detention, as a measure of last resort and for the shortest appropriate period of time. A variety of services – such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programs and other alternatives to institutional care – must be available to ensure that children are dealt with in a manner that promotes their well-being and is proportionate both to their circumstances and the offence.⁹⁵

Article 40 of the CRC and various instruments of soft law (see for example the Beijing Rules) address the special protection that should be granted to children brought before criminal courts or other competent authorities. For instance, special assistance and other measures should be accorded if children are called to testify, and psychological support should be made available to the extent possible. No child should be forced to testify. The same sources, mainly Article 40(3) of the CRC, encourage the States to promote the establishment of a separate justice system for juvenile justice.

Children should be prosecuted in a separate – and civilian – justice system. The Committee on the Rights of the Child, however, has noted with concern information regarding attempts by certain States to incorporate international standards for juvenile justice into the proceedings of military courts.⁹⁶

d) Sentencing

Sentencing must aim to foster the rehabilitation of children and there must be an effort to reintegrate the children into their communities. National authorities should directly contribute to this effort. The sentences handed down could take the form of residential placement or community service, for instance.⁹⁷

In cases where punishment is considered, neither capital punishment nor life imprisonment without possibility of release should be imposed.⁹⁸

Commentary

Cases where children are imprisoned for crimes under international or domestic law committed while they were associated with armed forces or armed groups should remain exceptional. National authorities should take appropriate measures for the re-education, rehabilitation, and social reintegration of children. States should consider the possibility of suspending sentences and allowing alternative follow-up.

Practical measures should be designed and implemented at the national level to facilitate the reintegration into society of children convicted of crimes committed when they were associated with armed forces or armed groups. This could take the form of some combination of educational programs and community service. Transitional justice mechanisms have demonstrated that doing something to benefit the community is likely to strengthen children's feeling that they have an active role to play in society and also restore their self-confidence, while at the same time encouraging the community to accept the returning children.⁹⁹ The child's family and/or the community should be involved whenever appropriate in the process of dealing with the crimes in order to discuss the facts of the case. This may help prevent community members from discriminating against or stigmatizing children formerly associated with armed forces or armed groups.

Under the Fourth Geneva Convention (Art. 68[4]), the "death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence." The Covenant on Civil and Political Rights (Art. 6[5]) states that the death sentence may not be imposed for crimes committed by persons below 18 years of age. The CRC (Art. 37[a]) lays down the same obligation, adding that children may not be sentenced to life imprisonment without the possibility of eventual release.

⁹⁴ CRC, Art. 40(2); General Comment No. 10, paras 40-67.

⁹⁵ CRC, Art. 40(4).

⁹⁶ Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Art. 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, CRC/C/OPAC/ISR/CO/1, para. 33.

⁹⁷ "Beijing Rules", Rules 11 and 19; Paris Commitments, Art. 12; CRC, Art. 40(4).

⁹⁸ CRC, Art. 37(a).

⁹⁹ See also Chapter 7(c) on Transitional Justice.

7. Mechanisms to enforce the prohibition on recruiting children and provide redress for its victims

a) Criminal repression

The States party to **API** and **APII** should adopt legislation stating that the recruitment of children under the age of 15 into the armed forces or armed groups, and their participation in hostilities, are criminal offences.¹⁰⁰

The States party to the **Optional Protocol** must adopt legislation stating that the compulsory recruitment of children under the age of 18, and their participation in hostilities, are criminal offences.¹⁰¹

The States party to the **Optional Protocol** must take all feasible measures to prevent the recruitment or use in hostilities of children under the age of 18 by armed groups that are distinct from the armed forces of the State. The States Parties must adopt the legal measures needed to prohibit and criminalize such practices.¹⁰²

The principle of complementarity dictates that the States party to the **ICC Statute** should ensure they are able to prosecute individuals for conscripting¹⁰³ or enlisting children under the age of 15 years into the national armed forces or causing them to participate actively in hostilities. The law should establish individual criminal responsibility for the perpetrators of these crimes as well as command responsibility for all commanders who fail to prevent or punish their perpetration. The States should ensure that these crimes are not covered by any amnesty law.¹⁰⁴

Extraterritorial criminal jurisdiction should be established in the form of universal jurisdiction, namely for the recruitment and use in hostilities of children contrary to the relevant international rules.

Commentary

a) Criminal repression

International humanitarian law prohibits the recruitment of children under the age of 15 into armed forces or armed groups and their use in hostilities. Every violation of this rule should be punished adequately, regardless of whether the children's participation was direct or indirect.

There is some evidence in State practice to suggest that a similar rule of customary law is developing, which regards all recruitment and use in hostilities of persons under the age of 18 as a serious violation of international law.

The recruitment of children under the age of 15 into armed forces or armed groups as well as their active participation in hostilities is a war crime under Article 8 (2b xxvi) of the Rome Statute. The commission of war crimes entails individual criminal responsibility, which means that those who commit the crimes will be held criminally responsible for them. Their military superiors will also be held responsible for failing to prevent or punish the criminal conduct of their subordinates (command responsibility).¹⁰⁵

¹⁰⁰ API, Art. 77(2) and APII, Art. 4(3)(c).

¹⁰¹ Optional Protocol, Art. 6(1) in relation to Arts 1 and 2.

¹⁰² Optional Protocol, Art. 4(2).

¹⁰³ ICC Statute, Art. 8(2b xxvi).

¹⁰⁴ N'Djamena Declaration on Ending Recruitment and Use of Children by Armed Forces and Groups (2010) – Art. 4.

¹⁰⁵ ICRC Study on Customary International Humanitarian Law, Rule 153, reads "Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible."

At present, there are proceedings before the ICC¹⁰⁶ for war crimes, particularly for the unlawful recruitment of children under the age of 15 and their use in hostilities.

In order to comply with the principle of complementarity set out in the Rome Statute,¹⁰⁷ States should undertake to reform or amend their domestic legal framework with the aim of criminalizing such conduct.

A State party to the Rome Statute should amend its criminal law in order for the principle of extraterritorial criminal jurisdiction – in the form of universal jurisdiction – to be used regarding the crime of recruiting and using children under the age of 15. The universality principle is based on the concept that a crime – in this instance the recruitment and use in hostilities of children under the age of 15 – is universally held to be of such gravity that all States are competent to prosecute those guilty of it. This competence is valid regardless of where the crime was committed, the nationality of the perpetrator, the nationality of the victim, and whether or not the accused is in custody or even present in the forum State. The principle of universal jurisdiction allows national authorities to commence criminal investigations of persons suspected of such crimes and to gather evidence. They may thus exercise criminal jurisdiction over these persons, without requiring that the person first be present, even temporarily, in the country.

National authorities could also consider submitting to universal jurisdiction the recruitment and use in hostilities of children between 15 and 18 years of age.

b) Reparation

Given that children who are unlawfully recruited are victims and also have rights, adequate reparation should be made to them. Effective reparations should amount to a combination of measures providing restitution, rehabilitation and compensation.¹⁰⁸ They may take the form of administrative programs such as an educational curriculum and professional training. Another approach to reparations may be to offer children symbolic amends such as satisfaction, assurances, and guarantees of non-repetition and of commemoration. Material benefits often take the form of concrete projects such as community centers for the purpose of rehabilitation.¹⁰⁹

Commentary

b) Reparation

Reparation – i.e. measures to compensate a whole community and/or individual citizen victims of a wrongful act – is not usually considered a priority after the end of an armed conflict. Nonetheless, a reparation mechanism for children should be established separately from measures for general victims of the conflict.

Reparation can take many different forms. It can be granted as financial compensation, restitution, rehabilitation, satisfaction, official apologies and ceremonies, physical and psychological assistance, as well as guarantees of non-repetition.

As reparation refers to a large scope of obligations, States are encouraged to follow the comprehensive guidelines on reparations drawn up by the UN in order to adequately respect the victims' right to remedy and reparation.¹¹⁰ The right to individual reparation does not exist under international humanitarian law.¹¹¹ States, however, should adopt legislation inspired by the best practices of the United Nations on the matter. Moreover, the States party to the CRC "shall take all appropriate measures

¹⁰⁶ *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/04-01/07.

¹⁰⁷ ICC Statute, Art. 1. The 2007 ICRC Fact Sheet on the Statute of the International Criminal Court also explains that "by the virtue of the principle of complementarity, the jurisdiction of the ICC is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged war criminals over which it has jurisdiction. To benefit from this principle, States will need to have adequate legislation enabling them to prosecute such criminals."

¹⁰⁸ OHCHR Rule-of-Law Tools for Post-Conflict States - Truth commissions (2006), available at <http://www.ohchr.org/Documents/Publications/RuleofLawTruthCommissionsen.pdf>. The International Law Commission Draft Articles on Responsibility of States for Internationally Wrongful Acts provide a reliable reference as for the different forms on reparation (See Arts 34 – 39) available at http://untreaty.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf. In the present context, these forms of reparations are also set out in General Assembly resolution 60/147 of 21 March 2006, Section IX available at <http://www.unhcr.org/refworld/docid/4721cb942.html>.

¹⁰⁹ *Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation*, Published by The Human Rights Program at Harvard Law School.

¹¹⁰ United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law*, 21 March 2006, A/RES/60/147, available at <http://www.unhcr.org/refworld/docid/4721cb942.html>.

¹¹¹ However, relevant State practice and doctrinal sources seem to demonstrate a tendency towards the development of a right to reparations for victims of armed conflict. See Conference Report, International Law Association, the Hague Conference (2010), *Reparation for Victims of Armed Conflict*, available at <http://www.ila-hq.org/en/committees/index.cfm/cid/1018>: "Until most recently, international law did not provide for any right to reparation for victims of armed conflicts. The Committee submits, however, that the situation is changing." See also, ICRC Study, Rule 150 and its commentary.

to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."¹¹²

States party to the Optional Protocol must cooperate in the rehabilitation and social reintegration of people who have been victims of acts contrary to the Optional Protocol. This may take the form of technical cooperation and financial assistance.¹¹³

Because of the complexity of the process, it is important that national authorities first identify the most vulnerable categories of people needing reparation and remain especially careful not to stigmatize them. The States should ensure that financial compensation allotted to children is always combined with educational and training programs.

c) Transitional justice

National authorities engaged in transitional justice initiatives should raise public awareness of the impact of armed conflict on the lives of children. They should also recognize children's distinct roles as victims, witnesses and, sometimes, perpetrators of crime. The opportunity for active voluntary participation of children in transitional justice initiatives should be ensured. To this end, appropriate training should be provided for all professionals involved in transitional justice.

Where possible, the national authorities should also establish and encourage local justice initiatives that take into account cultural traditions, while undertaken in full respect of international human rights standards. Initiatives that involve children previously associated with armed forces or armed groups should promote social reconciliation and non-punitive approaches to accountability. They must always be complementary to the formal system of justice and official truth-seeking mechanisms since the involvement of children fulfils their right to be heard in proceedings that affect them.¹¹⁴

Commentary

c) Transitional justice

The concept of transitional justice¹¹⁵ refers to the "full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, and achieve justice and reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement and individual prosecutions, reparation, truth seeking, institutional reform, vetting and dismissal, or a combination thereof."¹¹⁶ The process of transitional justice takes a rights-based approach and, inspired by international humanitarian law and human rights law, demands that States halt, investigate, punish, redress and prevent abuses including those committed against children. These measures should be taken in connection with other peace-building measures.

Transitional justice mechanisms include a number of initiatives that could be organized by competent national authorities. Their aim would be to restore confidence in the rule of law, to end impunity, to encourage reconciliation and to avoid the repetition of abuses committed against children.

- It is important to establish appropriate domestic, hybrid and/or international tribunals for the purpose of identifying, prosecuting and punishing perpetrators of serious atrocities. There are many good examples such as the Special Court for Sierra Leone, which has already successfully concluded judicial proceedings for war crimes, including unlawful recruitment of children under the age of 15.¹¹⁷
- Truth-telling initiatives have been used in some countries to determine and document abuses involving children: abuses of which children were victims and others witnessed by children.

¹¹² CRC, Art. 39.

¹¹³ Optional Protocol, Art. 7(1).

¹¹⁴ CRC, Art. 12.

¹¹⁵ Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation, Published by The Human Rights Program at Harvard Law School.

¹¹⁶ See UN Security Council, "The rule of law and transitional justice in conflict and post-conflict societies", *Report of the Secretary-General*, 23 August 2004, para. 8 (S/2004/616), available at <http://www.un.org/en/ruleoflaw/index.shtml>.

¹¹⁷ *The Prosecutor v. Norman*, available at <http://www.unhcr.org/refworld/publisher/SCSL,,,49abc0a22,0.html> (last visited 10 June 2011); *The Prosecutor v. Brima, Kamara and Kanu*, available at <http://www.sc-sl.org/CASES/ProsecutorvsBrimaKamaraandKanuAFRCCase/tabid/106/Default.aspx> (last visited 10 June 2011).

- Reconciliation activities within divided communities have been promoted with the purpose of establishing peaceful communication amongst people. It is important that not only children have a voice as perpetrators, but also as victims. Further, victims of violations committed by children should also be offered the opportunity to tell their story.

Other activities include the making of reparations – individual, collective and symbolic – to victims, the construction of monuments and memorials to educate future generations, and institutional reforms such as the vetting of public institutions.

The participation of children, as victims and witnesses in investigations and court proceedings for crimes under international law, should be voluntary. Children are entitled to and should be accorded special protective measures to facilitate their testimony, whether they are victims or perpetrators. Specific training should be provided to all professionals involved with children during the entire process of transitional justice.

Local justice initiatives are very important as they engage the community in the process of social reconciliation and emphasize the transformation rather than the punishment of former child soldiers. Children previously associated with armed forces or armed groups need to regain their confidence in the community and vice versa. Local approaches to justice are based on traditions and customs and should be undertaken in full respect for international human rights standards. They are not a substitute for judicial processes.

8. Preventive measures

a) Birth certificates

Every child should receive his/her own identity document. In addition to the obligation of the States party to the CRC to register a child immediately after birth (Art. 7[1]), domestic legislation should provide appropriate protective measures such as supplementary systems of child identification, particularly when there are obstacles to the usual process for verifying the age of recruits.

b) Tracing families of separated children

Children separated from their family by armed conflict have a right to special care and assistance.¹¹⁸ Efforts to assist unaccompanied minors, the tracing of their next of kin and family reunification are all crucial to preventing the recruitment of children. National authorities should establish and implement mechanisms for facilitating family reunification. When efforts to reunite a child with his immediate family or with other relatives fail, another suitable and long-term solution must be found. This could, when deemed appropriate, take the form of foster families, for example. Appropriate alternative care must be provided in accordance with the best interests of the child.

c) Registration of internally displaced or refugee children

As particularly vulnerable individuals, internally displaced children and refugee children are entitled to be protected from unlawful recruitment. The national authorities should set up an effective registration system¹¹⁹ in order to identify all vulnerable children, thus making it possible to plan and implement protection programs.

d) External control

To ensure the effective implementation of the above-mentioned international standards for recruitment, the national authorities should consider an inspection regime that seeks to verify that all the requirements have been met and that no child is recruited in violation of the applicable legislation.

Commentary

a) Birth certificate

A child without a provable date of birth is extremely vulnerable to all sorts of abuse and injustice, including unlawful recruitment into the armed forces. The States party to the CRC should commit themselves to strengthening birth-registration systems so that the identity of every child can be established easily and precisely. Where the process is hindered because of armed conflict, the State should also provide temporary means of identification: metal tags bearing the child's name and age or a school-class badge signifying enrolment in school, on the basis of which it is possible to verify the child's age.

b) Tracing children's families

Before starting the tracing process, the children should be identified and registered individually. The quality and the quantity of information¹²⁰ collected during this phase are of utmost importance for successful tracing. It is important to prepare the family, the community of origin and the children themselves for the reunification and for the children's full reintegration into the community. If children cannot be reunited with their family, an appropriate alternative form of care must be provided. Foster placement can be considered in such cases.

c) Registration of internally displaced or refugee children

Every person, including children and anyone displaced by conflict, should be provided with a temporary means of identification. The national authorities should explore the possibility of equipping refugee and internally displaced children with metal tags. There are frequent reports of unlawful recruitment among refugee and internally displaced children, mainly because

¹¹⁸ GCIV, Arts 17 and 24; API, Art. 78; APII, Art. 4(3).

¹¹⁹ The registration system should include precise data and could be established along the lines of API, Art. 78(3).

¹²⁰ Based for instance on the list provided for in API, Art. 78(3).

protection for children in refugee and IDP camps is often inadequate. The lack of an effective registration system increases the vulnerability of these children.

d) External control

In order to examine the compliance of armed forces with their obligations and, especially, to check whether there are children in their ranks, an inspection regime should be established at the national level. This could be created under various forms, for instance as ombudsmen or civilian authorities, but should be distinct from the military structure. The inspectors would in all likelihood be extremely helpful in identifying children who have been unlawfully recruited as well as those responsible for their recruitment. Some countries have already established such a regime within the context of a broader process of reform involving the restructuring of the armed forces. Recruiters violating the law should face proper criminal prosecution and sanctions.

e) Military schools

With regard to the enrolment process in military schools, national authorities should specify in their legislation whether they provide for incentives and, if they do, the types of incentive used to encourage enrolment in these schools. The specification of authorized incentives allows the setting of legal limits that circumscribe the scope of implementation. The law should also state unambiguously that children enrolled in military schools are not considered part of the armed forces. Recruits in military schools and their parents or guardians are entitled to receive adequate information about their rights and obligations and, especially, about their right to leave their military schools at their request and after giving a reasonable notice. In such circumstances, disciplinary action or any other type of sanction should be prohibited.

f) Educational and vocational programs

1. Programs that offer children viable alternatives to voluntary recruitment and prevent unlawful recruitment should be designed and set up at the national level. These programs should include, in particular, educational and vocational training carried out, where possible, in combination with employment opportunities, and should be directed towards children between the ages of 15 and 18.
2. Programs that make people aware of the rights of children involved in armed conflicts (especially special measures to protect them) should be designed and implemented at the national level. These programs should be specifically aimed at all who are in contact with children whether they are military or civilian.

In addition, training for professionals who work with and for children should be given in order to ensure the full implementation of the law and adequate promotion of that law.

Commentary

e) Military schools

In compliance with Article 3(5) of the Optional Protocol, military schools are exempted from the requirement to raise the minimum age from 15 to 18. Nevertheless, students attending military schools are not automatically considered to have been formally recruited into the armed forces until they reach the age of 18.¹²¹ Voluntary recruitment in military schools requires the utmost transparency. National authorities should state the following explicitly in any legislation they adopt: the measures taken to encourage students to enroll in military schools, the level of military training in comparison with other schools, and the process by which students might later become members of the armed forces.¹²² In addition, it is important to offer students enrolled in military schools the legal right to leave at their request, after giving reasonable notice – i.e. not more than three months. After graduation, students should not be under any obligation to join the armed forces.

The States party to the Optional Protocol should ensure that children attending military schools have direct access to independent investigation mechanisms and complaint mechanisms in the event of abuse and ill-treatment. When feasible, additional preventive measures should be adopted. For instance, a hotline should be created, as should youth groups. The choice of preventive measures should depend on the context and aim at addressing the root causes of these acts.

¹²¹ For example, in the Central African Republic and the Philippines, students enrolled in military schools are considered as part of the armed forces, whereas in Colombia enrolment in military school and enlistment in the armed forces are distinct.

¹²² Guidelines regarding initial reports to be submitted by States Parties under Article 81 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, 14 November 2001.

Armed forces should also include guidelines in their military manuals or adopt regulations in order to safeguard the preventive measures and help their effective implementation.

The States party to the Optional Protocol should enact appropriate legislation to ensure that enrolment in military school is voluntary. An alternative to military schooling should be offered when possible.

f) Educational and vocational programs¹²³

1. These programs should be designed to cover the particular needs of children under the age of 18. Their aim should be to prevent the recruitment of children into State armed forces or non-State armed groups, and to offer viable alternatives to it. To this end, the national authorities should ensure access to free basic education and implement vocational and professional training so that every child (including girls) between 15 and 18 years of age is aware of the alternatives to recruitment.

These programs should address all the root causes that lead to recruitment and participation of children in hostilities, and as such, aim at developing infrastructure. They should also pay particular attention to the special vulnerability of children displaced by the hostilities.

2. Every State should also ensure that all the actors that may be involved or in contact with children – police units, detention authorities, teachers, doctors, judges, lawyers, social workers and other professionals in contact with migrant and asylum-seeking children – are informed of the legal protection granted to children during armed conflict. In fact, these might be the persons who have the first contact with children formerly associated with armed forces or armed groups. These activities should be implemented at the national, regional and local levels and should include primary health-care personnel.

Educational training programs and awareness-raising campaigns are among the most effective ways of ensuring that all sections of the population are adequately informed about the legal protection granted by international humanitarian law and international human rights law to children during armed conflict.

Promotion programs geared towards non-recruitment should be set up for the armed forces. All those involved in the recruitment process should be fully aware of their obligations under international and domestic law.

General awareness-raising should also be considered in order to develop a better understanding of the situation and combat the frequently negative stereotype of children re-entering their community after being involved in armed conflict. International cooperation in educational programs and, especially, in the exchange of best practices is useful.

¹²³ CRC, Arts 28 and 29.

9. Disarmament, demobilization and reintegration programs

Disarmament, demobilization and reintegration programs should be undertaken for the purpose of ensuring that all those under the age of 18 associated with armed forces or armed groups are eligible for assistance in this respect.

The States party to the **Optional Protocol** must take all feasible measures to demobilize or otherwise release from service persons under 18. When necessary, they must also accord all appropriate assistance for their physical and psychological recovery and their social reintegration.¹²⁴

The release of all children unlawfully recruited or used by armed forces or groups must be sought unconditionally at all times, including during armed conflict. Actions to secure disarmament, demobilization and reintegration of children should not be dependent on a cease-fire or peace agreement or on any release or demobilization process for adults.

Reintegration programs – including a suitable combination of educational and vocational training – should be designed and implemented. Special attention should be given to the needs and experiences of girls previously associated with armed forces or armed groups: they should be provided with appropriate health care, including care for conditions such as forced pregnancy. They should also be offered distinct educational and professional training opportunities, with the purpose of facilitating their full reintegration into their families and communities.

National authorities should take advantage of increased international cooperation and availability of resources to include as many children as possible in disarmament, demobilization and reintegration programs.

All children under the age of 18 who have been associated with armed forces or armed groups, and who are seeking refugee status, should be entitled to care and special protection. To this end, competent national authorities should ensure that the fact that they were recruited and used in hostilities, as well as the possibility that they may have committed war crimes, are not regarded as reasons to prevent such children from being granted asylum and refugee status.

Educational and vocational training programs should be designed and implemented for the specific purpose of improving and enhancing the social and economic reintegration of children, including those accused of crimes under international or domestic law committed while associated with armed forces or armed groups in the country where they have applied for refugee status.

Commentary

The States are encouraged to observe the Paris Principles and Commitments (see Annex I) in order to better promote and implement the full scope of relevant obligations and best practices. Particularly relevant to disarmament, demobilization and reintegration programs is the section on release and reintegration, which promotes programs regardless of whether a formal process exists.¹²⁵ The following measures should thus be considered in all situations where the recruitment and participation in hostilities of children has occurred.

The disarmament, demobilization and reintegration process consists of three phases. The first is disarmament: the collection, inspection and disposal of small arms, ammunition, explosives, and light and heavy weapons within a conflict zone. Disarmament also includes a process for responsible arms management. The second phase is demobilization, during which the parties begin to disband their military structure. Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. In the final phase – reintegration – ex-combatants and their families adapt themselves to leading productive lives, both socially and economically. It is very important that States provide immediate physical and psychological assistance and, if necessary, other forms of medical attention to children who have been released. Awareness-raising is essential to ensuring the success of such programs and should thus be encouraged among armed forces, armed groups and the communities themselves.

¹²⁴ Optional Protocol, Art. 6(3).

¹²⁵ See Paris Commitments, section 19.

Educational and vocational training programs should be implemented with the aim of facilitating the reintegration of children into their families and communities. Children should also have access to jobs and other income-generating activities to support themselves and help their families. All measures should be taken with due concern for safeguarding the best interests of the child. For disarmament, demobilization and reintegration programs to be successful, the national authorities should also engage in adequate amounts of dialogue with children's families and communities to pave the way for their social reintegration. "Peace and reconciliation" events are also important in facilitating the long-term reintegration of children and should be part of transitional justice initiatives. To ease their return to civilian life, children formerly involved in armed conflict should be given access to programs that benefit all war-affected children. States should avoid re-recruiting disarmed and demobilized children, even after they reach the age of majority. They should be excluded from conscription on humanitarian grounds.

Both States and local communities should address the specific situation of girls associated with armed forces or armed groups. Since girls need special protection, national authorities should design and implement programs specifically for them, with the aim of helping them to overcome the traumatic experience of armed conflict. Direct physical and psychological care as well as professional training should be made available to them, and opportunities for employment created. Careful attention should be provided to girls returning with babies, while being careful not to single out these children. Equivalent special protection should be given to children with disabilities.

The international community, through enhanced international cooperation, should make every effort to provide affected countries with the resources needed for preventive programs and reintegration programs that benefit all vulnerable children. It is important to devote attention not only to those previously associated with armed forces or armed groups, but to all vulnerable children who may decide to enlist or to re-enlist for lack of alternatives. Ideally, disarmament, demobilization and reintegration programs should be part of broader programs of poverty eradication and socio-economic development.

Article 1(F)¹²⁶ of the 1951 Refugee Convention excludes the application of the Convention to persons who might have committed war crimes and/or crimes against humanity during armed conflicts. The application of exclusion clauses to children, however, needs to be put into effect with great caution.¹²⁷ Where children have allegedly committed crimes while being associated with armed forces or armed groups, it is important to take into account the fact that they might have been victims of violations of international law and are not only perpetrators. In addition, such exclusion clauses must be applied only to children who had reached the age of criminal responsibility, as laid down by international or national law, at the time the crime was committed.

The States should consider the appropriateness of accepting applications for asylum and/or refugee status from children who allegedly committed war crimes, and take the steps needed to implement such a policy.

Every State should establish a registration system to identify and register all the children (often unaccompanied) arriving from a foreign country and applying for asylum and refugee status. National authorities should develop or refine their system of data collection in order to improve their reporting methods. An effective registration system is also useful for gauging the presence, in their midst, of children previously associated with armed forces or armed groups to whom direct aid must be provided. Unfortunately, practice suggests a lack of interest in, and a lack of funding and programs for, dealing with such children on the territories of countries not their own. Therefore, the "receiving" States should implement specific educational and training programs with the aim of promoting the social and economic reintegration of children in the societies in which they have taken refuge.

¹²⁶ "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
 (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
 (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

¹²⁷ UNHCR Guidelines on International Protection No 8: Child Asylum Claims under Art. 1(a2) and 1(F) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees, HRC/GIP/09/08, 22 December 2009, available at <http://www.unhcr.org/refworld/docid/4b2f4f6d2.html> (last visited 10 June 2011).

Annex I

Applicable law (extracts)

A) International humanitarian law

Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949

Article 4

(A) Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict, as well as members of militias or volunteer corps forming part of such armed forces.

Article 16

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

Article 49

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949

Article 14

(1) In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Article 17

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.

Article 23

(1) Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

Article 24

The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

Article 38

(5) Children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

Article 40

(3) In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers in particular as regards wages, hours of labour, clothing and equipment, previous training and compensation for occupational accidents and diseases.

Article 50

The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

Article 68

[4] In any case, the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence.

Article 76

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require. Women shall be confined in separate quarters and shall be under the direct supervision of women. Proper regard shall be paid to the special treatment due to minors. Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

Article 89

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs.

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977

Article 48 – Basic rule

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Article 51 – Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Section, unless and for such time as they take a direct part in hostilities.
4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
 - (a) those which are not directed at a specific military objective;
 - (b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
 - (c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.
5. Among others, the following types of attacks are to be considered as indiscriminate:
 - (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
 - (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
6. Attacks against the civilian population or civilians by way of reprisals are prohibited.
7. The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.
8. Any violation of these prohibitions shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians, including the obligation to take the precautionary measures provided for in Article 57.

Article 70 – Relief actions

- (1) If the civilian population of any territory under the control of a Party to the conflict, other than occupied territory, is not adequately provided with the supplies mentioned in Article 69, relief actions which are humanitarian and impartial in character and conducted without any adverse distinction shall be undertaken, subject to the agreement of the Parties concerned in such relief actions. Offers of such relief shall not be regarded as interference in the armed conflict or as unfriendly acts. In the distribution of relief consignments, priority shall be given to those persons, such as children, expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.

Article 75 – Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.
2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:
 - (a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - (i) murder;
 - (ii) torture of all kinds, whether physical or mental;
 - (iii) corporal punishment; and
 - (iv) mutilation;
 - (b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
 - (c) the taking of hostages;
 - (d) collective punishments; and
 - (e) threats to commit any of the foregoing acts.
3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.
4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:
 - (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
 - (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - (c) no one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
 - (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
 - (e) anyone charged with an offence shall have the right to be tried in his presence;
 - (f) no one shall be compelled to testify against himself or to confess guilt;
 - (g) anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (h) no one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgment acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;
 - (i) anyone prosecuted for an offence shall have the right to have the judgment pronounced publicly; and
 - (j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.
5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units.
6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this Article until their final release, repatriation or re-establishment, even after the end of the armed conflict.
7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

- (a) persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and
 - (b) any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this Article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.
8. No provision of this Article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

Article 77 – Protection of children

1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.
2. 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.
3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.
4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.
5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Article 78 – Evacuation of children

1. No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require. Where the parents or legal guardians can be found, their written consent to such evacuation is required. If these persons cannot be found, the written consent to such evacuation of the persons who by law or custom are primarily responsible for the care of the children is required. Any such evacuation shall be supervised by the Protecting Power in agreement with the Parties concerned, namely, the Party arranging for the evacuation, the Party receiving the children and any Parties whose nationals are being evacuated. In each case, all Parties to the conflict shall take all feasible precautions to avoid endangering the evacuation.
2. Whenever an evacuation occurs pursuant to paragraph 1, each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity.
3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information:
 - (a) surname(s) of the child;
 - (b) the child's first name(s);
 - (c) the child's sex;
 - (d) the place and date of birth (or, if that date is not known, the approximate age);
 - (e) the father's full name;
 - (f) the mother's full name and her maiden name;
 - (g) the child's next-of-kin;
 - (h) the child's nationality;
 - (i) the child's native language, and any other languages he speaks;
 - (j) the address of the child's family;
 - (k) any identification number for the child;

- (l) the child's state of health;
- (m) the child's blood group;
- (n) any distinguishing features;
- (o) the date on which and the place where the child was found;
- (p) the date on which and the place from which the child left the country;
- (q) the child's religion, if any;
- (r) the child's present address in the receiving country;
- (s) should the child die before his return, the date, place and circumstances of death and place of interment.

Article 86 – Failure to act

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.
2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977

Article 4 – Fundamental guarantees

- (3) Children shall be provided with the care and aid they require, and in particular:
- (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
 - (b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
 - (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;
 - (d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;
 - (e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Article 6 – Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.
2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:
 - (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;
 - (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
 - (c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;
 - (d) anyone charged with an offence is presumed innocent until proved guilty according to law;
 - (e) anyone charged with an offence shall have the right to be tried in his presence;
 - (f) no one shall be compelled to testify against himself or to confess guilt.
3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.
4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Article 13 – Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.
2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

B) Customary international humanitarian law

ICRC Study

Rule 135

Children affected by armed conflict are entitled to special respect and protection. [IAC/NIAC]

Rule 136

Children must not be recruited into armed forces or armed groups. [IAC/NIAC]

Rule 137

Children must not be allowed to take part in hostilities. [IAC/NIAC]

C) International human rights law

Convention on the Rights of the Child (1989)

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. 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.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years 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, States Parties shall endeavor to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
 - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
 - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:
 - (a) Within two years of the entry into force of the Convention for the State Party concerned;
 - (b) Thereafter every five years.
2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.
4. The Committee may request from States Parties further information relevant to the implementation of the Convention.
5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
6. States Parties shall make their reports widely available to the public in their own countries.

African Charter on the Rights and Welfare of the Child (1999)

Article 22

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
2. 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.
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Optional Protocol to the Convention of the Rights of the Child on the Involvement of children in Armed Conflicts (2000)

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 it 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 that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein 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 that raises 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 the present 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 the present 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 the age of 18 years are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present 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 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 years shall maintain safeguards to ensure, as a minimum, that:
 - (a) Such recruitment is genuinely voluntary;
 - (b) Such recruitment is carried out 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 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 the present 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 the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such 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 thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the 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, within two years following the entry into force of the present Protocol for that State Party, 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 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 the present 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 on the Rights of the Child 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 of the United Nations 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 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.

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa**Article 11 – Protection of Women in Armed Conflicts**

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations which affect the population, particularly women.

2. States Parties shall, in accordance with the obligations incumbent upon them under the international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.
3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.
4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.

UN Committee on the Rights of the Child General Comment No. 10 (2007) Children's rights in Juvenile Justice

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

78. Article 37 of CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

Basic principles

79. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

80. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

81. The Committee recommends that the State parties ensure that a child can be released from pretrial detention as soon as possible, and if necessary under certain conditions. Decisions regarding pretrial detention, including its duration, should be made by a competent, independent and impartial authority or a judicial body, and the child should be provided with legal or other appropriate assistance.

Procedural rights (Art. 37[d])

82. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

83. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pretrial detention is reviewed regularly, preferably every two weeks. In case a conditional release of the child, e.g. by applying alternative measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body, not later than 30 days after his/her pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.

84. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is

an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

Treatment and conditions (Art. 37(c))

85. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults. There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

86. This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.

87. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.

88. The Committee draws the attention of States parties to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the General Assembly in its resolution 45/113 of 14 December 1990. The Committee urges the States parties to fully implement these rules, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of juvenile justice.

89. The Committee wishes to emphasize that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

- Children should be provided with a physical environment and accommodations which are in keeping with the rehabilitative aims of residential placement, and due regard must be given to their needs for privacy, sensory stimuli, opportunities to associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;
- Every child of compulsory school age has the right to education suited to his/her needs and abilities, and designed to prepare him/her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him/her for future employment;
- Every child has the right to be examined by a physician upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community;
- The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family;
- Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately;
- Any disciplinary measure must be consistent with upholding the inherent dignity of the juvenile and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC must be strictly forbidden, including

corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned;

- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay; children need to know about and have easy access to these mechanisms;
- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting.

D) Other relevant instruments (including regional codes)

ILO Convention No. 182 on the Worst Forms of Child Labour (1999)

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;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Article 7

1. 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.
2. Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
 - (a) prevent the engagement of children in the worst forms of child labour;
 - (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
 - (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
 - (d) identify and reach out to children at special risk; and
 - (e) take account of the special situation of girls.
3. Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.

Statute of the International Criminal Court (1998)

Article 8

(2) (b) (xxvi) For the purpose of this Statute, "war crimes" means: [...] Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: [...] Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

Article 8

(2) (e) (vii) For the purpose of this Statute, "war crimes" means: [...] Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: [...] Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; [...]

Article 25

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.
4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 31

- (1) In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:
 - (a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
 - (b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court; [...]
 - (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
 - (i) Made by other persons; or
 - (ii) Constituted by other circumstances beyond that person's control.

Guidelines on Children in Armed Conflict adopted by the European Union (2003)**Update of the EU GUIDELINES ON CHILDREN AND ARMED CONFLICT (2008)****I. CHILDREN AND ARMED CONFLICT**

1. In the past decade alone, armed conflicts are estimated to have claimed the lives of over two million children and physically maimed six million more. Conflict deprives children of parents, care-givers, basic social services, health care and

education. There are some twenty million displaced and refugee children, as well as one million orphans, while others are held hostage, abducted or trafficked. Systems of birth registration and juvenile justice systems collapse. At any given time, there are estimated to be at least 300,000 child soldiers participating in conflicts.

2. Children have special short and long term post-conflict needs, such as for tracing of family members, redress and social reintegration, psycho-social rehabilitation programmes, participation in disarmament, demobilization and reintegration programmes as well as within transitional justice frameworks. In this regard, the EU welcomes the creation of a follow-up forum to the Paris Commitments, which focuses on coordinating and facilitating international support for such programmes.
3. In many situations, there remains a climate of impunity for those committing crimes against children, as proscribed by international humanitarian law and the Rome Statute of the International Criminal Court. The EU underlines the fundamental role of international criminal jurisdictions in fighting impunity and addressing the relevant violations of international law concerning the illegal use and recruitment of child soldiers.
4. The Convention on the Rights of the Child (CRC) is almost universally ratified, but by no means universally applied. Particularly in situations of armed conflict, children suffer disproportionately, in a variety of ways, and with long lasting effects. The impact of armed conflict on future generations may sow the seeds for conflicts to continue or to re-emerge. The Optional Protocol to the CRC on the involvement of children in armed conflict is aimed at countering this situation.
5. The EU welcomes that important international mechanisms have been established dealing with children and armed conflict, in particular, the Special Representative of the UN Secretary General for Children and Armed Conflict, and the Security Council Working Group on Children and Armed Conflict. Consequently, the EU and its member States shall take into consideration and, where appropriate, coordinate their action with these mechanisms, in a view to maximize impact of their respective interventions. [...]
6. Promotion and protection of the rights of the child is a priority of the EU's human rights policy. The European Union (EU) considers it of critical importance to address the issue of children and armed conflict not only because children are suffering in the present and will shape the future but because they have inherent and inalienable rights, as set out in the CRC, its Optional Protocols and other international and regional human rights instruments. The EU aims to raise the awareness of this issue by giving more prominence to EU actions in this field, both within the EU and in its relations with third parties.
7. The EU undertakes to address the short, medium and long term impact of armed conflict on children in an effective and comprehensive manner, making use of the variety of tools at its disposal, and building on past and ongoing activities (overview of EU actions in Annex I). The EU's objective is to influence third countries and non state actors to implement international and regional human rights norms, standards and instruments, as well as international humanitarian law (as listed in Annex II) and to take effective measures to protect children from the effects of armed conflict, to end the use of children in armed forces and armed groups, and to end impunity for crimes against children. The EU recognizes the importance of ensuring coordination and continuity between the various policies and actions targeting the situation of children affected by armed conflict in the various policy areas, including CFSP/ESDP, external assistance and humanitarian aid. [...]
8. The EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. These principles are common to the Member States. Respect for human rights features among the key objectives of the EU's Common Foreign and Security Policy (CFSP), which includes the European Security and Defense Policy (ESDP). Respect for human rights is also part of the Community's policies regarding trade and development co-operation and humanitarian assistance.
9. The promotion and protection of the rights of all children is a priority concern of the EU and its Member States. In its work to ensure the protection of children affected by armed conflict, the EU is guided by relevant international and regional norms and standards on human rights and humanitarian law including, inter alia, those contained in Annex II.
10. The EU supports the work of the relevant actors, in particular the UN Secretary General, the Special Representative of the Secretary General for Children and Armed Conflict, the Working Group of the Security Council on Children and Armed Conflict, UNICEF, UNIFEM, OHCHR, UNHCR, UNDP, ILO, the Committee on the Rights of the Child, the Human Rights Committee, the Human Rights Council, the Third Committee, the Council of Europe, OSCE/ODIHR as well as UN Special

Mechanisms and other relevant actors such as the ICRC, the Human Security Network and civil society organizations. The EU also supports the work of child protection networks and Task Forces monitoring UN Resolution 1612 on the ground. The EU will pro-actively contribute and work with these actors to ensure that the existing international safeguards to the rights of the child are strengthened and effectively implemented.

IV. GUIDELINES

Regular monitoring, reporting and assessments form the basis for the identification of situations where EU action is called for. Where EU-led crisis management operations are concerned, decision making will proceed on a case-by-case basis, bearing in mind the potential mandate for the specific action and the means and capabilities at the disposal of the EU.

A. Monitoring and reporting

11. In their periodic reports and where relevant, and in full knowledge, and in coordination with, the reporting and monitoring system of the UN established through UNSC resolutions 1539 (2004) and 1612 (2005), the EU Heads of Mission, Heads of Mission of civilian operations, EU Military Commanders (through the chain of command) as well as the EU Special Representatives will include an analysis of the effects of conflict or looming conflict on children. These reports should address in particular violations and abuses against children, recruitment and deployment of children by armies and armed groups, killing and maiming of children, attacks against schools and hospitals, blockage of humanitarian access, sexual and gender-based violence against children, abduction of children and the measures taken to combat them by the parties in case. While these six violations provide a primary focus, they do not exclude monitoring and reporting of, and response to, other violations committed against children as relevant in each country situation. They will include in their normal reporting periodic evaluation of the effect and impact of EU actions on children in conflict situations where appropriate. Where relevant, Heads of Mission may prepare *ad hoc* reports on country situations, including an update on the implementation of relevant country strategies which may cover also these issues. Lessons learned from EU crisis management operations may form another important source of information for the competent working parties provided they are not classified.
12. The Commission will draw the attention of the Council and Member States to relevant reporting in this area and provide further information, where appropriate and necessary, on Community-funded projects aimed at children and armed conflict and post-conflict rehabilitation. Member States will feed into this overview by providing information on bilateral projects in this area.

B. Assessment and recommendations for action

13. The Council Working Group on Human Rights (COHOM) in close co-ordination with other relevant working parties will on the basis of the above mentioned reports and other relevant information, such as reports and recommendations from the UNSG (including the list of parties to armed conflict that recruit or use children as annexed to the annual report to the UN Security Council on children and armed conflict), the Special Representative of the Secretary General for Children and Armed Conflict, the UN Security Council working group on Children and armed conflict, UNICEF, UN Special Mechanisms and human rights Treaty Bodies as well as non-governmental organizations, at regular intervals identify situations where EU actions are called upon, in particular where alarming situations arise which call for immediate attention, and make recommendations for such action to the appropriate level (PSC/Coreper/Council).

C. EU tools for action in relations with third countries

The EU has a variety of tools for action at its disposal. The EU will build on existing initiatives in order to consolidate, strengthen and advance EU actions for children affected by armed conflict (as in Annex I). In addition, the tools at the EU's disposal include, inter alia, the following:

14. **Political dialogue:** The human rights component of the political dialogue at all levels between the EU and third countries and regional organizations shall, where relevant, include all aspects of the rights and well being of the child during pre-conflict, conflict and post-conflict situations.
15. **Démarches:** EU will make démarches and issue public statements urging relevant third countries to take effective measures to ensure protection of children from the effects of armed conflict, to end the use of children in armed forces and armed groups, and to end impunity. The EU Special Representatives and Heads of Mission will be tasked to continue to address the matter with non state actors where relevant. Where appropriate, the EU will also react to positive developments that have taken place.

16. Multilateral co-operation: the Community is engaged in funding projects relating to children and armed conflict in several fields, in particular for Disarmament, Demobilization, Reintegration and Rehabilitation (DDRR) and through humanitarian assistance. The Commission will identify possibilities for extending such support, for example in the context of its Country Strategy Papers and its Mid Term Reviews, paying specific attention to the situations in priority countries. The Commission will also specifically consider the link between relief, rehabilitation and development. In this continuum, the Commission has recognized the importance of support to education in emergencies, which has to be integrated into comprehensive longer-term policies. Member States will equally seek to reflect priorities set out in these guidelines in their bilateral co-operation projects.
17. Crisis management operations: during the planning process, the question of protection of children should be adequately addressed. In countries where the EU is engaged with crisis management operations, and bearing in mind the mandate of the operation and the means and capabilities at the disposal of the EU, the operational planning should take into account, as appropriate, the specific needs of children, bearing in mind the particular vulnerability of the girl child. In pursuit of the relevant UNSC resolutions, the EU will give special attention to the protection, welfare and rights of children in armed conflict when taking action aimed at maintaining peace and security.
18. Making use of the various tools at its disposal, the EU will seek to ensure that specific needs of children will be taken into account in early-warning and preventive approaches as well as actual conflict situations, peace negotiations, peace agreements, ensuring that crimes committed against children be excluded from all amnesties, post-conflict phases of reconstruction, rehabilitation, reintegration and long-term development. The EU will seek to ensure that the local community, including children, is involved in the peace process. In this context, the EU will take advantage of and build on experience gained within the UN system and regional organizations. Girls and those children, who are refugees, displaced, separated, abducted, affected by HIV/AIDS, disabled, subject to sexual exploitation or in detention are particularly vulnerable.
19. Training: the coordinated EU Training Concept in the field of crisis management should take account of the implications of these guidelines. In light of this, the EU recommends training in child protection.
20. Other measures: the EU might consider making use of other tools at its disposal where appropriate, such as the imposition of targeted measures. When EU agreements with third countries are approaching renewal the EU will consider carefully the country's record on respect for children's rights, with particular reference to children affected by armed conflict.

V. IMPLEMENTATION AND FOLLOW-UP

21. COHOM is furthermore requested to:
- a) oversee the implementation of EU action taken in accordance with these guidelines and to that end develop modalities to render paragraph 12 operational, as well as to oversee the implementation of relevant country strategies. In this context, reference is made to the 25 June 2001 General Affairs Council's conclusions, which recalled that the Community actions should be consistent with the EU's action as a whole;
 - b) review and update on a regular basis the EU list of priority countries;
 - c) promote and oversee mainstreaming of the issue of children and armed conflict throughout all relevant EU policies and actions, as well as to co-operate with other EU bodies in the area of security and development to comprehensively protect the rights of children;
 - d) undertake ongoing review of the implementation of these guidelines, in close co-ordination with the relevant working groups, Special Representatives, Heads of Mission, Heads of Mission of civilian operations and EU Military Commanders (through the chain of command);
 - e) continue to examine, as appropriate, further ways of co-operation with the UN and other international and regional intergovernmental organizations, NGOs as well as corporate actors in this area;
 - f) report to PSC on an annual basis on progress made towards fulfilling the objectives set out in these guidelines;
 - g) submit an evaluation of these guidelines to the Council with recommendations for improvements or updates as and when appropriate;
 - h) on that basis, consider establishing a focal point (for instance a special group of experts or Special Representative) to ensure the future implementation of these guidelines.

Paris Commitments to protect children from unlawful recruitment and use by armed forces or armed groups (Paris Commitments) [2007]

We,

Ministers and representatives of countries having gathered in Paris on 5 and 6 February 2007 to strongly reaffirm our collective concern at the plight of children affected by armed conflict, our recognition of the physical, developmental, emotional, mental, social and spiritual harm to children resulting from the violation of their rights during armed conflict, and our commitment to identifying and implementing lasting solutions to the problem of unlawful recruitment or use of children in armed conflict;

Recalling all the international instruments relevant to the prevention of recruitment or use of children in armed conflict, their protection and reintegration, and to the fight against impunity for violators of children's rights, as well as relevant regional instruments, as listed in the Annex hereto, and in particular calling upon all States which have not done so yet to consider ratifying as a matter of priority the Convention on the Rights of the Child and the Optional Protocols thereto;

Recalling UN Security Council resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005) which have repeatedly condemned and called for an end to the unlawful recruitment and use of children by parties to armed conflict contrary to international law, and led to the establishment of a Monitoring and Reporting mechanism and of a Working Group to address violations of children's rights committed in times of armed conflict;

Recalling the 1997 Cape Town principles ("Cape Town principles and best practices on the prevention of recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa"), that have been helpful to guide decisions and actions taken to prevent the unlawful recruitment of children under 18 years of age into armed forces or groups, stop their use, secure their release, provide protection and support their reintegration or integration into family, community and civilian life;

Deeply concerned that girls continue to be largely invisible in programming and diplomatic initiatives regarding the unlawful recruitment and use of children by armed forces or groups and committed to reversing and redressing this imbalance;

Deeply concerned that the Millennium Development Goals of universal primary education and the development of decent and productive work for youth will not be reached as long as children continue to be unlawfully recruited or used in armed conflicts;

Recognizing that States bear the primary responsibility for providing security to and ensuring the protection of all children within their jurisdiction, that children's reintegration into civilian life is the ultimate goal of the process of securing their release from armed forces or groups, and that planning for reintegration should inform all stages of the process and should commence at the earliest possible stage;

We commit ourselves :

1. To spare no effort to end the unlawful recruitment and use of children by armed forces or groups in all regions of the world, i.a. through the ratification and implementation of all relevant international instruments and through international cooperation.
2. To make every effort to uphold and apply the Paris principles ("The Guidelines to Protect Children from Unlawful Recruitment or Use by Armed Forces and Armed Groups") wherever possible in our political, diplomatic, humanitarian, technical assistance and funding roles and consistent with our international obligations.

In particular, we commit ourselves:

3. To ensure that conscription and enlistment procedures for recruitment into armed forces are established and that they comply with applicable international law, including the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and to establish mechanisms to ensure that age of entry requirements are fully respected and that responsibility for establishing the age of the recruit rests with the recruiting party.
4. To take all feasible measures, including legal and administrative measures, to prevent armed groups within the jurisdiction of our State that are distinct from our armed forces from recruiting or using children under 18 years of age in hostilities.

5. To adhere to the principle that the release of all children recruited or used contrary to international law by armed forces or groups shall be sought unconditionally at all times, including during armed conflict, and that actions to secure the release, protection and reintegration of such children should not be dependent on a cease-fire or peace agreement or on any release or demobilization process for adults.
6. To fight against impunity, and to effectively investigate and prosecute those persons who have unlawfully recruited children under 18 years of age into armed forces or groups, or used them to participate actively in hostilities, bearing in mind that peace or other agreements aiming to bring about an end to hostilities should not include amnesty provisions for perpetrators of crimes under international law, including those committed against children.
7. To use all available means to support monitoring and reporting efforts at the national, regional and international levels on violations of child rights during of armed conflict, including in relation to the unlawful recruitment or use of children, and in particular to support the monitoring and reporting mechanism established by Security Council resolutions 1539 and 1612.
8. To fully cooperate with the implementation of targeted measures taken by Security Council against parties to an armed conflict which unlawfully recruit or use children, such as, but not limited to, a ban on arms and equipment transfers or military assistance to these parties.
9. To take all necessary measures, including the elaboration of rules of engagement and standard operating procedures, and the training of all relevant personnel therein, to ensure that children recruited or used by enemy armed forces or groups who are deprived of their liberty are treated in accordance with international humanitarian law and human rights law, with special consideration for their status as children.
10. To ensure that all children under 18 years of age who are detained on criminal charges are treated in accordance with relevant international law and standards, including those provisions which are specifically applicable to children; and that children who have been unlawfully recruited or used by armed forces are not considered as deserters under applicable domestic law.
11. To ensure that children under 18 years of age who are or who have been unlawfully recruited or used by armed forces or groups and are accused of crimes against international law are considered primarily as victims of violations against international law and not only as alleged perpetrators. They should be treated in accordance with international standards for juvenile justice, such as in a framework of restorative justice and social rehabilitation.
12. In line with the Convention on the Rights of the Child and other international standards for juvenile justice, to seek alternatives to judicial proceedings wherever appropriate and desirable, and to ensure that, where truth-seeking and reconciliation mechanisms are established, the involvement of children is supported and promoted, that measures are taken to protect the rights of children throughout the process, and in particular that children's participation is voluntary.
13. To ensure that children who are released from or have left armed forces or groups are not used for political purposes by any party, including political propaganda.
14. To ensure that children who cross international borders are treated in accordance with international human rights and humanitarian and refugee law, and in particular, that children who flee to another country to escape unlawful recruitment or use by armed forces or armed groups can effectively exercise their right to seek asylum, that asylum procedures are age and gender-sensitive and that the refugee definition is interpreted in an age and gender-sensitive manner taking into account the particular forms of persecution experienced by girls and boys, including unlawful under-age recruitment or use in armed conflict, and that no child is returned in any manner to the borders of a State where there is real risk of torture or cruel and unusual treatment or punishment or when that child is recognized as a Convention refugee according to the 1951 Refugee Convention, or of unlawful recruitment, re-recruitment or use by armed forces or groups, assessed on a case by case basis.
15. To ensure that children who are not in their state of nationality, including those recognized as refugees and granted asylum are fully entitled to the enjoyment of their human rights on an equal basis with other children.
16. To advocate and seek for the inclusion in peace and ceasefire agreements by parties to armed conflict that have unlawfully recruited or used children of minimum standards regarding the cessation of all recruitments, the registration,

the release and the treatment thereafter of children, including provisions to meet the specific needs of girls and their children for protection and assistance.

17. To ensure that any programmes or actions conducted or funded to prevent unlawful recruitment and to support children unlawfully recruited or used by armed forces or groups are based on humanitarian principles, meet applicable minimum standards, and develop systems for accountability, including the adoption of a code of conduct on the protection of children and on sexual exploitation and abuse.
18. To ensure that armed forces or groups having recruited or used children unlawfully are not allowed to secure advantages during peace negotiations and security sector reforms, such as using the number of children in their ranks to increase their share of troop size in a power sharing agreement.
19. To ensure that any funding for child protection is made available as early as possible, including in the absence of any formal peace process and formal disarmament, demobilization and reintegration (DDR) planning, and to also ensure that funding remains available for the time required and for activities in communities benefiting a wide range of children affected by armed conflict in order to achieve full and effective integration or reintegration into civilian life.
20. In that context, we, Ministers and representatives of countries having gathered in Paris on 5 and 6 February 2007, welcome the update of the 1997 Cape Town principles ("the Paris principles"), which will be a useful guide in our common efforts to fight against the plight of children affected by armed conflicts.

The Paris Principles and Guidelines on Children Associated with Armed Forces of Armed Groups (Paris Principles) [2007]

Article 2

For the purposes of these Principles

- 2.0 "Child" refers to any person less than 18 years of age in accordance with the Convention on the Rights of the Child.
- 2.1 "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, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken a direct part in hostilities.
- 2.2 "Armed forces" refers to the military institution of a State with a legal basis, and supporting institutional infrastructure (salaries, benefits, basic services, etc).
- 2.3 "Armed groups" refers to groups distinct from armed forces as defined by Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.
- 2.4 "Recruitment" refers to compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force or armed group.
- 2.5 "Unlawful recruitment or use" is recruitment or use of children under the age stipulated in the international treaties applicable to the armed force or armed group in question or under applicable national law.
- 2.6 "Release" Includes the process of formal and controlled disarmament and demobilization of children from an armed force or armed group as well as the informal ways in which children leave by escaping, being captured or by any other means. It implies a disassociation from the armed force or armed group and the beginning of the transition from military to civilian life. Release can take place during a situation of armed conflict; it is not dependent on the temporary or permanent cessation of hostilities. Release is not dependent on children having weapons to forfeit.
- 2.7 "Disarmament" is the collection, documentation, control and disposal of small arms, ammunition, explosives and light and heavy weapons of combatants and often also of the civilian population. Disarmament also includes the development of responsible arms management programmes.

2.8 “Demobilization” is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilization may extend from the processing of individual combatants in temporary centres to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilization encompasses the support package provided to the demobilized persons, which is called reinsertion.

2.9 “Child Reintegration” is the process through which children transition into civil society and enter meaningful roles and identities as civilians who are accepted by their families and communities in a context of local and national reconciliation. Sustainable reintegration is achieved when the political, legal, economic and social conditions needed for children to maintain life, livelihood and dignity have been secured. This process aims to ensure that children can access their rights, including formal and non-formal education, family unity, dignified livelihoods and safety from harm.

2.10 “Formal DDR process” is a process that contributes to security and stability in a post-conflict recovery context by removing weapons from the hands of combatants, taking the combatants out of military structures and helping them to integrate socially and economically into society by finding livelihoods.

Article 8

10. Where large numbers of people are facing criminal proceedings as a result of armed conflict, the processing the cases of children and of mothers who have children with them in detention should take priority.

Annex II

Resolutions and Reports

UN Security Council resolutions

- Security Council resolution 1261 (1999)
- Security Council resolution 1314 (2000)
- Security Council resolution 1379 (2001)
- Security Council resolution 1460 (2003)
- Security Council resolution 1539 (2004)
- Security Council resolution 1612 (2005)
- Security Council resolution 1882 (2009)
- Statement of its President on 24 July 2006
- Statement of its President on 28 November 2006
- Statement of its President on 12 February 2008
- Statement of its President on 17 July 2008
- Statement of its President on 29 April 2009

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- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 12 October 1998, A/53/482
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 1 October 1999, A/54/430
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 3 October 2000, A/55/442
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 9 October 2001, A/56/453
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 24 September 2002, A/57/402
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 29 August 2003, A/58/328
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 8 October 2004, A/59/426
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 7 September 2005, A/60/335
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 17 August 2006, A/61/275
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 13 August 2007, A/62/228
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 6 August 2008, A/63/227
- *Protection of Children affected by Armed Conflict: Report of the Special Representative of the Secretary-General for Children and Armed Conflict*, 6 August 2009, A/64/254

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- *Report on Children and Armed Conflict to the Security Council*, 7 September 2001, S/2001/852
- *Report on Children and Armed Conflict to the Security Council*, 26 November 2002, S/2001/1299
- *Report on Children and Armed Conflict to the Security Council*, 10 November 2003, S/2003/1053
- *Report on Children and Armed Conflict to the Security Council*, 9 February 2005, S/2005/72
- *Report on Children and Armed Conflict to the Security Council*, 26 October 2006, S/2006/826
- *Report on Children and Armed Conflict to the Security Council*, 21 December 2007, S/2007/757
- *Report on Children and Armed Conflict to the Security Council*, 26 March 2009, S/2009/158

General Assembly

- *Guidelines for the Alternative Care of Children*, 30 October 2009, A/C.3/64/L.50
- *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law*, 21 March 2006, A/RES/60/147

UN Secretary-General's report to the General Assembly on "The status of the Convention on the Rights of the Child," UN Doc. A/64/172, 27 July 2009

UN Security Council

- "The rule of law and transitional justice in conflict and post-conflict societies," report of the Secretary-General, 23 August 2004, S/2004/616

Convention on the Rights of the Child

- Guidelines regarding initial reports to be submitted by States party 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: 12/10/2001, CRC/OP/AC/1
- Revised Guidelines regarding initial reports to be submitted by States Parties under article 8 paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: 19 October 2007, CRC/C/OPAC/2
- General Comment No. 10 (2007) Children's rights in Juvenile Justice: 25 April 2007, CRC/C/GC/10

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- "The Paris Principles", The principles and guidelines on children associated with armed forces or armed groups, Paris, 2007
- "The Paris Commitments" The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups, Paris, 2007
- "The Cape Town Principles and Best practices", Adopted at the symposium on the prevention of the recruitment of children into armed conflicts and on demobilization and on social reintegration of child soldiers in Africa, South Africa, 1997
- "The Beijing Rules", *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, UN doc. A/40/53, 1985

Economic and Social Council

- Resolution: Guidelines on Justice in matters involving child victims and witnesses of crime, Res/2005/20, 22 July 2005

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Checklist of States' Obligations relating to Children Associated with Armed Forces or Armed Groups

	CRC	OP-CAC	GC III	GC IV	API	AP II	African Charter (Child)	Protocol to the African Charter	Ibero-American Convention	ILO Convention 182	ICC Statute
Participation in hostilities	State Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. (Art. 38(2))	Ensure "all feasible measures" are taken so that those under 18 years of age do not take a direct part in hostilities. (Art. 1)			State Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. (Art. 77(2))	Children who have not attained the age of 15 years shall not be allowed to take direct part in hostilities. (Art. 4(3)(c))	States Parties shall take all necessary measures to ensure that no child shall take a direct part in hostilities. (Art. 22(2))	States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities. (Art. 11 al.4)	States Parties undertake to assure youth under 18 years of age that they shall not be called up or involved, in any way, in military hostilities. (Art. 12(3))		Using children under the age of 15 years to participate actively in hostilities is a war crime. (Art. 8(2)(b)(xxvi) & 8(2)(e)(viii))
Recruitment	State Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. When recruiting, State Parties shall endeavour to give priority to those who are oldest (between 15 and 18 years). (Art. 38(3))	Ensure that those under 18 years of age are not compulsorily recruited into their armed forces (Art. 2). / Ensure that States raise the minimum age for voluntary recruitment (from the current minimum of 15 years). (Art. 3(1))		The Occupying Power may not, in any case, change children's personal status, nor enlist them in formations or organizations subordinate to it. (Art. 50 para. 2)	State Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. When recruiting, State Parties shall endeavour to give priority to those who are oldest (between 15 and 18 years). (Art. 77(2))	Children who have not attained the age of 15 years shall not be recruited in the armed forces or groups. (Art. 4(3)(c))	States Parties shall take all necessary measures to refrain from recruiting any child. (Art. 22(2))	States Parties shall take all necessary measures to ensure that no child is recruited as a soldier. (Art. 11 al.4)	Youth have the right to make conscientious objection towards obligatory military service. (Art. 12(1))	Each Member shall take effective measures to prevent the forced or compulsory recruitment of children for use in armed conflict. (Art. 7(2)(a))	Conscribing or enlisting children under the age of 15 years into the national armed forces is a war crime. (Art. 8(2)(b)(xxvi) & 8(2)(e)(viii))

	CRC	OP-CAC	GC III	GC IV	API	AP II	African Charter (Child)	Protocol to the African Charter	Ibero-American Convention	ILO Convention 182	ICC Statute
Voluntary recruitment		Ensure that recruitment of those under 18 years of age (if applicable) is genuinely voluntary, with consent of guardians, upon reliable proof of age, providing full information on duties involved. (only if permitted by law) (Art. 3(3))									
Enforcement & redress		Ensure that the recruitment and use in hostilities by Non-State Actors of persons under 18 years of age is punishable as a criminal offence. (Art. 4)							The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right [conscientious objection] and advance in the progressive elimination of the obligatory military service. (Art. 12(2))	Each Member shall take all necessary measures to implement and enforce provisions including penal sanctions or, as appropriate, other sanctions. (Art. 7(1))	

	CRC	OP-CAC	GC III	GC IV	AP I	AP II	African Charter (Child)	Protocol to the African Charter	Ibero-American Convention	ILO Convention 182	ICC Statute
Protection	State parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict. (Art. 38(4))		Subject to any privileged treatment which may be accorded by reason of their [...] age, [...] all prisoners of war shall be treated alike. (Art. 16)			Special protection to children under 15 years shall remain applicable to them if they take a direct part in hostilities. (Art. 4(3)(d))	States Parties shall undertake to respect and ensure for rules of IHL which affect the child. (Art. 22(1))				
Detention			The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age [...] and physical aptitude, with a view particularly to maintaining them in a good state of physical and mental health. (Art. 49)		Children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units. (Art. 77(4))						

	CRC	OP-CAC	GC III	GC IV	AP I	AP II	African Charter (Child)	Protocol to the African Charter	Ibero-American Convention	ILO Convention 182	ICC Statute
Criminal Proceedings	States Parties shall ensure to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, unless it is considered not to be in the best interest of the child. (Art. 40(2)(b)(iii))				No sentence may be passed except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure. (Art. 75(4))	No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. (Art. 6(2))					
Sentencing	Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years. (Art. 37(a))				The death penalty for an offence related to the armed conflict may not be executed on persons under 18 years of age at the time of the offence. (Art. 77(5))	The death penalty shall not be pronounced on persons who were under the age of 18 years at the time of the offence. (Art. 6(4))					

DPR programmes	CRC	OP-CAC	GC III	GC IV	AP I	AP II	African Charter (Child)	Protocol to the African Charter	Ibero-American Convention	ILO Convention 182	ICC Statute
	<p>States Parties shall take all feasible measures to ensure that persons recruited/used are demobilized or otherwise released from service; shall accord appropriate assistance for their physical and psychological recovery and their social reintegration. (Art. 6(3))</p> <p>States Parties shall cooperate in the rehabilitation and social reintegration of persons victims of acts contrary thereto. (Art. 7(1))</p>									<p>Each Member shall take effective measures to provide direct assistance for the removal of children from being used in armed conflicts, and for their rehabilitation and social integration as well as access to free basic education and vocational training where appropriate. (Art. 7(2)(b)(c))</p>	