

# Louder than words

An agenda for action to end state use of child soldiers

## Report summary

and

## 10-Point Checklist to prevent the involvement of children in hostilities in state armed forces and state-allied armed groups



CHILD SOLDIERS  
INTERNATIONAL

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**Child Soldiers International**  
**9 Marshalsea Road (4th floor)**  
**London SE1 1EP**  
**United Kingdom**

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# Louder than words: An agenda for action to end state use of child soldiers

## Report summary

2012 marks ten years since the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Optional Protocol) entered into force. It is the most comprehensive of international treaties relating to child soldiers and contains an expansive set of obligations on states aimed at ending the use of child soldiers in both state armed forces and non-state armed groups.

At the core of the Optional Protocol is prevention. While it requires states to take all feasible measures to release boys and girls from armed forces and armed groups and to support their recovery and reintegration, its primary aim is to ensure that children are protected from the possibility of involvement in armed conflicts in the first place.

International commitment to this aim is high: over three quarters of the world's states are party to the treaty. However, in practice, a significant number of states have yet to translate their words into action having so far failed to put in place effective measures to prevent child soldier use, even in those forces over which they have direct control or influence.

In its report, ***Louder than words: An agenda for action to end state use of child soldiers***, Child Soldiers International focuses specifically on these forces, which include official state armed forces (national armies, paramilitaries, civil defence forces, police and other official armed elements of a state security apparatus). They also include certain non-state armed groups which can be described as “state-allied armed groups”

– that is, groups which are not formally a part of state armed forces but which nevertheless support or are supported by states.<sup>1</sup> (Although the latter do not represent the full range of non-state armed groups known to recruit and use children, states hold specific responsibilities with regard to their activities).<sup>2</sup>

The research shows that although many states already prohibit or claim to prohibit persons under the age of 18 years from joining their armed forces and/or from taking part in hostilities, when put to the test these commitments often do not translate into effective protection for children. The fact remains that when states are involved in armed conflict, directly or indirectly through their support of proxy armed groups, they are still prone to use child soldiers.

Although it is less common today for states to deploy under-18s in hostilities as part of national armies (army, navy, air force), ten states did so between January 2010 and June 2012 (Chad, Côte d'Ivoire, the Democratic Republic of the Congo, Libya, Myanmar, Somalia, South Sudan, Sudan, United Kingdom and Yemen). But when the wider spectrum of forces for which states are responsible are included (other official elements of state armed forces and state-allied armed groups) a total of 17 states are found to have used child soldiers in this period (the above, plus Afghanistan, Central African Republic, Eritrea, Iraq, the Philippines, Rwanda and Thailand). In another three states (Colombia, Israel and Syria) children were not formally recruited but were nevertheless reported to have been used for military purposes including intelligence gathering and as human shields.

However, based on its analysis of the laws, policies and practices of more than 100 “conflict” and “non-conflict” states, Child Soldiers International has found that children are at risk of use in state or state-allied armed forces in many more states than the 20 listed above. In some the risk is more immediate. In Eritrea or Iran, for example, where children are already in the ranks of the national army or paramilitary forces, the likelihood of their use in the event of hostilities is high. But even where the possibility of armed conflict seems more remote, protection for children from the possibility of use in hostilities by state or state-allied forces is often incomplete.

There are many factors (socioeconomic inequalities, insecurity and cultural traditions for example) which can make girls and boys vulnerable to involvement in armed conflicts, but it is the fact of recruitment – whether voluntary, compulsory or forced, formal or informal – that (in the vast majority of cases) ultimately makes their use possible. The risk of use can therefore be significantly reduced by creating legal, policy and practical barriers against the admission of children to military forces, regardless of economic, social or other factors which encourage or compel children to join.

The starting point for prevention, as many of those involved in drafting the Optional Protocol argued at the time, is to prohibit in law all recruitment, compulsory or voluntary, of anyone under the age of 18. Experience shows that where under-18s are recruited by state armed forces, prohibitions on their use in hostilities, even when supported by systems designed to screen troops prior to

deployment, do not constitute an effective guarantee against their participation.

In many states, however, the challenge is not establishing 18 as a minimum age for recruitment; it is the matter of enforcing it. Enforcement requires at a minimum:

- Independent verifiable proof of age for every child;
- Effective processes to verify the age of new recruits;
- Independent monitoring and oversight of military recruitment processes;
- Criminalisation of child recruitment and use in law;
- Capacity within the criminal justice system to effectively investigate and prosecute allegations of unlawful recruitment and use.

Child Soldiers International’s findings show that many states, even those that claim a “straight-18 ban”, fall short on one or more of these criteria, thus exposing children to potential risk of use in national armies and other official elements of state armed forces.

Beyond their armed forces, states also bear responsibility for the actions of non-state armed groups allied to them. These groups can include irregular paramilitaries and “self-defence” militias. They may also include armed groups operating in other countries to which a state provides support. Such groups play a significant role in contemporary armed conflicts and it is common for them to have children in their ranks, often in significant numbers.

Degrees of state responsibility for the recruitment and use of child soldiers by these groups vary depending on the nature of the relationship between the state and the group. But effective child soldier prevention strategies require that states act on and are held accountable to their international obligations to prevent the use of child soldiers whether by their own armed forces or by armed groups allied to them.

The report highlights, however, that for the most part states have failed to take measures either to prevent children being recruited and used by allied armed groups or to investigate allegations of the involvement of state officials in supporting such practices. Where states have acted to end child soldier recruitment and use by allied armed groups, it is notable that success has generally been achieved only through the regularisation or total disbandment of these forces.

States also have further responsibilities towards children at risk of recruitment and use as child soldiers. The Optional Protocol requires that states should take measures to implement its provisions beyond their own borders, through cooperation and assistance, and this report identifies two specific areas where states could make a significant contribution in this regard.

First states must ensure that their trade in or transfer of arms or other forms of military assistance does not contribute to the problem. The relationship between the proliferation of small arms and children's involvement in armed conflict is well established and obligations exist under the Optional Protocol and other international

treaties to prevent transfers of arms to situations where human rights abuses occur. In practice few states have acted on these obligations by conditioning weapons sales on ending unlawful recruitment or use of children. By failing to prevent transfers of arms to government forces or state-allied armed groups with a record of unlawful child soldier recruitment and use, these governments not only miss an opportunity to use their influence to end the practice, they also risk contributing to it.

Second, those states with the capacity and expertise can support other states in regularising recruitment practices, establishing oversight and accountability mechanisms and implementing other elements of a child soldier prevention strategy. Where such prevention has featured in the design of security sector reform (SSR) assistance programs the results have been positive but the examples are rare. In light of this, the report argues that the potential for SSR assistance programs to contribute to child soldier prevention must be further explored and acted upon.

Just as states must shift their focus beyond reaction to prevention so too must the UN. The UN has invested heavily in the children and armed conflict agenda in the last decade, establishing processes and mechanisms to respond to the issue, through which valuable work is being done. The majority of the resources are concentrated in the mechanisms and bodies set up under the UN Security Council on children and armed conflict framework, the focus of which is primarily directed at situations where risk of underage use has become real and there is evidence that

children are already in the ranks of armed forces (or non-state armed groups) and are actively participating in hostilities. Important as these responses are, they largely neglect the question of longer-term prevention.

In situations already on the UN Security Council's children and armed conflict agenda, responses must be strengthened through longer and deeper engagement. "Action plans" to end child soldier recruitment and use that are agreed with parties to armed conflicts (a key tool used by the UN) should not be regarded as the end goal, but as the beginning of a process of extended support for reform to create durable barriers against ongoing and future child recruitment.

The work of the UN Security Council on children and armed conflict framework must also be supplemented by broader approaches focusing more explicitly on prevention regardless of whether or not armed conflict exists or is even threatened. The Optional Protocol provides a framework for this preventative approach but enhanced monitoring of the risk of involvement in armed conflict faced by children is needed to reinforce the work of the Committee on the Rights of the Child in monitoring the implementation of the treaty. Where risks are identified it also requires investment in support to states to establish legal and practical barriers to prevent the recruitment and thereby use of the children concerned.

Child Soldiers International considers that waiting for the next conflict to break out to find out where under-18s may be vulnerable to military use places children at unnecessary and unacceptable risk. It

believes that this risk can be significantly reduced if not entirely eliminated through earlier identification of and response to risk factors. If children's involvement in armed conflict is truly to become a thing of the past, this type of preventative work must be a central part of the children and armed conflict agenda for the next decade with states leading the way by fulfilling their legal obligations under the Optional Protocol.

## Notes

- 1 The full report is available at [www.child-soldiers.org](http://www.child-soldiers.org).
- 2 Child Soldiers International's work also includes research and advocacy in relation to this broader range of non-state armed groups.

# Ten-Point Checklist to prevent the involvement of children in hostilities in state armed forces and state-allied armed groups

To assist in assessing where and why children are at risk of use in hostilities in armed forces for which states are responsible and to identify what measures can be taken to reduce these risks, Child Soldiers International has developed a “Ten-Point Checklist to prevent the involvement of children in hostilities in state armed forces and state-allied armed groups”.

The checklist is based around ten core questions covering the three areas of responsibility covered by the report:

## Child soldier use by state armed forces

- Are children prohibited in law from participating in hostilities?
- Has 18 years been established in law as the minimum age for compulsory and voluntary recruitment?
- Does every child have independently verifiable proof of age?
- Are there effective processes to verify the age of new recruits?
- Are military recruitment processes subject to independent monitoring and oversight?
- Is unlawful child recruitment and use criminalised in national law?
- Does the criminal justice system have the capacity to effectively investigate and prosecute allegations of unlawful recruitment and use?

## Child soldier use by state-allied armed groups

- Are legal and practical safeguards in place to prevent recruitment and use of children by any armed groups allied to the state?

## Arms transfers and security sector reform assistance

- Are measures in place to ensure that international arms transfers and other forms of military assistance do not contribute to or facilitate the unlawful recruitment and use of children as soldiers in recipient states?
- Are safeguards set out in this checklist reflected in national security sector reform (SSR) programs and in SSR assistance programs?

Recommendations following each question reflect the measures needed to protect children from recruitment and use highlighted in this report and draw on international human rights law and standards, in particular the Optional Protocol. They are also informed by best practice of states and the recommendations of expert bodies including the Committee on the Rights of the Child. The recommendations are cumulative – that is, they cannot be treated in isolation as it is their combined effect which will create an effective barrier to recruitment and use of children.

It is hoped that this checklist will be used by governments and government bodies (*inter alia*, ministries responsible for children, defence, human rights, justice and labour as well as national human rights institutions or other statutory bodies with responsibility for monitoring armed forces, child rights and Optional Protocol implementation); UN child protection and child rights experts; national and international NGOs; donors and other key stakeholders to assist them in identifying whether children are at risk of use in armed conflict in any given national context and, if so, what measures are needed to mitigate that risk.



# I Child soldier use by state armed forces

## 1. ARE CHILDREN PROHIBITED IN LAW FROM PARTICIPATING IN HOSTILITIES?

- Under the Optional Protocol states are required to “take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 do not take a direct part in hostilities” (Article 1). Under international humanitarian law, the concept of direct participation in hostilities is essential to the principle of distinction in the conduct of hostilities, whereby civilians (including civilian children) cannot be the object of direct attack unless and for such a time as they take direct part in hostilities.
- However, when it comes to the protection of children from armed conflict, the emphasis should be on preventing their involvement in any activity that puts them at risk of use. Best practice by states and the jurisprudence of the Committee on the Rights of the Child support the principle that children should be protected against any and all types of involvement in armed conflict. This also reflects customary international humanitarian law which prohibits the participation of children in hostilities, direct or indirect, without qualification.

### **The use in hostilities of anyone under the age of 18 years must be prohibited in law**

- Legislation must be enacted by all states to prohibit the participation of children in hostilities. Ideally this should be a blanket prohibition on both “direct” and “indirect” participation in order to protect children not only from deployment as a combatant or in other frontline roles, but also from

the dangers that can result from indirect participation.

### **Practical safeguards against deployment must be put in place by states that permit voluntary recruitment below 18 years**

- Where states have not yet raised the minimum age for voluntary recruitment to 18 years or above, to limit the risk of child soldier use effective safeguards must be established to ensure that any under-18s in armed forces are not deployed in hostilities. Safeguards must be based on systems in which the age of members of the armed forces is checked before deployment. Where the age of soldiers cannot be objectively verified as being 18 years or above, they must not be deployed.

## 2. HAS 18 YEARS BEEN ESTABLISHED IN LAW AS THE MINIMUM AGE FOR COMPULSORY AND VOLUNTARY RECRUITMENT?

Under the Optional Protocol, 18 is the minimum age at which an individual can be conscripted into a state's armed forces (Article 2). The minimum age for voluntary recruitment by states is 16 years or above (Article 3.1). However, on the basis of best practice by states there is a clear trend towards a "straight-18" ban on all forms of military recruitment of children (compulsory and voluntary) which, if implemented, is the most effective safeguard against the military use of children. This position is supported by the Committee on the Rights of the Child, the ICRC and other experts on child rights and child protection.

Banning children from the ranks of armed forces avoids the risk that under-18s may be inadvertently deployed. It also protects them from attack by opposing forces since under international humanitarian law all members of armed forces are regarded as combatants and therefore as legitimate targets of attack during armed conflict irrespective of their age or role. This includes not only under-18s who are on active duty, but also those in training or where as pupils in military schools they are accorded the status of members of the armed forces.

### **The age of compulsory recruitment should be established at 18 years or above in law**

- In accordance with international standards, the age of compulsory recruitment should be set at 18 years or above. There must be no circumstances in which this can be

lowered to allow for the mobilisation of under-18s in any forces in times of war or during other emergencies.

- The earliest date at which an individual can be conscripted should be their eighteenth birthday and not the year in which they turn 18.

### **The age of voluntary recruitment should be established in law, ideally at 18 years or above**

- The minimum age at which voluntary recruitment is permitted by state armed forces should be established in law. In no circumstances must it be lower than 16 years. However, in line with the practice of the majority of states and in order to achieve the highest standard of protection against possible use in armed conflict, the minimum age should ideally be set at 18 years or above.
- On becoming party to the Optional Protocol, states must deposit (in accordance with Article 3.2) a declaration of the minimum voluntary recruitment age. This declaration, which is legally binding, must include detailed information on safeguards adopted to ensure that recruitment is voluntary and effective age verification mechanisms are in place.

### **Exceptions to the minimum voluntary recruitment age should be abolished**

- Exceptions to the minimum voluntary recruitment age which permit boys or girls

to join armed forces at a younger age, for example for “training only” or on the basis of parental consent, should be abolished.

### **Children who are students in military schools should have civilian status**

- Students in military schools who are under the age of 18 years should be regarded as civilians and their rights as children respected. The civilian status of students in military schools should be established in law.
- Students in military schools who are under the age of 18 years should not receive weapons training and in no circumstances should they be used in hostilities in any role.

### **States that lawfully permit the voluntary recruitment of under-18s (16 or 17 year olds) should review these policies**

- States in which the minimum age for voluntary recruitment is below 18 years should carry out periodic reviews of their policies with a view to raising the minimum recruitment age to 18 years or above. Such reviews should be carried out in an informed manner, with the participation of all relevant stakeholders, including child rights and protection experts.
- States which raise the minimum age for voluntary recruitment after they become parties to the Optional Protocol should strengthen their binding declaration (in accordance with Article 3.4) by notifying the UN Secretary-General of this change.

### 3. DOES EVERY CHILD HAVE INDEPENDENTLY VERIFIABLE PROOF OF AGE?

Effective implementation of legislation on the minimum age for recruitment – compulsory or voluntary – is predicated on the state being able to establish the age of all potential recruits. The Optional Protocol requires states to ensure that applicants for voluntary recruitment have reliable proof of age prior to acceptance for military service (Article 3.3(d)). Where conscription is still practised, reliable proof of age is also necessary.

Birth registration, which is a right of every child under the Convention on the Rights of the Child (Article 7.1), is the most reliable means of proving an individual's age. In states which have not yet achieved universal birth registration, alternatives are necessary for recruitment purposes but should be considered as a temporary measure only. Where children do not have birth registration documents and there are no reliable alternative means to prove age there is a potential risk of underage recruitment and thereby use in hostilities.

#### **States should achieve universal birth registration**

- In accordance with Article 7.1 of the Convention on the Rights of the Child, every child must receive his or her own identity document at birth. To achieve this, states should ensure that birth registration is free and compulsory; appropriate administrative mechanisms are established including at local levels to register the birth of all children; and the population is made aware that births must be registered through awareness raising and other publicity campaigns.
- States that have not yet achieved universal birth registration should make it a priority and seek the support of the UN and donors in accelerating progress towards it.

#### **Temporary alternative means of establishing the age of an individual should be used where birth registration is not yet universal**

- Where states have not yet achieved universal birth registration, alternative measures to establish an individual's age should be put in place. Such measures should be regarded as temporary pending the achievement of universal birth registration. For the purposes of military recruitment, alternatives should depend on more than one form of documentation or approach, all of which should provide, or cumulatively provide, objective proof of age. These can include, *inter alia*, identity cards, school diplomas or other school records and methodologies involving cross-checking with families, local officials and others in a position to know the age of a candidate for recruitment.
- Methodologies involving medical or physical assessment (for example bone or dental age or anthropometric measurements such as height, weight, skin and puberty rating) raise ethical concerns and are not sufficiently reliable to be used for military recruitment purposes.

## 4. ARE THERE EFFECTIVE PROCESSES TO VERIFY THE AGE OF NEW RECRUITS?

Responsibility for establishing the age of new recruits lies with the recruiting party. Systems to verify the age of new recruits must be in place and be sufficiently robust to prevent anyone who does not meet age or other recruitment criteria from being conscripted or enlisted.

The way in which recruitment processes are conducted can significantly decrease the risk of unlawful recruitment and thereby use. Unregulated, informal or localised recruitment processes create a high risk of underage recruitment. Irregular recruitment practices that result in underage recruitment also create a very real danger of use. Where a person's age is not or cannot be verified at the point of enlistment or conscription or the recruitment is via unofficial channels, the fact that the individual could be a child, with all the protections this entails, is either not known or not recognised. Indeed, for military purposes those in this situation are treated as adults and exposed to the same conditions and risks as their adult comrades. In situations of armed conflict, this means that there are no barriers to their deployment.

### **Recruitment processes should be formal and standardised, include age verification procedures and avoid targeting under-18s**

- Recruitment methods should be designed and implemented to make compliance with the law practicable. There should be standard procedures for recruitment which include effective age verification procedures which should be applied without exception. In situations where proof of age may be difficult to establish, time should be built into the recruitment process in order to permit checks to be carried out.
- Recruitment campaigns that target children under the age of 18 years, for example via internet sites designed for children, in schools or other facilities used by children, should be prohibited.
- Informal association of children with the armed forces (in which children who have not been formally recruited and are therefore not officially members of armed forces nevertheless perform military and other functions for them) must be prohibited and measures introduced to prevent such practices.

### **Those responsible for recruitment should know what the minimum age is and be personally responsible for applying it**

- All those involved in recruitment processes should be fully aware of their obligations under international and domestic law, including in relation to the minimum age at which compulsory and voluntary recruitment is permitted. Age criteria and age verification procedures for recruitment should be included in basic training for military recruiters and be reflected in military instructions and guidelines. These instructions should specify the disciplinary sanctions applicable to those who fail to uphold them. Recruiters should be made

aware that underage recruitment may also incur criminal sanctions.

- Military recruiters should know what documentation constitutes proof of age and should be personally responsible for verifying the reliability of the identification documents. A copy of proof of age documentation should be placed on the file of every candidate for recruitment.

### **When the age of potential recruits is in doubt, they must not be recruited**

- If it cannot be established that an individual has reached the minimum age at which, by law, he or she can be conscripted or enlisted, the benefit of the doubt should be given and they must not be recruited. Recruiters should be instructed that this is the case.

### **Recruiters should not be under pressure to break the rules**

- Incentives for achieving recruitment quotas, such as monetary compensation and promotions, or punishments for failing to achieve them, such as demotions and discharge, increase the risk of underage recruitment and should be avoided.

### **Potential recruits and those liable to conscription should be aware of minimum ages and know their rights and duties in relation to military service**

- Public awareness campaigns should be conducted to ensure that all sections of the population are adequately informed

about recruitment criteria, including in relation to minimum ages for conscription and voluntary recruitment, and about legal protections granted to children during armed conflict by international humanitarian and human rights law. Information on minimum recruitment ages, provisions of the Optional Protocol and other relevant standards should be made widely known to children and their parents and other relevant members of society.

- Potential recruits must be informed of the duties involved in military service in accordance with Article 3.3(c) of the Optional Protocol.

## 5. ARE MILITARY RECRUITMENT PROCESSES SUBJECT TO INDEPENDENT MONITORING AND OVERSIGHT?

To ensure the effective implementation of national laws and international standards (including the Optional Protocol) on recruitment of children, independent inspection regimes should be established to verify that procedures have been followed, recruitment criteria met and, specifically, that no child is recruited or used in violation of applicable national or international law.

Where allegations of unlawful recruitment or use are made, mechanisms that are independent of any internal military processes should investigate the allegations. Where relevant they should identify underage recruits and initiate processes to bring about their release and reintegration. Additionally they should be mandated to investigate causes of unlawful recruitment and be able to recommend remedial actions and, where necessary, initiate administrative measures and criminal proceedings against individuals suspected of involvement in such practices.

### **Military recruitment should be monitored by a statutory body independent of the military with adequate powers and resources**

- An independent body such as a national human rights institution that is separate from the military should monitor recruitment practices for compliance with national laws relating to minimum ages for recruitment and use and with the Optional Protocol and other relevant international standards. It should have an explicit mandate to monitor issues

relating to children and armed conflict and dedicated resources (financial and human) to carry out its work independently and in a systematic manner. It should have expertise in child rights and staff should be trained in dealing with complaints in a child-sensitive manner. It should have a nationwide presence and be easily accessible to children and their parents.

- The independent monitoring body should be given unhindered access to all military facilities on an ongoing basis, including training sites, to identify underage recruits and initiate their immediate release and reintegration.
- The independent monitoring body should be responsible for monitoring the content of recruitment campaigns in order to ensure that they do not target children or are not otherwise designed to put children at risk of unlawful recruitment.

### **Independent monitoring bodies should coordinate closely with child protection experts**

- Statutory bodies responsible for monitoring child soldier recruitment and use should coordinate closely with national and international child protection experts including to ensure that any underage recruits receive appropriate support for their release, recovery and reintegration.

## 6. IS UNLAWFUL CHILD RECRUITMENT AND USE CRIMINALISED IN NATIONAL LAW?

The Optional Protocol imposes an obligation on states that are party to it to explicitly criminalise recruitment of children and their use in hostilities. Article 6.1 requires states parties to “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”. Article 4.2 requires states to adopt legal measures “necessary to prohibit and criminalize” the recruitment and use in hostilities of children under the age of 18 years by armed groups (distinct from the armed forces).

Independently of the Optional Protocol, states also have obligations under the Rome Statute of the International Criminal Court (ICC) and customary international humanitarian law to criminalise the war crime of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities. A growing number of states have adopted standards higher than that of the Rome Statute by setting at 18 years the relevant age for the crime of recruitment and use of children by both non-state armed groups and state armed forces.

### **Underage recruitment and use of children must be criminalised in national law**

- States must criminalise the recruitment of persons under the age of 18 by non-state armed groups. With regard to state armed forces criminalisation should apply to

compulsory recruitment of under-18s and to voluntary recruitment at an age which is consistent with the minimum age set by the state, which must be no lower than 16 years.

- The use in hostilities of children under the age of 18 in both state armed forces and non-state armed groups must be criminalised. With a view to providing the strongest possible protection for children from participation in armed conflict, states should criminalise both their direct and indirect participation.
- The crime of unlawful recruitment of children should apply at all times, in both wartime and in peace.

### **Criminalisation of unlawful recruitment and use should apply extra-territorially**

- Laws to criminalise underage recruitment and use of children should enable national judicial authorities to undertake criminal investigations and prosecutions of individuals suspected of unlawfully recruiting and using children in hostilities regardless of where the crime was committed or the nationality of the accused or the victim.



## 7. DOES THE CRIMINAL JUSTICE SYSTEM HAVE THE CAPACITY TO EFFECTIVELY INVESTIGATE AND PROSECUTE ALLEGATIONS OF UNLAWFUL RECRUITMENT AND USE?

Legislation to criminalise the recruitment and use of children is a prerequisite for ending impunity but achieves little unless it is applied. Without effective investigations and prosecutions, the crimes remain unpunished and any deterrent effect of the legislation is lost or significantly weakened. The existence of an independent and impartial judiciary and broader criminal justice system is therefore an essential element for prevention of children's involvement in armed conflict. Where this does not exist, prevention strategies must include measures aimed at supporting and strengthening these institutions.

Trials of military personnel are often conducted by military courts for military code offences. However, noting the risk of impunity, independent human rights experts have consistently recommended that trials of military personnel for ordinary crimes and human rights violations (which would include the unlawful recruitment or use of children in hostilities) are carried out by ordinary, civilian courts.

### **All allegations of underage recruitment must be independently investigated and suspects prosecuted**

- Prompt, effective and impartial investigations into all credible allegations of unlawful recruitment or use of children must be undertaken by a body independent of the alleged perpetrator.
- Individuals reasonably suspected of the unlawful recruitment or use of children must be prosecuted and brought to trial in an independent, impartial civilian court in proceedings that meet international fair trial standards.
- Military personnel reasonably suspected of unlawful recruitment or use of children should be immediately suspended from active duty pending completion of an investigation and appropriate disciplinary action taken against them.
- States should make public information on the number of investigations and prosecutions or cases of disciplinary action taken against individuals and the outcome of these processes.

### **States must cooperate with the International Criminal Court to investigate and prosecute unlawful recruitment and use of child soldiers**

- States that have not already done so should accede to the Rome Statute of the ICC and ensure that the war crime of conscripting or enlisting children or using them to participate actively in hostilities is incorporated into national legislation. In doing so states should ideally set at 18 years the age below which the war crime applies.
- States must extend their full cooperation to the ICC in its investigation and prosecution of such crimes, including identifying and locating witnesses, arresting and surrendering accused persons in their territories, and cooperating in the implementation of reparations to the victims.

## II Child soldier use by state-allied armed groups

### 8. ARE LEGAL AND PRACTICAL SAFEGUARDS IN PLACE TO PREVENT RECRUITMENT AND USE OF CHILDREN BY ANY ARMED GROUPS ALLIED TO THE STATE?

Some states have unofficial links with non-state armed groups such as irregular paramilitaries, “self-defence” militias and armed opposition groups operating in other countries. State relationships with such groups vary and can range from political and military support (such as providing weapons, training, logistical support and financing) to participation in joint military operations. In some cases state authorities have been found to be directly or indirectly involved in the recruitment and use of children by state-allied armed groups.

The responsibility of states with regard to such groups is established under Article 4 of the Optional Protocol. This requires states that are party to the Protocol to “take all feasible measures to prevent” recruitment and use of any person under the age of 18 years by armed groups “distinct from the armed forces” of the state. What kind of measures would be considered “feasible” depends on the type of relationship between the state and these armed groups. The greater the level of state control or influence over the group the wider the range of measures that are feasible. The following sets out the minimum measures that must be taken.

#### **Standards in relation to child recruitment in state armed forces should apply to armed groups which are allied to the state**

- The recruitment ages and procedures of armed groups established, controlled, condoned, armed or permitted to bear

arms by the state, should be brought into line with those for regular government forces.

- The minimum age for recruitment by armed groups that are not officially recognised as being a part of the state’s armed forces must be 18 years in accordance with Article 4.1 of the Optional Protocol.
- The recruitment and use in hostilities of persons under the age of 18 years by non-state armed groups (including those allied to, but not officially part of, state security forces) must be criminalised in law.
- Reports of recruitment and use of children by state-allied armed groups must be promptly and effectively investigated and perpetrators brought to justice.

#### **Civilian and military officials must be prohibited from providing military, financial and other support to armed groups which recruit and use children**

- Administrative and military orders should be issued to explicitly prohibit civilian and military officials from providing support to irregular paramilitaries, “self-defence” militias and other armed groups which recruit and use children. These orders should include information on the range of disciplinary and criminal sanctions applicable to those who fail to uphold them.

### **The involvement of state officials in supporting armed groups that unlawfully recruit and use children must be investigated**

- There must be effective investigation of reports of civilian and military officials' involvement in support of irregular paramilitaries, self-defence militias and other armed groups which recruit and use children. Those officials should be suspended from active duty pending the results of the investigation.
- Where state officials are reasonably suspected of complicity in the unlawful recruitment of children by irregular paramilitaries, "self-defence" militias and other state-allied armed groups, they must be prosecuted and brought to trial in an independent, impartial civilian court in proceedings that meet international fair trial standards.

### III Arms transfers and security sector reform assistance

#### 9. ARE MEASURES IN PLACE TO ENSURE THAT INTERNATIONAL ARMS TRANSFERS AND OTHER FORMS OF MILITARY ASSISTANCE DO NOT CONTRIBUTE TO OR FACILITATE THE UNLAWFUL RECRUITMENT AND USE OF CHILDREN AS SOLDIERS IN RECIPIENT STATES?

The Optional Protocol establishes global as well as domestic responsibilities on states that are party to it to prevent the involvement of children in armed conflict. Specifically, Article 7 requires states to cooperate in implementing provisions, including in the prevention of any activity contrary to it. Providing arms or other forms of military assistance to a state whose armed forces or armed groups allied to it are known to unlawfully recruit or use children risks contributing directly or indirectly to this practice and is therefore contrary to this obligation on states to prevent the use of children in hostilities.

This obligation is also contained in other public international law under which a state is considered responsible where it aids or assists another state in the commission of a wrongful act, as well as in various treaties and guidelines relating to the sale and transfer of arms and other military assistance. The Committee on the Rights of the Child has consistently held that states should prohibit the sale of arms when the final destination is a country where children are at risk of unlawful recruitment or use in hostilities.

#### **Legal prohibitions on transfers of arms and other forms of military assistance should be adopted**

- Specific prohibitions should be established in law to prevent the sale or transfer of

arms and other forms of military assistance to states when the final destination is a country in which children are known to be, or may potentially be, unlawfully recruited or used in hostilities by state armed forces.

- Prohibitions on the sale or transfer of arms and other forms of military assistance should also apply to states that provide direct or indirect support to armed groups that recruit and use child soldiers.
- States should make public the number of sales or transfers that have been halted as a result of prohibitions relating to child soldier recruitment and use by recipient states.
- Where there is evidence that children have been unlawfully recruited or used in the past checks should be carried out to establish whether measures have been taken to prevent the continuation or recurrence of this practice before agreeing to arms transfers or providing other forms of military assistance.

## 10. ARE SAFEGUARDS SET OUT IN THIS CHECKLIST REFLECTED IN NATIONAL SECURITY SECTOR REFORM (SSR) PROGRAMS AND IN SSR ASSISTANCE PROGRAMS?

In some states, implementing the legal and practical measures contained in this checklist will require reform of military and other security sector frameworks and institutions. Where this is the case child soldier prevention should be integrated into the design and implementation of SSR processes.

Under the Optional Protocol there is an obligation on states both to seek assistance to implement the provisions of the Protocol where needed and to provide it where possible. The provision under Article 7 requiring states to cooperate in implementation, including in the prevention of any activity contrary to the treaty, has been interpreted by the Committee on the Rights of the Child as an obligation on those states that lack the capacity to fully implement the provisions of the Protocol to actively seek assistance to do so.

Conversely, Article 7 also confers an obligation on states parties that have the capacity to provide such assistance, bilaterally or through international institutions such as the UN. SSR assistance programs represent one important way through which states can fulfil this obligation by supporting recipient states to strengthen mechanisms to prevent child recruitment by state armed forces and allied armed groups.

### **States should seek assistance to implement measures to prevent underage recruitment**

- States whose armed forces or state-allied armed groups have recruited children or used them in hostilities should seek the assistance of the UN and of other states to introduce the preventative measures described in this checklist as part of the reform of their security sector.

### **State providers of security sector reform assistance should ensure that child soldier prevention features in the design and implementation of such programs**

- States providing assistance to security sector reform (bilaterally, through the UN or via other multilateral programs) should ensure that this assistance contributes to strengthening mechanisms to prevent child recruitment and use by state armed forces of the recipient state. To this end, child soldier prevention should feature as an explicit objective of security sector assistance programs which should be designed to take account of the issues covered in this checklist.

The report “Louder than words: An agenda for action to end state use of child soldiers” is published to mark the tenth anniversary year of the entry into force of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. It examines the record of states in protecting children from use in hostilities by their own forces and by state-allied armed groups. It finds that, while governments’ commitment to ending child soldier use is high, the gap between commitment and practice remains wide. Research for the report shows that child soldiers have been used in armed conflicts by 20 states since 2010, and that children are at risk of military use in many more.

The report argues that ending child soldier use by states is within reach but that achieving it requires improved analysis of “risk factors”, and greater investment in reducing these risks, before the military use of girls and boys becomes a fact. Real prevention means tackling risk where it begins – with the recruitment of under-18s. A global ban on the military recruitment of any person below the age of 18 years – long overdue – must be at the heart of prevention strategies, but to be meaningful it must be backed by enforcement measures that are applied to national armies and armed groups supported by states.

The report contains detailed analysis of the laws, policies and practices of over 100 “conflict” and “non-conflict” states providing examples of good practice and showing where flaws in protection put children at risk. It also shows how states can do more to end child soldier use globally via policies and practices on arms transfers and military assistance, and in the design of security sector reform programs. On the basis of this analysis a “10-Point Checklist” is included to assist states and other stakeholders in assessing risk and identifying the legal and practical measures needed to end child soldier use by government forces and state-allied armed groups.

Child Soldiers International is a human rights research and advocacy organisation. It works to end all forms of military recruitment or the use in hostilities, in any capacity, of any person below the age of 18 by state armed forces or non-state armed groups, as well as other human rights abuses resulting from their recruitment or use. It advocates the release of unlawfully recruited children, promotes their successful reintegration into civilian life, and calls for accountability for those who recruit and use them.

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