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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Annual report of the Special Representative of the Secretary-General
for Children and Armed Conflict, Radhika Coomaraswamy***

* Late submission.

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I. INTRODUCTION

1. The present report is submitted pursuant to General Assembly resolution 51/77 and other subsequent resolutions of the Assembly on the rights of the child, including its most recent, resolution 63/241, in which the Assembly requested the Special Representative of the Secretary-General for Children and Armed Conflict to continue to submit a report to the Human Rights Council on the activities undertaken in discharging her mandate, including information on her field visits, and on the progress achieved and the challenges remaining on the children and armed conflict agenda. This report should be read in the context of the report of the Special Representative to the General Assembly (A/63/227), in which she provided a comprehensive account of activities undertaken by the Office of the Special Representative in 2007/2008; as well as the eighth report of the Secretary-General on children and armed conflict (A/63/785-S/2009/158). These reports, and the series of recommendations provided therein, should form the primary basis for discussion by the Human Rights Council of the work of the Special Representative in the period under review.

2. Grave child rights violations in situations of armed conflict represent a profound challenge to the international legal order. The normative infrastructure for the protection of children is both robust and comprehensive and enjoys an unprecedented consensus among Member States. Since the entry into force in 2002 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, it has been ratified by 128 Member States and ratifications continue. However, running counter to this is the shocking reality that in far too many situations of armed conflict children are routinely brutalized and their most fundamental rights contravened. It is critical, therefore, for the international community to remain steadfast, resolute and focused on ensuring accountability and fighting impunity for grave violations.

3. Even as accountability and fighting against impunity must remain a centrepiece of the collective action of the international community, there are some emerging challenges for the protection of children that must be understood in the context of changing characteristics of armed conflict and their consequences for children. It is a context in which the most vulnerable segments of the population - women, children and the elderly - have become the primary targets of armed actors and where children have sometimes also been turned into weapons of war. Some of these keystone priorities for the Office of the Special Representative are outlined in section IV of this report.

II. WORKING WITH THE UNITED NATIONS HUMAN RIGHTS SYSTEM

4. Over the last year, the Office of the Special Representative has strengthened its strategic partnership with the Office of the United Nations High Commissioner for Human Rights (OHCHR). A focal point for children and armed conflict within the Human Rights Council and Treaties Division in Geneva was identified in November 2008 to facilitate interaction and act as a coordinator between the Office of the Special Representative and the different sections of OHCHR, including its Inter-Branch Task Force on child rights issues.

5. The Office of the Special Representative also appreciates the continued efforts by OHCHR to encourage the mainstreaming of child rights issues related to armed conflict into its field

presences, as well as into the work of human rights mechanisms, including the universal periodic review (UPR) of the Human Rights Council, and treaty bodies such as the Committee on the Rights of the Child, as well as special procedures.

6. The Office of the Special Representative is further encouraged by the practice of a number of special rapporteurs of including a section on children and armed conflict in their reports, and by their proactive advocacy for the protection of children's rights in situations of conflict.

7. In 2008/2009, the Office of the Special Representative provided contributions for consideration by the Committee on the Rights of the Child in reviewing State party reports on the implementation of the Optional Protocol on the involvement of children in armed conflict in Chad, the Philippines and Uganda. The Office has submitted inputs for the UPR reports on Afghanistan, Burundi, the Central African Republic, Chad and the Democratic Republic of the Congo; and has also collaborated with other special procedures mandate holders to prepare joint submissions on the human rights situation in the east of the Democratic Republic of the Congo pursuant to Human Rights Council resolutions 7/20 and S-8/1 and in the occupied Palestinian territory in accordance with Council resolution S-9/1 on grave violations of human rights in the occupied Palestinian territory particularly due to the recent Israeli military attacks against the occupied Gaza Strip.

8. The Office will continue to share information on the status of the protection of children affected by armed conflict in specific country situations of common concern ahead of country reviews by the human rights mechanisms, including key recommendations by the Secretary-General and the Security Council Working Group on Children and Armed Conflict in the context of Security Council resolution 1612 (2005). In the same vein, the concluding observations and recommendations of the Committee on the Rights of the Child and the Working Group on the Universal Periodic Review respectively, as they pertain to the issue of children and armed conflict, will constitute a basis for continued advocacy by the Office.

III. ENDING IMPUNITY FOR GRAVE VIOLATIONS AGAINST CHILDREN IN ARMED CONFLICT

9. The need to address impunity and bring to justice those responsible for violations of the rights of children in situations of armed conflict, in contravention of applicable international law, continues to be a focus of priority attention and action by the Office of the Special Representative. Towards this end, the Office of the Special Representative regards the Human Rights Council as an important component of, and a critical partner in, efforts to ensure the application, enforcement and compliance of parties to conflict with international norms and standards to protect children's rights, as well as to ensure full accountability for commissions of grave violations against children.

10. In recent years, there have been several unprecedented initiatives to address impunity for crimes against children by international justice mechanisms, mixed criminal courts and tribunals and, increasingly, through national justice systems. The trial of former militia leader Thomas Lubanga Dyilo in the Ituri region of the Democratic Republic of the Congo, before the International Criminal Court, solely for the recruitment and use of children, continues. The Office of the Special Representative submitted an amicus curiae brief during the course of the proceedings, in which the Special Representative urged the Court to adopt a case-by-case

method in interpreting the provisions of the Court that define enlistment, conscription, participation and use of children, so as to protect all children associated with armed groups in line with the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (the Paris Principles) and the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups (the Paris Commitments). The Special Representative will appear before the Court later this year as an expert witness to provide testimony on the issues in her amicus brief.

11. Action at the international level must, however, be underpinned by a commitment to address impunity at the national level, including undertaking appropriate reforms of national legislation for the protection of children in order to bring laws into line with international obligations; addressing prevailing cultures of impunity for grave violations against children through rigorous investigation and prosecution of those responsible; addressing juvenile justice issues that guarantee adequate legal, social and psychological protection for children; as well as strengthening child protection capacity and training for military, police, law enforcement and judiciary officials within national security sector reform efforts.

12. Further, ensuring that national implementation of relevant international laws applicable to child rights is consistent with international standards, such as the Rome Statute, is important in enabling national authorities to cooperate with the International Criminal Court, where appropriate. For example, collaboration between the Government of the Democratic Republic of the Congo and the International Criminal Court has resulted in the arrest and transfer to the Court of Germain Katanga, a commander of the Forces de résistance patriotique d'Ituri and Mathieu Ngudjolo Chui, the former head of the Front des nationalistes et intégrationnistes and colonel in the Forces armées de la République démocratique du Congo (FARDC). Both individuals are charged with the commission of war crimes and crimes against humanity, including the use of children in hostilities. Their trials will begin in September 2009.

13. National legislation relating to genocide, crimes against humanity and war crimes should also ensure that these crimes are punishable under national law and have the same scope as the definition contained in the Rome Statute. Again, in the Democratic Republic of the Congo, Congolese judges applied the definition of crimes against humanity as defined in the Rome Statute in the trial of Mai-Mai warlord Gédéon Kyungu Mutanga. This was the largest trial involving crimes against humanity in the country, and his conviction by the military justice system on March 2009 set an important precedent for those who suffered human rights abuses.

14. Several important legislative reforms undertaken recently at national level to address impunity for grave violations against children include: (a) the Sudan Armed Forces Act adopted by the National Assembly in December 2007, which establishes 18 years as the minimum age for recruitment and lays down criminal penalties for individuals who recruit children below 18 years old. The Act also outlines penalties for a range of violations of international law, including killing, sexual slavery, abduction and enslavement, rape, torture and attacks on schools and hospitals; (b) a revised Penal Code adopted by the National Assembly in Burundi which, inter alia, prohibits the enlistment of children in the armed forces, stipulates 18 years as the minimum age for conscription, raises the age of criminal responsibility to 15 years, provides alternatives to imprisonment and strengthens sentences against perpetrators of violations against children, particularly sexual violence; and (c) a law on child protection promulgated on 10 January 2009 in the Democratic Republic of the Congo, which prohibits the recruitment and

use of children by armed forces, armed groups and the police, sets the legal majority age at 18 years, and calls for the creation of special tribunals and police special units for the protection of children.

15. Another significant development in the fight against impunity for the recruitment and use of child soldiers is the adoption of the Child Soldiers Accountability Act of 2008 in the United States of America. This law makes it a federal crime to knowingly recruit or use those under the age of 15 as soldiers, and permits the United States to bring charges under the law against both United States citizens and non-citizens who are in the United States. It also allows the United States to deport or deny entry to individuals who have knowingly recruited children as soldiers. In addition, the coming into force of the Child Soldier Prevention Act on 23 June 2009 restricts the provision of United States military training, financing and other defence-related assistance to countries identified as recruiting or using child soldiers in government armed forces or government-supported paramilitaries or militias, in violation of international law.

16. Despite these positive steps to investigate and prosecute violators, some former commanders of armed groups who were well known for their recruitment and use of child soldiers are now in Government or senior military positions. In the Democratic Republic of the Congo, Jean-Pierre Biyoyo was recently promoted to the rank of major in FARDC despite being convicted by a military court in March 2006 for the recruitment and use of children while a leader of the Mudundu 40 militia, and Bosco Ntaganda was made a general in FARDC in January 2009 despite being the subject of an arrest warrant issued by the International Criminal Court for the war crime of enlisting child soldiers and using them in hostilities. In Sri Lanka, Vinayagamoorthy Muralitharan (also known as Colonel Karuna) became Minister of National Integration and Reconciliation. Prior to April 2004, he was the commander of the eastern division of the Liberation Tigers of Tamil Eelam (LTTE) and was responsible for recruiting children into LTTE ranks. After breaking away from LTTE, he formed the Tamil Makkal Viduthalai Puligal (TMVP), which continued to recruit children. Recently, TMVP entered into an action plan with the United Nations Children's Fund (UNICEF) to release children in their ranks.

A. Action plans to halt the recruitment and use of children in armed conflict

17. The application of international norms, combined with the political process in the context of Security Council resolutions on children and armed conflict, has yielded several concrete actions and commitments by parties to conflict. In particular, in accordance with resolutions 1539 (2004) and 1612 (2005), parties to conflict, in collaboration with the United Nations, have developed and implemented time-bound action plans which, among other commitments, oblige parties to immediately release all children within their ranks; put in place measures to prevent further recruitment such as training for military personnel and strengthening of birth registration systems; discipline those responsible for recruiting children; and provide access to recruitment and training centres for independent monitoring by the United Nations.

18. Since her previous report to the Human Rights Council (A/HRC/9/3), formal action plans to halt the recruitment and use of children were signed with TMVP on 1 December 2008, and the Government of Uganda on 16 January 2009. Important commitments to begin negotiations on an action plan were received from the Justice and Equality Movement in the Sudan and the

Moro Islamic Liberation Front in the Philippines. In addition, commitments by the Government of Nepal to release children from Maoist cantonments as a matter of priority, as well as commitments by the Forces nationales de libération (FNL) in Burundi to immediately and unconditionally separate and release all children were also received. In fact, between April and May 2009, a total of 340 children were separated from FNL and have been reunited with their families and communities, marking the end of the demobilization phase of all children formerly associated with FNL. And in July 2009, the Government and the Unified Party of Nepal-Maoist declared that they will discharge the 2,973 children remaining in the cantonments to the United Nations for rehabilitation and reintegration.

19. Also in 2009, the Uganda People's Defence Forces and local defence units were removed from the annexes of the Secretary-General's report (A/63/785-S/2009/158) as a result of the full commitment by the Government of Uganda and concerted efforts toward implementing the provisions of its action plan.

20. The Special Representative, however, remains very concerned that grave violations continue to be committed against children by parties to conflict, in blatant violation of international law, and would like to bring to the attention of the Human Rights Council parties who were included in the annexes to the latest report of the Secretary-General on children and armed conflict (*ibid.*, annexes I and II) for the recruitment and use of children and the commission of other grave violations against children. More must be done to systematize and activate the full range of options available to the international community to ensure more robust action against recalcitrant violators. There are, for example, 18 such persistent violators¹ who have been explicitly named and listed by the Secretary-General for four years or more, and the lack of action against them undermines accountability initiatives. A successful deterrent to the recruitment and use of child soldiers and other grave violations against children will only be established when individuals are held accountable through the rule of law.

B. Field visits by the Special Representative

21. Apart from the sustained engagement and pressure placed on parties to conflict by the Security Council Working Group on Children and Armed Conflict, United Nations human rights mechanisms and other relevant bodies of the United Nations and its partners, field visits by the Special Representative have brought high-level visibility to the situation and rights of children

¹ Palipehutu-Forces nationales pour la libération (FNL) - Agathon Rwasa, Forces armées de la République démocratique du Congo (FARDC), Forces démocratiques de libération du Rwanda (FDLR); Front nationaliste et intégrationniste (FNI), Mai-Mai groups in North and South Kivu, including Coalition des patriotes résistants congolais (PARECO), Karen National Liberation Army (KNLA), Karenni Army (KA), Tatmadaw Kyi, Unified Communist Party of Nepal-Maoist (UCPN-M), Transitional Federal Government (TFG), Sudan People's Liberation Army (SPLA), government-supported militias in Darfur, Ejército de Liberación Nacional (ELN), Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP), Abu Sayyaf Group (ASG), Moro Islamic Liberation Front (MILF), New People's Army (NPA), Lord's Resistance Army (LRA). With the military defeat of the Liberation Tigers of Tamil Eelam (LTTE), its listing in the annexes is no longer applicable.

affected by armed conflict, as well as garnered several key commitments by relevant stakeholders, including the Government, non-State actors and the United Nations and partners, for the protection of children as reflected in international humanitarian and human rights instruments. These visits also serve to highlight national efforts to advance child rights concerns in armed conflict.

22. As an independent moral voice and high-level advocate, the Special Representative has engaged in child protection dialogue with all parties to conflict, including non-State actors, without prejudice to their political or legal status and with the consent of the Member States concerned. For example, during her mission to the Central African Republic in May 2008, the Special Representative engaged in discussions with the Armée populaire pour la restauration de la République et de la démocratie (APRD), securing their commitment to release all children associated with their forces. On 7 July 2009, APRD followed through and released all 182 children, who were between the ages of 10 and 17, to UNICEF. Almost all these children have been reunited with their families. The dialogue with such actors, with the approval of and facilitation by the Governments concerned, is essential if not critical on humanitarian grounds, to ensuring the release of children.

23. In 2008 and the first half of 2009, the Special Representative carried out nine field missions, including to Iraq (April 2008), Chad and the Central African Republic (May 2008), Afghanistan (June 2008), Nepal and the Philippines (December 2008), the occupied Palestinian territory and Israel (February 2009) and the Democratic Republic of the Congo (April 2009). Some of the more important commitments received from Governments and other parties to conflict during these missions are included below. The critical challenge is to ensure timely follow-up and adherence to commitments made and their practical implementation, in order to bring about concrete results for the protection of children on the ground. It is therefore important for the Human Rights Council and the broader international and human rights community to join in monitoring these undertakings to ensure that parties to conflict honour their commitments.

Iraq

24. The Government of Iraq and the multinational forces in Iraq committed to abide by international humanitarian law and international juvenile justice standards with regard to children in detention.

Chad and the Central African Republic

25. The Government of Chad committed to allow verification by United Nations teams of detention centres, training camps and military facilities; release as a matter of priority children associated with armed groups held in detention; and establish an inter-ministerial task force to coordinate and ensure effective reintegration of children.

26. The leader of APRD, Laurent Djim Wei, committed to prepare a list and release all children in his armed group as soon as proper arrangements are made for their protection and reintegration into communities.

Afghanistan

27. The Government of Afghanistan and the international military forces agreed to abide by standards of international humanitarian law and juvenile justice standards with regard to children in detention.

28. The Government of Afghanistan also committed to take appropriate measures to put an end to and prevent the perpetration of sexual violence against children, in particular the practice of *bacha baazi* (“boy play”).

29. The International Security Assistance Forces reaffirmed their commitment to abide by international humanitarian law during their operations and take all necessary measures to limit civilian casualties.

Nepal

30. The Prime Minister of Nepal committed to the release of 2,973 children from the Maoist army cantonments by the end of February 2009.

Philippines

31. The leadership of the Moro Islamic Liberation Front committed to enter into an action plan with the United Nations to halt the recruitment and use of children and to ensure their separation and return into civilian life.

Democratic Republic of the Congo

32. The Government and the FARDC Military Command committed to entering into dialogue with the United Nations for the preparation of a time-bound action plan to prevent child recruitment and to identify and release children already present in integrated FARDC brigades, as well as to issuing a directive to all FARDC commanders to respect international humanitarian law and reaffirming that they would be held accountable for grave violations committed against children and other civilians.

33. The Government of the Democratic Republic of the Congo also committed to setting up specialized units of the National Police to deal with crimes of sexual violence against women and children.

IV. EMERGING CONCERNS**Rape and other grave sexual violence against children in armed conflict**

34. Widespread and systematic rape and sexual violence against children, both girls and boys, is increasingly a characteristic of conflict, often perpetrated in a rule of law vacuum that is a consequence of conflict, and exacerbated by an ensuing culture of impunity. In some instances, sexual violence has been used as a premeditated tactic of war designed to humiliate or exterminate a population or to force displacement. For children, the physical and mental consequences are devastating, with far-reaching negative effects on sustainable peace and

security. The high incidence of rape and sexual violence against children in Burundi, Chad, the Central African Republic, Côte d'Ivoire, the Democratic Republic of the Congo, Haiti, Somalia and the Sudan are of particular concern.

35. There is universal consensus that rape and sexual violence against children in armed conflict is a grave breach of international humanitarian law and a most serious human rights violation. Furthermore, international criminal law explicitly outlaws rape and sexual abuse during wartime, and the Rome Statute of the International Criminal Court states that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or "other forms of sexual violence of comparable gravity" may constitute war crimes and crimes against humanity. Jean Pierre Bemba Gombo, a former commander-in-chief of the Mouvement de libération du Congo, is currently standing trial at the International Criminal Court for war crimes and crimes against humanity charges resulting from alleged instances of rape and other abuses by troops under his command.

36. International law also provides that children affected by armed conflict are entitled to special respect, protection and care, including against all forms of sexual violence and exploitation. It is therefore critical that efforts be strengthened towards ending impunity and ensuring access to justice, accountability and remedies for cases of such crimes against children. Towards that end, in his report on children and armed conflict, the Secretary-General recommended that the Security Council include rape and other grave sexual violence against children as additional criteria for inclusion of parties to conflict who perpetrate this crime onto the annexes of his report (*ibid.*, para. 158). This is a positive step towards expanding the protection framework for children and driving United Nations and international efforts to seal commitments to put an end to sexual violence against children.

Children internally displaced as a result of armed conflict

37. Children who are internally displaced count among the most vulnerable categories of children affected by armed conflict. In addition to the dangers to their physical safety and security during flight, these children are vulnerable to a host of other threats, including separation from family, trafficking, abduction by armed groups, lack of food and basic services, detention against their will and exploitation and abuse. Reports of some of these incidents have been received from Afghanistan, Chad, the Central African Republic, Colombia, the Democratic Republic of the Congo, Iraq, Myanmar, Pakistan, the Philippines, Somalia, Sri Lanka and the Sudan.

38. In some situations, the recruitment of children by armed groups also continues to be a pressing issue for internally displaced families and communities perpetually at risk of being further displaced. A protracted displacement situation, extended stay in camps, proximity of camps from national borders, and in some cases the infiltration and presence of armed elements in internally displaced persons' settlements also places children at a heightened risk of recruitment.

39. The Office of the Special Representative, in collaboration with the efforts undertaken by the Representative of the Secretary-General on the human rights of internally displaced persons, stresses the need to address some of the key protection concerns for children displaced as a result of conflict, including the need for a proper registration system for separated and unaccompanied

children that promotes early family tracing and reunification; the care and protection of children with disabilities and with critical medical conditions; and, where appropriate, the need to ensure that children identified as being formerly associated with armed groups are separated from adults, granted legal protection and linked to services for swift rehabilitation and reintegration.

40. In addition, in line with the Guiding Principles on Internal Displacement, the Special Representative will continue to advocate for the “rights and guarantees” which should be accorded to every internally displaced child affected by armed conflict. These include:

- (a) The enjoyment of the same rights and freedoms as those not displaced in their country. They shall not be subject to discrimination as a result of their displacement whether or not they are living in camps;
- (b) The right to relevant documentation. Competent authorities shall issue internally displaced children with all documents necessary for the full enjoyment and exercise of their legal rights;
- (c) The right of every child to be reunited with his or her family. Every effort must be made to reunify separated children with their immediate family or relatives, failing which they may be placed with foster families. Siblings are to be kept together and institutional care is to be avoided;
- (d) The right to life, to dignity and to physical, moral and mental integrity;
- (e) The guarantee of physical security and the provision of safe places for children;
- (f) The guarantee not to be recruited or used nor required or permitted to take part in hostilities;
- (g) The right to protection against sexual and gender-based violence by the placement of adequate protective measures to prevent these violations whether or not they are living in camps. Mechanisms should be put in place to ensure that there are procedures for accountability once violations occur, and that effective programmes exist for the care of the victim;
- (h) The right to an adequate standard of living. Competent authorities shall provide internally displaced children with and ensure safe access to essential medical services and sanitation, basic shelter, essential food supplies and potable water and appropriate clothing, both during and after armed conflict;
- (i) The right to education, free and compulsory primary education and the provision of secondary education whenever possible, as education offers a degree of normalcy and stability. Full effort is to be made to ensure the full and equal participation of boys and girls in educational programmes. Education should be made available both during and after conflict. Education should be an important part of emergency response;
- (j) The guarantee of long-term psychosocial and physical recovery and reintegration programmes at the community level for children’s intellectual and emotional needs and overall well-being, during and after armed conflict;

(k) The guarantee that measures of prevention will be put in place to protect children from trafficking, forced labour, forced prostitution, sexual exploitation, forced early marriage and illegal adoption;

(l) The right to durable solutions including the right to return, to integrate at the place of displacement or to resettle elsewhere in the country. Durable solutions must be voluntary, safe and dignified;

(m) The liberty of movement with their families, including from and within camps;

(n) The right of every child to manifest his/her religion or belief with his/her family and to freely participate in the cultural life of the community;

(o) Child participation shall be promoted in devising local strategies for recovery and reintegration;

(p) The principle of “the best interest of the child” shall be a primary consideration in regard to all actions concerning children.

Terrorism and counter-terrorism and its impact on children

41. Terrorism, more than any other concept, has come to dominate the security discourse in many places around the globe. Both terrorist actions and counter-terrorism measures can have multiple consequences for children and in recent years have created particular challenges for the protection of children, particularly in regard to the violation of human rights and the rule of law. The conflicts in Iraq, Afghanistan and the occupied Palestinian territory pose many of these problems.

42. Terrorist attacks disproportionately target civilians in hitherto sacrosanct locations, such as places of worship, schools and hospitals, markets and other public spaces. Such indiscriminate attacks, when deliberately targeting civilians, are grave abuses of human rights. And when such attacks take place in the context of an armed conflict, they constitute war crimes. Children are also increasingly being used to perpetrate these attacks, because they can be more easily compelled to act and they are less conspicuous. In some situations, children are being recruited and trained as suicide bombers, in blatant violation of international law, and used as human shields, decoys in suicide car bombings, or to transport improvised explosive devices.

43. Anti-terrorism measures often also target children, including through arrest and detention of children for reasons such as alleged participation in terrorist activities or other forms of association with terrorist groups. Legal and practical safeguards such as regular and independent monitoring of detention centres have often been disregarded. Many of these children are detained for extended periods of time and without due process provisions, in violation of international standards of juvenile justice. In detention they sometimes suffer beatings, and physical and psychological torture.

44. Precision aerial bombardment and other types of military operation also result in what is termed “collateral damage”, and children are often the victims. Recent statements in Afghanistan suggesting that the protection of civilians will be the primary goal of military operations in these areas are therefore welcomed.

45. Two bedrock standards of international humanitarian law are the principles of “distinction” and “proportionality”. They are universally accepted, enshrined in international law, and apply to State and non-State actors in all armed conflicts. These principles aim to protect civilians against the effect of hostilities and prevent unnecessary “collateral damage” resulting from military action. However, both these cornerstone elements of international law are being challenged by new types of military action, with major consequences for children. It is crucial that the international community reaffirm the principles of international humanitarian law and that military forces around the world, along with armed groups, adhere to those principles which have been developed over the centuries for the protection of women and children.

Attacks on schools

46. The deliberate targeting of schools is prohibited under international law, and can amount to a war crime. Schools are civilian institutions that often provide shelter and tend to the needs of children during conflict. The core humanitarian legal principle of “distinction” demands that civilian objects, including schools, must be protected against the consequences of military operations. Furthermore, humanitarian law makes clear that if in the “fog of war” there is a doubt whether a school or hospital is a military or civilian object, the presumption that must be made is that a building normally dedicated to civilian purposes remains a civilian object.

47. The escalation in the number of systematic and deliberate attacks on schoolchildren, teachers and school buildings is alarming, as these attacks not only damage property and cause harm to students and teachers, but they also incite fear and limit access to education services by children. Particularly disturbing is the targeting of girl students and girls’ schools, such as in Afghanistan, warranting the increased attention of, and action by the international community.

48. In the recent conflict in Gaza and southern Israel, many schools were damaged or destroyed by aerial bombardment, rocket fire and long-distance artillery. Some of these schools were schools administered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

Accountability for acts committed by children during armed conflict

49. The accountability for acts committed by children during armed conflict has recently been brought to light through the case of Omar Kadr, who faces charges of war crimes before the United States military commission for alleged offences committed at age 15 in Afghanistan, purportedly as a child soldier. In the Sudan, following its armed attack on Khartoum, a 17-year-old child associated with the Justice and Equality Movement was tried and sentenced to death by special counter-terrorism courts created after the event. Based on the current practice of ad hoc tribunals, the Special Court for Sierra Leone and the International Criminal Court, there is an emerging consensus that children below the age of 18 should not be prosecuted for war crimes and crimes against humanity by international courts.

50. International law recognizes the need to provide children with special protection because of their particular vulnerability, and considers children’s immaturity if they commit offences during armed conflict. In addition, international law prohibits the imposition of the death penalty for any offences committed by children under the age of 18 years. Children should be considered primarily as victims, and decisions whether to prosecute a child must be guided by the principle

of their best interests, bearing in mind the child's emotional, mental and intellectual maturity, the extent of the child's moral culpability, the possibility of alternative accountability and reconciliation mechanisms that focus on the child's rehabilitation. If a child is to be tried in any jurisdiction for crimes, his/her treatment should be in accordance with international human rights standards specific to the rights of the child, in particular with regard to the age of criminal responsibility, fair trials, sentencing and detention.

51. Similarly, national courts trying children for international crimes must also uphold their rights in accordance with international standards for juvenile justice. For example, in Afghanistan, child protection actors have welcomed juvenile-specific provisions, including on offences relating to children associated with armed groups, in the law on combating terrorist offences adopted in 2008. The law states that when an offence has been committed by individuals below the age of 18, the 2005 juvenile code will apply.

V. CONCLUSIONS AND RECOMMENDATIONS

52. **The Special Representative welcomes and appreciates the strengthened collaboration between her Office and the United Nation human rights system, and reiterates her continued support including to share regular information and to advocate for the protection of children affected by armed conflict. The Special Representative is also encouraged that information from the monitoring and reporting mechanism on grave violations against children in armed conflict established in accordance with Security Council resolution 1612 (2005), as well as conclusions adopted by the Security Council Working Group on Children and Armed Conflict have been mainstreamed by the Human Rights Council and the wider human rights system, particularly through reports submitted for the universal periodic reviews and by the Committee on the Rights of the Child.**

53. **The Special Representative encourages the Committee on the Rights of the Child and special procedures mandate holders, as appropriate, to continue to take account of recommendations by the Secretary-General and conclusions of the Security Council Working Group insofar as they are relevant to reporting on a particular country situation.**

54. **The Special Representative reiterates the recommendation made in her last report that concluding observations made by the Committee on the Rights of the Child on reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict should also be taken into consideration by the Working Group on the Universal Periodic Review when reviewing a State submission under the UPR process. More importantly, the Special Representative encourages States parties to integrate the Convention on the Rights of the Child and its Optional Protocols in their reports submitted for the universal periodic review process.**

55. **Further, in the light of the information provided in sections III and IV above, the Special Representative offers the following recommendations.**

Ending impunity for grave violations against children in armed conflict

56. Member States who bear a central and immediate political, legal and moral responsibility should comply with international norms and standards for the protection of children within their territories, and take strong and urgent action to bring to justice individuals responsible for the recruitment and use of children in the armed forces or armed groups and their use in hostilities in violation of applicable international law and other grave violation against children through national justice systems, including undertaking appropriate reforms of national legislation for the protection of children in order to bring laws into line with international obligations, as well as strengthening child-protection capacity and training for military, police, law enforcement and judiciary officials within national security sector reform efforts.

57. States parties to the Convention on the Rights of the Child are encouraged to strengthen national and international measures for the prevention of recruitment of children into armed forces or armed groups and their use in hostilities. In particular, these include signing and ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; enacting legislation that explicitly prohibits the recruitment of children into armed forces/groups and their use in hostilities; and exercising extraterritorial jurisdiction in order to strengthen the international protection of children against recruitment.

Rape and other grave sexual violence against children in armed conflict

58. Recognizing that rape and other grave sexual violence against children is prevalent in some situations of armed conflict, concerned Member States are urged, as a matter of priority, to adopt and implement national strategies to prevent, respond to and combat sexual violence.

Children internally displaced as a result of armed conflict

59. Member States should respect the “rights and guarantees” accorded to children internally displaced by armed conflict, as spelled out in paragraph 40 of this report.

Terrorism and counter-terrorism and its impact on children

60. Parties to situations of armed conflict are urged to immediately halt the recruitment and use of children, a violation of international law, in particular using them to commit terrorist acts.

61. Member States are also urged to ensure that counter-terrorism measures are in line with their obligations under international humanitarian law.

Attacks on schools

62. Parties in situations of armed conflict are urged to adhere to international law protecting the right to education in situations of concern. This includes protecting both

educational institutions and the process of education, including students, teachers, academics and other education personnel. Special attention should be paid to the protection of girls, given the increased targeting of girls' education in some countries.

Accountability for acts committed by children during armed conflict

63. Member States should ensure that children who are accused of crimes under international law allegedly committed while they were associated with armed forces or groups are considered primarily as victims, and that they are treated in accordance with international law and other relevant standards on juvenile justice, and within a framework of restorative justice and social rehabilitation. Neither capital punishment nor life imprisonment without the possibility of release should be imposed for offences committed by persons below 18 years of age. Detention of children should be used as a last resort and for the shortest period of time.

Annex I^a

**LIST OF PARTIES THAT RECRUIT OR USE CHILDREN IN SITUATIONS
OF ARMED CONFLICT ON THE AGENDA OF THE SECURITY COUNCIL,
BEARING IN MIND OTHER VIOLATIONS AND ABUSES COMMITTED
AGAINST CHILDREN**

Parties in Afghanistan	Taliban forces.
Parties in Burundi	Palipehutu-Forces nationales pour la libération (FNL) - Agathon Rwasa.
Parties in the Central African Republic	<ol style="list-style-type: none"> 1. Armée populaire pour la restauration de la République et de la démocratie (APRD). 2. Forces démocratiques pour la rassemblement (UFDR). 3. Forces démocratiques populaire de Centrafrique (FDPC). 4. Lord's Resistance Army (LRA). 5. Mouvement des libérateurs centrafricains pour la justice (MLCJ). 6. Self-defence militias supported by the Government of the Central African Republic.
Parties in Chad	<ol style="list-style-type: none"> 1. Chadian National Army. 2. Concorde nationale tchadienne (CNT). 3. Convention révolutionnaire démocratique du Tchad (CRDT). 4. Direction Générale de Sécurisation des Services et Institutions de l'Etat (DGSSIE). 5. Front uni pour le changement (FUC). 6. Sudanese armed groups backed by the Government of Chad: <ol style="list-style-type: none"> (a) Justice and Equality Movement; (b) Sudanese Toroboros. 7. Union des forces pour la démocratie et le développement (UFDD).
Parties in the Democratic Republic of the Congo	<ol style="list-style-type: none"> 1. Congrès national pour la défense du peuple (CNDP), formerly led by Laurent Nkunda and currently by Bosco Ntaganda. 2. Forces armées de la République démocratique du Congo (FARDC). 3. Forces démocratiques de libération du Rwanda (FDLR). 4. Front nationaliste et intégrationniste (FNI). 5. Lord's Resistance Army (LRA). 6. Mai-Mai groups in North and South Kivu, including PARECO.
Parties in Iraq	Al-Qaida in Iraq.

^a Parties to conflict listed in annex I to the report of the Secretary-General on children and armed conflict (A/63/785-S/2009/158).

Parties in Myanmar	<ol style="list-style-type: none"> 1. Democratic Karen Buddhist Army (DKBA). 2. Karen National Union-Karen National Liberation Army Peace Council. 3. Kachin Independence Army (KIA). 4. Karen National Liberation Army (KNLA). 5. Karenni Army (KA). 6. Karenni National People's Liberation Front (KNPLF). 7. Myanmar National Democratic Alliance Army. 8. Shan State Army-South (SSA-S). 9. Tatmadaw Kyi. 10. United Wa State Army (UWSA).
Parties in Nepal	Unified Communist Party of Nepal-Maoist (UCPN-M).
Parties in Somalia	<ol style="list-style-type: none"> 1. Al-Shabaab. 2. Remnants of the former Islamic Courts Union (ICU). 3. Transitional Federal Government (TFG).
Parties in southern Sudan	<ol style="list-style-type: none"> 1. Parties under the control of the Government of the Sudan: Sudanese Armed Forces (SAF). 2. Parties under the control of the Government of southern Sudan: Sudan People's Liberation Army (SPLA). 3. Lord's Resistance Army (LRA).
Parties in Darfur	<ol style="list-style-type: none"> 1. Parties backed by the Government of the Sudan: <ol style="list-style-type: none"> (a) Chadian opposition groups; (b) Government-supported militias; (c) Police forces, including the Central Reserve Police; (d) Sudanese Armed Forces (SAF). 2. Former rebel parties that have accepted the Darfur Peace Agreement: <ol style="list-style-type: none"> (a) Justice and Equality Movement (Peace Wing); (b) Movement of Popular Force for Rights and Democracy; (c) Sudan Liberation Army (SLA)/Abu Gasim/Mother Wing; (d) Sudan Liberation Army (SLA)/Free Will; (e) Sudan Liberation Army (SLA)/Minni Minnawi; (f) Sudan Liberation Army (SLA)/Peace Wing. 3. Rebel parties that have rejected the Darfur Peace Agreement: <ol style="list-style-type: none"> (a) Justice and Equality Movement (JEM); (b) Sudan Liberation Army (SLA)/Abdul Wahid; (c) Sudan Liberation Army (SLA)/Unity.

Annex II^a**LIST OF PARTIES THAT RECRUIT OR USE CHILDREN IN SITUATIONS OF ARMED CONFLICT NOT ON THE AGENDA OF THE SECURITY COUNCIL, OR IN OTHER SITUATIONS OF CONCERN, BEARING IN MIND OTHER VIOLATIONS AND ABUSES COMMITTED AGAINST CHILDREN**

Parties in Colombia	1. Ejército de Liberación Nacional (ELN). 2. Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP).
Parties in the Philippines	1. Abu Sayyaf Group (ASG). 2. Moro Islamic Liberation Front (MILF). 3. New People's Army (NPA).
Parties in Sri Lanka	1. Liberation Tigers of Tamil Eelam (LTTE). 2. Tamil Makkal Viduthalai Pulikal (TMVP) (former Karuna faction).
Parties in Uganda	Lord's Resistance Army (LRA).

^a Parties to conflict listed in annex II to the report of the Secretary-General on children and armed conflict (A/63/785-S/2009/158).