



**COALITION TO STOP THE  
USE OF CHILD SOLDIERS**



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**Review of State Party reports  
to the Committee on the Rights of the Child  
on the Optional Protocol to the  
Convention on the Rights of the Child  
on the involvement of children in armed conflict**

**November 2006**

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## Annex I

### How national NGOs can contribute to the Optional Protocol reporting process

# **Review of State Party reports to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>1</sup>**

**November 2006**

## **Introduction**

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the Optional Protocol) was adopted and opened for signature, ratification and accession by the UN General Assembly on 25 May 2000. It entered into force on 12 February 2002.<sup>2</sup> The protocol sets 18 as the minimum age for direct participation in hostilities, for compulsory recruitment by governments and for all recruitment into armed groups. States are obliged to raise the minimum voluntary recruitment age – from 15 years to a minimum of 16 years – but must deposit a binding declaration at the time of ratification setting out their minimum voluntary recruitment age and outlining safeguards to ensure that such recruitment is genuinely voluntary. The Coalition to Stop the Use of Child Soldiers campaigns for states to adopt and implement the Optional Protocol in a manner that sets 18 years as the minimum age for all forms of military recruitment and use without exception or reservation. This is called the “straight-18 position”.

By May 2006, 121 states had signed and 107 states had ratified the Optional Protocol. The number of governments’ legally recruiting children below the age of 18 into their armed forces has significantly reduced since the Optional Protocol was adopted. Recruitment of under-18s by non state armed groups has continued; processes to monitor and control such recruitment are more difficult to implement than for states.

States which have ratified the Optional Protocol must submit a report on its implementation to the Committee on the Rights of the Child within two years of ratification. This is known as the Initial Report. Further information on actions to implement the Protocol may be subsequently submitted to the Committee along with government reports on implementation of the Convention on the Rights of the Child.

This report reviews ten of the Initial Reports on the Optional Protocol which had been submitted to the Committee by March 2006. At the time of writing, seven had already been considered by the Committee and in these cases issues raised by the committee and its Concluding Observations are briefly summarized. The review highlights a number of weaknesses in government initiatives to implement the Protocol, as well as identifying areas where the reports lacked detail or did not supply information on key elements of it. It suggests ways in which governments might strengthen legislative and other measures to protect children from all forms of military recruitment and use, as well as noting areas in which more detailed information would contribute to more constructive debate on government actions to effectively implement the Optional Protocol. The review concludes by offering a series of ways in which non-governmental organizations (NGOs) could contribute to the reporting process.

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<sup>1</sup> This document was researched and written by Elisabeth Janz, independent consultant. It was edited by Elizabeth Stubbins and Claudia Ricca, independent consultants.

<sup>2</sup> General Assembly Resolution A/RES/54/263 (Annex I), Convention on the Rights of the Child: Optional Protocol on the Involvement of Children in Armed Conflict (25 May 2000), <http://www.un.org/search/>.

## Reporting on Optional Protocol implementation

Article 8, paragraph 1 of the Optional Protocol states that

Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

After submission of this first comprehensive report, also referred to as the Initial Report, each State Party

shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with Article 44 of the Convention, any further information with respect to the implementation of the Protocol (Article 8, paragraph 2).

For State Parties which have ratified the Optional Protocol but not the Convention on the Rights of the Child (the Convention), such as the USA, Article 8 states that they must submit a report every five years. The format for the State Party reports has yet to be clearly defined, once the process has been integrated into the general reporting sessions of the Committee on the Rights of the Child (the Committee).

In June 2005 a Committee decision stated that

[R]eports received approximately at the same time as a regular periodic report on the implementation of the Convention on the Rights of the Child will be considered at the session at which this regular periodic report will be examined. Additional separate time will be scheduled for this examination if the State is a Party to both Optional Protocols and has submitted approximately at the same time both Initial Reports.<sup>3</sup>

The same decision mentioned that

[If] the State is only a party to the Optional Protocol on the involvement of children in armed conflicts, the Initial Report to this instrument will be considered at a regular session of the Committee if the State Party concerned is facing or has recently faced serious difficulties in respecting and implementing the provisions enshrined in the Optional Protocol. For other State Parties, the Committee will offer them a choice of an examination in writing (technical review) or one at a regular session of the Committee which include a dialogue with representatives of the concerned State Party.<sup>4</sup>

The criteria for determining whether a State Party is or has recently faced serious difficulties in implementing the Optional Protocol were unclear and it was likewise unclear on what basis governments are offered a technical review. By March 2006 the Committee had offered the governments of Bangladesh, Belgium, Canada, Czech Republic and Switzerland a technical review. The governments of Bangladesh and Switzerland chose to send a delegation to the session to discuss their Initial Reports.<sup>5</sup> The Initial Reports of Belgium, Canada and Czech

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<sup>3</sup> Committee on the Rights of the Child (CRC), Decision No. 8, "Consideration of reports under the two Optional Protocols of the Convention on the Rights of the Child", 39th session, June 2005, <http://www.ohchr.org/english/bodies/crc/decisions.htm>. The other is the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/54/263 (Annex II), entering into force on 18 January 2002, <http://www.un.org/search/>

<sup>4</sup> CRC, Decision No. 8, op. cit., paragraph 3 (a).

<sup>5</sup> The government of Bangladesh was represented by a delegate from its Geneva-based mission to the UN; Switzerland sent a delegation from its capital.

Republic were discussed at the Committee's 42<sup>nd</sup> session in May 2006. These governments opted for a technical review.

Paragraph 4 of the June 2005 decision also stated that "reports submitted under both Optional Protocols will also be included in the agenda of the Committee's Pre-sessional working group meetings". These offer Committee members time for consultation and discussion with NGOs and other international and national agencies involved in implementation of the Convention and its Protocols.<sup>6</sup>

In September 2003 the Committee recommended to the UN General Assembly that it "approve and provide appropriate financial support to the Committee to work in two chambers as of October 2004"<sup>7</sup> and this was endorsed by the General Assembly at its 58<sup>th</sup> session. The two-chamber committee system allows for two parallel Committee sessions to take place at the same time with half of the Committee's members attending each session.<sup>8</sup> This has not only significantly increased the Committee's capacity to deal with reports submitted by State Parties, but has also freed up crucial time for debate and consultation.

The two-chamber committee system has provided opportunities for individual pre-sessional Working Group meetings dedicated to the two Optional Protocols and their implementation. This system will remain in place initially for a two-year period until the Committee's 43<sup>rd</sup> session (scheduled for the second half of 2006) when it will be evaluated for possible renewal.<sup>9</sup> General feedback on the system, from Committee members, UN staff, NGOs and governments has been positive so far, particularly in relation to the opportunities it provides for detailed discussion of problematic questions or issues.

By the end of January 2006, the Initial Reports of seven State Parties had been examined by the Committee. They were Andorra, Austria, Bangladesh, Denmark, Finland, New Zealand and Switzerland. Of these, Austria, Denmark, Finland and New Zealand were the first to report on the Optional Protocol and their submissions were considered along with their periodic reports on the Convention. The Committee considered Andorra's Initial Report in a separate session on the Optional Protocols.

The Committee responded to three of the seven by producing a List of Issues, to which the State Parties have in turn replied.<sup>10</sup> The Committee's Concluding Observations on all seven Initial Reports are available.<sup>11</sup> These observations have become more detailed and relevant as the number of State Parties submitting Initial Reports has increased.

The List of Issues and the Concluding Observations are useful in highlighting positive developments which may have occurred before governments have signed or ratified the Optional Protocol. They draw attention to issues which were not adequately addressed in the reports and make suggestions for improvements. Summary records of the discussions between committee members and government representatives during the reporting sessions

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<sup>6</sup> To access written submissions by NGOs and other agencies to pre-sessional Working Group meetings of the CRC, visit <http://www.crin.org/NGOGroupforCommittee>.

<sup>7</sup> CRC, Decision No. 6, "Recommendation: Committee to work in two chambers," September 2003.

<sup>8</sup> CRC, Decision No. 6, op. cit. This Decision specifically points out that due consideration must be given to the equitable geographical distribution of its members in these two chambers.

<sup>9</sup> CRC, Decision No. 6, op. cit., paragraph 2.

<sup>10</sup> CRC, List of Issues, UN Doc. CRC/C/OPAC/AND/Q/1 (Andorra); UN Doc. CRC/C/OPAC/BGD/Q/1 (Bangladesh); UN Doc. CRC/C/OPAC/CHE/Q/1 (Switzerland). All Committee documents can be found on the website of the Office of the High Commissioner for Human Rights, <http://www.ohchr.org>.

<sup>11</sup> CRC, Concluding Observations, UN Doc. CRC/C/OPAC/CO/1, 27 January 2006 (Andorra); UN Doc. CRC/C/OPAC/CO/2, January 2005 (Austria); UN Doc. CRC/C/OPAC/BGD/CO/1, January 2006 (Bangladesh); UN Doc. CRC/C/OPAC/DNK/CO/1, 24 November 2005 (Denmark); UN Doc. CRC/C/OPAC/FIN/CO/1, 21 October 2005 (Finland); UN Doc. CRC/C/OPAC/CO/1, 3 October 2003 (New Zealand); UN Doc. CRC/C/OPAC/CHE/CO/1, 27 January 2006 (Switzerland).

are available for all seven State Parties reports.<sup>12</sup> While the Summary records usefully offer the possibility to follow the debates without attending the sessions, they do not fully reflect the details of the discussions between the State Parties and the Committee.

### **Areas of concern arising from Initial Reports**

State Parties have tended to present their reports in accordance with the Committee's Guidelines on Initial Reports of State Parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (the guidelines).<sup>13</sup> The guidelines address each article of the Optional Protocol. If followed by governments, they may result in detailed and relatively comprehensive reports.

The content and depth of individual reports varied widely.<sup>14</sup> Not surprisingly, the most comprehensive were those submitted by State Parties committed to the "straight-18" position. When State Party delegations included government officials with direct knowledge of the issues involved, the reports were more informative. When governments sent a delegate from their Geneva diplomatic missions or submitted written replies less detail was provided.

Some governments appeared to interpret the Optional Protocol as only relevant for countries involved in armed conflict. They paid less attention therefore to legal reforms and other mechanisms to protect children from armed conflict should it occur. However, the effective implementation of the Optional Protocol in all countries provides a model for other countries to emulate and support a global prohibition on child recruitment for military purposes.

Many of the reports did not define explicitly the notion of "direct participation in hostilities", either in law or in armed forces regulations. During the drafting of the Optional Protocol, much debate focused on this term. The international community, some State Parties and certainly the NGO community, argued for the term "direct" to be excluded from the text. It is important that State Parties clearly define their concept of direct participation and its implications in their own countries. This is particularly important when states allow voluntary recruitment of under-18s into their armed forces.

Usually, the defence and foreign affairs ministries prepare the government's report on the Optional Protocol. Meaningful consultation with civil society, including NGOs and international agencies, in the drafting of the report appears to have been the exception rather than the rule. Only one State Party report reflected an NGO's perspective despite this being contrary to its own view. State Parties appear to have paid little attention to relevant debates, campaigns or initiatives aimed at strengthening government declarations at the time of ratification of the Optional Protocol, especially if the age for voluntary recruitment is set lower than 18 years.

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<sup>12</sup> CRC, Summary records, UN Doc. CRC/C/SR.1095, 19 January 2006 (Andorra); UN Doc. CRC/C/SR.1008, 24 January 2005 (Austria); UN Doc. CRC/C/SR.1083, 17 January 2006 (Bangladesh); UN Doc. CRC/C/SR.1073, 29 September 2005 (Denmark); UN Doc. CRC/C/SR.1069, 28 September 2005 (Finland); UN Doc. CRC/C/SR.897, 26 September 2003 (New Zealand); UN Doc. CRC/C/SR.1082, 16 January 2006 (Switzerland).

<sup>13</sup> CRC, Guidelines regarding Initial Reports of States Parties to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 12 October 2001, UN Doc. CRC/OP/AC/1.

<sup>14</sup> It was noted that the length of reporting has ranged so far from one or one-and-a-half pages to the more common length of 8-12 pages. A few reports have had 16-20 pages and one was 28 pages in length.

## **Legal and contractual status of under-18s in the armed forces**

State Parties tended to address superficially, if at all, the question of whether young people who join up before they are 18, can leave the armed forces if they wish to, and what kind of disciplinary measures they would face in such an event. Nor do the reports indicate whether under-18s are required to reaffirm their commitment to the armed forces once they reach the age of 18. The reports could usefully clarify which laws are applicable to under-18-year-old recruits who commit offences against military law; and the consequences of such offences need to be spelled out. The reports should further clarify whether any applicable provisions are in line with relevant provisions of the Convention on the Rights of the Child.

## **Clarification of voluntary recruitment safeguards**

Article 3 of the Optional Protocol requires State Parties to raise “in years” the minimum voluntary recruitment age. This in practice means that ratifying states must raise the voluntary recruitment age to a minimum of 16 years (one year above the age of 15 years specified by the Convention).

The Optional Protocol requires safeguards to ensure that the recruitment of under-18s is genuinely voluntary. These include informed parental (or guardian) consent, full information of the duties involved in military service, and the provision of reliable proof of age prior to acceptance into national military service. While most reports indicate that such minimum safeguards are in place, a more comprehensive and systematic approach could be pursued.

The text of Article 3 was the subject of extensive debate during drafting negotiations, largely because of the inherent ambiguity of the term “voluntary”. Whether involved in armed conflict or not, all State Parties are expected to report in detail on existing safeguards and how they operate in practice. As noted by one expert “these conditions must *all* be met: they are cumulative, not alternatives... If these criteria are not met the presumption should be that a recruit under the age of 18 must be considered not to have volunteered as a matter of law, even if they identify themselves as a volunteer”.<sup>15</sup>

Disaggregated data on under-18s in the armed forces were often inadequate or not available. Such volunteers are frequently drawn from socially disadvantaged groups with limited opportunities for education and employment. It would be useful to obtain more detailed information on the socioeconomic background of young recruits, including the numbers drawn from state care institutions, minority groups (whether ethnic, religious, or linguistic), as well as from refugee, displaced or foreigner communities. The voluntary character of a youth’s decision becomes debatable if enlisting for lack of alternative options. Such a decision is arguably not in keeping with the spirit of the Optional Protocol, and may be in violation of Article 3.

## **Military schools**

Article 5 of the Optional Protocol does not require State Parties to raise the age of entry into schools operated by or under the control of the armed forces. Entry to military schools is thus permissible from the age of 15 years, although the education provided should be in keeping with articles 28 and 29 of the Convention.<sup>16</sup> Whilst some of the reports provided detailed information on a variety of military schools operated by or under the aegis of the armed forces, others were unclear on whether students are by law part of the armed forces. Their

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<sup>15</sup> Brett R and Irma Specht, *Young Soldiers: why they choose to fight*, pp 114-115, Lynne Rienner Publishers, USA and International Labour Organization, Geneva, 2004.

<sup>16</sup> Article 28(2) places a duty on State Parties “to ensure that school discipline is administered in a manner consistent with the child’s human dignity...”; Article 29 includes among the general aims of education that it includes “respect for human rights and fundamental freedoms”, <http://www.ohchr.org/english/>.

status during a mobilization - during armed conflict or a state of emergency - also remained unclear. Information on the minimum entry age for such schools was often lacking and only a few State Parties described the exact syllabus and extra-curricula activities taught to the students. None of the reports reviewed gave figures for the number of students who had completed military school and committed to a military career. The question of military schools needs to be closely monitored with a view to avoiding the unlawful recruitment of under-18s into armed forces under the pretext of education.

### **The criminalization of child recruitment**

A number of reports did not provide adequately detailed information on domestic laws to prohibit and criminalize the recruitment of under-18s by armed groups distinct from the armed forces of the state (armed groups). The reports did not adequately address the question of whether domestic laws provide for the prosecution of a person present in its territory who has allegedly recruited or used children in an armed conflict in another country. A question that the Committee has recently raised is whether State Parties may assume any form of extraterritorial jurisdiction when: a) their child citizens are recruited outside the State Party's territory; and b) when a citizen of the reporting State Party is engaged in recruiting under-18s outside the State Party's territory.

Under the Rome Statute of the International Criminal Court (ICC) and international humanitarian law it is a war crime to conscript or enlist children under the age of 15 into armed forces or groups, or to use them to participate actively in hostilities. Article 38 (1) of the Convention on the Rights of the Child reiterates these obligations. Paragraph 12 of the preamble to the Optional Protocol recalls the obligation of parties to armed conflict to abide by the provisions of international humanitarian law.

While article 4(2) of the Protocol prohibits the direct participation of under-18s in hostilities it does not define the recruitment of 16 and 17 year olds as a war crime. Instead, it places a duty in international law on State Parties to "take all feasible measures to prevent such recruitment and use", including by prohibition and criminalization in law. State Parties thus have an obligation to investigate and prosecute those suspected of such practices. The war crime of conscripting, enlisting or using children under the age of 15 should be subject to universal jurisdiction – with suspects prosecuted in any state, regardless of where the crime took place.

The Committee has also raised the question of the exact rules and procedures to govern the apprehension of under-18s during hostilities – including as prisoners of war – in situations where State Parties have armed forces deployed in third countries.<sup>17</sup>

### **Asylum procedures for former child soldiers**

None of the reports reviewed referred to the plight of refugee or migrant children who had been involved in armed conflict before leaving their home countries.<sup>18</sup> There are two areas of concern in this regard:

a) State Parties should ensure that asylum procedures recognize the specificity of the reasons child soldiers flee their home countries, including persecution by non-state actors. They should pay particular attention to the plight of former girl child soldiers, including during asylum procedure reviews and the actual hearings, which must consider the best interests of the child. Given that asylum procedures are often very lengthy, states must ensure that

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<sup>17</sup> CRC, List of Issues, UN Doc. CRC/C/OPAC/CAN/Q/1, 9 February 2006 (Canada), and UN Doc. CRC/C/OPAC/SLV/Q/1, 9 February 2006 (El Salvador).

<sup>18</sup> See, Quaker UN Office, *Former child soldiers as refugees in Germany*, project study by Michaela Ludwig for Terre des Hommes Germany, 2004, <http://www.quno.ch>.



children and young people are accorded a sense of stability and security, including the possibility to follow educational, training or employment opportunities. As for legal representation during the asylum procedure, the age at which minors can represent themselves should not be below 18 years in accordance with the Convention on the Rights of the Child.

b) State Parties should report on any programs to facilitate the recovery and social integration of former child soldiers into their societies (including efforts to address the psychosocial needs of this group). This potentially vulnerable group of youth is one that demands specialized programs managed by experienced professionals. The simple integration of this group into programs for refugee children will not suffice. The particular needs of sexually-exploited girl soldiers must be addressed through sensitively designed and adequately funded projects.

### **Provisions to protect internally displaced children**

No reference has been made so far to the special vulnerability of internally displaced (IDP) children to recruitment. These children unquestionably represent one of the highest risk groups for recruitment into armed groups. Governments must report on the measures in place to prevent IDP children's recruitment and to secure their adequate protection. Principle 13 of the Guiding principles on internal displacement states that

In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities. Internally displaced persons shall be protected against discriminatory practices of recruitment into armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.<sup>19</sup>

### **Disarmament, demobilization and reintegration (DDR) programs**

A paucity of information is available on (DDR) programs. Those reporting countries that have been involved in armed conflict, and as a result have former child soldiers among their citizens, have failed to provide detailed information on their activities to provide adequate assistance for the physical and psychological recovery as well as social integration of these youths. Other State Parties have reported on the bilateral and/or multilateral technical cooperation and financial assistance they have extended to other countries in this regard. However, the majority of these reviews remain on a very general level (e.g. programs aimed at poverty reduction) not addressing the support and implementation of specific DDR programs.

To conclude, scant information tends to be made available on the different ways State Parties ensure the effective implementation and enforcement of the Optional Protocol within their respective countries, and more innovative measures should be found to facilitate the latter, ensuring a transparent process and meaningful monitoring. Young people themselves must participate actively in this process.

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<sup>19</sup> Report of the Representative of the Secretary General, Mr. Francis Deng, submitted pursuant to Commission resolution 1997/39, Addendum: Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2, 11 February 1998.

## Review of selected government reports submitted before March 2006

### Andorra

In its binding declaration upon ratification of the Optional Protocol, the Principality of Andorra declared that it currently has no armed forces. Its only specialized forces are the police and customs, for which the minimum recruitment age is 18 years. The recruitment age for the Andorran police force is given as between 19 and 35 years of age. The Principality reiterates in its binding declaration “its disagreement with the contents of Article 2, in that this Article permits the voluntary recruitment of children under the age of 18 years”.<sup>20</sup> In paragraph 16 of its report, the government states that there are no schools in its country operated by or under the control of the military, nor are there any schools with a military orientation. In the Summary record of the Committee on Andorra’s reporting session, a government official noted that in September 2005, the government had introduced a new criminal code which raised the age for criminal responsibility from 16 to 18 years, including several new offences to bring the code into line with the provisions of the Optional Protocols, as well as more specific classification of those offences.<sup>21</sup>

In response to Article 4 of the Optional Protocol the government states that “no armed groups operate from Andorran territory nor does any such group use Andorran territory as a base or refuge, and that this eventuality is proscribed or punished under national law”. However, no detailed elaboration is given as to the exact legal and administrative measures in place to prevent the recruitment of children living in Andorran territory by third parties, nor on the punitive measures available should such practice arise.

This question was taken up by members of the Committee and the Andorran government acknowledged the lack of legal and administrative measures in place to prevent the enlistment and use of children in armed conflict.<sup>22</sup> In paragraph 15 of the Summary records, Andorra specifies that the judiciary could assume jurisdiction in some cases under the provisions of international treaties it had ratified, while under domestic legislation it would only be competent to try a case where the victim or perpetrator was of Andorran nationality. Andorran jurisdiction would only extend to foreign victims or perpetrators if the offence was considered to threaten domestic security or the authority of the state. The Chairperson of the Committee pointed out that giving national courts universal jurisdiction to try offences under the Optional Protocol would undoubtedly enhance children’s protection. During these elaborations it was further clarified that no Andorran citizens could be recruited into the armed forces of France or Spain.

In its Concluding Observations, the Committee recommended that the State Party take the necessary legislative measures to criminalize child recruitment and for the inclusion of this crime in Article 8, paragraph 8, of its criminal code, which establishes extraterritorial jurisdiction.<sup>23</sup> The Committee further requested that Andorra provide more detailed information on the contributions or support provided to the implementation of the Optional Protocol in other States.<sup>24</sup>

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<sup>20</sup> For the full texts of all binding declarations and reservations of the Optional Protocol, see [http://www.ohchr.org/english/countries/ratification/11\\_b.htm#reservations](http://www.ohchr.org/english/countries/ratification/11_b.htm#reservations).

<sup>21</sup> CRC, Summary record (Andorra), UN Doc. CRC/C/SR.1095, 19 January 2006, paragraph 3.

<sup>22</sup> CRC, Summary record (Andorra), op. cit., paragraph 12.

<sup>23</sup> CRC, Concluding Observations (Andorra), UN Doc. Committee/OPAC/AND/CO/1, 27 January 2006, paragraph 6.

<sup>24</sup> CRC, List of Issues, UN Doc. CRC/C/OPAC/AND/Q/1/Add.1, 30 November 2005, and Concluding Observations (Andorra), op. cit., paragraph 9.

## Austria

The Austrian government's Initial Report on the Optional Protocol was considered at the Committee's 38<sup>th</sup> session and the Concluding Observations issued in January 2005.<sup>25</sup> In the preparation of its Initial Report, the government appears to have followed the Reporting guidelines and states that "relevant government and non-governmental agencies were consulted on the preparations". No clarification is provided on which non-governmental agencies were involved in the drafting or on how the consultation process was conducted.

Austria maintains a system of conscription into its armed forces. The Austrian National Defense Act, which regulates compulsory and voluntary recruitment in the Austrian armed forces, was amended prior to the ratification of the Optional Protocol to "explicitly prohibit the direct participation of persons less than 18 years of age in direct hostilities".<sup>26</sup> Regrettably, the government interprets the term "direct participation in hostilities" restrictively explaining that it "does not include acts such as gathering and transmission of military information, transportation of arms and munitions, provision of supplies, etc".<sup>27</sup> During its reporting session, a member of the Committee posed a question to the government about its restrictive interpretation of the term "direct participation" and requested information on the specific regulations or instructions in place for commanders in the field concerning the types of duties that under-age recruits were allowed to perform. In response, the government said that military regulations stipulated that minors should not be sent to conflict areas; when this was unavoidable their military service was suspended until they reached the age of majority. Austrian troops deployed abroad, it was added, must be over the age of 18.<sup>28</sup>

According to the National Defense Act, male Austrian nationals are called up for registration during the calendar year in which they reach the age of 18.<sup>29</sup> According to section 9, paragraph 1 of the Act, only persons who have turned 18 years and are fit for military service shall be (compulsorily) recruited into the armed forces. However, section 9 (2) of the Act provides that "persons who have attained the age of 17 years but not yet 18 may do their military service earlier". This raises the question of whether effectively starting compulsory military service before the age of 18 years is compatible with the prohibition on conscription of under-18s in Article 2 of the Optional Protocol. This question was not discussed with the State Party's delegation during its reporting session before the Committee, and the Committee did not take up the matter in its Concluding Observations to the Austrian government. Austrian law does not provide for legal provisions enabling the age of conscription to be lowered in exceptional circumstances (e.g. in a state of emergency).<sup>30</sup>

Austria's declaration upon ratification of the Optional Protocol states that "the minimum age for the voluntary recruitment of Austrian citizens into the Austrian Army (*Bundesheer*) is 17 years". The explicit consent of parents or other legal guardians is required for such recruitment. The government of Austria has not yet amended its National Defense Act to reflect 18 years also as the minimum age for voluntary recruitment and "no systematic or comprehensive debate has taken place in Austria prior to the adoption of the declaration on minimum age for voluntary recruitment", as stated in paragraph 25 of the government's Initial Report on the Optional Protocol. The reasoning provided for this omission reads that "the existing Austrian legislation reflected a general consensus on the minimum age". It is not clear from Austria's report whether volunteers under the age of 18 can freely decide to leave the army without facing punishment, once they have become members of the armed forces.

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<sup>25</sup> CRC, Initial Report (Austria), UN Doc. CRC/C/OPAC/AUT/1, 8 July 2004; and Concluding Observations (Austria), UN Doc. CRC/C/OPAC/CO/2, January 2005.

<sup>26</sup> This amendment came into effect on 1 January 2001.

<sup>27</sup> CRC, Initial Report (Austria), op. cit., paragraph 9.

<sup>28</sup> CRC, Summary record (Austria), UN Doc. CRC/C/SR.1008, 24 January 2005, paragraph 76.

<sup>29</sup> National Defence Act, section 18, paragraph 4.

<sup>30</sup> CRC, Initial Report (Austria), op. cit., paragraph 16.

The rules governing military justice or discipline apply equally to all recruits irrespective of their age. Section 9 of the military criminal code makes it punishable to desert from the armed forces while in active service. Sentences range from six months' to five years' imprisonment. For first-time offenders who turn themselves in voluntarily within six weeks, the maximum sentence is six months' imprisonment or a fine (rates to be determined by the financial capacity or income of the accused). For subsequent offenders a maximum of one year's imprisonment can be imposed for an absence of more than eight days. However, for juvenile offenders the sentences are reduced by half.<sup>31</sup>

In paragraph 40 of its Initial Report, the government claims that the Austrian armed forces do not operate schools, and in paragraph 38, it is stated that the armed forces do not use any incentives to encourage volunteers to join the armed forces. However, a military gymnasium (albeit not part of the armed forces), offers students aged 14 and over, a secondary education with a specialization in natural sciences at a military-led boarding school.<sup>32</sup> The school is under the auspices of the education and defence ministries and aims to prepare students for a military career (military officers). At present, eight military and 40 civilian staff are instructing at this school.<sup>33</sup> Judging from the school's website the institution has strong military ties. Students can leave the gymnasium at any time without facing punitive measures. In its Concluding Observations, the Committee requested more detailed information on the military gymnasium in view of the fact that a significant proportion of new recruits to the armed forces are said to be drawn from the school. The information is to be provided in Austria's next report on the Optional Protocol.<sup>34</sup> During discussions with Committee members at the reporting session, a member of the Austrian delegation stated that the school was not a military academy and that the students were not subject to military discipline. There was apparently a debate in Austria as to whether the school should remain open due to budgetary constraints.<sup>35</sup>

Austria's report does not provide any information on procedures they may have in place for former child soldiers seeking asylum in Austria or about specialized programs available for refugee or migrant children residing within its jurisdiction that may have been involved in hostilities in their home countries and may need special support as a result.

Paragraphs 46-49 of the Austrian Initial Report on the Optional Protocol deal with the domestic legislation in place to prohibit and criminalize the recruitment and use in hostilities of under-18s by armed groups. It is not possible to deduce from the information provided whether current legislation adequately covers and criminalizes the possible recruitment of under-18s by third parties from within Austrian territory.

The Committee also asked the government to comment on reports it had received regarding young recruits stationed at border posts who had attempted suicide. While the government confirmed that there had been suicide attempts among young soldiers on border duty, the delegate could not comment on whether minors had been involved.<sup>36</sup>

## **Bangladesh**

Bangladesh's Initial Report on the Optional Protocol was considered at the Committee's 41<sup>st</sup> session. The Committee offered the government a "technical review" of its Initial Report and proposed it submitted a written examination only, on the grounds that the government was not facing or has not recently faced any difficulties in respecting and implementing the

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<sup>31</sup> CRC, Initial Report (Austria), op. cit., paragraphs 36 and 37.

<sup>32</sup> For further information, see <http://www.milrg.at>.

<sup>33</sup> The school's website gives no details as to the number of students enrolled to date or the exact percentage of students who take up a military career upon completion of their education.

<sup>34</sup> CRC, Concluding Observations (Austria), op. cit., paragraph 8.

<sup>35</sup> CRC, Summary record (Austria), op. cit., paragraph 73.

<sup>36</sup> CRC, Summary record (Austria), op. cit., paragraphs 72 and 78.

provisions or the Optional Protocol. However, the government decided to send a representative of its Geneva Mission to the UN to discuss the report. Regrettably, it appears that the delegate was not in a position to respond to the questions posed by the Committee. The areas of concern raised by the Bangladesh report, the debate between Committee members and the government's representative during the reporting session, and the issues raised by the Committee in its Concluding Observations were substantial enough to indicate that a technical review in this case was not sufficient.

Bangladesh has no provision for compulsory recruitment into the armed forces. In response to Article 1 of the Optional Protocol, the State Party replied that the "Bangladesh Army do not permit any person who has not attained the age of 18 to participate in any armed hostility".<sup>37</sup> However, no legislation is identified to give substance to the claim.

Sixteen years is set as the minimum age for non-commissioned soldiers to volunteer into the armed forces, while 17 years is the minimum age for commissioned soldiers. Parental consent, it appears, is only required for volunteers entering the Bangladesh Air Force, not for those who volunteer into the Bangladesh Army or Navy.<sup>38</sup> In the State Party's declaration upon ratification of the Optional Protocol, the Bangladesh government did state that informed consent of parents or legal guardians was required without exception. There is no reiteration of the government's declaration in its Initial Report. As an additional safeguard, Bangladesh's armed forces are said to request young volunteer recruits to present their birth certificates and educational records but this has to be seen in the context of a poorly functioning birth registration system. This was noted by the Committee in October 2003 during consideration of Bangladesh's Second periodic report on the Convention.

The Bangladesh Initial Report does not provide any information on government measures taken to ensure that recruitment of under-18s is genuinely voluntary. The Committee has taken up these concerns in its Concluding Observations.<sup>39</sup> The Committee recommends that the government develop and strengthen measures to effectively guarantee that no child under the age of 16 years be enrolled in the army or police forces. A number of different safeguards are proposed for systematic implementation. No reference is made on whether volunteers have the option to leave once enrolled in the Bangladesh armed forces, or whether they would face punitive measures if they did.

In its Initial Report or its reply to a question during the reporting session, the State Party did not make available meaningful disaggregated data by age and gender on under-18s in the armed forces.<sup>40</sup> The government argued that since volunteers are only recruited into the armed, police and paramilitary forces once they have completed training (by which time they have reached the age of 18 years), no one is in fact recruited under the age of 18 years.<sup>41</sup>

The Initial Report makes no reference to military schools and the question was not raised by the Committee in its List of Issues. According to NGO sources, students in Bangladesh do undergo military training from very young ages in several locations. According to the Coalition, some ten cadet colleges exist around the country and while students are not obliged to join the army upon completion of their studies, they generally do so.<sup>42</sup> The Concluding Observations recommend that the State Party take all necessary measures to

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<sup>37</sup> CRC, Initial Report (Bangladesh), UN Doc. CRC/C/OPAC/BGD/1, 24 July 2005, paragraph 2.

<sup>38</sup> CRC, Initial Report (Bangladesh), *op. cit.*, paragraph 4.

<sup>39</sup> CRC, Concluding Observations (Bangladesh), UN Doc. CRC/C/OPAC/BGD/CO/1, 17 March 2006, Recruitment of children, paragraphs 15a and 15d.

<sup>40</sup> CRC, List of Issues (Bangladesh), UN Doc. CRC/C/OPAC/BGD/Q/1, 2 November 2005.

<sup>41</sup> CRC, Answers provided by the State Party (Bangladesh), Pre-session Working Group, 41<sup>st</sup> session, p. 1.

<sup>42</sup> Coalition to Stop the Use of Child Soldiers (Child Soldiers Coalition), Country Brief (Bangladesh), June 2003, <http://www.child-soldiers.org>.

ensure that education provided in unregistered *madrassas* is in full conformity with the Optional Protocol and with the Convention on the Rights of the Child.<sup>43</sup>

The government states in Article 4 (1) of its Initial Report that “there is no armed group in Bangladeshi territory”, and hence there is no mention of measures in place to protect children from recruitment and use for military purposes by any armed force or group. The Committee expressed concern about information it had received on the existence of extremist religious groups which may recruit and use children, and recommended that it ensures that no child is recruited or used in activities of a military or paramilitary nature. The Committee sought information on the physical and psychosocial needs of such children.<sup>44</sup> The government did not mention any programs it might plan to establish to offer a feasible alternative to military recruitment, such as increasing employment and educational opportunities for groups of young people particularly vulnerable to military recruitment.

The government noted that armed conflict with tribal minorities of the Chittagong Hill Tracts had ceased in December 1997. The Committee requested information on number of children who continue to be affected by the Chittagong Hill Tracts conflict as displaced persons, as orphans, or as combatants. The government replied that there were no displaced persons or orphans resulting from this conflict, and only some 1,947 former combatants. No details were provided on how this figure was arrived at and no information was provided on disarmament, demobilization, and reintegration (DDR) programs for former child soldiers. The Committee expressed concern over this as well as on the proliferation of small arms and light weapons carried by children.<sup>45</sup>

A number of additional concerns were raised by the Committee in its Concluding Observations. They included the lack of a specific government institution or ministry charged with implementing the Optional Protocol, as well as a lack of knowledge about the Optional Protocol in the country and of training on its provisions.

## Denmark

Denmark submitted its Initial Report at the 40<sup>th</sup> session of the Committee.<sup>46</sup> The government did not make use of the *Guidelines* and the resulting document did not meet the reporting requirements of the Committee. The report was superficial and only one-and-a-half pages long. While the government did respond to articles 1, 2 and 3 of the Optional Protocol, the remaining articles were not addressed. At the time of ratification of the Optional Protocol, Denmark declared that its legislation “does not permit the recruitment of any person below 18 in the armed forces”. Denmark raised its minimum compulsory recruitment age from 17 to 18 years, as a result of a decision taken during negotiations on the Optional Protocol.<sup>47</sup> In paragraph 7 of its Initial Report, the government mentioned that as a general rule, “the process of compulsory recruitment begins after the person concerned has attained the age of 18 years. However, at the request of the person concerned the process may begin in the calendar year during which the person concerned attains the age of 18 years”. The government does not explain in further detail the phrase “the process may begin”, or define the exact status accorded to volunteers before they have reached the age of 18. The Initial Report concludes in paragraph 10 that “as follows from the above, no person can become a

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<sup>43</sup> CRC, Concluding Observations (Bangladesh), UN Doc. CRC/C/OPAC/BGD/CO/1, 17 March 2006

<sup>44</sup> CRC, Concluding Observations op.cit.

<sup>45</sup> CRC, Concluding Observations op.cit.

<sup>46</sup> CRC, Initial Report (Denmark), UN Doc. CRC/C/OPAC/DNK/1, 21 April 2005.

<sup>47</sup> Several orders and circulars have raised the minimum age to 18: for conscripts, Ministry of Defence Order No. 1083 of 23 December 1998 came into force on 1 January 1999; for private first class trainees and private first class personnel, two circulars issued by the Danish Ministry of Defence came into force at the end of May 1998; for voluntary members of the Danish Home Guard, the Home Guard Act came into force on 1 March 2001. See also the Consolidated Act No. 80 of 12 February 2004.

member of the Danish armed forces before the person concerned has attained the age of 18 years. The age of 18 years is determined from the date of birth of the person in question". The latter paragraph appears to contradict paragraph 7 of Denmark's Initial Report cited above. According to the information provided by Denmark to the Coalition, "a recruit may present himself before the medical board when he is 17 but may only enrol for military training from the age of 18".<sup>48</sup>

It is not possible to conclude from the Initial Report whether Denmark's legislation criminalizes the recruitment of children under its jurisdiction by third parties. The Initial Report does not shed light on governmental technical cooperation or financial assistance to other countries to support the implementation of the Optional Protocol, including the prevention of any activity contrary to the Optional Protocol. No information is provided on DDR programs for under-18s who have been involved in armed conflict.

Considering that Denmark hosts a considerable numbers of refugees, it is important for the government to address the question of assistance for children who may have been involved in hostilities before seeking refuge in Denmark. This issue is addressed in the Committee's Concluding Observations.<sup>49</sup> In Denmark's Initial Report no reference is made to any measures to ensure that asylum procedures are adequate for this vulnerable group. Article 7 and 8 of the Optional Protocol (on DDR) are not addressed by the government and no information is provided on military schools.

The Summary records of the Committee's 1,073th session indicate that minimal time was reserved for consideration of Denmark's Initial Report (a maximum of five minutes) and that no meaningful discussion took place on the implementation of the Protocol. The main part of the session was allocated to discussion of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.<sup>50</sup>

## Finland

The Finnish government reported on the Optional Protocol to the Committee during its 40<sup>th</sup> session.<sup>51</sup> Finnish legislation does not allow, even in a state of emergency, the recruitment of persons below the age of 18 into its armed forces.<sup>52</sup> The minimum age of conscription, stated in Finland's Military Service Act, was amended by Act 364/2000, according to which voluntary military service can only start from the age of 18. A similar amendment was made to section 1 of the Act on Voluntary Military Service for Women (365/2000). By virtue of Finland's Penal Code, recruitment of a person under the age of 18 during hostilities would be deemed a war crime.<sup>53</sup> It is not clear from the government's Initial Report whether current domestic legislation adequately covers the prevention and criminalization of recruitment of under-18s by third parties from Finnish territory. This question is not addressed in the Committee's Concluding Observations and it was not discussed during the State Party's reporting session.

In paragraph 10 of its Initial Report, the State Party affirms that the "Finnish Defence Forces do not operate or have under their control the type of schools referred to in Article 3, paragraph 5 of the Optional Protocol". However, a National Defence Training Association

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<sup>48</sup> Child Soldiers Coalition, *Child Soldiers Global Report 2004*, p. 235; correspondence received by the Coalition from the Danish Defence Command on 3 March 2004.

<sup>49</sup> CRC, Concluding Observations (Denmark), UN Doc. CRC/C/OPAC/DNK/CO/1, 24 November 2005, paragraph 4.

<sup>50</sup> The Summary record of this session is only available in French to date: *Compte Rendu Analytique de la 1073e Séance* (Denmark), UN Doc. CRC/C/SR.1073, 29 September 2005; paragraphs 1-86 of the Summary record refer to the discussion on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, while paragraphs 87-91 reflect the discussion to the Optional Protocol.

<sup>51</sup> CRC, Initial Report (Finland), UN Doc. CRC/C/OPAC/FIN/1, 10 March 2005.

<sup>52</sup> CRC, Initial Report (Finland), *op. cit.*, paragraph 7.

<sup>53</sup> CRC, Initial Report (Finland), *op. cit.*, paragraph 6.

established in 1999, organizes voluntary national defence training with the aim to equip volunteers with skills needed in times of war or crisis, and to complement the training of conscripts.<sup>54</sup> In paragraph 13 of its Initial Report, the government reflects the view of the Peace Union of Finland Association for the United Nations, an NGO, which expresses concern regarding the recruitment policies and campaigns of the National Defence Training Association. However, the government argues that since this organization does not represent an armed group, but rather an umbrella organization arranging training for different voluntary organizations, the concerns do not fall within the realm of the Optional Protocol. The Committee does not address this concern further in its Concluding Observations, nor is the question addressed in any detail during discussions with Finnish delegates during the reporting session. There is no information about the minimum age required to participate in these training courses, nor are statistics provided as to the numbers of such volunteers who then go on to serve in the armed forces.

The government does not mention any programs to address the needs of refugee or migrant children residing on its territory who have been involved in armed conflict before arriving in Finland. Considering that Finland does accept a number of refugees from war-torn societies, it is possible that former child soldiers are among them. This should be taken into consideration by the government in the context of Optional Protocol reporting. The Committee raised this issue in its Concluding Observations and requested information on such programs at the next reporting session.<sup>55</sup>

The Committee's Concluding Observations do not address any other area of concern. The debate between members of the Finnish delegation and the Committee during their reporting session was extremely short and did not provide further clarification on implementation of the Optional Protocol.<sup>56</sup>

## **New Zealand**

The New Zealand report was the first Initial Report submitted to the Committee.<sup>57</sup> While this Initial Report was comprehensive, a number of questions were left unanswered.

It does not strictly rule out the presence of soldiers below the age of 18 in New Zealand's armed forces, and disaggregated statistics on the number of under-18s currently enrolled are not provided. Before ratifying the Optional Protocol, New Zealand amended its Defence Act 1990, giving statutory effect to the standard limit of 18 years for active service in its army, air force and navy, regardless of geographical location.<sup>58</sup> However, in paragraph 6 of its Initial Report, the government stated that the "New Zealand Defence Force Orders for Administration, published on 15 February 2002, set out the New Zealand Defense Force policy for the *recruitment and deployment* in operations of persons under the age of 18 years".<sup>59</sup> To complicate the issue further, paragraph 8 of the Initial Report refers to the same Defence Force Orders setting out that "service members are not to be posted on active service or operational service *outside* New Zealand unless they have reached the age of 18".<sup>60</sup> The phrasing appears to allow implicitly for active service within New Zealand's territory by under 18-year-old soldiers. This question is raised in the Committee's Concluding Observations which recommend that "New Zealand amend the Defence Force Order to

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<sup>54</sup> Child Soldiers Coalition, *Child Soldiers Global Report 2004*, op. cit., "Finland", p. 237. For more information on the National Defence Training Association, see <http://www.milnet.fi>.

<sup>55</sup> CRC, Concluding Observations (Finland), UN Doc. CRC/C/OPAC/FIN/CO/1, 21 October 2005, paragraph 5.

<sup>56</sup> The Summary record of this session is available in French only: *Compte Rendu Analytique de la 1069e Séance*, UN Doc. CRC/C/SR.1069 (Finland), 28 September 2005. Paragraphs 1-57 of the record reflect the debate on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, while paragraphs 58-66 refer to the discussion on the Optional Protocol.

<sup>57</sup> CRC, Initial Report (New Zealand), UN Doc. CRC/C/OPAC/NZL/1, 30 July 2003.

<sup>58</sup> CRC, Initial Report (New Zealand), op. cit., paragraph 5.

<sup>59</sup> CRC, Initial Report (New Zealand), op. cit., paragraph 6, emphasis added.

<sup>60</sup> CRC, Initial Report (New Zealand), op. cit., paragraph 8, emphasis added.



expressly prohibit active service in and outside of New Zealand by soldiers under the age of 18”.<sup>61</sup> During New Zealand’s session, a Committee member asked whether service members could be assigned to active duty in New Zealand before the age of 18 and whether there were any plans to amend the Defence Act 1990.<sup>62</sup> A government representative responded that New Zealand prohibited any type of active service for under-18s.<sup>63</sup> The government did not supply the Committee with its interpretation of the term “direct participation in hostilities”.

New Zealand’s declaration deposited at the time of ratification of the Optional Protocol stated that the minimum age for voluntary recruitment into the national armed forces was 17. The Defence Force Orders for Administration also sets the minimum age for voluntary recruitment at 17 years. However, paragraph 15 of the Initial Report states that “the Defence Act 1990 does not currently set a minimum age for voluntary recruitment, although it does specify that those under the age of 18 years, who are not or have not been married, shall not be recruited without prior consent of a parent or guardian”. It is not only of concern that the Defence Act leaves the minimum age for voluntary recruitment open, but also that the guardianship stipulation clearly allows for the voluntary recruitment of under-18s without parental consent in case they are or have been married.

Paragraphs 36 and 37 of New Zealand’s Initial Report refer to Chapter 11 of the Manual of the armed forces law which says that “generally it is undesirable to sentence members of the armed forces to imprisonment if they are under 20 years of age. In general, detention is a more suitable punishment for persons under 20 years of age than imprisonment, whatever the nature of the offence”. The Armed Forces Discipline (Exemptions and Modifications) Order 1983, Regulation 8, affirms that “no member of the armed forces who is under the age of 17 years shall be sentenced to detention by an officer exercising summary powers, or by a court martial, under the Armed Forces Discipline Act 1971”. The same act says that “a member of the armed forces who has attained the age of 17 years but is under the age of 18 years, shall not be sentenced except with the prior approval of a superior commander”.

The latter provisions suggest that New Zealand’s armed forces include soldiers below the age of 17 years. This would contradict the government’s assertion that 17 years is the minimum age for voluntary recruitment. Committee members highlighted these seeming contradictions with regard to minimum ages for deployment and voluntary recruitment but no satisfactory explanation was provided during discussions with delegation members.<sup>64</sup> While the Initial Report does not supply disaggregated figures for voluntary recruits below the age of 18, the government said that the percentage of under 18-year-old voluntary recruits could be 40 to 50 per cent. In its Concluding Observations, the Committee recommended that the government “amend the Defence Act and the Guardianship Act to specify the minimum age of voluntary recruitment of 17 years for all persons, as well as consider the possibility to increase the minimum age for voluntary recruitment to 18 years”.<sup>65</sup>

In paragraph 7 of its Initial Report, the State Party sets out that the New Zealand Defence Force Orders are established under Section 27 of the Defense Act 1990, which in turn provides that “the Chief of Defence Force may from time to time, for the purposes of the Defence Act, issue and promulgate Defence Force Orders, not inconsistent with the Defence Act, the Armed Forces Discipline Act 1997, or any other enactment”. It must be clarified

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<sup>61</sup> CRC, Concluding Observations (New Zealand), UN Doc. CRC/C/OPAC/CO/1, March 2003, paragraph 5.

<sup>62</sup> CRC, Summary record (New Zealand), UN Doc. CRC/C/SR.897, 26 September 2003, paragraph 66.

<sup>63</sup> CRC, Summary record (New Zealand), *op. cit.*, paragraph 71.

<sup>64</sup> In this context, the Chairperson of the Committee’s session with the government of New Zealand, mentioned a press release that had come to the attention of the Committee, which alleged that two 16 and 17 year-old girls had been accepted into New Zealand’s Army Artillery Section and that this information raised questions about the government’s firmness regarding the minimum recruitment age. In response, a delegate from the government suggested that the press release quoted concerned a training programme and not recruitment into the armed forces, but that the delegation would follow up on this information and report back to the Committee. See CRC, Summary Records (New Zealand), *op. cit.*, paragraphs 70 and 77.

<sup>65</sup> CRC, Concluding Observations (New Zealand), *op. cit.*, paragraph 7.

whether this would theoretically allow the Chief of Defense to lower current regulations on minimum ages, particularly the age of voluntary recruitment, since no minimum age is set down in the Defence Act 1990.

New Zealand's Initial Report listed several reasons for retaining 17 as the minimum voluntary recruitment age. These include: a) the inverse relationship between enlistment age and retention after five years of service; b) competition with other employers for a relatively limited sector of the labour market; c) the possibility that prospective recruits may seek alternative employment or remain unemployed and lose motivation to join up when they reach the appropriate age; d) the likelihood that current difficulties attracting recruits to fill technical positions could be exacerbated by raising the minimum age; and e) less opportunity to reach out to the traditional target group of young people from lower socio-economic groups who leave school aged 17.<sup>66</sup>

In paragraphs 24 and 25 of its Initial Report, New Zealand drew attention to the significant number of voluntary recruits from smaller urban settings as well as from the Maori ethnic group. The Summary records of New Zealand's debate with Committee members report that "the percentage of New Zealand Maori who have registered as voluntary recruits is higher than the proportion of Maori in the overall population".<sup>67</sup> The delegate argued that such large numbers are attributable to the armed forces being an attractive career opportunity for young Maori, many of whom can obtain training in technical careers.<sup>68</sup> No review was provided of available alternatives to these socially disadvantaged groups, whether in the employment or training sectors. Neither did the government outline any efforts that could bring the provisions of the Optional Protocol to the attention of these groups of youth. A much more concerted effort was dedicated to the various activities to attract persons at recruiting age to a career in the armed forces.

According to the Coalition's *Child Soldiers Global Report 2004*, New Zealand has active cadet forces in regular schools (they are not members of the armed forces). Cadet force members must be between 13 and 18 years old. The cadet force is regulated in Part VI of the 1990 Defence Act. According to section 77, cadet forces shall: conduct training courses or programs similar to those undertaken by the armed forces; promote appreciation among members of the functions and operation of the armed forces; and the development of good citizenship.<sup>69</sup> While cadet forces are said to represent an important recruiting ground for the armed forces, no information is given on curricula or activities offered. Disaggregated statistics on the students and the numbers who subsequently join the armed forces are likewise not provided in the Initial Report. During discussions with Committee members a government representative confirmed that while the country's "military schools were operated separately through schools or community organizations, the Defence Force was required to provide them with support".<sup>70</sup> In its Concluding Observations, the Committee requested additional information on cadet forces, and on "how their activities fit with the aims of education as recognized in Article 29 of the Committee and in General Comment No. 1 of the Committee, and on recruitment activities undertaken by the armed forces within the cadet forces".<sup>71</sup>

In paragraphs 34 and 35 of New Zealand's report, the government explains that "during basic training, recruits may choose to remove themselves from the Service at any time and depart the armed forces. Once basic training is completed, recruits are physically integrated into the armed forces ... Any member of the armed forces can seek early discharge after giving (usually) three months' notice".

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<sup>66</sup> CRC, Initial Report (New Zealand), op. cit., paragraphs 17-21.

<sup>67</sup> CRC, Summary record (New Zealand), op. cit., paragraph 78.

<sup>68</sup> CRC, Summary record (New Zealand), op. cit., paragraph 78.

<sup>69</sup> Child Soldiers Coalition, *Child Soldiers Global Report 2004*, op. cit., "New Zealand", p. 193.

<sup>70</sup> CRC, Summary record (New Zealand), op. cit., paragraph 71.

<sup>71</sup> CRC, Concluding Observations (New Zealand), op. cit., paragraph 8.

In paragraphs 40, 41, and 42 of the Initial Report, New Zealand addresses Article 4 of the Optional Protocol, which calls for the criminalization of recruitment or use in hostilities of under-18s. From the domestic legislation outlined in the government's report it cannot be assumed that recruitment by third parties of under-18s living in New Zealand's territory is adequately addressed.

Committee members questioned the delegation about the availability of mechanisms to prosecute international crimes, such as war crimes. A member of the delegation referred the Committee to paragraph 43 of its Initial Report, where it is stated that the country is a party to the Rome Statute of the International Criminal Court and that the International Crimes and International Criminal Court Act 2000 give effect to New Zealand's obligations under the Statute. He said that, "it is now an offence under New Zealand law to conscript or enlist children under 15 years of age into armed forces or to use them actively in hostilities in either an international or internal armed conflict. The offence carries a maximum penalty of life imprisonment. New Zealand has taken extraterritorial jurisdiction over these offences, and so would be in a position to prosecute new Zealanders who engage in such conduct elsewhere".<sup>72</sup>

The Initial Report does not address the possible needs of refugee or migrant children residing within their jurisdiction who have been involved in armed conflict before coming to New Zealand and who may need special attention and assistance. In effect, New Zealand stated that Articles 6(3) of the Optional Protocol, which asks, *inter alia*, about the provision of appropriate assistance for children's physical and psychological recovery and their social reintegration, was not relevant to its specific national context.<sup>73</sup>

With regard to Articles 6(1) and 6(2) which call on states parties to take steps to ensure effective implementation and enforcement and dissemination of the Optional Protocol, the government supplied information on efforts made within its Defence Forces. No information was provided on other measures to implement the Optional Protocol, for example through a broader social debate or on plans to disseminate its provisions, involve NGOs, community leaders or children in the implementation process.

## Switzerland

Switzerland reported on the Optional Protocol at the 41st session of the Committee in January 2006.<sup>74</sup> Although the government was offered a technical review it opted to send a delegation from Geneva to the reporting session. Switzerland submitted a detailed and comprehensive Initial Report which closely followed the Reporting guidelines. The Swiss government appears to have cooperated with various federal departments as well as with a number of child rights NGOs in drafting the report from a child rights perspective. In its Concluding Observations the Committee noted with appreciation that the government's authorization of foreign trade in war material follows specific criteria which pay particular attention to the use of children as soldiers in the receiving country.

Since 1 May 2002, the recruitment of children has been prohibited in Switzerland. During its summer session in 2002, the governmental Legal Affairs Commission of the National Council unanimously endorsed a draft submitted by the federal council recommending ratification of the Optional Protocol and raising the minimum voluntary recruitment age for the Swiss armed forces to 18 years. Upon ratification of the Optional Protocol, the government deposited a binding declaration providing for a minimum voluntary recruitment age of 18 (raising it from

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<sup>72</sup> CRC, Initial Report (New Zealand), op. cit., paragraph 43.

<sup>73</sup> CRC, Initial Report (New Zealand), op. cit., paragraph 56.

<sup>74</sup> CRC, Initial Report (Switzerland), UN Doc. CRC/C/OPAC/CHE/1, 14 July 2005.

the previous age of 17). In paragraph 31 of its Initial Report, Switzerland outlined the reasons for its decision to establish 18 as the minimum voluntary recruitment age. These included:

- a) since the Committee defines a child as anyone under the age of 18 years and all children must be protected, this means that children must not be enlisted even if they volunteer;
- b) by raising the minimum voluntary recruitment age to 18 Switzerland has demonstrated its commitment to effectively protecting children from involvement in armed conflict and to working for a global prohibition of child recruitment;
- c) Switzerland believes that it is in its own interest not to recruit young people who are still immature. Enlisting only persons who are of age means all are subject to criminal and military criminal law.<sup>75</sup>

The Army and Military Administration Act (LAAM) and the Ordinance on the Recruitment of Conscripts (OREC) regulate the conscription of male citizens into the Swiss armed forces (militia army). These state that every Swiss male is required to do military service. Swiss women may volunteer for military service. The requirement to enlist takes effect at the beginning of the year in which a person subject to military service reaches the age of 19; the obligation to perform some portion of military service takes effect at the beginning of the year in which the conscript reaches the age of 20. There is no law authorizing lowering the conscription age in exceptional circumstances.<sup>76</sup> Switzerland's Initial Report further states that it has no schools operated by or under the control of the armed forces. It does mention a recruit training school, which, however, purportedly, "does not pursue the full range of educational aims referred to [in the Optional Protocol] and is therefore not covered by the exemption from the minimum age rule".<sup>77</sup>

In paragraph 22 of the Initial Report, the Swiss government defines the concept of "recruitment", as induction into an organized military structure such as the armed forces or armed units for active service. A "recruit" is anyone undergoing military training, but may also denote a child directly enlisted without having been recruited or previously trained. The information sessions, familiarization campaigns and short pre-military training courses do not count as recruitment provided the participants are not inducted into an organized military structure for active service. Lastly, recruitment is compulsory when it is required by law. The Summary records state that during the discussion on training courses, a Swiss delegate reported that "the term 'short pre-military training courses' referred to in paragraph 22 of the report was no longer in use".

Paragraph 33 of the Initial Report states that there are no armed groups operating on, or child recruitment taking place in, Swiss territory. There follows a detailed outline of the legislation available to the State Party to prevent such action and to punish it should the phenomenon arise. According to a report provided by the Committee for Peace in Yugoslavia, the Kosovo Liberation Army reportedly did recruit on Swiss territory during April 1999.<sup>78</sup> The Committee for Peace in Yugoslavia at the time lodged a complaint to the Swiss Attorney-General about the matter who declared that there had been no violation of Swiss Law. The Swiss authorities subsequently launched an examination of how such recruitment might be criminalized.<sup>79</sup> The question of the prevention and criminalization of the recruitment and use of children in armed conflict by third parties from Swiss territory was also the subject of debate during Switzerland's session with the Committee. A delegate confirmed that the enlistment of children in Switzerland for a foreign state, party or other organization was liable

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<sup>75</sup> CRC, Initial Report (Switzerland), op. cit., paragraph 31.

<sup>76</sup> CRC, Initial Report (Switzerland), op. cit., paragraph 26.

<sup>77</sup> CRC, Initial Report (Switzerland), op. cit., paragraph 32.

<sup>78</sup> Letter from the Ministère Public de la Confédération, Berne, to the Comité pour la Paix en Yougoslavie, 10 May 1999, quoted in Child Soldiers Coalition, Briefing paper (Switzerland)

<sup>79</sup> Child Soldiers Coalition, Reply by the Federal Department of Foreign Affairs, Berne, 2 August 1999; letter from the Swiss Federal Department of Foreign Affairs, Berne, to the Quakers UN Office, 14 October 1999.

to punishment under Article 271 of its Criminal Code.<sup>80</sup> It was further claimed that the Swiss authorities “had never encountered any case of such recruitment or other similar acts by armed groups, and Switzerland had no information or indication that armed groups or foreign states were recruiting children on Swiss territory in violation of Article 271”.<sup>81</sup> In cases in which the alleged victim or perpetrator was a Swiss national, Swiss courts would be competent under Article 183 of the Criminal Code - which deals with kidnapping - to prosecute anyone suspected of recruiting a child of Swiss nationality to participate actively in hostilities abroad.<sup>82</sup> Whether current Swiss national legislation can adequately address, prosecute and punish the recruitment of persons under the age of 18 years by foreign nationals, such as, for instance, Kosovars or Tamils, has not been sufficiently clarified.

One area somewhat neglected by the government’s Initial Report is that of refugee children. A related question is that of whether the government considers involvement in armed conflict as a criterion for granting asylum to foreign children and whether special measures are in place during refugee status determination procedures for this potentially vulnerable group. These concerns were addressed by Committee members during discussions with the government, which noted that the Federal Act on Assistance to Victims of Offences provided counselling, legal services and compensation to victims, including emergency medical and psychological treatment. Free emergency treatment is also available to refugees who had been victims of torture, and to child soldiers from other countries.<sup>83</sup> It was furthermore confirmed by a Swiss delegate that no special procedure exists to identify child asylum-seekers who had been involved in internal or international armed conflicts. However, he stated that he could suggest to the federal departments of Foreign Affairs, Justice and Police, as well as Defence, Civil Protection and Sports that such a procedure should be established.<sup>84</sup>

Under the List of Issues, the Committee questioned the State Party about its amendment to the Military Penal Code of 23 December 2003, which entered into force on 1 June 2004, and its requirement of the so-called “perpetrator’s close link to Switzerland” for the prosecution of war crimes, in particular questioning whether this amendment restricted the exercise of universal jurisdiction over war crimes, such as conscripting or enlisting children under the age of 15 into the national armed forces or using them to participate actively in hostilities. Switzerland responded to this question in its Statement to the Committee during the 41<sup>st</sup> reporting session, explaining that the concept of the “perpetrator’s close link to Switzerland” did not figure originally in the draft proposition for the amendment, but was introduced by the Federal Assembly (Swiss parliament) chiefly to limit the possibilities for criminal prosecution, and to ensure that Switzerland was not flooded with complaints as had been the case in Belgium.<sup>85</sup> The term “close link”, as explained in Switzerland’s statement, covers the following categories of persons:

- i) those whose domicile or centre of livelihood is in Switzerland;
- ii) those who have a direct link to Switzerland, and
- iii) those who cannot be extradited nor be transferred to an international Tribunal.<sup>86</sup>

This does not include, for example, persons who just have a bank account in Switzerland, who just pass through Switzerland or who reside on Swiss territory only briefly, with the

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<sup>80</sup> CRC, Summary record (Switzerland), UN Doc. CRC/C/SR.1082, 16 January 2006, paragraph 4.

<sup>81</sup> CRC, Summary record (Switzerland), op. cit.

<sup>82</sup> CRC, Summary record (Switzerland), op. cit., paragraph 30.

<sup>83</sup> CRC, Summary record (Switzerland), op. cit., paragraph 29.

<sup>84</sup> CRC, Summary record (Switzerland), op. cit., paragraph 36.

<sup>85</sup> Rapport de la Suisse sur la mise en oeuvre du Protocole facultatif a la Convention relative aux droits de l'enfant, concernant l'implication d'enfants dans les conflits armés, Texte introductif (French only), 9 January 2006, <http://www.ohchr.org/english/bodies/crc/docs/statements/41switzerland.pdf>.

<sup>86</sup> Rapport de la Suisse, op. cit., p. 7.

intention of leaving again.<sup>87</sup> Numerous human rights campaigners and legal experts strongly criticized the Swiss amendment of its Military Penal Code and deeply regretting the government's inclusion of the "close link" clause in Swiss law, requested that parliament should review its decision. They demanded that the government should re-amend the Military Penal Code with a view to enabling Switzerland to act if there was a suspect on its territory with a sufficiently strong case.<sup>88</sup> TRIAL, an NGO, submitted a detailed statement on this question to the Committee, arguing that

Switzerland is not taking all "feasible" or "necessary measures" to prevent the conscription, enlistment or use of children in armed conflicts. In particular, there is a poignant *lacuna* in Switzerland's ability to impose penal sanctions for this crime, namely if it is committed abroad, by foreigners against foreigners. Rather, by virtue of self-imposed restriction of its ability to exercise universal jurisdiction, Switzerland in fact creates a zone of greater tolerance for persons who have committed war crimes against children, thus becoming a weak link in the global pursuit of accountability for these perpetrators.<sup>89</sup>

During Switzerland's discussions with Committee members, the question of universal jurisdiction was an important part of the debate.<sup>90</sup> A Swiss delegate said that for several decades the government had recognized universal jurisdiction for war crimes and that the recruitment, enlistment or use of child soldiers in hostilities could be prosecuted in Switzerland, even if the acts had been committed during an internal armed conflict in another country. The delegate confirmed that the amendment to the Military Penal Code had modified the conditions under which the military courts could exercise universal jurisdiction, which now could only be exercised if the suspected perpetrator was in Switzerland, had a close link to Switzerland and could not be extradited or handed over to an international criminal court. It was affirmed that the decision on whether the "close link" applied, was a matter for judicial authorities and had to be in conformity with international law.<sup>91</sup>

However, following the amendment, a consultation process has apparently begun in Switzerland on a draft law which provides for the prosecution of the crime of genocide and crimes against humanity. The draft law explicitly states that conscripting or enlisting children under the age of 15 years into the armed forces or groups or using them to participate in hostilities constitutes a war crime.<sup>92</sup> A Swiss delegate affirmed that the possible redefinition or abolition of the "close link" requirement for Military Criminal Court proceedings in respect of war crimes would be re-examined at the federal level in consultation with all stakeholders.<sup>93</sup>

The Swiss delegation said that in considering legislative proposals to implement the Rome Statute the government was looking at whether to set 18 (rather than 15) as the age at which conscription or enlistment of children into armed conflict is defined as a war crime, over which they would exercise universal jurisdiction. Following intense debate, opinions have remained divided. The Swiss delegation asked for the Committee's views on whether the recruitment or enlistment of children between the ages of 15 and 18 is considered a war crime under international customary law.<sup>94</sup> The Committee said that it is not, but said this does not prevent a State Party to the Convention of the Rights of the Child and the Optional Protocol from criminalizing such an act in its domestic legislation. The Committee added that

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<sup>87</sup> Rapport de la Suisse, op. cit., p. 8.

<sup>88</sup> *UN queries Swiss war crimes legislation*, Swiss Info website, 9 January 2006, <http://www.swissinfo.org>.

<sup>89</sup> TRIAL, Written Submission to the Committee for the Rights of the Child, Geneva, 3 October 2005, <http://www.crin.org/NGOGroupforCommittee>.

<sup>90</sup> See CRC, Summary record (Switzerland), op. cit.

<sup>91</sup> CRC, Summary record (Switzerland), op. cit., paragraphs 9, 10, 11, and 13.

<sup>92</sup> CRC, Summary record (Switzerland), op. cit., paragraph 14.

<sup>93</sup> CRC, Summary record (Switzerland), op. cit., paragraph 27.

<sup>94</sup> CRC, Summary record (Switzerland), op. cit., paragraph 31.

given the vulnerability of child asylum-seekers, there was a good reason to strengthen the legal protection of children in Switzerland.<sup>95</sup>

The Swiss delegation also inquired whether under international customary law it was necessary for the conscription or enlistment of children below the age of 15 to have taken place in the context of an on-going armed conflict for it to be considered a war crime.<sup>96</sup> The Committee's chairperson replied that the recruitment of children under the age of 15 years into armed forces was a violation of Article 38 of the Convention on the Rights of the Child, regardless of whether such recruitment took place in the context of an on-going armed conflict. In drafting legislation to implement the Rome Statute, it was therefore not advisable to introduce a condition linking recruitment to an on-going armed conflict.

### **Selected review of reports considered by the Committee in May 2006<sup>97</sup>**

#### **Belgium**

Belgium's Initial Report on the Optional Protocol was submitted in March 2004 and was considered during the Committee's 42<sup>nd</sup> session in May 2006. The report is detailed and prepared according to the reporting guidelines. The NGO community and other stakeholders involved in implementing the Optional Protocol were unable to see copies of the Initial Report before it was submitted and did not contribute to it.

Upon ratification of the Optional Protocol, Belgium declared that "it is absolutely forbidden under Belgium law for any person under the age of 18 years to participate in times of war and in times of peace in any peacekeeping operation or in any kind of armed operational engagement".<sup>98</sup> The declaration further affirms that "the minimum age for voluntary recruitment into the Belgium armed forces is not lower than 18 years". Belgium stresses in its Initial Report that it seeks to focus on the broad interpretation of the concept of child soldiers, intending to cover "any person under 18 years of age who is part of the regular or irregular armed forces in any capacity, regardless of whether he or she has effectively taken part in hostilities. The definition includes girls recruited for sexual purposes or forced marriage, and in general all children 'associated' with the armed forces. Thus, it does not simply describe a child who bears or has borne arms".<sup>99</sup>

Belgium's declaration emphasizes that it "shall not act upon a request for judicial cooperation where doing so would lead to discrimination between governmental and non-governmental forces in violation of the principle of international humanitarian law of equality of parties to a conflict, including in the event of armed conflict of a non-international nature". The background and intent of this statement would benefit from further clarification by the government.

Belgian law prohibits members of its armed forces who have not yet attained the age of 18 to take a direct part in hostilities. The government has further amended certain provisions in its law to prohibit the participation of military recruits below 18 years of age in any operational armed engagement in times of war.<sup>100</sup> Compulsory military recruitment has been suspended since 1992 but has not been abolished. Conscripts remain subject to the Consolidated Military Service Acts of 30 April 1962, which stipulate that a person can be recruited in the year he turns 18 during peace time. During war, recruitment is allowed in the year a person turns 17 years, and therefore when they are potentially 16 years old.

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<sup>95</sup> CRC, Summary record (Switzerland), op. cit., paragraph 35.

<sup>96</sup> CRC, Summary record (Switzerland), op. cit., paragraph 37.

<sup>97</sup> The Coalition has not reviewed discussions held during the session, or the documents arising from it.

<sup>98</sup> Belgium's binding declaration made upon ratification of the Optional Protocol, [http://www.ohchr.org/english/countries/ratification/11\\_b.htm#reservations](http://www.ohchr.org/english/countries/ratification/11_b.htm#reservations).

<sup>99</sup> Belgium's binding declaration, op. cit., paragraph 6.

<sup>100</sup> Belgium's binding declaration, op. cit., paragraph 6.

The government states that it has chosen to set 18 years as the voluntary recruitment age.<sup>101</sup> However, from Belgium's Initial Report it appears that a person can be voluntarily recruited once they have completed compulsory education - that is before they reach the age of 18.<sup>102</sup>

The government confirmed in its report that by referring to compulsory education it does not offer the same guarantees as a specific requirement of an 18 year minimum age as nothing prevents under-18s who have completed compulsory education from being accepted as voluntary military personnel.<sup>103</sup> To become a recruit, the individual must sign an act of enlistment, and those below the age of 18 must have parental consent. No other safeguards are listed in the Initial Report and no details on the exact responsibilities and obligations conferred by the act of enlistment are given. Paragraph 29 of the Initial Report states that "applicants may at any time during the training period terminate the contract and put an end to their enlistment". However, it is stated that once individuals have obtained effective military status, they "must have their resignation accepted by the Ministry of Defence".<sup>104</sup> No details are given on the procedures or on whether resignations are easily accepted, on how many have resigned in the past. In 2004 there were 64 military recruits under the age of 18; 38 were aged 17; and 26 were 16. While gender statistics are provided, information was not given on ethnic or social background of the recruits. The government stated that data on social origin is regarded as personal information and cannot be obtained.

There are three non-commissioned officer's colleges in Belgium accepting "career non-commissioned officer candidates" who become military candidates at the age of 16.<sup>105</sup> The government argues that "this provision does not, in principle pose a problem of conformity between Belgium and international law, since the Optional Protocol raises the possibility of schools operated by or under the control of the armed forces of the State Parties". The Initial Report does not, however, fully clarify whether students at the schools have military status.

Paragraph 50 of the Initial Report states that no existing legislation addresses the status of students at military schools in the event of a mobilization or armed conflict. The low admission age for military schools as well as the potential military status of students in these institutions is of concern. The Belgian Coalition to Stop the Use of Child Soldiers recommended that the government set 18 years as the age of entry to military schools or alternatively define the students' status as clearly civilian under humanitarian law. In the List of Issues, the Committee asked the government to provide "information on the contracts concluded (for example a requirement to sign a military oath) between the non-commissioned officer candidates and the officer candidates under the age of 18 and the State Party".<sup>106</sup> In addition, the Committee asked the government of Belgium to clarify "whether the candidates have a civil or military status".<sup>107</sup> According to available statistics, 53 candidates below the age of 18 were enrolled in military schools in 2004; 27 were 17 and 26 were 16 years old. The government said that they were drawn from a range of socio-economic backgrounds.

Paragraphs 40 and 41 of the Initial Report, reported that the Belgian armed forces use poster and media campaigns, periodic open days in military training establishments, a National Defence website, career advisors at National Defence Information Centres throughout the country, stalls at various job fairs, attractions and sport events, to attract new recruits. Similar efforts could be made to advertise the provisions of the Optional Protocol to young people in Belgium.

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<sup>101</sup> Belgium's binding declaration, op. cit., paragraph 16.

<sup>102</sup> Belgium's binding declaration, op. cit., paragraphs 17-20.

<sup>103</sup> Belgium's binding declaration, op. cit., paragraph 23

<sup>104</sup> Belgium's binding declaration, op. cit., paragraph 29.

<sup>105</sup> Belgium's binding declaration, op. cit., paragraph 25 and 42.

<sup>106</sup> CRC, List of Issues (Belgium), UN Doc. CRC/C/OPAC/BEL/Q/1, 9 February 2006, paragraph 6.

<sup>107</sup> CRC, List of Issues (Belgium), op. cit.



Belgium did not report on programs to assist children involved in armed conflict before seeking asylum in Belgium and the Committee raised this in its List of Issues for Belgium.<sup>108</sup> More details could usefully be made available on the country's refugee status determination procedures in relation to this group of children.

It is difficult to conclude from the Initial Report whether adequate measures have been taken to prevent and criminalize the recruitment or use of under-18s within the territory of Belgium. Paragraph 53 of the Initial Report states that a 1934 law prohibits private militias in Belgium and this was confirmed by the government in its binding declaration upon ratification of the Optional Protocol.

Belgium is a party to the Rome Statute of the International Criminal Court and the Act of 5 August 2003 on the punishment of serious violations of international humanitarian law considers the conscription or enlistment of children under 15 years of age in the armed forces or in armed groups, or the forcing of children to participate actively in hostilities to be a war crime and punishable as such.<sup>109</sup> Regarding the exercise of universal jurisdiction over anyone suspected or accused of grave crimes under international law, the Committee asked the government to provide information on the amendments to the Belgium Anti-Atrocity Law (1993) adopted in 2003, and to clarify how these amendments restrict the exercise of universal jurisdiction over war crimes such as conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities. The Committee further requested information on cases in which the Anti-Atrocity law has been implemented to address atrocities committed against children.<sup>110</sup> There is no indication that the government is considering the criminalization of the recruitment of children between the ages of 15 and 18 years in its domestic legislation as a war crime, which would undoubtedly strengthen the protection of refugee children under Belgium's jurisdiction.

The legal status of the Optional Protocol under Belgium's domestic law and its applicability in national courts has yet to be clarified. The government's Initial Report stated that:

according to practice in Belgium no provision of an international treaty may determine *expressis verbis* whether all or part of its norms have a direct effect in the internal legal order of the contracting States. Under Belgian law it is the responsibility of the judge to decide whether a treaty norm is directly applicable. The problem is one of interpretation and must be resolved by the judge on the basis of Articles 31 and 33 of the Vienna Convention on the Law of Treaties of 23 May 1969.<sup>111</sup>

The government's report does not mention the dissemination of the Optional Protocol to stakeholders aside from the armed forces, such as children and young adults or professional groups working with and for children. The report contains a detailed account of the country's conflict prevention and peace consolidation strategies, but provides little information on specific support for DDR programs around the world.

## Canada

Canada's Initial Report on the Optional Protocol was submitted in September 2004 and was considered at the Committee's 42<sup>nd</sup> session in May 2006.<sup>112</sup> The report is short, provides little detail on the implementation of individual articles and leaves several areas open to question.

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<sup>108</sup> CRC, List of Issues (Belgium), op. cit., paragraph 4.

<sup>109</sup> CRC, List of Issues (Belgium), op. cit., paragraph 55 (c).

<sup>110</sup> CRC, List of Issues (Belgium), op. cit., paragraph 1.

<sup>111</sup> CRC, Initial Report (Belgium), UN Doc. CRC/C/OPAC/BEL/1, paragraph 62. On the List of Issues, the Committee requested information on whether the provisions of the Optional Protocol had been fully incorporated into the State Party's domestic legislation and if they had not, information on the measures required to do so.

<sup>112</sup> CRC, Initial Report (Canada), UN Doc. CRC/C/OPAC/CAN/1, 29 July 2005.

Canada amended its National Defence Act to prohibit under-18s from deployment in areas where hostilities are taking place.<sup>113</sup> The government stated that members of the Canadian forces who have not yet reached the age of 18 may not be deployed in any theatre of hostilities, or indeed, any area where armed combat is a possibility. Soldiers under the age of 18 cannot be deployed in domestic emergencies where the use of weapons cannot be ruled out. Compulsory military service ceased after the end of World War II.

Voluntary recruitment is permitted from the age of 16 into Canada's Regular Officer Training Plan and from 17 into the Reserve forces.<sup>114</sup> The report did not include figures for voluntary recruits below the age of 18 disaggregated according to age, gender social, ethnic or religious background.

A member of the Canadian armed forces below the age of 18 wishes to withdraw from the Army, he or she may do so at any time without penalty.<sup>115</sup> However, under-18s who joined the military through avenues such as the Regular Officer Training Plan – and whose university education is fully funded by the Canadian armed forces - may only withdraw during the first year of service without penalty. After that, they are liable to pay their school costs.<sup>116</sup>

The Defence Administrative Orders and Directives (DAOD) include a provision on the right of conscientious objection, applicable to officers and non-commissioned members of the Canadian forces. However, similarly to voluntary recruitment, the Operating Principles under the section 'Obligatory service' limit the eligibility for voluntary release to members of the Canadian forces who have incurred obligatory service as a result of subsidized education or training or a recruitment allowance.<sup>117</sup>

The report includes scant information on military schools. Paragraph 14 of the Initial Report states that "the Royal Military College (RMC) is the only school operated by and under the control of the Canadian armed forces and that the RMC is exempted from raising the age of recruitment as required by paragraph one of Article 3 of the Optional Protocol". No additional information was provided on the minimum age for entry into military schools, the background of the students, the curricula, disciplinary measures, complaints procedures and so on.<sup>118</sup>

The Canadian armed forces have reportedly targeted increasingly aggressive recruitment campaigns at 16 to 34 year olds, including through economic incentives, scholarships for tertiary education, major, media and internet campaigns, summer camps, sports events, and more.<sup>119</sup> The Canadian Cadet Movement, comprising Sea, Air and Army Cadet Leagues, reportedly represent the largest federal government youth program in Canada, with over 60,000 members.<sup>120</sup> A child at the age of 12 may join the Cadets. According to the Canadian Coalition for the Rights of the Child, specific efforts are also made to target young Aboriginal Canadians and other minority groups in these recruitment drives.<sup>121</sup>

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<sup>113</sup> Section 34 of the National Defence Act, 29 June 2000.

<sup>114</sup> CRC, Initial Report (Canada), op. cit., paragraph 6.

<sup>115</sup> CRC, Initial Report (Canada), op. cit., paragraph 13.

<sup>116</sup> CRC, Initial Report (Canada), op. cit., paragraph 13.

<sup>117</sup> Defence Administrative Orders and Directives (DAOD) 5049-2, Conscientious Objection, issued on 30 July 2004. See also Queen's Regulations and Orders for the Canadian Armed Forces, 15.07 – Voluntary Release after Subsidized Education or Training, and 15.071 – Voluntary Release after Receiving a Recruitment Allowance, available on <http://www.admfincs.forces.gc.ca>.

<sup>118</sup> Child Soldiers Coalition, Country Brief (Canada), June 2003.

<sup>119</sup> Canadian Coalition for the Rights of Children, Written submission to the Committee on the Rights of the Child in response to Canada's Initial Report on the Optional Protocol on the Involvement of Children in Armed Conflict, October 2005.

<sup>120</sup> Department of National Defense, Support for Canada's Youth, [http://www.forces.gc.ca/site/about/support\\_e.asp](http://www.forces.gc.ca/site/about/support_e.asp).

<sup>121</sup> Canadian Coalition for the Rights of Children, Written submission, op. cit.

Given that Canada hosts large numbers of immigrants and refugees, the government could usefully provide information on programs to assist children involved in armed conflict before entering Canada. These children may also be vulnerable to voluntary recruitment, especially if the Army becomes the sole entity where free recreation and education can be sought, as well as a source of employment.

In its List of Issues, the Committee asked the government to clarify whether the Canadian International Development Agency (CIDA) "Action Plan on Child Protection" - or any other program or project - provide appropriate assistance for the psychological and physical recovery and social reintegration of immigrant or refugee children in Canada who may have been involved in or affected by armed conflicts.<sup>122</sup> Canada's refugee status determination procedures should also be addressed, to verify whether effective safeguards are in place to protect former child soldiers, and in particular girl soldiers, in the asylum process.

The Committee asked "whether the forced recruitment of children in Canada is a crime and whether this also applies in cases of: i) forced recruitment outside Canada of a Canadian citizen under 18 years of age; and ii) forced recruitment outside Canada of a person under 18 years of age by a Canadian citizen".<sup>123</sup> The Committee asked whether the government would consider criminalizing these acts if it had not already done so.

Canadian NGOs have asked the government to specify the rules of engagement with regard to the apprehension of underage prisoners of war, in the context of the increased deployment of Canadian troops in Afghanistan and their combat operations alongside allied forces and in view of the fact that Afghanistan had a high number of child soldiers, some as young as 14. The Committee has reiterated this question in its List of Issues and asked for more detailed information on this subject.<sup>124</sup>

Paragraph 17 of Canada's Initial Report explained that the Optional Protocol has been made available on a website and that the text is distributed to any interested individual upon request. Canada's Initial Report provides a comprehensive overview of the financial assistance and technical cooperation it provides to other countries on the implementation of the Optional Protocol, including support that is targeted directly at initiatives involving the DDR of child soldiers.

## **EI Salvador**

The Republic of El Salvador submitted its Initial Report on the Optional Protocol in January 2004 and it was considered at the Committee's 42<sup>nd</sup> session in May 2006.<sup>125</sup> The foreign affairs and national defence ministries prepared the report and no other stakeholders appeared to have been consulted. The government argued that "the provisions of the Protocol are based on the assumption of the existence of an armed conflict in which the recruitment or use of children may occur".<sup>126</sup> Several areas of concern were therefore not adequately addressed by the report. Following the pre-sessional meeting held in January 2006, the Committee raised a number of issues.<sup>127</sup>

Under article 215 of the constitution military service is compulsory for all Salvadorians from 18 to 30 years of age. However, the law on the armed forces states that "in case of

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<sup>122</sup> CRC, List of Issues (Canada), UN Doc. CRC/C/OPAC/CAN/Q/1, 9 February 2005, paragraph 2.

<sup>123</sup> CRC, List of Issues (Canada), op. cit., paragraph 4.

<sup>124</sup> CRC, List of Issues (Canada), op. cit., paragraph 3.

<sup>125</sup> CRC, Initial Report (El Salvador), UN Doc. CRC/C/OPA/SLV/1, 15 August 2005.

<sup>126</sup> CRC, Initial Report (El Salvador), op. cit., paragraph 4.

<sup>127</sup> CRC, List of Issues (El Salvador), UN Doc. CRC/C/OPAC/SLV/Q/1, 9 February 2006.

necessity, all Salvadorans fit for military service shall be soldiers".<sup>128</sup> Paragraph 4 of the Initial Report refers to legislation in force, "in particular the provisions of the Constitution and the corpus of domestic legislation relating to the inadmissibility of the participation of children in the event of armed conflict". All males must register for military service one month after they reach the age of 17, and are then randomly selected for recruitment into the army through a lottery system. In 1994, El Salvador made women liable for military service but they are not required to serve in a combat capacity.<sup>129</sup> El Salvador's report provided no information on safeguards in place to ensure that under-18s in the armed forces do not take a direct part in hostilities. As the law stands, it appears that "in a situation of extreme emergency, such as an international war or an invasion, all Salvadorians fit for military service, shall be soldiers", irrespective of their age and gender.<sup>130</sup>

Article 6 of the armed forces law states that "Salvadorians over 16 years of age may voluntarily submit to the Recruitment and Reserves Department or its subsidiary offices an application to perform military service and the Department shall accept them according to the needs of the service".<sup>131</sup> Paragraph 20 of the Initial Report lists the safeguards in place to ensure that recruitment of under-18s is genuinely voluntary. These include a written request to be submitted by the volunteer clearly stating his or her wish to perform military service; submission of the recruit's original birth certificate or minor's card; and parental, guardian or legal representative consent. Paragraph 14 of the Initial Report states that the "General Staff of the armed forces has issued a permanent order to refrain from accepting minors among newly recruited personnel, so that the armed forces only recruit volunteers who have attained the age of majority".<sup>132</sup> However, the order does not appear to be legally binding. No figures were provided to show how many under-18s were recruited into the armed forces or paramilitary forces or on the number of voluntary recruits. The Committee asked for this information in its List of Issues, including a request for information on the number of recruits sent to Iraq.<sup>133</sup>

The minimum period of service in El Salvador is 12 months. The armed forces use incentives, including providing basic and secondary education, citizens' training, social welfare, technical and university courses and participation in UN peacekeeping missions as well as technical training in the army, air force or navy.<sup>134</sup> The Initial Report does not offer information on whether it is possible for under-18-year-old volunteers to leave the armed forces without facing disciplinary proceedings.

El Salvador lists the General Gerardo Barrios Military School, managed by the armed forces, in its report. The report does not clarify the status of the students, state the minimum age for admission, or whether students may leave before completing their studies. Four 17-year-old students, one female and three males are said to be attending the school. While paragraph 26 of the report notes that: "students are not detained at these schools on any grounds" it goes on to add that "in case of necessity, action is taken in accordance with the provisions of the Constitution". The statement was not further clarified so the status of under-18s enrolled in the school remains unclear.

The report stated that since El Salvador is not involved in an armed conflict, Article 4 - which deals with recruitment by armed groups - is not relevant. Thus there was no information on efforts to engage communities in child protection or of government steps to criminalize the recruitment and use of children by armed groups. El Salvador suffers high levels of violence,

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<sup>128</sup> Ley Orgánica de la Fuerza Armada, No. 353, 9/7/98, Article 6. See also CRC, Initial Report (El Salvador), op. cit., paragraph 8.

<sup>129</sup> Child Soldiers Coalition, Country Brief (El Salvador), February 2004.

<sup>130</sup> CRC, Initial Report (El Salvador), op. cit., paragraph 17.

<sup>131</sup> CRC, Initial Report (El Salvador), op. cit., paragraph 17.

<sup>132</sup> CRC, Initial Report (El Salvador), op. cit., paragraph 14.

<sup>133</sup> CRC, List of Issues (El Salvador), op. cit., paragraphs 1-2.

<sup>134</sup> CRC, Initial Report (El Salvador), op. cit., paragraph 25.

dramatic social and economic inequalities and firearms are readily available. Under these circumstances children remain especially vulnerable to recruitment or use by armed groups, if armed conflict recurs.

El Salvador's report does not respond on Article 6(3) of the Optional Protocol which defines government obligations to assist the recovery and reintegration of children recruited or used in hostilities. According to UNICEF, initiatives to include child soldiers in DDR programs following the 1992 Peace Accords were poorly implemented.<sup>135</sup> Only a few organizations working during the post-war period have continued to provide services to these individuals, despite the fact that many children clearly require long-term support and services.<sup>136</sup>

The Initial Report further neglected to provide information on measures to ensure the effective implementation and enforcement of the Optional Protocol. Equally, it did not specify what, if anything, has been done to bring El Salvador's domestic legislation in line with the Optional Protocol.

The List of Issues included requests for information on:

- i) rules of engagement regarding the capture of under-18-year-old prisoners of war, particularly in Iraq;
- ii) data for 2003-2006 on budget allocations for implementation of the Optional Protocol, in particular on disarmament, demobilization and reintegration programs for child victims of activities contrary to the Protocol;
- iii) legislation on voluntary recruitment of under-18s and the criminalization of the recruitment or use of children in hostilities;
- iv) whether courses on human rights and humanitarian law have been integrated into school curricula, to strengthen a culture of peace;
- v) the number of children who continue to be affected directly or indirectly by the armed conflict as displaced persons, as orphans, or as combatants;
- vi) measures taken to implement the 2005 decision of the Inter-American Court on Human Rights in the case of the *Sisters Serrano Cruz vs. El Salvador*, including but not limited to the establishment of a Commission to determine the whereabouts for children who disappeared during the armed conflict;
- vii) the number of children aged between 16 and 18 years who died while serving in the army between 2002 and 2005.<sup>137</sup>

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<sup>135</sup> Child Soldiers Coalition, Country Brief (El Salvador), op. cit.

<sup>136</sup> Red de los Derechos de la Niñez y Adolescencia, Report on the Situation of Enforcement of the Convention on the Rights of the Child in El Salvador to the Committee on the Rights of the Child, 36<sup>th</sup> session, 17 May - 4 June 2004, <http://www.crin.org>.

<sup>137</sup> CRC, List of Issues (El Salvador), op. cit.

## **Annex I**

### **How national NGOs can contribute to the Optional Protocol reporting process**

- Liaise closely with the Committee during the reporting process for the Optional Protocol, including during pre-sessional Working Group meetings. Submit timely alternative reports to the Committee, to include an analysis of the government's report and a review of issues of concern, as well as specific questions for the Committee to raise with the reporting government.
- Encourage the participation of government representatives with relevant expertise in Committee reporting sessions.
- If the government is to be offered a technical review of the government's report, but NGOs consider there are serious issues to be addressed, urge the Committee to invite a government representative to be present at the reporting session.
- Circulate government reports on the Optional Protocol, as well as documents on the Committee's consideration of each report, to interested NGOs and other civil society organizations working in the relevant countries.
- Monitor the recruitment or use of children by non-state armed groups and reflect on how these practices could be addressed by the Committee in the context of the reporting mechanism for the Optional Protocol.