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Rehabilitation, Reintegration and Reconciliation of War-Affected Children

Edited by

Ilse DERLUYN, Cindy MELS,
Stephan PARMENTIER and
Wouter VANDENHOLE



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PREFACE

Radhika COOMARASWAMY
*Special Representative of the United Nations Secretary-General
for Children and Armed Conflict*

I am pleased to write this preface on the occasion of the publication of the proceedings coming out of the international conference on ‘Rehabilitation and Reintegration of War-Affected Children’, held in Brussels, Belgium, in October 2009.

CHILD SOLDIERS

One important category of children in armed conflict are the many thousands of child soldiers who are recruited and trained to play an important role in the violence. In relation to this category of children, it is worthwhile to draw attention to two major aspects, i.e. the reintegration of these children and the accountability of those who recruit them.

The reintegration of child soldiers has been a complex issue which has tested even the best programmes on the ground. The Paris Principles of 2007 give us the best guidance, as they contain key insights that need implementation and relate to social and economic rights of children, as well as their rehabilitation and reintegration. Three overarching guidelines configure the entire reintegration effort. Firstly, children must be heard and be enabled to participate in all decisions affecting them, so as to ensure that these decisions are taken in their best interest. Some children for example may think that they are wasting their time at school while they want to learn practical skills. Secondly, non-discrimination is an absolute must in any reintegration programme. It is important that former child soldiers do not receive a preferential treatment over those who have not been associated with armed groups. Also, particular attention should be given to girls, so as to ensure that they are involved in the reintegration effort and to see to it that their specific needs are being met. Thirdly, the capacity of reintegration programmes and the actors involved should be strengthened in order to ensure their self-sustainability. This is particularly important when it comes to schools and hospitals.

Apart from these overarching guidelines, the same Paris Principles also contain four operational principles that must be implemented to strengthen the effectiveness of the programmes geared at reintegrating child soldiers into society. First of all, the programmes must not be implemented in a generalistic and abstract manner but in a context-specific way that allows the particular circumstances of the children to be taken into account. Furthermore, programmes should not be individualistic only but also be family-focused since strengthening family ties reduces the risk of re-recruitment of children and is beneficial to their development in general. However, programmes aimed at the family require longer term support, and local ownership of the programmes. This brings us to the third operational principle, being the engagement of the local community. This does not only reinforce the sustainability of the programmes, but also allows other children in the community to benefit from any reintegration programme. Finally, the training for livelihood and skills should take an important place in any reintegration and rehabilitation programme. In this respect, it is important to further build upon the skills that the children have already acquired.

However, it is crystal clear that tackling the issue of child recruitment can not only be done by focusing on the victim. The other side, namely the accountability for those who recruit children must be paid attention to. In this respect, the efforts made by the International Criminal Court in recent years to bring to trial child recruiters already make a difference on the ground. Moreover, prosecutions at the national level should also constitute an integral part of strengthening the accountability of war criminals.

A more difficult issue is whether children who have perpetrated crimes should be prosecuted for their actions. Here, the Paris Principles are quite clear, stating that these children should not be prosecuted or punished but their crimes should be addressed through programmes of alternative justice, restorative justice, or truth and reconciliation processes which at the same time guarantee their legal protection as minors.

CHILDREN AND ARMED CONFLICT IN GENERAL

Since assuming the function of Special Representative of the Secretary-General for Children and Armed Conflict in April 2006, my office has sought to develop a strong partnership with the academic community with the broad objective of facilitating research to fill the critical gaps in knowledge that hamper advocacy and programmatic responses for children that are relevant to the needs of child protection practitioners on the ground; I therefore welcome the remarks of all

the academics in this volume along with their activist partners who have done excellent and groundbreaking research on the important topic of the reintegration of children associated with armed groups. Drawing from extensive field experience and the work of activists and UN colleagues, the research gives us the state of the art knowledge in this field.

It will be equally important that the results of this conference be widely disseminated to all stakeholders involved, not the least to the children affected by armed conflict themselves.

FOREWORD

A Children's Rights Approach to Recovery and Reintegration: An Agenda for Action

Jaap E. DOEK

Former chairperson of the Committee on the Rights of the Child

This book is a most welcome contribution to the growing body of multidisciplinary scholarship on children's rights. By focusing on recovery, reconciliation and reintegration, it expands the scope of much of the literature on children in armed conflict from the recruitment and participation of child soldiers to the broader questions of rebuilding societies and healing and reintegrating children who have been affected by armed conflict.

I will use the opportunity given to me to write a foreword to set an agenda for action at the international level that may facilitate reconciliation, recovery and reintegration. I will insist in particular on the need for prevention; universal ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC); the adoption of the Paris Principles and Guidelines by the UN General Assembly; and the establishment of a fund for the recovery and reintegration of children affected by armed conflict (CAACs). But first, by way of preliminary question, I will examine whether the recovery and reintegration of CAACs is a matter of human rights or international humanitarian law. Before I present my agenda for action, I will introduce a children's rights approach, in which I will try to identify the specific rights of war-affected children and the related obligations of states and others.

1. REHABILITATION AND REINTEGRATION OF WAR-AFFECTED CHILDREN: A HUMAN RIGHTS MATTER (?)

1.1. INTERNATIONAL HUMANITARIAN LAW

International instruments of humanitarian law are important for the protection of children affected by war, notably the Geneva Convention relative to Protection

of Civilian Persons in Time of War (1949).¹ They contain various provisions for the protection of children under the age of 15, i.e. parties to a conflict have to take measures necessary to ensure that children under fifteen who are orphaned or are separated from their families as a result of the war are not left to their own resources and that their maintenance and education are facilitated in all circumstances. Furthermore, parties to the conflict must endeavour to arrange for all children under twelve to be identified by the wearing of identity discs or by some other means (Art. 24). The Convention also contains provisions for the protection of children in occupied territories, on the internment of children and on their right to education (Arts. 50, 82 and 94).

Protocol I to the Geneva Convention (1977) provides for the special protection of children in Article 77 with the well-known rule that children under 15 years shall not be recruited or participate in hostilities. These rules were also included in Article 38 CRC, despite many efforts in the open-ended working group on the drafting of the CRC to set a higher standard for recruitment and involvement in hostilities.² Article 4, para. 3 of Protocol II to the Geneva Convention (1977) requires that children shall be provided with the care and aid they need and in particular shall receive education, while steps shall be taken to facilitate reunification with their families. It furthermore allows for the removal of children, with consent of their parents or other responsible persons, to safer areas.³

So international humanitarian law, in particular the Geneva Conventions of 1949 and Protocols I and II of 1977, is relevant, although the provisions focus more on protection as such than on recovery and reintegration. This should be understood in light of the fact that these instruments focus on the protection of

¹ The Geneva Convention is applicable to all cases of declared war or of any other armed conflict between two or more states (Art. 2) and its application shall cease (in principle) on the general close of military operations (Art. 6). Protocol I supplements all four Geneva Conventions and deals with (among others) the protection and treatment of wounded, sick and shipwrecked persons, with missing and dead persons and with the status of combatants and prisoners of war and measures in favour of women and children. Protocol II applies to all armed conflicts not covered by Protocol I (Art. 1) and which take place in the territory of the contracting State Party between its armed forces and dissident armed forces or other organised armed groups.

² S. DETRICK, *The UN Convention on the Rights of the Child. A Guide to the "Travaux Préparatoires"*, Martinus Nijhoff, Dordrecht/Boston/London, 1992; L.J. LE BLANC, *The Convention on the Rights of the Child. United Nations Lawmaking on Human Rights*, University of Nebraska Press, Lincoln, 1995; UNOHCHR, *Legislative History of the Convention on the Rights of the Child*, United Nations, New York/Geneva, 2007 (UN doc. HR/PUB/07/1).

³ D. FLECK (ed.), *The Handbook of Humanitarian Law in Armed Conflicts*, Oxford University Press, Oxford, 1995; C. HAMILTON and T. ABU EL-HAJ, 'Armed Conflict: The Protection of Children under International Law', (1997) 5 *The International Journal of Children's Rights* 1-46.

civilians *during* wars or armed conflicts. It is also self-evident that the process of recovery and social reintegration should not be put on hold until the war is over. Already during the period of armed conflict efforts in that regard should be made and these efforts need to be supported by the full implementation of the provisions of humanitarian law for the protection of children. This is confirmed by the reference to the obligations of States Parties under international humanitarian law in both Article 38 CRC and Article 22 ACRWC, i.e. to ensure the care and protection of children affected by armed conflicts in accordance with international humanitarian law.

1.2. THE PARIS COMMITMENTS AND PRINCIPLES AND GUIDELINES

Two of the leading documents on the recovery and reintegration of children affected by armed conflict are the *Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups* and the *Principles and Guidelines on children associated with armed forces or armed groups*, adopted in February 2007 by a group of states at a conference in Paris. A discussion of these important documents, currently endorsed by 100 states, goes beyond the scope of a foreword (see Nylund's chapter), but I was and still am surprised that the time and energy invested was not used (perhaps with some extra effort) to have the Principles and Guidelines adopted by the UN General Assembly. UN Guidelines have a higher status and are morally stronger than a document adopted at a conference and endorsed by less than half of the UN member states.⁴

Remarkably, the Paris Commitments make only a very limited reference to the CRC, except for a call to ratify the CRC and OPAC as a matter of priority.⁵ In §17 for instance, the endorsing states commit themselves to ensuring that any programmes or actions to prevent the recruitment and use of children and to support unlawfully recruited or used children are based on humanitarian law. In §19 on funding child protection, no reference is made to the CRC either.

The Paris Principles and Guidelines do recognize as overarching principles among others the four principles of the CRC: non-discrimination (Art. 2), the best interests of the child as a primary consideration (Art. 3), the right to life, survival and development (Art. 6) and the right of the child to respect for her/his

⁴ It is even more puzzling that they are not UN guidelines given the very clear and consistent commitment of the Security Council to preventing and reducing the recruitment and involvement of children in armed conflicts; see Resolutions 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005).

⁵ As mentioned in the preamble. It is only in the paragraphs on child perpetrators of (serious) war crimes that treatment is required in line with the CRC (§12).

views and participation (Art. 12). The chapter on release and integration does not, however, make specific reference to the rights of the child as enshrined in the CRC. It leaves us with the question whether the recovery and reintegration of war-affected children must be considered as a matter of humanitarian law or as a matter of human rights.

1.3. REHABILITATION AND REINTEGRATION: A HUMAN RIGHTS IMPERATIVE

The question whether human rights law is relevant to rehabilitation and reintegration is *inter alia* triggered by the fact that Article 38, §4 CRC refers to an obligation under international humanitarian law and by the discussion of the status of the OPAC, Article 6 of which deals among others with measures to be taken to provide children recruited for or used in hostilities with all appropriate assistance for full recovery and social reintegration. There are three possible categorisations of the OPAC: as a human rights instrument, as part of international humanitarian law, or as a hybrid instrument straddling the divide between human rights and international humanitarian law (IHL).

Bennoune has compiled and analysed the arguments and consequences of each of the three options.⁶ With reference to the drafting history and the text of the OPAC, the jurisprudence of the CRC Committee and the views of NGOs and experts, she came to the conclusion that the OPAC is a human rights instrument. To consider OPAC as an IHL instrument would limit its application to situations of armed conflict and undermine the protection of children and their human rights, or at least some of them, which call for the protection of the individual at all times, in war and peace alike. The option to treat the OPAC as a hybrid instrument could allow for innovative human rights interpretations while still recognizing the important connections to and bases in IHL. But the downside is that doing so muddles the waters and thereby possibly gives rise to a lot of confusion. Augmenting Bennoune's well-founded conclusion, I'd like to add the following specifically in relation to the matter of rehabilitation and reintegration: even if one limits the scope of the OPAC to situations of armed conflict, we should emphasise that the protection provided under the CRC applies to all children at all times, in war and peace alike. Thus, and regardless of one's opinion on the status of the OPAC, the rehabilitation and reintegration of war-affected children is a human rights imperative.

⁶ K. BENNOUNE, *Memorandum on The Nature and Sphere of Application of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict prepared for the Coalition to Stop the Use of Child Soldiers* (May 2009, on file with the author).

2. THE INTERNATIONAL LEGAL FRAMEWORK: GENERAL OBSERVATIONS

The major international human rights instruments that provide the legal framework for the rehabilitation and reintegration of war-affected children are the CRC and its OPAC, and for African countries additionally the ACRWC.⁷ Discussion of the legal framework requires a kind of definition of rehabilitation and reintegration. To avoid the battle with words which usually accompanies efforts to define a concept, let me just make some ‘defining’ remarks:

- a. the CRC Committee does not like the word ‘rehabilitation’ because of its possible connotation with disabilities. Therefore – and in line with the text of Article 6 OPAC and the CRC⁸ – I will use the term ‘recovery’ instead of ‘rehabilitation’;
- b. recovery measures focus on repairing as good as possible the physical and psychological trauma that the child has suffered from participating in armed conflict or as a witness of the effects of hostilities;
- c. measures of social reintegration include efforts to reunite the child with her/his family and community of origin as much as possible, and to support the child in developing her/his personality and talents to their fullest potential, notably through education/vocational training and in finding healthy and secure employment or work. In short: all efforts to support the child in her/his full and harmonious development while assuming a constructive role in society;
- d. for children recruited or used in armed conflicts, the recovery and integration process starts with demobilisation or other forms of release from the armed forces/groups concerned (including disarmament, where applicable). I will not deal with these measures and only note that Article 6 OPAC requires States Parties to take all feasible measures to ensure that children within their jurisdiction who have been recruited and used in hostilities are demobilised or otherwise released from service. The CRC and the ACRWC do not contain specific provisions in that regard.

In what follows, I will make some general observations on the rights-based approach, followed by a discussion of some specific problems: the criminal responsibility of children, children with disabilities, and displacement.

⁷ The SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia (Kathmandu, 2002) does not contain specific provisions relating to children affected by war.

⁸ The term ‘rehabilitation’ only appears in Art. 23 (on children with disabilities) and Art. 24 CRC (rehabilitation). Art. 39 uses the terms ‘recovery’ and ‘social reintegration’ in relation to child victims of, *inter alia*, abuse, exploitation, cruel or inhuman treatment and armed conflict.

2.1. OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT (OPAC)

Given its specific nature, we will first look at the Optional Protocol on the Involvement of Children in Armed Conflict for provisions on the recovery and reintegration of child victims of war. Adopted by the UN General Assembly in Resolution A/RES/54/263 of 25 May 2000, this Protocol requires States parties to take all feasible measures to ensure that children (persons under the age of 18) do not take a direct part in hostilities (Art. 1). Furthermore, the OPAC prohibits the compulsory recruitment of children into armed forces (Art. 2) and armed groups (Art. 4). It also requires States parties to the OPAC to set a minimum age at least at 16 for voluntary recruitment, while ensuring that this recruitment is genuinely voluntary and with the informed consent of the child and her/his parents or legal guardians.

This Optional Protocol is an amendment to Article 38 CRC, which sets the minimum age for recruitment and direct participation in hostilities at the age of fifteen. In this regard it should be noted that the African Charter on the Rights and Welfare of the Child (ACRWC) has set the age at 18, requiring States Parties to this Charter to ensure that no child shall take a direct part in hostilities and to refrain in particular from recruiting any child (art. 22 ACRWC). This standard is also known as the 'straight 18 standard'.

The attention given in this Protocol to recovery and reintegration is very limited. Article 6, §3 OPAC contains the following provision:

States Parties shall take all feasible measures to ensure that persons within its jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

This provision limits the obligation of the state to the provision of assistance for the recovery and social reintegration of children *recruited or used in hostilities*. It does not cover all other children who are victims of war. This is certainly disappointing, but can simply be explained by the fact that the focus of this Optional Protocol is on the recruitment and involvement of children in armed conflict. Furthermore, Article 6 OPAC does not specify the nature, the timing, the duration or the setting of this assistance. This is therefore a missed opportunity to provide for specific principles and rules for the recovery and social reintegration of *all* war-affected children, including the role of parents and the community. The OPAC (Art. 6) does not make a specific reference to international humanitarian law when requiring States Parties to

provide assistance for the recovery and social reintegration of war-affected children.

Important is Article 7 OPAC, requiring States Parties to cooperate in the implementation of the OPAC, with special attention to preventing the violation of the OPAC's rules and to recovery and social reintegration, which are again limited to the category of children mentioned above.⁹ Article 6, §2 OPAC contains a provision that is often overlooked: rich States Parties shall provide (technical and/or financial) assistance via multilateral, bilateral or other programmes or 'inter alia through a voluntary fund (...)'.⁹

The Optional Protocol is an annex to the CRC, and has to be interpreted in connection with and/or in the context of the CRC. This approach is confirmed in the preamble to the OPAC, stating inter alia that the States Parties are to bear in mind 'that... observance of applicable human rights instruments [is] indispensable for the full protection of children, in particular during armed conflicts and foreign occupation'. States also reaffirm 'that the rights of children require special protection' and call for 'continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security'.

From these statements it is clear that the protection of war-affected children should not only be based on provisions in the OPAC, but should be governed by all the rights enshrined in the CRC and when applicable (also) those in the ACRWC, e.g. all States Parties to the CRC that have also ratified the OPAC are bound by the obligation to implement that Convention fully. In other words: the CRC is the legal framework for the recovery and social reintegration of all war-affected children and requires a comprehensive and holistic child rights-based approach. This is (at least implicitly) confirmed by the reporting rule that, after a separate initial report on the implementation of this Protocol, any further information shall be included in the regular reports on the implementation of the CRC as a whole (Art. 8, §2 OPAC). Reporting under the OPAC thus becomes an integral part of the overall process of implementing the CRC. The provisions of the OPAC are meant to amend, strengthen or specify provisions in the CRC.

2.2. THE CONVENTION ON THE RIGHTS OF THE CHILD

The key building bloc of the legal framework is Article 2 CRC: States Parties shall respect and *ensure* the rights enshrined in the CRC to each child within their

⁹ For unknown reasons, Art. 7 OPAC uses the term 'rehabilitation' whereas Art. 6 talks about 'recovery'.

jurisdiction without discrimination of any kind. It means that all children affected by armed conflict, and not only those who are/have been recruited or used in hostilities (via Demobilisation, Disarmament and Reintegration (DDR) programmes) are entitled to the maximum enjoyment of their rights under the CRC. Article 3 ACRWC contains a similar provision stating that every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the Charter.

These provisions are not only a solid legal foundation for recovery and integration programmes as an obligation of the State, but also are binding guidance for the content and the implementation of these programmes. This is particularly important given the fact that the OPAC limits the obligations of States Parties to the provision of ‘all appropriate assistance’ (see Art. 6, §3 OPAC and earlier remarks in this regard). It means *inter alia* that recovery and reintegration programmes for all war-affected children, both in their development and implementation, should respect and implement all the rights of the child enshrined in the CRC. For practical reasons I will limit myself to highlighting the importance of some of these rights.

First and given the CRC Committee’s emphasis on the obligation to take general measures of implementation (see General Comment No. 5), programmes for the recovery and social reintegration of children affected by armed conflict should as much as possible be an integral part of a comprehensive, well coordinated and adequately resourced national policy for the implementation of children’s rights. This will avoid these programmes becoming narrowly focused on immediate, short-term responses to the trauma children have suffered as a result of their experiences during armed conflict and also promote benefits for the children from, for example, long-term health, education and social policies. They have, like all other children in the country, the right to the highest attainable standard of health and this requires access to all available health care services (Art. 24 CRC). They must be provided with free and compulsory primary education and secondary education and vocational training, either for free or with financial assistance in case of need (Art. 28 CRC). Furthermore, they have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development (Art. 27 CRC). These and other rights in the CRC, such as the right to protection from all forms of violence and exploitation (Arts. 19, 32–36 CRC), but also the right to rest, leisure and to engage in play, recreational and cultural activities, apply to all children, including children affected by armed conflict. It is important to underscore this in order to ensure that these children are not provided only with short-term support for their recovery and reintegration. This recovery requires full and ongoing respect for and implementation of their rights.

I would like to emphasise the following:

- All children affected by armed conflict should be provided with meaningful opportunities to express their views and to participate actively in the preparation and implementation of the programmes, while ensuring that their views are given due weight (Art. 12);¹⁰
- The primary responsibility of parents for the upbringing of their children, including the responsibility to secure the conditions of living necessary for the child's development (Arts. 18 and 27 CRC), implies that they should be actively involved as much as possible in the recovery and reintegration of their children. In this regard, it is important to note that States Parties must respect the rights of parents and, where applicable, of members of the extended family and the community, to provide the child, in accordance with her or his evolving capacities, appropriate direction and guidance in the exercise by the child of the rights recognized in the CRC (Art. 5). This obligation indicates that not only the parents but also the extended family and the community should play a role in the recovery and reintegration process.
- States Parties have the obligation to provide parents with support and assistance in the performance of their child-rearing responsibilities, inter alia by establishing institutions, facilities and services for the care of children (Art. 18) and by providing, in case of need, material assistance and support programmes, particularly with regard to nutrition, clothing and housing (Art. 27).

These provisions of the CRC indicate clearly that recovery and reintegration programmes require the involvement not only of the children themselves but also of their parents, extended family and community, and of the government to undertake measures to the maximum extent of its available resources (Art. 4). This means that the state must provide as much human and financial resource as possible for the implementation of the programmes and should seek international support and cooperation. As the CRC Committee stated in General Comment no. 5: 'Whatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups.'

The ACRWC contains similar provisions in Article 14 (on health care), Article 11 (on education), Article 20 (on assuring an adequate standard of living) and Articles 15, 27–29 (on exploitation). Finally, in the provisions specific to armed conflict, both the CRC and the ACRWC (Art. 38 and Art. 22 respectively)

¹⁰ With regard to the interpretation and implementation of Art. 12 CRC, see General Comment No. 12 of the CRC Committee: *The Right of the Child to be Heard*, UN Doc. CRC/C/GC/12 of 1 July 2009.

require States Parties to take all feasible measures in accordance with their obligations under international humanitarian law to ensure the protection and care of children who are affected by armed conflict.¹¹

Let me summarise my general observations. The CRC is *the* best international legal framework for the recovery and social reintegration of *all* war-affected children, because it is applicable to *all* children in a war-affected country without discrimination of any kind. It will therefore contribute to an all-inclusive policy of care and protection covering all children and tailored to their specific needs. The CRC also provides the specific rights to, for example, health care, education, adequate living conditions that are critical elements of an effective long-term process of recovery and social reintegration. The ACRWC confirms this approach with some important additions (e.g. on the elimination of harmful traditional practices).

The assistance to recovery and social reintegration that States Parties to OPAC must provide is limited to children recruited or used in armed conflict. This is disappointing, but can simply be explained by the fact that the OPAC's focus is on the recruitment and involvement of children in armed conflict, and more specifically on setting specific age limits in that regard. Unfortunately, this focus has resulted in a missed opportunity to provide for much more specific principles/rules for various aspects of transitional justice and in particular for the recovery and social reintegration of *all* war-affected children (including the role and responsibilities of parents and communities). The one specific opportunity provided by the OPAC, i.e. an international voluntary fund, has been neglected.

Finally, an important complement to the CRC as *the* international legal framework is international humanitarian law. IHL contains various provisions with a focus on the protection and care of children during 'officially' declared wars or other armed conflict. However, IHL does not define a child as a person under 18, but limits its specific attention for children to those under the age of fifteen.

3. SOME SPECIAL PROBLEMS

The efforts to assist war-affected children with their full recovery and social reintegration face many problems and challenges. While this is not the place to discuss these problems and challenges in detail, from a rights perspective there is reason to draw attention to some of these problems.

¹¹ It should be noted that Art. 22 ACRWC contains also the very general clause that States Parties shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

3.1. CRIMINAL RESPONSIBILITY OF CAACs

One of the problems with the recovery and social reintegration of war-affected children is the fact that some of them have committed very serious crimes which can qualify as crimes against humanity and/or war crimes. The Rome Statute clearly states that the International Criminal Court has no jurisdiction regarding such crimes if committed by a person below the age of 18. So it is left to the national authorities to decide how to treat children who allegedly committed very serious (war) crimes. These may be dealt with through a Truth and Reconciliation Commission or under the rules of the criminal code.

It is in my opinion not a contribution to full recovery and social reintegration just to ignore the (suspected) commission of crimes or, even worse, to treat it as a taboo issue (don't ask, don't tell). It is in line with respect for the child as a rights-holder also to hold him/her responsible for the serious violations of the rights of others he/she may have committed. The full implementation of rules for juvenile justice in the CRC (Arts. 37 and 40) and the related international standards (Beijing and Havana Rules) provides for such accountability with the clearly stated commitment to treat the child in a manner consistent with the promotion of the child's sense of dignity and worth and with the aim of promoting the child's reintegration and the child's assuming a constructive role in society.

In line with Article 40, §3, b CRC, measures should be taken to deal with children accused of having infringed the penal law without resorting to judicial proceedings. In other words, when appropriate not penal sanctions but alternative measures should be applied. First and foremost, juvenile justice for these children should be restorative justice that reconciles the child with her/his family and community with a view to her/his social reintegration. The CRC Committee is of the opinion that alternative measures such as restorative justice should not be limited to minor offences.¹² As was stated in the Lima Declaration (2009) on Restorative Juvenile Justice:

Experience shows that restorative juvenile justice can also play an important role in addressing serious crimes. For example, in many armed conflicts children are used as child soldiers and forced to commit unspeakable crimes targeting especially their own family members, their neighbours and their community. Restorative justice is very often the only way of bringing reconciliation to victims and offenders alike in a war-torn society where victims of offences suffer as do child offenders, having been forced to commit offences. Without such reconciliation the reintegration of child

¹² For more information on the interpretation and implementation of the CRC in this regard, see General Comment No 10 of the CRC Committee on *Children's Rights in Juvenile Justice*, UN doc. CRC/C/GC/10 of 9 February 2007.

soldiers in their communities is not possible, much to the detriment of the then ostracised child as well as the community bereft of workforce and under threat of criminal behaviour of the excluded child.¹³

3.2. CHILDREN WITH DISABILITIES

Amongst the very visible effects of war are the children with disabilities resulting from intentional amputations or explosions of landmines and other devices/weapons. Unfortunately, the end of war does not put an end to the risk of children being disabled by landmine explosions. Many international efforts have been and are being undertaken to prevent and address the problems of Anti-Personnel Landmines (e.g. the Ottawa Convention 1997 and the Guidelines for Landmine and Unexploded Ordnance Awareness Education).

Special attention should also be given to the rights of children with disabilities in the context of recovery and reintegration programmes. Awareness raising and education on the dangers of landmines and other unexploded devices are important, but strong, systematic and ongoing efforts have to be made to ensure that children with disabilities enjoy a full and decent life in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community (Art. 23 CRC and Art. 7 Convention on the Rights of Persons with Disabilities – CRPD, 2006). It requires not only well-trained people to treat the disabilities, but also ongoing support for the families of these children (e.g. the growing bodies and bones of these children will require on average a new prosthesis every six months). Prevention of discrimination and access to regular, or if necessary special, education are other issues that require special attention. These and other measures which have to be taken by the State as much as possible with the involvement of the children themselves and with the support of NGOs and other sections of civil society are elaborated in the CRC Committee's General Comment no. 9 on the rights of children with disabilities. It is clear from Article 23 and other provisions in the CRC and from the CRPD that the protection and realisation of the rights of children with disabilities must be an integral part of the legal framework for recovery and social reintegration programmes.¹⁴

¹³ The Lima Declaration (2009) on Restorative Juvenile Justice was adopted at the First International Conference on Restorative Juvenile Justice, held in Lima (Peru) on 2–7 November 2009. See also ECOSOC Resolution 2002/12 Basic Principles on the use of restorative justice programmes in criminal matters.

¹⁴ See also *The Paris Principles and Guidelines on children associated with armed forces or armed groups*, §§7.50 – 7.53 (Paris, February 2007).

3.3. DISPLACED CHILDREN

Many millions of children are displaced (internally or across borders) by armed conflict and are the most frequent victims of violence, disease, malnutrition and death. They often become separated from their parents and families and are thereby exposed to far greater danger and exploitation. For instance, adolescents are especially vulnerable to forced recruitment, abduction, trafficking and sexual exploitation. These children have the right to receive special protection and humanitarian assistance in the enjoyment of their rights under the CRC. Efforts have to be made to trace the parents or other family members in order to obtain information necessary for the child's reunification with her or his family. If parents or family cannot be found, the child must be provided the same protection as any other child permanently or temporarily deprived of her or his family environment for any reason (Arts. 22 and 20 CRC).

Displaced children have the same rights as other children to food, health care and education, as well as the right to preserve their identity and cultural, linguistic and inheritance rights. It should be noted that governments are responsible for the welfare of Internally Displaced Persons (IDPs), including children. Unfortunately, governments are often unable or unwilling to provide these children with the assistance and protection they are entitled to. Many IDP children live in refugee camps. Although intended as temporary refuge, they often become shelters where entire generations of children grow up. Ongoing efforts are needed for their safe return to their families and communities, but at the same time measures have to be taken to improve living conditions in the camps.

4. AN AGENDA FOR ACTION

4.1. PREVENTION

It may be considered too idealistic or even naïve, but we should continue to undertake efforts, and strengthen them where possible, to prevent children from becoming war-affected and therefore in need of rehabilitation and reintegration. We may never succeed in having a war-free world, but we must try to establish an effective worldwide prohibition on the recruitment of children and on their active involvement in armed conflict, and undertake all other available measures to prevent children from becoming victims of armed conflict. It goes well beyond the scope of this foreword to discuss in detail the many political, social, economic and other measures necessary to prevent armed conflict. I will limit myself to some observations on the measures that can and must be taken to stop the recruitment or enlistment of children in armed forces or groups and/or their active participation to hostilities.

To prevent children from becoming victims of armed conflict as a result of their recruitment and/or direct participation in armed forces or groups, the following actions should be taken:

- Maximum efforts to achieve the universal ratification of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict in order to establish a global and legally binding commitment to stopping the recruitment of children and/or their active involvement in armed conflicts, not only as combatants but in any other role. The OPAC entered in to force on 12 February 2002 and so far it has been ratified by 143 states, including the US, which has not yet ratified the CRC. More than 50 percent of the African states (32 out of 53) have ratified or acceded to the OPAC. In addition, so far 45 African states have ratified the ACRWC. If the remaining eight States ratify this Charter, all African states will be bound by the 'straight 18 standard'. I am pleased to see that upon my suggestion, the Special Representative of the Secretary General on children and armed conflict now conducts a global campaign ('Zero under Eighteen') for the universal ratification of the OPAC by 12 February 2012.
- Within the framework of the implementation of the OPAC, all states should establish a minimum age of 18 for both compulsory recruitment and voluntary enlistment in armed forces and for their involvement in armed conflict. These standards should also be applicable to armed groups – this is in fact already the case.¹⁵ It should be noted that almost all African states that have ratified the OPAC have the minimum age for voluntary recruitment set at 18 years.¹⁶
- All States Parties to the OPAC should explicitly criminalise the violation of these standards and establish extra-territorial, preferably universal jurisdiction. In its Concluding Observations on the initial reports of States Parties, the CRC Committee systematically makes recommendations to that effect. The International Criminal Court only deals with the crimes of recruiting and using children below the age of 15 years in armed conflict. But if all States party to the OPAC take the measures suggested and effectively implement them, it will result in clear global standards with the message that no one who violates them will escape justice.¹⁷ This would make a crucial

¹⁵ Art. 4 OPAC already sets these standards: 'Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years'. And: 'States Parties shall take all feasible measures to prevent such recruitment and use (...)'.
¹⁶ Only Cape Verde has a minimum age of 17 for voluntary recruitment while Egypt has set this age at 16 and at 18 for conscription.

¹⁷ Art. 6 OPAC requires States Parties to take all necessary legislative, administrative and other measures to ensure effective implementation and enforcement of the provisions of OPAC in their jurisdiction. But it does not specify the nature of these measures and is in that regard much weaker than the Optional Protocol on the sale of children, child prostitution and child

contribution – in addition to other measures – to a reduction in the number of children who are seriously affected by armed conflict.

4.2. ESTABLISHMENT OF A VOLUNTARY FUND

The establishment of an international voluntary fund has so far been neglected. Its feasibility should be actively explored in order to provide children, their parents and communities with the extra support they may need and with compensation for the violations of their rights.

I am not aware of any of the main players in this field (Special Representative of the UN Secretary General on Children and Armed Conflict, the Coalition to Stop the Use of Child Soldiers, UNICEF etc.) taking concerted or targeted actions to establish such a fund. This is most regrettable because such a voluntary fund could be used for:

- community support with a view to creating the necessary conditions for recovery and social reintegration of *all* war-affected children, e.g. by improving health care and education;
- individual support for war-affected children, in particular children mentally and/or physically disabled as a result of armed conflict. This support should provide for ongoing assistance and guidance for children with disabilities and could, where appropriate, provide financial compensation for the harm done to a child, a family or a community.

I would like to refer to the marginal impact of repeated expressions of concern about the impunity of the people responsible for the very serious crimes committed during armed conflict. Given this reality and in light of the right of everyone to an effective remedy for acts violating her or his fundamental rights (Art. 8 UDHR; Art. 2 ICCPR), would it not be a simple matter of justice to have an international fund that can provide at least some remedies?

pornography. This OP contains provisions on the criminality of specified acts (Art. 3), on the establishment of extraterritorial jurisdiction (Art. 4) and on extradition (Art. 5).

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