
SUBMISSION ON THE DRAFT GENERAL COMMENT BY THE UN COMMITTEE ON THE RIGHTS OF THE CHILD REGARDING CHILD RIGHTS AND THE BUSINESS SECTOR

Executive Summary

Child Soldiers International believes that this General Comment on Child Rights and the Business Sector offers an important opportunity for the Committee on the Rights of the Child (the Committee) to reflect on and clarify the states' obligations in relation to companies' direct or indirect support and/or involvement in the unlawful recruitment of children or their use in hostilities.

In particular, Child Soldiers International highlights two issues which are already touched upon by the draft General Comment, but which could benefit from further elaboration:

- the obligation of states to prohibit and prevent arms manufacturers and traders from selling or transferring arms and ammunition to countries where children are known to be, or are at risk of being, unlawfully recruited or used in hostilities;
- the obligation of states to ensure that private military and security companies (PMSCs) do not recruit children or use them in hostilities.

Our comments are based on the Committee's own interpretation of states' obligations under the Convention on the Rights of the Child (CRC) and its Optional Protocol on the involvement of children in armed conflict (OPAC), as well as applicable international human rights standards and guidelines.

Child Soldiers International suggests the following inclusions in the Draft General Comment on the Rights of the Child regarding Child Rights and the Business Sector:

1. Paragraph 43

“States parties should prohibit in law the sale or transfer of arms and other forms of military assistance to states when the final destination is a country in which children are known to be, or may potentially be, unlawfully recruited or used in hostilities. Criteria used to apply this prohibition should be made public, together with the number of arms sales or transfers which have been halted as a result of prohibition relating to child soldier recruitment and use.”

2. Paragraph 24

“Host and home states should introduce national legislation to regulate private military and security companies (PMSCs) in line with existing international standards (such as the “Montreux Document”) and the recommendations made by independent experts including the UN Working Group on mercenaries. Such legislation should include specifically a prohibition on PMSCs from recruiting children under 18 years or using them in

hostilities; requirements for PMSCs to take effective measures to protect children from human rights abuses; and an effective accountability framework for PMSCs personnel suspected of abusing children's rights.”

3. Paragraph 24:

“The obligations of host and home States under the relevant provisions of the CRC relating to children in conflict should be emphasised in this context: Article 38 requires respect for the rules of international humanitarian law, Article 39 obliges States to provide appropriate psychological recovery and social reintegration and the Optional Protocol on Children in Armed Conflicts contains provisions ~~regarding recruitment of children into armed forces over 18 years of age~~ requiring states parties to take all feasible measures to prevent the unlawful recruitment of children or their use in hostilities. [...]”

I. Arms transfer

Efforts around the recent negotiations of the Arms Trade Treaty (ATT) reflect the growing international consensus of the need to regulate the international trade in conventional arms, especially in order to prevent arms transfers and other military assistance where there is a substantial risk that they could be used for, or contribute to, the commission of serious abuses of human rights.

The Committee has consistently held that states should prohibit the sale of arms when the final destination is a country where children are at risk of unlawful recruitment or use in hostilities. In doing so the Committee draws, *inter alia*, on Article 7 of OPAC which requires states to cooperate in implementing the provisions of the Protocol, including in the prevention of any activity contrary to it.

More broadly the linkages between child soldiers and transfers of arms and other military assistance have long been made. More than 15 years ago Graça Machel, the UN Secretary-General's Expert on the impact of armed conflict on children, found that the proliferation of inexpensive and lightweight weapons made so widely available by the international arms trade was contributing to the unlawful recruitment of children and their use in hostilities.¹ Therefore, strategies to fight the recruitment and use of children ought to include initiatives to better control the international transfer of arms. Since then, the UN Secretary-General and its Special Representative for Children and Armed Conflict (SRSG-CAAC) have repeatedly called for bans on the export or supply of small arms and military assistance to parties which recruit or use children in hostilities.²

Despite these findings and recommendations, states, with few exceptions, do not consider the record on child soldier recruitment and use by recipient states in their decision-making

¹ The Impact of Armed Conflict on Children, Report of the Expert of the UN Secretary-General, Ms. Graça Machel, submitted pursuant to UN General Assembly resolution 48/157, (known as the “Machel Report”), UN Doc. A/51/306, 26 August 1996.

² See, for example, Children and armed conflict, Reports of the UN Secretary-General 2000, 2003, 2005, 2006, 2007 and 2009. See also Report of the UN Secretary-General on small arms, UN Doc. S/2008/258, 17 April 2008 and reports of the Special Representative of the UN Secretary-General for Children and Armed Conflict, UN Doc. A/58/328, 29 August 2003; UN Doc. A/63/227, 6 August 2008; UN Doc. A/65/219, 4 August 2010; and UN Doc. A/66/256, 3 August 2011.

processes to control the exports of arms. Indeed, for the most part they have neither the laws nor policies in place on which to base such decisions.

Child Soldiers International notes that the draft General Comment already contains an important reference to this issue in paragraph 43.

In view of the specific risks of arms transfer with regards to children, Child Soldiers International recommends that the Committee elaborates further on the obligation of states to prohibit and prevent arms transfer to countries where children are known to be, or are at risk of being, unlawfully recruited or used in hostilities. Specifically, Child Soldiers International suggests the inclusion of the following sentences:

“States parties should prohibit in law the sale or transfer of arms and other forms of military assistance to states when the final destination is a country in which children are known to be, or may potentially be, unlawfully recruited or used in hostilities. Criteria used to apply this prohibition should be made public, together with the number of arms sales or transfers which have been halted as a result of prohibition relating to child soldier recruitment and use.”

II. Private military and security companies (PMSCs)

PMSCs have been increasingly used in recent armed conflicts (and other situation of political instability and violence). They are employed by states as well as international organisations, such as the United Nations.³

The UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (UN Working Group on mercenaries) has raised concerns about abuses of human rights by PMSCs in countries such as Afghanistan, Iraq, South Africa, and the United States of America.⁴ Noting a gap in the international regulatory framework, the UN Working Group on mercenaries recommended the adoption of an international convention on PMSCs, and the Human Rights Council has mandated an open-ended intergovernmental working group to consider options to develop an international regulatory framework on PMSCs.⁵ Meanwhile a joint initiative by the government of Switzerland and the International Committee of the Red Cross led to the adoption in September 2008 of the Montreux Document clarifying the responsibility of states with regards to PMSCs.⁶ This was also followed by the development of an International Code of Conduct for Private Security Service Providers (to which more than 400 companies from 60 different countries have adhered to).⁷

³ See Global Policy Forum, Dangerous partnership: private military and security companies and the UN, available here: <http://www.globalpolicy.org/multimedia/podcast/51757-dangerous-partnership-private-military-and-security-companies-and-the-un-july-10-2012.html>.

⁴ Reports of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, visits to Afghanistan (UN doc. A/HRC/15/25/Add.2, 14 June 2010); Iraq (UN Doc. A/HRC/18/32/Add.4, 12 August 2011); South Africa (A/HRC/18/32/Add.3, 4 July 2011); United States of America (UN Doc. A/HRC/15/25/Add.3, 15 June 2010).

⁵ A/HRC/RES/15/26, 7 October 2010.

⁶ Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict. Available in UN Doc. A/63/467 - S/2008/636.

⁷ See http://www.icoc-psp.org/Home_Page.html.

Because of their activities and the contexts in which they operate, PMSCs may impact on a range of children's rights, including but not limited to the right to life, freedom from torture or other cruel, inhuman or degrading treatment or punishment, and the right to liberty. Furthermore, children may be, and in some cases have been, employed by PMSCs, thereby putting them at risk of participating in hostilities (as well as the broader risk of attack).⁸

Child Soldiers International notes that the above mentioned Code of Conduct includes a provision whereby "Signatory Companies will not hire individuals under the age of 18 years to carry out Security Services". While this is useful, it is not sufficient to guarantee protection of children from involvement in the activities of PMSCs. Indeed, the UN Working Group on mercenaries has noted the lack of national legislation to regulate PMSCs, and, linked to that, the impunity often enjoyed by PMSCs reportedly responsible for human rights abuses.⁹

Child Soldiers International believes that the General Comment could provide useful guidance to states in this respect. In interpreting states' positive obligations to cooperate in the implementation of measures to prevent unlawful recruitment and use of children in hostilities under article 7 of OPAC, the Committee could specifically note the range of measures that states should take to ensure that PMSCs incorporated or operating in their territories protect children's rights. These measures should include a legal prohibition to recruit children or use them in hostilities; requirements for PMSCs to take effective measures to protect children from human rights abuses; and effective accountability measures for PMSCs personnel suspected of abusing children's rights.

Child Soldiers International would therefore recommend that the following sentences are included in paragraph 24 of the draft General Comment:

"Host and home states should introduce national legislation to regulate private military and security companies (PMSCs) in line with existing international standards (such as the "Montreux Document") and the recommendations made by independent experts including the UN Working Group on mercenaries. Such legislation should include specifically a prohibition on PMSCs from recruiting children under 18 years or using them in hostilities; requirements for PMSCs to take effective measures to protect children from human rights abuses; and an effective accountability framework for PMSCs personnel suspected of abusing children's rights."

Child Soldiers International would like also to suggest that the first sentence of paragraph 24 is reworded as follows:

"The obligations of host and home States under the relevant provisions of the CRC relating to children in conflict should be emphasised in this context: Article 38 requires respect for the rules of international humanitarian law, Article 39 obliges States to provide appropriate psychological recovery and social reintegration and the Optional Protocol on Children in Armed Conflicts contains provisions **regarding recruitment of children into armed forces over 18 years of age requiring states**

⁸ See for example, IRIN, Dec 2007 "AFGHANISTAN: Child soldiers operating on several fronts" <http://www.irinnews.org/Report/75904/AFGHANISTAN-Child-soldiers-operating-on-several-fronts>.

⁹ Report of the UN Working Group on mercenaries to the Human Rights Council, UN doc. A/HRC/18/32, 4 July 2011.

parties to take all feasible measures to prevent the unlawful recruitment of children or their use in hostilities. [...]"

Child Soldiers International remains ready to respond to any queries the Committee may have on this submission.