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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Annual report of the Special Representative of the Secretary-General for children and armed conflict, Radhika Coomaraswamy\*, \*\***

#### *Summary*

In the present report, the Special Representative of the Secretary-General for children and armed conflict presents her activities undertaken in discharging her mandate, including information on her field visits and on the progress achieved, as well as challenges remaining on the children and armed conflict agenda. The report covers the period from May 2010 to May 2011.

In the report, the Special Representative highlights how children continue to be disproportionately affected by armed conflict and to have their basic rights violated. She sheds light on the growing trend of attacks on schools and hospitals, which increasingly deprives children in situations of armed conflict of education and access to health care. She also discusses the complex issue of accountability of children involved in armed conflict and children's access to justice, by examining how the current system enables child witnesses and victims to give evidence against perpetrators.

The Special Representative acknowledges the progress made since the previous reporting period, especially with regard to the ratification of the Optional Protocol on the involvement of children in armed conflict and the signing of action plans to release children from armed groups. She nevertheless emphasizes the remaining challenges in addressing grave violations against children, such as the limited progress in the development of plans of action for the release of children in some countries and the continued impunity of violating parties.

Lastly, the Special Representative outlines a series of recommendations addressed to States parties to the Convention on the Rights of the Child, States that are under review of the Human Rights Council universal periodic review mechanism, the Human Rights Council and Member States to further the protection of children's rights and to alleviate the suffering of children in armed conflict.

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\* Late submission.

\*\* The annexes to the present document are reproduced as received, in the language of submission only.

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## I. Introduction

1. The present report, covering the period from May 2010 to May 2011, is submitted pursuant to General Assembly resolution 51/77 and other subsequent resolutions of the Assembly on the rights of the child, including its most recent resolution 65/197, in which the Assembly requested the Special Representative for children and armed conflict to continue to submit a report to the Human Rights Council on the activities undertaken in discharging her mandate, including information on her field visits and on the progress achieved, and challenges remaining on the children and armed conflict agenda.

2. Children continue to be disproportionately affected by armed conflict and to have their basic rights violated. They continue to be forcefully recruited, killed and maimed, abducted, subjected to sexual violence and are denied humanitarian aid. They are deprived of education, health care and access to justice. The changing nature of armed conflict has created new dilemmas for the protection of children. Not only have children become the primary targets of armed actors and are increasingly used for intelligence purposes and as human shields, they are also directly affected by targeted attacks on schools and hospitals during armed conflict. Of the total number of primary school age children in the world who do are not enrolled in school, 42 per cent — 28 million children — live in poor countries affected by conflict.<sup>1</sup>

3. There has been continued progress on the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which has been ratified by 141 countries. Nevertheless, the international community must continue to fight against the impunity of violating parties in order to alleviate the suffering of children in armed conflict. The Human Rights Council is an important partner contributing to efforts to ensure the application of international norms and standards that protect children's rights. It should continue to make the defence of the rights of children affected by armed conflict a key priority.

4. The Special Representative welcomes the adoption by the Human Rights Council of its resolution 16/12 on the protection and promotion of children working and/or living on the street. The Special Representative especially appreciates the call on States to take appropriate measures to protect children affected by armed conflict in order to reduce the risk of children resorting to working and/or living on the street. Children in conflict-affected countries in particular end up living on the street as they are often orphaned, internally displaced and stigmatized when they have been recruited and used by armed actors.

5. The Special Representative also wishes to express her appreciation for the invitation to attend the annual meeting of special rapporteurs, representatives, independent experts and chairpersons of working groups on 27 June 2011, and hopes to maintain a close relationship with the special procedures.

## II. Working with United Nations human rights mechanisms

6. The Office of the Special Representative is collaborating closely with the Office of the United Nations High Commissioner for Human Rights (OHCHR) with a view to mainstreaming child rights issues relating to armed conflict into the work of human rights

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<sup>1</sup> United Nations Educational, Cultural and Scientific Organization, *The hidden crisis: armed conflict and education*, March 2011.

mechanisms, including the universal periodic review of the Human Rights Council, the treaty bodies and the special procedures. In the same vein, recommendations relating to children and armed conflict by United Nations human rights mechanisms are important advocacy tools in the work of the Special Representative.

7. The field presences of OHCHR and its deployment of human rights monitors to peacekeeping operations and country missions also continue to make an important contribution to the monitoring and reporting of grave violations against children during armed conflict.

8. The Special Representative attaches great importance to the reporting process to the Committee on the Rights of the Child on the implementation of the Optional Protocol on the involvement of children in armed conflict. During the period under review, the Office of the Special Representative provided information relevant to the issue of children and armed conflict to the Committee on the implementation of the Optional Protocol. In particular, the Office provided information on the issue of children and armed conflict ahead of the Committee's country reviews for Afghanistan, Colombia, Myanmar, Sri Lanka and the Sudan. Such information included key recommendations by the Secretary-General and the Working Group of the Security Council on Children and Armed Conflict. The Office is pleased that its concerns were reflected in the Committee's concluding observations and intends to use the relevant observations of the Committee for its advocacy purposes. The Office will continue to support the work of the Committee and, in this regard, encourages State parties to the Convention to implement the recommendations of the Committee and to submit timely reports under the Optional Protocol to the Committee.

9. The Office of the Special Representative has also submitted inputs to the universal periodic review on Iraq, Myanmar, Nepal, Somalia and the Sudan, and intends to submit information on Thailand for consideration by the Working Group on the Universal Periodic Review during its upcoming sessions. The Special Representative is very pleased that the reviews of these countries by States included recommendations relating to children affected by armed conflict.

10. The Special Representative reiterates the recommendation made in her previous report (A/HRC/15/58), in which she encouraged the Working Group on the Universal Periodic Review to take into account the concluding observations made by the Committee on the Rights of the Child on reports submitted by State parties when reviewing a State submission under the universal period review process. State parties are encouraged to prioritize the implementation of relevant recommendations of the Working Group, with the assistance of the international community as needed.

11. The Special Representative reiterates her call to all special procedures mandate holders to continue to take into account during their missions the challenges faced by children, as well as in their reports and recommendations, insofar as they are relevant to their respective mandates, and to bring those concerns to her attention. The Special Representative is particularly encouraged by the work of the Special Rapporteur on the right to education and his proactive advocacy for education for children in conflict-affected countries. The Special Representative also wishes to thank the Special Rapporteur on the human rights of internally displaced persons for his contribution to a working paper by the Office of the Special Representative on the rights and guarantees of children displaced by armed conflict.

12. Furthermore, when considering or adopting resolutions on country-specific situations or thematic issues, the Human Rights Council is encouraged to include recommendations therein on or references to protection of children affected by armed conflict. A number of Council resolutions during the period under review made such

references, including resolution 16/24, on the situation of human rights in Myanmar and, resolution 15/28 on the assistance to Somalia in the field of human rights.

### **III. Progress and challenges in addressing grave violations against children in armed conflict**

13. Since the previous report of the Special Representative submitted to the Human Rights Council, the child protection commitments made by the Government of Nepal and the Unified Communist Party of Nepal-Maoist, the Moro Islamic Liberation Front in the Philippines, the Sudan People's Liberation Army have been translated into concrete actions by these parties. New action plans to cease recruitment and use of children as well as to secure their release were signed by the United Nations and the Sudan Liberation Army/SLA-Free Will on 14 June 2010; the Sudan Liberation army/SLA-Mother Wing (Abu Gasim) on 15 August 2010; and the Government of Afghanistan on 30 January 2011, respectively.

14. In addition, in November 2010, during the visit of the Special Representative, the Transitional Federal Government in Somalia committed to work towards an action plan to release girls and boys within the ranks of the Government forces and allied militias. In Myanmar, action plan negotiations between the Government and the United Nations to end the recruitment and use of children in the Tatmadaw Kyi are ongoing. In the Sudan, a memorandum of understanding was signed by the Justice and Equality Movement and the United Nations on 21 July 2010, paving the way towards the signing of an action plan. On 22 December 2010, JEM/Peace Wing submitted a draft action plan to the United Nations, to be implemented in West Darfur. In Chad, some 1,000 children were released by 12 armed opposition groups during the reporting period. In April 2011, the Government of Chad prepared an action plan to address the recruitment and use of children by the Armée nationale tchadienne, which is ready for signature with the United Nations.

15. Since the previous report of the Special Representative, close to 10,000 children associated with armed groups have been released as a result of efforts on the ground, including agreements on actions plans for the release of children signed by the United Nations and parties to conflict.

16. Despite the progress made, however, significant challenges in addressing grave violations against children remain. In several countries, such as in the Central African Republic, Somalia and the Sudan, access constraints for security reasons hamper the systematic monitoring and reporting of grave violations. In addition, information gathering is challenged by underreporting of grave violations, particularly in the case of sexual violence.

17. Dialogue between the United Nations and non-State armed groups for the development of action plans has been delayed in some cases for a variety of reasons, including lack of access to armed groups and of political will, fragmentation within armed groups or the inability to identify and hold groups accountable for violations committed. Countries affected by these constraints include Afghanistan, Colombia, the Democratic Republic of the Congo, the Philippines, Somalia, the Sudan and Yemen.

18. In some cases, such as in the Sudan and the Philippines, the implementation of action plans has been delayed owing to lack of funding. In places such as the Central African Republic, the Philippines, Darfur and South Sudan, children are associated with armed groups having close links to the local community, which complicates their formal release.

19. The reintegration of children formerly associated with armed forces and groups continues to be hampered by the lack of economic opportunities in already poor regions and insufficient long-term funding, such as is the Philippines. In many countries, ongoing fighting and insecurity make children vulnerable to re-recruitment and limit the access of actors delivering reintegration support. Inadequate sequencing between the implementation of an action plan on the one hand, and the rate of funding for reintegration of children on the other, may lead to instances where reintegration programmes are not able to absorb the caseload created by the successful implementation of an action plan. The establishment of regional coordination mechanisms to respond to reunification and reintegration of children abducted across borders, in particular by the Lord's Resistance Army, presents an additional challenge.

20. With regard to attacks on schools and hospitals, limited knowledge of international humanitarian law by parties to conflict, insufficient implementation of the law's provisions and limited insight into the different country contexts in which violations occur still hamper the design of clear strategies to address such violations. The case of the military use of schools exemplifies the complexity of the issue; although strictly speaking not a violation of international humanitarian law, the military occupation of schools clearly impedes children's access to education and puts them at risk. Further complicating the issue are cases where the military provide security to a school at the school's request, and there is collocation between children and military in the same school, or even partial occupation.

21. An emerging concern is the detention of children for alleged association with armed groups or other threats to security in several conflict scenarios. An unknown number of children have been captured, arrested and detained by security and law enforcement forces in contravention of international standards for juvenile justice. Children's access to justice in conflict and post-conflict settings is hampered by the fact that the infrastructure of judicial systems is often inadequate or non-existent. Targeted measures by the Security Council and the establishment of the International Criminal Court are steps towards mitigating the impunity of perpetrators of grave child rights violations; they cannot, however, replace the delivery of national justice.

#### **IV. Children and justice during and in the aftermath of armed conflict: bringing conceptual clarity**

22. In contemporary armed conflicts, children are increasingly the subject of targeted attacks, sexual violence and military recruitment. Many are forced to witness or even to take part in horrifying acts of violence. As a result, it is often difficult to assess whether a child is a victim or a perpetrator; depending on the child's age and maturity and the forced nature of involvement, it may be both. Hence, in the search for justice for serious violations committed during armed conflict, children are often involved in justice processes in two different and opposite ways: on the one hand, children who have suffered grave violations seek justice for the violations of their rights; on the other, children having been forced by adults to perpetrate heinous crimes are being held accountable for their acts.

##### **A. What is "justice" for children?**

23. The ability of children to have access to justice is seen as a vital part of the mandate of the United Nations to reduce poverty and fulfil children's rights. A clear definition of what constitutes "access to justice" cannot be found in international instruments. According

to the United Nations Development Programme, access to justice can be defined as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards”.<sup>2</sup> The Common Approach to Justice for Children, as explained by the United Nations Children’s Fund in 2008, expands on this definition:

“Access to justice can be defined as the ability to obtain a just and timely remedy for violations of rights as put forth in national and international norms and standards [...] Proper access to justice requires legal empowerment of all children: all should be enabled to claim their rights, through legal and other services such as child rights education or advice and support from knowledgeable adults.”

24. Reports and research undertaken with children who are victims of armed conflict all find that child victims want perpetrators of grave violations to be held accountable, particularly when they continue to live in the same community. For children, however, justice includes far more than punishing a perpetrator. Even more important to them is the restoration of their rights, especially their socioeconomic rights, and concrete acts of compensation and reparation to address the loss of those rights.

## **B. Children as victims and witnesses**

25. Access to justice for victims and witnesses in conflict and post-conflict situations is achieved through judicial and non-judicial justice mechanisms. International crimes are generally punishable in national courts, but in many countries where there has been armed conflict, the infrastructure of the judicial system is often either virtually non-existent or inadequate. Recognizing this, and in order to put an end to a culture of impunity, the international community has over the past 20 years set up new accountability mechanisms, such as ad hoc tribunals, hybrid courts, human rights panels and truth and reconciliation commissions. Children are increasingly playing a role in these mechanisms, as victims and, in some cases, as witnesses.

26. With the establishment of the International Criminal Court, it is likely that more children will participate as witnesses in legal proceedings against the violators of their rights. The Rome Statute establishing the Court requires that it “take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”, and “have regard to all relevant factors, including age, gender [...] and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender-based violence against children.” Victims and witnesses units in charge of short- and long-term protective measures and security arrangements, as well as medical and psychological support, have become an established practice in international and national courts. Special protection measures can be requested to assist a child giving evidence. However, it is not always in the best interest of child witnesses of serious violations of human rights or international humanitarian law to give evidence in a court. In some cases, it may result in grave psychological trauma and illness or renewal of despair, depression or even suicidal tendencies.

27. For a range of reasons, only a small proportion of children who have suffered harm in armed conflict are likely to be called as witnesses in trials heard by the International Criminal Court. For many children, non-judicial mechanisms may provide a better opportunity to have their voices heard and to have the wrongs done to them recorded. The

<sup>2</sup> United Nations Development Programme, *Programming for Justice: Access For All, A practitioner’s guide to a human rights-based approach to access to justice* (Bangkok, 2005).

general view is that non-judicial mechanisms can provide more immediate accountability, enable community reconciliation, provide reparation for losses and damages, and allow children to move on with their lives. Nevertheless, there are significant challenges to the effective participation of children, such as the limits and focus of the mandate, the financial and human resources available, the expectations raised and disappointment with outcomes, and the need to secure long-term political support.

28. In some countries, traditional justice mechanisms are commonly used to resolve disputes and feuds between families and clans and to bring about settlement and reconciliation. For many children in these countries, traditional justice may be the only readily accessible form of justice, meaningful to their families and communities. As with all other forms of justice, however, there are limitations, particularly in the aftermath of armed conflict. Traditional justice relies on oral tradition and customary practice, which can be lost as a result of displacement, dissipation of collective memory and loss of traditional authority in times of breakdown of social structures. In addition, traditional authority often resides with the elder males of the community. This patriarchal structure does not always take into account or reflect children's rights, and especially the rights of girls and their need for protection.

### **C. Accountability of children involved in armed conflict**

29. Although the general view is that children who are associated with an armed force or armed group should not be prosecuted but rather be treated primarily as victims, some children may, nevertheless, be detained and face prosecution before a national court. When determining whether to prosecute children, States should take into account the Principles and Guidelines on Children Associated with Armed Groups, which stipulate that the purpose of any sanction imposed on a child accused of international crimes committed during association with armed groups should be to promote the child's rehabilitation and reintegration into the community, not to punish it. Prosecution of children for crimes arising from active participation in hostilities in a criminal court should be a matter of last resort.

30. Placing children in detention without access to the important procedural safeguards and guarantees to which they are entitled in international human rights law can expose children to human rights abuses. The international framework on juvenile justice provides a very detailed set of standards that are applicable to children who are deprived of their liberty. According to article 37(c) of the Convention on the Rights of the Child, every child deprived of liberty should be treated with humanity and respect for inherent dignity of the human person and in a manner that takes into account the needs of persons of his or her age. All disciplinary measures involving cruel, inhumane or degrading treatment, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the child, are strictly prohibited. In addition, children should always be kept separately from adult prisoners, and detention should last for the shortest period possible.

31. In a number of countries, truth and reconciliation commissions have been put in place as an alternative to prosecution and judicial trial for children accused of committing international crimes. Any such commission needs to take into consideration the prevailing view that child soldiers should be regarded primarily as victims rather than as perpetrators, and that the child's best interests should be the primary concern. This does not mean that atrocities committed by child soldiers should be ignored or that the truth about their acts should not be established. However, commissions operate at their best for children when the purpose is to establish the truth rather than to make a finding of guilt or responsibility on the part of the child.



32. Reintegration is a key post-conflict process for children formerly associated with armed groups or armed forces. Its objective is to contribute to security and stability in post-conflict environments so that recovery and development can begin. It is regarded as a more child-friendly mechanism for addressing children's participation in hostilities than prosecution. The process of reintegration and the approach taken are necessarily different for children and adults. It has been suggested that child disarmament, demobilization and reintegration measures should target the entire community rather than just former combatants. Mixing different categories of children may actually be beneficial to their social reintegration, and difficulties or tensions between groups of children may be overcome.

33. Traditional justice, aimed at the reintegration of child soldiers, can make a significant contribution to healing, recovery and reintegration. It may employ an array of measures, such as punishment, reparation, truth-telling, involving confession and absolution, and healing or cleansing ceremonies. Traditional justice can be most helpful in assisting reintegration where it focuses on re-establishing the child as a member of the community rather than relying upon punishment or public shaming. Restorative justice is very often the only way of bringing reconciliation to victims and perpetrators alike in a war-torn society where victims of offences suffer, as do child perpetrators, having been forced to commit offences.

## **V. Attacks on schools and hospitals: an emerging concern**

34. Attacks on schools and hospitals in armed conflict are widespread and are of increasing concern. Out of 22 country situations reported in the annual report of the Secretary-General on children and armed conflict (A/65/820-S/2011/250), 15 referred to attacks on schools and hospitals. Apart from the direct and physical damage to schools and hospitals, incidents of closure of schools and hospitals as a result of threats and intimidation, as well as the military use of these civilian institutions, have been documented. In addition, schools are often used as recruiting grounds for children.

35. Armed conflict can either directly or indirectly result in the forced closure or the compromised functioning of civilian facilities. Children, teachers and health-care providers can be subject to direct threats and acts of intimidation by parties, which, for example, target Government institutions or medical personnel assisting the other party to the conflict. In other situations, armed elements are opposed to secular and/or girls' education, or to girls being seen by male medical personnel. The delivery of health-care services to children is also heavily affected by lack of supplies and manpower caused by looting of the facilities and/or access constraints. A general climate of fear and insecurity as a result of armed hostilities can also prevent children, teachers and medical personnel from attending school or seeking medical help. Parents, for example, may find it too risky to send their children to school in a volatile security situation, or children may be denied timely access to hospitals because of checkpoints and roadblocks.

36. Military control and use of school facilities also endangers children. The Office of the Special Representative will advocate with parties, urging them to take all precautionary measures not to endanger the life of civilians and civilian objects in the vicinity of military objectives. Extreme caution should also be exercised in identifying objects normally dedicated to civilian purposes as military targets. In armed conflict situations, the use of schools as polling stations may put the physical integrity of such facilities at risk, as some armed groups see these civilian institutions as legitimate targets of attack. The Office of the Special Representative will further continue to advocate with Governments for the adoption of precautionary measures that avoid jeopardizing school facilities.

37. The abduction of educational and medical personnel is also of grave concern to the children and armed conflict agenda, as it severely affects the provision of basic services to children. The Office of the Special Representative is concerned at the use of schools as recruiting grounds for children with the aim of involving them in armed hostilities and military operations. Schools should be considered safe havens protecting children from involvement in armed conflict.

## **VI. Field visits by the Special Representative**

38. During the period under review, the Special Representative carried out field missions to Somalia (November 2010), Afghanistan (January 2011) and the Philippines (April 2011). The purpose of these visits was to secure and facilitate the implementation of child protection commitments on the ground, to foster more effective coordination among key stakeholders, and to follow up on the recommendations of the Secretary-General<sup>3</sup> and the key provisions of Security Council resolutions 1612 (2005) and 1882 (2009).

39. The main commitments received from Governments and other parties to the conflict during these missions are highlighted below. It is crucial for the protection of children that the Human Rights Council and the broader international and human rights community continue to collectively monitor follow-up actions and encourage parties to honour their commitments.

### **A. Somalia**

40. The Special Representative visited Somalia from 1 to 5 November 2010 to obtain a commitment by the Transitional Federal Government to cease recruitment and use of children and to take the steps necessary to develop a national legislative framework for the protection of children. The Special Representative also discussed with the Government the need to protect civilians, including children, from death and injury during military operations by means of strict adherence to the principles of distinction and proportionality.

41. The Special Representative also raised her concerns at the killing and maiming of civilians, including children, with the Force Commander of the African Union Mission in Somalia (AMISOM), and obtained his commitment that AMISOM would adhere to their rules of engagement for the protection of civilians during military operations.

42. In December 2010, Prime Minister Mohamed Abdullahi Mohamed appointed State Minister Zahra Ali Samantar as focal point for child protection and human rights. The focal point will work with the United Nations towards the timely development and implementation of a comprehensive time-bound action plan to stop and prevent the recruitment and use of children.

### **B. Afghanistan**

43. The Special Representative travelled to Afghanistan from 27 January to 2 February 2011 to witness the signing, on 30 January, of an action plan for the prevention of under-age recruitment into the Afghan National Security Forces by the Minister for Foreign Affairs, Zalmay Rassoul, and the Special Representative for Afghanistan. In the action plan, the Government of Afghanistan pledged to prevent under-age recruitment into the Afghan

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<sup>3</sup> See S/2010/577, S/2011/55 and S/2010/36.

National Army, the Afghan National Police, including the Afghan Local Police, and the National Directorate of Security.

44. In addition, the Government pledged to address issues of sexual violence against children by its security forces and of killing and maiming in contravention of international humanitarian law.

45. The Special Representative also met with high-level stakeholders and obtained commitments from the *Ulema Shura* (council of clerics), the High Peace Council, the International Security Assistance Force, the North Atlantic Treaty Organization, donors and human rights actors to redouble their efforts to support the action plan.

### C. Philippines

46. During her visit to the Philippines from 2 to 9 April 2011, the Special Representative met with high-level representatives of the Government Peace Panel of the National Democratic Front of the Philippines (NDFP-NPA) to support the negotiation and development of an action plan with NDFP-NPA on the recruitment and use of children within its ranks. The NDFP representatives agreed to continue the talks and to start negotiations on the provisions of an action plan.

47. The Special Representative also followed up on the implementation of the action plan signed in August 2009 by the United Nations and the Moro Islamic Liberation Front, and advocated for better compliance measures and further commitment of the international community for the successful completion of the action plan.

48. The Special Representative also met with high-ranking officials of the Armed Forces of the Philippines to deepen ongoing dialogue and to address issues relating to children affected by armed conflict, as well as to advocate for the implementation of the specific recommendations of the Secretary-General and the Working Group of the Security Council on Children and Armed Conflict.

## VII. Towards universal ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

49. The Special Representative continues to mobilize support for the signing and ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The Special Representative held bilateral meetings with the majority of Member States that had not ratified the treaty and briefed several regional organizations on the matter. The Office provided technical guidance to Member States to facilitate the ratification process during a seminar on international treaty law and practice organized by the United Nations Institute for Training and Research. The Office also created an online social networking presence of the campaign and conducted media outreach to promote broader awareness, information and support.

50. The Special Representative would like to reiterate her call upon States to establish 18 years as the minimum age for voluntary recruitment into the armed forces when depositing their binding declaration (under article 3) upon ratification of the Optional Protocol.

51. There has been important progress since the launch of the two-year global campaign on ratification, “Zero Under 18”, in May 2010. Three Member States signed (the Central African Republic, Ethiopia and Iran (Islamic Republic of)); five ratified (Cyprus, Djibouti,

Gabon, Malawi and Seychelles); and four acceded to the Optional Protocol (the Congo, Georgia, Guyana and Saint Vincent and the Grenadines). To date, the Optional Protocol has been ratified by 141 States; 21 countries have signed but not ratified, while 30 countries have neither signed nor ratified.

52. In order to accelerate the pace of ratification by the 51 remaining Member States, the Office of the Special Representative together with United Nations partners held a forum in New York on the occasion of the first anniversary of the campaign in May 2011. Moreover, the Office will organize a treaty-signing event during the high-level segment of the sixty-sixth session of the General Assembly, in September 2011, where Member States will be able to demonstrate their commitment by signing, ratifying or acceding to the treaty.

53. Given the resource implications and reporting requirements that ratification and implementation entail, the Special Representative would like to encourage leadership by one or more countries that have already ratified the Optional Protocol to provide guidance and other forms of assistance to those willing to ratify.

## **VIII. Conclusion and recommendations**

54. **The Special Representative expresses her appreciation for the strengthened collaboration between her Office and the United Nations human rights system, and reiterates her continued support, including through regular information-sharing and advocating for the protection of children affected by armed conflict. The Special Representative wishes to reiterate that, unless all parties to conflict adhere to their commitments, comply with their international obligations and are held accountable for non-compliance, there will be no improvement in the situation of children in armed conflict. To this end, the Special Representative makes the recommendations below.**

### **A. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

55. **The Special Representative encourages State parties to the Convention on the Rights of the Child to strengthen national and international measures for the prevention of recruitment of children into the armed forces or armed groups and their use in hostilities. In particular, those measures include signing and ratifying the Optional Protocol to the Convention on the involvement of children in armed conflict and enacting legislation that explicitly prohibits and criminalizes the recruitment of children into armed forces or groups and their use in hostilities; exercising extraterritorial jurisdiction in order to strengthen the international protection of children against recruitment; establishing mechanisms to identify children, including asylum-seeking and refugee children, who have been or may have been recruited or used in hostilities; providing such children with the necessary assistance, including psychological and psychological rehabilitation and social integration; and prohibiting the export of arms to countries where children are recruited or used in hostilities.**

56. **State parties to the Convention and to the Optional Protocol are called upon to implement the recommendations of the Committee on the Rights of the Child and to submit timely reports to the Committee under the Optional Protocol. To this end, State parties are encouraged to establish effective inter-ministerial coordination mechanisms with a view to ensure comprehensive measures to prevent and protect children from offences under the Optional Protocol.**

57. States are encouraged to establish 18 years as the minimum age for voluntary recruitment into armed forces when depositing their binding declaration upon ratification of the Optional Protocol. States that have ratified but not adopted the “straight-18 position”<sup>4</sup> are urged to reconsider their declarations and to raise the minimum age to 18 years.

58. In the light of the fact that ratification and the implementation processes of the Optional Protocol place a clear burden on the resources of certain States willing to ratify the instrument, leadership by one or more countries that have already ratified is encouraged, to provide guidance and other forms of assistance.

59. State parties are also encouraged to support the process towards the adoption of the optional protocol to the Convention on the Rights of the Child to provide a communications procedure, which will strengthen the protection of children involved in armed conflict. Under the new optional protocol, individuals or groups of individuals, including children themselves, who claim to be victims of violations under the Convention and its two optional protocols — on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography — will be able to submit communications to the Committee for examination.

60. The Special Representative urges the international community:

(a) To continue to advocate for 18 years as the minimum age for recruitment and participation in hostilities;

(b) To exert international pressure on parties that continue to recruit and use children;

(c) To monitor and compel adherence by parties to conflict to commitments made to protect children, and to hold them accountable for failure to comply with international standards;

(d) To address the political, social and economic factors that facilitate the recruitment and use of children;

(e) To respond to the rehabilitation and reintegration needs of former child soldiers.

## **B. Universal periodic review**

61. During the universal periodic review process, States are urged to include, as appropriate, in their recommendations to the State under review specific references to information from the monitoring and reporting mechanism on grave violations against children established in accordance with Security Council resolution 1612 (2005), as well as the country conclusions adopted and recommendations made by the Working Group of the Security Council on Children and Armed Conflict, as appropriate.

62. The concluding observations of the Committee on the Rights of the Child on reports submitted by State parties under the Optional Protocol to the Convention should also be taken into consideration by the Working Group on the Universal Periodic Review when reviewing a State submissions under the review process.

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<sup>4</sup> See A/HRC/15/58, para. 17.

63. States should begin to pay particular attention to the implementation of relevant recommendations by the Working Group on the Universal Periodic Review with the assistance of the international community, wherever it is needed.

### **C. Human Rights Council**

64. The Human Rights Council is encouraged, when considering or adopting resolutions on country-specific situations or thematic issues, to include therein recommendations on, or references to, the protection of children affected by armed conflict.

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

66. Member States should continue to insist that parties listed in the annexes to the report of the Secretary-General on the recruitment and use of children, killing and maiming of children, and/or rape and other sexual violence against children (see annexes I and II),<sup>5</sup> in contravention of applicable international law, prepare and implement concrete time-bound action plans to halt those violations and abuses and to take measures against any parties that fail to comply.

67. Finally, the Special Representative urges all special procedures mandate holders to continue to take into account during their missions the challenges faced by children, as well as in their reports and recommendations insofar as they pertain to their respective mandates, and to bring those concerns to the attention of the Special Representative.

### **D. Attacks on schools and hospitals**

68. In order to ensure the protection of schools and hospitals during armed conflict, Member States, the Security Council, the United Nations and civil society are encouraged to undertake concerted action, in the form of a global campaign or a partnership. In addition, a strategy should be designed and implemented to halt and prevent further attacks on schools and hospitals. Creative solutions should also be found for complex problems such as the use of schools by the military and as recruiting grounds.

### **E. Children's access to justice**

69. Member States should ensure the participation of children in justice processes, whenever grave child rights violations are committed during armed conflict. Children

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<sup>5</sup> A/65/820-S/2011/250, annexes I and II.

who participate in justice processes should be protected and their best interests should be the main concern at all times. The appropriate justice mechanism, whether judicial or non-judicial, should be sought. In addition, a child who commits international crimes while associated with armed forces or armed groups should be regarded primarily as a victim, not as a perpetrator. In the event that a child is held accountable, the appropriate form of accountability should be sought. Any decision made should take into account the best interest of the child and his or her reintegration into society.

## Annex I

### **List of parties that recruit or use children, kill or maim children and/or commit rape and other forms of sexual violence against children in situations of armed conflict on the agenda of the Security Council, bearing in mind other violations and abuses committed against children**

#### **Parties in Afghanistan**

1. Afghan National Police<sup>a</sup>
2. Haqqani network<sup>a, b</sup>
3. Hezb-i-Islami of Gulbuddin Hekmatyar<sup>a, b</sup>
4. Jamat Sunat al-Dawa Salafia<sup>a</sup>
5. Latif Mansur Network<sup>a</sup>
6. Taliban forces<sup>a, b</sup>
7. Tora Bora Front<sup>a</sup>

#### **Parties in the Central African Republic**

1. Armée populaire pour la restauration de la République et de la démocratie (APRD)<sup>a</sup>
2. Convention des patriotes pour la justice et la paix (CPJP)<sup>a</sup>
3. Forces démocratiques populaires de Centrafrique (FDPC)<sup>a</sup>
4. Lord's Resistance Army (LRA)<sup>a, b, c</sup>
5. Mouvement des libérateurs centrafricains pour la justice (MLCJ)<sup>a</sup>
6. Self-defence militias supported by the Government of the Central African Republic<sup>a</sup>
7. Union des forces démocratiques pour le rassemblement (UFDR)<sup>a</sup>

#### **Parties in Chad**

1. Armée nationale tchadienne, including newly integrated elements<sup>a</sup>
2. Justice and Equality Movement<sup>a</sup>

#### **Parties in the Democratic Republic of the Congo**

1. Forces armées de la République démocratique du Congo (FARDC), including recently integrated elements from various armed groups, including Congrès national pour la défense du peuple (CNDP), formerly led by Laurent Nkunda as well as elements currently led by Bosco Ntaganda<sup>a, c</sup>
2. Forces démocratiques de libération du Rwanda (FDLR)<sup>a, c</sup>

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<sup>a</sup> Parties that recruit and use children.

<sup>b</sup> Parties that kill and maim children.

<sup>c</sup> Parties that commit rape and other forms of sexual violence against children.



3. Forces de résistance patriotique en Ituri/Front Populaire pour la Justice au Congo (FRPI/FPJC)<sup>a, c</sup>
4. Front nationaliste et intégrationniste (FNI)<sup>a, c</sup>
5. Lord's Resistance Army (LRA)<sup>a, c</sup>
6. Mai-Mai groups in North and South Kivu, including Patriotes résistants congolais (PARECO)<sup>a, c</sup>

#### **Parties in Iraq**

1. Al-Qaida in Iraq, including its armed youth wing, "Birds of Paradise"<sup>a, b</sup>
2. Islamic State of Iraq<sup>b</sup>

#### **Parties in Myanmar**

1. Democratic Karen Buddhist Army (DKBA)<sup>a</sup>
2. Kachin Independence Army (KIA)<sup>a</sup>
3. Karen National Liberation Army (KNLA):<sup>a</sup> this party has sought to conclude an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005), but the United Nations has been prevented from doing so by the Government of Myanmar
4. Karen National Union-Karen National Liberation Army Peace Council<sup>a</sup>
5. Karenni Army (KA):<sup>a</sup> this party has sought to conclude an action plan with the United Nations in line with Security Council resolutions 1539 (2004) and 1612 (2005), but the United Nations has been prevented from doing so by the Government of Myanmar
6. Shan State Army-South (SSA-S)<sup>a</sup>
7. Tatmadaw Kyi, including integrated border guard forces<sup>a</sup>
8. United Wa State Army (UWSA)<sup>a</sup>

#### **Parties in Nepal**

Unified Communist Party of Nepal-Maoist (UCPN-M)<sup>a</sup>

#### **Parties in Somalia**

1. Al-Shabaab, including newly merged Hizbul Islam<sup>a, b</sup>
2. Transitional Federal Government (TFG)<sup>a, b</sup>

#### **Parties in the Sudan**

##### **Parties in southern Sudan**

1. Lord's Resistance Army (LRA)<sup>a, b, c</sup>
2. Sudan People's Liberation Army (SPLA)<sup>a</sup>

##### **Parties in Darfur**

1. Chadian armed opposition groups<sup>a</sup>
2. Police forces, including the Central Reserve Police and Border Intelligence Forces<sup>a</sup>

3. Popular Defence Forces<sup>a</sup>
4. Pro-Government militias<sup>a</sup>
5. Sudanese Armed Forces<sup>a</sup>
6. Parties signatories to the Darfur Peace Agreement:
  - (a) Justice and Equality Movement (Peace Wing)<sup>a</sup>
  - (b) Movement of Popular Force for Rights and Democracy<sup>a</sup>
  - (c) Sudan Liberation Army (SLA)/Mother Wing (Abu Gasim)<sup>a</sup>
  - (d) Sudan Liberation Army (SLA)/Free Will<sup>a</sup>
  - (e) Sudan Liberation Army (SLA)/Minni Minawi<sup>a</sup>
  - (f) Sudan Liberation Army (SLA)/Peace Wing<sup>a</sup>
7. Parties not signatories to the Darfur Peace Agreement:
  - (a) Justice and Equality Movement (JEM)<sup>a</sup>
  - (b) Sudan Liberation Army (SLA)/Abdul Wahid<sup>a</sup>
  - (c) Sudan Liberation Army (SLA)/Historical Leadership<sup>a</sup>
  - (d) Sudan Liberation Army (SLA)/Unity<sup>a</sup>

## Annex II

### **List of parties that recruit or use children, kill or maim children and/or commit rape and other forms of sexual violence against children in situations of armed conflict not on the agenda of the Security Council, or in other situations of concern, bearing in mind other violations and abuses committed against children**

#### **Parties in Colombia**

1. Ejército de Liberación Nacional (ELN)<sup>a</sup>
2. Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (FARC-EP)<sup>a</sup>

#### **Parties in the Philippines**

1. Abu Sayyaf Group (ASG)<sup>a</sup>
2. Moro Islamic Liberation Front (MILF)<sup>a</sup>
3. New People's Army (NPA)<sup>a</sup>

#### **Parties in Sri Lanka**

Tamil Makkal Viduthalai Pulikal (TMVP) (Iniya Barrathi faction)<sup>a</sup>

#### **Parties in Uganda**

Lord's Resistance Army (LRA)

#### **Parties in Yemen**

Al-Houthi rebels<sup>a</sup>

Pro-Government tribal militia<sup>a</sup>

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<sup>a</sup> Parties that recruit and use children.