



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### **Concluding observations on the report submitted by India under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict\***

1. The Committee considered the initial report of India (CRC/C/OPAC/IND/1) at its 1885 and 1886 meetings (see CRC/C/SR.1885 and 1886), held on 2 and 3 June 2014, and adopted, at its 1901<sup>th</sup> meeting, held on 13 June 2014, the following concluding observations.

#### **I. Introduction**

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPAC/IND/Q/1/Add.1) and appreciates the constructive dialogue with the multi-sectoral State party delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's combined second to fourth periodic reports under the Convention (CRC/C/IND/CO/3-4) as well as those on the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/IND/CO/1), adopted on 13 June 2014.

#### **II. General observations**

##### **Positive aspects**

4. The Committee welcomes the ratification by the State party of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, in May 2011.

5. The Committee welcomes the various positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular the adoption of the Juvenile Justice (Care and Protection) Amendment Act of 2006; and the Jammu and Kashmir Juvenile Justice (Care and Protection) Act of 2013.

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\* Adopted by the Committee at its sixty-sixth session (26 May 13 June 2014).

### III. General measures of implementation

#### Legislation

6. The Committee is concerned about the lack of information on the legal status of the Optional Protocol in the jurisdiction of the State party.

7. **The Committee recommends that the State party take all necessary legal measures to incorporate the provisions of the Optional Protocol into its domestic laws.**

#### Declaration

8. The Committee notes that according to the declaration the State party made upon ratification of the Optional Protocol, “[t]he minimum age for recruitment of prospective recruits into Armed Forces of India (Army, Air Force and Navy) is 16 years. After enrollment and requisite training period, the attested Armed Forces personnel is sent to the operational area only after he attains 18 years of age.”

9. **The Committee urges the State party to consider withdrawing its declaration and establish the minimum age for recruitment into the armed forces at 18 years.**

#### Coordination

10. While noting that the Ministry of Women and Child Development, in cooperation with the Ministry of Home Affairs and the Ministry of Defence, is responsible for the coordination of the implementation of the Optional Protocol and the establishment of a National Coordination Group to coordinate the implementation of the Optional Protocol with other concerned ministries, departments, State governments and non-governmental organizations, the Committee is concerned about the infrequency of meetings held.

11. **The Committee recommends that the State party strengthen coordination among the Ministry of Women and Child Development and other relevant entities in order to ensure full implementation of the Protocol.**

#### Allocation of resources

12. The Committee is concerned about the very low budgetary allocations foreseen for child protection as recognized by the State party in its report and that there are no budget allocations specifically assigned to activities designed to implement the Optional Protocol.

13. **The Committee recommends that the State party ensure that sufficient and targeted resources are allocated for the effective implementation of all areas of the Optional Protocol at national, regional and district levels.**

#### Dissemination and awareness raising

14. The Committee welcomes the dissemination of the Optional Protocol to various agencies, including relevant central ministries, state governments and Union Territories administration. The Committee is nevertheless concerned that awareness of the Optional Protocol among the general public is low and that efforts to disseminate its relevant provisions among the public, children and professional groups working with and for children and local authorities have been insufficient, in particular in the disturbed districts.

15. **In light of article 6, paragraph 2 of the Optional Protocol, the Committee recommends that the State party ensure that the principles and provisions of the Optional Protocol are widely disseminated among the general public, children,**

teachers, and relevant central and local authorities, in particular in the disturbed districts.

#### **Training**

16. The Committee is concerned that relevant professional categories, in particular the military, the police and those working within the administration of justice, receive inadequate training on the provisions of the Optional Protocol.

17. **The Committee recommends that the State party strengthen its human rights training to all relevant professional groups, in particular the armed forces, including the Central Paramilitary Forces, members of international peacekeeping forces, the Central Armed Police Forces, the State Police Forces, including the Special Police Officers and the Village Defence Committees, judges, social workers, teachers, media professionals and legislators with specific trainings on the provisions of the Optional Protocol.**

#### **Data**

18. The Committee notes with concern the lack of data and statistics on most areas covered under the Option Protocol.

19. **The Committee recommends that the State party:**

(a) **Develop and implement a comprehensive system of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol;**

(b) **Ensure that the data are disaggregated, inter alia, by sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous and socio-economic status, with particular attention to the most vulnerable groups of children;**

(c) **Analyse and use the data collected as a basis for designing policies to implement the Optional Protocol and assessing progress achieved towards this objective; and**

(d) **Seek the assistance of relevant United Nations agencies and programmes, including the United Nations Children's Fund (UNICEF), in this regard.**

## **IV. Prevention**

#### **Age verification procedures**

20. The Committee is concerned at the lack of effective mechanisms to verify the age of incoming recruits to the armed forces, police forces and other paramilitary forces, and notes that this problem is exacerbated by the low rate of birth registration in the State party. In particular, the Committee is concerned that in the absence of an official birth certificate, admission to the armed forces, police forces and other paramilitary forces can be based on a school certificate with an estimated date of birth.

21. **The Committee urges the State party to ensure consistent and effective verification of the age of individual recruits to effectively prevent the recruitment of children into the armed forces. The State party should take all necessary measures to ensure that all children are registered at birth.**

### **Prevention of recruitment of children by non-State armed groups**

22. The Committee is deeply concerned at the phenomena of recruiting children under 18 years of age by various non-State armed groups and their use in hostilities in the disturbed districts in the Northeast of the State party, areas where Maoist armed groups are operating, and Jammu and Kashmir. The Committee is further concerned at the practice of forced recruitment of children from families of poor and marginalized segments of society by non-State armed groups in the disturbed districts.

**23. The Committee urges the State party to expeditiously enact legislation that prohibits and criminalizes the recruitment and use of children under the age of 18 years in hostilities by non-State armed groups. The Committee further urges the State party to take all necessary measures to prevent and eliminate the root causes of forced recruitment of children from families of poor and marginalized segments of society by non-State armed groups in the disturbed districts. This should include implementing awareness-raising programmes addressing the root causes of forced recruitment, enabling of schooling for such children, as well as establishing of a monitoring and reporting system for parents and families to report the forcible recruitment of children.**

### **Military schools**

24. The Committee is concerned that children as young as 13 years of age are enrolled in military colleges and schools and that they participate in basic military training involving firearms. The Committee is also concerned that no concrete information on their military status in case of a mobilization or clashes with armed opposition groups or other emergency situations, on minimum service time and on conditions for early discharge has been provided and that there are no independent and confidential reporting mechanisms in such colleges and schools.

25. **The Committee recommends that the State party:**

**(a) Take measures to ban military-type training, including on the use of firearms at military schools, for all children under the age of 18. Those recruited to military establishment should have a birth certificate, or an age verification document.**

**(b) Establish regular monitoring of military schools to ensure that the school curriculum and the teaching personnel comply with the Optional Protocol;**

**(c) Ensure that children who study in military schools are considered as civilians until they turn 18;**

**(d) Ensure that children under the age of 18 who are admitted to cadet schools and higher military institutes are not subjected to military discipline; and**

**(e) Set up independent, confidential and gender-sensitive mechanisms for complaints and investigation that are accessible to children in military colleges and schools, in order to monitor the welfare of and investigate complaints by children in such programmes.**

### **Human rights and peace education**

26. While welcoming that the Central Board of Secondary Education has taken steps to introduce a human rights course for military schools, the Committee regrets the lack of programmes to systematically incorporate human rights and peace education into school curricula.

**27. With reference to its general comment No. 1 (2001), the Committee recommends that the State party take effective measures to include peace education in**

school curricula and encourage a culture of peace and tolerance within schools. It also encourages the State party to include human rights and peace education in the training of teachers.

#### **Attacks and/or occupation of protected civilian objects**

28. While welcoming the adoption of an Integrated Action Plan that provides public infrastructure and services in areas where Maoist armed groups are operating, the Committee is concerned at the deliberate attacks of schools by non-State armed groups, as well as occupation of schools by State armed forces in Northeast India and areas where Maoist armed groups are operating.

29. **The Committee urges the State party to take all necessary measures to prevent the occupation and use of, and attacks on, places with a significant presence of children, such as schools, in line with international humanitarian law, expedite the vacation of schools as appropriate and take concrete measures to ensure that cases of unlawful attacks and/or occupation of schools are promptly investigated, and that perpetrators are prosecuted and punished.**

## **V. Prohibition and related matters**

#### **Recruitment and use of children by State police forces**

30. The Committee is concerned about the lack of uniformity in the minimum age required for recruitment in police forces in different states and Union Territories in the State party and that some states are recruiting children under 18 years as “boy orderlies” of the state police, auxiliary police forces and village defence committees.

31. **The Committee urges the State party to enact legislation that prohibits and criminalizes recruitments of children under 18 years of age in the police forces and affiliated forces as well as in the village defence committees in all states and Union Territories in the State party.**

#### **Recruitment and use of children by non-State armed groups**

32. The Committee expresses deep concern about the continuous recruitment, kidnapping and use of children, including girls, by various non-State armed groups listed under the Unlawful Activities (Prevention) Act (1967) or active in the disturbed districts in the Northeast India, areas where Maoist armed groups are operating, and districts in Jammu and Kashmir. The Committee expresses further concern that children are used for various tasks, including handling weapons and improvised explosive devices or acting as informants.

33. **The Committee reminds the State party of its obligations under the Optional Protocol to take all the necessary measures to ensure that no children are recruited by non-State armed groups and recommends the incorporation of the forcible recruitment of children as an offence under the Indian Penal Code. It further recommends that the State party set up a monitoring system which allows family members to confidentially report cases of children who are missing and to ensure that prompt and impartial investigations into these reports are carried out. The State party should consider seeking technical assistance from, inter alia, the United Nations Children’s Fund (UNICEF).**

### **Extraterritorial jurisdiction**

34. The Committee regrets the lack of information in the State Party's report about the possibility of establishing extraterritorial jurisdiction over all offences under the Optional Protocol.

**35. The Committee recommends that the State party take all necessary steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all offences under the Optional Protocol, when these offenses are committed by or against a person who is a citizen of, or has habitual residence in, the State party. The Committee also recommends that the State party consider ratification of the Rome Statute of the International Criminal Court.**

## **VI. Protection, recovery and reintegration**

36. The Committee welcomes the adoption of the Juvenile Justice (Care and Protection) Act in 2000 and its subsequent amendments for the purpose of providing protection to children affected by armed conflict in the disturbed districts of the State party. The Committee is nevertheless concerned that the Act is not sufficiently implemented in all disturbed districts in the State party and the lack of establishment of Welfare Committees and Juvenile Justice Boards in the same districts under the Act.

**37. The Committee urges the State party to prioritise the establishment of mechanisms for the effective implementation of the Juvenile Justice (Care and Protection) Act in all disturbed districts in the State party and closely monitor its implementation.**

### **Measures adopted to protect the rights of child victims**

38. The Committee is concerned that children under the age of 18 are subject to administrative detention under the Public Safety Act of 1978, the Armed Forces Special Powers Act of 1958 and other security-related legislation, in the disturbed districts. It is particularly concerned that under these security-related laws children are treated as, and detained with, adults.

**39. The Committee calls upon the State party to review its security-related laws with a view to prohibiting criminal and administrative proceedings against children under the age of 18 as well as prohibiting their detention in military detention centres. It recommends that all children under the age of 18 be handled by the juvenile justice system in all circumstances and that age verification procedures are consistently and effectively applied in this context. The Committee in particular urges the State party to ensure that:**

**(a) Children are not arbitrarily arrested, detained and prosecuted by military courts for their membership in armed groups or for military offences such as desertion;**

**(b) Detention of children is only used as a measure of last resort and for the shortest possible period of time;**

**(c) Children deprived of their liberty as a consequence of their involvement in hostilities are treated with humanity and with respect for their inherent dignity;**

**(d) If criminal charges are brought against children, trials must be held before civilian courts and in compliance with international standards on juvenile justice, including the standards enshrined in the Convention on the Rights of the**

**Child and illustrated in the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice; and**

**(e) Children are provided with rehabilitation and reintegration services, including reunification with their families and access to psycho-social recovery.**

**Disarmament, demobilization and reintegration**

40. The Committee notes with appreciation that the State party has established surrender-cum-rehabilitation schemes in Northeast India, areas where Maoist armed groups are operating, and the districts in Jammu and Kashmir, providing for monetary compensation for those who surrender, vocational training programmes and incentives for surrender of weapons. However, the Committee is concerned that none of the policies relating to surrender focus on the recovery and integration of children. In particular, the Committee is concerned that:

(a) Mechanisms for the systematic identification of former child soldiers among those who surrender to the State security forces are not in place;

(b) The surrender and rehabilitation policies require a surrendered person to make a public media statement of his or her voluntary surrender; and

(c) Surrendered cadres, including children, are used as informants for security forces, exposing them to security risks, including subsequent retaliations by non-State armed groups.

41. **The Committee urges the State party to develop a programme aiming at the identification, release, recovery and reintegration with their families of all children, including girls, who have been recruited or used in hostilities by non-State armed groups, and immediately ensure their effective and transparent demobilisation. In this regard, if families cannot be located or identified, alternative protective accommodation should be provided. In particular, the Committee recommends the State party to:**

**(a) Establish an identification mechanism for children, who have been or may have been involved in armed conflict, and ensure that personnel responsible for such identification are trained on child-rights, child protection and child-friendly interviewing skills;**

**(b) Review its surrender-cum-rehabilitation schemes with a view to preventing surrendered children and other young persons, who were minors at the time when they joined or were forcibly recruited by the armed opposition groups, from media exposure, and in particular the disclosure of their identity, as foreseen under the Juvenile Justice (Care and Protection) Act of 2000, as amended in 2006;**

**(c) Ensure that children are not used as informants and any information provided by demobilized children are maintained confidential in order not to expose them to security risks or potential retaliations,**

**(d) Conduct prompt and impartial investigations of reports that children have been interrogated for intelligence purposes and ensure that those responsible with the armed forces are duly sanctioned, as well as that these children are accorded victim and witness support services; and**

**(e) Provide further information on measures adopted in this regard in its next report under the Convention.**

**Assistance for physical and psychological recovery and social reintegration**

42. The Committee regrets the lack of information provided on measures related to recovery, psychosocial support, reintegration with families and or placement in protective accommodation for children who may have been recruited or used in armed conflicts. In particular the Committee regrets the lack of information on:

- (a) The type of assistance in social reintegration and family reunification provided, and the type of physical and psychological recovery delivered, including the budget allocations foreseen;
- (b) The number of children that have benefited from such assistance; and
- (c) The remedies and reparations that may be sought by child victims of recruitment.

43. **The Committee urges the State party to:**

- (a) provide information on numbers of children identified and reintegrated with their families. For those who could not be reunited, the interventions to provide them with protective accommodation should be specified;**
- (b) Provide these children with immediate as well as child and gender-sensitive multidisciplinary assistance for their physical and psychological recovery and ensure that the release, recovery and social reintegration of children associated with non-State armed forces or armed groups becomes a priority; and**
- (c) Establish a community follow up system to ensure that such children are able to access schooling, health services as necessary and are not stigmatised.**

**Arms export**

44. The Committee is concerned at the lack of information with respect to legislation explicitly prohibiting and criminalizing trade and export of arms, including small arms and light weapons, to countries where children are known to have been or are involved in armed conflict. The Committee is further concerned that the State party has not ratified the 2008 Convention on Cluster Munitions.

45. **The Committee recommends that the State party:**

- (a) Enact legislation explicitly prohibiting trade and export of arms, including small arms and light weapons, to countries where children are known to have been or are involved in armed conflict;**
- (b) Ensure that illicit activities, including the manufacturing and trafficking of small arms and light weapons, are criminalized, that records are maintained and firearms marked; and**
- (c) Consider ratifying the 2008 Convention on Cluster Munitions.**

## **VII. International assistance and cooperation**

**International cooperation**

46. **The Committee recommends that the State party continue and strengthen its cooperation with the International Committee of the Red Cross and with the Special Representative of the Secretary-General for Children and Armed Conflict, and that it explore increased cooperation with the United Nations Children's Fund (UNICEF) and other United Nations entities in the implementation of the Optional Protocol.**



## **VIII. Follow-up and dissemination**

47. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations by, *inter alia*, transmitting them to the Parliament, relevant ministries, including the Ministry of Defence, the Supreme Court, and to local authorities, for appropriate consideration and further action.

48. The Committee recommends that the initial report and written replies submitted by the State party and the related concluding observations adopted by the Committee be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

## **IX. Next report**

49. In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.

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