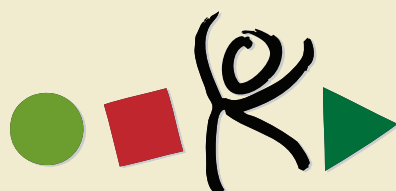


Reporting on the OPSC and OPAC

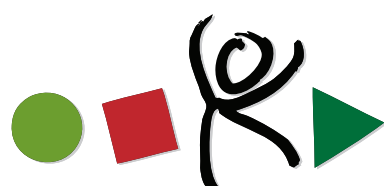
A Guide for Non-governmental Organizations



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Reporting on the OPSC and OPAC

A GUIDE FOR NON-GOVERNMENTAL ORGANIZATIONS



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Reporting on the OPSC and OPAC: A Guide for Non-governmental Organizations

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[NAME CHANGED] Margaret, 15, was abducted by the LRA in 2003 while collecting firewood for her mother. Presently she is recovering at the UNICEF-supported Kitgum Concerned Women's Association (KICWA) in the northern town of Kitgum. Like many other abductees, she was forced to walk long distances while carrying heavy loads. She witnessed girls being given to commanders as sex slaves and saw others being killed. She is still haunted and has nightmares about two children from her village who were accused of trying to escape and then killed in her presence. "If I get home, I need to pray a lot and go to school," she said. Margaret believes that former child soldiers should be forgiven if they want to return to society.

By the end of 2004 in Uganda, up to 20,000 children in northern districts had been abducted from their homes since 1986 and forcibly recruited into the rebel Lord's Resistance Army (LRA) as combatants, sex slaves and porters. Some 12,000 have been abducted since mid-2002, forcing over 44,000 children (and many adults) to become 'night commuters' – abandoning their homes and villages each night to seek shelter in relatively safe urban centres. An additional 2,500–3,000 unaccompanied children have fled their home districts and are now separated from their families. The conflict has displaced 1.4 million people, more than 80 per cent of whom are children and women. Heightened insecurity is also hampering relief efforts for affected populations, many of whom face food shortages and lack access to basic services. Some 15,000 children have escaped the LRA or been captured by the army, and, of these, 10,000 have received assistance at reception and reintegration centres. At the reception centres, UNICEF trains local volunteers to provide psychosocial services and help demobilized child soldiers reintegrate into their communities. UNICEF is also assisting two shelters for 'night commuters', as well as providing shelter, education and water and sanitation supplies in camps for the displaced.

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The NGO Group for the Convention on the Rights of the Child

The NGO Group for the Convention on the Rights of the Child is a global network of 77 national and international NGOs committed to ensuring that all children fully enjoy their rights as defined by the UN Convention on the Rights of the Child (CRC). The NGO Group works through its secretariat and thematic working groups to fulfil its mission to facilitate the promotion, implementation and monitoring of the CRC.

Since its establishment in 1983, the NGO Group has provided a coordinated platform for NGO action and played a central role in key child rights developments at the international level. In addition, it promotes the full implementation of the CRC through its work with national and international NGOs throughout the world.

The NGO Group's strategic priorities are to:

1. Enhance the effective engagement of NGOs and other relevant partners in the CRC reporting process and other activities of the Committee on the Rights of the Child.
2. Mainstream child rights in relevant activities of other United Nations human rights mechanisms and procedures.
3. Promote the realisation of child rights at national level through the effective implementation of the recommendations and other outputs of the Committee and other relevant international human rights mechanisms.
4. Pursue and support international advocacy on priority child rights issues through coordinated action with members and partners.

Abbreviations

Art.	Article
CHR	Commission on Human Rights
Committee	Committee on the Rights of the Child
Convention	Convention on the Rights of the Child
CRC	Convention on the Rights of the Child
HRC	Human Rights Council
NGO Group	NGO Group for the Convention on the Rights of the Child
OHCHR	Office of the High Commissioner for Human Rights
OP	Optional Protocol
OPAC	Optional Protocol on the Involvement of Children in Armed Conflict
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
Pre-session	Pre-sessional Working Group
UN	United Nations
UN GA	United Nations General Assembly
UNICEF	United Nations Children's Fund

Foreword

This guide aims to promote the understanding of, and effective reporting on, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), by NGOs. The reporting processes on the OPSC and OPAC provide an opportunity for national and international Non-governmental Organizations (NGOs) to monitor States' efforts in implementing the provisions of both these treaties, which cover some of the worst violations of child rights.

The NGO Group for the Convention on the Rights of the Child's (NGO Group) has been supporting NGOs in reporting on both Optional Protocols since the Committee on the Rights of the Child (the Committee) first started examining reports under these treaties in 2005. By November 2010, the Committee had examined 63 reports under the OPAC and 48 reports under the OPSC.

Following the examination of more than 80 initial reports, the Committee developed new guidelines in 2006 and 2007 on each of the Optional Protocols (OPs) to assist States parties in reporting on the two treaties. Subsequently, in accordance with the provisions of the two Optional Protocols, States parties are beginning to include information on the implementation of the Protocols in their reports on the implementation of the Convention on the Rights of the Child (CRC). In 2010, the Committee produced new guidelines for periodic reporting under the CRC, which include information on periodic reporting under the Optional Protocols.

Given the growing number of reports being submitted under the OPs, the evolution of the reporting procedures since 2005, the new guidelines for States parties and the inclusion of information on the OPs in periodic reports under the CRC, the NGO Group has produced this new guide. It is addressed principally to national and international NGOs and child rights coalitions who monitor and implement the issues covered by both OPs.

This guide builds on the NGO Group's experience in supporting the work of NGOs and child rights coalitions in monitoring and implementing the Convention on the Rights of the Child and its two Optional Protocols. It also draws on previous guidelines that were produced prior to the consideration of State party reports by the Committee, namely: the *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict*¹ (Coalition to Stop the Use of Child Soldiers and UNICEF, 2003), the *Guide for NGOs reporting to the UN Committee on the Rights of the Child on the implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*² (NGO Group, 2006) and the *Guide for Non-Governmental Organizations reporting to the Committee on the Rights of the Child*³ (NGO Group, 2006). In additions to this, UNICEF also published a handbook on the OPSC to explain the provisions of that treaty.⁴

¹ http://www.unicef.org/publications/files/option_protocol_conflict.pdf

² http://www.crin.org/docs/FileManager/NGOGroup/OPSC_Guide_for_NGOs.pdf

³ <http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>

⁴ http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf

This practical tool provides substantive analyses of the provisions under the two treaties in one comprehensive document. It offers a detailed description of the reporting process, as well as information and advice to NGOs on how to participate effectively in this process, including meeting with the Committee. This guide can be used for both comprehensive initial reports under each Optional Protocol as well as for the follow-up in the periodic reports under the CRC.

The methodology used to produce this guide included an examination of both the initial reports submitted by NGOs on the two OPs, as well as the concluding observations of the Committee on the Rights of the Child in order to analyse the best practices in reporting. Desk officers at the Office of the High Commissioner for Human Rights (OHCHR), Committee members, selected NGOs who have recently reported under the OPs, and other NGO partners working on themes covered by the Optional Protocols, were consulted in the drafting of this Guide. In addition, existing guidelines and relevant documents were reviewed. Finally, this guide offers the NGO Group's evaluation of monitoring six years of State party and NGO reporting.

Both Optional Protocols contribute to strengthening the provisions of the Convention on the Rights of the Child and to fighting the impunity of perpetrators. We hope that this guide will assist NGOs in producing reports that present the reality of children all over the world and ultimately contribute to the improvement of the protection of children's rights relevant to the provisions of the OPs.

1. Introduction

The Convention on the Rights of the Child⁵ (CRC) is a comprehensive instrument which sets out rights that define universal principles and norms for children. It provides children with fundamental human rights and freedoms and takes into account their need for special assistance and protection.

In order to expand upon the obligations set out under specific articles of the Convention, two Optional Protocols⁶ (OPs) were adopted by the United Nations General Assembly (UN GA) in 2000: one on the involvement of children in armed conflict and one on the sale of children, child prostitution and child pornography.

The Optional Protocols are separate legal instruments which must be ratified independently of the CRC and are only binding on States which have ratified them. Both Optional Protocols include a provision by which it is possible to be a State party to an Optional Protocol having only signed but not ratified the CRC. Following ratification, States have the obligation to provide information on measures taken to implement the provisions of the OPs.

1.1 Optional Protocol on the Involvement of Children in Armed Conflict

Article 38 of the CRC upholds standards on the minimum age of recruitment of children into the armed forces and their participation in hostilities, as set out in the Additional Protocols to the Geneva Conventions.⁷ It is, however, the only instance in the Convention whereby an age lower than 18 (in this case 15) is explicitly set. A number of States, dissatisfied with the outcome of the drafting of article 38, submitted, upon ratification of the CRC, declarations expressing their disagreement with the age of participation and recruitment of children being set at 15.

Article 38 of the Convention on the Rights of the Child

2. States parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States parties shall endeavour to give priority to those who are oldest.

⁵ The Convention on the Rights of the Child was unanimously adopted by the United Nations General Assembly on 20 November 1989.

⁶ See annexes for the full texts of the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

⁷ For more information on the Additional Protocols to the Geneva Conventions (1977) see <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/genevaconventions#a4>

During its second session in 1992, the UN Committee on the Rights of the Child⁸ (Committee) held its first thematic discussion day (called Day of General Discussion) on the subject of children in armed conflict⁹ and recommended that an Optional Protocol to the CRC be drafted to increase the age of participation and recruitment of children into the armed forces from 15 to 18. The Committee prepared a preliminary draft of an Optional Protocol which was transmitted to the United Nations Commission on Human Rights in 1994. The initial draft envisaged measures to ensure that children under 18 did not take part in hostilities and that the minimum age of recruitment was raised to 18.

The Optional Protocol on the involvement of children in armed conflict (OPAC) was adopted by the UN GA on 25 May 2000, entered into force on 12 February 2002 and has been ratified by 138 States.¹⁰

The OPAC strengthens article 38 of the CRC by raising the minimum age of direct participation in hostilities from 15 to 18 (art.1) and prohibiting anyone under 18 from being compulsorily recruited into the armed forces (art. 2). Article 4 further criminalises the recruitment and participation in hostilities of anyone under 18 by armed groups. The OPAC also requires States parties to increase the age of voluntary recruitment from 15 to a minimum of 16, and to ensure that safeguards are in place to guarantee that recruitment is genuinely voluntary, consent from the parent or legal guardian has been obtained, duties involved are fully explained, and reliable proof of age has been obtained (art. 3).

However, the OPAC only forbids “direct participation” in hostilities (art.1) rather than covering all types of participation, as the Committee wished. As the term “direct participation” is not defined in the OPAC, it is open to broad interpretation. In addition, the OPAC only establishes 18 as the age for compulsory recruitment (art. 2), while the minimum age for voluntary recruitment is set at 16 (art. 3). The Committee had called for both to be raised to 18.

1.2 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) came out of a very different drafting process as it was initiated by the UN Commission on Human Rights (CHR).¹¹

In 1994, the government of Cuba proposed that the CHR develop an Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. The Committee initially opposed the idea, as it felt that the CRC already provided a framework for addressing issues concerning sale of children, child prostitution and child pornography in articles 34 and 35.¹² Together with a number of NGOs, they argued that what was necessary was for the existing articles to be implemented, rather than creating a new instrument. The OPSC was nevertheless adopted by the UN GA in 2000, entered into force on 18 January 2002 and has been ratified by 142 States.¹³

⁸ The body entrusted with monitoring the implementation of the CRC.

⁹ <http://www2.ohchr.org/english/bodies/crc/docs/discussion/conflict.pdf>

¹⁰ Ratifications as of 1 December 2010. The current list of ratifications is available at, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en

¹¹ In 2006, the Commission on Human Rights (CHR) was replaced by the Human Rights Council (HRC).

¹² See Report on the Sixth Session, April 1994, CRC/C/29, and Report on the Tenth Session, October/November 1995, CRC/C/46, Report on the Eleventh Session, January 1996, CRC/C/50, and Report on the Twentieth Session, January 1999, CRC/C/84.

¹³ Ratifications as of December 2010. The current list of ratifications is available at, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en

Article 34 of the Convention on the Rights of the Child

States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- a. The inducement or coercion of a child to engage in any unlawful sexual activity;
- b. The exploitative use of children in prostitution or other unlawful sexual practices
- c. The exploitative use of children in pornographic performances and materials.

Article 35 of the Convention on the Rights of the Child

States parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

The OPSC requires that the sale of children, child prostitution and child pornography, as defined by article 2, be prohibited (art. 1).

Definitions of Sale of Children, Child Prostitution and Child Pornography (OPSC Article 2)

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primary sexual purposes.

The OPSC sets out which specific acts must be criminalized “as a minimum” (art. 3) within the areas of sale of children for purposes of sexual exploitation, transfer of organs, forced labour, or adoption, as well as child prostitution and child pornography. It includes provisions on jurisdiction, extradition and investigation of these criminal offences (arts. 4, 5, 6) and on the seizure and confiscation of goods or proceeds resulting from these offences (art. 7).

The OPSC also binds States to protect the rights and interests of child victims and witnesses and to provide for rehabilitation, access to procedures to seek compensation and prevention measures to protect children from these offences (arts. 8, 9). International cooperation is also called for in the areas of prevention, detection, investigation, prosecution and punishment of those responsible (art. 10).

2. Substantive analyses of the provisions under the optional protocols

Although similar in terms of structure, the two Optional Protocols differ in terms of substance, thus the information that is required to monitor their implementation also differs. This section will examine the common requirements under the two Optional Protocols and provide an overview of the type of information that is needed under each Optional Protocol. It should be noted, however, that not all elements may be relevant in all States parties.

2.1 Common requirements under the Optional Protocols

2.1.1 General measures of implementation

General measures of implementation cover the legal status of the OPs in national law, jurisprudence, reservations, coordination amongst governmental bodies, the role of independent national human rights institutions in monitoring the OPs, dissemination of the OPs and training of relevant professional groups.

- NGOs should point out gaps in legislation, possible amendments to existing legislation or new specific legislation to be adopted in order to harmonize national legislation with the OPs.

2.1.2 International assistance and cooperation

The Committee requests that States provide information on international assistance and cooperation regarding the prevention, detection, investigation, prosecution and punishment of any of the offences covered by the OPs. International cooperation may include multilateral, regional or bilateral agreements as well as support from international agencies and organizations and/or national and international NGOs.

- NGOs may wish to provide information on how they are cooperating with the State in ensuring the effective implementation of the OPs.

2.1.3 Other legal provisions

States are requested to provide information on national or international laws that may be more beneficial to the realization of the rights of the child than those contained in the OPs and the status of ratification of major international instruments.

- NGOs generally do not need to comment on these areas, but may do so if considered necessary.

2.2 Specific requirements under the Optional Protocol on the Involvement of Children in Armed Conflict

Summary of the OPAC

- **Article 1** raises the minimum age for direct participation in hostilities from 15 to 18. States are required to take “all *feasible* measures” and only “direct” participation is forbidden. The OPAC does not provide a definition as to what constitutes “direct participation”.
- **Article 2** prohibits anyone under 18 from being compulsorily recruited into the armed forces. States parties “shall ensure” that this does not happen.
- **Article 3** requires States to increase the age of voluntary recruitment from 15 to at least 16 and ensure that safeguards are in place to guarantee that recruitment is voluntary, consent from the parent or legal guardian has been obtained, duties involved are fully explained, and reliable proof of age has been obtained. Although the Committee had wanted voluntary recruitment to also be set at 18, this was not accepted in the negotiations. States are not required to raise the age for attending schools operated or controlled by the military.
- **Article 4** prohibits all recruitment and participation in hostilities of anyone under 18 by armed groups “under any circumstances” making the requirement for armed groups stronger than that of armed forces. States must take “all *feasible* measures” to prevent these practices by adopting legislation and criminalizing these actions. The OPAC in effect sets a higher standard than the Rome Statute of the International Criminal Court, which only considers conscription or enlistment of children under the age of fifteen years as a war crime.
- **Article 5** states that national or international laws that are more conducive to children’s rights should prevail.
- **Article 6** binds States parties to take all legal, administrative and other measures to ensure that the OPAC is being implemented effectively. This includes awareness raising and training as well as providing assistance for the physical and psychological recovery and reintegration of children who have been recruited or used in hostilities.
- **Article 7** encourages technical cooperation and financial assistance in prevention and also in the rehabilitation and social reintegration of victims.
- **Articles 8 to 13** deal with issues of reporting, ratification, entry into force and amendments.

The OPAC is applicable irrespective of whether or not a State party is currently or has recently experienced armed conflict. A number of States parties not involved in an armed conflict have provided succinct reports to the Committee and civil society often did not see the need to report at all. This was unfortunate as the guidelines for reporting clearly point out a number of areas in which all countries need to report irrespective of whether or not there is an ongoing-armed conflict. Furthermore, even if there is no armed conflict in a State party, children may be recruited by armed groups to participate in conflicts in other countries or in preparation for a future armed conflict.

- If NGOs have any information on this type of situation, it should also be provided to the Committee.
- NGOs should refer to the Committee’s reporting guidelines¹⁴ and are encouraged to submit a report irrespective of the current situation in the State party.

¹⁴ Revised Guidelines regarding initial reports to be submitted by States parties 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, CRC/C/OPAC/2 (2007), see Annex.

In the **introduction** to the NGO report, background information on any existing or recent armed conflicts within the territory of the State party or abroad should be provided in summary form. Brief information about any non-state armed groups operating within the territory of the State party should also be given.

In addition to common areas such as general measures of implementation, the reporting guidelines request that information be provided under three general areas: **prevention, prohibition and protection** of the rights of child victims. The guidelines provide details as to what information States should include in their reports and NGOs may wish to comment on some of the same issues. In particular, attention should be paid to the following areas.¹⁵

2.2.1 Prevention of the recruitment and use of children in hostilities

Irrespective of whether or not a country is experiencing an armed conflict, legislation, administrative and other measures must comply with the obligations set out in the OPAC in order to prevent the recruitment and use of children in hostilities.

Establishing age

A key aspect in preventing the recruitment and use of children in hostilities is the need to establish an effective birth registration system.

- NGOs should provide information on procedures used to establish someone's age in the absence of birth certificates.

Compulsory recruitment

The Committee notes as positive the absence of compulsory conscription. NGOs should therefore:

- Comment on whether compulsory recruitment exists, the age of compulsory recruitment and whether it is being adhered to. If not, what are the reasons?
- Refer to observations on any legal provisions that allow for the age of conscription to be lowered in "exceptional circumstances", such as during a state of emergency or during an armed conflict.

Voluntary recruitment

Upon ratification, States parties must raise the minimum age for voluntary recruitment to at least 16 and submit a binding declaration which sets out the minimum age for voluntary recruitment. The majority of States parties to the OPAC have declared 18 years to be the minimum age. The latter can be increased at a later date and the declaration subsequently modified.

NGOs should therefore:

- Mention the minimum age of voluntary recruitment. If it is below the age of 18, provide information on whether there is a debate in the country about raising the age to 18.
- As the recruitment process itself is of particular interest to the Committee, highlight whether particular groups of vulnerable children are targeted. These may include

¹⁵ For additional information on the OPAC see: Guide to the Optional Protocol on the Involvement of Children in Armed Conflict, Coalition to Stop the Use of Child Soldiers and the United Nations Children's Fund (UNICEF), December 2003; Review of State party reports to the Committee on the Rights of the Child on the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, November 2006, Child Soldiers Global Report 2008, www.child-soldiers.org

children from socially disadvantaged groups with limited opportunities for education or employment, children living in poverty, children living in remote areas, children without parental care, refugee or internally displaced children, minority or indigenous children, and so on.

- Provide information on the extent, quality and accessibility of information, such as documentation, films, videos, or oral briefings, given to potential recruits about their role in the military.
- Include information with regards to the recruitment of girls into the armed forces.
- Comment on the effectiveness of safeguards such as informed parental consent, providing documentation on military duties and whether recruitment is truly voluntary, and any reasons there may be to doubt that.
- Highlight guidelines and procedures within the military to ensure that under-18s who are legally recruited are not deployed inadvertently.
- Mention whether there exist incentives or any other forms of pressure for joining the armed forces and their effect on voluntary recruitment.
- Provide details of minimum service time, conditions for early discharge and possible sanctions for doing so without a proper discharge.

Direct participation in hostilities

The notion of “direct participation in hostilities” is not defined in the OPAC.¹⁶ The Paris Principles, however, define a child associated with an armed force or armed group as “any person below 18 years of age who is or who has been recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys, and girls used as fighters, cooks, porters, messengers, spies or for sexual purposes.”¹⁷ Guarding military persons or quarters may also be considered as direct participation in hostilities.¹⁸

NGOs should therefore provide information and/or comment on the following:

- The State party’s definition/interpretation in domestic legislation of direct participation in hostilities.
- Implications of this definition, particularly when voluntary recruitment of children under 18 is allowed.
- Examples of any types of participation of under-18s in hostilities; capacity in which children have participated; ages and gender, if available.
- Occurrences of sexual exploitation or violence against girls and boys in the armed forces.
- The use of girls in roles such as cooks, porters, messengers, spies or in sexual roles.

¹⁶ The International Committee of the Red Cross recently produced an Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Law, http://www.icrc.org/eng/assets/files/other/icrc_002_0990.pdf, which attempts to clarify the meaning and consequences of direct participation in hostilities in international humanitarian law. Although the ICRC has clearly stated that the guidance is meant for conduct in hostilities and may not be relevant for international human rights law, it may provide some guidance to NGOs in determining which functions may be considered to be direct participation under the OPAC.

¹⁷ Paris Principles: Principles and Guidelines on Children associated with Armed Forces or Armed Groups, February 2007, http://www.child-soldiers.org/childsoldiers/Paris_Principles_March_2007.pdf

¹⁸ Guide to the Optional Protocol on the Involvement of Children in Armed Conflict

Military schools

As the OPAC allows children to attend schools “operated by or under the control of the armed forces”,¹⁹ the operation of military schools is of particular interest to the Committee in order to ensure that children are not being recruited into the armed forces under the pretext of education.

NGOs should therefore provide detailed information regarding:

- The military or civilian status of students and the deployment of students in “exceptional circumstances” such as armed conflict or a state of emergency.
- The education provided in military schools and whether it respects articles 28 (right to education) and 29 (aims of education) of the CRC, as well as whether or not the school curriculum is aimed at promoting respect for human rights and a peaceful society.
- The type of training provided, including on the use of weapons.
- School discipline and the use of corporal punishment in military schools.
- Whether students have access to independent complaints mechanisms.
- The right of students to leave school at any time and not pursue a military career and any requirements or incentives for students to join the military after graduation.
- Whether military students who violate the law are tried in military or civil courts.

Armed groups

Under the Optional Protocol, armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use children in hostilities (art. 4 (1)). States are asked to take “all feasible measures” to prevent this by prohibiting and criminalizing these practices through legislation (art. 4 (2)).

The OPAC does not define armed groups other than noting that they are distinct from the armed forces. These may be groups that are in opposition to the State, such as rebel groups or dissident armed forces, or groups that are not in opposition to the State, such as paramilitary groups or private security forces, established, condoned or armed by the government.²⁰

NGOs should provide any information on the recruitment of children by armed groups including:

- Where possible, data on numbers of children and a profile of these children such as their age, gender, ethnic/religious origins, geographic origins, and whether they belong to an identifiably vulnerable group such as refugees or internally displaced persons.
- The methods of recruitment, including data on incidents of use of children in hostilities and the capacities in which children have been used by armed groups.
- Specific information on the recruitment and use of girls by armed groups.
- Any safeguards in place to ensure that vulnerable children are not targeted by armed groups.
- Details of whether armed groups have been cooperating with the United Nations or others regarding the release and reintegration of children or have adopted policies regarding the recruitment of children.

¹⁹ OPAC, article 3, para. 5

²⁰ Cape Town Principles and Best Practices, April 1997, [http://www.unicef.org/emerg/files/Cape_Town_Principles_\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles_(1).pdf)

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- Details of existing negotiations with armed groups and whether amnesties for war crimes, which may have included children, have been contemplated.

Training and awareness raising

NGOs should provide information or comment on:

- Steps taken by the State party to disseminate information and train relevant officials.
- How the OPAC is being disseminated and what other types of awareness raising may be needed to make the public more aware of the harmful consequences of involving children in armed conflict.
- Training of military personnel, members of international peacekeeping forces, law enforcement or immigration officers, or any other specific groups by civil society, as well as the effectiveness of these training programmes.
- The provision by, or in collaboration with, civil society of peace education and/or human rights education in the schools.

2.2.2 Prohibition and related matters

Irrespective of whether or not a country is currently experiencing an armed conflict, legislation, administrative and other measures must comply with the obligations set out in the OPAC in order to prohibit and criminalize the recruitment and use of children in hostilities.

In that regard, NGOs should provide information regarding:

- Any problems in the legislation or in the implementation of the legislation with regards to the criminalization of those who compulsory recruit children and/or use children in hostilities.
- The minimum age limits for recruitment and deployment by armed forces and whether this is set in law, whether underage recruitment and use of children has been criminalized and if so, how they are sanctioned.
- The need to amend or revise existing legislation, including the Penal Code to ensure violations regarding the recruitment of children, both during times of war and peace are being criminalized.
- Any problems in the legislation or the implementation of the legislation with regards to the prohibition and criminalization of the recruitment of children and/or use of children in hostilities by armed groups, and the need to amend or revise existing legislation, including the Penal Code.
- Whether direct participation in hostilities has been defined in law and whether there has been any debate or discussion at national level on a possible definition.
- Whether extraterritorial jurisdiction for crimes involving the recruitment and use of children has been established (the Committee recommends violations of OPAC provisions be made a crime subject to universal jurisdiction).
- Whether a person present in the State party who has allegedly recruited or used children in an armed conflict in another country can be prosecuted. This should include whether a person who is a citizen of, or has other links with, the State party can be prosecuted for violations of the OPAC, such as when a child who is a citizen is recruited outside of the State party or when a citizen of the State party recruits under-18s outside the State party.

- The possibility of extradition of persons who have committed offences under the OPAC and international agreements with regards to investigations, criminal and extradition proceedings and their effectiveness.
- Whether children have been captured (for example prisoners of war), detained or imprisoned. The reasons for their detention and whether they are being treated and detained in accordance with international standards on juvenile justice, and whether they are being charged for their affiliation with armed groups, the legal charges and how they are defined and whether children may be tried in military justice courts or in special anti-terrorist legal regimes.
- The criminal liability of legal persons, such as private military and security companies for acts committed under the OPAC.²¹

2.2.3 Protection, recovery and reintegration

The OPAC takes a long term approach to the involvement of children in armed conflict by requiring not only the demobilization of children, but also assistance for their “physical and psychological recovery and their social reintegration.”²²

The Committee interprets this provision as not restricted to the country in which the children have been recruited or have participated in an armed conflict. States that are not parties to a conflict but are a destination for refugee or asylum seeking children who have been recruited or used in hostilities are under the obligation to provide assistance to these children.

NGOs should therefore provide information regarding:

- Whether assistance is being provided by the State party to all children who have been recruited or used in hostilities and the nature of the assistance provided.
- Programmes to assist in the physical and psychological recovery of former child soldiers and their reintegration into their communities.
- Work being done to ensure that asylum seeking and refugee children who may have been involved in armed conflict are identified and receive appropriate care and treatment.
- The particular needs of girls, including adolescent mothers and their children.

2.2.4 International assistance and cooperation

NGOs should provide information regarding:

- Any initiatives being taken or supported to secure the release of children in armed forces or groups.
- The trade and export of small arms and light weapons to countries where children are known or suspected to be involuntarily recruited or used in hostilities, and whether the State party has taken any measures or is considering banning the sale of weapons to these countries.

²¹ See Annex. Revised Guidelines regarding initial reports to be submitted by States parties under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, CRC/C/OPAC/2, para. 23

²² States parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service, States parties, shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.” OPAC, article 6(3)

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- Military assistance being provided to countries where children are involved in armed conflict.
 - Whether the State party has cooperated with the Office of the Special Representative of the Secretary General for Children in Armed Conflict and whether the situation in the State party has been identified in reports of the Secretary General to the Security Council in accordance with resolution 1612 of 2005.

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- Does the State ensure that under-18s who are members of its armed forces do not take a direct part in hostilities?
- Does the State ensure that under-18s are not compulsorily recruited into its armed forces?
- Has the State raised in years the age for voluntary recruitment into its national armed forces, from that set out in article 38 of the Convention?
- Has the State deposited a binding declaration setting out the minimum age for voluntary recruitment and describing safeguards adopted to ensure that such recruitment is not forced or coerced?
- Do these safeguards ensure, as a minimum that
 - recruitment is genuinely voluntary;
 - recruitment is done with the informed consent of the child's parents or legal guardians;
 - those involved are fully informed of the duties involves in such military service;
 - those involved provide reliable proof of age prior to acceptance.
- Does the State keep under review the age for voluntary recruitment, with a view to raising it further in years?
- Does the State take all feasible measures to prevent recruitment or use in hostilities of under-18s by other armed groups?
- Has the State adopted legal measures to prohibit and criminalize such practices by other armed groups?
- Has the State sought to establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State?
- Does the State ensure that any children in their jurisdiction recruited or used in hostilities in ways contrary to the Optional Protocol are demobilized or otherwise released from service?
- Does the State ensure that such children receive when necessary all appropriate assistance for their physical and psychological recovery and social reintegration?

Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2007

2.3 Specific requirements under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Summary of the OPSC

- **Article 1** prohibits the sale of children, child prostitution and child pornography.
- **Article 2** defines the above acts in broad terms.
- **Article 3** requires that States parties criminalize certain acts whether they are committed nationally or across borders or on an individual or group basis. They include:
 - “offering, delivering or accepting” a child for the purpose of sexual exploitation, transfer of organs for profit, engagement in forced labour or “improperly inducing consent” for the adoption of a child.
 - “offering, obtaining, procuring or providing a child for child prostitution”
 - “producing distributing, disseminating, importing, exporting, offering, selling or possessing ...child pornography”.
- **Article 4** binds States to criminalize the above offences when committed domestically and allows them to prosecute offenders who are nationals of a State or have their habitual residence in the State or when the victim is a national of the State.
- **Article 5** deals with issues regarding extradition and calls on States to include these offences in both existing and future extradition treaties.
- **Article 6** obliges States to cooperate with regards to criminal investigations and extradition proceedings. It asks States to provide “the greatest measure of assistance”.
- **Article 7** requires that goods and proceeds be seized or confiscated and that premises used to commit offences be closed.
- **Article 8** protects child victims or witnesses during the criminal justice process including allowing their views to be heard, providing support services, and protecting their identity, privacy and safety. Procedures should be adapted to the special needs of children.
- **Article 9** binds States to take all legal, administrative and other measures or prevent these practices and to conduct awareness raising and training. It also requires States to provide assistance for the physical and psychological recovery and social reintegration of victims.
- **Article 10** encourages international cooperation in prevention, detection, investigation, prosecution and punishment of these acts as well as to assist child victims. Poverty and underdevelopment, which contribute to the vulnerability of children, should also be addressed through international cooperation.
- **Article 11** states that national or international laws that are more conducive to children’s rights should prevail.

The OPSC does not only cover the commercial sexual exploitation of children. It also includes the sale of children for the transfer of organs, engagement in forced labour and improperly inducing consent for adoption (art. 3).

- NGOs should make sure their reports cover all areas of the Optional Protocol to ensure the Committee has a full picture of the State’s implementation of the treaty.²³

²³ For a detailed analysis of the provisions of the OPSC see Ugo Cedrangolo (2009), ‘The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the jurisprudence of the Committee on the Rights of the Child’. *Innocenti Working Paper* No. 2009-03. Florence, UNICEF Innocenti Research Centre http://www.unicef-irc.org/publications/pdf/iwp_2009_03.pdf

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- NGO reports should, however, limit themselves to the areas under consideration by the Optional Protocol. Sexual assaults and sexual abuse in the family are not covered by the Optional Protocol.

In addition to the common areas mentioned earlier (general measures of implementation, international assistance and cooperation and other legal procedures), the reporting guidelines request that information be provided under three general areas: **prohibition, prevention and protection** of the rights of child victims.

- Within these three areas, NGOs should ensure that sale of children, child prostitution and child pornography are covered thoroughly.

The reporting guidelines provide details as to the type of information that States should include in their reports and NGOs may wish to comment on some of the same issues. In particular, attention should be paid to the following areas.

2.3.1 Prohibition and related matters

Sale of children

The sale of children is defined by the OPSC as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration” (art. 2). It is important not to confuse the sale of children with trafficking. Although sale and trafficking of children may overlap, they do not always fall in the same category of offences.

The sale of children always includes an element of payment and the transfer of a child from one person to another while trafficking may not. In addition, the sale of children may not be for the purpose of exploitation (such as in the case of adoption) and may take place without the child being physically moved.²⁴ **It is extremely important that NGOs do not use the word “trafficking” as a synonym for sale of children.**

- NGOs should note whether specific legislation exists which prohibits the sale of children and not only trafficking in children.

The sale of children is also not limited to sale for the purposes of sexual exploitation. The Optional Protocol lists a number of acts and activities under the sale of children that must be criminalized. In addition to sexual exploitation, these acts or activities include organ transfer, child labour, and adoption (art. 3).

NGOs should therefore provide information on the following:

1. Sexual Exploitation of the child

- Sale of children for purposes of sexual exploitation is not only limited to child prostitution and child pornography. Other forms of sale of children for the purposes of sexual exploitation include temporary, early and/or forced marriages.
- As the element of sale must be present, sexual relations between an adult and a child without compensation of any kind are not covered by the Protocol. Compensation may or may not be provided directly to the child.
- All children under the age of 18 should be protected from sexual exploitation. However, a low age of sexual consent may make children more vulnerable. Examine

²⁴ For a detailed analysis of the differences between sale of children and trafficking see *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography*, 2009, Florence, UNICEF Innocenti Research Centre http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf

national legislation with regards to the age of sexual consent to determine if it covers all children under 18 and whether boys and girls receive equal protection under the law.

2. Transfer of organs of the child for profit

- Only the sale of a child for the purpose of transferring organs is prohibited by the Optional Protocol.
- Whether there is national legislation on this issue and the criminalization of these practices.

3. Engagement of the child in forced labour

- For labour to be forced, there must be a promise of, or an exchange of money, goods or services. This includes, but is not limited to, the commercial sexual exploitation of children.
- Work or services that a child is forced to provide under threat or coercion and any slavery-like practices to determine if there is an element of sale.
- Forced labour includes debt bondage, marriage or betrothal.²⁵ The specific cases of sale of children for participation in sporting events, such as camel racing, service to religious teachers or temples and in armed conflict.

4. Sale for purposes of adoption

- The Protocol prohibits “improperly inducing consent” (art. 3) for illegal adoption, not adoption itself.
- Whether there is legislation and administrative measures in place for all those involved in the sale of children for purposes of adoption and not only for the intermediaries.²⁶
- The criminalization of illegal adoption as well as safeguards in place for national and international adoptions.

Child prostitution

Child prostitution is defined by the Protocol as “the use of a child in sexual activities for remuneration or any other form of consideration”.

Therefore, NGOs should:

- Where available, provide data on the number of children engaged in prostitution and whether child prostitution is increasing or decreasing.
- Examine national laws to establish whether it covers any sexual activity with a child and any form of payment in cash or kind.
- Provide information on both heterosexual and homosexual prostitution and on the use of both girls and boys in prostitution.
- Examine the link between child prostitution and sex tourism and make recommendations on what needs to be done to prevent and combat child sex tourism, such as awareness raising campaigns directed at tourists and cooperation with travel operators.

²⁵ CRC/C/OPSC/2, Guideline 10c, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>

²⁶ “States parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments” OPSC article 3 (5).

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- Examine whether the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism of the World Tourism Organization²⁷ is being followed, funds have been earmarked for the national tourism authority to promote responsible tourism, funding is provided for public campaigns on child sex tourism and whether offenders for crimes committed are prosecuted upon their return.
 - Examine other forms of child prostitution.²⁸

Child pornography

Child pornography is defined in the Optional Protocol as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”(art. 2(c)).

NGOs should provide information on the following:

- Whether the law criminalizes all acts related to child pornography, including accessing, viewing, downloading, offering, exporting, selling and possessing child pornography.
- Whether the law covers audio recordings and simulated images of child pornography as well as the production, importation, distribution or consumption of pornography where persons “actually or apparently under the age of 18” are featured. These include photographs and other printed materials; videos, motion pictures and electronically recorded materials; internet sites containing photographs, videos, motion pictures or animated productions (e.g. cartoons) depicting, offering or advertising child pornography; and live performances.²⁹
- Regulations regarding dissemination and access of child pornography on the Internet including the obligations of Internet service providers, credit card companies, financial institutions and other intermediaries.
- Whether or not the State party criminalizes or intends to criminalize mere possession of child pornography without any further intent to disseminate. This should be mentioned even though the OP only requires the criminalization of the possession of pornography when it is for the further purpose of production, distribution, dissemination, importation, exportation, offer or sale (i.e. not the mere possession of child pornography).
- On the extent of access and exposure of children to pornography and the use of pornographic materials and communications to lower a child’s inhibitions and entice/coerce them into engaging in sexual behaviour. Again, the OP does not protect children from being exposed to pornography, but it is worth looking into this.

Jurisdiction and extradition

The Optional Protocol requires that States establish jurisdiction over offences that are “committed in its territory or on board a ship or aircraft registered in that State.” (art. 4(1)) “States may, but are not required, to establish jurisdiction over offences when the alleged offender is a national of that State or has their habitual residence in the State’s territory or when the victim is a national of that State.” (art. 4(2))

²⁷ See http://www.unwto.org/ethics/full_text/en/full_text.php?subop=2

²⁸ The use of children by temples or religious leaders for sexual services, sexual slavery, the solicitation by teachers of sexual favours from students and sexual exploitation of child domestic workers are mentioned in the reporting guidelines as examples of other forms of child prostitution. CRC/C/OPSC/2, Guideline 11b, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>

²⁹ CRC/C/OPSC/2, Guideline 12, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>

NGOs should comment on the following:

- Have there been cases where nationals who have committed crimes in another country have been prosecuted? Although the Optional Protocol does not require States to prosecute their nationals for crimes committed abroad, over 30 countries worldwide have extraterritorial legislation enabling them to prosecute their own citizens at home for offences under the OPSC committed abroad.
- Is double criminality required by the State party, or have there been any discussions as to the removal of this requirement? If this is not a requirement, are there adequate resources to investigate violations of the OPSC? Double criminality requires that an offence committed in one country must also be an offence in the receiving country in order to be prosecuted. It may cause difficulties in the extradition and prosecution of crimes committed outside of the territory of the State. Find out about extradition rules and information on the number of foreign nationals charged for engaging in sexual exploitation. When no extradition agreement exists between two States, the OPSC can be used as a “legal basis for extradition” for offences committed under the Optional Protocol. Nevertheless, the Committee strongly recommends that States include the offences under the Optional Protocol as extraditable offences in any existing as well as future extradition treaties.
- Provide comments on rates of identification and prosecution of cases including examples in which the State party cooperated with other States parties or any difficulties experienced in obtaining cooperation.

Sanctions and liability

States are required to criminalize all of the offences covered by the OPSC in national legislation. States must investigate and, when appropriate, punish offences by appropriate penalties. (art. 3)

NGOs may wish to comment on the investigation of crimes covered by the OPSC, including:

- Information which may impede the investigation of crimes or weaken the enforcement of legislation such as insufficient resources, the lack of enforcement by the police and/or the judicial system or problems with complicity or corruption. The lack of social condemnation or a climate of impunity may also reinforce cultural acceptance of these behaviours.
- The lack of clear definitions which may prevent the prosecution of perpetrators of these offences, for instance the issue of complicity or participation in offences, such as the punishment of brothel owners in cases of child prostitution.
- Punishment for offences under the OPSC should take into account the serious nature of the crimes committed. Light sentences for offenders may weaken the deterrent effect of existing legislation. The Committee has also suggested that the statute of limitation for offences under the OPSC should begin only after the child victim has reached the age of majority.

Article 3(4) of the Optional Protocol establishes the liability of legal persons³⁰ for offences committed under the Optional Protocol. This liability may be criminal, civil

³⁰ Legal entities are entities **other** than physical persons that have legal personality, such as corporations and other businesses, local or regional governments and legally recognized foundations, organizations and associations. CRC/C/OPSC/2, Guideline 18, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>

or administrative depending on the legal principles of the State party and subject to the provisions of national law.

NGOs should therefore provide information regarding:

- The effectiveness of such laws as a deterrent.
- If criminal liability is not extended to legal persons, whether there has been any debate or discussion on this issue.

Article 7 of the Optional Protocol requires that goods and proceeds be seized or confiscated and that any premises relating to the commission of offences be closed.

Comments should describe the law, policy and practice indicating whether the State party is implementing this principle.

2.3.2 Prevention

The OPSC requires States to adopt measures to prevent the sale of children, child prostitution and child pornography. The need to address the root causes, such as poverty, underdevelopment and cultural attitudes, as well as the nature and extent of the problem has been highlighted by the Committee.³¹

NGOs should provide information on the following:

- Research that has been conducted on the root causes as well as the nature and extent of the problem.
- There is a need to pay particular attention to groups who are at a higher risk of being exploited and socioeconomic causes. These groups include children living in poverty, children living in the street, working children, migrant and foreign children, children who are internally displaced, children with disabilities, indigenous children, children who belong to ethnic minorities and children living in difficult family situations.³²
- What has been done in terms of awareness raising, education and training for the general public, including children, about the harmful effects of the sale of children, child prostitution and child pornography and to combat and prevent discrimination against victims.

2.3.3 Protection of the rights of victims

The Optional Protocol also requires States to adopt measures to protect the rights and interests of child victims and witnesses at all stages of the criminal justice process (art. 8). The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime³³ should be used to provide more detailed information on protecting children's rights under the criminal justice system.

NGOs should therefore provide information regarding the following:

- Whether the best interests of the child is the primary consideration.
- Whether there are difficulties in determining victims' ages as this should not prevent investigations into offences. States are asked to presume that the victim is a child if

³¹ See Legal Frameworks for Combating Sexual Exploitation of Children, Background paper for the III World Congress against Sexual Exploitation of Children and Adolescents, [http://iiiicongressomundial.net/congresso/arquivos/paper_n\[1\].2_final_version.doc](http://iiiicongressomundial.net/congresso/arquivos/paper_n[1].2_final_version.doc)

³² Ibid.

³³ <http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf>

doubt exists. If relevant, provide information on weaknesses in the birth registration system and recommendations for improvement.

- The deprivation of liberty of child victims or the treatment of child victims as offenders. Child victims should not be criminalized nor penalized and measures should be taken to ensure that they are not stigmatised nor face double victimization.

NGOs should describe measures that have been taken to ensure that:

- There are child sensitive procedures, such as interview rooms, that recognize the vulnerability and special needs of children, including as witnesses.
- Children are informed of their rights.
- The views, needs and concerns of child victims and witnesses are presented and considered.
- Social services are provided throughout the legal process.
- The privacy and identity of the child is protected.
- Children, their families and other witnesses are protected against intimidation and retaliation.
- Unnecessary delays are avoided, unless they are in a child's best interest.³⁴
- Training programmes for those who work with child victims, such as police officers and judges exist.
- The sorts of measures that have been taken to protect the safety and integrity of those who work with child victims, both individuals and organizations.

The OPSC requires that States provide physical and psychological assistance as well as recovery and rehabilitation services to victims (art. 9 (3)). The Committee has recommended that this assistance include both medical and psychosocial attention in accessible crisis centres.

NGOs should comment on:

- Whether recovery and rehabilitation services are being provided to boys as well as girls in a multi-lingual format, and where relevant, taking into account the most common countries of origin of child victims.
- The range of support services available (including mental health and substance misuse services) and on alternative models of out-of-family care, vocational training and income-generating schemes to enable young people to learn skills necessary for financial independence and any follow-up provided to prevent revictimization.
- The differences between the assistance provided to children who are nationals and those who are not.
- Whether there are specialized services provided by competent staff, taking the best interests of the child as the primary consideration, including any services provide by NGOs.

Child victims are also required to have access to adequate procedures to seek compensation for damages from those legally responsible (art. 9 (4)).

³⁴ OPSC, article 8 (1)

NGOs should look into the following:

- The guidelines on reporting define damages as “physical or mental injury, emotional suffering, prejudice to moral interests (e.g. honour, reputation, family ties, moral integrity), denial of one’s rights, loss of property, income or other economic loss and expenses incurred in treating any injury and making whole any damage to the victim’s rights”.³⁵
- Where mandatory reporting exists, the Committee has emphasized the need to ensure that public employees and civil society are aware of this obligation through public media campaigns. Mandatory reporting should also be accompanied by training of professionals working with children.
- There is a need for accessible and child-friendly independent complaints mechanisms such as an Ombudsman for children. The Committee has also recommended that helplines be established or strengthened.

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- Are all forms of selling children – transactions whereby a child is transferred by any person or group of person to another for remuneration – criminal offences under domestic law?
- Is it a criminal offence to offer, deliver or accept a child for the purpose of:
 - sexually exploiting the child?
 - transferring the child’s organs for profit?
 - engaging the child in forced labour?
- Is it a criminal offence to improperly induce consent as an intermediary for the adoption of a child?
- Is it a criminal offence to offer, obtain, procure or provide a child for child prostitution (using the child in sexual activities for any form of gain)?
- Is it a criminal offence to produce, distribute, disseminate, import, export, offer, sell or possess for any of these purposes, child pornography (any representation of the child engaged in any sexual activity or any representation of the sexual parts of children for a sexual purpose)?
- Do these criminal offences have appropriate penalties, reflecting their grave nature? Are there provisions for the seizure or confiscation of any goods relating to or proceeds derived from these offences?
- Are measures available to close premises used to commit these offences?
- Are all forms of advertising or promoting these offences prohibited?
- Are legal entities (for example companies) liable for these offences?
- Does domestic criminal law in relation to these offences apply to all foreign nationals who commit them within the jurisdiction?
- Are these offences included as extraditable offences in all treaties and agreements between the State and other countries?
- Does the State provide the greatest measures of assistance to all other countries in the investigation, prosecution or seizure of property relating to the commission of these offences?

³⁵ CRC/C/OPSC/2, Guideline 18, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>

OPSC Implementation Checklist (*continued*)

- Are child victims treated humanely as victims, not criminals, and provided with all appropriate forms of support and assistance?
- Are child victims kept fully informed about their rights and about the details of any criminal cases relating to their exploitation?
- Do all stages of the criminal justice procedures recognize vulnerability of child victims and give primary consideration to their best interests?
- Has the State used the United Nations Economic and Social Council's Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime when developing legislation, procedures, policies and practice for these children?
- Is special training, particularly legal and psychological, provided for those who work with child victims?
- Are criminal justice procedures adapted to accommodate children's special needs as witnesses?
- Are child victims supported throughout legal processes?
- Are the views, needs and concerns of child victims ascertained and considered in any proceeding affecting their personal interests?
- Is the privacy of child victims fully protected within the criminal justice system?
- Does the law prohibit any form of identification of child victims?
- Is appropriate provision made available where necessary to protect child victims and their families or witnesses on their behalf from intimidation or retaliation?
- Are appropriate measures available where necessary to protect the safety and integrity of those who are involved in helping child victims?
- Is unnecessary delay avoided in all cases involving child victims and in the delivery of compensation?
- Does the State disseminate information to children and the general public, through education, training and publicity, about the harmful effects of sale of children and child sexual exploitation and how to prevent these activities?
- Are children involved in the preparation of this information?
- Are adequate measures taken for the full social reintegration and recovery of child victims?
- Do child victims have access to procedures to seek compensation from those legally responsible?
- Does the State give full cooperation and support to agencies, both within the jurisdiction and internationally, who aim to prevent, detect and punish those committing these offences?
- Does the State give full cooperation and support to agencies, within the jurisdiction and internationally, who assist child victims?

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3. Reporting procedures under the Optional Protocols

3.1 Committee on the Rights of the Child

As with the CRC, the implementation of the OPs is monitored through a system of reporting by States parties to the Committee on the Rights of the Child.³⁶ The Committee meets in Geneva (Switzerland) three times a year for a period of four weeks, three weeks of plenary session followed by one week of pre-session to prepare for the next session of the Committee. The latter is responsible for examining the progress made by States parties in fulfilling their obligations under the CRC and the OPs. It can only receive or consider information concerning countries which have ratified or acceded to the Convention and/or the Optional Protocols.

The Committee's approach is non-confrontational and attempts to engage States parties in a constructive dialogue with a view to obtaining an accurate assessment of the situation of children in a country.

Committee on the Rights of the Child

The Committee is composed of 18 independent experts who are elected by States parties from amongst their nationals and serve in their personal capacity for four-year terms. The Convention requires that Committee members be of "high moral standing" and competent in the fields covered by the CRC (art. 43 (2)). An equitable geographical distribution and representation of the principal legal systems is taken into consideration in their selection. The Committee is supported by a small permanent Secretariat at the Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

3.2 Initial State party reporting

States are required to submit a comprehensive initial report to the Committee two years after ratification of each of the Optional Protocols. These reports should provide a comprehensive picture of the legal and practical measures taken to implement the OPs.

The Committee adopted guidelines for the preparation of initial reports under the Optional Protocols in 2001 and revised them in 2006 for the OPSC and 2007 for the OPAC.³⁷ The guidelines aim to "better understand the kind of information and data it considers necessary to understand and evaluate the progress made by States parties in implementing their obligations and to enable it to provide them with appropriate observations and recommendations."³⁸

The revised guidelines request that States provide information on general measures of implementation; prevention; prohibition and related matters; protection of the rights of

³⁶ For more information on the selection of Committee, see : Elections to the Committee on the Rights of the Child: Information for NGOs, NGO Group for the Convention on the Rights of the Child, 2006, [http://www.crin.org/docs/CRC_FS_E1_8\[1\].pdf](http://www.crin.org/docs/CRC_FS_E1_8[1].pdf)

³⁷ The Revised Guidelines are provided as annexes to this Guide.

³⁸ See introduction to Guidelines for Reporting CRC/C/OPAC/2 & CRC/C/OPSC/2, annexed.

child victims; international assistance and cooperation; and other legal provisions. The guidelines for the OPSC also include a section on data collection.

3.3 Periodic State party reporting

There is no periodic reporting under the Optional Protocols. Instead, States parties must include information on the implementation of the OPs in the periodic reports that are submitted to the Committee under article 44 (1(b)) of the Convention. States are informed in the concluding observations on the Optional Protocols to include further information on the OPs in their next periodic report due under the Convention. The deadline for sending this information will vary depending on when the next periodic report on the Convention is due.

Common core document

States are required to prepare a common core document³⁹ which contains general information on the implementation of all the human rights treaties which a State has ratified. It is therefore not child-specific. It is transmitted in the same format to all human rights treaty bodies and should be updated by the State on a regular basis to ensure that the information is current.

The common core document should include general factual and statistical information such as demographic, social and cultural characteristics and information on the constitutional, political and legal structure. It should also contain information on the general framework for the protection and promotion of human rights such as the ratification of international human rights instruments, reservations, the general legal framework at national level and how treaty body reports are prepared. It should also include information on the implementation of substantive human rights provisions common to all or several human rights treaties such as non-discrimination and equality.

In addition to the common core document, States are required to submit treaty-specific initial and periodic reports.

Treaty specific report

The treaty specific reports should not repeat information detailed in the common core document or earlier reports but rather provide specific information on the measures adopted to implement the recommendations made by the Committee during the examination of previous reports. States are requested to provide explanations for any recommendations that have not been implemented, information on difficulties encountered in implementing recommendations and measures that are planned to overcome these obstacles.

Guidelines on treaty specific reports⁴⁰ adopted by the Committee in 2010 make reference to information that States should provide in relation to the implementation of the OPs. Most of these references appear under the section on general measures of implementation. States are also requested to provide specific information on the implementation of the OPAC under articles 38 and 29 and specific information on the implementation of the OPSC under articles 34 and 35. The Committee also suggests that States may refer to the initial reporting guidelines for more guidance on reporting on the implementation of the OPs.

³⁹ Guidelines for the common core document can be found in Compilation of Guidelines on the form and content of reports to be submitted by State Parties to the international human rights treaties, HRI/GEN/2/Rev6, <http://www2.ohchr.org/english/bodies/icm-mc/docs/9th/HRI-GE-2-Rev6.doc>

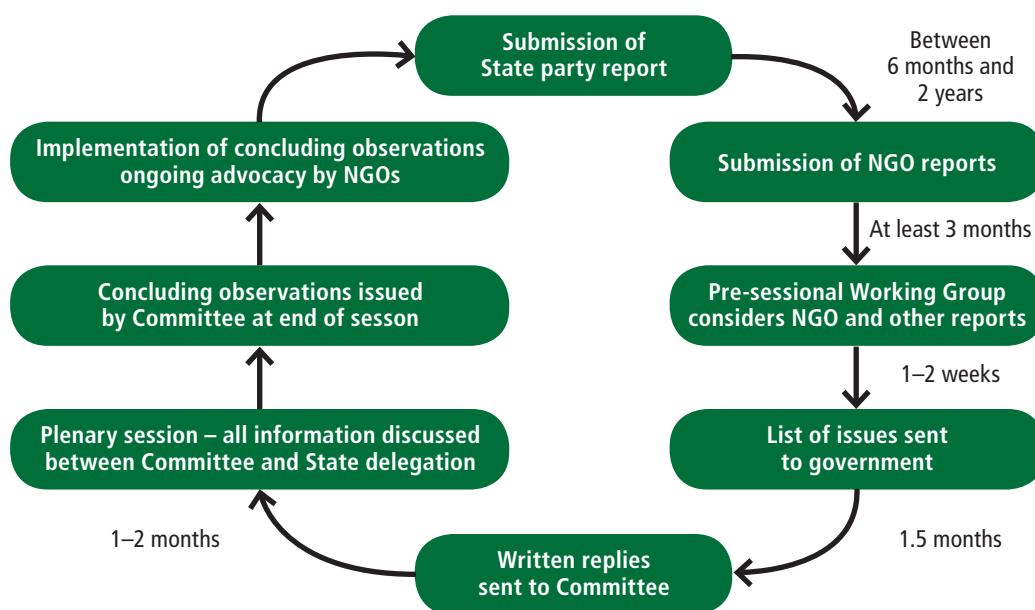
⁴⁰ Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child (CRC/C/58/Rev.2) http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.58.Rev.2_ReportingGuidelines.doc

States that have not ratified the CRC are requested to use the guidelines for initial reporting under the OPs as guidelines for their periodic reports which should be submitted every five years.

3.4 Examination of reports under the Optional Protocols

Upon completion, the State sends its report to the Secretariat of the Committee (at the OHCHR) in Geneva. The Committee then tentatively schedules it for examination⁴¹ and the report then goes through the following steps of the reporting process:

Reporting process of the Committee on the Rights of the Child



In order to obtain a more comprehensive picture of the situation at national level, the Committee seeks written information from other sources, such as non-governmental and inter-governmental organizations and independent national human rights institutions. Complementary information is then reviewed by the Committee in the presence of these organizations during a private meeting called the pre-sessional working group (pre-session). This provides an opportunity for non-governmental organizations, national human rights institutions and UN agencies, notably UNICEF, to orally present their reports.

Following the pre-session, the Committee prepares a list of issues, seeking additional information from the State party. The latter is then requested to respond to these questions in writing before the plenary session.

The Committee examines the State report in public during a plenary session. Government representatives are invited to answer the questions and comments posed by Committee members in order to discern the actual situation in the country as well as their understanding of the relevant provisions of the Optional Protocols.

At the end of the dialogue, the Committee prepares concluding observations which reflect the main points of discussion, indicate concerns and make recommendations for specific follow-up action at national level.

⁴¹ Information on which reports have been submitted to the United Nations, the expected date of examination of reports by the Committee as well as copies of reports are available at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>

4. Preparation of an NGO written submission

4.1 Role of NGO reporting

It is extremely important for the Committee to receive specific, reliable and objective information from NGOs in order to make a serious and independent assessment of the progress made and difficulties encountered in the implementation of the Optional Protocols. The Committee seeks information that deals with all areas covered by the OPs. It is also interested in receiving information where the government report is incomplete and on areas of concern not covered or is, in the opinion of the NGOs, incorrect or misleading. Experience to date demonstrates that the majority of State reports focus on legislation and do not provide sufficient information on practical challenges and measures. The NGO report should therefore highlight good practices, identify gaps and underline challenges in the implementation of legislation, programmes and policies.

At national level, the preparation of an NGO report encourages and facilitates public scrutiny of governmental policies and provides NGOs with ways to influence the national agenda. It opens a debate on the status of children and can create an opportunity to have a serious dialogue with senior government officials about the State's efforts to comply with the Optional Protocols. Reporting can also empower national NGOs by offering a legitimate external source to which children's issues can be raised and addressed.

Unlike the CRC, the Optional Protocols do not set an explicit role for NGOs in their monitoring and implementation, but the Committee welcomes written information from international, regional, national and local NGOs. In the reporting guidelines for States parties, the Committee specifically asks whether the State party consulted with NGOs during the preparation of their report.⁴² The Committee also seeks information on what role NGOs played in the design and implementation of public awareness measures.⁴³ The reporting guidelines for the OPSC include a general request that States parties provide information on the work being done by civil society in eliminating the sale of children, child prostitution and child pornography.⁴⁴ They also request information about the activities of NGOs in the areas of protection of the rights of victims and international assistance and cooperation.⁴⁵

NGOs who are interested in preparing reports should request a copy of the State party report from the governmental office writing the report or from the Ministry of Foreign Affairs or its equivalent. The report is also available on the website of the Committee⁴⁶ or through the NGO Group. If a State party has submitted more than one report at the same time, it is essential that each report has its own corresponding NGO report. When a State is providing follow-up information to the OPs in its periodic report, NGOs may either include information on the follow-up as an annex, as a separate section of a comprehensive NGO report, or may submit a separate report.

⁴² CRC/C/OPAC/2, para. 1 & CRC/C/OPSC/2, para. 1

⁴³ CRC/C/OPAC/2, para. 17(d) & CRC/C/OPSC/2, para.15(c)

⁴⁴ CRC/C/OPSC/2, para. 13(h)

⁴⁵ CRC/C/OPSC/2, paras. 32, 39 40

⁴⁶ <http://www2.ohchr.org/english/bodies/crc/sessions.htm>

Name of the report submitted by NGOs

There is no set name for the reports prepared by NGOs. They are often called the following:

- NGO report
- Alternative report
- Complementary report
- Supplementary report

It is up to the NGOs/coalitions to decide what they prefer to call it. The only term which is no longer used is 'Shadow report' as it can be interpreted as not being legitimate.

4.2 Joint NGO reports

Whenever possible, NGOs should prepare a report in collaboration with other NGOs specialized or working on the topics covered by the Optional Protocols. A single comprehensive report allows Committee members, who are under intense time pressure, to familiarize themselves with the relevant issues by studying only one NGO document.

Where a national child rights coalition exists,⁴⁷ NGOs with expertise on the OPs' provisions may wish to form a separate thematic working group to prepare a report and present it on behalf of the coalition. NGOs who work on themes related to the OPs and, which may not typically be part of a national child rights coalition, should also be consulted in the preparation of the report.

A group of NGOs allows for more effective monitoring at national level due to the specialist knowledge of members and the variety of points of view that may be represented. Ideally, members should represent diverse jurisdictional and geographic as well as ethnic and cultural differences that may exist in a country. It is equally important that the views of children be taken into consideration through the submission of a separate report or by incorporating their views into the NGO report.⁴⁸

4.3 Structure and content of initial NGO reports

4.3.1 Introduction

A brief introduction should provide information on the methodology used, a list of NGOs which participated/contributed to the report, and may include information about the general situation in the State which may be having an impact on the implementation of the Optional Protocols.

4.3.2 Substantive analysis

The NGO report should be composed of a section-by-section analysis of the State party report. Rather than an article-by-article or thematic approach, reports should follow the structure of the reporting guidelines for initial reports and include the following sections:⁴⁹

■ General Measures of Implementation

⁴⁷ To find out if there is a national coalition in your country, contact the NGO Group Secretariat.

⁴⁸ See Maximizing Children's Engagement in the Reporting Process of the Convention on the Rights of the Child, NGO Group for the Convention on the Rights of the Child, November 2009.

⁴⁹ For more information on the substantive analysis, please refer to section 2 above.

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- Prevention
 - Prohibition and Related Matters
 - Protection of the Rights of Victims
 - International Assistance and Cooperation
 - Other Legal Provisions

In this way, the Committee will be able to compare the State party report with the NGO report. The NGO report should not “shadow” the State party report but should comment on information provided in the State party report, particularly when the position of the NGOs differs from that of the State.

The report should undertake a systematic analysis of the extent to which law, policy and practice in the State party is in compliance with the provisions of the OPs. To complement the States legalistic reports, NGOs should endeavour to provide information on practical implementation or lack thereof. It should reflect the experience of children throughout the country, including differences in legislation, administration of services, culture and environment of different jurisdictions. It should draw upon the widest possible sources of knowledge, expertise and experience – and the views and experiences of children should be identified and incorporated in the report. It is essential that the information provided is accurate and objective. The report should be based on the broadest possible range of information sources.⁵⁰

Information Sources

- current legislation and government reports on its implementation
- government policy documents
- government statistics
- government budgets
- records of parliamentary/legislative proceedings
- domestic case law
- reports published by organizations and professional bodies working with children
- published research (government, academic, NGO, national human rights institutions), books and periodicals
- data and research from UN agencies, international organizations and international NGOs
- media reports
- primary research or case studies on practice and implementation, including interviews and testimonies, focus groups and surveys

4.3.3 Conclusions and recommendations

The NGO report should conclude with a limited number of concrete recommendations that are country specific, limited in time and can be realistically implemented.

⁵⁰ In addition to the usual sources, these may include <http://www.crin.org/law/index.asp> and http://www.unicef.org/policyanalysis/index_51859.html

4.4 Structure and content of follow-up reporting⁵¹

Although States parties are not required to submit separate periodic reports on the Optional Protocols, it is recommended that NGOs do not simply include the information on the Optional Protocols under the relevant sections of the Convention. Follow-up information from NGOs may be included as a separate section or annex to a comprehensive NGO report being submitted in response to a periodic report, or may be submitted as a separate report.

The concluding observations from the examination of the initial report should be used as the basis for the NGO report in order for the Committee to evaluate progress made. The NGO report should also inform the Committee on the positive and negative changes in key areas since the last report, and new areas of concern should be highlighted.

4.5 Structure and content of periodic reporting

States parties who have not ratified the CRC are required to submit periodic reports on the OPs every five years. NGOs should therefore also submit periodic reports. The concluding observations from previous reports should be used as the basis for the NGO report.

4.6 Practical information for NGO reports

To ensure that the Committee can use the NGO reports effectively, it is important to take into account the following information on formatting, translation and timing.

4.6.1 Format

The report should contain the following:

- title page
- table of contents
- page numbers
- abstract or executive summary highlighting key issues and principle areas of concern
- list of key recommendations

NGO reports should be no longer than 30 pages for an initial report and 20 pages for follow-up and periodic reports for each OP.

Initial NGO reports should cover the period of time from ratification until the submission of the report. Follow-up and periodic reports should cover the period from the consideration of the previous report until the deadline for the submission of the NGO reports.⁵² If necessary, NGOs may provide an update to cover the period between the submission of the NGO report and the consideration of the State party report in plenary session.

⁵¹ The term 'follow-up reporting' refers to States that have ratified the CRC and therefore have to include follow-up information on the OPs in their reports on the CRC.

⁵² As the Committee currently has a backlog of reports, the deadline for NGO reports can be 1 to 2 years after the submission of the State party report. By also covering the period between the submission of the State party report and the pre-session, the NGO report will provide up-to-date information.

Format for the Title Page

The title page of the NGO report should clearly indicate the following information:

- Title of the report
- State party
- Treaty covered by report
- Clearly marked as NGO report
- Name of the coalition/organization(s) submitting the report
- Contact information
- If the report is available in more than one language or in a longer version, title of the other/ original reports
- Clearly state if report is confidential
- Month and year of publication

4.6.2 Language

Reports should be submitted in one of the three official working languages of the Committee (English, French and Spanish). As English is the working language of the majority of Committee members, documents submitted in French and Spanish should, whenever possible, be translated into English. The UN will not translate any documents submitted by NGOs. If it is not possible to translate the entire report, a summary of the key issues of concerns and recommendations should be submitted in English.

4.6.3 Timing

Ideally, NGO reports should be submitted three months prior to the pre-session (i.e. six months prior to the plenary session) to ensure that the report is taken into account during this preparatory meeting. NGO reports should be submitted electronically to the NGO Group⁵³ which can provide comments on drafts and if necessary make photocopies for the Committee. If bound and printed, 25 copies should be sent by post to the NGO Group.⁵⁴

NGO reports will be made available electronically⁵⁵ on the NGO Group and CRIN alternative reports database provided permission is received in writing from the NGOs who wrote the report. The service is free and no remuneration is received or retained by the NGO Group. The report will only be made public after the completion of the pre-session.

4.7 Child participation

The Committee welcomes the submission of written reports from children and encourages NGOs to support children to present their views to the Committee. The active involvement of children in these processes gives children visibility as actors in the implementation of their own rights and can have an impact on the agendas of the State and civil society.

⁵³ secretariat@childrightsnet.org

⁵⁴ NGO Group for the Convention on the Rights of the Child, 1 rue de Varembe, 1202 Geneva, Switzerland

⁵⁵ <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>

While children are increasingly preparing their own reports on the CRC, they rarely prepare reports on the two Optional Protocols. Children's views have until now been incorporated in the main NGO reports. Children should be encouraged to express their views, give opinions and formulate recommendations about how the OPs are being implemented at national level. In addition to participating in the NGO report, children can prepare their own report for submission to the Committee. This report may take the form of a written report, case study, quotes, illustrations, posters or DVDs.

Basic requirements for the effective, ethical, and meaningful participation of children have been set out by the Committee in its General Comment No. 12 on the right of the child to be heard.⁵⁶

The NGO Group has prepared guidelines for children on getting involved in reporting on children's rights and to support NGOs to engage children in the reporting process. While these guidelines do not have a specific focus on reporting on the OPs, they provide information on how to generally involve children in the reporting process.

⁵⁶ General Comment No. 12 (2009), Committee on the Rights of the Child, <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.doc>

5. Pre-sessional working group meeting

5.1 Timing

The pre-session is an opportunity to conduct a preliminary review of the report submitted by the State party under the Optional Protocols and to examine supplementary and alternative information. During this meeting, the Committee identifies the main questions to be discussed with States parties during the plenary session.⁵⁷ The meeting lasts a maximum of three hours per country.

The Committee devotes the same amount of time to a State which has submitted an initial report under only one Optional Protocol as one which has submitted initial reports under both Optional Protocols or has submitted its periodic report under the CRC and one initial report under an Optional Protocol. It is rare, however, that the full three hours are used when only one Optional Protocol report is being considered. If a State has simultaneously submitted both initial OP reports and its CRC periodic report, the Committee may exceptionally reserve an extra 90 minutes for the examination of the reports during the pre-session.

Although up to three reports from the same State party may be examined during a pre-session, each report will be considered separately. If the State has submitted a periodic report in addition to one or two Optional Protocol reports, the Committee will first examine the periodic report and then move on to the consideration of the report(s) under the Optional Protocols. While the amount of time spent on each report will vary, the Committee will generally only spend one hour on the Optional Protocol(s).

If both reports under the Optional Protocols are being considered during the same session with no periodic report, the Committee will generally split the time allocated between the two Protocols with more time being devoted to the Protocol that may have more difficulties in being implemented. Should only one Protocol be under consideration, the Committee will usually devote up to two hours to its consideration, once again, depending on the severity of the issues being faced and the number of participants.

In the case where a State party has submitted follow-up information on the Optional Protocols in its most recent periodic report, the Committee asks questions about the Optional Protocols during the three-hour pre-session. No extra time is specifically devoted to the follow-up on the Optional Protocols during the pre-session meeting.

For States parties who submit periodic reports on one or both of the Optional Protocols (currently only applicable to the United States), the procedures for periodic reporting should be the same as those for initial reporting.

5.2 NGO participation in the pre-session

NGOs, who submit written information in advance, considered relevant by the Committee, may be invited to participate in the pre-session. Interested NGOs should state clearly

⁵⁷ The session takes place 3 months after the pre-session.

in the cover letter accompanying their report that they wish to participate in the pre-session. Only a limited number of NGOs from each country will be invited to attend. The Committee will base its decision on an evaluation of the written information on the country provided in advance by NGOs or coalitions. The Committee will then issue a letter acknowledging receipt of the written information and formally inviting the NGO to be present at the date and time when the pre-session will consider the relevant report.

5.2.1 Who can attend the meeting?

The pre-session is a private meeting, so only national and international NGOs, as well as independent national human rights institutions who have been formally invited by the Committee can attend. Representatives from relevant inter-governmental organizations (e.g. UNICEF, ILO, UNHCR, WHO, UNESCO) have an open invitation to participate and organizations such as UNICEF often do so. As the meeting is not public, no governmental representatives, media or outside observers may attend.

All the participants are asked to respect the confidentiality of those present. Information shared and opinions expressed by all those present should not be made public. No press releases or summary records are issued for the pre-session and the official report of the Committee states that NGOs attended the meeting but does not mention the organizations or participants by name.

5.2.2 How can children participate?

Children, who have contributed to the preparation of reports on the OPs, may participate in the pre-session as part of the NGO delegation. This provides an opportunity for children to speak out and express their views directly to members of the Committee. However, it should be noted, that – as a technical meeting in a fairly formal setting – the pre-session may not be the best place for children to express their views. Children have rarely attended the pre-session to discuss the two Optional Protocols (unlike the CRC, where it is more common).

In order to provide children with a less formal setting to discuss their views with the Committee, a separate informal meeting can be arranged between children and Committee members outside of formal meeting time. This one-hour meeting usually takes place before or after the pre-session and allows for a more informal, flexible environment in which children may feel more comfortable expressing their views. There is, however, no interpretation available as it is outside official meeting time, so NGOs need to bring people who could act as interpreters for this meeting.

Alternatively, NGOs could enquire if the Committee member who is acting as the country rapporteur can visit the country to discuss the issues with children. The visit of a country rapporteur has been a very positive experience in the past, as it allows the Committee member to meet with children from different backgrounds in a child-friendly setting. The children also have more time to share their views and in some cases show the Committee member the reality of the lives of children in their country.

In addition to the NGO Group's guidelines for child participation, there are a number of other tools which provide guidance on children's participation in international meetings.⁵⁸

⁵⁸ For more information on the participation of children at international meetings, see *So you want to consult with Children: A toolkit of good practice*; "Having children on your delegation", pp. 49–53, International Save the Children Alliance, November 2003. www.savethechildren.net/alliance/resources/childconsult_toolkit_final.pdf

5.2.3 How do NGOs prepare for the pre-session?

During the pre-session, NGOs can help to set priorities, identify key issues for discussion with the government and make concrete recommendations for follow-up. They are encouraged to provide the Committee with a constructive, critical analysis of both the State party report and the actual situation in the country. NGOs may be asked to advise the Committee on how to approach sensitive issues or to comment on the feasibility of potential recommendations.

NGOs should bring copies of statistics or studies that might be referred to during an oral presentation or that may interest Committee members. The information provided by NGOs may be used in the elaboration of the list of issues which will be sent to the government.

NGOs should try and send two or three representatives from their organization/coalition to meet with the Committee. Unfortunately, the Committee is unable to provide funding for travel expenses or assist in making travel arrangements. In some instances, however, the NGO Group may be able to provide limited financing for travel and subsistence expenses for representatives of national NGOs or coalitions from the Global South or Central and Eastern Europe who have been invited by the Committee to participate in the pre-session.

NGO representatives should have been actively involved in the preparation of the NGO report and have extensive knowledge of the thematic area under examination and its implementation at national level in terms of national legislation, government policies and programmes, priority areas and major gaps. In addition, representatives should include a lawyer who can respond to the various legal aspects of the implementation of the Optional Protocol and a specialist in at least one of the key areas of concern.

Participants to the pre-session should be at ease and effective in question and answer sessions, be willing to collaborate with other non-governmental or UN representatives who may be participating in the meeting and be fluent in understanding and speaking English, French or Spanish (Arabic, Russian and Chinese are available upon request).

5.3 How does the pre-session work?

There is no fixed procedure or approach set out by the Committee as it depends on the adequacy or insufficiency of each report and how much information it has been possible to secure from other sources.

The meeting is a question and answer session which begins with a short introductory statement by participants followed by a long series of questions from the Committee.

5.3.1 Introductory statements

Participants are expected to make a short introductory statement for each Optional Protocol, which should highlight a limited number of key issues of concern and recommendations for follow-up.

■ **Length: NGOs are generally given ten minutes.** Although it varies depending on the number of reports being considered during the meeting and the number of organizations present. If more than one person is speaking, the time must be shared amongst participants. If there is more than one NGO report, a total of fifteen minutes is allocated to NGO statements and the time is divided between the different groups.

The NGO Group will let you know how much time your organization will have to make a presentation depending on the number of other organizations present at the meeting.

- **Content: Focus on a limited number of key issues under the areas of prevention, prohibition and protection** ensuring that all thematic areas are covered. Point out any general issues that may be relevant to the implementation of the Optional Protocols and the main challenges faced by the government that may affect the implementation of the Protocols. As with the written information, the oral presentation on the OPSC should include all aspects of sale of children including transfer of organs, forced labour, and adoption, and not only instances of commercial sexual exploitation. The presentation should conclude with a summary of key recommendations and issues that should be raised with the State party. The oral presentation should not provide information about the work of the NGO itself although this information may be distributed in writing to the members of the Committee.
- **Languages:** Presentations should be made in **English, French or Spanish**, but may be given in Arabic, Russian and Chinese if interpretation was requested in advance. If interpretation in Arabic, Chinese or Russian is needed, let the NGO Group secretariat know at least one month before the pre-session.
- **Copies of the statement/report:** Committee members will have been provided with copies of the NGO report so it is not necessary to summarize or read out the report in full. Eight copies of oral statements must be submitted in advance to the NGO Group for the interpreters and country rapporteurs. In order for all Committee members to have copies for future reference, twenty-five copies of the statement must be submitted.

The NGO Group can make copies only if the statement is sent electronically a week prior to the meeting. Otherwise, NGOs are expected to bring the appropriate number of photocopies to the briefing.

The NGO Group does not have offices in the UN building where the pre-session takes place. It is therefore difficult to print or copy statements on the day of the meeting. If NGOs wish to print their statements after they have arrived in Geneva, they should go to the NGO Group offices before the pre-session and ask to make copies.

There are no PowerPoint facilities in the conference room. NGOs who prefer this style of presentation should submit copies of their presentation in advance so that they can be distributed to Committee members and interpreters.

Following the NGO presentations, the Chairperson will ask representatives of inter-governmental organizations (such as UNICEF and UNHCR) and national human rights institutions (such as Ombudsmen) to make similar presentations.

5.3.2 Questions and responses

Once the oral presentations are completed, Committee members are invited to comment on or ask questions about the reports and the presentations. Some comments will be general while others may be questions specifically directed at the NGOs or UN agencies. Rather than asking one question at a time, Committee members will ask a series of questions starting with the country rapporteur, who is the person responsible for taking the lead on the examination of the report. Only after all Committee members have raised questions will the NGOs and others be given a chance to respond.

The Chair will generally allow a short break to allow some time for those present to prepare their responses. Rather than responding to questions in the order in which they were asked, the Committee prefers that the questions be grouped by theme and responded to by the person present who has the most expertise in that particular subject area. The break should be used to allocate the responses among the participants, remembering that the national human rights institutions and UN agencies, in particular UNICEF, should be included in discussions regarding the division of themes. Due to time constraints, the Committee does not expect to hear an NGO and UN agency response to each question.

Once the meeting resumes, NGOs, national human rights institutions and UN agencies will be given the opportunity to respond to the questions or comments. Time is extremely limited and it will be almost impossible to cover all issues in the time available. **NGOs should therefore prioritise their responses according to the most pressing issues** in their country rather than responding to the issues in the order in which they were asked. They should provide concise comments whenever possible. If more information is required, the Committee will ask a follow-up question. As others will wish to speak, no one person should speak for more than five minutes at a time. It is always possible to return to unanswered questions once all participants have had an opportunity to speak.

5.3.3 List of issues

Following the pre-session, the Committee prepares a list of issues which is forwarded to the State party along with a formal invitation to appear before the Committee. The information provided in writing and during the pre-session by NGOs, UN agencies and national human rights institutions may inform the list of issues; a list of ten to fifteen questions on which additional information is sought. The questions generally seek to clarify factual issues such as data and legislation. The Committee sends the list of issues to the State party and requests a written response approximately 6 weeks after the pre-session (approximately two months before the plenary session).

The list of issues is made public shortly after the pre-session and is available on the website of the Committee.⁵⁹ The NGO Group also sends a copy directly to NGOs who have submitted written information to the Committee. NGOs may contribute to the preparation of the written replies, if such assistance is requested by the government or, if they so wish, NGOs may prepare their own brief replies to the list of issues and submit these to the Committee prior to the examination of the report. The responses to the list of issues are made public as soon as they are submitted by the government⁶⁰ and are sent by the NGO Group to NGOs who submitted written information to the Committee.

To ensure that the UN has enough time to translate the written replies in the working languages of the Committee, NGOs should, if possible, encourage the State party to respect the deadline for submitting its written replies to the Committee.

⁵⁹ <http://www2.ohchr.org/english/bodies/crc/sessions.htm>

⁶⁰ Also available at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>

Role of the NGO Group for the Convention on the Rights of the Child

The NGO Group supports national NGOs to engage effectively in the reporting process by ensuring two-way communication between them and the Committee on the Rights of the Child during the entire process. It does this by:

- Contacting national coalitions/NGOs to encourage them to prepare an NGO report
- Providing guidelines on how to report
- Providing advice and training on preparing reports either through national workshops or by e-mail
- Commenting on drafts if requested by the NGOs
- Providing advice on the entire reporting process, including how to prepare for the pre-session and using the documents produced by the Committee
- Making copies of NGO reports (when needed) and providing them to the Committee secretariat
- Organizing logistics for participation in the pre-session
- Briefing NGO representatives prior to the pre-session
- Facilitating NGO participation in the pre-session
- Facilitating NGO participation at the plenary session
- Ensuring the flow of information between NGOs and the Committee during the entire reporting process
- Organising meetings with Committee members (when possible)
- Sending the concluding observations and summaries to NGOs at the end of the session

6. Plenary session

6.1 Between the pre-session and the plenary session

During this period, the government selects the members of the official delegation. The composition of the delegation makes a critical difference to the success of the dialogue with the Committee. The delegation should be varied and include both high-level officials who have authority to speak on behalf of the government, as well as those whose work is more directly related to the implementation of the Optional Protocols. As a general rule, the Committee insists that the government sends an appropriate delegation from the home country and does not encourage the delegation to consist solely of their diplomats based in Geneva.

- NGOs should confirm the meeting dates with relevant Ministries and emphasize the importance of sending a high-level knowledgeable delegation.
- NGOs may also wish to meet with members of the governmental delegation and any other key persons prior to the plenary session to discuss ways in which the NGO community could cooperate with the government in addressing critical problems affecting children. This can help to clarify the role that NGOs can play and reinforce important issues which may not have received sufficient recognition in the government report.
- NGOs may also want to organize a public event, such as a press conference, to bring the wider public's attention to the upcoming meeting and its possible implications, as well as the NGO recommendations to the Committee.
- NGOs should ensure that the media has access to the State party report and, if appropriate, the NGO report and encourage ongoing media coverage of the meeting with the Committee as this would be a good opportunity for public education and debate on child rights' issues.
- NGOs may also submit additional information to the Committee to clarify issues raised during the pre-session, to provide written responses to questions that remain unanswered or to respond to the list of issues or comments on the written replies. The Committee strongly welcomes information on any new developments that might have occurred in the period between the pre-session and the session in order to have the most up-to-date and relevant information prior to meeting the government.

Following the pre-session, the NGO Group will inform the NGOs that participated about the deadlines for submitting further information and will ensure that the Committee receives the necessary copies.

6.2 Plenary procedures

Scrutiny of a report under one Optional Protocol takes place over half a day (one three-hour meeting). Where reports under both Protocols have been submitted, the consideration in plenary session is extended to one full day (two meetings of three hours each). Each Optional Protocol report is considered separately. If one or both Optional Protocol reports are submitted simultaneously with a periodic report, an extra half or full day is granted for the consideration of the reports under the Optional Protocol.

Although it is early days in the review of follow-up information on the OPs, the Committee has been considering this information within the six hours allocated for the consideration of periodic reports. No additional time has been granted for the consideration of the OPs and no separate concluding observations have been issued.

In the case of periodic reports on the OPs for a State which has not ratified the CRC, the procedure is similar to that of initial reports with a maximum of three hours being granted for the consideration of one report and six for the consideration of two reports, with separate concluding observations being produced.

The governmental delegation is invited to make a short opening statement which is followed by a series of questions posed by Committee members. As for the pre-session, the country rapporteur starts the round of questions. Following a short break, the government is expected to regroup the questions according to themes and respond to the Committee's questions and concerns. The Committee then poses any additional questions to which the government is expected to respond immediately.

If two Optional Protocols are being considered during the same day, consideration of the second Protocol will begin immediately following the consideration of the first Protocol. Depending on the issues being covered, it is possible that the amount of time for the consideration of each Protocol will be uneven with more time being devoted to the Protocol that may have more difficulties in being implemented.

6.2.1 Should NGOs attend?

NGOs should consider attending the plenary session which is a public meeting. Although NGOs do not have a right to speak during the meeting, they may participate as observers which would allow them to obtain a comprehensive picture of the dialogue with the government.

It may also be possible to meet with Committee members informally before and during the meeting with the government to present additional information, provide updates or suggest possible questions.

Although summary records of the discussion are produced, these contain a summary of the proceedings rather than a verbatim record of the discussion. In addition, the summary records are made available in French or English straight after the session and translated in the other language a few months after the discussion.

The NGO Group prepares summaries of the meetings and sends them to the NGOs which submitted reports on the Optional Protocols.

6.3 Concluding observations

Following the discussion with the State party, the Committee will adopt concluding observations. These point out the positive aspects, the factors and difficulties impeding the implementation of the OPs, and the principal subjects of concern and make concrete suggestions and recommendations for future action. These concluding observations are made public on the last day of a Committee session and are sent to both the State party and the United Nations General Assembly.

The NGO Group sends the concluding observations to the NGOs which have submitted written information to the Committee.

The first two sections are generally succinct welcoming the submission of the report, appreciating the dialogue with the governmental delegation and noting the adoption of relevant laws, programmes and plans of actions. The majority of the document focuses on the areas of concern and the recommendations. This section, for purposes of clarity, is sub-divided to reflect the guidelines on the submission of reports.

For the **OPSC**, the concluding observations are divided into data, general measures of implementation, prevention of the sale of children, child prostitution and child pornography; protection of the rights of child victims; prohibition of the sale of children, child pornography and child prostitution; international assistance and cooperation; and follow-up and dissemination.

For the **OPAC**, the concluding observations are divided into general measures of implementation; prevention; prohibition and related matters; protection, recovery and reintegration; international assistance and cooperation and follow-up and dissemination.

The concluding observations are initially made available in English. They are then translated into the other working languages of the Committee (French and Spanish) within the months following the session. If Arabic, Russian or Chinese is one of the main languages in the State party, the concluding observations will also be translated into that language.

In order to maintain the momentum, NGOs may wish to encourage the State to translate the concluding observations into national language(s) after the session. NGOs can also translate the concluding observations themselves both into national languages and also produce child-friendly versions.

6.3.1 How can NGOs use the concluding observations?

Concluding observations of the Committee can be an unparalleled tool for NGOs to stimulate a discussion at national level, to exert pressure on the government to follow up on the recommendations of the Committee, and to lobby for changes in legislation and practice.

NGOs should disseminate the concluding observations at national level to those working with children, including in child-friendly language to children themselves. They should try to get the national mass media involved in reporting the concluding observations and the comments of Committee members in the press. NGOs should also consider organizing press conferences, round tables, workshops and seminars in order to raise awareness about the Committee's recommendations. The effectiveness of the proceedings

is largely dependent on the publicity they attract. Scrutiny by the media and the public can help to ensure that the concerns raised by the Committee figure prominently on the national agenda.

The Committee does not have a follow-up mechanism other than the reporting process, so it is unable to enforce its recommendations between the reports of the State party. Some Committee members (usually the country rapporteur) have visited countries to follow-up the concluding observations. As this is not a formal part of the Committee's work, it depends on the State, NGOs or UN agencies to organise and pay for such a visit as well as on the availability of the Committee member.

The Committee looks towards national-level mechanisms to ensure that the recommendations are taken into account by the State. NGOs, Ombudsmen and UN agencies can play a key role in the short and long term to assist the government in following up on the concluding observations. This may include working with governmental officials to elaborate legislation, policies, plans of actions and strategies to address the recommendations of the Committee. NGOs should be regularly monitoring and assessing the efforts being made by the State to implement the Committee's recommendations and advocating for change.

ANNEXES

■ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	43
■ Revised Guidelines regarding initial reports to be submitted by States parties 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, CRC/C/OPAC/2 (2007)	48
■ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography	56
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Other Key Documents

- Convention on the Rights of the Child
<http://www2.ohchr.org/english/law/crc.htm>
- United Nations, Compilation of guidelines on the form and content of reports to be submitted by State Parties to the international human rights treaties, 2009 (HRI/GEN/2/Rev6)
- Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child (CRC/C/58/Rev.2)

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

ADOPTED AND OPENED FOR SIGNATURE, RATIFICATION AND ACCESSION BY GENERAL ASSEMBLY RESOLUTION A/RES/54/263

OF 25 MAY 2000

ENTRY INTO FORCE 12 FEBRUARY 2002

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflict,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflict and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflict,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.
2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

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3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:
 - (a) Such recruitment is genuinely voluntary;
 - (b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;
 - (c) Such persons are fully informed of the duties involved in such military service;
 - (d) Such persons provide reliable proof of age prior to acceptance into national military service.
 4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.
 5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. 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.
2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.
3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.
2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.
3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and

social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.
2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.
3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

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2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Revised Guidelines regarding initial reports to be submitted by States parties 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

SEPTEMBER 2007

Introduction

Pursuant to article 8, paragraph 1, of the Optional Protocol, each State party shall, within two years following the entry into force of the Protocol for that State party, submit a report to the Committee on the Rights of the Child (“the Committee”) providing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, pursuant to article 8, paragraph 2, of the Optional Protocol, States parties having submitted their initial report under this Protocol shall include in the reports they submit to the Committee in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol that are not parties to the Convention shall submit a report within two years following the entry into force of the Protocol and then every five years.

Guidelines regarding initial reports to be submitted by States parties under article 8, paragraph 1, of the Optional Protocol were adopted by the Committee at its 736th meeting, on 3 October 2001. The process of reviewing the reports received has led the Committee to adopt revised guidelines, in order to assist the States parties that have not yet reported to better understand the kind of information and data it considers necessary to assess and evaluate the progress made by States parties in implementing their obligations and to enable it to provide them with appropriate observations and recommendations.

The revised guidelines are divided into VI sections. Section I refers to general measures of implementation relevant to this Optional Protocol; section II concerns the prevention of the recruitment and use of children in hostilities; section III concerns the criminalization of these practices and related matters; section IV concerns protection of the rights of child victims; section V concerns international assistance and cooperation; and section VI concerns other relevant provisions of national or international law.

I. GENERAL MEASURES OF IMPLEMENTATION

1. Reports should contain a description of the process of preparation of the report, including the consultations with governmental, independent national human rights institutions and nongovernmental organizations/ bodies in its drafting and dissemination. Reports of federal States and States having dependent territories or autonomous regional governments should contain summarized and analytical information on how they contributed to the report.
2. Reports should contain information on the legal status of the Optional Protocol in the internal law of the State party, including whether its provisions can be directly invoked before the courts and applied by the national authorities. If internal

legislation is required for the application of the Optional Protocol, the State party should indicate the legal amendments adopted.

3. Reports should accurately describe the implementation of the Optional Protocol with regard to all territories and persons over which the State party exercises jurisdiction, including all parts of federal States, dependent or autonomous territories, all military forces of the State party and all locations where such forces exercise effective control.
4. States parties are invited to include in the reports, when relevant, information about the intention of the State party to withdraw any reservation(s) it has made to the Optional Protocol.
5. If the State party has indicated an age under 18 for voluntary recruitment in its binding declaration under article 3 made upon ratification or accession to the Optional Protocol, the State party is invited to indicate whether there are plans to raise this age to minimum 18 and a tentative timetable for doing so.
6. States parties are also invited to submit information on the governmental departments or bodies having primary responsibility for the implementation of the Optional Protocol and the mechanism(s) that have been established or are used to ensure coordination between them and the relevant regional and local authorities, as well as with civil society, including the media and academia.
7. States parties are encouraged to provide details of the dissemination of the Optional Protocol and the appropriate human rights training offered to all relevant professional groups, in particular the armed forces and members of international peacekeeping forces, law enforcement and immigration officers, judges, social workers, teachers, media professionals and legislators.
8. Data included in the reports should be disaggregated, to the extent possible, by age, sex, nationality, region and ethnicity, if relevant, and any other criteria that the State party considers relevant and that would help the Committee come to a more accurate understanding of the progress made in implementing the Optional Protocol and any remaining gaps or challenges. The report should also contain information on the mechanisms and procedures used to collect these data. In particular the State party is requested to present:
 - (a) Data on the number of children under the age of 18 voluntarily recruited into national armed forces;
 - (b) When applicable, available data on the number of children recruited and used in hostilities by armed groups in the State party. Data should also indicate the number of children incorporated in demobilization and reintegration programmes. The data provided should also show increase or decrease in practices over time, when possible;
 - (c) When applicable, information on whether and how many children have been charged for war crimes committed while recruited or used in hostilities;
 - (d) Data on the number of child victims of practices prohibited by the Optional Protocol among refugee and asylum-seeking children within the jurisdiction of the State party.
9. With reference to the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, States parties should inform the Committee whether there

is an independent national human rights institution and, when applicable, provide information on its mandate and the role it plays in monitoring the implementation of the Optional Protocol.

10. The Committee invites States parties to provide an analysis of the factors and difficulties, if any, affecting the degree of fulfilment of their obligations under the Optional Protocol.

II. PREVENTION

(arts. 1, 2, 4; para. 2, and art. 6; para. 2)

11. States parties are invited to indicate all the measures taken, including of a legislative, administrative or other nature, to ensure that persons who have not reached the age of 18 are not compulsorily recruited into the armed forces and do not take direct part in hostilities. In this regard, reports should provide information on:
 - (a) The process of compulsory recruitment (i.e. from registration up to the physical integration into the armed forces), indicating the minimum age linked to each step and at what point in that process recruits become members of the armed forces;
 - (b) The documents considered reliable to verify potential recruits' age prior to their acceptance into compulsory military service (birth certificate, affidavit, ID card or any form of identification);
 - (c) Any legal provision enabling the age of conscription to be lowered in exceptional circumstances (e.g. state of emergency);
 - (d) For States parties where compulsory military service has been suspended but not abolished, the minimum age of recruitment set for compulsory military service and how, and under which conditions, compulsory service can be reactivated.
12. With regard to the minimum safeguards that States parties shall maintain concerning voluntary recruitment, reports should provide information on the application of these safeguards and indicate, among other things:
 - (a) A detailed description of the guarantees in place to ensure that the recruitment is genuinely voluntary and of the procedures used for such recruitment, from the expression of intention to volunteer to the physical integration into the armed forces;
 - (b) Medical examinations foreseen before volunteers can be recruited;
 - (c) The documentation considered reliable to verify the age of the volunteers (birth certificate, affidavit, ID card or any other form of identification);
 - (d) The effective minimum service time and the conditions for early discharge; the application of military justice or discipline to recruits under 18 and disaggregated data on the number of such recruits being tried or in detention; the minimum and maximum sanctions foreseen in case of desertion;
 - (e) Information that is made available to the volunteers and to their parents or legal guardians, allowing them to formulate their own opinion and to make them aware of the duties involved in the military service (a copy of any materials used for this purpose should be annexed to the report);
 - (f) The incentives used by the national armed forces for encouraging volunteers (financial incentives, scholarships, career prospects, advertising, meetings at schools, games, etc.).

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13. In relation to article 3, paragraph 5, of the Optional Protocol, States parties are requested to provide information on:
 - (a) The minimum age of entry into schools operated by or under the control of the armed forces;
 - (b) Disaggregated data on schools operated by or under the control of the armed forces, including their number, the type of education provided and the proportions of academic education and military training in the curricula; length of the education; academic/military personnel involved, educational facilities, etc.;
 - (c) Efforts to ensure that education is provided in accordance with articles 28 and 29 of the Convention on the Rights of the Child and that the school curricula include human rights and humanitarian principles. The report should also contain information on the measures taken to ensure that school discipline is administered in a manner consistent with the child's human dignity and the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment;
 - (d) Disaggregated data (for example, by sex, age, region, rural/urban areas and social and ethnic origin) on the students attending schools operated by or under the control of the armed forces; their status (members or not of the armed forces); their military status in the case of a mobilization or of an armed conflict, a genuine military need or any other emergency situation; their right to leave such schools at any time and not to pursue a military career;
 - (e) Whether independent complaint mechanisms are accessible for children attending military schools.
 14. If applicable to the State party, reports should give details of measures taken to prevent recruitment of children by armed forces distinct from the State. In particular, information should be provided on:
 - (a) Armed groups operating on or from the territory of the State concerned;
 - (b) An update on the status of negotiations of the State party with armed groups and whether ongoing negotiations contemplate any forms of amnesties for war crimes;
 - (c) Any written or oral commitment made by armed groups not to recruit and use children under the age of 18 in hostilities;
 - (d) Measures adopted by the State party aimed at raising awareness amongst armed groups of the need to prevent the recruitment of children under the age of 18 and of their legal obligations with regard to the minimum age set in the Optional Protocol for recruitment and participation in hostilities;
 - (e) Whether the State party cooperates with the International Committee of the Red Cross (ICRC) for the above purpose.
 15. Reports should describe the methods used to identify children who are especially vulnerable to practices contrary to the Optional Protocol due to their economic and social status, such as children living in poverty, those living in remote areas and, if applicable, refugee, internally displaced, minority and indigenous children.
 16. If applicable to the State party, the report should contain information on measures taken to prevent attacks on civilian objects protected under international humani-

tarian law and other international instruments, including places that generally have a significant presence of children, such as schools and hospitals.

17. In accordance with article 6, paragraph 2, reports should describe any campaigns or other measures that have been taken to promote public awareness of the principles and provisions of the Optional Protocol, including:
 - (a) Measures, specifically aimed at making children aware of the harmful consequences of involvement in armed conflict, and of resources and sources of assistance intended to prevent children from falling victim to recruitment;
 - (b) Efforts undertaken to include peace education in the school curricula;
 - (c) Programmes targeting any specific groups other than children and the general public (e.g. the armed forces and members of international peacekeeping forces, law enforcement and immigration officers, judges, social workers, teachers and legislators);
 - (d) The role played by non governmental organizations, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above;
 - (e) Any steps taken to measure and evaluate the effectiveness of the measures described above, and the results obtained.

III. PROHIBITION AND RELATED MATTERS

(art. 1, 2, 4, paras. 1 and 2)

18. Reports should provide information on all regulations and criminal legislation in force, including details of the exact provisions, covering and defining the acts enumerated in articles 1 and 2 and of the Optional Protocol, including:
 - (a) The material elements of all such acts and offences, including the definition of the compulsory recruitment and use of children in hostilities and what constitutes direct participation;
 - (b) The maximum and minimum penalties that can be imposed for each of these offences;
 - (c) Available data or information concerning the number of prosecutions and convictions for such offences;
 - (d) Guarantees in place to ensure that superior orders cannot be invoked as justification for acts contrary to the Optional Protocol and whether any defences and aggravating or attenuating circumstances can apply to these offences;
 - (e) The statute of limitations for each of these offences;
 - (f) Any other offences recognized by the laws of the State party that it considers relevant to implementation of the Optional Protocol;
 - (g) The sentences applicable under the law(s) of the State party for attempts to commit and complicity or participation in the offences covered by the Optional Protocol.
19. Reports should provide information on all criminal legislation in force, including details of the exact provisions, covering and defining the offences enumerated in article 4, paragraphs 1 and 2, of the Optional Protocol, including:

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- (a) The material elements of all such acts and offences, including the definition of the recruitment and use of children in hostilities and what constitutes direct participation;
 - (b) If applicable, whether provisions covering such crimes have been included in transitional justice measures such as war crimes tribunals or truth commissions;
 - (c) The maximum and minimum penalties that can be imposed for each of these offences;
 - (d) Available data or information on the number of prosecutions and convictions for such offences, including, if applicable, the existence of international jurisprudence relating to the State party or its nationals;
 - (e) The statute of limitations for each of these offences;
 - (f) Any other offences recognized by the laws of the State party that it considers relevant to implementation of the Optional Protocol;
 - (g) The sentences applicable under the law(s) of the State party for attempts to commit and complicity or participation in the offences covered by the Protocol.
20. State party reports should contain information on:
- (a) All relevant laws, decrees, military codes, manuals or regulations adopted by the national, State or regional legislatures or other competent bodies of the State party in order to give effect to the Optional Protocol;
 - (b) Any significant jurisprudence adopted by the courts of the State party, in particular that applies to the Convention on the Rights of the Child, the Optional Protocol related international instruments referred to by the present guidelines. States parties are invited to submit, together with their reports under article 8, copies of the principal legislative, administrative and other relevant texts, judicial decisions and relevant studies or reports.
21. Reports also should indicate any provisions of legislation currently in force that the State party considers an obstacle to the implementation of the Optional Protocol, and whether there are plans to review such provisions.
22. States parties to the Optional Protocol that are not parties to the following treaties are invited to indicate whether they have considered becoming parties to them:
- (a) The Additional Protocols I and II to the 1949 Geneva Conventions, (1977);
 - (b) The Rome Statute of the International Criminal Court (1998);
 - (c) The International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).
23. Reports should contain a description of any law concerning the criminal liability of legal persons, such as private military and security companies (PMCs and PSCs), for the acts and activities enumerated in the Protocol, and comments on the effectiveness of such laws as a deterrent to the recruitment of children. If the law of the State party does not recognize the criminal liability of legal persons for such offences, the report should explain why this is so and the position of the State party on the feasibility and desirability of modifying it.

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24. Reports should indicate the legal provisions that establish jurisdiction over the acts and offences referred to in articles 1, 2, 4 of the Optional Protocol, including information about the grounds for this jurisdiction (see article 4, paragraphs 1 and 3).
 25. Reports also should indicate what national legal provisions provide for the establishment of extraterritorial jurisdiction over serious violations of international humanitarian law and whether to date the State party has exercised its jurisdiction over child recruitment as a war crime. Furthermore, reports should indicate the age at which such jurisdiction on crimes of child recruitment applies.
 26. Reports should describe the law, policy and practice of the State party concerning the extradition of persons accused of having committed offences referred to in the Optional Protocol. In particular, reports should describe the legal basis, including international agreements, for cooperation with other States parties with regard to investigations and, if applicable, details of criminal and extradition proceedings brought with regard to the offences referred to by the Optional Protocol, including examples of cases in which it has cooperated with other States parties and any significant difficulties it has experienced in obtaining the cooperation of other States parties.

IV. PROTECTION, RECOVERY AND REINTEGRATION

(art. 6, para. 3)

27. Reports should contain information on the measures adopted by the State party to implement article 6, paragraph 3, of the Optional Protocol with a view to ensuring that the rights and best interests of children who have been the victims of the practices prohibited under the Optional Protocol are fully recognized, respected and protected at all stages of demobilization processes as well as in criminal investigations and proceedings where they are victims or witnesses. States also may wish to refer to any efforts made to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council in its resolution 2005/20.
28. Reports should indicate what measures are taken to ensure legal, psychological or other training for those who work with victims of the offences prohibited in this Protocol.
29. Reports should describe existing public and private demobilization programmes that provide child victims of recruitment with assistance in social reintegration, paying special attention to family reunification, and physical and psychological recovery. Information should be provided on:
 - (a) Budget allocations for such programmes;
 - (b) The level of cooperation between public entities and civil society in this regard;
 - (c) The degree of participation of children in their design and implementation;
 - (d) To what extent such programmes are gender sensitive.
30. Reports should also describe the measures taken by the State party to ensure that the child's identity is protected, in accordance with article 16 of the Convention on the Rights of the Child, in order to maintain confidentiality and prevent media exposure and stigmatization of victims.
31. If unaccompanied foreign children who have been involved in armed conflict are in the jurisdiction of the State party, reports should indicate measures taken to ensure that they are treated in accordance with paragraphs 54 to 60 of the Committee's

general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

32. Reports should contain information on existing remedies and reparations that may be sought by child victims of recruitment and in particular on the role of the State in enforcing such measures. States parties are encouraged to describe efforts made to promote and implement the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the General Assembly in 2006 in its resolution 60/147.

V. INTERNATIONAL ASSISTANCE AND COOPERATION

(art. 7, para. 1)

33. Reports should provide information on measures to strengthen international cooperation regarding the implementation of the Optional Protocol, including in the prevention and investigation of any activity contrary to the Optional Protocol and in the recovery and reintegration of children victims of acts contrary to the Optional Protocol, through for example technical cooperation and financial assistance. When applicable, States parties are requested to provide information on their cooperation with international tribunals.
34. The State party should indicate whether its national legislation prohibits the trade and export of small and light arms as well as military assistance to countries where children are involved in armed conflict. If not, it should indicate whether consideration is given to the possibility of adopting such legislation.
35. Reports should provide information on whether the State party has cooperated with the Office of the Special Representative of the Secretary-General for Children in Armed Conflict.
36. Reports should provide information on whether the situation in the State party has been identified in reports of the Secretary-General to the Security Council in accordance with resolution 1612 (2005).

VI. OTHER LEGAL PROVISIONS

(art. 5)

37. Reports should describe:
 - (a) Any provisions of domestic legislation in force in the State party that it considers more conducive to the realization of the rights of the child than the provisions of the Optional Protocol;
 - (b) Any provisions of international law binding on the State party that it considers more conducive to the realization of the rights of the child than the provisions of the Optional Protocol, or that it takes into account in applying the Optional Protocol;
 - (c) The status of ratification by the State party of the main international instruments of humanitarian law which relate to the recruitment of use of children in hostilities as well as any other international or regional commitments undertaken by that State concerning these issues.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

ADOPTED AND OPENED FOR SIGNATURE, RATIFICATION AND ACCESSION BY GENERAL ASSEMBLY RESOLUTION A/RES/54/263

OF 25 MAY 2000

ENTERED INTO FORCE ON 18 JANUARY 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing

further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
 - (a) In the context of sale of children as defined in article 2:
 - (i) Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - a. Sexual exploitation of the child;

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- b. Transfer of organs of the child for profit;
 - c. Engagement of the child in forced labour;
 - (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
 - (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
 2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
 3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
 4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
 5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.
2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:
 - (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;
 - (b) When the victim is a national of that State.
3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.
4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.
2. If a State Party that makes extradition conditional on the existence of a treaty receives

a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.
5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:
 - (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;
 - (ii) Proceeds derived from such offences;
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:
 - (a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
 - (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

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- (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
 6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.
4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

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5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organisations and international organizations.
2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.
3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.
2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.
3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

Revised Guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

ADOPTED BY THE COMMITTEE AT ITS FORTY-THIRD SESSION,
ON 29 SEPTEMBER 2006

Introduction

Pursuant to article 12, paragraph 1, of the Optional Protocol, each State party shall, within two years following the entry into force of the Protocol for that State party, submit a report to the Committee on the Rights of the Child (“the Committee”) containing comprehensive information on the measures it has taken to implement the provisions of the Protocol. Thereafter, pursuant to article 12, paragraph 2, of the Protocol, States parties having submitted their initial report under this Protocol shall include in the reports they submit to the Committee in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol that are not parties to the Convention shall submit a report within two years following the entry into force of the Protocol and then every five years.

Guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol were adopted by the Committee at its 777th meeting, on 1 February 2002. The process of reviewing the reports received has led the Committee to adopt revised guidelines, in order to assist the States parties that have not yet reported to better understand the kind of information and data it considers necessary to understand and evaluate the progress made by States parties in implementing their obligations and to enable it to provide them with appropriate observations and recommendations.

The revised guidelines are divided into eight sections. Section I contains general guidelines about the reporting process, section II concerns data and section III concerns general measures of implementation relevant to this Protocol. Sections IV to VIII concern the substantive obligations recognized by the Protocol: section IV concerns the prevention of the sale of children, child prostitution and child pornography; section V concerns the criminalization of these practices and related matters; section VI concerns protection of the rights of child victims; section VII concerns international assistance and cooperation; and section VIII concerns other relevant provisions of national or international law.

The Committee particularly wants to draw attention of the States parties to the annex to these guidelines, which provides additional guidance on some issues and further indications as to the information needed for a comprehensive report of the States parties on the implementation of this Protocol.

I. GENERAL GUIDELINES

1. Reports submitted pursuant to article 12, paragraph 1, of the Protocol should contain a description of the process of preparation of the report, including the contributions made by governmental and non-governmental organisations/bodies in its drafting and dissemination. Reports of federal States and States having dependent territories or autonomous regional governments, should contain summarized and analytical information on how they contributed to the report.
2. Reports should indicate how the general principles of the Convention, namely non-discrimination, the primacy of best interests of the child, the rights to life, survival and development, and respect for the views of the child, have been taken into account in the design and implementation of the measures adopted by the State party under the Protocol (see annex).
3. Since the Protocol is intended to further implementation of the Convention on the Rights of the Child, in particular articles 1, 11, 21, 32, 34, 35 and 36, reports submitted pursuant to article 12 of the Protocol should indicate how and to what extent the measures taken in order to implement the Protocol have contributed to the implementation of the Convention, in particular the articles listed above.
4. Reports should contain information on the legal status of the Protocol in the internal law of the State party, and its applicability in all relevant domestic jurisdictions.
5. States parties also are invited to include in the reports, when relevant, information about the intention of the State party to withdraw any reservation(s) it has made to the Protocol.
6. Reports should include, in addition to information on the measures taken to implement the Protocol:
 - (a) Information, including relevant quantifiable data where available, on the progress made in eliminating the sale of children, child prostitution and child pornography and in ensuring the protection and enjoyment of the rights set forth in the Protocol;
 - (b) An analysis of the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Protocol; and
 - (c) Information from all autonomous regions or territories in the State party in a summarized version (full texts of the information concerning such entities may be annexed to the report).
7. Reports should accurately describe the implementation of the Protocol with regard to all territories and persons over which the State party exercises jurisdiction, including all parts of federal States, dependent or autonomous territories, all military forces of the State party and all locations where such forces exercise de facto effective control.
8. States parties are invited to submit, together with their reports under article 12, copies of the principal legislative, administrative and other relevant texts, judicial decisions and relevant studies or reports.

II. DATA

9. Data included in the reports submitted pursuant to article 12 of the Protocol should be disaggregated, to the extent possible, by sex, region, age and by nationality and ethnicity, if relevant, and any other criteria that the State party considers relevant

and that would help the Committee come to a more accurate understanding of the progress made in implementing the Protocol and any remaining gaps or challenges. The report should also contain information on the mechanisms and procedures used to collect these data.

10. Reports should summarize available data on the incidence of sale of children in the State party, including:
 - (a) The sale or transfer of children for purposes of sexual exploitation;
 - (b) The transfer of the organs of children for profit;
 - (c) The engagement of children in forced labour (see annex);
 - (d) The number of children adopted through the efforts of intermediaries using methods incompatible with article 21 of the Convention or other applicable international standards;
 - (e) Any other form of sale of children that occurs within the State party, including any traditional practices that involve the transfer of a child by any person or group of persons to another for any form of consideration, and any available indicators of the number of children affected by such practices;
 - (f) The number of child victims of trafficking - whether within the territory of the State party, from the territory of the State party to other States or from other States to the territory of the State party - including information as to the type of exploitation for which such children are trafficked (see annex); and
 - (g) The data provided should also show increase or decrease in these practices over time, when possible.
11. Reports should summarize available data concerning child prostitution, including:
 - (a) The number of persons under the age of 18 engaged in prostitution in the State party;
 - (b) The increase or decrease of child prostitution or any specific forms of child prostitution over time (see annex); and
 - (c) The extent to which child prostitution is linked to sex tourism within the territory of the State party, or the State party has detected within its territory efforts to promote sex tourism involving child prostitution in other countries.
12. Reports should summarize available information concerning the extent to which pornography featuring persons actually or apparently under the age of 18, is produced, imported, distributed or consumed within the territory of the State party and any increases or decreases in the production, importation, distribution or consumption of child pornography that have been measured or detected, including:
 - (a) Photographs and other printed materials;
 - (b) Videos, motion pictures and electronically recorded materials;
 - (c) Internet sites containing photographs, videos, motion pictures or animated productions (e.g. cartoons) depicting, offering or advertising child pornography; and
 - (d) Live performances.

The report should contain any available data concerning the number of prosecutions and convictions for such offences, disaggregated by nature of offence (sale of children, child prostitution or child pornography).

III. GENERAL MEASURES OF IMPLEMENTATION

13. Reports submitted should contain information on:
- (a) All laws, decrees and regulations adopted by the national, State or regional legislatures or other competent bodies of the State party in order to give effect to the Protocol (see annex);
 - (b) Any significant jurisprudence adopted by the courts of the State party with regard to the sale of children, child prostitution and child pornography, in particular jurisprudence that applies the Convention, the Protocol or related international instruments referred to by these guidelines;
 - (c) The governmental departments or bodies having primary responsibility for the implementation of this Protocol and the mechanism(s) that have been established or are used to ensure coordination between them and the relevant regional and local authorities, as well as with civil society, including the business sector, the media and academia;
 - (d) The dissemination of the Protocol and the appropriate training offered to all relevant professional and para-professional groups, including immigration and law enforcement officers, judges, social workers, teachers and legislators;
 - (e) The mechanisms and procedures used to collect and evaluate data and other information concerning implementation of this Protocol on a periodic or continuing basis;
 - (f) The budget allocated to the various activities of the State party related to implementation of the present Protocol;
 - (g) The overall strategy of the State party for the elimination of the sale of children, child prostitution and child pornography and the protection of victims, and any national or regional plans, or particularly significant local ones, that have been adopted in order to strengthen efforts to implement this Protocol, or any components of plans for advancing the rights of the child, the rights of women or human rights that contain components aimed at the elimination of these practices or protection of victims;
 - (h) The contributions made by civil society to efforts to eliminate the sale of children, child prostitution and child pornography; and
 - (i) The role played by statutory ombudspersons for children or similar autonomous public institutions for the rights of children, if any, in implementing this Protocol or in monitoring its implementation (see annex).

IV. PREVENTION (*art. 9, paras. 1 and 2*)

14. Bearing in mind that article 9, paragraph 1, of the Protocol requires States parties to pay “particular attention” to the protection of children who are “especially vulnerable” to the sale of children, child prostitution or pornography, reports should describe the methods used to identify children who are especially vulnerable to such practices, such as street children, girls, children living in remote areas and those living in poverty. In addition, they should describe the social programmes and policies that have been adopted or strengthened to protect children, in particular especially vulnerable children, from such practices (e.g. in the areas of health and education), as well as any administrative or legal measures (other than those described in response to the guidelines contained in section V) that have been taken to protect children from these prac-

tices, including civil registry practices aimed at preventing abuse. Reports also should summarize any available data as to the impact of such social and other measures.

15. Reports should describe any campaigns or other measures that have been taken to promote public awareness of the harmful consequences of the sale of children and child prostitution and pornography, as required by article 9, paragraph 2, of the Protocol, including:
 - (a) Measures specifically aimed at making children aware of the harmful consequences of such practices, and of resources and sources of assistance intended to prevent children from falling victim to them;
 - (b) Programmes targeting any specific groups other than children and the general public (e.g. tourists, transportation and hotel workers, adult sex workers, members of the armed forces, correctional personnel);
 - (c) The role played by NGOs, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above; and
 - (d) Any steps taken to measure and evaluate the effectiveness of the measures described above, and the results obtained.

V. PROHIBITION AND RELATED MATTERS

(arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

16. Reports should provide information on all criminal or penal laws in force covering and defining the acts and activities enumerated in article 3, paragraph 1, of the Protocol, including:
 - (a) The material elements of all such offences, including any reference to the age of the victim and the sex of the victim or perpetrator;
 - (b) The maximum and minimum penalties that can be imposed for each of these offences (see annex);
 - (c) Any defences and aggravating or attenuating circumstances applicable specifically to these offences;
 - (d) The statute of limitations for each of these offences;
 - (e) Any other offences recognized by the laws of the State party that it considers relevant to implementation of the present Protocol (see annex); and
 - (f) The sentences applicable under the law(s) of the State party for attempts to commit and complicity or participation in the offences described in response to this guideline.
17. Reports also should indicate any provisions of the law in force that the State party considers an obstacle to implementation of the present Protocol, and any plans it has to review them.
18. Reports should describe any law concerning the criminal liability of legal persons for the acts and activities enumerated in article 3, paragraph 1, of the Protocol, and comment on the effectiveness of such laws as a deterrent to the sale of children, child prostitution and child pornography; if the law of the State party does not recognize the criminal liability of legal persons for such offences, the report should explain why this is so and the position of the State party on the feasibility and desirability of modifying it (see annex).

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19. Reports of States parties whose law permits adoption should indicate the bilateral and multilateral agreements, if any, that are applicable and the measures it has taken to ensure that all persons involved in the adoption of children act in conformity with such agreements and with the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children (General Assembly resolution 41/85 of 3 December 1986), including:
 - (a) The legal and other measures taken to prevent illegal adoptions, e.g. those that have not been authorized by the authorities competent for dealing with domestic and intercountry adoptions;
 - (b) The legal and other measures taken to prevent intermediaries from attempting to persuade mothers or pregnant women to give their children for adoption, and to prevent unauthorized persons or agencies from advertising services concerning adoption;
 - (c) The regulations and licensing of agencies and individuals acting as intermediaries in adoptions, as well as legal practices identified so far;
 - (d) The legal and administrative measures taken to prevent the theft of young children and to prevent fraudulent birth registration, including applicable criminal sanctions;
 - (e) The circumstances in which the consent of a parent for adoption can be waived and any safeguards in place that are designed to ensure that consent is informed and freely given; and
 - (f) Measures to regulate and limit the fees charged by agencies, services or individuals in connection with adoption and the sanctions applicable for non-compliance with them.
 20. States parties to this Protocol that recognize adoption and that are not parties to the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption are invited to indicate whether they have considered becoming parties to it and the reasons they have not yet done so.
 21. Reports should indicate:
 - (a) The laws in force prohibiting the production and dissemination of material advertising any of the offences described in the Protocol;
 - (b) The applicable sanctions;
 - (c) Any available data or information concerning the number of prosecutions and convictions for such offences, disaggregated by nature of the offence (sale of children, child prostitution or child pornography); and
 - (d) Whether such laws are effective in preventing advertising for the sale of children, child prostitution and child pornography and, if not, the reasons why and any plans the State has for strengthening such laws and/or their enforcement.
 22. Reports should indicate the legal provisions that establish jurisdiction over the offences referred to in article 3 of the Protocol, including information about the grounds for this jurisdiction (see article 4, paragraphs 1 and 3).
 23. Reports also should indicate the legal provisions that establish extraterritorial jurisdiction over such offences on the grounds mentioned in article 4, paragraph 2, and/or on any other grounds of jurisdiction recognized by the law of the State party.

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24. Reports should describe the law, policy and practice of the State party concerning the extradition of persons accused of having committed one or more of the offences referred to by article 3 of the Protocol, including:
- (a) Whether extradition requires the existence of an extradition treaty with the requesting State and, if not, any conditions applied in considering requests for extradition (e.g. reciprocity);
 - (b) If extradition is conditional on the existence of an extradition treaty in force for the State party and a requesting State, whether the competent authorities of the State party recognize article 5, paragraph 2, as sufficient basis for granting an extradition request made by another party to this Protocol, including in cases in which the extradition request concerns a national of the State receiving the request;
 - (c) Whether the State party has entered into any extradition treaties since becoming a party to this Protocol or is negotiating any extradition treaties and, if so, whether such treaties recognize the offences corresponding to those referred to in the Protocol as extraditable offences;
 - (d) Whether the State party, since the entry into force of the Protocol, has refused any request(s) for the extradition of a person subject to its jurisdiction who was accused by another State of any of the offences referred to in the present Protocol and, if so, the reason for the refusal(s) to extradite, and whether the person(s) concerned was referred to the competent authorities of the State party for prosecution;
 - (e) The number of requests for extradition for any of the offences referred to the Protocol that have been granted by the State party since the entry into force of the Protocol or since its most recent report on implementation of the Protocol, disaggregated by the nature of the offences;
 - (f) Whether the State party has, since the entry into force of the Protocol, requested the extradition of any person accused of any of the offences referred to in this Protocol and, if so, whether such request(s) have been honoured by the requested State(s); and
 - (g) Whether any new legislation, regulations or judicial rules concerning extradition have been proposed, drafted or adopted and, if so, their consequences, if any, for the extradition of persons accused of offences corresponding to the conduct described in article 3 of this Protocol.
25. Reports should describe the legal basis, including international agreements, for cooperation with other States parties with regard to investigations and criminal and extradition proceedings brought with regard to the offences referred to by the Protocol, and the policy and practice of the State party with regard to such cooperation, including examples of cases in which it has cooperated with other States parties and any significant difficulties it has experienced in obtaining the cooperation of other States parties.
26. Reports should describe the law, policy and practice of the State party with regard to:
- (a) The seizure and confiscation of materials, assets and or other goods used to commit or facilitate any of the offences set forth in the Protocol;
 - (b) The seizure and confiscation of proceeds derived from the commission of such offences; and

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- (c) The closure of premises used to commit such offences, including the execution of requests made by other States parties for the seizure and confiscation of any materials, assets, instrumentalities or proceeds described in article 7 (a) of the Protocol; the State party's experience concerning the response of other parties to its requests for the seizure and confiscation of goods and proceeds; any legislation concerning these matters that has been proposed, drafted or enacted since the entry into force of the Protocol, and any judicial decisions concerning these matters of particular significance.

VI. PROTECTION OF THE RIGHTS OF VICTIMS

(arts. 8 and 9, paras. 3 and 4)

27. Reports should contain information on the measures adopted by the State party to implement article 8 of the Protocol with a view to ensure that the rights and best interests of children who have been the victims of the practices prohibited under the present Protocol are fully recognized, respected and protected at all stages of criminal investigations and proceedings which concern them. States also may wish to describe any efforts made to implement the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council in 2005 (see annex).
28. Reports should describe the law, policy and practice throughout the territory of the State party regarding the investigation of the offences referred to by the Protocol, in cases in which the victim appears to be below the age of 18 but his or her actual age is unknown (see annex).
29. Reports should describe any rules, regulations, guidelines or instructions that have been adopted by relevant authorities in order to ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the present Protocol (see annex).
30. Reports also should indicate which provisions of the existing laws, procedures and policies are meant to ensure that the best interests of child victims of such offences are adequately identified and taken into account in criminal investigations and proceedings and, if not, what steps it considers necessary or plans to take to improve compliance with article 8, paragraph 3, of the Protocol (see annex).
31. Reports should indicate what measures are taken to ensure legal, psychological or other training for those who work with victims of the offences prohibited in this Protocol (see annex).
32. Reports should indicate the measures in place that provide the agencies, organizations, networks and individuals with the conditions necessary to carry out their work without fear of interference or reprisals and, if not, what measures are planned or considered necessary to ensure compliance with article 8, paragraph 5, of the Protocol (see annex).
33. Reports should describe any special safeguards or compensatory measures that have been introduced or strengthened in order to ensure that measures designed to protect the rights of child victims of the offences referred to by this Protocol do not have any undue impact on the rights of accused persons to a fair and impartial trial (see annex).

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34. Reports should describe existing public and private programmes that provide child victims of sale, prostitution and pornography with assistance in social reintegration, paying special attention to family reunification, and physical and psychological recovery (see annex).
 35. Reports should also describe the measures taken by the State party to help the child recover his or her identity, when the exploitation to which the child has been exposed has adversely affected any elements of his or her identity, such as name, nationality and family ties (see annex).
 36. Information contained in reports concerning assistance in social reintegration, physical and psychological recovery and the recovery of identity should indicate any differences between the assistance provided to children who are nationals or presumed to be nationals of the State party and those who are not nationals, or whose nationality is unknown (see annex).
 37. Reports should contain information on existing remedies and procedures that may be used by child victims of sale, prostitution or pornography to seek compensation for damages from those legally responsible (see annex).

VII. INTERNATIONAL ASSISTANCE AND COOPERATION (art. 10)

38. Reports should describe:
 - (a) Any multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences referred to by this Protocol that the State party has helped draft, or has negotiated, signed or become a party to;
 - (b) The steps that have been taken to put in place procedures and mechanisms to coordinate the implementation of such arrangements; and
 - (c) The results obtained through such arrangements, any significant difficulties encountered in implementing them and any efforts made or considered necessary to improve the implementation of such arrangements.
39. Reports also should describe any other steps taken by the State party to promote international cooperation and coordination concerning the prevention, detection, investigation, prosecution and punishment of the offences referred to by the Protocol between their authorities and relevant regional or international organizations, as well as between the authorities and national and international non-governmental organisations.
40. Reports should describe any steps taken by the State party to support international cooperation to assist the physical and psychological recovery, social reintegration and repatriation of the victims of the offences referred to by this Protocol, including bilateral aid and technical assistance, and support for the activities of international agencies or organizations, international conferences and international research or training programmes, including support for the relevant activities and programmes of national or international non-governmental organisations.
41. Reports should describe the contributions of the State party to international cooperation designed to address root causes that contribute to children's vulnerability to sale, prostitution, pornography and sex tourism, in particular poverty and underdevelopment.

VIII. OTHER LEGAL PROVISIONS (art. 11)

42. Reports should describe:

- (a) Any provisions of domestic legislation in force in the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol;
- (b) Any provisions of international law binding on the State party that it considers more conducive to the realization of the rights of the child than the provisions of this Protocol, or that it takes into account in applying the present Protocol; and
- (c) The status of ratification by the State party of the main international instruments concerning sale of children, child prostitution, child pornography, trafficking of children and sex tourism, as well as any other international or regional commitments undertaken by that State concerning these issues, and any influence their implementation has had on implementation of the Protocol.

Annex

The link between the Optional Protocol and the implementation of the Convention referred to in **Guideline 2*** is recognized by the first paragraph of the preamble to the Protocol.

The term forced labour, referred to in **Guideline 10 (c)**, includes any substantial work or services that a person is obliged to perform, by a public official, authority or institution under threat of penalty; work or services performed for private parties under coercion (e.g. the deprivation of liberty, withholding of wages, confiscation of identity documents or threat of punishment) and slavery-like practices such as debt bondage and the marriage or betrothal of a child in exchange for consideration (see International Labour Organization Convention No. 29 (1930) on Forced Labour (arts. 2 and 11), and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (art. 1)).

Trafficking of children, as referred to in **Guideline 10 (f)**, means the recruitment, transportation, transfer, harbouring or receipt of persons under the age of 18 for the purpose of any form of exploitation, including sexual exploitation, the exploitation of child labour or adoption in violation of the relevant international standards, regardless of whether the children or their parents or guardian have expressed consent thereto (see the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (art. 3 (a), (b) and (c))).

Forms of prostitution that, according to **Guideline 11 (b)**, should be distinguished, if possible, include heterosexual and homosexual prostitution, and commercial or other forms of prostitution, such as the delivery of children to temples or religious leaders for the purpose of providing sexual services, sexual slavery, the solicitation by teachers of sexual favours from students and sexual exploitation of child domestic workers.

States may wish to present the information referred to in **Guideline 13 (a)** in the form of a table of relevant laws and their most relevant provisions.

The important role of children's ombudsmen and similar institutions, mentioned in **Guideline 13 (i)**, is described by the Committee in general comment No. 2 on "The role

* See paragraph 2 above; guidelines correspond to paragraph numbers.

of independent national human rights institutions in the promotion and protection of the rights of the child”, adopted at its thirty-first session in 2002.

Information provided in response to the guidelines contained in section IV above, in particular in reports made by federal States, States having dependent territories and/ or autonomous regions, and States whose legal order recognizes religious, tribal or indigenous law, should include information about the relevant law of all jurisdictions having competence over these matters, including the law applicable to the armed forces.

The reply to **Guideline 16**, especially its subparagraph (b), should distinguish between the penalties applicable to adults convicted of such offences and juveniles who have committed them. Article 3, paragraph 1, of the Protocol provides that States parties shall “as a minimum” ensure that the acts listed are covered by its criminal or penal law; the broader, generic obligation set forth in article 1 is to “prohibit the sale of children, child prostitution and child pornography”. Hence **Guideline 16 (e)** indicates that reports should indicate any other forms of sale, or any other acts or omissions concerning child prostitution or child pornography, that are covered by its criminal or penal law. In addition, in some countries certain crimes may be used to prosecute the sale of children, child prostitution or child pornography even though they do not expressly prohibit those offences as such. Reports also should describe such offences and explain their application to the sale of children, child prostitution and/or child pornography.

Legal persons, referred to in **Guideline 18**, are entities other than physical persons that have legal personality, such as corporations and other businesses, local or regional governments and legally recognized foundations, organizations and associations.

The applicable international legal instruments in **Guideline 19** include articles 20 and 21 of the Convention, read together with the general principles recognized by articles 2, 3, 6 and 12 of the Convention; the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which the Committee considers an appropriate instrument for meeting the obligation contained in article 21 (e), of the Convention; the 1967 European Convention on the Adoption of Children (CETS No. 58); the 1990 African Charter on the Rights and Welfare of the Child; the Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, adopted by the General Assembly in 1986; and bilateral treaties on adoption. The Declaration on Social and Legal Principles, which is mentioned in the Preamble to the Convention on the Rights of the Child, is applicable to all States, including those that are not party to any of the treaties mentioned above.

The information referred to in **Guideline 27** should include, in particular:

- (a) Any laws and other legal standards providing that the best interests of the child victim or child witness shall be a primary consideration in criminal justice matters concerning the sale of children, child prostitution and child pornography;
- (b) Any laws or other legal standards, procedures and practices concerning the placement of children considered to be victims of sale, child prostitution or child pornography in protective custody in police or correctional facilities, or public child welfare facilities, during the duration of investigations or legal proceedings against the perpetrators of such acts, and information on the number of children placed in such custody for the duration of such investigations or proceedings, disaggregated if possible according to the age, sex and place of origin of the child, the nature of the facility and the average duration of placement;

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- (c) The principle that children shall not be deprived of liberty except as a last resort (see article 37 (b) of the Convention) means that child victims or witnesses should not be kept in police or correctional facilities nor, except in extreme circumstances, closed child welfare facilities, in order to ensure their protection and availability in criminal proceedings;
 - (d) Any laws, procedures and practices allowing the placement of children considered to be victims of sale, child prostitution or child pornography in the temporary care of relatives, foster parents, temporary guardians or community-based organizations during the investigations or legal proceedings against the perpetrators of such acts, and information on the number of children so placed, disaggregated if possible according to the age, sex and place of origin of the child, the type of care provider and the average duration of placement;
 - (e) Any legal standards that have been adopted recognizing the right of child victims of sale, child prostitution or child pornography to be informed about their legal rights and their potential role in criminal proceedings concerning such exploitation and the scope, timing and progress and outcome of such proceedings, and the practices and procedures that have been established in order to provide children with such information;
 - (f) Any legal standards that have been adopted that recognize the right of child victims of sale, child prostitution or child pornography to express or convey their views, needs and concerns about criminal proceedings concerning their exploitation and the duty of investigators, prosecutors and other relevant authorities to take their views and concerns into account; the methods and procedures used to ascertain the views, needs and concerns of child victims of different ages and backgrounds and to communicate them to the relevant authorities; and information regarding the progress made and difficulties encountered, if any, in implementation of such standards and procedures;
 - (g) Any programmes and services that provide support to child victims during criminal proceedings against those responsible for their exploitation, the geographical location and nature of the agencies or organizations responsible (public, subsidized or non-governmental), the nature of the support services provided and the coverage; any available data concerning the age, sex, place of origin and other relevant characteristics of the beneficiaries; the results of any evaluations of the support provided; and the views of the State party as to the adequacy of the coverage, scope and quality of the services available and any plans to expand them;
 - (h) Any laws or regulations designed to protect the right to privacy and prevent the disclosure of the identity of victims of any of the offences referred to in the Protocol, and any other measures taken by the State party to protect their privacy and prevent the disclosure of their identity, as well as the views of the State party on whether such laws, regulations and other measures are effective and, if not, the reasons why they are not and any plans it has to enhance the protection of their right to privacy and prevent the disclosure of their identity;
 - (i) The policies, procedures, programmes, protocols or other measures that have been put in place in order to ensure the safety of child victims of sale, prostitution or pornography who may be at risk of retaliation or intimidation and to ensure the safety of their families and of witnesses vulnerable to such risks, as well as the views of the State party on whether such measures have been effective and, if not, the

reasons why they have not been and any plans it has to reinforce them, modify them or to adopt new safeguards; and

- (j) Any laws, rules, regulations, guidelines or policies that have been adopted by the competent legislative, administrative or judicial authorities in order to avoid unnecessary delay in the disposition of cases involving the offences referred to by this Protocol and in the execution of orders or decrees granting compensation to child victims, as well as any jurisprudence that may have been adopted by the courts of the State party concerning the timely resolution of such matters.

The information referred to in **Guideline 28** should include, in particular:

- (a) The measures used to estimate the age of the victim when documentary proof is not available;
- (b) The standard of proof for the age of the victim and the legal presumptions, if any, that apply; and
- (c) The agency or bodies that are responsible for carrying out investigations with a view to determining the age of the child and the methods used to this end.

The information provided in response to **Guideline 28** also should indicate whether difficulties in determining the age of presumed victims of the offences referred to by the Protocol to be a substantial obstacle to law enforcement and effective protection of children against such practices and, if so, why it does, and what plans, if any, the State party has to overcome them or what action it considers necessary to address such difficulties. Information provided also should differentiate, when relevant, between offences that have been committed within the territory of a State party against a child who is a national, and offences in which the victim may not be a national of the State party or the act may have taken place in the territory of another State.

The information provided in response to **Guidelines 29 and 30** should:

- (a) Indicate whether the legislation of all relevant jurisdictions of the State party recognizes the requirement that the best interests of the child shall be a primary consideration in the treatment afforded by the criminal justice system to children who are victims of any of the offences described in the Protocol and, if not, what steps, if any, the State party has taken or plans to take to incorporate this principle into the relevant legislation;
- (b) Describe any rules, guidelines, policies or jurisprudence concerning how the best interests of children are defined in this context and the methods that are used to determine the best interests of individual child victims;
- (c) Describe, in particular, any rules, regulations, guidelines, policies or jurisprudence concerning the methods used to determine the child's views and the weight given to such views in establishing what the best interests of the child are in this context;
- (d) Describe, in addition, what steps have been taken and what mechanisms and procedures have been established to provide child victims with objective information, in language adapted to their age and background, about criminal investigations and proceedings regarding offences affecting them, their rights with regard to such investigations and proceedings, and any options or alternative courses of action they may have;
- (e) Describe any legislation, regulations, procedures, policies and jurisprudence regarding the legal standing of children with regard to decisions that must be made

regarding criminal proceedings concerning offences against them, including any age limit concerning the child's decision whether to testify or otherwise participate in proceedings; the authority of parents or guardians to take such decisions for the child, and the appointment of temporary guardians to ensure that the best interests of the child are identified and respected in the absence of any parent or guardian or in the event of a possible conflict of interest between the child victim and her or his parent(s) or legal guardian; and

- (f) Describe the role, if any, of child protection agencies or child rights bodies in criminal proceedings concerning the offences referred to by the Protocol, in particular any role they may play in defending the best interests of the child victim or child witness in such proceedings.

Information requested under **Guideline 31** should provide details as to the agency or agencies that are competent to investigate and/or prosecute the offences referred to by the Protocol and the courts competent over these offences throughout the territory or territories of the State party, and whether contact with child victims and witnesses by the staff of such agencies is limited to officials assigned especially to cases concerning children; any specific requirements regarding education on the rights of children and child psychology or development applicable to the recruitment or appointment of staff having contact with children; any entry-level or in-service training programmes that provide staff having contact with children and their supervisors with legal, psychological and other relevant training designed to ensure that child victims receive treatment that is sensitive to their age, sex, background and experiences and respectful of their rights, and a brief description of the content and methodology of such training programmes; and the agencies or organizations, public or private, that provide care, shelter and psychosocial services to the victims of the offences referred to by this Protocol, and any applicable regulations concerning the qualifications and training of private service providers.

The information provided in response to **Guideline 32** should indicate the public or private agencies, organizations and networks most involved in efforts to prevent the sale of children, child prostitution and pornography and related practices, as well as those most involved in providing protection, rehabilitation and similar services to the victims of such practices; and describe any significant attacks or threats to the safety, security and integrity of the above-mentioned bodies and their members or staff, as well as the types of measures the State party has adopted to protect the persons or bodies that have been the target of attacks and threats of the kind mentioned above, and the measures or policies that have been adopted as a precaution against such threats or attacks.

For purposes of **Guideline 33**, the rights of accused persons to a fair and impartial trial should be considered to be the rights set forth in articles 14 and 15 of the International Covenant on Civil and Political Rights, in particular the right to be presumed innocent until proved guilty according to law, to have adequate facilities for the preparation of a defence and to examine, or have examined, the witnesses against him.

Information provided in response to **Guideline 34** should include: identification of programmes or services and the agencies or organizations that operate them, their geographical location and a description of the type of services provided; data on the number of children who receive such assistance, disaggregated according to the age and sex of the beneficiaries, the type of abuse suffered and whether the assistance is provided in a residential or non-residential setting; the results of any evaluation(s) that have been made of the assistance provided by existing programmes and information regarding the unmet demand for such services, if any; and any plans the State party has for increasing

the capacity of existing programmes or expanding the type of services provided, as well as any other information that it considers relevant.

The right to assistance in social reintegration and psychological recovery referred to by **Guideline 35** and article 9, paragraph 3, of the Protocol includes the right of children deprived of any element of their identity to assistance in speedily re-establishing their identity, a right also recognized by article 8, paragraph 2, of the Convention on the Rights of the Child.

Information provided in response to **Guideline 36** should include:

- (a) The number of children who are not nationals or whose nationality is unknown who are identified annually as victims of sale, child prostitution and child pornography, disaggregated to the extent possible by age, sex, type of exploitation and country of origin;
- (b) The policy of the State party regarding the repatriation of child victims and reintegration with their families and community, including the way such policies address issues such as the best interests of the child, the right of the child to have his or her views taken into account, the child's participation in criminal proceedings against those responsible for his or her exploitation and the right of the child to protection against the risk of reprisals and to assistance in physical and psychological rehabilitation;
- (c) Any existing legal or administrative agreements with other countries concerning the repatriation of children who have been victims of these forms of exploitation, mutual assistance in re-establishing their identity or relocating their families and for evaluating the appropriateness of return of the child to his or her family or community, as opposed to other forms of social reintegration; and
- (d) Information on the progress made and difficulties encountered in safeguarding the right to social reintegration, identity and physical and psychological recovery of children who have been victims of these forms of exploitation and who are not nationals, or whose nationality is unknown, as well as any plans it may have for overcoming the difficulties encountered, if any.

The information provided in response to **Guideline 37** should include:

- (a) Whether the child's right to compensation is subordinated to or conditioned by a prior finding of criminal responsibility on the part of those responsible for his or her exploitation;
- (b) Procedures and standards regarding the appointment of a guardian or representative for the child for purposes of legal procedures of this kind, when there is an actual, possible or potential conflict between the interests of the child and those of his or her parents;
- (c) Standards and procedures concerning the voluntary settlement of cases or complaints involving the sale of children, child prostitution or pornography;
- (d) Whether there are any differences between the procedures applicable to cases involving children and those involving adults, insofar as the admissibility of evidence or the way evidence concerning the child victim is presented;
- (e) Whether rules and guidelines concerning the management of cases recognize the importance of the need to avoid undue delay in the resolution of cases involving children, in accordance with article 8, paragraph 1 (g), of the Protocol;

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- (f) Whether there is any difference in the statute of limitations applicable to claims of compensation for these forms of exploitation, when the victim is a child;
 - (g) Any special features of the law that concern the use, disposition and safeguarding of damages awarded to children until such time as they reach the age of majority;
 - (h) Any other special features of existing procedures that may be used by children to seek compensation in the type of cases referred to above that are designed to make them more sensitive to the special needs, rights and vulnerabilities of children;
 - (i) Whether the information given in reply to the preceding paragraphs of this guideline is applicable to victims who may not be nationals of the State party, and any special measure that may exist to ensure that victims who are not or may not be nationals have equal access to remedies designed to obtain compensation for damages due to the forms of exploitation referred to above;
 - (j) Any information concerning the number and amount of awards made to children for abuses of this kind, as a result of legal or administrative proceedings or settlements supervised by official bodies, that would help the Committee understand how existing remedies and procedures work in practice;
 - (k) Whether the State party considers that existing remedies and procedures provide adequate protection to the right of children who have been victims of the above forms of exploitation to obtain adequate compensation for damages and, if not, what improvements or changes it considers would enhance effective protection of this right.

Damages include physical or mental injury, emotional suffering, prejudice to moral interests (e.g. honour, reputation, family ties, moral integrity), denial of one's rights, loss of property, income or other economic loss and expenses incurred in treating any injury and making whole any damage to the victim's rights (see principles 19 and 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law).

Resources

OHCHR Documentation

Convention on the Rights of the Child, <http://www2.ohchr.org/english/law/crc.htm>

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, <http://www2.ohchr.org/english/law/crc-conflict.htm>

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, <http://www2.ohchr.org/english/law/crc-sale.htm>

General Guidelines regarding the form and content of initial reports to be submitted by States Parties under article 44, paragraph 1(a) to the Convention on the Rights of the Child, http://www2.ohchr.org/english/bodies/crc/docs/Guidelines_initial_reports_CRC.pdf

United Nations, Compilation of guidelines on the form and content of reports to be submitted by State Parties to the international human rights treaties, 2009 (HRI/GEN/2/Rev6) <http://www2.ohchr.org/english/bodies/icm-mc/docs/9th/HRI-GE-2-Rev6.doc>

Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child (CRC/C/58/Rev.2) <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.58.Rev.2.ReportingGuidelines.doc>

Revised Guidelines regarding initial reports to be submitted by States parties 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, http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.2_en.pdf

Revised Guidelines regarding initial reports to be submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>

State Parties reports, summary records, and concluding observations can be found at <http://www2.ohchr.org/english/bodies/crc/sessions.htm>

UNICEF Tools and Guides

Handbook on the Optional Protocol on the sale of children, child prostitution and child pornography, UNICEF, Innocenti Research Centre, 2009, http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf

‘The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the jurisprudence of the Committee on the Rights of the Child’, Ugo Cedrangolo (2009). *Innocenti Working Paper* No. 2009-03. Florence, UNICEF Innocenti Research Centre http://www.unicef-irc.org/publications/pdf/iwp_2009_03.pdf

Implementation Handbook for the Convention on the Rights of the Child, Third Edition, UNICEF, 2007 (not available electronically)

Implementation Handbook for the Convention on the Rights of the Child, Implementation Checklists, UNICEF, 2007, <http://www.unicef.org/crc/files/Implementation%20Checklists.pdf>

NGO Tools and Guides

A Guide for Non-governmental Organizations reporting to the Committee on the Rights of the Child (Third Edition), NGO Group for the Convention on the Rights of the Child, 2006 <http://www.crin.org/docs/Reporting%20Guide%202006%20English.pdf>

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NGO Group for the Convention on the Rights of the Child

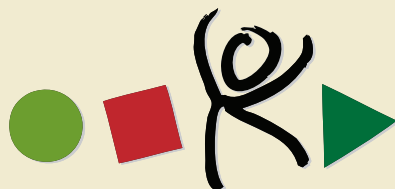
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