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**Children Affected by Armed Conflict:  
Child Rights Law vs Compliance**

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## Introduction

Children suffer considerably from conflict situations, and even during the post-conflict phase, their needs are not always met. During civil or international conflicts, children are forcefully recruited or abducted by either rebel groups or armed forces. Children serve as child soldiers, sex slaves, and do not receive adequate humanitarian assistance. As child soldiers, children carry out several duties, *inter alia*, being porters, spies, cooks, messengers and fighters. The proliferation of small arms and light weapons, easy to carry, assemble and use, has exacerbated the problem.

Both international humanitarian law and human rights law have strived to protect children in situations of conflict. However, there is a large discrepancy between international law and compliance on the ground. Humanitarian laws such as the *Geneva Conventions* (1949) and their Optional Protocols (1977), and child rights treaties such as the *United Nations Convention on the Rights of the Child* (CRC) of 1989 and its optional protocol on children and armed conflict (2000), have articles dealing with the protection of children in situations of armed conflict. Yet rebel groups and state armies continue to violate these standards and commit egregious crimes against children.

This paper reviews international humanitarian law and international human rights laws that deal with children affected by armed conflict (CAC). An attempt will be made to understand why there is a large discrepancy between law and practice in light of the "Era of Application" called forth by the UN Secretary-General.

The first part delves into the definition of children affected by armed conflict by analysing different international human rights laws and international humanitarian laws (IHL). Of special interest will be the CRC and the Optional Protocol of the CRC on CAC which stipulates the minimum age of recruitment as fifteen years (government forces) and eighteen (armed groups) respectively. Since the CRC mentions respect for IHL this paper will examine aspects of the *Geneva Conventions* (I-IV) and the Additional Optional Protocols (I-II) and how they relate to the protection of children. Other crucial instruments like the *Rome Statute of the International Criminal Court*, UN Security Council Resolutions on CAC, and GA Resolutions on CAC will be scanned.

The second part has four short testimonies from former child soldiers in Burundi and Uganda with a critique of the different child rights violations

based on articles of the CRC. The final section contains recommendations for policy and action. The major recommendations of this paper are:

- the empowerment of national citizens in conflict prevention;
- participation in decision making and drafting of resolutions by national citizens;
- collaboration in the design, implementation, monitoring and reporting mechanisms for strategies dealing with CAC; and
- mobilisation of resources and capacity building in understanding international humanitarian and human rights law relating to children.

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## Part 1

### A. Defining “children affected by armed conflict” (CAC)

At the outset it's important to define the issue of CAC. It is crucial to review both international human rights law such as the *Convention on the Rights of the Child* and the optional protocol to the CRC on the involvement of children and armed conflict, and international law like the UN Security Council Resolutions on CAC. Furthermore, the *Geneva Conventions* and the Additional Protocols are the basis of international humanitarian law (IHL) that define conflict between different states as well as conflict within a state.

### B. United Nations Convention on the Rights of the Child (CRC)

The CRC has been ratified or acceded to by 192 countries<sup>1</sup>. It defines a “child” as anyone who is under 18 years old. However, CRC Article 38 shows that CAC can be defined in terms of IHL. It states:

*1. States Parties undertake to respect and to ensure respect the rules of international humanitarian law applicable to them in armed conflicts which are relevant to 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.*

*4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure*

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<sup>1</sup> A/59/41 (2004), *Report of the Committee on the Rights of the Child*, General Assembly, Official Records, 59<sup>th</sup> Session, United Nations, New York

*protection and care of children who are affected by an armed conflict.*

What does the Article 38 tell us? It states that children under 15 should not be recruited and that governments should prioritise the protection and care of children. There seems to be an obvious contradiction between the definition of a child (under 18) and the age at which children can take part in hostilities (15).

### **C. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-CAC)**

As of February 2004, the OP-CRC-CAC had been ratified or acceded to by 69 states and signed by 115. However, the OP-CRC-CAC tried to address this discrepancy by stating the following:

#### *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 18 are entitled to special protection.*

*2. Each State Party shall deposit a binding declaration upon ratification of or accession to this 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 that it has adopted to ensure that such recruitment is not forced or coerced.*

*3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:*

- a. such recruitment is genuinely voluntary;*
- b. such recruitment is done 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 under this Protocol shall not affect the legal status of any party to an armed conflict.*

If one were to take the OP-CRC-CAC literally, it means that any armed or rebel group should not conscript or recruit children. However, national armies are exempt from this requirement since they can include voluntary recruitment of children who are 15 years or older. It almost seems like a double standard, by allowing national armies to have 15-year-olds where as rebel groups have to have adults. One way around this is to have a "straight 18" ban with no reservations or exemptions. There is a thin line between voluntary and compulsory recruitment especially when children are coerced to say that they have voluntarily joined armed forces.

#### **D. Cape Town Principles**

Although CAC encompasses more than child soldiers, the Cape Town Principles<sup>2</sup> provide a comprehensive definition of child soldiers as follows:

*"Child soldier" in this document means any person under 18 years of age who is part of any kind of regular or irregular armed force or armed group in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. It includes girls recruited for sexual*

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<sup>2</sup> Cape Town Annotated Principles Best Practice on the Prevention of Recruitment of Children into the Armed Forces and Demobilisation and Social Reintegration of Child Soldiers in Africa, 1997

*purposes and forced marriage. It does not, therefore, only refer to a child who is carrying or has carried arms.*

*"Recruitment" encompasses compulsory, forced and voluntary recruitment into any kind of regular or irregular armed force or armed group.*

This definition is for programmatic purposes rather than a legal definition. However, it is used by many organisations such as UN agencies like UNICEF, the World Bank, and NGOs working in the area of child protection. These principles clarify that the term "child soldier" encompasses more than just children who fight, and they pay attention to the role of girls.

## **E. The Geneva Conventions**

Article 38 of the CRC mentions the rules of IHL so it is crucial to understand these further. The *Geneva Conventions* I-V (1949) and Additional protocols I-II (1977) are the most important humanitarian law treaties. These are:

*First Convention: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949*

*Second Convention: the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949*

*Third Convention: the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949*

*Fourth Convention: the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949*

*Additional Protocol 1: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts*

*Additional Protocol 11: Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts*

Summarising the articles in the Geneva Conventions and Additional Protocols can be daunting.

The third Geneva Convention outlines the treatment of prisoners of war. The articles deal with issues pertaining to health, food rations, hygiene, discipline, caring for the sick or wounded, labour, financial resources and correspondence. Of importance is Common Article 3 (found in all four Geneva Conventions and Additional Protocols) which mentions the acts that are prohibited in non-international conflicts.

*1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

*a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*

*b. Taking of hostages;*

*c. Outrages upon personal dignity, in particular, humiliating and degrading treatment;*

*d. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples<sup>3</sup>.*

*2. The wounded and sick shall be collected and cared for...*

The fourth Geneva Convention goes further to mention the protection of children under 15, as in Articles 14–24 which establish the protection of children in hospitals and safety zones (Article 14), removal of children

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<sup>3</sup> Article 3, *The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949*

(Article 17), accessibility of food and clothing (Article 23), and provision of services (e.g. education) for separated and orphaned children (Article 24). However, Articles 50, 51, 68 and 76 deal with children under 18 granting children education, protection from forced labour and the death penalty, as well as treatment of minors who have committed offences. Protective measures for interned children are provided in Articles 81, 82, 85, 89, 94, 119, 127 and 132.

Fortunately, Additional Protocol I has two articles stipulating the protection of children. Article 77 deals with protection of children from indecent assault, provision of care and aid, refraining from recruiting children under 15, provision of separate quarters for child soldiers and no execution of the death penalty for those under 18. Article 78 deals with conditions at which children may be evacuated.

Finally, Additional Protocol II deals with the provision of care and aid ranging from education, family reunion, protection of under 15s from recruitment, and temporary removal from hostile zones to safety. Article 6 reiterates the protection of under 18s from the penal code.

## **F. Rome Statute of the International Criminal Court**

The *Rome Statute of the International Criminal Court* (1998) is the first international criminal court to try people for acts of genocide, crimes against humanity and war crimes, as shown in Article 5:

### *Article 5*

#### *Crimes within the jurisdiction of the Court*

*1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:*

- a. the crime of genocide;*
- b. crimes against humanity;*
- c. war crimes;*
- d. the crime of aggression.*

The Rome Statute's definition of a child soldier is similar to that of the Geneva Conventions. It states in Article 8 (2) (e) (vii) under "war crimes":

*(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;*

## **G. United Nations General Assembly**

On 20<sup>th</sup> December 1993, the UN General Assembly adopted Resolution 48/157 which requested the UN Secretary-General to appoint an independent expert to review and analyse the impact of conflict on children. Graça Machel was appointed as the Secretary-General's expert and produced a report entitled *The Impact of Armed Conflict on Children*<sup>4</sup>. The report was submitted to the GA in 1996 during the 51<sup>st</sup> session as A/51/306 Add1. As a result the GA adopted a Resolution on 12<sup>th</sup> December 1996 recommending that the Secretary-General appoint a Special Representative on children affected by armed conflict<sup>5</sup>.

In 2003 the UN General Assembly requested that the Secretary-General prepare a report on the coordination of the UN system's response to CAC<sup>6</sup>. The *Comprehensive Assessment of the UN System Response to Children Affected by Armed Conflict*<sup>7</sup> was presented on 18<sup>th</sup> October 2004 with recommendations on a mechanism for monitoring, reporting and responding to CAC issues within the UN.

Annually there is a GA agenda item on the *Promotion and the Protection on the Rights of the Child*. There are different reports prepared, for instance by the Committee on the Rights of the Child and more recently the Office of the Special Representative of the Secretary-General on Children Affected by Armed Conflict (SRSG-CAAC). Furthermore, there is a *Resolution on the Rights of the Child* that Member States are encouraged to implement.

## **H. United Nations Security Council Resolutions on CAC**

The mandate of the SRSG-CAAC outlined in GA Resolution A/Res/51/77 is as follows:

*36. Recommends that the Special Representative:*

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<sup>4</sup> A/51/306 and Add. 1

<sup>5</sup> A/Res/51/77 article 35

<sup>6</sup> A/RES/57/190 of 19 February 2003

*a. assess progress achieved, steps taken and difficulties encountered in strengthening the protection of children in situations of armed conflict;*

*b. raise awareness and promote the collection of information about the plight of children affected by armed conflict and encourage the development of networking;*

*c. work closely with the Committee on the Rights of the Child, relevant United Nations bodies, the specialized agencies and other competent bodies, as well as non-governmental organizations;*

*d. foster international cooperation to ensure respect for children's rights in these situations and contribute to the coordination of efforts by Governments, relevant United Nations bodies, notably the office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the specialized agencies and the Committee on the Rights of the Child, relevant special rapporteurs and working groups, as well as United Nations field operations, regional and sub-regional organizations, other competent bodies and non-governmental organizations;*

To date the UNSC has passed five Resolutions on CAC, namely: 1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003) and 1539 (2004). Annex 1 of this paper summarises the main issues covered by these resolutions, ranging from protection of schools and hospitals; prevention of gender-based violence; recruitment of child soldiers; killing and maiming children; abduction; and the proliferation of illegal small arms and light weapons. However, these resolutions have not led to concrete actions on the ground nor to compliance. Impunity of perpetrators is still rampant.

## **I. United Nations Commission on Human Rights**

For many years the CHR has annually adopted a resolution entitled "the Rights of the Child", containing a chapter on the "Protection of children affected by armed conflict" which echoes the language of the resolutions of the General Assembly, particularly calling upon states to end the recruitment of children and their use in armed conflicts contrary to international law. The CHR also focuses attention on the situation of abduction of children in Africa. Between 1998 and 2002, a resolution was adopted annually calling for an end to the abduction of children in northern Uganda, and in 2003, the resolution was changed to address abduction of children in Africa generally. Again, these resolutions have not necessarily led to action on the ground and compliance.

## J. African Charter on the Rights and Welfare of the Child

It is worth noting the language of the *African Charter on the Rights and Welfare of the Child*, as this is one of the few regional treaties that articulates a “straight-18” ban on involving children in hostilities.

### *Article 22: Armed Conflicts*

*1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.*

*2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.*

*3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife<sup>8</sup>.*

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<sup>8</sup> *African Charter on the Rights and Welfare of the Child*, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force 29<sup>th</sup> November 1999

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## Part 2

### Listening to children's experiences on the ground: Laws vs compliance

Children continue to suffer egregious war crimes, as illustrated in the following testimonies received from former child soldiers.

Box 1: Peter\*, demobilised child soldier in Burundi

*Peter was abducted by an armed group while he was walking along the road when he was 11 years old. Now he's 19 years old, so he spent 8 years with the armed group. While with the armed group he was given heavy ammunition and food to carry; he also cooked, cleaned guns, washed soldiers' clothes and collected firewood. Then one day the armed group told him that there were organisations demobilising children. First he was registered at the camp. Then the commander told Peter and other child soldiers to take their luggage to Karusi after one week. He received a package which contained a blanket, food, clothes and a bucket. The reintegration package was US\$20 a month for 18 months. However, this was in the form of gifts-in-kind, not monetary. After extensive tracing, the army had documentation that Peter's parents had died. So he chose to live with a mature friend/ guardian. Currently he is in grade 4. It is difficult for him to be 19 years old yet only in grade 4, but he wanted to take advantage of the opportunity for an education that UNICEF had offered.*

*As a child soldier he was mistreated in the camps. He was beaten, he did not sleep well at night, and he had to transport messages as early as 1 a.m.. Sometimes he slept without any blankets, in unsafe areas. They were usually put in groups of seven boys. There was nothing he appreciated about life in the camp. If any of the child soldiers*

From this narrative about Peter, it is evident that there was limited compliance on the ground in terms of the CRC and the OP-CRC-CAC. Being recruited at age 11 was in violation of Article 38 of the CRC and IHL. He was denied his right to an education (Articles 28 and 29 of the CRC) and play (Article 31), and he was exploited as a child labourer which was

an infringement of his rights (Article 32). Peter's rights to education, medical care, freedom of expression and generally his best interests were not taken into consideration. Abuse was rampant, such as beatings, solitary confinement and fighting.

Box 2: Four more demobilised child soldiers in Burundi

*Life as a child soldier involved transporting ammunition and bullets as well as carrying wounded soldiers, water and food. It was exhausting, and children had to march long distances. Many children died in the field. Some of the children were abducted or forcefully recruited from displaced people's (IDP) camps to join the armed group. Small arms and light weapons that children came in contact with included the B10, M60, 14.5, an assault rifle, Kalashnikov (referred to as a Kalash), rocket, grenade, and M15.*

*One commander informed the children that they were going to be demobilised. They stayed in Karusi for four days and everyone was transported to their own commune. When they returned home, some of the former child soldiers lived once again with their siblings. Many are trying to physically construct their own homes.*

*Fear was instilled in the children regarding HIV/AIDS infection. They were restricted from having sexual relationships at night. The commanders told them about the high cost of medicine. Currently the former child soldiers know that HIV/AIDS is dangerous. Demobilised child soldiers were screened for HIV/AIDS at the VCT clinics and health centres. However, the children were concerned that they were not given a full physical check-up for other diseases.*

The illegal proliferation of small arms and light weapons, and other forms of weaponry, has caused extensive harm to the lives of girls and boys in situations of armed conflict. Children are affected negatively by the pervasive use of such weapons, both in situation of conflict and violent crimes (e.g. gangs and armed robbery). There are a whole host of impacts on children which include:

- psycho-social trauma (Article 19 of the CRC?)
- illiteracy due to lack of education (Article 28 and 29)
- poor health e.g. malnutrition and HIV/AIDS infection (Article 24)
- sexual abuse (Article 34)
- drug and alcohol abuse (Article 33)
- unwanted pregnancy (Article 34)
- auditory and visual problems (Article 23)
- physical injury (Article 19)

- death (Article 6)

Box 3: John\*, rehabilitating child soldier in Gulu, Uganda

*John was abducted in August 1994. He spent one month in Uganda and the rest in Sudan. In Sudan he underwent military training and was given a gun. He was taken to attack Sudanese, but his group shifted to another area when the Government of Sudan discovered their location. As part of the mobile Lord's Resistance Army (LRA) he was involved in looting, raiding and abducting children. Kony was his leader. John was made a sergeant and he continued rising within the ranks. As a reward he was given three women as sex slaves or "wives". One died and two are still with the LRA, one being pregnant. In 2002 he moved from Sudan back to Uganda. Then in May 2004, while he was looting with the LRA there was a Uganda People's Defence Forces (UPDF) ambush and he was shot in the foot. He hid for one week and three days, after which time he crawled to the main road and was rescued by civilians who took him to the UPDF where he was transferred*

Article 11 of the CRC explicitly requires states to protect children from being trafficked from one country to another. In this case, John was trafficked from Northern Uganda to Sudan, an violation of Articles 11 and 35.

It is deplorable that children are coerced into being perpetrators of violence such as abduction, looting and raiding. Sadly, this leaves a stigma with community members. However, traditional reconciliation festivals as well as community-based rehabilitation and reintegration programmes go a long way in ensuring that the child is accepted back within their community and not ostracised.

Brain-washing is used by rebel groups and others who recruit children to give them incentives to rise within the ranks. In John's case he was given more sex slaves or "wives". Life with armed forces is dangerous for children and physical, emotional and mental injury is rampant.

Box 4: Sara\*, girl child soldier, now a 23-year-old mother

*Sara was abducted by the LRA in 1993. Many children in her situation died, due to the cold and attacks by the UPDF. She went to Sudan which was more peaceful, however, there was no food there and she had to rely on the Sudanese to give them food. When she was 11 years old she was given to a man to be his future wife. She underwent military training then she was given a gun. In the LRA they raided other centres, but were attacked by Sudanese soldiers. There was a time when she fed on wild leaves for survival. In 1995 Sara conceived with her "husband" so she spent her maternity leave at the camp for people with disabilities where her gun was taken. Now she has two children.*

*One day they were attacked by the UPDF, but she escaped and spent three days in the bush. Civilians took her to the barracks of the UPDF where she was treated well. Later on she was demobilised and transported to the World Vision Uganda Children of War Rehabilitation Centre. Her "husband" has since died. Sara needs assistance for her children. While she was in the LRA the reasons she was given for fighting*

Girls suffer from egregious crimes to the same extent as boys in situations of armed conflict. Sara was abducted, trafficked and used as a sex slave which breaches her rights to safety (Article 3.3), protection from trafficking (Articles 11 and 35) and protection from sexual exploitation (Article 34). Being recruited at 11 years old was in violation to Article 38. Girls like Sara are used as combatants.

It is crucial that all programmes designed for disarmament, demobilisation, reintegration and resettlement (DDRR) take into consideration the needs of girl child combatants. Furthermore, for girls who return with children born from sexual exploitation and rape by armed groups, their best interests and those of their children should be met. These girls may opt to "self-demobilise and reintegrate", however in doing so they forgo valuable counselling, psycho-social and trauma management that can provide them with personal coping mechanisms; and opportunities to gain or regain knowledge that could help them reintegrate into their society – such as basic literacy, vocational training, and traditional culture (festivities, dances, and so on).

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## Part 3

### Recommendations

#### K. Empowerment of national citizens

In post-conflict situations, international courts and tribunals have been set up to administer justice and strengthen the rule of law. Examples include the *ad hoc* tribunals of the International Criminal Tribunal for Yugoslavia (ICTY) set up in 1993<sup>9</sup>, and the International Criminal Tribunal for Rwanda (ICTR) established in 1994<sup>10</sup>. These have been criticised for being costly and slow. The Special Court for Sierra Leone, created in 2002, is a hybrid of both a UN body and national tribunal or court<sup>11</sup>.

In an ideal world, the place to start is the prevention of conflict. Furthermore, at the national level it is important to empower national citizens on their rights and responsibilities. Civil society organisations, government institutions, NGOs, UN agencies like UNICEF and international institutions could focus on raising awareness of the CRC, the OP-CRC-CAC, the *Geneva Conventions*, the *Rome Statute of the ICC* and other relevant international human rights and humanitarian laws. National citizens need to know the legal process and how children can be protected from recruitment, abuse or gender-based violence, and be provided with humanitarian assistance.

This awareness-raising may be through national campaigns, utilisation of the media, posters, booklets and IEC (information, education and communication) tools. Learning the different laws that protect child rights can be daunting, yet it is the role of a government to ensure that its citizens are empowered. Furthermore, NGOs and civil society organisations (CSOs) can keep governments accountable and transparent.

National citizens need to know that the judicial system will protect them, prosecute perpetrators and ensure a free and fair trial for those accused. The report by the UN Secretary-General on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*<sup>12</sup> clearly stated the importance of redress:

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<sup>9</sup> Mandated by the Security Council Resolution 827, S/RES/827 (1993)

<sup>10</sup> Mandated by the Security Council Resolution 955, S/RES/955 (1994)

<sup>11</sup> Harvey, Rachel, 2001, *Children and Armed Conflict, A Guide to International Humanitarian & Human Rights Law*, International Bureau for Children's Rights

<sup>12</sup> S/2004/616, UN Security Council, 23<sup>rd</sup> August 2004

*Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice. At the same time, the heightened vulnerability of minorities, women, children, prisoners and detainees, displaced persons, refugees and others, which is evident in all conflict and post-conflict situations, brings an element of urgency to the imperative of restoration of the rule of law.*

The views of children need to be taken into account, in accordance to the age and maturity of the boy or girl. For example, Radio Okapi is run by the United Nations Mission in the Democratic Republic of Congo (or *Mission des Nations Unies en République Démocratique du Congo*, MONUC). One of the aims is to ensure that children who have been recruited in Rwanda to fight in the DRC know their basic rights and are encouraged to undergo disarmament, demobilisation, repatriation, resettlement and reintegration (DDRRR). However, one suggestion from a child in Rwanda is to make Radio Okapi more interesting, have wider coverage and use languages that the children can understand. Furthermore, in June 2004 a Children's Summit was held in Rwanda and the children stated that the *Gacaca* (traditional judicial system) did not include the participation of children. Children mentioned that they saw what happened during the genocide of 1994 and knew that some of the adults were not telling the truth. The children wanted to be involved as protected witnesses. As a result, UNICEF was discussing child participation with the Ministry of Justice.

National citizens can also advocate for a change in judicial processes, policies and laws that affect children, ensuring that the right of the child is protected in conflict and post-conflict situations. Issues such as juvenile justice, amnesty and reconciliation should have input from local people. Psycho-social and physical rehabilitation of CAC would reflect the needs of the particular community and the country context.

The national citizens should play a major role in determining the best way forward: is it reconciliation? prosecution of those who violate children thereby overfilling ill-equipped jails? or a combination of both? Involvement of religious leaders and community elders will be important especially for cases where there is lack of central government, and legal structures are not operational.

## **L. National citizens' participation in decision-making and drafting resolutions**

Participation is an important component of empowerment. For example, in the drafting of the CRC, the OP-CRC-CAC, the Geneva Conventions and Additional Protocols and the *Rome Statute of the ICC*, to what extent did national citizens have the opportunity to share their opinions and be part of the decision-making process? This links to the old adage of ownership of the final child rights laws. Obviously, the process of participation enables national citizens to understand the issues that are being incorporated into these international and humanitarian laws. They will also be keen to follow up on the national implementation of these instruments. Participation should go beyond lawyers, judges and police forces, and also include representatives of children's, youth and women's organisations, national NGOs working in the child rights field, district commissioners and other government officials. Involvement in the drafting process would enable local citizens to share their personal experiences, understand the terminology, ask questions about national implementation, monitoring and reporting, and learn more about the UN system and its role in international monitoring and reporting. In this way, NGOs may influence national citizens to be part of the process of preparing alternative reports to the Committee on the Rights of the Child, in the case of the CRC and the OP-CRC-CAC.

The CRC is the most widely ratified international convention with 192 ratifications or accessions. However, there is a backlog of national reports and the Committee on the Rights of the Child recommended that the UNGA split into two parallel chambers which would work concurrently in order to increase from 27 to 48 the number of reports reviewed<sup>13</sup>.

## **M. Design, implementation, monitoring and evaluation (DIME)**

Collaboration between private-public partnerships, national and international governments, international and national NGOs, the judiciary and local citizens is key to ensure appropriate DIME of child rights laws which are enacted into national policies, laws and administrative structures. The first place to start is in designing a needs assessment for CAC within the country or region. Organisations required to deal with CAC prevention and response are those that can work on psycho-social, health, security and legal justice<sup>14</sup>. The use of traditional structures to

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<sup>13</sup> A/59/41 Report on the Committee on the Rights of the Child, UN General Assembly

<sup>14</sup> Vann, Beth, 2002, *Gender-Based Violence, Emerging Issues in Programs Serving Displaced Populations*, Reproductive Health For Refugees Consortium, Virginia, USA

monitor cases and advocate for changes and steps to be taken is essential. Some specific activities that are required include the following:

- defining and targeting the programme
- coordinating activities, which includes: community participation; maximising confidentiality, survivor respect and safety; a system for receiving and documenting CAC incident reports; referral mechanisms; information-sharing, problem-solving and coordination; and continuous monitoring and evaluation for prevention and response
- preventing armed conflict's effects on children through the identification of root causes and contributing factors, and a thorough assessment
- responding through: community education, outreach and identification of survivors, counselling, follow-up, care and treatment, collaboration and coordination with traditional leaders, training of police, non-discriminatory laws and adequate court systems.

The Report of the UN Secretary General on Children and armed Conflict<sup>15</sup> outlines an action plan to establish a monitoring, reporting and compliance mechanism. This is a step in the right direction, though it is still too early to determine its effectiveness. Safety of staff providing information and confidentiality are paramount. NGO networks like the Watchlist on Children and Armed Conflict and the Coalition to Stop the Use of Child Soldiers provide useful documentation, research and analysis on CAC.

## **N. Mobilisation of resources**

Financial, material and human resources are crucial to ensure that children are protected during situations of armed conflict but also receive support and are able to reintegrate into their communities. Again, the empowerment of citizens should incorporate strategies to ensure that citizens question how the national budget is allocated to assist children who have been affected by conflict. Furthermore, international donors, bilateral and multilateral organisations are crucial in providing adequate financial and human resources.

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<sup>15</sup> A/59/695-S/2005/72 Report of the Secretary General, Children & Armed Conflict, 9<sup>th</sup> February 2005

It must be emphasised that national lawyers, judges, legal aides, police, the Ministry of Justice and national justice sector officials involved in the judicial system should ensure that technical expertise is available within their country.

## O. Capacity-building

*Unfortunately, the international community has not always provided rule of law assistance that is appropriate to the country context. Too often, the emphasis has been on foreign experts, foreign models and foreign-conceived solutions to the detriment of durable improvements and sustainable capacity. Both national and international experts have a vital role to play, to be sure. But we have learned that effective and sustainable approaches begin with a thorough analysis of national needs and capacities, mobilizing to the extent possible expertise resident in the country. Increasingly, the United Nations is looking to nationally led strategies of assessment and consultation carried out with the active and meaningful participation of national stakeholders, including justice sector officials, civil society, professional associations, traditional leaders and key groups, such as women, minorities, displaced persons and refugees.<sup>16</sup>*

Girls and boys who have experienced, *inter alia*, injury, maiming, gender-based violence, recruitment, abduction, involvement in national armies or rebel groups, lack of access to humanitarian assistance or other atrocities should be referred to as survivors, not victims. Schools and hospitals, places where there is a large percentage of children, may have been targeted in the conflict. It should be noted that even children who did not take part in the hostilities are traumatised and need special attention. Psycho-social support systems are needed to address traumatised survivors. Personnel in CSOs, UN agencies, national legal associations, human rights groups and advocates need to be trained on how to work with child survivors, understand national and international child rights mechanisms and inform the children on their rights. In accordance with the *Rome Statute of the ICC*, special measures need to be taken to ensure the safety, physical and psychological needs, dignity and privacy of child survivors and witnesses during investigation and prosecution<sup>17</sup>.

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<sup>16</sup> S/2004/616 Paragraph 15

<sup>17</sup> Rules of Procedure & Evidence Adopted by the Preparatory Commission for the ICC, at its 23<sup>rd</sup> Meeting on 30 June 2000, Article 68(1)

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**Annex 1**  
**Summary of UN Security Council Resolutions on CAC**

updated April 2004  
 by Ruth Kahurananga

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
1. Note Worst Forms of Child Labour (ILO 182)	p <sup>18</sup>	p	+		
2. Comply with <i>Rome Statute of the International Criminal Court</i> (ICC) conscripting under 15 a war crime	p	p	+	p	p
3. Concern of impact of conflict on children and consequences	p	+ <sup>19</sup>	P/+		+
4. Condemn targeting of children: killing, maiming, sexual violence, abduction, forced displacement, recruitment, schools and hospitals	p	+			+
5. Comply with international law e.g. <i>Geneva Conventions</i> (1949) and <i>Additional Protocols</i> (1977), <i>CRC</i> (1989)	p	+	+	P/+	P e.g. <i>CRC</i>
6. Support SRSG-CAC, UNICEF and UNHCR, request SG to coordinate	+	+	+(HCHR)	+(UN in general)	+

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<sup>18</sup> P = preamble

<sup>19</sup> + = article in text

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
7. Support OP-CRC-CAC (2000)	+ (form.)	P/+ (ratify)	+ (ratify)	p	p
8. Peace negotiations consider rights of children	+	+	+	+	
9. Minimise harm suffered by children e.g. implement days of tranquility	+		+ (immu.)		
10. Urge concrete commitment to protect children	+	+ (to SRSG and UN)	+		P on the ground
11. Protect girls from rape, SGBV and consider special needs – heading households, orphaned, combatants	+	+	+	+ 6 Core Princip.	+ 6 Core Princip.
12. Access of humanitarian assistance to children	+	+	+	p	p
13. Safety of UN and associated personnel	+	+	+	p	p
14. End recruitment of children and find alternatives to participation in armed conflict	+	+	+	+	+
15. Combat flow of illegal small arms and light weapons (SALW)	+	+	+	+	+
16. Facilitate disarmament, demobilisation, rehabilitation and reintegration (DDRR)	+	+ (child part. and girls)	+ (counsel, edn, voctn.)	+	+

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
17. Provision, access and rehabilitation of medical and education services	+	+	+		+ edn.
18. UN Peacekeeping operations – training on child rights	+			+	
19. Request SG report to SC on implementation of this and previous resolutions by 31 <sup>st</sup> October ➤ 1460 progress made by parties on list; natural resources and small arms; effective monitoring and reporting; best practices DDRR, CPA and negotiations to end recruitment ➤ 2004 progress made by parties in situations of armed conflict on the SC agenda and not (recruitment and other violations); M and R implementation of action plan; best practices DDR	+	+	+	+	+
20. Reaffirm previous resolutions and statements of its President on CAC		p	p	p	p
21. Reiterate UN Charter and responsibility of SC in international peace and security		p	p	p	p
22. Comply with international law – international humanitarian, human rights and refugee law		p	p	P (implied)	P (respect)
23. Comply with the <i>Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction</i>		p	+		

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
24. Note regional initiatives e.g. Organisation for Security and Cooperation in Europe, the West African Conference on War-Affected Children Accra, Ghana (2000) and International Conference on War-Affected Children Winnipeg, Canada		p			
25. Consider report of SG on implementation of previous resolution		p	p	p	P
26. End impunity and prosecute those responsible for genocide, crimes against humanity and war crimes ➤ 2004 Resolution not seek legal determination situation referred to are armed conflict or not within <i>Geneva Conventions</i> and Additional Protocols		+	+ (no amnesty)	p	p
27. Protect refugees and IDPs especially women and children		+	+		
28. Concern over link between illicit trade in natural resources and armed conflict		+	+ (terror.)	+	+
29. Include child protection advisers (CPA) in peacekeeping operations		+	+	+	+ No. and roles
30. Assess consequences of sanctions on children (Article 41, <i>UN Charter</i> )		+	+	+? 6	

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
31. Welcome regional and sub-regional organisations and arrangements to protect children and should consider <ul style="list-style-type: none"> <li>➤ child protection units and include children in the design</li> <li>➤ child protection staff and train members of peace and field operations</li> <li>➤ curb cross border recruitment and abduction of children</li> <li>➤ allocate resources for CAC</li> <li>➤ integrate gender perspective</li> <li>➤ prohibit use of child soldiers</li> <li>➤ special attention to girls (2004)</li> </ul>		+	+		+ e.g. ECOWAS and EU
32. Release abducted children and family reunification		+			+
33. Strengthen national institutions and local civil society dealing with CAC		+	+		+
34. Involve young people in peace building		+			
35. Appropriate legal, political, diplomatic, financial and material measures according to the Charter of the UN			+		
36. Measures against corporate actors – illicit trade in natural resources and SALW			+	+	+ cross border
37. Protect children – International Decade for the Culture of Peace and Non-Violence for the Children of the World (2001–2010)					

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
38. Guidance of peacekeeping personnel on HIV/AIDS, international human rights, humanitarian and refugee law				+	+
39. Monitor and report situation of CAC ➤ 2004 Action plan with expertise from UN, govts, regional organisations, NGOs (advisory) and child soldiers re recruitment and other violations			+	+	+
40. Integrate HIV/AIDS awareness, prevention, care, testing and support into programmes			+	+ PKO, police, hum. staff	+
41. Promote a culture of peace e.g. peace education and conflict resolution			+		
42. Encourage IFIs to: ➤ Devote assistance to DDDR (2004 and special needs for girls) ➤ Contribute resources for quick impact projects in conflict zones ➤ Support regional organisations – financial and technical assistance			+		+ (also UN)
43. Request SG to attach list of parties that recruit or use children, in situations that are on the SC agenda			+	+	
44. Supports SG “an era of application” on protection of children				+	

ISSUE	1261 (1999)	1314 (2000)	1379 (2001)	1460 (2003)	1539 (2004)
45. Dialogue with parties to armed conflict to end recruitment and develop action plans				+	+
46. Call parties identified in list to show steps taken to halt recruitment, to SRSG-CAC ➤ (2004) Countries on SC agenda – time-bound action plans (31/7/04); SG review regularly; measures e.g. ban export or supply SALW and military assistance				+	+
47. Call parties in armed conflict to abide by commitments made to SRSG				+	+ UNICEF and UN
48. Request SG his country specific reports include CAC				+	+
49. Note advances made in advocacy, norms and standards, but concerned on lack of progress on the ground					p
50. Recognise important role of education in conflict situations					+
51. Concerned continued recruitment and other violations or situations not on SC agenda mentioned in SG's report					+

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**Annex 2**  
**List of acronyms**

CAC	Children and armed conflict
CHR	(United Nations) Commission on Human Rights
CRC	<i>Convention on the Rights of the Child</i>
DDRR	Disarmament, demobilisation, rehabilitation and reintegration
DDRRR	Disarmament, demobilisation, repatriation, resettlement and reintegration
ECOWAS	Economic Community of West African States
GA	(United Nations) General Assembly
HCHR	High Commissioner for Human Rights
ICC	International Criminal Court
IDP	internally displaced person
IFI	international financial institution
IHL	International Humanitarian Law
ILO	International Labour Organisation
OP	Optional Protocol
SALW	Small Arms and Light Weapons
SC	Security Council
SG	Secretary-General
SGBV	Sexual and gender-based violence
SRSG	Special Representative of the Secretary-General
UN	United Nations