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### **Promotion and protection of the rights of children: promotion and protection of the rights of children**

## **Report of the Special Representative of the Secretary- General for Children and Armed Conflict**

### *Summary*

The present report is submitted to the General Assembly pursuant to resolution 51/77 and subsequent resolutions on the rights of the child. It covers the period from August 2009 to August 2010. The report outlines critical child protection themes in the context of the changing nature of conflict and its impact on children. It describes an overall situation in which children continue to be the victims of grave violations in situations of conflict around the world, and a prevailing climate of impunity with respect to perpetrators.

Under the overarching frame of the changing nature of conflict, section I of the report highlights critical child protection themes and issues that require concerted attention and action. Section II focuses on addressing the impunity of perpetrators of grave violations against children, including through the judicious use of sanctions and other targeted measures, and stresses the imperative to undertake dialogue specifically for child protection purposes with all parties to a conflict. Section III identifies opportunities to strengthen child protection in United Nations peacemaking and peacekeeping engagements, an area that has seen significant gains in recent years in terms of more consistent and concerted focus on the protection of children.

2010 marks the tenth anniversary of the adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. In this regard, the report also highlights the two-year campaign launched by United Nations system partners for the universal ratification of the Protocol by 2012.

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\* A/65/150.



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## **I. Introduction**

1. The present report is submitted to the General Assembly pursuant to resolution 51/77 and subsequent resolutions on the rights of the child. It covers the period from August 2009 to August 2010. The report builds on the previous report of the Special Representative to the General Assembly (A/64/254) by outlining critical child protection themes in the context of the changing nature of conflict and its impact on children. It describes an overall situation in which children continue to be the victims of grave violations in situations of conflict around the world, and a prevailing climate of impunity with respect to perpetrators.

2. The Special Representative's emphasis on field missions continues to be crucial in advancing the cause of children. The main purpose of the visits is to bear witness on the ground to the situation of children and to gain concrete child protection commitments from parties to conflict and facilitate their preparation of action plans to address violations. The Special Representative considers it essential to engage with national Governments to ensure that the United Nations is able to support more effectively the efforts of national institutions in the protection, reintegration and rehabilitation of children. In the reporting period, the Special Representative undertook field visits to the Sudan (November 2009), Nepal (December 2009), Afghanistan (February 2010) and Uganda (May 2010). In addition, retired Major General Patrick Cammaert visited Sri Lanka in December 2009 as a Special Envoy of the Special Representative.

## **II. The changing nature of conflicts and emerging protection challenges**

3. The 1996 Graça Machel study on the impact of armed conflict on children (A/51/306 and Add.1) and the 2007 10-year review of that study (see A/62/228) noted that the changing nature of conflict put children at a higher risk than ever before. Children have become more vulnerable to new tactics of war, including the blurring of lines between military and civilian targets, constriction of humanitarian space and access to affected populations, deliberate targeting of traditional safe havens and critical infrastructures such as educational institutions and medical facilities, and the rise of terrorism as well as counter-terrorism measures. Studies have also shown that armed conflicts hamper the achievement of the eight Millennium Development Goals, six of which promote the rights and well-being of children. Conflicts create an environment in which grave violations are committed against children and, by interrupting or slowing development, children are denied opportunities for a better future. Therefore, the changing nature of conflict and the impact on children continues to be an overarching framework of analysis for the agenda on children and armed conflict.

### **A. Protection of children in the course of military operations**

4. Protecting vulnerable populations, and especially children, should be paramount during military operations. New tactics of war, the absence of clear battlefields and increasingly numerous and diverse parties to conflict in terms of their composition, motivations and character have complicated matters. Moreover,

the rise of terrorism where civilians are the main victims directly challenges the distinction between military and civilian targets, one of the fundamental principles of international humanitarian law. Counter-terrorism and counter-insurgency also blur the line between what is legitimate and what is not in addressing security threats. Raids against predominately civilian targets, including night raids, and the use of aerial bombardment in civilian-populated areas, make children more vulnerable to being killed or maimed and often serve to fuel resentment and conflict.

5. Rules of engagement of armed forces stipulate that the protection of civilians should remain the foremost consideration in the course of military operations. Increasingly, however, the record indicates that these strictures are inadequate to ensure the safety of children. Moreover, as noted by the Secretary-General in his most recent report on children and armed conflict (A/64/742-S/2010/181), there also seems to be a growing practice of putting children in the direct line of danger, through, for instance, their use for intelligence-gathering in military operations. This includes the interrogation of children separated from armed groups during military actions, in contravention of standards that require the immediate transfer of such children to protection actors.

6. In this regard, the development of standard operating procedures by armed forces is critical in order to put in place additional protection measures for children during military operations. Regional and United Nations peacekeeping missions should also prioritize such measures and procedures in the context of peacekeeping engagements or where international forces are supporting national forces in joint operations. These standard operating procedures may vary from one context to another, but a minimum set of measures should include:

- (a) Joint military-civilian assessment of the security risk for populations, and especially children, prior to any military action;
- (b) Refraining from engaging in combat and/or using heavy artillery in highly populated areas;
- (c) Protecting schools and hospitals as zones of peace;
- (d) Refraining from occupying or using schools and health facilities, or their vicinity, for purposes that could turn them into military targets;
- (e) Undertaking post-operation evaluations of the impact on civilians, including children;
- (f) Developing procedures for the reception, treatment and rapid handover to United Nations child protection actors of children separated from armed groups in the course of military operations.

7. Member States seem increasingly resolved to better protect vulnerable populations, including through more explicit civilian protection provisions in peacekeeping mandates. In United Nations peacekeeping, this has led to the development of new operational arrangements such as the Joint Protection Teams and Rapid Response and Early Warning Cell of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). The objective of these initiatives is to deepen information as the basis for more effective action; to better coordinate action across civilian, police and military components of peacekeeping operations; and to leverage peacekeeping resources more effectively, in particular the advantage of their physical presence in remote areas where the

access of humanitarian actors may be limited. The evolution of the “conditionality policy” in MONUSCO (ensuring that support to national forces will be provided only if they comply with the condition that they protect civilians) is another healthy practice in the development of peacekeeping norms.

## **B. Children in detention**

8. Detention of children for alleged association with armed groups or other threats to security remains a significant concern. This includes the use of administrative detention in several conflict scenarios. An unknown number of children have been captured, arrested and detained by security and law enforcement forces in contravention of international standards for juvenile justice.

9. Detention of children should be in line with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, which include specific protection with regard to the age of the child, access granted to child protection partners, appropriate legal counsel and provision of psychosocial support and activities. The treatment of children must be based on the objective of their future reintegration into society.

10. Child protection actors have regularly raised specific concerns related to conditions of detention, especially in overcrowded facilities, ill-treatment, including torture by adult detainees and corrections personnel, and acts of sexual violence perpetrated in detention facilities. The age of criminal responsibility is also a specific concern, particularly as it relates to children detained on security-related charges. Emphasis should be placed on alternatives to institutionalization of these children and on non-judicial and restorative processes.

11. Children being detained by multinational forces is also a concern that must be addressed by Member States. In such cases, access by child protection actors to all facilities, including high-security sites, is necessary for ensuring that procedures of detention and due process for children are in line with international standards. Beyond the responsibility and imperative to protect children, this represents a critical issue in respect of the credibility of international and multinational forces.

## **C. Education under attack**

12. A marked characteristic of the changing nature of conflict is deliberate attacks against and destruction of educational infrastructure, including the targeting of schoolchildren and teachers. This is illustrated by data which indicate that over one third of the 72 million out-of-school children of primary school age reside in low-income countries affected by conflict.

13. In response to this crisis of education in conflict and other emergency settings, Member States, United Nations entities and civil society organizations have undertaken a concerted campaign in the past several years, which resulted in the adoption by the General Assembly in July 2010 of resolution 64/290 on the right to education in emergency situations. The resolution affirms that attacks on educational buildings is a war crime and threatens the achievement of the Millennium Development Goals, including in the context of education for all.

14. Another positive development is the recent creation of the interdisciplinary Global Coalition for Protecting Education from Attack, comprising United Nations organizations, non-governmental organizations (NGOs) and researchers. The Coalition will focus on the prevention of attacks on education, effective response, enhanced monitoring and reporting, increased accountability and development of stronger international norms.

15. Beyond the destruction of educational facilities through deliberate targeting or as collateral damage during armed confrontation, attacks against education also present other faces. For instance, there are reports of the use of acid and gas on girl students on their way to or at school, as well as shootings and suicide bombings in school premises. In some contexts, schools are a prime recruiting ground of children by armed groups. Elsewhere, school buildings are used as training centres or as military bases, turning them into high-value military targets.

16. The motivations for attacking teachers, students and school buildings are numerous and cynical, including to achieve military, political or sociocultural objectives. In some cases, attacks are perpetrated as a means of creating a general climate of insecurity, to destabilize local communities or target them for retribution for perceived support of the Government, or to undermine the Government by destroying symbols of State institutions. The result is a growing disregard for the sanctity of schools, the notion that schools, above all other places, are safe havens for children. The consequence is a growing fear among children to attend school, among teachers to give classes, and among parents to send their children to school.

17. Attacks against schools and hospitals have been designated as one of six grave violations that are now systematically recorded under the Secretary-General's monitoring and reporting mechanism on grave violations against children in armed conflict. However, such attacks are still underreported and there remains a lack of knowledge concerning the context of attacks, the perpetrators and their specific motivations, and other factors that need to be understood in order to address the problem.

18. It is imperative that schools and other educational facilities be considered as zones of peace for children — safe havens even in contexts of conflict and instability. The concept of schools as zones of peace should extend also to school instruction and curricula, with emphasis on peace education and fostering cultures of tolerance. There are examples in numerous contexts of educational institutions being hotbeds for radicalization and recruitment of children, a trend that must be countered.

#### **D. Sexual violence**

19. Sexual violence against children, particularly in the context of armed conflict, continues to be of utmost concern. Such violations are exacerbated in conflict situations by the general security vacuum and the lack of administrative, law enforcement and judicial infrastructures, among other factors.

20. Sexual violence is often used to achieve military, political and social objectives through, for instance, the targeting of specific ethnicities or terrorizing populations to force displacement. Data indicate that children are particularly vulnerable to sexual violence in and around refugee and internally displaced

population settings, and when they are directly associated with armed forces and groups. Child survivors of sexual violence suffer both physical and psychological consequences, which are often debilitating. This is particularly true for girls who have been raped or forced to “marry” combatants, as well as for their children born of rape.

21. Girls remain the main victims of sexual violence in armed conflict. However, there are increasing reports of sexual abuse committed against boys. This phenomenon is still not adequately understood, and is yet to be comprehensively addressed in advocacy, monitoring, reporting and response. Knowledge about sexual violence against boys continues to be thin, in part because boys are more reluctant to speak out about sexual violence and there is inherently a bias against questioning boys about such abuse.

22. Another aspect that tends to be underestimated is the trauma boys face as perpetrators or witnesses of sexual violence. They may be forced to commit rapes either directly by their commander or indirectly through peer pressure. Many may be forced to witness sexual violence perpetrated by others. It should be noted that through the jurisprudence of the International Tribunal for the Former Yugoslavia (1998, Furundzija case), forcing an individual to witness acts of rapes and other sexual violence is considered as sexual torture under international law.

23. The previous reports of the Special Representative to the General Assembly emphasized the challenges of collecting data and reporting on sexual violence against children in armed conflict. Part of the problem lies in the fact that these acts are considered in many contexts as strong taboos, and as such survivors and communities are not encouraged to speak out. The lack of trust in judicial process and the fear of reprisals accentuate the culture of silence. Yet, more precise and comprehensive information, including details of incidents and the identity of perpetrators is a prerequisite to combating impunity and for more effective response programming. Monitoring, reporting and response to sexual violence requires both new perspectives and new methodologies, as well as more extensive partnerships across the United Nations system and beyond. For example, in the context of United Nations peacekeeping, collaboration between civilian components and United Nations military and police components may entail the matching of information on sexual violence with intelligence gathered on movements of armed parties, as a contribution to the identification of perpetrators, particularly in remote areas where humanitarian presence is thin. At the same time, more precise incident-related information must be complemented by macro-level information as it relates to the scope and trends of sexual violence. More timely and effective programming and dedication of sufficient resources depends on the deepening of all aspects of the information base on sexual violence.

24. In this regard, Security Council resolutions 1882 (2009) and 1888 (2009) challenge United Nations actors to put in place more rigorous monitoring and reporting mechanisms on sexual violence. Resolution 1882 (2009) advances monitoring practice by requiring the Secretary-General to list in his annual report on children and armed conflict parties who commit patterns of rape and other grave acts of sexual violence against children in contravention of international law. The Office of the Special Representative is in the process of developing templates, with the assistance of an international legal expert and former prosecutor of gender cases in the International Tribunal for the Former Yugoslavia and the International

Criminal Tribunal for Rwanda, for action plans to ensure that parties that are listed will enter into agreements with the United Nations to prevent such violations, hold individuals accountable and take action to provide support to the victims.

25. Security Council resolution 1888 (2009) also breaks new ground through its establishment of a focused mandate of the Council dedicated to sexual violence in conflict. These developments have brought a new momentum to address this critical issue, and also represent new challenges in terms of coordinated action among a broad array of United Nations and civil society partners. Beyond the specific focus of the Council on addressing impunity of perpetrators of sexual violence, at the level of the General Assembly the new United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) has been established, with a broad mandate to coordinate the global efforts of the United Nations on gender-related issues as a whole.

26. Although these developments at the level of the General Assembly and Security Council represent critical and complementary advances, it is clear that action at the national level related to the prevention of and response to sexual violence is ultimately of paramount importance. Emphasis must be placed on the development and implementation of comprehensive national strategies to combat sexual violence, particularly in conflict situations and where children are more vulnerable. In this connection, United Nations organizations stand ready to provide technical support to national authorities in developing such strategies, and donors are encouraged to ensure that adequate resources are available for these efforts.

27. Sexual abuse and exploitation by peacekeeping personnel and humanitarian workers remains a challenge and represents a crisis of credibility for the international community as a whole. Since the General Assembly requested the Secretary-General to report on such incidents, there has been an increase in the cases that have been reported, especially in the context of abuses in internally displaced person and refugee settings. The creation in 2002 of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises represents a step forward in enhancing protection measures. However, even greater commitment is required in implementation of accountability mechanisms and delivery of assistance to survivors. This is a collective responsibility of United Nations entities, regional organizations in the context of their peacekeeping engagements, NGOs and individual Member States in their capacity as troop-contributing countries.

## **E. Internally displaced children affected by armed conflict**

28. In the previous report of the Special Representative to the General Assembly, concerns related to internally displaced children were highlighted and the report included an annex specifying the rights and guarantees for this vulnerable group (A/64/254, annex I). The Assembly acknowledged the guarantees in its resolution 64/162 on the protection of and assistance to internally displaced persons. These rights and guarantees include the principle of non-discrimination, the right to documentation, protection from violence and abuse, the right to essential services, and the requirement that when dealing with internally displaced children the best interest of the child must prevail.

29. A number of regional legal instruments also affirm the rights of internally displaced children, most notably the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), which was adopted in October 2009. It includes specific provisions reaffirming the right of internally displaced persons to personal documentation, education, protection against recruitment and use in hostilities, kidnapping, abduction, sexual slavery and trafficking, and protection that addresses the special needs of separated and unaccompanied minors, as well as of mothers with young children. The African Charter on the Rights and Welfare of the Child emphasizes the responsibility of States to ensure that internally displaced children receive appropriate protection and humanitarian assistance and pays special attention to the importance of reuniting families separated by displacement. Furthermore, the Council of Europe has adopted a number of recommendations concerning internal displacement, including the right of internally displaced children to education.

30. The Office of the Special Representative continues to focus on this issue as a mandate priority, and in this regard is preparing a working paper stressing the particular vulnerabilities of displaced children and the responsibilities of Governments and other stakeholders in providing them with adequate and timely protection and services.

## **F. Rethinking reintegration**

31. The changing nature of conflict also carries implications and new challenges for the reintegration and rehabilitation of children. The United Nations system has invested significant resources in forging common standards and practice around disarmament, demobilization and reintegration of children. This has contributed significantly to system-wide buy-in and coordination for this critical priority. A tension exists, however, between the need for standardized practice and programmes and the fact that children face very different realities depending on the context. For instance, in settings of protracted conflict, children may be associated with armed forces and groups for many years. Others are abducted across borders, which has raised new challenges for regional coordination among many entities for family tracing, repatriation and reunification. In some contexts, children are increasingly used in terrorist activities and in counter-terrorism actions. It is also clear that the mode and rhythm for funding child disarmament, demobilization and reintegration programmes is increasingly under pressure where structured dialogue with parties to conflict and implementation of action plans to release children have yielded unanticipated caseloads.

32. Such considerations beg the question of whether current disarmament, demobilization and reintegration approaches and programmes are adequate and reflective of the variety of contexts in which children are being recruited and used or the range of their experiences. Another question is whether reintegration programmes are flexible or adaptable enough to address an increasingly broad range of scenarios for children in conflict situations.

33. Such an examination of the premises for child disarmament, demobilization and reintegration could be undertaken in the context of the Paris Principles and Guidelines on Children associated with Armed Forces or Armed Groups, which provide guidance on the basis of lessons learned over the past 10 years. The Paris

Principles also call, as appropriate, for thorough needs assessments and review and reformulation of reintegration programmes through broad consultation of all relevant stakeholders.

### **III. Combating impunity for violations against children**

#### **A. Sanctions and other direct measures for grave child rights violations**

34. Those who continue to commit grave child rights violations do so in part because they see that there are few, if any, personal consequences for abusing children. This perception, which is reinforced by the continued lack of direct action against perpetrators, must be redressed. Essentially, the cost of committing grave violations against children must be made prohibitive in terms of the personal consequences for perpetrators.

35. First and foremost, this requires commitment to action at the national level, through local legal and judicial infrastructure and on the basis of national legislation. In addition, such action should extend equally to Government functionaries or high-ranking members of armed forces where evidence of violations exists.

36. Beyond the national level, a central rationale and strategy for the engagement of the Security Council on the issue of children and armed conflict has been to hold perpetrators accountable under international law. The unique means of the Council to impose sanctions and other direct and targeted measures raises the stakes for perpetrators. Thus far, the Council has expressed its readiness to consider targeted measures against perpetrators of grave violations through its resolutions on children and armed conflict, including 1539 (2004), 1612 (2005) and 1882 (2009). Council resolution 1882 (2009) also establishes a linkage between the Security Council's children and armed conflict agenda and its sanctions committees.

37. The Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo has taken the unprecedented step of requesting further information on grave violations against children, and for the first time invited the Special Representative of the Secretary-General for Children and Armed Conflict to brief the Committee in May 2010. As a result, it is anticipated that several names of individuals may be included on the Committee's list of individuals and entities against whom targeted measures will be imposed on the basis of verified information regarding their recruitment and use of children. To date, such close consideration of violations against children has not extended to the work of the other country-specific sanctions committees, but it will be important to build on the precedent set in the context of the Democratic Republic of the Congo in this regard. Possibilities should also be explored for a similar focus on grave child rights violations by other thematic committees, including the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism. It is also important to consider ways by which sanctions may be imposed in contexts where there are no existing Security Council sanctions committees.

38. These explicit expressions of commitment by the Security Council to take measures against perpetrators represent a credible threat of action that has been the basis for negotiation with many parties to conflict for commitments and action plans to address the grave violations for which they have been cited. The lack of action against some of the most persistent and egregious violators over the years is increasingly conspicuous, however, and reflects on the overall credibility of the United Nations agenda for children and armed conflict and on Member States and the Council itself.

39. Even as it is understood that sanctions are a measure of last resort, it is evident that the viability of the children and armed conflict agenda in which Member States have invested so much over the past years depends on the imposition of such measures against those who continue to flout international law and standards for the protection of children.

40. It should be noted that the focus of international criminal justice and mixed tribunals specifically on crimes against children has also raised the stakes in the fight against impunity. The Special Court for Sierra Leone paved the way for sanctioning individuals for child-specific violations by including such crimes in the indictments of all the individuals charged by the Court. This includes former President of Liberia Charles Taylor on counts of recruitment and use of children. In addition, despite the challenges in the trial of Thomas Lubanga Dyilo by the International Criminal Court for recruiting and using children, that case has symbolized the will of the international community to act for children and as such has sent a powerful message to perpetrators. As this is the first case before the International Criminal Court on the issue of children and armed conflict, and having filed an *amicus curiae*, the Special Representative gave testimony before the Court on the need to adopt a case-by-case method in deciding on what constitutes enlistment and conscription in terms of the statute. The Special Representative urged an interpretation that would not exclude girl children, who play multiple roles in many groups, not only as combatants but as wives and domestic aides.

## **B. Dialogue with parties to conflict**

41. It is the long-held position of the Special Representative of the Secretary-General for Children in Armed Conflict and United Nations child protection partners that the international community must seek to engage all parties to conflict in dialogue for the purpose of eliciting concrete child protection commitments and to ensure that parties prepare and implement action plans to both prevent and address grave violations for which they have been cited. Such dialogue does not prejudge the legal status of non-state parties, nor does it confer legitimacy. The primacy and imperative to protect children must override political considerations.

42. It should be noted that this is consistent with General Assembly resolution 64/146 on the rights of the child, which urges State and non-state actors to end grave violations against children by taking time-bound and concrete protection measures. This presupposes a possibility of dialogue between parties to conflict and protection actors to establish the modalities and verification of such measures.

43. The element of dialogue with parties to conflict for the preparation of time-bound action plans to address grave child rights violations represents one of the centrepieces of the United Nations agenda for children and armed conflict. In the

past several years, numerous parties to conflict in places such as Côte d'Ivoire, Nepal, the Philippines, Sri Lanka, the Sudan, Uganda and elsewhere, have begun to implement action plans that put in place measures to prevent child recruitment and to identify and release children already associated with their forces. As such practical action to address the issue of children associated with armed forces and groups has gained traction, credibility and momentum, the process is now under way to structure similar dialogue and action plans to address other violations, such as the killing and maiming of children and rape and other forms of sexual violence. For the children, this is where the promises of protection of the international community as expressed in international law and resolutions finally become tangible. As the primary duty bearers for the protection of children, Member States are encouraged to devise ways to enable child protection dialogue with State and non-state parties as necessary.

### **C. Children and transitional justice**

44. In his report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), the Secretary-General defines transitional justice as the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof. Given the deep impact of conflict on children, child protection actors have advocated for a comprehensive view of the involvement and participation of children in all aspects of transitional justice. To attempt transitional justice processes without involving children not only fails to comply with the Convention on the Rights of the Child — the most universally ratified international instrument — it also compromises the outcome of those processes.

45. The imperative of child participation in transitional justice has gained both credence and clarity in past years. The importance and potential of transitional justice for children is evident. At the same time, it is more widely recognized that their views and experience provide unique and critical contributions to these processes and to national reconciliation.

46. In 2002, the indictment for grave violations against children of all the individuals charged by the Special Court for Sierra Leone, as well as the involvement of children in that country's Truth and Reconciliation Commission, signified a shift that placed the issue of child participation centrally in the international discourse on justice and truth-seeking mechanisms. Since then there has been significant investment to create guidance and common perspectives on the basis of lessons learned and of best practices from Sierra Leone and elsewhere.

47. In this regard, the Innocenti Research Centre of the United Nations Children's Fund (UNICEF) and the Human Rights Program of Harvard Law School convened a meeting of experts and practitioners in April 2009 to consult on new and emerging issues in the area of child rights and transitional justice. This forum led to the publication in March 2010 of *Children and Transitional Justice: Truth-Telling,*

*Accountability and Reconciliation.* Critically, the publication outlines in an annex the key principles for children and transitional justice.

48. The key principles consist of overarching considerations for children in transitional justice processes as a whole, as well as specific precepts as related to judicial mechanisms, truth commissions and truth-seeking mechanisms, local, traditional and restorative justice processes, reparations for children and institutional reform.

49. The emphasis on institutional reform introduces a number of new issues such as the importance of working with educational experts and officials, the need to undertake legal reform and the urgency of creating economic opportunities for children and young people.

50. The key principles also address the issue of the appropriate form of accountability for alleged child perpetrators, and alternatives to judicial proceedings for children. They highlight the issue that children may simultaneously be victims, witnesses and alleged perpetrators of violations, but stress that they must be viewed primarily as victims in all circumstances.

51. The overarching considerations for the involvement of children in transitional justice processes are set out in the annex to the present report.

#### **IV. Strengthening the child protection role of United Nations peacekeeping and political missions**

##### **A. Mainstreaming child protection in United Nations peacekeeping and political missions**

52. In June 2009, the Department of Peacekeeping Operations and the Department of Field Support adopted a policy directive on mainstreaming the protection, rights and well-being of children affected by armed conflict. This groundbreaking policy reinforces the crucial role of peacekeeping missions in the protection of children. The directive is built around the key operational elements of the Security Council resolutions on children and armed conflict, in particular resolutions 1612 (2005) and 1882 (2009). The directive therefore specifies the role of peacekeeping operations in key areas such as monitoring and reporting of grave violations against children, the conduct of dialogue with parties to the conflict for the preparation of time-bound action plans to address grave violations for which they have been cited by the Secretary-General, as well as other responsibilities, such as the provision of regular and comprehensive training for civilian, police and military personnel of peacekeeping operations.

53. It is evident that in its early implementation stages the directive has achieved more purposive and coherent mainstreaming of the children and armed conflict agenda in United Nations peacekeeping operations, and as such has enabled the Department of Peacekeeping Operations to more effectively implement relevant Security Council resolutions. The directive is also contributing to more coordinated action by United Nations partners, as it clearly articulates the responsibilities of the Department of Peacekeeping Operations vis-à-vis child protection actors such as UNICEF, ensuring a clear division of labour and complementarity of action.

54. The Security Council does not make a distinction between United Nations peacekeeping missions and special political missions in terms of its expectations for the implementation of resolutions on children and armed conflict. That is to say, the priority that the Council has placed on monitoring and reporting, dialogue with parties to conflict, or inclusion of child protection provisions in peace processes and agreements, applies equally to United Nations peacekeeping operations and to special political missions.

55. Therefore, in May 2010, in an effort to bring consistency across all United Nations missions, the Department of Political Affairs transmitted the child protection directive prepared by the Department of Peacekeeping Operations and the Department of Field Support to all relevant special political missions. This is seen as an interim measure, pending the Department of Political Affairs internal review of the implications for special political missions of Security Council resolutions on children and armed conflict and the institution of a Department of Political Affairs policy. In this regard, it should be noted that the directive is scheduled to be reviewed in June 2011 and it is anticipated that this will present an opportunity for its formal reissuance as a joint policy on child protection of all three Departments. This will be critical to ensure consistent and coherent practice across United Nations peacekeeping and special political missions in the implementation of relevant resolutions.

56. It is also evident that the effective implementation of the directive and consistent follow up of key operational elements of the Security Council resolutions depends on the deployment of the requisite child protection expertise. In recognition of this, the Council has now called for the deployment of child protection advisers to all relevant peacekeeping and political missions. In addition, it should be noted that the General Assembly has also welcomed the deployment and role of child protection advisers, including through Assembly resolution 62/141 on the rights of the child, and through its Special Committee on Peacekeeping Operations (see A/64/19).

57. To date, child protection advisers have been appointed in nine peacekeeping missions and efforts are under way to ensure that special political missions also deploy child protection advisers as required. Child protection advisers have ensured that reports of the Secretary-General on peacekeeping operations and specific country reports on children and armed conflict have more consistently included reliable and timely information and analysis on children and armed conflict and feedback to Member States on implementation of resolutions.

58. Child protection advisers have also ensured that mission senior management is increasingly engaged on child protection at the highest level. More needs to be done, however, to ensure that the protection of children is understood as an explicit responsibility of the heads of United Nations country presence. In this regard, key child protection responsibilities such as monitoring and reporting violations, dialogue with parties to conflict towards preparation of child protection action plans, and systematic inclusion of child protection provisions in agreements during peace processes should consistently be reflected as overall mission success criteria and performance benchmarks for which special representatives for the Secretary-General and resident coordinators are directly accountable.

59. It is notable that most mandates for United Nations peacekeeping and political missions now include reference to child protection as a mandate priority. This

expression of commitment to protect children in the crafting of mandates has not yet, however, consistently translated into budgeting processes and mission staffing. The role of the General Assembly is critical in this regard, particularly in the context of the work of the Fifth Committee, the Advisory Committee on Administrative and Budgetary Questions and the Special Committee on Peacekeeping Operations.

## **B. Child protection and transition to peacebuilding**

60. Another priority and challenge is to ensure that a level of child protection expertise is maintained as peacekeeping operations are drawn down and restructured in transition to peacebuilding configurations. During that phase, it remains critical that the representatives of the Secretary-General retain adequate advisory capacity on child protection within their offices. In particular, child protection advisers will be responsible for ensuring ongoing monitoring and verification of child protection action plans with parties to conflict, as well as maintenance of the cycle of reporting to Member States on implementation of children and armed conflict resolutions and the recommendations of the Security Council Working Group on Children and Armed Conflict, which often remain relevant and in effect through the transition to post-conflict peace consolidation and peacebuilding.

61. Member States are urged to ensure that child protection concerns, including support for reintegration efforts and youth employment, are also explicitly reflected in relevant peacebuilding mandates and in the work of the Peacebuilding Commission through its country configurations.

## **C. Child protection in mediation, peace processes and agreements**

62. Experience has shown that long-term sustainability of peace also depends on addressing specific needs of children in peace mediation processes and resultant agreements. Not to do so carries the risk of children ultimately becoming “spoilers” into the future.

63. One of the key challenges is to overturn the inclination, including of many mediators, that broader political considerations and dynamics may be adversely affected or compromised by child protection issues surfacing at negotiating tables. There is often a reticence to consider the protection of children as a “high line” priority on an equal footing with considerations of achieving or maintaining ceasefires, for instance. Yet, such issues as the immediate cessation of grave violations against children and the unconditional release of all children associated with fighting forces should be seen as fundamental to any ceasefire agreement. Continued violations such as child recruitment, or unwillingness to identify and release children already in fighting forces, must be formally stipulated as violations of ceasefire agreements by parties to a conflict.

64. Other specific issues that should be reflected as integral provisions of peace agreements themselves may include terms for child disarmament, demobilization and reintegration, care of internally displaced children, participation of children in transitional justice frameworks, and specific attention and resources for children in recovery and reconstruction phases.

65. In negotiation terms, the universal moral consensus on the protection of children should be viewed as a comparative advantage, a common point of agreement around which parties can be brought to the negotiating table, and a goodwill prerequisite for broader negotiations. It is imperative that children are not made to wait until peace is settled. Parties should be required to make child protection commitments at all stages of peace processes, whether a ceasefire or peace agreement is close or not.

66. It is therefore a matter of practical consideration that the United Nations, as well as regional mediation infrastructures and initiatives, are committed to incorporating child protection perspectives and expertise. Child protection elements should be routinely included in guidance materials for mediators, in mediation training programmes and in development of mediation tools. This includes establishment of modalities for child protection actors to regularly collaborate with mediation support focal points and to brief the mediators themselves.

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

67. The 2007 review of the Machel study stated that international standards and their enforcement were the strongest defence against impunity of child rights violations in armed conflict, yet these would only be effective if and when they were widely known, understood and implemented by everyone. In that spirit and on the occasion of the tenth anniversary of the adoption of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (25 May 2000), the Office of the Special Representative, in partnership with the Special Representative of the Secretary-General on Violence against Children, UNICEF and the Office of the United Nations High Commissioner for Human Rights, launched a two-year campaign promoting the universal ratification of the Optional Protocol by 2012.

68. To date, 132 Member States have ratified the Optional Protocol, 24 have signed but not ratified it and 36 have neither signed nor ratified it. Universal ratification is essential for establishing a universal consensus and strengthening customary law with respect to the issues covered by the Protocol.

69. Activities around the campaign to achieve universal ratification of the Optional Protocol include bilateral meetings with Member States that have not signed or ratified the Protocol, advocacy initiatives in multilateral meetings, technical assistance for translating provisions of the Protocol into national legislation and awareness-raising events. The Office of the Special Representative also encourages specific Governments to take the lead at regional and global levels to help ensure universal ratification by 2012.

#### **V. Recommendations**

70. **Recalling the recommendations of the 10-year strategic review of the Machel study, as presented to the General Assembly in the Report of the Special Representative (A/62/228), Member States, United Nations agencies,**

**funds and programmes and NGOs are urged to continue to reinforce efforts to ensure timely implementation of the range of protection and programmatic measures outlined in the recommendation.**

**71. Member States which have not already done so are encouraged to sign and/or ratify the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict, to secure universal ratification of the Protocol by 2012. To facilitate the process, Member States with the capacity to do so are encouraged to take the lead at the regional level to advocate for ratification in the context of the regional organizations of which they are members.**

**72. In light of continued grave violations against children in situations of armed conflict, Member States are strongly urged to prioritize the investigation and prosecution of perpetrators through national judicial processes, including high-ranking officials and members of the armed forces as necessary. Furthermore, at the international level Member States are encouraged to take action against persistent perpetrators through the imposition of sanctions and other targeted measures.**

**73. To address the scourge of sexual violence in conflict, Member States are strongly encouraged to prepare and implement, with the support of the United Nations, comprehensive national strategies on sexual violence that address accountability of perpetrators and programmatic response and services for survivors. Donors are urged to ensure that adequate funding is allocated to such initiatives.**

**74. Given the primacy of protecting children, Member States are urged to facilitate as necessary dialogue with all parties to a conflict for the exclusive purpose of eliciting concrete child protection commitments and action plans to address grave violations. Such dialogue is not intended to prejudge the legal status of non-state parties, nor does it confer legitimacy upon them.**

**75. In view of the disturbing trend of civilian casualties, especially children, during the course of military operations, Member States are urged to ensure that national and multinational forces adopt standard operating procedures to mitigate the direct targeting or collateral death and injury of children. Regional and United Nations peacekeeping missions are also urged to support the development of such procedures. If support is given to national forces by international peacekeeping operations it must be on the condition that those forces have procedures in place for the protection of civilians.**

**76. In the context of the global campaign for education in emergencies and in light of trends related to attacks in conflict situations against educational facilities, teachers and students, Member States, United Nations entities and civil society organizations are encouraged to take all measures necessary to promote and enforce the concept of schools as zones of peace. This should extend to the development of curricula with an emphasis on peace education and fostering cultures of tolerance.**

**77. Member States are urged to continue to include child protection as a priority in the mandates of United Nations peacekeeping operations and political missions, and furthermore to ensure that key child protection**

responsibilities are specified as overall mission success criteria and performance benchmarks for which heads of mission are directly accountable.

78. The Department of Peacekeeping Operations-Department of Field Support child protection policy directive is critical to ensuring that United Nations peacekeeping operations effectively implement child protection resolutions and other recommendations of Member States and its implementation should be further reinforced. The Department of Field Support is also encouraged to co-sign the directive to ensure consistent guidance to all United Nations peacekeeping operations and relevant special political missions.

79. The General Assembly, particularly in the context of the work of the Fifth Committee, the Advisory Committee on Administrative and Budgetary Questions and the Special Committee on Peacekeeping Operations, should continue to support adequate budgetary provision for the deployment of child protection advisors to United Nations peacekeeping and political missions to ensure effective implementation of resolutions and mandates on child protection.

80. Member States are urged to ensure that child protection aspects are also explicitly reflected in relevant peacebuilding mandates and in the work of the Peacebuilding Commission through its country configurations, and that adequate provision is made for child protection expertise in peacebuilding missions.

81. Taking into account the changing nature of conflict and consequently the diverse experience and circumstances of children associated with armed forces and groups, key stakeholders, including UNICEF, other United Nations actors and child protection NGOs are encouraged to continue to review existing conceptual frameworks and programmes for child rehabilitation and reintegration with a view to rendering such interventions more timely, effective and sustainable.

82. Member States, bearing the primary duty and responsibility for addressing internal displacement, should abide by their obligations under international law and adhere to the Guiding Principles on Internal Displacement. This includes as provided for in the rights and guarantees for internally displaced children, safeguarding populations on their territory from arbitrary displacement; provision of protection and assistance to those who have been displaced; and supporting and facilitating voluntary, safe and dignified solutions to displacement, particularly as regards children.

83. Member States and relevant United Nations entities are urged to ensure that United Nations-led and regional mediation processes prioritize the protection of children at all stages of peace processes and that ceasefire and peace agreements include specific child protection provisions. Child protection elements should be routinely included in guidance materials for mediators, in mediation training programmes and in development of mediation tools, and modalities should be established for regular briefings and exchange between child protection actors and mediators and mediation support focal points.

84. In view of continued concerns regarding the detention of children, Member States are urged to ensure that such measures are in line with the United Nations Standard Minimum Rules for the Administration of Juvenile

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**Justice, and emphasis should be placed on alternatives to institutionalization of children and on non-judicial and restorative processes. Child protection actors should also have access to any children detained by multinational forces.**

**85. The Special Representative brings to the attention of Member States the key principles for child protection and participation in transitional justice and the overarching considerations in this regard as outlined in the annex to the present report, and encourages all relevant stakeholders to endorse and implement those principles. The Special Representative supports the call for the development of common minimum standards on children and transitional justice.**

## Annex

### **Principles for child protection and participation in transitional justice<sup>a</sup>**

1. The best interests of the child should guide transitional justice processes.
2. Children must be treated with dignity and respect.
3. Transitional justice mechanisms, including in the design and implementation of policies and child-friendly procedures, should ensure the protection of children against violence and promote their physical and psychological well-being.
4. Protection of the identity of the child and the child's privacy must be guaranteed at all times.
5. Children have the right to participate in decisions affecting their lives. The participation of children should be voluntary, with the informed consent of the child and a parent or guardian. The decision not to participate can also be a form of participation.
6. Policies and procedures to protect the rights of children involved in transitional justice processes should include a specific focus on adolescents and should be consistent with the evolving capacities of the child.
7. A gender-sensitive approach to participation in transitional justice processes should include a focus on the protection of the rights of girls and should address their specific needs and experiences.
8. Participation should be non-discriminatory and should include, as appropriate, diverse ethnic, racial, religious and other groups, and take into consideration the specific needs of children with disabilities.
9. Transitional justice processes should facilitate the realization of children's civil, political, economic, social and cultural rights. A human rights-based approach to transitional justice processes should be holistic and sustainable, addressing the root causes of armed conflict and political violence and strengthening the protective environment for children in their families and communities.

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<sup>a</sup> Prepared under the auspices of the United Nations Children's Fund and Harvard Law School, March 2010 (see *Children and Transitional Justice: Truth-Telling, Accountability and Reconciliation*).