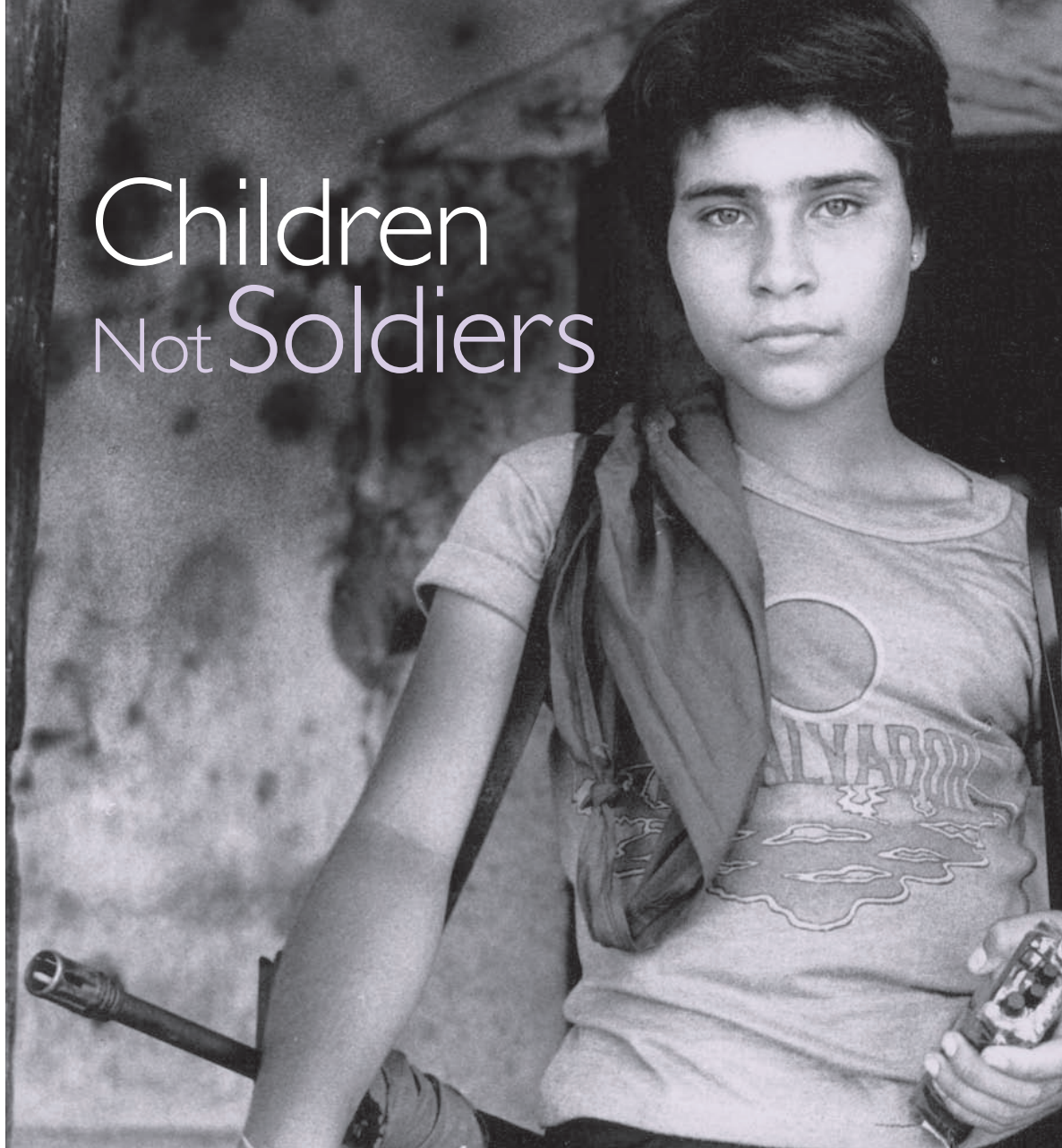


Children Not Soldiers



Guidelines for working with child soldiers and children associated with fighting forces

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PART ONE:

A framework for action

1

The responsibilities of states, the international community and non-state armed actors

Words on paper do not protect the rights and security of children. Concrete actions in specific situations are urgently needed.¹

SUMMARY

States, non-state armed actors and the international community all have a responsibility to stop the recruitment and use of children in fighting forces.

This chapter urges states and parties to the conflict to fulfil their obligations under international humanitarian and human rights law, and highlights the need for better monitoring and reporting of violations. It argues that those responsible for violating children's rights should be held to account and that the UN Security Council should always include the protection of children in its deliberations.

Furthermore, efforts to secure children's release should be made at every opportunity, with children given priority in the demobilisation process. The international community should co-operate with agencies in persuading non-state armed actors to stop recruiting children, and should also demonstrate a clear commitment to children in armed conflict by providing adequate resources for disarmament, demobilisation and reintegration (DDR). Peacekeepers, members of armed forces and police should also be trained in the protection of children.

International and national agencies become involved in the protection of children when the rights of boys and girls are abused by belligerents during conflict, and when states and the international community fall short in their duty to protect children and their communities.

While the priority is to meet immediate humanitarian needs, a crucial task of these agencies is to lobby the parties to the conflict to assume their responsibilities under international humanitarian and human rights law. Drawing on the collective experience of NGOs and UN agencies,² this chapter outlines the key issues on which agencies may need to advocate. Cross-references throughout the chapter highlight where in the Guidelines these issues are explored in greater depth.

‘States’ here refers to those directly and indirectly involved in a conflict, and other states in the wider international community.

IA. The universal adoption of norms and standards

States should fulfil their obligations under international humanitarian and human rights law to protect children in armed conflict. In particular, states should:

- **Fully implement the UN Convention on the Rights of the Child (UNCRC) and use it as a framework for protecting children.**
- **Ratify and enforce the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.**

Non-state armed actors should:

- **Respect fully the provisions of Protocol II Additional to the Geneva Conventions that prohibit the recruitment of children and their use in hostilities (see section 1F below).**

The Optional Protocol is an uncompromising expression of international determination to stop the use of children as soldiers. The success of efforts by agencies to impose a global ban on child soldiers will depend upon the ratification of this Protocol by all member states without reservations, and upon whether the minimum age for all forms of military recruitment can be raised to at least 18.³

It is not only the countries engaged in armed conflict which should enforce these standards. Governments in the industrialised countries should also sign, ratify and implement the Optional Protocol on the Involvement of Children in Armed Conflict and the Rome Statute of the International Criminal Court (ICC).

Governments must ensure that these standards apply not only to state armed forces, but also to paramilitaries and other forces for which they have overall responsibility.

See also Chapter 4.

I.B. Improved monitoring and reporting of violations

In co-operation with UN bodies, the International Committee of the Red Cross (ICRC), NGOs and civil society organisations, states should set up an effective system for monitoring and reporting the violation of children's rights.

The Committee on the Rights of the Child is important for reviewing the compliance of member states with the Convention, but its current reporting requirement – once every five years – is inadequate for situations where the very survival of children is threatened. A complaints process should be developed for the Convention and its Optional Protocols, similar to that of other international human rights instruments.

Monitoring and reporting violations of children's rights should be included

explicitly in the mandate of all UN field and peacekeeping operations. Child rights and child protection advisers should be deployed before, during and after conflicts. Where necessary, inter-agency task forces should be set up to carry out child-focused analysis and develop effective strategies.⁴ If there is no UN field or peacekeeping operation, NGOs and other agencies have a key role to play in monitoring and reporting abuses.

Commitments already made by states and non-state armed groups (for example, as a result of agreements with the UN Special Representative for Children in Armed Conflict) need to be followed up (see, for example, Chapter 6 section G and section 1F below).

See also Chapter 14.

Ic. End impunity and increase accountability

States should universally ratify, incorporate into domestic law and enforce the Rome Statute for the ICC, and should prosecute in their national courts those responsible for war crimes against children, including the conscription or enlistment of children under 15.

Ending impunity is essential if children's rights are to be protected. Governments and agencies should work to develop local, regional, national and international systems to enable those responsible for violations against children to be held to account. States should move quickly to ratify the Rome Statute of the ICC so that it may begin prosecuting crimes against children.⁵

In most countries experiencing conflict, national institutions have either collapsed or are functioning under very difficult circumstances. Therefore, states cannot be expected to prosecute the perpetrators of violations against children unless their investigative and judicial authorities are strengthened. Technical and financial assistance to rebuild capacity in these areas is extremely important.

Peace agreements should not give amnesty to those who violate children's rights. In Sierra Leone, children continued to be recruited after the Lomé peace

agreement was signed in July 1999. Amnesty International and others pointed out that the agreement was severely compromised because it failed to end impunity for gross human rights abuses.

See also Chapters 4 and 8.

1D. Commitment to child protection by the UN Security Council

Child protection, and specifically the use of children in fighting forces, should be included in all deliberations of the UN Security Council.

In 1999 and 2000, the UN Security Council endorsed a range of practical measures to protect children during armed conflict. It should now institutionalise these recommendations, by ensuring that information, analysis and recommendations on child protection are included in all its reports, deliberations, missions and resolutions, including those that are country-specific; and that states and non-state armed actors (and their supporters) who target or abuse children should face appropriate sanction and censure. Progress in implementing this agenda should be reviewed annually.⁶

1E. The humanitarian basis of children's release or demobilisation

The release or demobilisation of children should be based on humanitarian, not political, considerations. Their release from fighting forces should not have to wait until there is a peace agreement, but should take place at any time during the conflict. Children should be given priority during demobilisation and reintegration.

The 1999 Lomé agreement for Sierra Leone was the first peace agreement to require special attention to be given to children involved in fighting forces. At the same time, campaigning by agencies in 1999 and 2000 led to recognition by the UN Security Council (in Resolutions 1261 and 1314) of the need to ensure provision for children's disarmament, demobilisation and reintegration.

However, child protection agencies are keen to ensure that efforts to secure the release of children from fighting forces should not have to wait until there is a formal agreement, but should take place at all times during the conflict. In practice, agencies often take the initiative by making direct contact with the warring parties who recruit children and, increasingly, by lobbying states to use their influence to secure the release of children. The wider international community should exert more pressure on the belligerents and provide adequate financial support for child protection organisations.

The release of children must be kept first and foremost a humanitarian and human rights issue, not a political matter. As belligerents become more aware of the political advantages of being seen to respect children's rights, they are more likely to use the demobilisation of children as a bargaining counter in political negotiations.

Furthermore, those seeking the release of children need to be vigilant to ensure that the warring parties do not attempt to use the absence of a formal agreement as an excuse for holding on to children in their ranks.

See also Chapter 6.

I F. Engagement with non-state armed actors

In co-operation with agencies, the international community should provide leadership in persuading non-state armed actors to stop recruiting children.

The 190, or more, armed opposition groups currently active throughout the world carry a major burden of responsibility for abuses against children, including under-age military recruitment.

When there is extreme violence and disregard for life, implementation of

international law may seem impossible. But, although engaging with non-state armed actors (such as armed opposition groups and militias) can be difficult, it is essential if children are to be better protected.

Experience shows that many non-state armed actors are prepared to discuss the protection of children and civilians (see Chapter 4, section C8 and Chapter 6, section C). However, the armed groups more likely to engage on humanitarian issues are those guided by political or ideological – as opposed to economic – objectives, and who have a clear command structure.

Although agencies often establish contact with non-state armed actors at local or national level, governments in the region where the conflict is taking place and the wider international community must take greater responsibility for persuading these groups to stop recruiting children.

How pressure is applied depends on the situation. Non-state armed actors ultimately seek political recognition, but agencies should base dialogue on humanitarian rather than political considerations, and set clear objectives. In many situations, quiet diplomacy is preferable to public condemnation of child recruitment or threats of prosecution, both of which are likely to be counter-productive. Other forms of pressure can also be applied (see Chapter 6, section I).

The international community has a crucial role in making formal agreements with non-state actors, who can be asked to give written undertakings to stop recruiting children, to release the children in their ranks, or to support the Optional Protocol or the ICC. A past weakness has been that agreements made between non-state armed actors and the Special Representative for the Secretary General for Children in Armed Conflict – such as in Colombia – were not followed up. Return visits should be made and non-state actors should be asked to submit reports on their compliance.

Any engagement with armed groups should be co-ordinated with the relevant agencies working with children, since these often have a good knowledge of local conditions and may be involved in caring for children once they have been released.

See also Chapters 4 and 6.

Ig. Commitment to child protection by the international community

The international community must show its commitment to children in armed conflict by providing the leadership and the financial, technical and human resources needed to ensure that:

- **Children who wish to avoid military recruitment or re-recruitment, or who are being demobilised, are given adequate protection by national forces or peacekeeping forces.**
- **The demobilisation and reunification of children takes place efficiently and effectively.**
- **Assistance to demobilised children is given within a framework of assistance for other children affected by the conflict and wider national, social and economic reconstruction.**
- **Long-term technical and financial support is provided for initiatives that address the root causes of the conflict and child recruitment, and that promote peace and reconciliation.**

Disarmament and demobilisation are the first steps towards ending conflict and establishing peace. But without political will and adequate financial resources, the process will fail. Insecurity and uncertainty will discourage children from demobilising of their own accord and their commanders from releasing them. The international community must provide leadership by brokering peace agreements and putting pressure on the belligerents to honour their commitments.

The consequences of inadequate political and financial commitment were seen in the Democratic Republic of Congo (DRC) and Sierra Leone:

Failure of leadership in the DRC

In the DRC, absence of international leadership was blamed for the failure of the Lusaka peace agreement. According to the International Crisis Group, “The [Lusaka] accord largely froze the armies in their positions but did not

stop the fighting'. The international community pressured the belligerents to sign the agreement and then abandoned them to search for a workable solution to the conflict.

No funding was provided to support formal moves to demobilise children. The two official demobilisation commissions set up in 2000 were 'ill-equipped for the task, with few, largely inexperienced staff, no logistic capacity, no presence outside the one or two major centres, and ... little or no capacity to develop policy'. The commission assumed that international donor funds would be made available for demobilisation, but by the end of 2000 they had received no practical support.^{7, 8}

Lack of funding

Funding is a decisive expression of political commitment by the international community. In Sierra Leone, nine months after the signing of the Lomé agreement, child protection agencies in Sierra Leone warned that if a 'significant increase in both political and financial support to the Sierra Leone peace process [was] not forthcoming ... the peace [itself] could be in jeopardy'.

Following the Lomé agreement, DDR in Sierra Leone was slow to get started and was beset by logistical and security problems, lack of funding and the slow deployment of United Nations Mission in Sierra Leone (UNAMSIL) troops. US\$50 million had been requested for DDR, yet by March 2000 only US\$4.3 million had been received by the World Bank Multi-Donor Trust Fund. Long-term support also failed to materialise: of the promised US\$71 million, only US\$2.5 million had been received by February 2000. This, said the agencies, was 'a shocking demonstration of the international community's apparent complacency towards Sierra Leone as compared to other post-conflict situations such as Kosovo'.

These failures, combined with a lack of political will to demobilise children, meant that many children remained under the control of military commanders. By March 2000, fewer than half of the 45,000 combatants had been demobilised, and only five out of the twelve planned DDR camps had opened. About half of those who had not disarmed were children.⁹

In her review in 2000 of progress made and obstacles encountered in increasing protection for war-affected children, Graça Machel gave an example of the different levels of assistance provided between countries:

Disparities

In 1998 overseas development assistance for Bosnia and Herzegovina reached US\$237 per person. Poor countries with ongoing conflicts received much less. Burundi got US\$12, Afghanistan US\$7 and the Democratic Republic of Congo US\$3.¹⁰

These disparities in funding between countries and regions, and between relief and reconstruction, must be addressed if the rights of children in war-affected countries are to be protected. Machel has stated the need to, ‘establish criteria and guidelines to reduce disparities in resource mobilisation for war-affected children and women across conflict situations and to reduce the institutional, budgetary and functional barriers between relief assistance, reconstruction and development co-operation’.¹¹

See also Chapter 7.

I H. Training armed forces and police to protect the rights of children

Members of the armed forces – including those deployed as peacekeepers – and the police, should be given training in how to protect children’s rights.

If standards to prevent child recruitment are to be enforced, states must train their own armed forces in the protection of children’s rights during armed conflict. This will give military personnel an understanding of how to treat combatant children if they capture them. National forces may also be used as peacekeepers, and here too they need to understand the importance of disarmament and demobilisation of children, and their own role in bringing it about.

The wider issue of how to reform peacekeeping operations is outside the scope of these Guidelines, but the UN Security Council has formally recognised that such operations have a key role in protecting children. There is now broad agreement that:

- Every peacekeeping mission should include child protection advisers, with a brief to work with child-focused organisations on the spot to discover what is happening in a particular situation and to make their findings available to other agencies within the UN system. The brief should also include monitoring and investigating violations by members of the peacekeeping force.¹²

Child protection adviser in Sierra Leone

In Sierra Leone, the Child Protection Adviser with UNAMSIL is working with her colleagues in the military and human rights components of the mission and UNICEF to ensure that the training sessions for incoming peacekeeping troops include the child-relevant aspects of human rights and humanitarian law, the special needs of child soldiers within the disarmament, demobilisation and reintegration process, and the practical issues involved in assisting and protecting child soldiers while conducting field operations. The Child Protection Adviser has received manuals from Save the Children Sweden and is preparing a complete set of training materials while also trying to ensure that key materials are available in the first languages of some of the troops.¹³

- Peacekeeping personnel should be trained on the provisions of the UNCRC and given guidance on appropriate modes of response when confronted by child soldiers, the protections due to detained child combatants and child civilians, and recommended procedures for responding to sexual abuse.¹⁴

Among others, Save the Children Sweden and its partners are providing training to forces in a number of countries in Africa.¹⁵

Training armed forces in Africa

Soldiers in the Ugandan People's Defence Forces (UPDF) serving in Gulu province regularly come into conflict with child soldiers in the rebel Lord's Resistance Army.

When, in 1998, UPDF commanding officers attended a Save the Children Sweden training session on children's rights and protection, they had some difficulty in accepting the concept of the 'good soldier' who is willing to understand the situation of these children and to help them.

Following practical advice and discussion about children's rights and needs during armed conflict, the UPDF agreed that if it failed to address child rights, it would suffer repercussions in the future. Since the training, the UPDF has set up child protection units within military barracks, so that children who return after being abducted can be treated properly. The subject of children's rights is expected to be included on the curriculum of military training schools.

Non-state armed groups have also been given training in child rights and protection: in Sudan, Save the Children Sweden has trained relief wings of the Sudan People's Liberation Army (SPLA). In the past, such training has led to collaboration with the community on providing services to children and to the occasional release of children by the SPLA. More recently, the Congolese Rally for Democracy (RCD) movement in eastern Congo has approached Save the Children UK for training on the same issues.

In West Africa, Save the Children Sweden and Economic Community of West African States (ECOWAS) have developed a set of regional training materials for national and peacekeeping forces that can be adapted for use by the different ECOWAS countries. The materials form part of a wider programme in ten of the fifteen ECOWAS countries, where a local NGO works with the Ministry of Defence of each country to ensure that child rights and child protection are put on all national military training curricula. In Sierra Leone, the implementing partner, Caritas, has worked with UNICEF and other organisations to train not only recruits to the new national army, but also every British soldier arriving in Sierra Leone and the 13,000-strong UN peacekeeping force. In Senegal, each of the 600 soldiers who joined the

UN Mission in the Democratic Republic of the Congo (MONUC) force in the DRC received child rights and child protection training before their departure.

The project is now being considered for replication by South African Development Community (SADC) countries.

2

The Legal Framework

SUMMARY

International humanitarian and human rights law provides the basis for all action to protect children associated with fighting forces. This chapter argues that agencies need to know international and national law, both to advocate with parties to the conflict, and to advocate with the international community to fulfil their legal responsibilities. This legal knowledge will also guide their own actions in protection of children.

All agency staff should therefore be familiar with the UNCRC and key humanitarian principles, while those dealing with governments or the military need wider legal knowledge.

This chapter outlines the main international legal standards relating to the recruitment and use of children in armed conflict. It also outlines the legal standards relevant to reintegration of child soldiers, and their protection in the justice system, while highlighting legal developments relating to the prosecution of those responsible for the recruitment of children.

Web references for the legal instruments or declarations mentioned are given at the end of the chapter, and extracts from key standards are given in Appendix 1.

2A. Why agencies need to know international and national law

Agencies usually become involved in child protection when states and parties to the conflict are unable, or unwilling, to fulfil their responsibilities to children

under international humanitarian or human rights law. While this cannot be a substitute for action by those who have a legal responsibility to protect children and their communities (see Chapter 1), agencies need to understand the key elements of international law and the law of the country concerned for two purposes:

- To lobby parties to the conflict (both state and non-state armed actors) and the international community to fulfil their legal responsibilities.
- To guide the assistance and protection of children.

Agencies need to understand the key provisions of international humanitarian law as it applies to state and non-state armed actors involved in the conflict, and those of international human rights law – in particular, the UNCRC – as it applies to the country where they are working.

Non-state armed actors are not bound by international human rights treaties such as the UNCRC, but both they and state actors are subject to international humanitarian law: in particular, Article 3 common to the four Geneva Conventions and Protocol II Additional to the four Geneva Conventions of 1949. These distinctions are important when planning advocacy strategies: for example, when seeking to stop the recruitment of children.

With respect to the UNCRC, agencies need to have some knowledge of national law concerning the protection of children and of the policies and mechanisms that exist for implementing it. In practice, however, the national law is often inadequate while policies for implementation may be lacking. Enforcing the law can be difficult for countries which lack capacity and resources, and is likely to be even more difficult during conflict (see Chapter 13, section C).

The UNCRC and other legal standards not only set standards for states, they also provide a framework for the policies and practice of agencies (see section 2C below). However, the law on its own cannot stop the military recruitment of children, and agencies need to adopt a much broader approach taking into account the different circumstances of children's lives.

At the local level, the reasons why children are recruited into fighting forces are rooted in the conditions of their lives: poverty, lack of opportunity and the denial of basic rights make them vulnerable to becoming involved in hostilities.

Rather than national or international law, it is the customary law and practices of communities which will chiefly influence how people protect their children during times of conflict. Equally, they can influence who fights: boys are often sent to join armed groups. In such circumstances, a legal prohibition on children joining fighting forces will have little effect on its own (see Chapter 4).

Agencies and others concerned with protecting the rights of children must, therefore, find ways of making global standards more relevant to the day-to-day circumstances of boys and girls and their families. Although such standards provide the foundation for their work, agencies and their partners need to develop policies and practices sensitive to the very different social, cultural and economic contexts children are living in. This is the approach adopted throughout this book.

What is protection?

‘Protection’ means all activities aimed at securing full respect for the rights of an individual – in this case a child – as set out in the relevant human rights instruments and international humanitarian law. There are essentially three complementary types of action:

- responsive action: aimed at preventing, putting a stop to, and/or alleviating the immediate effects of a specific pattern of abuse;
- remedial action: aimed at restoring dignified living conditions through rehabilitation, restitution and reparation;
- environment building: aimed at creating and/or consolidating an environment (political, institutional, legal, social, cultural and economic) conducive to full respect for the rights of the individual.

An overall protection framework must guide all actions on behalf of separated children.¹

Agencies should also have an understanding of the political framework for action at the international level. UN Security Council members have made important pledges to give greater protection to children during armed conflict. UN Security Council Resolutions 1261 (1999) and 1314 (2000) show that the international

community is starting to recognise that children's safety and welfare are directly relevant to peace and security.

Since they provide important benchmarks for policy, planning and co-ordination, agencies need to know what these resolutions say and should cite them when advocating at international level: for example, when lobbying for resources for disarmament, demobilisation and reintegration (DDR).

2B. Which agency staff need to know the law?

Generally speaking, all staff working with children should be familiar with the principles of the UNCRC. However, when agencies are specifically focusing on the recruitment of children to fighting forces, the extent of knowledge required by different members of staff will depend upon their role and responsibilities.

For example, any staff member involved in advocacy with government civil servants, or the commanders of fighting forces, must be confident in their knowledge of what the law says – and must be able to communicate this competently. They also need to know about relevant legislation in the country they are working in and the key humanitarian principles.

Other staff, such as the outreach workers helping children and communities to prevent recruitment, probably do not need to know what the law says in detail, but they should understand its core principles. To complement this, they may also need to know about local norms relating to child protection (see Chapter 12, section D).

If more specialised knowledge is needed, this can be provided by legal advisers or experts from other organisations, such as the International Committee of the Red Cross (ICRC).² Advisers must be able to explain the key principles of the law in clear language and in a manner relevant to the work of agency staff.

2c. The main legal standards

The main international legal standards are summarised here according to their functions and to how they can be used to help:

- Protect children in armed conflict, including those associated with fighting forces.
- Prevent the recruitment of children and their use in hostilities, and to secure their release from fighting forces.
- Reintegrate children with their family and community.
- Protect children in the justice system.
- Pursue and prosecute those responsible for child military recruitment.

I. Protection of children and promotion of their rights

The UNCRC provides the core principles for protecting the rights of all children in armed conflict, not solely those associated with fighting forces.

States have the main responsibility for implementing the UNCRC through their own national law – although, as already mentioned, their capacity to do this may be limited. Agencies with specialist knowledge of the UNCRC can work with government counterparts to develop capacity in key areas.

The standards particularly relevant to children associated with fighting forces concern:

- protection in armed conflict (Article 38)
- protection of children without families (Article 20)
- recovery and social reintegration (Article 39)
- the right to education (Articles 28 and 29)
- prohibition of torture and the deprivation of liberty (Article 37)
- treatment in the juvenile justice system (Article 40).

The UNCRC also sets out principles that should inform all work with children: for example, promoting the best interests of the child, the importance of family

unity, and the need to listen, and give due weight to children's opinions and wishes (see Chapter 12, section A).

2. The prevention of recruitment and securing children's release during conflict

This section should be used with Chapters 4 and 6.

The law relating to the recruitment of children into fighting forces is complicated, particularly on the question of age. Although the international community is moving towards a ban on the compulsory recruitment of children under 18, individual states will set their own minimum age for voluntary recruitment (the UNCRC stipulates that this should be over 15). Agencies must therefore keep track of developments in the countries where they are working.

Programme managers and other staff who engage with state and non-state armed actors must also be familiar with the law of the country and how it is enforced. Until the Optional Protocol (OP) to the UNCRC on the Involvement of Children in Armed Conflict comes into force, the position is as follows:

International law bans the recruitment and direct involvement in hostilities of children under 15 years, in any form of armed force or armed group and during any type of armed conflict. UNCRC Article 38; 1977 Additional Protocol I to the Geneva Conventions, Article 77(2); 1977 Additional Protocol II to the Geneva Conventions, Article 4(3)(c).

In other words, government armed forces, informal armed forces – such as militias, civil defence or local defence forces – and opposing armed groups should under no circumstances have children below the age of 15 years amongst their fighters.

Where national law sets an age higher than 15 years as the minimum age of recruitment, that higher age applies. Furthermore, if governments are recruiting children aged between 15 and 18 years, they should recruit those who are oldest first. UNCRC Article 38(3); Additional Protocol I to the Geneva Convention, Article 77(2).³

The UNCRC generally defines a child as any person under 18 (Article 1). But the above shows that a lower age applies where the military recruitment and participation of children in armed conflict is concerned.

The new Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict – adopted by consensus by the United Nations General Assembly in May 2000 – helps to correct this anomaly (see Appendix 1). It raises, from 15 to 18 years, the minimum age for *direct* participation in hostilities, for *compulsory recruitment* and for *any* recruitment by non-governmental armed groups. It also calls on states to raise the minimum age and introduce strict safeguards for any voluntary military recruitment under 18.

The new Protocol is a major advance in tackling the problem of children being used in fighting forces. The agreement on 18 as the minimum age for participation in hostilities will provide a strong legal basis for prevention and for efforts to secure the release of children from fighting forces; it also reaffirms the distinction that the UNCRC makes between childhood and adulthood. But the Optional Protocol leaves unsolved two major problems:

- It does not deal with the voluntary recruitment of 16- and 17-year-olds into the armed forces or the indirect use of under-18s in military forces. It also allows states to add their own declarations, thus weakening the Protocol's provisions. The phrase 'all feasible measures' used in the main provision is weak by comparison with other possible wording, such as 'in all circumstances'.
- The Protocol sets different standards for non-state armed actors and for state armed forces. Non-state groups are prohibited both from recruiting under-18s and from using them in hostilities, whereas states can set a lower age for voluntary recruitment (with safeguards). This could cause tension when agencies are working with non-state actors to develop local agreements to stop the recruitment of children.

The Optional Protocol builds on other standards:

- The African Charter on the Rights and Welfare of the Child (which came into force in November 1999) prohibits the recruitment or direct participation in hostilities or internal strife of anyone under the age of 18 (Article 22).
- The International Labour Organisation (ILO) Convention 182: Convention

Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (which came into force November 2000) defines a ‘child’ as all persons under the age of 18 (Article 2) and includes ‘forced or compulsory recruitment of children for use in armed conflict’ among the worst forms of child labour (Article 3).

- The Rome Statute of the International Criminal Court (ICC) defines ‘conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities’ as a war crime when committed in either an international or non-international (internal) armed conflict (Article 8).
- The Guiding Principles on Internal Displacement (1998) are based on international humanitarian and human rights law. They say: ‘In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular, any cruel, inhuman or degrading practices that compel compliance or punish non-compliance are prohibited in all circumstances’ (Article 13).

Other provisions:

Many children are coerced into joining fighting forces by methods such as press-ganging and abduction. As well as being mentioned implicitly in the African Charter (which refers to ‘all recruitment’) and explicitly in the ILO Convention 182, these and similar methods are prohibited by: the UNCRC (Article 37, relating to torture and deprivation of liberty), the Guiding Principles on Internal Displacement (1998) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

3. The reintegration of children who have been involved in fighting forces

This section should be used with Chapters 7, 9 and 10.

Agencies should be aware of the standards relating to the reintegration of

children so that they can advocate for adequate provision – for example, as part of a formal DDR agreement – and can plan effective reintegration programmes.

Family reunification is one of the most important stages in a child's reintegration. But some children may not be able to rejoin their families immediately, and may need temporary care while their families are traced, and while they prepare for their return to civilian life. Children who cannot return to their families are entitled to alternative arrangements (Article 20 of the UNCRC).

The UNCRC and other instruments recognise that children affected by armed conflict may require special care. Where necessary, efforts should be made to promote the 'physical and psychological recovery and social reintegration' of children in armed conflict 'in an environment which fosters the health, self-respect and dignity of the child' (Article 39).

Article 4(3) of the Additional Protocol II to the 1949 Geneva Conventions states that children (under 15) who have 'taken a direct part in hostilities' should not be excluded from the provisions of care due to all children affected by conflict. These include family reunification and education.

Access to education and opportunities for play and recreation are crucial in helping children to re-establish their lives away from the military. The importance of providing education to displaced children is emphasised in the Guiding Principles on Internal Displacement (principle 23), and in the Additional Protocol II to the 1949 Geneva Conventions (article 4), which applies to non-international armed conflicts.

Finally, the UNCRC (Article 28) firmly establishes the right to education in all circumstances.

4. The protection of children in the justice system

This section should be used with Chapters 6 and 11.

Children who have taken part in hostilities risk further violations of their rights if they enter the justice system. For example:

- If they are captured by government forces.
- If their participation in the opposition armed forces is deemed a criminal offence.

- If those under 18 are included when prosecuting war crimes, crimes against humanity or genocide.
- If children commit offences under the criminal law while in military service or if they desert.

Agencies concerned with protecting children in the juvenile or adult justice system need to be familiar in particular with: the UNCRC; the UN Standard Minimum Rules for the Administration of Juvenile Justice (1985); UN Rules for the Protection of Juveniles Deprived of Their Liberty (1990), and the International Covenant on Civil and Political Rights (1976) (Articles 6 and 10).

Article 40 of the UNCRC states that judicial proceedings against children should be avoided wherever possible, and sets out the minimum guarantees for children accused of infringements of the law. Those particularly relevant to child ex-combatants are:

- access to legal assistance in the preparation of defence
- the case should be heard without delay in a fair hearing
- the child should not be compelled to give testimony or confess guilt
- respect for privacy
- the child should be able to appeal against any decision to a higher tribunal.

Article 37 of the UNCRC prohibits torture of children, cruel treatment or punishment, capital punishment, life imprisonment and unlawful arrest or deprivation of liberty. It also specifies that if children are arrested or detained they should be given special treatment; they should be separated from detained adults and should have contact with their family and access to legal assistance.

5. The prosecution of those responsible for recruitment

This section should be used with Chapters 4, 11, and 14.

Agencies must keep up to date with developments relating to the prosecution of individuals who have committed war crimes, crimes against humanity or genocide. These establish precedents and show the importance of documenting abuses. Agencies have an important role in monitoring and documenting abuses

against children, including their recruitment and use in fighting forces, as well as rape and other forms of violence.

As a major step towards ending individual impunity for acts that constitute crimes under international law, the Rome Statute of the International Criminal Court includes as a war crime ‘the conscription and enlistment of children under the age of 15 into armed forces or groups or using them to participate in hostilities’ (Article 8). However, the weakness of this provision is that the Court’s jurisdiction will apply only to abuses against children up to 15 rather than up to 18.

The Rome Statute of the International Criminal Court

The Statute of this, the first permanent International Criminal Court (ICC), was agreed by 120 States in July 1998. The ICC is intended to complement national justice systems. Under the principle of ‘complementarity’, primary responsibility for bringing to justice those responsible for serious violations of international humanitarian and human rights law will remain with States. The Court will not supersede the International Criminal Tribunals for Rwanda and former Yugoslavia.

The ICC will have jurisdiction over individuals who commit crimes during internal and international armed conflicts and during peace; it will not act retrospectively. The Court will be established when sixty States have ratified the Statute.

Although its jurisdiction has yet to be tested, the ICC establishes important principles relating to the protection of children in the judicial process, and has already been used as a key reference point in presentations to the Security Council on shortcomings in the draft statute of the Special Court for Sierra Leone.

Other relevant provisions of the ICC include:

- Jurisdiction over intentional attacks on educational institutions and schools (Article 8(2)(b)(ix) and Article 8(2)(e)(iv)); schools are frequently targeted for military recruitment or other purposes.
- Special provisions will protect children as victims and witnesses (Articles

43(6) and 68(1, 2)), exempt children under 18 from prosecution by the court (Article 26) and require judges and the office of the prosecutor to have expertise in violence against children (Articles 36(8)(b) and 42(9)).

6. Other declarations

Agencies can also draw upon other declarations and frameworks relating to children in fighting forces, for example:

- *The Cape Town Principles and Best Practices*, devised at a symposium in Cape Town in April 1997, outline principles and practices concerning the prevention of child recruitment, the demobilisation of child soldiers and reintegration into family and community life.
- The Maputo, Berlin, Kathmandu, Montevideo and Amman Declarations on the use of children in war will be useful for agencies working in the regions covered by these statements.

2D. Sources for legal instruments and other declarations cited

The various legal instruments and declarations concerned with the recruitment of children and their use in fighting forces are available on the web sites listed below. Unfortunately, no one site includes them all, but the best place to start is the Coalition to Stop the Use of Child Soldiers.

Coalition to Stop the Use of Child Soldiers:

<www.child-soldiers.org>

Human Rights Watch:

<www.hrw.org>

Child and Young Adult Soldiers (UNICEF, UNESCO, Ginie):

<<http://www.pitt.edu/~ginie/mounzer/conventions.html>>

United Nations High Commissioner for Human Rights:

<www.unhcr.ch>

UN Office for the Co-ordination of Humanitarian Affairs:

<www.reliefweb.int>

United Nations:

<www.un.org>

I. International law

UN Convention on the Rights of the Child (1989):

<www.unicef.org/crc/crc.htm>

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict:

<<http://www.unhcr.ch/html/menu2/6/protocolchild.htm>> or

<www.child-soldiers.org>

Additional Protocol I to the 1949 Geneva Conventions, and relating to the Protection of Victims of Non-international Armed Conflicts. Article 77, Protection of Children:

<www.hrw.org/campaigns/crp/int-law.htm>

Additional Protocol II to the 1949 Geneva Conventions, and relating to the Protection of Victims of Non-International Armed Conflicts. Article 4, Fundamental Guarantees:

<www.hrw.org/campaigns/crp/int-law.htm>

African Charter on the Rights and Welfare of the Child (1999):

<www.child-soldiers.org>

International Labour Organisation Convention 182: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (came into force 2000):

www.ilo.org/public/english/standards/ipecc/ratification/convention/text.htm

The Rome Statute of the International Criminal Court, Article 8:

www.child-soldiers.org

The full treaty can be seen on:

www.un.org/law/icc

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984):

www.unhcr.ch Go to 'treaties' on the homepage.

UN Standard Minimum Rules for the Administration of Juvenile Justice (1985) ('Beijing Rules'):

www.unhcr.ch Go to 'treaties' on the homepage.

UN Rules for the Protection of Juveniles Deprived of Their Liberty (1990):

www.unhcr.ch Go to 'treaties' on the homepage.

The International Covenant on Political and Civil Rights (1976):

www.unhcr.ch Go to 'treaties' on the homepage.

2. Other principles and declarations

The Guiding Principles on Internal Displacement (1998):

www.reliefweb.int/ocha_ol/index.html

Cape Town Principles and Best Practices (1997):

<http://www.pitt.edu/~ginie/mounzer/conventions.html>

The following declarations are on:

www.hrw.org/campaigns/crp/statements.htm

Maputo Declaration on the Use of Children as Soldiers (April 1999)

Montevideo Declaration on the Use of Children as Soldiers (July 1999)

Berlin Declaration on the Use of Children as Soldiers (October 1999)

Kathmandu Declaration on the Use of Children as Soldiers (May 2000)

Amman Declaration on the Use of Children as Soldiers (2001)

Other declarations can be found on:

www.child-soldiers.org

3. Security Council Resolutions

UN Security Council Resolution 1261 (1999) on Children and Armed Conflict (25 August 1999):

www.un.org/Docs/scres/1999/99sc1261.htm

UN Security Council Resolution 1314 (2000) on Children and Armed Conflict (11 August 2000):

www.un.org/Docs/scres/2000/res1314e.pdf

PART TWO:

Taking action

3

The military recruitment of children

“My father was a gold miner until he got sick. Then we had nothing, and we had to drop out of school. When Kabila’s troops from Katanga entered our village, they looted all the goats and chickens and made us carry heavy loads. After we had been looted three times, I was angry, and joined up to get revenge, and to escape the attacks. In the army I got \$100 a month and was very happy.” 17-year-old boy in the Democratic Republic of Congo (DRC).¹

SUMMARY

Poverty, anger, abduction or intimidation – these are just some of the reasons why children join fighting forces. Offers of food or money, a desire to change the world, the attraction of a uniform, the power of a gun, the urging of friends – these can all appeal to young people trying to survive in the midst of conflict.

This chapter describes how and why children are recruited into or join fighting forces, and what makes them vulnerable to recruitment. Although the immediate circumstances of their recruitment differ, a great many children are recruited because there is a lack of opportunity in their lives. In many situations, boys and girls are recruited by force or abducted, often in brutal circumstances; the most socially vulnerable children are among those most likely to be recruited in this way. Other children join armed groups or are put forward by their families, because they have few other choices and this is the best option for survival.

Fighting forces use children in order to increase their numbers, and because they are easy to control. Furthermore, armed groups often recruit or abduct children as a tactical weapon against the children's own families and communities.

The overview given in this chapter highlights the main known causes of children's recruitment but, in practice, the different factors outlined here will occur in different combinations, while some may be evident in some situations but not in others. It may be useful to use this chapter alongside Chapter 4, section A and Appendix 2, which provide more detailed guidance on questions to ask when analysing the specific situation.

3A. The immediate causes of involvement

Children may become involved with fighting forces through:

- **Compulsory or voluntary military service** in the national armed forces, as determined by legislation. In the United Kingdom, for example, children enlist into the armed forces from the age of 16.
- **Forced recruitment** into government armed forces, paramilitary forces, armed opposition groups, militias and other military groups which target children. The methods used may include:

Quota systems. Families or communities in or near the conflict zone may be required to provide a specified number of children.

When there are quotas, families often make informed choices about giving their children up to armed forces – particularly if they are the local defence forces. Parents may have to choose between sending children or men, and decide to hand over the children because they are economically less important to the household than men. Being seen to send more children off to fight can be a way of securing local popularity.²

In the Democratic Republic of Congo, a 15 year old boy described his experience: “My family is poor, and also my father has no job, so there’s not much chance of there being enough to eat, or there being any money for school fees. The Interahamwe often came to our village to steal cattle, goats and chickens .. so [there was a call] to all the village leaders to set up a Local Defence. Every family had to provide a son. As I didn’t have work, I was signed up”.³

Abduction. Boys and girls may be seized by fighting forces and forced to serve in them. For example, UNICEF Uganda estimates that, since 1992/93, 11,333 children, about one-third of them girls, have been abducted by the Lord’s Resistance Army.⁴ Abductions have also been carried out in Sierra Leone.

A girl abducted at the age of 15 by the Armed Forces Revolutionary Council, Sierra Leone said: “I did not want to go; I was forced to go. They killed a lot of women who refused to go with them ... when they capture young girls, you belong to the soldier who captured you.”⁵

Press-ganging. Physical force may be used to coerce children to enlist.

A Burmese former child soldier describes how he was recruited:

“I was forcibly conscripted into the SLORC [State Law and Order Restoration Council] army when I was a student in March 1992. We were leaving school at the end of the day and the SLORC soldiers surrounded the school. There were 40 or 50 of us all leaving together, and we were all arrested. We were all 15, 16, 17 years old, and we were afraid of the soldiers. We were students; we looked like students, because we were all wearing our white shirts and our green longyi. Our teachers ran away in fear. Everything was in chaos ... We were all terrified, but we could not even call out to them to let us go and that we were under 18, because we were so scared.

“They sent us to the exhibition ground at Aung San Stadium and we

stayed there one night. The next day they sent us to Mingaladon [airport and military base] to register. Our parents had no idea what happened to us. They weren't told anything and neither were we. Some people had money to pay off the SLORC officers, but most couldn't."⁶

- **Other means of persuasion.** These might include: the use of propaganda; offers of food, clothing or money; promises of better opportunities; using children already involved in the fighting force to influence their peers.
- **Lack of documents** providing evidence of age, such as ID cards or birth certificates. Although recruiters may be obliged to respect age limits on military recruitment, they might ignore them if children cannot produce the necessary documentation.

Inadequate documents

In Cambodia, NGOs and the UN Human Rights Centre have come across many cases which show that [under-age] voluntary recruitment [to government armed forces] has been common. Unit commanders admitted to helping young boys join the army, usually by falsifying the boys' age and sometimes also giving them the name and biography of other soldiers who had died or deserted ... Given the unreliability of official documents regarding the age of recruits, confirming age can be difficult. Even when the official documents state that a person is over 18, they may lie about their age and there is no way to check, as there is no effective system of birth registration in the country and many births go unregistered, especially in remote areas.⁷

Children may also choose to join fighting forces voluntarily: for example, if they feel that this is the best (or the only) option available to them, or if they wish to fight for a cause. Sometimes children are motivated by revenge. Both forced and 'voluntary' recruitment should be seen in the wider context of the underlying factors that put children at risk of recruitment. These are considered in the next section.

3B. When children are vulnerable to involvement with fighting forces

Here are some of the factors known to make children vulnerable to recruitment:

- **When the main forms of child protection – institutional, social and familial – have broken down.** Children usually join fighting forces because their families and communities have been unable to protect them. The most vulnerable are children living in the conflict zone, particularly those who:
 - have been separated from their family
 - have been displaced
 - are from child- or female-headed households
 - are orphaned or abandoned
 - are living and/or working on the street
 - are involved in prostitution.
- **Economic necessity.** For many children, enlistment in fighting forces may be the only way they can survive. Sheer desperation pushes them to join, a situation that recruiters frequently exploit. This ‘push’ factor of the denial of basic rights combines with the ‘pull’ factor of active targeting of children.

In the DRC, the combined pressures of forced recruitment and economic necessity often make joining up the only option.

Economic necessity

For children who join under this kind of pressure, the principal motivations for initial enrolment have been to seek an economic livelihood, to seek revenge, to seek personal physical security, the desire to protect family and community, and the simple lack of anything else to do in a village where economic activity has been virtually paralysed by insecurity, and where penury bars a child from access to education.

For most child soldiers, all of these factors played a part, with economic necessity being, in general, the single most important driving force ... Even without the offer of a regular wage, membership of any armed

group offers the prospect of taking part in looting and extortion. For many children, even the prospect of being fed was incentive enough to join.

In the DRC there is a close correlation between the level of a child's poverty and vulnerability to recruitment. Staff at a Save the Children transit centre in Bukavu interview children about their family circumstances when they arrive. Out of 300 boys, 61 per cent said that their family had no income, and more than half had at least six siblings.⁸

- Lack of protection by government. The recruitment of children often takes place where forces associated with the government are themselves involved in recruitment, or where the state is absent or unable to adequately protect children, their families and community. In northern Uganda, abduction by the Lord's Resistance Army has continued despite appeals to the government for protection.

When armed opposition groups are recruiting children, other children in the locality come under suspicion of the authorities. Harassment or abuses against youth and children by police or military forces can, over time, be another 'push' factor leading children to join the opposing groups.

- Sustained exposure to violence makes children more likely to join fighting forces. In Colombia, child protection agencies view the involvement of children in fighting forces in the wider context of 'structural violence': the denial of basic rights combined with the direct violence that permeates society and often reaches into the home.

Violence in children's lives

The children of Colombia are affected by violence when they live in misery and poverty, when they are displaced from their place of origin, when their families disintegrate, when they witness violent acts against members of their families or their neighbours, when they join the armed actors or are forcibly recruited by them, when they are at risk of being recruited because they live in regions with high violence, when they are mutilated or handicapped by anti-personnel mines or the elements of warfare used in

combat, when they are kidnapped, and when they are mistreated or abused by members of their families.⁹

Some young people are further socialised into military life if they attend military schools, or if soldiers or the police have direct involvement in schools, as has also been the case in Colombia (see Chapter 4, section C5)

- **Political ideology.** In Colombia and Sri Lanka, for example, some children have been motivated to join fighting forces by the desire to change their lives. Political ideology or, in some situations, religious fundamentalism can seem to offer young people a way out of poverty, disenchantment or simple boredom. Military leaders often exploit such youthful idealism for their own purposes.
- **Traditional beliefs about the entry of boys into manhood** can strongly influence their participation in fighting forces. Male adolescents are often expected to protect and provide for their family and community. During conflict this might include taking up arms, and traditional practices may be manipulated to maximise recruitment. In some communities in Sudan, for example, the facial marking that signifies adulthood has been carried out at an earlier age so that younger boys can be recruited.¹⁰

Initiation

During the war in Sierra Leone, the traditional militia known as the Kamajors recruited large numbers of children into their ranks. The need for communities to meet their quota of recruits, the prestige associated with serving in the militia and access to food were among the reasons cited by most child protection practitioners for the participation of children as members of this fighting force.

The leaders of the fighting forces, on the other hand, claimed that children made the best fighters as their traditional powers were greater than adults due to their 'purity'. Children performed the most daunting tasks, such as serving as shields for the fighting forces during battles.

Concerns have been raised that the leaders of the Kamajors have distorted traditional practice by allowing children to participate in the fight-

ing. Before the war, the Kamajors, who were traditional hunters, would only allow a youth to graduate as a Kamajor after several years learning the art and going through the traditional rituals as an apprentice. The youth would also have gone through his adult initiation ritual which usually takes place after puberty.¹¹

- **Family association with fighting forces.** When siblings, parents or other relatives are involved with the military, the child comes to regard this as the norm. Joining up then becomes a natural step to take, particularly if there is a strong ideological or religious element in the family's involvement. Children are also born into fighting forces when their mothers are combatants.
- **Targeting of civilians.** Children are more likely to want to join in order to seek revenge or to protect their family if they have been attacked.

The reasons that children in Colombia give for joining guerrilla forces show how these social and personal factors combine:

Many reasons

The family's economic situation may be very precarious compared to the economic offer made by armed actors. They may lack alternatives for their future. They may not have opportunities for education or to sustain themselves. From an early age, they may be familiar with armed actors who have been established in the region for a long time. They may have friends or relatives in the armed movements. A boyfriend or girlfriend may join an armed movement.

They may experience family violence. They may be seduced by the weapons, under the impression that these will give them authority and prestige. They may be frightened by the armed actor's threats against their families. They may feel the need to protect themselves from other armed actors. They may be overwhelmed by violence used in operations aimed at recruiting children by force. And they may be seduced into joining by ideological indoctrination.¹²

3c. The military and political rationale for recruiting children

The most commonly cited reason for recruiting children into fighting forces is the need for manpower. Children are seen as a military asset because they are easier to control and quick to learn to fight.

Their need for attachment and approval can be exploited in different ways to instil obedience and loyalty. In Sierra Leone, adult combatants actively promoted the idea of the military group as ‘family’.

For non-state armed actors in particular, children are a valuable source of unpaid labour and are more likely than adults to work for food, security and status rather than wages. Children also carry out tasks that adults may not want to do, and their agility can be exploited for purposes such as spying. Small arms are particularly easy for children to carry and use because of their lightness.

The commanders of fighting forces also know that to use a community’s own children against it to maim and kill has a devastating psychological effect, as the Khmer Rouge showed in Cambodia. Professional armed forces in particular find it hard to open fire on young children, as was the case in Vietnam and Northern Ireland. The Lord’s Resistance Army also devised ways to control children abducted into their ranks:

Control

Joseph Kony [of the Lord’s Resistance Army] uses the same techniques to gain full control over the abducted children as [those used] in several other contexts where children are/have been used by rebel groups (eg, Sierra Leone, Mozambican National Resistance [RENAMO] in Mozambique). The children are forced to kill, rape, and loot family and thus community members, thus effectively destroying all bonds of love and loyalty, and reducing the possibility that they will try to escape.¹³

In some situations armed groups deliberately use children who are below the age of criminal responsibility because they cannot be punished for their crimes. In Colombia, armed gangs have used children as drug traffickers.¹⁴

The next chapter looks at what agencies need to do in terms of understanding, planning and taking practical steps to prevent child recruitment.

The recruitment and use of an estimated 300,000 boys and girls in armed conflicts across the world is now widely recognised as a violation of children's rights that demands a robust international response.

The strengthening of international law and recognition of the problem of children's military recruitment by the UN Security Council are important achievements. However, these initiatives must be complemented by practical measures that give children, their families and communities viable alternatives to recruitment, that prioritise the release and demobilisation of children from fighting forces and support their reintegration.

Children – Not Soldiers provides guidance for those working with children directly involved in armed conflict on these and other key areas. Drawing on existing and emerging lessons of experience from different countries, it highlights issues of special concern and areas where further research is needed. It will be useful for people working directly with children as well as for managers and policy-makers.

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