

SUMMARY OF INTERNATIONAL TREATIES TO PROTECT CHILDREN IN ARMED CONFLICT

In the past decade, two million children have been killed in armed conflict. Three times as many have been seriously injured or permanently disabled. Armed conflict kills and maims more children than soldiers. Civilian fatalities in wartime have climbed from 5 percent at the turn of the century to more than 90 percent in the wars of the 1990's. Refugees from armed conflicts worldwide increased from 2.4 million in 1974 to more than 27.4 million in 1996, with another 30 million people displaced within their own countries. Children and women make up an estimated 80 percent of displaced populations.*

Children are affected by war in many ways, but one of the most alarming trends is their participation as soldiers. This has been made easier by the proliferation of small arms and light weapons. Assault rifles are cheap and widely available due to both the legal and illegal international arms trade. A series of case studies prepared for the Graça Machel study on the *Impact of Armed Conflict on Children* indicates that government or rebel armies have recruited tens of thousands of children. Boys serve as porters, messengers and combatants. Girls may also serve as combatants or prepare food and attend to the wounded. In addition, they may be forced to provide sexual services or be "married off" to other soldiers. Among the most severe violations of human rights that many children - especially adolescent girls- experience during armed conflicts are rape, prostitution and other forms of sexual violence and exploitation.

**All statistical information is taken from the Graça Machel Study, presented in a special session to the General Assembly of the UN (A/51/306) 8/26/96.*

With the enactment of the Hague Conventions (1899-1907), laws governing war on land were better defined with respect to both civilians and soldiers. After the atrocities of the Second World War, the international community further developed treaties that specifically protected civilians. Two treaties now exist, which *explicitly* provide for the protection of children in times of war.

1) The Geneva Conventions provide various protections to civilians, but *Geneva Convention IV (1949)* is specifically designed to protect children and civilians in times of war. *Additional Protocols I and II (1977)* provide children with special protection and, for the first time, deal with their participation in hostilities. Most of *Geneva Convention IV* and *Additional Protocol I* apply during international armed conflicts. *Common Article 3* to the *Geneva Conventions*, and *Additional Protocol II* apply during non-international armed conflicts.

The *NGO Committee on Unicef's Sub-Working Group on Children in Armed Conflict* has compiled this document to provide a concise summary of key international legal instruments. It is not a comprehensive review of existing international treaties. For complete details please consult the instruments directly.

Children remain susceptible to the physical dangers, as well as to the lasting psychological and social effects of war, once a conflict has ended. Children are vulnerable to physical danger from millions of existing landmines and unexploded ordnance. Children must also cope with the trauma of loss -of their family members, schools, neighborhoods and communities. In addition, millions of children have been forced to witness or even take part in horrifying acts of violence. One UNICEF survey in Rwanda found that nearly 80 percent of the children had lost immediate family members and more than one-third of these had actually witnessed their murder.

Children have become targets, not incidental casualties, of armed conflict. War violates every right of a child -the right to life, the right to be with family and community, the right to health and education, the right to the development of the personality, and the right to be nurtured and protected. It is a basic need of children to be protected and cared for when conflicts threaten, and the implementation of international human rights and humanitarian law addresses these needs. A number of international treaties exist to provide for the legal protection and care of children. Too often these treaties are ignored, and the world community must do everything possible to see that these treaties are complied with in all areas of the world.

2) The Convention on the Rights of the Child was adopted by the UN General Assembly in November 1989, and entered into force in 1990. This Convention brings together existing international law and new standards for issues not previously addressed. The *CRC* is applicable at all times, and some of its articles specifically protect child victims of war. Most countries have ratified this treaty, which is the most widely and swiftly ratified treaty in history.

A recent addition to these two international instruments is the treaty to eliminate landmines, which was adopted in September 1997, in Ottawa, Canada. The *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction*, was entered into force in 1999. While the body of this document does not address children specifically, this international treaty is meant to especially protect children from the suffering inflicted by these indiscriminate weapons of destruction.

These Key International Legal Instruments as they apply to the protection and care of children in armed conflict are summarized below. A list of related international treaties that also protect children is provided on the back page of this document.

Key International Legal Instruments:

The Geneva Convention IV (GC IV)

Protocol I Additional to the Geneva Conventions (PI)

Protocol II Additional to the Geneva Conventions (P2)

The UN Convention on the Rights of the Child (CRC)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction [Ottawa Treaty] (OT)

Article 1 of the *CRC* identifies a "child" as "every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." Thus children *and* adolescents are covered by the *CRC*.

Life/Survival

Direct Threats

- The child has a right to protection from all violence to life and person. (*GC IV, Art.3a*) *see also* (*GC IV, Art.27*)
- The death penalty may not be pronounced against a person who was under eighteen years of age at the time of the offence. (*CRC, Art.37; GC IV, Art.68*) *see also* (*PI, Art.77(5); P2, Art.6(4)*)
- Pregnant women and mothers with infants who are arrested detained or interned shall have their cases rapidly processed and death penalty should be avoided. (*PI, Art.76 (2&3)*) *see also* (*P2, Art.6(4)*)
- It is prohibited to order that there shall be no survivors. (*PI, Art.40*)
- Civilians are entitled to general protection against the dangers from military operation. They shall not be the object of indiscriminate attack, acts or threats of violence. (*PI, Art.51*) *see also* (*P2, Art.13*)
- States are obligated never under any circumstances to use anti-personnel mines. (*OT, Art. 1*)
- Capable States shall provide assistance for mine clearance, and in determining mine awareness activities to reduce the incidence of mine-related injuries or deaths. (*OT, Art. 6(4&7)*)

Access to Essential Services

- In providing for children's rights, the State is obligated to ensure the survival and development of the child. (*CRC, Art.6*)
- Starvation of civilians is prohibited. It is prohibited to attack, destroy, remove or tender useless foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, etc. (*P2, Art.14*) *see also* (*P2, Art.17; PI, Art. 52*)

Torture/Rape/Sexual Exploitation/Physical & Mental

Abuse

- The child's right to protection from sexual exploitation and abuse, including prostitution and involvement in pornography. (*CRC, Art.34*) *see also* (*CRC, Art.32&37*)
- Civilians are entitled to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall be humanely treated and shall be protected against all acts of violence or threats thereof and against insults and public curiosity. (*GC IV, Art.27*) *see also* (*GC IV, Art.3c*)
- Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they

require, whether because of their age or for any other reason. (*PI, Art.77 (1)*) *see also* (*P2, Art.4(3)*)

- All non-combatants are protected against: Violence to life, health and physical or mental well-being, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments; taking of hostages; acts of terrorism; outrages upon personal dignity; slavery and the slave trade in all their forms; pillage; threats to commit any of the foregoing acts. (*P2, Art.4(2)*) *see also* (*PI, Art.75*)

Disappearances/Unaccompanied Children/Family

Reunification

- The legal right to preserve or re-establish the child's identity (name, nationality and family ties). (*CRC, Art.8*)
- The right to live with parents unless this is deemed incompatible with the child's best interests; the right to maintain contact with both parents; the State to provide information to relevant family members or designated guardian, when children are separated due to State action. (*CRC, Art.9*)
- The right to leave or enter any country and to maintain contact with both parents. (*CRC, Art.10*)
- The State to prevent the abduction, sale and trafficking of children. (*CRC, Art.35*) *see also* (*CRC, Art.11*)
- The parties to the conflict shall endeavor to ensure that children who have been separated from their families, are not left to their own resources, and to arrange for all children under twelve who have been moved to a neutral country to be identified by the wearing of identity discs, or by some other means. (*GC IV, Art.24*)
- When evacuation of children to a foreign country is deemed necessary, the following standards must be applied:
 - Each Party to the conflict may only evacuate its own nationals except for temporary evacuation by another party when the children's health, or their safety in occupied territories, so requires;
 - It will be conducted under the supervision of the Protecting Power in agreement with the Parties concerned;
 - The parents or guardians must provide written consent;
 - The child's education, including religious and moral education, shall be provided.

With a view to facilitating family reunification following an evacuation, a photograph and a card with the following specific information should be filed and sent to the Central Tracing Agency of the International Committee of the Red Cross: names; sex; place and date of birth; full names of both parents, including mother's maiden name; next of kin;

nationality; language(s) spoken; family address; child's identification number; health; blood group; distinguishing features; date and place child was found; religion; present address in country; and in the case of the child's death before return, the date, place and circumstances of death, including internment. (PI, Art.78(3)) see also (GC IV, Art.25&26, PI, Art.74; PI, Art.78)

Children in Detention

- The right of the child to be protected from: torture or other cruel, inhuman or degrading treatment; capital punishment or life imprisonment; and unlawful or arbitrary deprivation of liberty. (CRC, Art.37) see also (CRC, Art.40)
- The taking of hostages is prohibited. (GC IV, Art.3(b)) see also (PI, Art.75; P2, Art.4; GC IV, Art.34)
- The passing of sentences and the carrying out of executions without judgement pronounced by a regularly constituted court, affording all judicial guarantees is prohibited. (GC IV, Art.3(d)) see also (PI, Art.75; P2, Art.6)
- If arrested, detained or interned, children shall be in quarters separate from the quarters of adults, except where families are accommodated as family units. (PI, Art.77(4)) see also (GC IV, Art.82)
- Every child deprived of liberty shall be separated from adults and have the right to maintain contact with his/her family. (CRC, Art.47)

Children Associated with the Armed Forces

Prevention

- The State to respect International Humanitarian Law, ensure that no child under 15 takes a direct part in hostilities, refrain from recruiting any child under 15 into the armed forces and ensure that all children affected by armed conflict benefit from protection and care. In recruiting among children between the ages of 15 and 18 years, States shall give priority to those who are oldest. (CRC, Art.38) see also (PI, Art.77; P2, Art.4(3c))
- Some states have established a minimum age which is above 15 years, for recruitment. The standards contained in this Convention are not to supersede higher standards contained in national law or other international instruments in force for the State. (CRC, Art.41)

Demobilization/Reintegration

- The State to promote the physical and psychological recovery and social reintegration of child victims of abuse, neglect, exploitation, torture or armed conflicts in an environment which fosters the health, self-respect and dignity of the child. (CRC, Art.39)

Forced Labor

- Children have the right to be protected from economic exploitation and from engaging in work that constitutes a threat to health, education and development. The State to set minimum ages for employment, regulate conditions of employment and provide sanctions for effective control. (CRC, Art.32) see also "Torture/Rape/Sexual Exploitation/Physical and Mental Abuse" and "Children Associated with the Armed Forces"

Disabled

- The right of disabled children to special care and training designed to help achieve self-reliance and a full and decent

life in society. (CRC, Art.23)

- Capable States to provide for the care & rehabilitation, and the social and economic reintegration of mine victims. (OT, Art. 6(3))

Refugees and Displaced Persons

- The State to ensure protection and assistance to children who are refugees or are seeking refugee status, and to cooperate with competent organizations providing such protection and assistance. (CRC, Art.22) see also (CRC, Art.10; GC IV, Art.44; PI, Art.73)
- Parties to the conflict shall facilitate the care of displaced children in a neutral country for the conflict, under safeguards, with the consent of the Protecting Power. (GC IV, Art.24)
- The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians is involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. (P2, Art.17(1))

Basic Services

Education

- The right of all children to free primary education. (CRC, Art.28)
- The Parties to the conflict shall take necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition. (GC IV, Art.24)
- Parties to the conflict shall encourage intellectual, educational and recreational pursuits, sports and games. Special playgrounds shall be reserved for children. (GC IV, Art.94) see also (GC IV, Art.50; P2, Art.4(3a))

Health

- The parties to the conflict shall establish hospitals and safety zones and localities, organized as to protect mothers and children, elderly, sick and wounded, from war, including their protected and safe removal from besieged areas; particular attention should be given to expectant mothers and nursing mothers. (GC IV, Art 14,16,17,18,20&21)
- Parties to the conflict shall allow the free passage of all consignments of medical and hospital stores and tonics intended for children under fifteen, expectant mothers and maternity cases, and nursing mothers. Their physical or mental health and integrity shall not be endangered by any unjustified act or omission. (GC IV, Art.23 & 55) (P2, Art.5(2e))
- The right to the highest attainable standard of health and access to medical services; the obligations of the State to attempt to diminish infant and child mortality, combat disease and malnutrition, ensure health care for expectant mothers, provide access to health education, develop preventive health care and abolish harmful traditional practices. (CRC, Art.24) see also (CRC, Art.27)

Targeted Populations/Genocide

- Rights in the convention to apply to all children without exception; the State to protect children from any form of discrimination or punishment based on the child's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, or any other status. (*CRC, Art.2*) see also (*CRC, Art.30*)
- Obligation to respect person's honour, convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. (*P2, Art.4(1&2)*) see also (*GC IV, Art.27*)

Additional treaties: Universal Declaration of Human Rights (1948); Convention on the Prevention and Punishment of the Crime of Genocide (1948); Convention Relating to the Status of Refugees (1951); and its Protocol (1967); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

International Treaties and Children in Armed Conflict - Documents & Reporting:

A Committee on the Rights of the Child was elected to review States Parties' reports about how they are implementing the *CRC* within their own country (see *CRC, Art. 43*). The Committee welcomes information, and may be contacted through the OHCHR. The international NGO community also reports to the Committee, providing input on their experience and knowledge of rights violations committed against children. International and local NGOs are important contacts for sharing information on rights abuses against children.

Copies of *Refugee Children: Guidelines on Protection and Care* (1994) can be obtained from UNHCR.

For more information contact:

Office of the High Commissioner for Human Rights
OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
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e-mail: webadmin.hchr@unog.ch
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United Nations High Commissioner for Refugees
Case Postale 2500
CH-1211 Geneva 2 Dépôt, Switzerland
Tel.: (41 22) 739-8111
Fax: (41 22) 739-7326
Protection & Legal Issues e-mail: hqpr00@unhcr.ch
Internet: <http://www.unhcr.ch>

Copies of the *Convention on the Rights of the Child* can be obtained through UNICEF or other UN offices throughout the world.

Copies of the *Geneva Conventions* and the *Protocols* can be obtained through the International Committee of the Red Cross, 19 Avenue de la Paix, CH-1202 Geneva, Switzerland or national Red Cross and Red Crescent Societies throughout the world. The Red Cross is the international NGO that monitors the Geneva Conventions and the Additional Protocols.

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A Guide to the Protection and Care of Children in Armed Conflict (insert) has been included to serve as a tool to assist in evaluating the effectiveness of efforts to protect children, with some suggestions on concrete actions that might be taken to prevent violations of children's rights.

The *Sub-Working Group on Children in Armed* is composed of representatives of non-governmental organizations and individuals concerned with the welfare of children. For more information, contact the Group through the NGO Committee on UNICEF, c/o UNICEF House, Room H-6F, 3 UN Plaza, New York, NY, 10017, USA. Information in this summary sheet may be freely reproduced without permission.

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