

# Frequently Asked Questions about the Convention on the Rights of the Child and its Optional Protocols



## What is the Convention on the Rights of the Child?

The Convention on the Rights of the Child (CRC) is the most comprehensive treaty on children's rights and was adopted on November 20, 1989. The CRC reflects the nearly universal recognition of children's unique human rights protection needs.

## What are the rights protected under the CRC?

The CRC protects the full range of children's rights, both civil and political. It guarantees children's rights to be free from sexual exploitation and to proper treatment while in detention, as well as their economic, social and cultural rights, such as their rights to education and health care. The CRC encompasses all youth up to the age of 18.

## Did the U.S. ratify the CRC?

Although the U.S. signed the CRC in 1995, and ratified two optional protocols in 2002, it has still not ratified the CRC. The CRC has been ratified by every country in the world except the United States and Somalia (which does not have an internationally recognized and functioning government).

## Why is the CRC important for the U.S.?

The CRC would fill current gaps in U.S. laws, providing vulnerable children in America with the same robust protections that children in 193 countries are entitled to. The Convention would offer much-needed protection to children at risk including minority and poor children and other vulnerable populations such as those sentenced to life imprisonment without parole for crimes committed as a minor and children detained in juvenile detention facilities.

## What has the U.S. done to advance children's rights?

The U.S. ratified two optional protocols to the CRC: the Optional Protocol on the involvement of children in armed conflict, and the Optional Protocol on the sale of children, child prostitution and child pornography. As a result, the U.S. is obligated to comply with and implement the provisions of the optional protocols just as it would any other domestic law.

## What does the Optional Protocol on the involvement of children in armed conflict protect?

The Optional Protocol on the involvement of children in armed conflict ("Optional Protocol") safeguards the rights of children under 18 from military recruitment and deployment to war, and guarantees basic protections to former child soldiers, whether they are seeking refugee protection in the United States or are in U.S. custody for alleged crimes.

The Optional Protocol categorically prohibits military recruitment of anyone under 16 and a binding declaration by the U.S. government raises the minimum age for recruitment to 17. For children under 18, the Optional Protocol requires that military recruitment be genuinely voluntary, informed, and with the informed consent of parents or legal guardians. Countries also are required to take all

feasible measures to ensure the physical, psychological, and social reintegration of former child soldiers.

## Does the Optional Protocol apply only to the federal government?

No. The Optional Protocol's protections and requirements apply to all local, state, and federal government entities and agents, including state militias, as well as private actors, such as private military contractors and mercenary companies.

## What is the U.N. Committee on the Rights of the Child?

The U.N. Committee on the Rights of the Child was established to monitor the implementation of the CRC and its Optional Protocols. It is composed of 18 independent experts with recognized competence in the field of human rights generally and children's rights specifically. Committee mem-

## Guantánamo and the Optional Protocol on Children in Armed Conflict: A Closer Look

International law requires the United States to recognize the special situation of children who have been recruited or used in armed conflict. The Optional Protocol requires the rehabilitation of former child soldiers, including "all appropriate assistance for their physical and psychological recovery and their social reintegration." Yet in its dealings with Omar Khadr and Mohammed Jawad, two Guantánamo detainees who were teenagers at the time of their capture by the U.S., the U.S. government has ignored its legal obligations under the Optional Protocol. Both Khadr and Jawad are part of a larger group of children who were held at Guantánamo.

Omar Khadr is a Canadian national who was 15 when captured by the U.S. and has been held at Guantánamo for nearly one-third of his life. For years, Khadr was denied access to education, vocational training, counseling, or any family contact. Instead, he was held in isolation and abused, and he currently faces charges before the unconstitutional Guantánamo military commissions for crimes allegedly committed as a child. Mohammed Jawad, an Afghan citizen, had been held in U.S. custody since he was possibly as young as 12 and was released in August 2009, after six-and-a-half years in U.S. detention. Jawad, like Khadr, was reportedly subjected to torture, sleep deprivation, and other abuse in U.S. custody. The ACLU represented Jawad in federal court, successfully challenging his illegal detention through a habeas corpus petition.

In May 2008, the UN Committee on the Rights of the Child, which oversees compliance with the Optional Protocol, criticized the United States' detention, mistreatment, and prosecution of children held at Guantánamo, and called on the U.S. government to treat alleged child soldiers in its custody in accordance with international juvenile justice standards.

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bers are elected for a term of four years and must be from countries that have ratified the CRC. Governments submit reports about their compliance with the CRC and its Optional Protocols on a periodic basis.

### **Has the United States submitted reports about its compliance with the Optional Protocol?**

Yes. The U.S. Department of State is currently responsible for coordinating the drafting of reports and appearing before the Committee sessions in Geneva. The U.S. submitted its first report to the Committee in June 2007 and submitted additional reports in May 2008.

### **What happened at the Committee on the Rights of the Child in Geneva?**

On May 22, 2008, the Committee on the Rights of the Child reviewed the United States report in a public meeting held at the United Nations in Geneva. The U.S. was represented by officials from the Department of State, Department of Justice, Department of Defense, Department of Homeland Security, and the Department of Health and Human Services, as well as the Attorney General of the state of New Mexico. At the review session on May 22, 2008, the Committee members' questions were highly critical and showed their strong

concern about U.S. policies and practices on military recruitment of youth at home and detention of suspected child soldiers abroad.

### **What is the role of human rights and civil liberties organizations in the treaty compliance process, and why is the ACLU involved?**

Domestic non-governmental organizations (NGOs) are encouraged to participate whenever the Committee considers a country's compliance with the CRC and its Optional Protocols. Many groups submit information in the form of "shadow reports," and provide Committee members with a list of suggested questions and areas of concern regarding the country report. The Committee relies in part on factual information provided by NGOs like the ACLU to counter information submitted by the government in its report.

### **But I thought the ACLU was a domestic civil liberties organization?**

The ACLU is the nation's largest civil liberties organization and is committed to defending and preserving the individual rights and liberties guaranteed by the Constitution, laws, and treaties of the United States. It is important for the ACLU and other domestic human rights and civil liberties groups to participate in the treaty compliance process to hold the U.S. government accountable for human rights abuses and to send a message to the rest of the world that violations of human rights within the United States and abroad will not be tolerated.

### **How has the ACLU been involved in the current review process?**

In May 2008, the ACLU submitted a "shadow report" that documents U.S. failure to comply with its obligations under the Optional Protocol. The report focuses on three substantive areas: the efforts of the U.S. military to recruit children under 18 into the armed services; the detention of suspected child soldiers in U.S. facilities in Iraq, Afghanistan, and Guantánamo; and barriers faced by former child soldiers seeking asylum and refugee protection in the U.S. In addition, the ACLU sent a representative to the Committee on the Rights of the Child session in Geneva to present the ACLU report and to meet with the U.S. delegation, where the ACLU ex-

pressed its concerns vis-à-vis U.S. compliance.

### **What happened after the periodic reporting and examination of the U.S. in Geneva?**

At the end of its session, on June 6, 2008, the Committee on the Rights of the Child issued a list of concerns and recommendations regarding the U.S. compliance with the Optional Protocol. Among its recommendations, the Committee identified certain areas of concern and asked for additional information from the U.S. on what measures the U.S. has taken to address these concerns.

### **What are the next steps?**

In fall 2008, Congress passed the Child Soldiers Accountability Act (CSAA), criminalizing the recruitment and use of child soldiers. The Child Soldiers Prevention Act of 2007 (CSPA) was introduced in the Senate to limit the use of child soldiers in government and government-sponsored militias, stop the financing the use and exploitation of children in armed conflict by the U.S. military and make efforts towards the rehabilitation of children. Both the CSAA and the CSPA are examples of concrete measures the U.S. government has recently taken to better comply with treaty obligations.

However, the U.S. needs to do more to bring itself into compliance with the Optional Protocol by implementing the Committee's recommendations. In addition, the Obama administration should work with the Senate to ratify the CRC. If ratified by the United States, the CRC would provide needed protections for children in the U.S. On the state level, communities can organize towards protecting rights outlined in the CRC and Optional Protocol or against abusive military recruitment. For example, students and parents can call on their local governments to pass resolutions and local ordinances that provide greater respect and protection of children's rights consistent with the CRC.

**The ACLU Human Rights Program (HRP) works to ensure that the U.S. government complies with universal human rights principles in addition to the U.S. Constitution. HRP has been part of a reemerging movement of U.S. based organizations that uses the international human rights framework in domestic rights advocacy.**

■ While the recommendations of the Committee on the Rights of the Child are not legally binding, they place political pressure and an important moral obligation on the U.S. government, which has committed to complying with the Optional Protocol.