

Part II

United States Response to Specific Recommendations by the Committee on the Rights of the Child Optional Protocol on the Involvement of Children in Armed Conflict

In its Concluding Observations regarding the Initial Report of the United States on the Optional Protocol on the Involvement of Children in Armed Conflict, the Committee on the Rights of the Child (Committee) requested that the United States provide responses to its specific recommendations. U.N. Doc. CRC/C/OPAC/USA/CO/1 (Committee's Concluding Observations). The Committee's specific recommendations and the U.S. responses to them are provided below.

As a preliminary matter, the United States appreciates the ongoing dialogue with the Committee on the issues identified in the Committee's Concluding Observations. Many of these issues are also covered in the Committee's Revised Guidelines Regarding Initial Reports, CRC/C/OPAC/22, which guided U.S. preparation of its Periodic Report, included as Part I of this submission. Rather than repeating material provided in the Periodic Report in those instances, the United States has provided a brief response here, with cross-references to further information on the relevant topic in the Periodic Report. For issues not addressed in the Periodic Report, Part II provides a full response.

Committee Recommendation ¶ 7:

“7. The Committee recommends that the State party review with a view to withdrawing its understandings of the provisions of the Optional Protocol in the interest of improving the protection of children in situations of armed conflict.”

U.S. Response to ¶ 7:

A copy of the U.S. understandings included in its instrument of ratification is attached to the Initial Report as Annex I. The United States maintains its position with regard to the understandings contained in its instrument of ratification and believes that it has a clear record of implementing its obligations under the Optional Protocol to protect children in situations of armed conflict. For further discussion of the U.S. understandings, see the U.S. Periodic Report at ¶¶ 47-48 and 63, as well as ¶ 8 concerning the U.S. declaration.

Committee Recommendation ¶ 9:

“9. The Committee encourages the State Party to provide training on the Optional Protocol to all members of its armed forces, in particular those involved in international operations, including on the obligations in articles 6, paragraph 3, and 7.”

U.S. Response to ¶ 9:

As noted in ¶ 121 of the Periodic Report, the obligations of article 6 (3) do not apply to the United States because the United States does not recruit or use persons in hostilities in

contravention of its obligations under the Optional Protocol. Nevertheless, as indicated in ¶ 77 of the Periodic Report, the Department of Defense and other agencies have incorporated training on the Optional Protocol into annual training for military and civilian personnel. Paragraphs 122-128 of the Periodic Report set forth actions taken by the United States with regard to children in U.S. asylum and refugee programs who were recruited or used in situations of armed conflict in foreign countries in violation of other States Parties' obligations under the Optional Protocol. As to article 7, ¶¶ 129-161 of the Periodic Report demonstrate that the United States is actively involved in international cooperation and assistance in preventing activities contrary to the Protocol and in the rehabilitation and social reintegration of persons in foreign countries who are victims of acts contrary to the Protocol.

Committee Recommendation ¶ 10:

“10. The Committee recommends that further training on the provisions of the Optional Protocol be provided for professionals dealing with children, in particular teachers, migration authorities, police, lawyers, judges, military judges, medical professionals, social workers and journalists.”

U.S. Response to ¶ 10:

As explained in ¶ 11, the U.S. government is disseminating the text of the Optional Protocol and related material widely at all levels of government and to the public. Within the U.S. government, the Department of Homeland Security provides training on the Optional Protocol to its asylum officers. Training provided by the Departments of State, Defense, and Homeland Security is discussed in ¶¶ 77-79 and 126 of the U.S. Periodic Report. See also training included in international assistance and coordination in ¶¶ 129-161 of the U.S. Periodic Report.

Committee Recommendation ¶ 12:

“12. The Committee recommends that the State party ensure that disaggregated data, by sex and ethnicity, is available on voluntary recruits under the age of 18. Furthermore, the Committee recommends the State party to establish a central data collection system in order to identify and register all children present within its jurisdiction who may have been recruited or used in hostilities. In particular, the Committee recommends the State party to ensure that data is available regarding refugee and asylum-seeking children who have been victims of such practices.”

U.S. Response to ¶ 12:

Updated disaggregated data on voluntary recruits under the age of 18 is provided in ¶¶ 13-14 and Annex 1 to the U.S. Periodic Report.

As noted above, the United States does not recruit or use persons in hostilities in contravention of its obligations under the Optional Protocol. It does not have a central data collection system for the purpose of identifying and registering all children present within its jurisdiction who may have been recruited or used in hostilities in foreign countries. Given the

shared responsibilities between U.S. federal and state governments, such information would be extremely difficult to obtain. However, updated information available on refugee and asylum applications of children from countries with groups identified in the annexes to the UN Secretary-General's 2009 report on Children and Armed Conflict is provided in ¶¶ 19-22 and Annexes 2-5.

Committee Recommendation ¶ 14:

“14. The Committee recommends the State party ensure that its policy and practice on deployment is consistent with the provisions of the Optional Protocol.”

U.S. Response to ¶ 14:

U.S. policy and practice on the assignment of military members under the age of 18 continues to be consistent with U.S. obligations under the Optional Protocol to “take all feasible measures” to ensure that members of their armed forces under age 18 do not take “a direct part in hostilities.” As discussed in ¶¶ 47-51 of the U.S. Periodic Report, each of the services promulgated plans to implement this obligation in January 2003. Those plans are attached to the Initial Report as Annex III. In fact, the military departments’ policy and procedures go further than the obligations of the Optional Protocol by not assigning service members to units scheduled to deploy operationally to an area of conflict/hostilities until the service member’s eighteenth birthday. Although a few individuals were deployed overseas before reaching their eighteenth birthday, contrary to established policy due to administrative error, none of these individuals took direct part in hostilities and most were returned to the United States.

Committee Recommendation ¶ 16:

“ 16. The Committee encourages the State party to review and raise the minimum age for recruitment into the armed forces to 18 years in order to promote and strengthen the protection of children through an overall higher legal standard.”

U.S. Response to ¶ 16:

Consistent with the requirement in Article 3(1) of the Optional Protocol to raise the minimum age for voluntary recruitment above age 15, the United States has established 17 as the minimum age for voluntary recruitment into its armed forces and filed a declaration to that effect pursuant to Article 3(2) with its instrument of ratification. The United States has reviewed its policies and has confirmed that adequate safeguards are in place to protect 17-year-olds interested in serving. It has no plans to raise the age of voluntary recruitment to 18. For further discussion of safeguards, see ¶ 8 and ¶¶ 34-46 of the U.S. Periodic Report.

Committee Recommendation ¶ 17:

"17. The Committee recommends that the State party ensure that recruitment does not occur in a manner which specifically targets racial and ethnic minorities and children of low-income families and other vulnerable socio-economic groups. The Committee underlines the importance that voluntary recruits under the age of 18 are adequately

informed of their rights, including the possibility of withdrawing from enlistment through the Delayed Entry Program (DEP).”

U.S. Response to ¶ 17:

As discussed in the Periodic Report in ¶¶ 14 and 72-73 and Annex 1, U.S. recruitment efforts result in a military force that is representative of the United States as a whole. Economically disadvantaged individuals are actually underrepresented in our military, and race and ethnicity data show our recruits are on par with youth of comparable age in the general population.

As indicated in ¶ 41, all seventeen-year-olds have the ability to withdraw from enlistment at any time prior to beginning basic training. The U.S. military is an all-volunteer force. It would be inconsistent with that concept to order or force unwilling individuals to fulfil their contractual agreement to enter active duty, including those in the Delayed Entry Program (DEP).¹

Committee Recommendation ¶ 18:

“18. The Committee furthermore recommends that the content of recruitment campaigns be closely monitored and that any reported irregularity or misconduct by recruiters should be investigated and, when required, sanctioned. In order to reduce the risk of recruiter misconduct, the Committee recommends the State party to carefully consider the impact quotas for voluntary recruits have on the behaviour of recruiters. Finally, the Committee recommends the State party to amend the No Child Left Behind Act (20 U.S.C., sect. 7908) in order to ensure that it is not used for recruitment purposes in a manner that violates the children’s right to privacy or the rights of parents and legal guardians. The Committee also recommends the State party to ensure that all parents are adequately informed about the recruitment process and aware of their right to request that schools withhold information from recruiters unless the parents’ prior consent has been obtained.”

U.S. Response to ¶ 18:

As demonstrated in ¶¶ 34-46 of the U.S. Periodic Report, the United States takes its responsibilities in adhering to recruitment requirements seriously. Recruiting is the heart of the U.S. military services since it became an all-volunteer force in 1973. Individual recruiters who violate professional standards are held accountable under the Uniform Code of Military Justice. The 2008 Military Recruiter Irregularity Report in Annex 6 illustrates the extremely low incidence of misconduct--less than .2%-- discussed in ¶ 46 of the Periodic Report.

The United States has considered the possible impact of the quotas on the behavior of recruiters and believes that the recruiting standards in place and the potential individual liability of recruiters for violations provide adequate safeguards.

¹ The DEP is a program under which an individual may enlist in a reserve or inactive component of a Military Service and specify a future reporting date for entry on active duty in the active component. This future date generally coincides with availability of training spaces and with personal plans such as high school graduation.

The United States confirms that the No Child Left Behind Act, 20 U.S.C. § 7908, authorizes military recruiters access to the names, addresses, and telephone listings of secondary school students attending schools in local educational agencies (LEAs) receiving financial assistance under the Elementary and Secondary Education Act. *See also* 10 U.S.C. § 503. These statutes also authorize military recruiters to have the same access to secondary school students as LEAs provide to other prospective employers, as well as colleges and universities.

At the same time, the scope of the statutes is limited and well-defined in restricting and protecting access to information by military recruiters. In addition to limiting the kind of information available to military recruiters, a parent or student may request that a student's name, address, and telephone listing in secondary school are not disclosed without prior parental consent.

LEAs are required to notify parents annually that the school routinely discloses this information to military recruiters upon request, unless a parent requests not to have this information disclosed without his or her written consent. The notification must advise the parent how to opt out of the disclosure of this information and the method and timeline within which to do so.

In 2002, after the legislation went into effect, the Secretaries of Education and Defense jointly issued a letter and guidance notifying all states of these provisions, available at www.ed.gov/policy/gen/guid/fpco/hottopics/ht10-09-02c.html. The letter and enclosed guidance described the law's restrictions and protections, including the requirement for LEAs to notify parents of their right to indicate that this information should not be disclosed without their consent. *See* www.ed.gov/policy/gen/guid/fpco/hottopics/ht-10-09-02a.html. The 2002 guidance also included a model notice that could be used by LEAs or schools to notify parents of their option to choose not to have this information disclosed. The Deputy Secretary of Education and the Under Secretary of Defense jointly sent a letter to all chief state school officers in 2003 to clarify these provisions, again noting the importance of the fact that parents may opt out of schools providing information about their children to military recruiters, available at www.ed.gov/policy/gen/guid/fpco/pdf/ht070203.pdf.

In 2004 and again in 2006, the National Forum on Education Statistics, a cooperative federal-state-local body sponsored by the National Center for Education Statistics, published a resource document for schools about the privacy of student information, the *Forum Guide to the Privacy of Student Information: A Resource for Schools*. The publication discusses a number of issues relating to the privacy of student information, including what information would be provided to military recruiters and the fact that parents have the right to notify a school not to disclose information that otherwise would be provided to military recruiters. *See* <http://nces.ed.gov/pubs2006/2006805.pdf>

The Department of Education's Family Policy Compliance Office (FPCO) is the cognizant office for these student privacy and access provisions. FPCO annually notifies LEAs of their responsibilities with regard to ensuring parental rights under the Family Educational Rights and Privacy Act (FERPA) and the Protection of Pupil Rights Amendment (PPRA). In that yearly letter, FPCO also reminds LEAs about the requirement to provide student contact information to military recruiters only on those students whose parents have not opted out. *See* www.ed.gov/policy/gen/guid/fpco/pdf/pprasuper.pdf. A model notice concerning disclosure of directory information under FERPA and provision of student contact information under the military recruiters provision is included in this annual letter. This notice also informs parents of their right to opt out. *See* www.ed.gov/policy/gen/guid/fpco/ferpa/mndirectoryinfo.html.

FPCO also routinely responds to requests for guidance from school officials, as well as parents, about these requirements. Should problems arise involving military recruiters, FPCO notifies appropriate officials in the Department of Defense. However, FPCO rarely receives complaints about these provisions or their implementation.

Committee Recommendation ¶ 20:

“20. The Committee recommends the State party ensure that any military training for children take into account human rights principles and that the educational content be periodically monitored by the federal Department of Education. The State party should seek to avoid military-type training for young children.”

U.S. Response to ¶ 20:

In its observations, the Committee referred specifically to the Junior Reserve Officers’ Training Corps (JROTC), and suggested that it was offered to children as young as 11. As the Committee recognizes, the existence of the JROTC program does not constitute recruitment into U.S. national armed forces and does not violate any obligations under the Optional Protocol. The United States also notes that references to JROTC courses for children below high school age are not accurate. Where courses similar to JROTC exist for pre-high school students, they have been created by local education authorities and are not affiliated with the U.S. military.

Pursuant to 10 U.S.C. § 2031, JROTC programs are established at public and private secondary educational institutions that apply for a unit and meet criteria set forth in the statute. The school bears half the cost of the program’s implementation, with the military providing the rest of the funding, most of which goes to pay salaries of military retirees running the program in the school. The military retirees are qualified by the military to instruct; however, because the instructors are hired by the local school, the school has control over the program’s execution.

By law, JROTC’s purpose is to “instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.” See www.usarmyjrotc.com/jrotc/dt/2_History/history.html. As explained in a history of the program available on the U.S. Army website,

“The JROTC Program has changed greatly over the years. Once looked upon primarily as a source of enlisted recruits and officer candidates, it became a citizenship program devoted to the moral, physical and educational uplift of American youth. Although the program retained its military structure and the resultant ability to infuse in its student cadets a sense of discipline and order, it shed most of its early military content.

The study of ethics, citizenship, communications, leadership, life skills and other subjects designed to prepare young men and women to take their place in adult society, evolved as the core of the program. More recently, an improved student-centered curriculum focusing on character building and civic responsibility is being presented in every JROTC classroom.”

Id.

Students in JROTC are not members of or otherwise affiliated with any U.S. military service. High school graduates who have participated in JROTC can choose to voluntarily enlist

at age 17 or older, as can any other individual, and with all of the safeguards provided for the recruitment of anyone who is 17. Although their JROTC experience may give them certain benefits in recruit training, those benefits are only available if they have graduated from high school, consistent with the program goal of promoting completion of secondary school education.

Committee Recommendation ¶ 22:

“22. In order to strengthen protection measures for the prevention of the recruitment of children and their use in hostilities, the Committee recommends that the State party:

- (a) Ensure that violations of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities be explicitly criminalized in the State party’s legislation. In this regard, the State party is recommended to expedite the enactment of the Child Soldier Accountability Act of 2007;**
- (b) Consider establishing extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State Party;**
- (c) Ensure that military codes, manuals and other military directives are in accordance with the provisions of the Optional Protocol.”**

U.S. Response to ¶ 22:

As discussed in ¶¶ 83-88 of the Periodic Report, in 2008 the United States enacted the Child Soldier Accountability Act, creating both criminal and immigration sanctions for persons recruiting or using child soldiers under the age of 15. The Act provides jurisdiction over the offense if (i) the alleged offender is a U.S. national or lawful permanent resident; (ii) the alleged offender is a stateless person whose habitual residence is the United States; (iii) the alleged offender is present in the United States, irrespective of nationality; or (iv) the offense occurs in whole or in part within the United States. U.S. law does not generally provide jurisdiction over offenses occurring outside U.S. territory against U.S. nationals and the Act does not do so.

All military codes, manuals and other military directives are in accordance with the provisions of the Optional Protocol.

Committee Recommendation ¶ 23:

“23. The Committee recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further improve the protection of children’s rights.”

U.S. Response to ¶ 23:

The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

Committee Recommendation Paragraph 24:

"24. Furthermore, the Committee recommends that the State Party consider ratifying the following international instruments, already widely supported in the international community:

- (a) The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977;**
- (b) The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977;**
- (c) The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997."**

U.S. Response to ¶ 24:

As indicated in ¶ 104 of the Periodic Report, Additional Protocol II to the 1949 Geneva Conventions (1977) remains before the U.S. Senate pending its advice and consent to ratification. The United States has taken no steps to ratify Additional Protocol I.

The United States has no plans to become party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, but is a party to Amended Protocol II of the Convention on Certain Conventional Weapons, which regulates the employment of anti-personnel land mines.

Committee Recommendation ¶ 25:

"25. The Committee, consistent with its practice in this regard, invites the State party to reconsider its position in relation to the Rome Statute of the International Criminal Court, 2001."

U.S. Response to ¶ 25:

As indicated in ¶ 105 of the U.S. Periodic Report, the United States is examining its policies concerning the International Criminal Court but does not currently have plans to pursue becoming a State Party to the Rome Statute of the International Criminal Court.

Committee Recommendation ¶ 27:

"27. The Committee recommends that the State party provide protection for asylum-seeking and refugee children arriving to the United States of America who may have been recruited or used in hostilities abroad by taking, inter alia, the following measures:

- (a) Identify at the earliest possible stage those refugee and asylum-seeking children who may have been recruited or used in hostilities abroad;**
- (b) Recognize the recruitment and use of children in hostilities as a form of persecution on the grounds of which refugee status may be granted;**

- (c) Improve the access to information, including help lines, for children who may have been recruited or used in hostilities, reinforce the legal advisory services available for them and ensure that all children under 18 years are assigned a guardian in a timely manner;**
- (d) Carefully assess the situation of these children and provide them with immediate, culturally and child sensitive multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with the Optional Protocol;**
- (e) Ensure the availability of specially trained staff within the migration authorities and that the best interests of the child and the principle of non-refoulement are primary considerations taken into account in the decision making process regarding repatriation of such children;**
- (f) Include information on measures adopted in this regard in its next report.”**

U.S. Response to ¶ 27:

As discussed in ¶¶ 122-124 of the U.S. Periodic Report, the United States believes that appropriate measures are in place to ensure that children seeking asylum or refugee admission who may have been recruited or used in hostilities will be identified at an early stage and, if eligible, be granted asylum or admission. Consistent with the 1951 Refugee Convention, made applicable to the United States through accession to its 1967 Protocol (Refugee Protocol), refugee and asylum-seeking children who have previously been recruited or used in hostilities may be eligible for asylum if they have suffered persecution or have a well-founded fear of persecution on account of a protected characteristic (race, religion, nationality, membership in a particular social group, or political opinion) and are not otherwise barred from a grant of asylum.

Those involved in the asylum process are especially trained in dealing with children and in recognizing issues such as the recruitment and use of children as soldiers. See ¶¶ 126-128 of the Periodic Report.

As indicated in ¶ 125 of the Periodic Report, the best interests of the child principle does not play a direct role in determining substantive eligibility under the U.S. refugee definition; nonetheless, it is a useful measure for determining appropriate interview procedures for child asylum seekers.

The United States abides by its non-refoulement obligations under the Refugee Protocol for children who meet the criteria for protection as refugees and the Convention Against Torture where applicable.

Committee Recommendation ¶ 30(a):

"30. The Committee recommends that the State party:

(a) Ensure that children are only detained as a measure of last resort and that the overall number of children in detention is reduced. If in doubt regarding the age, young persons should be presumed to be children;"

U.S. Response to ¶ 30(a):

Consistent with its efforts to address the use of children in armed conflict, the U.S. Department of Defense has gone beyond the requirement of the Protocol to ensure that our military personnel recognize the special needs of juveniles captured on the battlefield and held in

detention. In the armed conflict in which they are currently engaged, U.S. forces capture and detain individuals who are a part of, or who substantially support, Taliban, al Qaida, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces. Although age is not a determining factor in whether or not the United States detains an individual under the law of armed conflict, the United States goes to great lengths to attend to the special needs of juveniles while they are in detention.

In a conflict where terrorists recruit and exploit children to send them into harm's way deliberately, which often leads to their death, the detention of juveniles becomes an unavoidable necessity and burden. Indeed, the principal rationale for detaining combatants under the law of armed conflict is to protect them and to save lives by preventing them from returning to the fight. These actions show the underlying logic and need for the detention of combatants, even those who may be under the age of 18. Under these circumstances, in detaining juvenile combatants, the United States seeks to restore some hope for their future and to prepare them for reintegration into society.

The United States has gone to great lengths to reduce the number of juveniles held in detention. In Iraq, the United States is releasing or turning over to the custody of the Government of Iraq for prosecution detainees, including juveniles, consistent with the Agreement between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During Their Temporary Presence in Iraq. As of December 31, 2009, the United States holds fewer than five detainees under the age of 18 in Iraq and Afghanistan. At Guantanamo, only one detainee who was under 18 at the time of capture (Omar Khadr, who was captured engaging in hostilities against U.S. Forces) remains in U.S. custody.

Committee Recommendation ¶ 30(b):

“(b) Guarantee that children, even if suspected of having committed war crimes, are detained in adequate conditions in accordance with their age and vulnerability. The detention of children at Guantánamo Bay should be prevented;”

U.S. Response to ¶ 30(b):

The Department of Defense recognizes the often difficult and unfortunate circumstances of young detainees. It has procedures in place to evaluate detainees medically, to determine their ages, and to provide for detention facilities and treatment appropriate for their ages. Young detainees are attended to by military personnel who are committed to providing them with safe and humane care and custody, and by medical professionals who recognize that, as juveniles, such detainees may require special physical and psychological care. In all cases, juvenile detainees are afforded regular exercise; access to mental health and medical services, including dental care; and contact with their families, when possible.

As the Committee is aware, President Obama issued an executive order mandating the closure of the detention facility at Guantanamo Bay. The review of each detainee at Guantanamo continues and the one remaining individual who was captured when he was under the age of 18, Omar Khadr, will have his case reviewed by the interagency panel and his

disposition decided, consistent with the interests of U.S. national security and the interests of justice.

Committee Recommendation ¶ 30(c):

“(c) Inform parents or close relatives where the child is detained;”

U.S. Response to ¶ 30(c):

The United States recognizes the unique role of the International Committee of the Red Cross (ICRC) under the Geneva Conventions in support of the protection of detainees during armed conflict. The ICRC has regular, private access to all detainees interned by the Department of Defense at Guantanamo and at the Theater Internment Facilities in Iraq and Afghanistan, and it assists the United States with facilitating contact with families, whenever possible.

The United States allows, and encourages, family contact and communication with detainees, wherever possible. In Iraq and Afghanistan, families are invited to visit family members who are in detention, and many have done so. Additionally, the ICRC delivers mail to detainees in U.S. custody, and it has partnered with the United States to facilitate telephone calls between family members and detainees at Guantanamo, as well as to increase family access at the Theater Internment Facility in Afghanistan. With the ICRC’s help, the United States has also instituted a program of video-teleconferences between detainees and family members who cannot travel to Afghanistan.

Committee Recommendation ¶ 30(d):

“(d) Provide adequate free and independent legal advisory assistance for all children;”

U.S. Response to ¶ 30(d):

As the committee is aware, the United States and its coalition partners are engaged in a war against al-Qaida, the Taliban, and associated forces. The U.S. Supreme Court, in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), affirmed that the detention of belligerents is a “fundamental and accepted [] incident to war,” and concluded that the United States is therefore authorized to hold detainees for the duration of the relevant conflict. This is consistent with the Geneva Conventions. The principal rationale for detention during wartime is to maintain security and to prevent combatants from returning to the battlefield to re-engage in hostilities.

Nevertheless, the United States has instituted enhanced screening procedures at the Theater Internment Facility in Afghanistan for reviewing the status of detainees. These enhanced procedures significantly improve the Department of Defense’s ability to assess the facts supporting the detention of each detainee as an unprivileged enemy belligerent, the threat each detainee represents, and each detainee’s potential for rehabilitation and reconciliation. The modified procedures also enhance each detainee’s ability to challenge his or her detention. These procedures allow for a personal representative who “shall act in the best interests of the detainee” and have access to all reasonably available information (including classified information) relevant to the proceedings.

Committee Recommendation ¶ 30(e):

“(e) Guarantee children a periodic and impartial review of their detention and conduct such reviews at greater frequency for children than adults;”

U.S. Response to ¶ 30(e):

All detainees, regardless of age, are advised of the reason for their detention and undergo periodic reviews. As noted above, in September 2009, the Department of Defense began implementing new detainee review procedures in Afghanistan that significantly improve the U.S. ability to assess each detainee's status, threat, and potential for reconciliation and reintegration. The new review procedures include features that enhance each detainee's ability to challenge his or her detention, including the appointment of a personal representative who will act in the detainee's best interests, and more extensive procedures to allow the detainee to present reasonably available witnesses and documentation relevant to the determination of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary. The new process better enables U.S. forces to determine which detainees must be held, and those who may be transitioned back into Afghan society, and better aligns detainee operations with the broader counterinsurgency strategy.

Committee Recommendation ¶ 30(f):

“(f) Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated in an impartial manner and those responsible for such acts should be brought to justice;”

U.S. Response to ¶ 30(f):

As noted above, the United States recognizes the unique role of the ICRC under the Geneva Conventions in support of the protection of detainees during armed conflict. The ICRC has regular, private access to all detainees interned by the Department of Defense at Guantanamo and at the Theater Internment Facilities in Iraq and Afghanistan, and it assists the United States with facilitating contact with families, whenever possible. The U.S. relationship with the ICRC is a productive one, based on confidentiality. The United States values the ICRC's input and addresses all of its concerns in a constructive, on-going dialogue at all levels of military command and civilian leadership. The United States strictly prohibits the abuse of detainees in its custody. Torture and cruel, inhuman and degrading treatment or punishment are prohibited by U.S. law and policy. The United States meets or exceeds the requirements of Common Article 3 of the Geneva Conventions in the treatment of all detainees in its custody. All credible allegations of abuse are thoroughly investigated, and those who are determined to have violated these treatment standards have been, and will continue to be, held accountable.

Committee Recommendation ¶ 30(g):

“(g) Conduct investigations of accusations against detained children in a prompt and impartial manner, in accordance with minimum fair trial standards. The conduct of criminal proceedings against children within the military justice system should be avoided;”

U.S. Response to ¶ 30(g):

As the Committee is aware, the United States is currently undergoing a comprehensive review of its detention policies. President Obama has noted that military commissions have a long history in the United States and that they are an appropriate venue for trying detainees for violations of the laws of war. They allow for the protection of sensitive sources and methods of intelligence-gathering; for the safety and security of participants; and for the presentation of evidence gathered from the battlefield that cannot always be effectively presented in federal courts. In the Military Commissions Act of 2009, Congress revised the procedures for military commissions to ensure that they are fair, legitimate, and effective. The decision to use criminal proceedings or military commissions will be made on a case-by-case basis. In the cases of individuals detained at Guantanamo, there is a presumption that such detainees, where feasible, will be tried in federal criminal proceedings. The United States is currently considering U.S. military prosecution of only one case involving acts committed by a person under the age of 18, that of Omar Khadr.

In this context, it should be noted that it is not unprecedented for juveniles to face prosecution for criminal acts committed during armed conflict. The Geneva Conventions and the Additional Protocols to them contemplate the prosecution of individuals under the age of 18 for violations of the law of armed conflict. Article 77 of Additional Protocol I and Article 6 of Additional Protocol II to the Geneva Conventions prohibit the application of the death penalty to those under 18 at the time the offense was committed, thereby indicating that prosecutions not resulting in the imposition of death are not prohibited. Similar approaches are taken by international tribunals established by the United Nations. The International Criminal Tribunals for Rwanda and the former Yugoslavia have no express age restrictions on prosecutions, and the Special Court for Sierra Leone expressly provides for prosecution of juveniles who are 15 to 17 years old. At the same time, the United States is mindful that due consideration should be given to the age of the accused at the time of the alleged offense and shares the Committee’s concern regarding appropriate treatment for juveniles whom terrorists have unlawfully recruited and endangered.

Committee Recommendation ¶ 30(h):

“(h) Provide physical and physiological recovery measures, including educational programmes and sports and leisure activities, as well as measures for all detained children’s social reintegration.”

U.S. Response to ¶ 30(h):

The United States has completed its new Theater Internment Facility (TIF) in Afghanistan, where all detainees will have greater access to recreation, vocational, and

educational programs, as well as enhanced family visitation programs. Building on lessons learned in its Iraq detention operations, the United States is developing programs for engaging the detainee population in Afghanistan, to encourage and better facilitate their eventual reintegration into Afghan society. The goal of these programs is to assist the detainees with becoming productive Afghan citizens who will contribute to the rebuilding of their nation when they are eventually released.

The new TIF has more space for recreation, greater access to fresh air and natural light, and educational and vocational programs that will contribute to the detainees' rehabilitation and reintegration into society upon their release. Reconciliation programs take into account the specific needs of juvenile detainees.

Further discussion of these issues is available in ¶¶ 28-70 of the 2008 Written Replies.

Committee Recommendation ¶ 32:

“32. The Committee recommends that the State party continue and strengthen its financial support for multilateral and bilateral activities to address the rights of children involved in armed conflict, in particular through promotion of preventive measures, as well as of physical and psychological recovery and social reintegration of child victims of acts contrary to the Optional Protocol.”

U.S. Response to ¶ 32:

The United States agrees with the Committee that multilateral and bilateral assistance to prevent the recruitment and use of children as soldiers and to promote physical and psychological recovery and social reintegration of child victims is essential to making real progress on these fronts. As explained in ¶ 129 of the Periodic Report, the United States has contributed and continues to contribute substantial resources to international programs aimed at preventing the recruitment of children and at reintegrating child ex-combatants into society. The United States applies a definition of child ex-combatants in its programmatic commitments that covers any child unlawfully used or recruited by fighting forces in any capacity, whether or not he or she ever bore arms. In this regard, U.S. programming adopts a broad approach by seeking to include all children affected by armed conflict rather than singling out for separate services former child combatants. It also espouses the principle that family reunification and community reintegration are both goals and processes of recovery for former child combatants. Examples of such U.S. foreign assistance and other international efforts are set forth in ¶¶ 131-161 of the U.S. Periodic Report.

Committee Recommendations ¶¶ 34 and 36:

“34. The Committee recommends the State party to include a specific prohibition in legislation with respect to the sale of arms when the final destination (end use) is a country where children are known to be, or may potentially be, recruited or used in hostilities.

“36. The Committee recommends that the State party abolish Foreign Military Financing, when the final destination is a country where children are known to be—or may potentially be—recruited or used in hostilities, without the possibility of issuing waivers. In

the interest of strengthening measures to prevent the recruitment or use of children in hostilities, the committee recommends that the State party adopt the draft Child Soldiers Prevention Act of 2007.”

U.S. Response to ¶¶ 34 and 36:

The Child Soldiers Prevention Act of 2008 was enacted on December 23, 2008. The Act defines child soldiers for the purpose of the legislation and prohibits specific types of military assistance (Foreign Military Financing, International Military Education and Training, and Excess Defense Articles Programs) and licenses for direct commercial sales of military equipment to governments that are identified by the Secretary of State as having “governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers.” See ¶¶ 89-93 of the Periodic Report.

Committee Recommendations ¶¶ 37 and 38:

“37. The committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of Government Departments, the congress and to State authorities, for appropriate consideration and further action.

“38. The Committee recommends that the initial report submitted by the State party and concluding observations adopted by the Committee be made widely available to the public at large in order to generate debate and awareness of the Optional protocol, its implementation and monitoring.”

U.S. Response to ¶¶ 37 and 38:

As discussed in ¶ 11 of the Periodic Report, recently the National Security Council distributed to all U.S. federal agencies a memorandum from the Legal Adviser of the Department of State transmitting links to the U.S. Initial Report on the Optional Protocol, as well as the Committee's Concluding Observations, and the Department of State has transmitted similar memoranda conveying such information to the state governors, the governors of American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and the mayor of the District of Columbia. The memorandum asked the entities to forward it to Attorneys General and to departments and offices that deal with human rights, civil rights, housing, employment and related issues. To provide access to the public at large and to civil society, the Department of State's Bureau of Democracy, Human Rights, and Labor posts U.S. treaty reports and related submissions and relevant treaty body's concluding observations, including those for the Optional Protocol, on its website at www.state.gov/g/drl/hr/treaties/index.htm. Additionally, the United States is in the process of taking further steps to ensure broader outreach to all levels of government and the public within the United States regarding the Optional Protocol and other U.S. human rights treaty obligations and reports. All agencies with a role in implementing the Optional Protocol have necessarily become more familiar with all aspects of the Optional Protocol in the process of its implementation and in preparing the reports for this Committee. As noted in the report, the United States government is fully in compliance with its obligations under the Optional Protocol,

and it is pleased to widely disseminate and to take under consideration the Committee's observations and recommendations.