



Convention on the Rights of the Child

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Committee on the Rights of the Child

Consideration of reports submitted by States parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Reports of States parties due in 2016

United States of America*

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I. Introduction

1. The United States of America welcomes this opportunity to submit its Combined Third and Fourth Periodic Report to the Committee on the Rights of the Child (Committee) on measures giving effect to its obligations under the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC), and on the Sale of Children, Child Prostitution and Child Pornography (OPSC), and on other information of interest to the Committee.¹ The Report consolidates information on both Protocols, in accordance with the Committee's guidelines, and places particular emphasis on developments since the prior U.S. reports of 2010. The selection and order of the content generally follows that of the Committee's June 26 and July 2, 2013, Concluding Observations (Observations), UN Docs. CRC/C/OPAC/USA/CO/2 and CRC/C/OPSC/USA/CO/2. A table of contents appears in the Contents Annex.

2. This Report draws on the expertise of the U.S. Departments of State (DOS), Defense (DoD), Justice (DOJ), Homeland Security (DHS), Health and Human Services (HHS), Labor (DOL), and Education (ED), as well as the U.S. Agency for International Development (USAID) and the Equal Employment Opportunity Commission (EEOC). The United States held a civil society consultation concerning this Report with nongovernmental organizations (NGOs) on November 12, 2015, and intends to hold further consultations prior to its Committee presentation.

A. Optional protocol on the involvement of children in armed conflict

1. General Measures of Implementation

3. The United States is committed to effective domestic implementation of its OPAC obligations. The legal and policy framework through which the United States gives effect to its undertakings has not changed since the submission of its Second Periodic Report, UN Doc. CRC/C/OPAC/USA/2. The United States refers the Committee to its declaration submitted upon becoming a Party, in OPAC Annex 1.

4. Since its Second Periodic Report, the United States has actively promoted the goals of the OPAC. In the multilateral arena, the United States has worked with foreign governments; UN entities, including the UN Working Group on Children and Armed Conflict (CAAC) and the Special Representative for CAAC; NGOs; and others to monitor, report on, and prevent the unlawful recruitment and use of child soldiers and to protect, assist, and rehabilitate children associated with fighting forces through Disarmament, Demobilization, Rehabilitation, and Reintegration (DDRR) programs. These include counseling, formal and informal education, vocational training, and physical rehabilitation (e.g., prosthetics) for former child soldiers.

5. Various DOS components, including its Office to Monitor and Combat Trafficking in Persons (TIP Office), the Bureau of Democracy, Human Rights, and Labor, and embassies and missions worldwide, including the U.S. Mission to the United Nations, are involved in addressing unlawful child soldier recruitment and use, including reporting on the unlawful use of child soldiers in the annual Human Rights and Trafficking in Persons Reports. DOL's annual *Findings on the Worst Forms of Child Labor* report includes information on the prevalence of child soldiering in countries that experience it, and the actions corresponding governments are taking to address it and other worst forms of child

¹ This Report will be posted at <http://www.state.gov/g/drl/hr/treaties>.

labor through legislation, law enforcement, policies, inter-ministerial coordination, and social programs. USAID supports the rehabilitation and reintegration of former child soldiers in certain countries. The United States has insisted on stronger human rights reporting by UN peacekeeping missions, including accurate and timely information on violations of applicable law and other abuses committed against children in the host State. We have also called on the United Nations to ensure that child protection issues are addressed during peace agreement negotiations, and have acted to ensure that DDDR programming is robust and diverse so that it can address the needs of disarmed and demobilized child soldiers, including girls and children with disabilities.

6. The United States has actively implemented the Child Soldiers Prevention Act of 2008 (CSPA), which requires publication in the annual Trafficking in Persons (TIP) Report of a list of countries that have governmental armed forces or government-supported armed groups that unlawfully recruit or use child soldiers, as defined in the CSPA. The governments of CSPA-listed countries, absent a waiver, are subject to restrictions on certain forms of U.S. military assistance and licenses for direct commercial sales of military equipment in the fiscal year (FY) following their placement on the CSPA list. The United States engages diplomatically with such governments and encourages national armies to improve age vetting of recruits; monitor troops to identify, demobilize, and rehabilitate child soldiers; investigate perpetrators of child soldier recruitment and use and hold them accountable; and otherwise implement UN child soldier action plans. The United States has also actively sought to hold perpetrators accountable through immigration bars and other tools made available by the CSPA.

a) *Data*

7. Given the shared responsibilities between federal and state governments, establishment of a comprehensive central data collection system for identifying and registering all children present within U.S. jurisdiction who may have been recruited or used in hostilities in foreign countries, as recommended in **Observation 19**, would pose challenges. We are able to provide updated, disaggregated data on voluntary recruits under the age of 18 into the U.S. military and on refugee and asylum applications of children from conflict-affected countries in the annexes to the UN Secretary-General's Report on CAAC. These data appear in OPAC Annexes 2 and 3, respectively.

b) *Legislation*

8. The Child Soldiers Accountability Act of 2008 (CSAA) is consistent with Article 3's provision that States Parties declare a minimum age older than 15 for voluntary recruitment into their militaries. States Parties may, consistent with Article 3, declare a minimum age older than 15 but younger than 18. As noted in 64 of the Second Periodic Report, while the CSAA is targeted at use of child soldiers outside the United States, the law could also apply if such an offense occurred within the United States. U.S. law and policy permit voluntary recruitment at age 17 and older, with safeguards sufficient to protect 17-year-olds interested in serving. Regarding **Observation 10**, the United States intends to maintain 17 as the minimum age for voluntary recruitment.

c) *Right to Life, Survival, and Development*

9. Regarding **Observation 8(a)-(c)**, as a threshold matter, the United States notes that this observation, like several others, does not relate to obligations the United States undertook under OPAC or OPSC. Moreover, the applicability of human rights obligations in situations of armed conflict raises difficult questions regarding the role of international humanitarian law as the *lex specialis* with respect to the conduct of hostilities and the protection of war victims. Nevertheless, with regard to the specific issues the Committee

raised, U.S. Armed Forces recognize and comply with the obligation under the law of war to take feasible measures to avoid or minimize civilian casualties and, further, go to great lengths to avoid civilian casualties, including children, in the conduct of hostilities.

10. Although the United States uses military force with as much precision and care as possible, there have been instances where civilian casualties have occurred. In those instances in which civilians, including children, have been killed or injured, after-action reviews have been conducted to determine how this occurred, and to ensure that we are taking the most effective steps to minimize the risk of civilians being killed or injured in the future. In accordance with standard practice, the United States has investigated U.S. personnel for alleged criminal conduct resulting in civilian casualties. Additionally, if we determine that non-combatants were killed or injured in a U.S. strike, we may, where appropriate, offer condolence or *ex gratia* payments to those injured and the families of those killed.

d) *Reservations and Related Conventions*

11. Regarding **Observation 4**, the United States supports the goals of the Convention on the Rights of the Child (CRC). The United States signed the treaty but has not transmitted it to the U.S. Senate for its advice and consent, which is required for ratification of a treaty under our constitutional system. Consideration of that potential transmission remains ongoing.

12. The United States maintains its position regarding the understandings in its instrument of ratification, attached to the U.S. Initial Report, UN Doc. CRC/C/OPAC/USA/1, as Annex I (**Observation 12**), and points to its strong record of implementing its OPAC obligations regarding protecting children in situations of armed conflict. For further discussion of the U.S. understandings, see the Second Periodic Report at 47-48 and 63, and 8 concerning the U.S. declaration.

e) *Independent Monitoring*

13. Monitoring is undertaken at all governmental levels in the United States. Although the United States does not have a national human rights institution *per se* (**Observation 14**), as described in 135 of the U.S. Common Core document, CCPR/C/USA/4, we have multiple complementary protections and mechanisms to reinforce our ability to guarantee respect for human rights domestically through federal departments and agencies; numerous state, local, tribal, and territorial human rights agencies and institutions; and our independent judiciary at all levels. Regarding the existence of Child Advocate Offices at the state level, at the time of the Second Periodic Report, 29 states had such offices. According to the National Conference of State Legislatures, as of 2015, that number had risen to 38, www.ncsl.org/research/human-services/childrens-ombudsman-offices.aspx. The United States has encouraged and will continue to encourage states to set up such offices.

f) *Public Awareness and Training*

14. Regarding public awareness, **Observation 15**, the United States disseminates the text of the OPAC and related material widely to all government levels and to the public, as described in 11 of the Second Periodic Report. DOS also publishes widely read reports addressing the unlawful recruitment and use of child soldiers, including the annual TIP Reports and the Country Reports on Human Rights Practices, www.state.gov/j/tip/rls/tiprpt, www.state.gov/j/drl/rls/hrrpt/, and 3 of the U.S. December 6, 2012, Written Replies (2012 Written Replies). The United States will continue to promote wide dissemination of the OPAC and information on the issues it covers.

15. The United States continues actively to train military and civilian personnel on the OPAC. All DoD military members and civilian employees are required to participate annually in training to further a general awareness of trafficking in persons. Consistent with **Observation 17**, DoD has added OPAC training to its existing trafficking training modules. Overseas Combatant Commands provide additional theater- and country-specific training. As noted in 77-79 and 126 of the Second Periodic Report, in addition to training provided by DoD, DOS and DHS provide training to federal, state, and local agencies, and more broadly to health care organizations, business leaders, academia, legal practitioners, and the public. DHS provides training on the OPAC to its asylum officers, as well as officers who interview refugees overseas applying for resettlement in the United States. USAID has incorporated training on trafficking in persons into its new employee orientation and recently developed a new online counter-trafficking in persons (C-TIP) training that will be mandatory for all staff and will include information about child soldiers. Training provided as part of U.S. international assistance and coordination is described in 129-161 of the Second Periodic Report.

2. Prevention

a) *Voluntary Recruitment and Safeguards*

16. Consistent with the OPAC Article 3(1) requirement 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 (see OPAC Annex 1). As to **Observation 21(a)**, the United States has reviewed its policies and has confirmed that adequate safeguards are in place to protect 17-year-olds interested in serving. For further discussion of safeguards, see the Second Periodic Report, 8 and 34-46.

17. The United States takes adhering to recruitment requirements seriously. Recruiting has been at the heart of U.S. military services since they became all-volunteer in 1973. Individual recruiters who violate professional standards or commit misconduct are held accountable as appropriate under the Uniform Code of Military Justice or administrative processes. Recruiters have no greater or lesser access to students in secondary schools than do other potential employers or colleges and universities. Regarding **Observation 21(b-c)**, the safeguards applicable to military recruiting in schools include limiting the kind of information available to military recruiters (only name, address, and telephone listing), and the requirement that school districts must notify parents of their option to opt out of having that information disclosed without the prior written consent of the parent. On March 26, 2013, DoD issued an Instruction on Military Services Recruiting, which establishes policy and procedures, and assigns responsibility for tracking and reporting of various recruiting related data, www.dtic.mil/whs/directives/corres/pdf/130432p.pdf. See 13 of the 2012 Written Replies for a discussion of the voluntary nature of the Armed Services Vocational Aptitude Battery (ASVAB). Regarding **Observation 21(d)**, see OPAC Annex 4.

b) *No Direct Participation in Hostilities*

18. As noted in 34 and 37 of the Second Periodic Report and **Observation 23**, U.S. law requires parental consent or the consent of the guardian for 17-year-old recruits to enlist in the military. Safeguards for voluntary enlistment include written parental consent, a comprehensive briefing, and an enlistment contract that together specify the duties involved in military service, and reliable proof of age. The parents' or guardians' signatures representing consent must also be witnessed and verified by at least two separate sources.

19. U.S. policy and practice regarding deployment of persons under 18 in areas where hazardous duty pay or imminent danger pay have been granted through 2011 are described

in detail in 4 and 5 of the 2012 Written Replies. These safeguards remain in place. No persons under 18 have been deployed to these areas in the last three years.

c) *Schools*

20. Regarding **Observation 25(a)-(c)**, Junior Reserve Officer Training Corps (JROTC) is a voluntary “elective” course from which students may withdraw at any time. Students and their parents/guardians are informed of this fact. The course covers ethics, citizenship, leadership, character building, civic responsibility, life skills, communication, and other subjects designed to prepare young persons to take their place in adult society. Local educational authorities decide the particular manner in which JROTC fits into curricula, such as how many credits are offered and how those credits fit into overall graduation requirements. As an elective course, JROTC is in addition to, and not in place of, core courses (such as English, social studies, math, and science) required for graduation. Marksmanship and the responsibilities associated with firearms handling may be covered but are not a required part of the JROTC curriculum. The JROTC course does not substitute for the military training required if a participant volunteers to join the U.S. military.

21. **25(d)**. The Army Cadet Corps is a nonprofit youth education organization that receives no federal funding and has no affiliation with the U.S. military. The United States does not have data on children enrolled in this program.

d) *Education*

22. Measures to promote knowledge of the OPAC are covered above and in 2-3 of the 2012 Written Replies. Regarding **Observation 27**, many schools include human rights and peace education, character and civic education, and related subjects and areas in their curricula. Curricula at many higher education institutions also include courses on civil rights, international human rights, and peace education, and a number of colleges and universities have centers specifically devoted to the study of human rights. The federal government does not have authority to direct or control curricula in schools and has not adopted a plan of work for the second phase of the World Program for Human Rights Education. However, ED engages in initiatives to further respect for human rights, nondiscrimination, diversity, and civic learning and responsibility, including knowledge about diverse cultures and religious traditions, tolerance, civility, and mutual respect. In 2012, ED established its first-ever international strategy, <http://www2.ed.gov/about/inits/ed/internationaled/international-strategy-2012-16.pdf>, which includes “Global competencies for all students” as one of its four Objectives.

3. **Prohibition and Related Matters**

a) *Criminal Legislation and Regulations*

23. Regarding criminalization of recruitment up to age 18, **Observation 29(a)-(b)**, as explained further in 20 and 21 of the 2012 Written Replies, U.S. federal and state law fully met U.S. OPAC obligations at the time of ratification and continue to do so. A comprehensive review of legislation was undertaken for this purpose at the time of ratification. Since ratifying, the United States has adopted additional legislation, in particular the CSAA and the CSPA. In its instrument of ratification the United States included an understanding that “the term ‘armed groups’ in Article 4 of the OPAC means nongovernmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups.” See 64-71 and 83-88 of the Second Periodic Report for a discussion of U.S. criminal law and penalties concerning insurgent activities by nongovernmental actors against the United States, forced recruitment by nongovernmental armed groups, and recruitment of persons under 15 years of age to serve in an armed force or armed group.

24. Regarding accession to the treaties noted in **Observation 30(a)-(d)**, 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 (Ottawa Convention), but is a party to Amended Protocol II of the Convention on Certain Conventional Weapons, which regulates the use of anti-personnel land mines. The United States has recently announced several measures that will help advance the humanitarian aims of the Ottawa Convention, which are shared by the United States, www.state.gov/t/pm/wra/c11735.htm; www.whitehouse.gov/the-press-office/2014/06/27/statement-nsc-spokesperson-caitlin-hayden-us-anti-personnel-landmine-pol. The United States is not at this time considering becoming Party to the Rome Statute of the International Criminal Court (ICC), but we continue to engage with Parties on issues of concern and to support the ICC's prosecution of those cases that advance U.S. interests and values, consistent with the requirements of U.S. law.

b) *Extradition and Removals*

25. The 2012 *Boley* case referenced in **Observation 32** represented the first removal order obtained under the CSAA, which added the recruitment and use of child soldiers as grounds to bar entry to, and for deportation from, the United States under the Immigration and Nationality Act (INA). This historic ruling by an immigration judge represented the culmination of extensive efforts by attorneys and special agents of DHS's U.S. Immigration and Customs Enforcement (ICE) to remove Mr. Boley from the United States due to his crimes. Under the U.S. Constitution's *ex post facto* clause, Mr. Boley could not be tried criminally based on his child soldier recruitment and use because those acts pre-dated the 2008 enactment of the CSAA. However, the *ex post facto* clause does not apply to removal cases. Thus, Mr. Boley could be removed based on acts that were not bars to entry or grounds of removal when he committed the acts. The United States has worked and will continue to work to ensure that all allegations of unlawful recruitment and use of children in armed conflicts are properly investigated and the suspected perpetrators are pursued effectively.

4. Protection, Recovery, and Reintegration

a) *Treatment of Children Associated with Armed Groups*

26. Regarding **Observations 34(a)-(h)** and **38**, DoD goes to great lengths to ensure that U.S. military personnel recognize and attend to the special needs of any juveniles captured on the battlefield, and has acted to limit the amount of time such juveniles are held in detention, where practicable and consistent with security concerns. As of December 10, 2014, DoD no longer operates detention facilities in Afghanistan. Consistent with the United States–Afghanistan Bilateral Security Agreement, which entered into force on January 1, 2015, the Government of Afghanistan is responsible for detention facilities going forward. No detainees who were under 18 at the time of capture remain in U.S. custody at the Guantanamo Bay detention facility. Should DoD capture and detain an individual under the age of 18, it has policies and procedures in place to attend to the special needs of children, as appropriate.

27. The United States refers the Committee to its response to **Observation 30** in the Second Periodic Report, and to 31-43 in the 2012 Written Replies, for detailed descriptions of policies and procedures regarding the detention of juveniles, including advocacy at hearings, cohabitation with family members, and access to individualized recreation, education, and socialization programs developed in coordination with medical staff and behavioral consultants. The United States fully implements its humane treatment

obligations under Common Article 3 of the Geneva Conventions and, after extensive review, has concluded that current U.S. military practices are consistent with Additional Protocol II and Article 75 of Additional Protocol I to the Geneva Conventions.

28. Regarding the Red Cross's role, see the Second Periodic Report, U.S. response to **Observation 30(c)**.

b) *Measures to Protect Rights of Child Victims*

29. The United States places great importance on rehabilitation and social reintegration of former child soldiers. Where the U.S. military has detained individuals under the age of 18 in the past, as described in the Second Periodic Report in response to **Observation 30(h)**, the United States has developed programs to facilitate their eventual reintegration as productive citizens in their home countries, where practicable and consistent with security concerns. Regarding **Observation 36**, the possibilities for and limitations on use of discretionary authority to grant exemptions from the terrorist activity bar in refugee determinations are described in detail in 26-28 of the 2012 Written Replies. The United States explained in 125 of its Second Periodic Report that the best interests of the child principle does not play a direct role in determining substantive eligibility for admission as a refugee. At the same time, the United States recognizes and supports the principle of taking into account the best interests of children in adjudicating applications for asylum and refugee status, including determining appropriate interview procedures, and assessing the situation of child refugees on issues such as resettlement and custody determinations. This principle is also a useful measure for determining appropriate interview and immigration hearing procedures for child asylum seekers. As noted in 48-51 of the 2012 Written Replies, the United States has strongly supported the increased use of best interests determinations in cooperation with the UN High Commissioner for Refugees.

5. **International Assistance and Cooperation**

30. U.S. multilateral cooperation in support of the OPAC's objectives is referenced above at paragraph 4. Regarding **Observation 39**, the United States recognizes the importance of financial support for multilateral and bilateral activities to eliminate unlawful recruitment and use of children in armed conflict, and is continuing such support, including support for rehabilitation and social reintegration of child victims. Development of the 2012 *United States Government Action Plan on Children in Adversity: A Framework for International Assistance: 2012-2017*, crafted in coordination with the Department of Agriculture, DoD, HHS, DOL, DOS, USAID, and the Peace Corps, demonstrates the U.S. government's commitment to protecting children from violence, including children recruited as child soldiers, and acknowledges the need for a whole-of-government approach to support international assistance for children in adversity. For a specific list of USAID-supported international assistance regarding children who were in armed conflict, categorized by a focus on documentation of abuses, prevention, and reintegration efforts, see OPAC Annex 5.

31. CSPA determinations to waive restrictions on the provision of foreign assistance are complex and difficult, and are based on the unique situation of the country in question. In countries that received full or partial waivers, much of the security assistance provided by the United States is aimed at working with their militaries to promote needed reforms and professionalize their armed forces to be more respectful of human rights, democratic values, and civilian control of the military. In the context of **Observation 41's** recommendation that the United States amend the 2008 CSPA to eliminate the waiver provision, it should be noted that exercise of the waiver authority can, in fact, act as a tool in stopping recruitment of children into armed conflict. By linking waivers to specific actions in each country, the United States can use the possibility of a waiver to provide an

incentive for reform and continue to work closely with those governments to end the use of child soldiers. Thus, rather than granting “blanket waivers,” we try to connect specific policy actions with partial or full waivers, transforming the CSPA into a strategic, diplomatic tool. Much of our diplomatic work centers on encouraging listed governments to enter into action plans with the UN. Chad, for example, was listed under the CSPA in 2010, 2012, and 2013. In 2011, Chad signed a joint action plan with the UN outlining concrete steps toward ending the recruitment and use of child soldiers. By 2014, Chad had fulfilled that action plan, and a joint UN–Chad screening mission found no children in its national army. Chad was not listed on the 2014 or 2015 CSPA lists. In the past few years, thanks in part to the leverage provided by the CSPA, a number of governments have signed action plans and started reducing the number of child soldiers in their armies. Nonetheless, challenges still remain, not only in working to eliminate child soldiers in State militaries, but also because non-State armed groups have expanded their recruitment of children. The United States is working with governments of the affected countries, civil society organizations, and activists to engage with non-State groups to stop recruitment and, importantly, to find ways to reintegrate former child soldiers into society.

32. In 2014, DOS established an Office of Security and Human Rights in the Bureau of Democracy, Human Rights, and Labor to promote the alignment of U.S. national security policies and practices with laws, policies, and principles related to human rights and democracy. Among its responsibilities, this office leads DOS’s implementation of the CSPA.

6. Ratification of the Optional Protocol on a Communications Procedure

33. Regarding **Observation 42**, the United States participated in negotiating the Optional Protocol on a Communications Procedure but has no current plans to ratify it.

7. Follow-up and Dissemination

34. Regarding **Observations 43-44**, see 144 and 147 of the Common Core Document, as updated in the Updates to Common Core Document filed with this Report. DOS Acting Legal Adviser Mary McLeod’s April 2015 letter to state, tribal, and territorial officials specifically informed them of our upcoming OPAC and OPSC treaty reporting commitments. In addition, as noted in A-2, in preparation for this Report the U.S. government hosted a consultation on this Report and has endeavored, as possible, to address civil society’s recommendations here.
