



Soldiers of Misfortune:

Abusive U.S. Military Recruitment and Failure to Protect Child Soldiers

EXECUTIVE SUMMARY

The Optional Protocol on the Involvement of Children in Armed Conflict (Optional Protocol) is meant to safeguard the rights of children under 18 from military recruitment and deployment to war, and to guarantee 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 U.S. Senate ratified the Optional Protocol in December 2002. By signing and ratifying the Optional Protocol to the Convention on the Rights of the Child, the U.S. bound itself to comply with the obligations contained in the Optional Protocol. The Optional Protocol provides that the absolute minimum age for voluntary recruitment is 16 years old.¹ It also instructs countries to set their own minimum age by submitting a binding declaration, and the United States entered a binding declaration raising this minimum age to 17.² Therefore, recruitment of youth ages 16 and under is categorically disallowed in the United States.

The Optional Protocol imposes special minimum safeguards for the recruitment of 17-year-olds, requiring that military recruitment activities directed at 17-year-olds be carried out with the consent of the child's parents or guardians.³ The Optional Protocol also requires that recruitment must be genuinely voluntary, and that the military must

¹ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, U.N. GAOR, U.N. Doc A/54/RES/263 (entered into force Feb. 12, 2002), art. 3(1)-(2).

² Office of the U.N. High Commissioner for Human Rights, Ratifications and Reservations, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, United States of America, Declaration (2005), para. (A).

³ Optional Protocol, *supra* note 1, at art. 3(3)(b).

fully inform youth of the duties involved in military service.⁴ In addition, the Optional Protocol requires underage recruits to provide reliable proof of age prior to acceptance into military service.⁵ The Optional Protocol also requires the United States to take all feasible measures to ensure that 17-year-old members of the armed forces do not take part in hostilities.⁶

Public schools serve as prime recruiting grounds for the military, and the U.S. military's generally accepted procedures for recruitment of high school students plainly violate the Optional Protocol. In its initial report to the U.N. Committee on the Rights of the Child, the U.N. body charged with monitoring compliance with the Optional Protocol, the U.S. Government claims that "[n]o one under age 17 is eligible for recruitment."⁷ In practice, however, the U.S. armed services regularly target children under 17 for military recruitment, heavily recruiting on high school campuses, in school lunchrooms, and in classes. Department of Defense instructions to recruiters, the U.S. military's collection of information on hundreds of thousands of 16-year-olds, and military training corps for children as young as 11 reveal that students are targeted for recruitment as early as possible. By exposing children younger than 17 to military recruitment, the United States military violates the terms of the Optional Protocol.

U.S. military recruitment of youth under 18 also frequently violates the minimum safeguards required by the Optional Protocol. Wartime enlistment quotas have placed increased pressure on military recruiters to fill the ranks of the armed services. The added strain of fulfilling enlistment quotas necessary to carry out sustained U.S. military operations in Iraq and Afghanistan without reinstating a draft has contributed to a rise in aggressive recruitment efforts and allegations of misconduct and abuse by recruiters, in contravention of the Optional Protocol. In the absence of a policy on implementation of the Optional Protocol,⁸ misconduct by recruiters often goes unchecked.

Heavy-handed recruitment tactics and misconduct by recruiters often render recruitment involuntary, and despite government and media reports documenting misconduct in recruitment of prospective enlistees under the age of 18, protections for students against abusive recruitment tactics remain weak. Recruiters threaten serious penalties to 17-year-old youth who have signed Deferred Entry contracts and subsequently changed their minds about enlisting, in some cases forcing these youth to report to basic training against their will. A provision of the federal No Child Left Behind Act forces schools to open their doors to recruiters and provide the military with students' information to undergo recruitment without parents' informed consent. The U.S. military's practice of targeting low-income youth and students of color for

⁴ *Id.*, art. 3(3)(a), 3(3)(c).

⁵ *Id.*, art. 3(3)(d).

⁶ *Id.*, art. 1.

⁷ U.S. Department of State, Initial Report of the United States of America to the UN Committee on the Rights of the Child concerning the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, UN Doc CRC/C/OPAC/USA/1, June 22, 2007, para. 21.

⁸ John T. Rawcliffe, *Child Soldiers: Legal Obligations and U.S. Implementation*, ARMY LAWYER, Sept. 2007 (stating that "The DOD has no formal directive or regulation governing the implementation of the Optional Protocol on Children in Armed Conflict").

recruitment, in combination with exaggerated promises of financial rewards for enlistment, undermines the voluntariness of their enlistment.

The United States also fails to accord basic protections to former child soldiers from other countries. In the case of Omar Khadr, who has been in Department of Defense custody since he was 15 years old, the United States has detained the alleged child soldier at Guantánamo for a period of prolonged pretrial detention without charge; denied him access to legal counsel for over two years; reportedly subjected him to torture and other cruel, inhuman and degrading treatment; and denied him independent psychological assessment and treatment. The United States also has prosecuted Khadr in a substandard legal proceeding characterized by the withholding of exculpatory evidence from his defense counsel and the failure to meet internationally recognized standards for the trial of juveniles. In the cases of some former child soldiers who were victims of serious human rights abuses abroad and are seeking protection in the United States because they cannot return to a safe civilian life in their home countries, children are being excluded from protection under immigration provisions intended to bar those who victimized them.

The United States is not doing enough to comply with the Optional Protocol. The ACLU calls upon the United States to take immediate, meaningful action to bring its policies and practices on military recruitment of youth, treatment and prosecution of alleged child soldiers, and consideration of the asylum claims of former child soldiers, into compliance with the Optional Protocol.

A broader failure to recognize the importance of children's rights underlies the shortcomings of the United States' policies and practices on military recruitment of American youth and the U.S.'s failures to accord special protection to former child soldiers from abroad. The United States is one of only two countries in the world not to have ratified the Convention on the Rights of the Child (CRC), the most comprehensive treaty on children's rights. The CRC is the most universally accepted and least controversial human rights treaty that has been drafted or adopted, and yet the United States has failed to ratify it. Somalia, which for many years lacked a functioning central government, is the only other country in the United States' company in failing to recognize the critical importance of protecting children's human rights. If the United States is to assert leadership on human rights issues, it must join the rest of the world in ratifying the CRC.