



**ACERWC**  
African Committee of Experts on  
the Rights & Welfare of the Child

**GENERAL COMMENT ON ARTICLE 22 OF  
THE AFRICAN CHARTER ON THE RIGHTS  
AND WELFARE OF THE CHILD:**

# **CHILDREN IN SITUATIONS OF CONFLICT**

**SEPTEMBER 2020**

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## **GENERAL COMMENT ON ARTICLE 22 OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD: “CHILDREN IN SITUATIONS OF CONFLICT”**

### **INTRODUCTION**

1. According to Article 42 (a) (ii) of the African Charter on the Rights and Welfare of the Child (ACRWC), the African Committee of Experts on the Rights and Welfare of the Child (the ACERWC) has a mandate to formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa. It is prudent that State Parties are provided with guidance and standards on how to deal with situations of conflict, tension and strife on the continent of Africa.
2. Article 22 of the ACRWC is meant to ensure that children benefit from the rights, protection, and care that they are entitled to in the context of armed conflict, in accordance with International Human Rights and International Humanitarian Law (IHL).
3. In drafting this General Comment, the ACERWC drew inspiration from various international instruments such as the United Nations Convention on the Rights of a Child, the Optional Protocol on the Involvement of Children in Armed Conflict, the ILO Convention 182 on the Elimination of the Worst Forms of Child Labour and the Geneva Conventions and its protocols. The General Comment also draws inspiration from regional human rights instruments such as the African Charter on Human and Peoples’ Rights, as well as the Maputo Protocol on the rights of women and girls in Africa. Further inspiration is drawn from international and domestic jurisprudence, academic commentaries, the travaux préparatoires of various instruments, and soft law instruments in the interpretation of Article 22.
4. Further inspiration is derived from principles of IHL, United Nation’s Security Council Resolutions, UN Security Council Resolution 2427 (2018), the Paris Principles and guidelines on children associated with armed forces or armed groups, the Safe Schools Declaration and policy decisions by the African Union (AU) Peace and Security Council (PSC).
5. At the 30<sup>th</sup> Ordinary Session of the ACERWC, a decision was made to develop a General Comment on Article 22 of the ACRWC in consonance with one of the recommendations of a continental study on the impact of conflict and crises on children in Africa which the ACERWC had commissioned earlier.

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6. Article 22 of the Charter states:

1. *State Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.*
2. *State Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.*
3. *State Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.*

## **1.2 A LEGAL ANALYSIS OF OBLIGATION TO PROTECT RIGHTS OF CHILDREN IN SITUATION OF ARMED CONFLICT.**

7. The need for a General Comment on Article 22, is to guide and offer insights to State Parties in the prevention of the violations of the rights of children in armed conflict. It is also instructive in the protection of children in the course of armed conflicts, strife and tensions on the African continent.
8. The protection of children in armed conflict is informed by an international legal framework, which is useful in dealing with the violations of children's rights in armed conflict, tension and strife. Some of the notable violations include the recruitment and use of children by armed forces or groups, killing and maiming of children, rape and sexual violence, abduction, attacks on schools and hospitals, and the denial of humanitarian access by parties to armed conflict, tension and strife.<sup>1</sup>
9. The international legal framework includes international humanitarian law<sup>2</sup> and

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1 There have been various steps since the early 1990s that have been taken to contextualize the problem of children and conflict. Some of the notable steps include the report by Graca Machel, the continued work of the Peace and Security Council of the African Union and other AU Organs, as well as the role of the Regional Economic Communities. At the 23<sup>rd</sup> session of the ACERWC, a decision was taken to prepare this General Comment. This followed the continental study on the impact of conflict and crises on children in Africa, which reflected the lived realities of children in areas experiencing armed conflict, tension or strife

2 These include the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), the additional Protocol to the Geneva Conventions relating to the protection of victims of international armed conflicts (Protocol I), and the additional Protocol to the Geneva Conventions relating to the protection of victims of non-international armed conflicts (Protocol II).

international human rights law.<sup>3</sup> International humanitarian law (IHL) applies to a specific content of conflict whilst International Human Rights Law (IHR) applies in all settings, these two bodies of law are complementary and overlapping, and there is an intersection in their commonality in the protection of human dignity and life.<sup>4</sup> The four main principles of IHL governing the conduct of hostilities are; humanity, distinction, proportionality and necessity.<sup>5</sup> IHL also contains specific rules on the protection of children.

10. Article 22 specifically reaffirms the application of rules of international humanitarian law in situations of armed conflict, but it is simultaneously a provision situated within an instrument of human rights law. On this basis, the approach taken throughout this General Comment is one of complementarity between HRL and IHL.
11. This means, in light of the continued application of human rights law in situations of armed conflict, that both HRL and IHL obligations will be addressed throughout the General Comment, as rules in both bodies of law can add value and specificity to the rights and protections of children in this context. With this said, greater focus will be given in this General Comment to the rules of HRL, and in particular those set out in the ACRWC, in line with the ACERWC's mandate and intention to adopt a child rights-based approach to its work. Accordingly, the linkages between other rights in the ACRWC and Article 22 will be highlighted in the forthcoming sections.
12. While IHL applies exclusively in situations of armed conflict, Article 22(3) is also applicable in situations of tension and strife to ensure the protection and care of children. This Article is not intended to apply IHL rules on the conduct of hostilities outside of situations of armed conflict, as these rules permit a certain degree of civilian harm and could result in lower protection for children. Rather, this provision is intended to ensure children benefit from the highest protection in armed conflicts, including internal armed conflicts, and during tension and strife.

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3 These include the Convention on the Rights of the Child (CRC), the African Charter on the Rights and Welfare of the Child (ACRWC), the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention 182), the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), and the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles).

4 Daniel Moeckli, Human Rights and Non-discrimination in the "War on Terror" 92 (2008).

5 The scope of the protection of children in IHL includes general and special protection as members of the civilian population. Available at <https://www.icrc.org/en/doc/resources/documents/article/other/57jmat.htm> (accessed 27 August 2019).

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13. The intent of this provision is to ensure greater protections for children, and therefore this article is not intended to apply IHL rules on the conduct of hostilities outside of situations of armed conflict, as this would incorrectly permit the targeting of military objectives as well as civilian damage that is proportionate to the military advantage of an attack, and this could result in lower protection for children. Rather, this provision is intended to ensure children benefit from the highest protection possible.

## **2. OBJECTIVES**

14. The General Comment clarifies and elaborates the nature of State Party obligations that arise from Article 22 on children and armed conflict. These obligations include legislative, administrative and other measures that should be taken by State Parties to protect the rights of children in situations of, or affected by armed conflict. Nothing in this General Comment is intended lower the protection to which children are entitled under international law.”

## **3. THE SCOPE OF THE GENERAL COMMENT**

15. The General Comment covers key principles, nature of State Parties’ obligations, an elaboration of Article 22, the role other stakeholders, accountability and dissemination of the General Comment. It is also instructive on how the State Parties should deal with the rights of children in situations of armed conflict, tension and strife.<sup>6</sup> The interpretation of Article 22 of the ACERWC relates to how the State Parties should deal with grave violations that arise under IHL and IHR.

16. States also have an obligation to take measures necessary for the suppression of all acts contrary to the Geneva Conventions and Additional Protocol I, including those relevant to the protection of children.

17. The General Comment uses a child-rights approach that the State Parties will need to use in the conceptualisation, adoption and implementation of laws, policies, and practices to protect children in the context of armed conflict, tension and strife.

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<sup>6</sup> While the Security Council Monitoring and Reporting Mechanism is based on 6 grave violations, the ACERWC states that this is not an exhaustive list. The six violations are: a) the recruitment and use of children (reiterated in some of the ACERWC’s jurisprudence, like Michelo Hansungule para 40); b) Killing or maiming of children; c) Sexual violence against children; d) Attacks against schools or hospitals; e) Abduction of children; and f) Denial of humanitarian access. See paragraph 5 above.

18. The application of the General Comment extends from States that are experiencing or have experienced armed conflict, to those that experience tension and strife. The existence of armed conflict, tension or strife is based on their effect on the disruption of the political, socio-economic and the enjoyment of human rights in the respective State.
19. The intent of this provision is to ensure greater protections for children, and therefore this article is not intended to apply IHL rules on the conduct of hostilities outside of situations of armed conflict, as this would incorrectly permit the targeting of military objectives as well as civilian damage that is proportionate to the military advantage of an attack, and this could result in lower protection for children. Rather, this provision is intended to ensure children benefit from the highest protection possible
20. The General Comment reiterates the need for the use of synergies from other sources to prevent conflicts, and promote post-conflict management. In this regard, the ACERWC recognises that the Peace and Security Council of the African Union plays a key role in the promotion of peace, security and stability in Africa, anticipation and prevention of conflicts.<sup>7</sup> This role extends to the promotion and implementation of peace-building and post-conflict reconstruction activities to consolidate peace and prevent the resurgence of violence.<sup>8</sup> In addition, the United Nations Security Council has in a number of its resolutions indicated that crimes against children in armed conflicts is an issue that poses a threat to international peace and security.<sup>9</sup> In this regard, the protection of children from the dangers of war should be recognised as a 'moral imperative, a legal responsibility and a question of international peace and security'.<sup>10</sup>
21. The ACERWC recognises that the best protection to the rights of a child in armed conflict, tension and strife stems from the identification of the violations under

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7 Article 3(a), (b) and (c) of the Protocol relating to the establishment of the Peace and Security Council of the African Union. Available at <http://www.peaceau.org/uploads/psc-protocol-en.pdf> (accessed 28 August 2019).

8 Article 3(d).

9 See the following security council resolutions; SCR 1261/1999, preambular paras 2-3; SCR 1314/2000, SCR 1379/2001, SCR 1460/2003, SCR 1539/2004, SCR 1612/2005 and SCR 1882/2009, SCR Res 2427 2018.

10 See SCR 1314/2000, SCR 1379/2001, SCR 1460/2003, SCR 1539/2004, SCR 1612/2005 and SCR 1882/2009.

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IHR and IHL.<sup>11</sup> The scope of the protection should be a child-rights based approach that is aimed at preventing child rights violations and, dealing with post-conflict societies; drawing on synergies from the international and regional frameworks on children and armed conflict and bodies that deal with conflict.

22. The intent of this provision is to ensure greater protections for children, and therefore this article is not intended to apply IHL rules on the conduct of hostilities outside of situations of armed conflict.
23. State Parties that do not have armed conflicts, tension or strife, may still use the principles in this General Comment in instances of crises, emergencies and national disasters where the rights of children may be violated.

## **4. GENERAL PRINCIPLES**

### **4.1 BEST INTERESTS OF THE CHILD**

24. Armed conflicts, tension and strife stifle the best interests of the child as they affect the development of children physically, socially, psychologically, economically and culturally; and affect the enjoyment of their rights. Article 22, read in conjunction with Article 4(1) places obligations on State Parties to use the principle of the best interest of the child in all matters affecting children including children in situations of conflict. The ACERWC has developed jurisprudence that emphasises the use of the best interest principles, such as its General Comment No 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection.
25. Best interests of the child shall be the primary consideration in all actions/ measures taken for children affected by armed conflict, which includes both preventive and protective measures.
26. Children shall be dealt with as victims regardless of their association with armed

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<sup>11</sup> Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "The Six Grave Violations against Children during Armed Conflict: The Legal Foundation" (2013) United Nations Working Paper No 1 at 9, online: <[www.childrenandarmedconflict.un.org/publications/WorkingPaper-1\\_SixGraveViolationsLegalFoundation.pdf](http://www.childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf)>. See also Anaise Muzima, Reimagining the Scope of Children's Legal Protection during Armed Conflicts under International Humanitarian Law and International Criminal Law, 8 W. J. Legal Stud. 1 (2018) at 2.

forces and armed groups. Children who may have committed crimes should be treated in accordance with principles of child justice including the use of detention as a measure of last resort and for the shortest period possible as well as the use of diversion and restorative justice. The State has to provide child justice systems close to the affected communities to ensure that the perpetrators are brought to book. With regard to the child, justice systems that rehabilitate the child to be a better person in society have to be put in place and maintained. The child justice systems have to be close to the children in the affected community. Justice systems should be adequately resourced to investigate violations against children in armed conflict, and ensure that the perpetrators responsible are brought to justice.

27. In the context of armed conflict, tension and strife, the Best Interests Principle include inter alia prevention of the recruitment of children, protection of children from violations such as abduction, killing and maiming, sexual violence and exploitation, school destruction, denial of humanitarian assistance for children and protection of children from the effects of combat.
28. Armed conflict, tension and strife lead to psychosocial and psychological effects on children. As a result, children then suffer from post-traumatic stress disorders as well stigmatization for their role in armed conflicts (especially in cases of sexual violence). In such circumstances, reintegration into families and communities becomes essential and must include community mobilization.
29. Registration of births enhances the realisation of the best interests of the child and shall be prioritised to enhance availability of information for state parties in making informed decisions for children to access services such as immunisation, provision of maternal health care and access to other basic social services.
30. State Parties shall not under any circumstances recruit children under the age of eighteen years. State Parties shall put in place all necessary measures, such as legislative, administrative, and policy to prevent such recruitment by other non-state armed groups.

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## 4.2 THE RIGHT TO PARTICIPATION OF CHILDREN

31. State Parties have an obligation to ensure that children who are capable of forming their views are given opportunity to exercise the right and to express their views freely on matters that affect them.<sup>12</sup> State Parties have a duty to give due weight to these views according to the evolving capacities of the child.
32. State Parties shall develop laws and policies that allow child participation in matters that concern them. Their participation shall be assured in a manner that allows them to express their opinions as individuals or collectively, freely. Special emphasis has to be placed on children from vulnerable contexts including those with disabilities.
33. The State shall create an enabling and safe atmosphere where children will be able to express their views on matters that affect them. Further, child participation shall be fully integrated in designing and implementation of post conflict reintegration programs for children affected by armed conflicts.
34. For inculcation of a culture of durable peace, child participation shall be integrated in the conflict prevention strategies, conflict resolution, transitional justice, recovery and reconstruction of affected communities.
35. In line with the right to association, children shall be allowed to share their experiences with their peers, and express their views as a way of harnessing their strengths, skills and building of self-confidence. In doing this, their safety should be guaranteed.
36. State Parties shall develop requisite legislative and policy environment to ensure that other stakeholders who work with children including inter alia parents, teachers, community elders, religious and traditional leaders, NGOs, CSOs, the media, NHRIs, government officials and UN agencies include children's views as well as ensure their representation in peace talks, mitigation of the effects of conflict, and rebuilding of communities.
37. Participation of children shall be done in an inclusive manner, for both boys and girls from contexts of vulnerability. The participation should also protect children from re-victimization.

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12 ACRWC, Art. 7 General Comment 12 of the CRC on Child Participation,

### 4.3 NON-DISCRIMINATION

38. In light of Article 3 of the ACRWC, “every child shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in [the] Charter irrespective of his/ her parents “or legal guardians” race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status. In the context of armed conflict, tension and strife, a child’s status should not be used as a hindrance to the enjoyment of rights under the ACRWC. The protection against discrimination of a child extends to actions of his or her parents, caregivers or persons in authority that would be a ground for offering different treatment to the child.<sup>13</sup>

39. Despite situations of armed conflict, tension and strife, access to basic social services such as education, health and social protection shall be given priority for all children including refugee children, internally displaced, and any other category of children that may be found in the context of conflict. Discrimination is in acts where the host State fails to ensure that the refugee or asylum seeking child enjoys his or her rights; investigation or prosecution of perpetrators of the criminal acts against children is done. IHL also sets out the fundamental principle that children must be treated humanely without any adverse distinction. In particular, this requires that they are in all circumstances to be treated humanely without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. This obligation is contained in Common Article 3 to the Geneva Conventions, among others.

40. Post conflict reconstruction shall be alive to the different physiological, mental, emotional and social needs of boys and girls. Reparations shall be instituted for child rights violations such sexual abuse, violence and exploitation, which include rape, enforced pregnancies, forced marriages and forced prostitution, among others.

### 4.4 THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

41. Whilst it is permissible under IHL to have collateral damage of civilians, including children during armed conflicts, State Parties shall ensure the

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<sup>13</sup> For instance discrimination on grounds of ethnicity which may be a reason for the armed conflict does not create a loophole for children in such a situation to be discriminated against

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survival, protection and development of all children in situations of conflict to the maximum extent possible. The context of “survival” illuminates a positive obligation on States to ensure that appropriate measures are taken to prolong the life of a child. The context of “development” refers to a comprehensive process of realising children’s rights in an environment where they grow up in a healthy and protected manner, free from fear and want, and to develop their personality, talents and mental and physical abilities to their fullest potential consistent with their evolving capacities.<sup>14</sup>

42. State Parties shall uphold the rights of children, and ensure humanitarian access to a child, to ensure the provision of the conducive environment as provided in Article 1 of the ACRWC. IHL requires parties to the conflict to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, subject to their right of control. Each party must refrain from deliberately impeding the delivery of relief supplies to civilians in need in areas under its control.<sup>15</sup>

## **5. NATURE OF STATE PARTY OBLIGATIONS IN THE CONTEXT OF CHILDREN AND ARMED CONFLICT**

43. Article 22 should be read in light of Article 1 of the ACRWC and should be interpreted through a child-rights-focused and child-centred lens and in manner that emphasises and strengthens the dynamic relationship between the obligations under Article 22 with the fundamental principles of the Charter.
44. State Parties have an obligation to take necessary steps to develop and implement administrative, legislative, judicial and other practical measures to deal with all children affected by armed conflict, tension and strife. The protection shall extend to children separated from their family and those in the hands of armed forces or armed groups, children who are deprived of liberty and those participating in hostilities in any other way. This obligation extends to the treatment of children who are accused of association with armed or designated terrorist groups, who should never be prosecuted based on solely their association with an armed or designated terrorist group. Access to public quality health care and relevant education should be guaranteed for these children.

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14 General Comment No. 1 (Article 30 of the African Charter on the Rights and Welfare of the Child) on “Children of Incarcerated and Imprisoned Parents and Primary Caregivers” 2013, para 25-26.

15 Instances of such impediment have been repeatedly condemned by the UN Security Council, General Assembly and Human Rights Council. See UNSC Res 824, UNGA Res 55/2, UN Commission on Human Rights Res 1995/77.

45. In light of the above paragraph, Article 22 describes the general nature and scope of the legal obligations undertaken by state parties, domestically and abroad. The obligations place immediacy on state parties to deliberately, concretely and in a targeted manner, take all necessary legislative, administrative and other feasible measures including adequate budgetary allocation, in accordance with their Constitutional processes and with the provisions of the ACRWC, to comply and ensure compliance with applicable rules of IHL.
46. The obligation to respect has an immediate effect on the State Parties to refrain from violation of the rights recognised by the ACRWC, and any restrictions on any of those rights must be permissible under the relevant provisions of the ACRWC. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of rights under Article 22. The obligation requires a good-faith implementation of the basic rules of IHL, without discrimination including on the basis of nationality, sex, age, race, religion, ethnicity immigration status or statelessness.
47. The obligation to respect ensures not only that the rights of boys and girls under the age of 18 years are not to be recruited or used, directly or indirectly, in hostilities by armed forces, non-state armed groups, but it also establishes an international obligation on state parties to refrain from doing so.
48. In addition, the obligation to respect places a positive duty on state parties to: firstly, prevent violations of provisions of Article 22 as well as applicable IHL rules. The state parties should further take measures to ensure that all individuals and state entities know about and comply with IHL and the ACRWC including through legislative measures and training. Secondly, to respond to violations or potential violations of rights contained in the ACRWC and specifically Article 22, including through ensuring accountability, monitoring and reporting. Thirdly, to provide effective remedy and redress, including through compensation and victim assistance for violations of IHL and this ACRWC, and to ensure that adequate human and financial resources are allocated for children's rehabilitation, re-integration and reunification with their families.
49. Further, the obligation to respect places a negative duty on states that provide or aid the provision of arms, resources, right of passage and protection of perpetrators to State Parties or parties to the conflict. The actions of providing

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resources or any support have to be interpreted as a violation of rights and disregard of obligations under the ACRWC.

50. State parties must ensure respect for the rules of IHL, and this requires that they take appropriate measures to prevent IHL violations from happening in the first place: accordingly, a party to a conflict must take all measures necessary to ensure respect for the applicable rules of IHL, beginning in peacetime. Parties to conflicts may take various measures to ensure respect for IHL rules by, inter alia, integrating these rules into legislative, administrative and institutional measures (including into military manuals and codes of conduct); making available legal advice to the armed forces as to the application of these rules; and teaching the civilian population about the protection of children in times of armed conflict.
51. The obligation to respect and ensure respect for IHL binds all States, whether they are party to a conflict or not. The duty to ensure respect by others comprises both a negative and a positive obligation: under the negative obligation, States may neither encourage, nor aid or assist in violations of IHL by Parties to a conflict, and under the positive obligation, they must do everything reasonably in their power to prevent and bring such violations to an end.
52. The obligation to 'ensure respect' requires that State Parties take all appropriate measures with regard to its population and the groups within its territories to observe the obligations in the ACRWC. This obligation extends to other States and non-State partners operating in other States.<sup>16</sup> These measures include taking administrative, judicial and other measures to ensure the practical recognition of the rights affected by Article 22 of the ACRWC. It relates to preventive, mitigating and corrective actions taken by a state party in respect of violations, or potential violations of IHL, IHRL, and the ACRWC, by other states or non-state actors in a conflict.
53. The overall responsibility to secure the safety and the liberty of its citizens rests with the state party within its territory and to all persons subject to their jurisdiction. It is, therefore, incumbent on the State to exercise due diligence in relation to violations or potential violations of IHL and the ACRWC by any actor in a conflict on the territory of a state party. The obligation to protect arises in

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16 This extends to both civil and political rights, and economic and social rights as hinted on above.

two ways. First, through the State Party's performance of other obligations. Secondly, the obligation may arise out of the requirement to protect without invoking other obligations as a basis for protection. As such protection arises out of the need to create an enabling environment as a condition precedent to the respect, or fulfilment of a given right. Examples include the provision of physical protection to ensure the smooth running of schools or hospitals and the safety of related civilians, such as students, teachers, doctors, nurses, and patients.

## **6. SUBSTANTIVE CONTENT OF ARTICLE 22**

### **6.1 THE RIGHT NOT TO BE TORTURED, OR TO BE SUBJECTED TO CRUEL, INHUMAN OR DEGRADING TREATMENT.**

54. The ACRWC protects children against child abuse and torture (Article 16), sexual exploitation (Article 27), trafficking and abduction (Article 29). Any actions by State Parties or Parties to an armed conflict, tension or strife that impedes the prohibition against torture in any form on children is inconsistent with the ACRWC. Under both the IHR and IHL children are protected from actions that impede the prohibition against torture or cruel, inhuman and degrading treatment. This protection is fortified under IHL in the Geneva Convention IV.
55. The ACRWC mandates State Parties to “take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the parent or guardian”. The mandate should be evident in the provision of special monitoring units that provide effective procedures to prevent, identify, report, investigate, treat and conduct follow-ups to affected children. A reading of Article 16 and 22 of the ACRWC shows that the State has to carry out its mandatory obligations under Article 16 despite the existence of circumstances that fall within the bounds of armed conflict, tension and strife. The prohibition against torture or cruel, inhuman or degrading treatment recognises one of the grave violations that requires parties to a conflict not to rape or otherwise sexually abuse children.
56. State Parties have an obligation to train and build the capacity of their entire security apparatus to prevent all types of human rights violations, including torture. The training should target the troops that States may deploy within their own territory as well as in other countries, including as part of AU or UN missions.

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State parties shall develop educational curriculum that can be inculcated in training to ensure that the protection of a child, including against sexual abuse and exploitation, in armed conflict, tension and strife is guaranteed.

57. State Parties that contribute troops to a mission should set up a child protection unit that should be functional for purposes of investigation and collection of evidence with regard to the violations of the rights of children. Its mandate should include dealing with sexual violence, abuse and exploitation, and its members should be provided training to respond adequately against these grave violations. It is also prudent that State Parties provide early response mechanisms to prevent acts of torture or cruel, inhuman and degrading treatment, and to secure environments including schools, places of worship and hospitals.

## **6.2 CHILDREN ASSOCIATED WITH ARMED FORCES AND ARMED GROUPS**

58. As children involved in armed conflict are primarily victims, State Parties shall take appropriate steps to prevent the detention or prosecution of children for alleged involvement with armed groups, including all non-State armed groups and those designated as terrorist groups. Detention is contrary to the best interests of the child and often associated with ill-treatment and torture. States should develop handover protocols to prevent detention and ensure that children taken into military custody are swiftly transferred to civilian child protection authorities for rehabilitation and community reintegration.<sup>17</sup> Children associated with armed forces or armed groups should be considered as a special group and undergo rehabilitation via Disarmament, Demobilization and Reintegration (DDR) programs where they should be provided with psychosocial support, civic education, art therapy, hands on skills training and vocational skills.

59. Children should not be detained or prosecuted solely for their participation in armed conflict or mere membership in armed groups, including groups designated as terrorist. If there is evidence that a child has committed a criminal offense, State Parties should treat them in accordance with international juvenile justice standards – notably ensuring that detention is a last resort and is used for shortest appropriate period of time; that children are detained separately from adults; that

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<sup>17</sup> Countries including Chad, Niger, Mali and Sudan have signed such handover protocols.

they have access to legal counsel; that the best interests of the child is the primary consideration, and that rehabilitation and reintegration into society are prioritized. When it cannot be established that a child is above the set age of criminal responsibility, the child should be given a benefit of doubt and should not be held criminally responsible. In the same vein, in case of older children, when it cannot be definitely established that a child has reached the age of 18, the child shall be treated in accordance with international juvenile justice standards. Wherever possible, diversion measures, restorative justice programmes and the use of non-coercive treatment and education programmes shall be used as alternatives to judicial proceedings, and restorative justice must be sought.<sup>18</sup> If children are detained, they are entitled to age-appropriate and gender sensitive treatment including appropriate food and medical treatment, and access to education.

60. Children should always be tried in specialized child justice systems. Protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offender.
61. State Parties should work together with human rights and humanitarian organisations, peace and support operation personnel and other inter-governmental agencies in the vetting process of members of the military forces who are expected to have contact with children and ensure child protection training for all military personnel.<sup>19</sup> Where acts of human rights violations have already occurred, the State Parties should ensure that the perpetrators are investigated and prosecuted.
62. The State Parties shall exercise due diligence in the provision of justice systems in areas of armed conflict, tension and strife that are child-friendly justice system, with provision of psychosocial support. The State Parties shall provide these services regardless of the provision of similar services by humanitarian organisations.
63. State Parties should ensure equal access to reintegration support for boys and girls formerly associated with armed forces and armed groups and ensure reunification with their families.

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<sup>18</sup> See Paris Principles 8.7, Security Council resolution 2427, paras 19-21.

<sup>19</sup> Countries like Uganda and Côte d'Ivoire already have a protocol that is used to ensure child protection forms part of the training.

### 6.3 SEXUAL ABUSE, VIOLENCE AND EXPLOITATION

64. State Parties have an obligation to take legislative, administrative, social and educational measures to protect the child from all forms of maltreatment including sexual abuse, exploitation and violence.<sup>20</sup> This obligation should be evident in the existence of special monitoring units that prevent, identify, report, investigate, treat and conduct follow-ups to affected children.<sup>21</sup> The protection against such maltreatment requires parties to a conflict not to sexually abuse or exploit children. State Parties should also provide mechanisms to address situations.
65. There is consistent jurisprudence from IHR that promotes the prosecution of sexual violence and abuse both in times of war and peace. In this vein, international agreements such as the Convention against Torture (1984),<sup>22</sup> the Convention for the Elimination of all Forms of Discrimination Against Women (1979) (“CEDAW”),<sup>23</sup> and the Vienna Declaration of the World Conference on Human Rights (1993)<sup>24</sup> uphold the right to liberty and security of one’s person. It follows that the protection against torture or cruel, inhuman and degrading treatment should be interpreted to include rape and sexual violence.<sup>25</sup> The definition of torture offered by the Convention against Torture includes acts on both adults and children as defined by the ACRWC.<sup>26</sup> Actions such as detention of children in illegal places, sexual offences against children, torture of child soldiers and children in internally displaced camps show a fusion of the jurisprudence of the Committee against Torture and the ACERWC.<sup>27</sup> Instances of torture or cruel, inhuman and degrading treatment of children in armed conflict include detention by both State and non-state armed groups and sexual abuse. Emphasis has to be placed on incidences where the child who has suffered the abuse is suffering from a disability.

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20 ACRWC, Article 16(1).

21 ACRWC, Article 16(2).

22 Article 1, Convention Against Torture.

23 Articles 1-3, CEDAW.

24 Part 5, Vienna Declaration of the World Conference on Human Rights (1993).

25 Office of the Special Representative of the Secretary General for Children and Armed Conflict, (2009) Working Paper 1. The six grave violations against children during armed conflict: The legal foundation, 5. See note 23 above on sexual violence.

26 Article 1, Convention against Torture, Article 2, ACRWC.

27 Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, Document A/55/290 paragraphs 10, and 15. Adopted at the 55<sup>th</sup> session of the General Assembly. See also Wijemanne H (2017) ‘Protecting the Rights of Children Deprived of their Liberty’ in *Protecting Children against Torture in Detention: Global Solutions for a Global Problem* Center For Human Rights & Humanitarian Law available at [http://antitorture.org/wp-content/uploads/2017/03/Protecting\\_Children\\_From\\_Torture\\_in\\_Detention.pdf](http://antitorture.org/wp-content/uploads/2017/03/Protecting_Children_From_Torture_in_Detention.pdf)130 (accessed 2 January 2019). See Committee Against Torture (CAT), *Concluding observations on the second periodic report of Afghanistan*, paragraph 17 on the detention of children with adults; 12 June 2017, CAT/C/AFG/CO/2, available at: <https://www.refworld.org/docid/596f4f754.html> (accessed 2 January 2019)

## 6.4 THE RIGHT TO HEALTH

66. State Parties have an obligation to take the requisite measures to ensure full implementation of the right to enjoy the best attainable state of physical, mental and spiritual health. According to IHL the importance of the protection of the right to health calls for the protection of hospitals. Concerns about the health of the civilian population are eminent in armed conflict, more so where children are involved. The ACRWC recognises the right to enjoy the best attainable state of physical, mental and spiritual health. The relevant provision is silent on the limits to the enjoyment of the right with regard to times of peace or war. Notwithstanding this, Article 22, is by implication interpreted to refer to both periods of peace and conflict.
67. State Parties shall ensure that children in armed conflict, tension and strife have the right to receive quality basic health care in a nurturing environment. The children must be able to receive immunisation benefit from policies that address malnutrition, basic nutrition, reduction of deaths due to preventable causes before the age of five, and reduction in maternal mortality rates. The use of nuanced approaches such as ceasefires can be used to enable humanitarian assistance.
68. The girl child's right to health is often adversely affected. Sexual abuse, exploitation and violence often leads to forced marriages and enforced pregnancies, physical and sexual violations like rape and forced prostitution. When State Parties do not ensure women and girls have access to safe and legal abortion, unwanted pregnancies may, in turn, lead to high rates of unsafe abortion, resulting in serious health complications and preventable deaths. The State should ensure emergency contraception is available and accessible to all, particularly victims of sexual violence, and ensure the provision of quality maternal health services, safe abortion and post-abortion services, HIV testing, prevention and treatment. This treatment should be accessible to children in areas of armed conflict, tension and strife.
69. The State Parties have to ensure that children who are victims of sexual violence and exploitation receive age-appropriate reproductive health care and

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psychosocial support. Preventive steps should be taken to ensure that the physical health needs of adolescents, such as sanitary towels and contraceptives are met. The recovery and reintegration programmes that are engaged have to address issues of the effect of conflict and possible trauma. These measures should be tailored on grounds of gender and age of the children.

70. Where the right to health of children in situations of armed conflict, tension and strife is violated, protection under human rights law is triggered due to the obligation on the State to protect this right. Underlying this protection is the obligation to respect the right to health by ensuring the realisation of this right even in instances of armed conflict. The State Parties are reminded of their obligations with regard to the right to health under the ICESCR. State Parties are urged, as a basic minimum to positively realise the right to health; towards prioritisation and progressive realisation in light of the minimum core obligation to this right. The protection of the right to health extends to instances where children have been displaced to other States or territories where a State or receiving State has control.
71. State Parties shall maintain a child protection unit that investigates and collects evidence relating to violence, sexual abuse and exploitation of children. There should be early response mechanisms to prevent sexual abuse and exploitation in all environments involving children. State Parties should work together with other organisations and inter-governmental agencies in ensuring that the acts of sexual exploitation, violence and abuse are investigated and prosecuted.

## **6.5 THE RIGHT TO EDUCATION**

72. State Parties shall ensure that every child must have the right to an education.' It is required of State Parties to ensure that they fulfil the obligation to provide for the right to education even in times of armed conflict or crisis situations. Article 22 of the ACRWC also refers to rules of IHL, and IHL contains a family of rules which aim to ensure that in situations of conflict, education can continue and students, educational personnel and educational facilities are protected. These include rules protecting education from attack, as well as rules requiring parties to the conflict to take steps to facilitate access to education.

73. IHL contains rules that are aimed at guaranteeing that in situations of armed conflict education can continue. In particular, the Geneva Conventions and Additional Protocol I specifically address the need to protect access to education with regard to the following situations in international armed conflict: all children under 15 orphaned or separated as a result of war (arts. 13 and 24 GC IV); civilian internees, notably children and young people (arts. 94, 108 and 142 GC IV); occupation (art. 50 GC IV); circumstances involving evacuation of children (Art. 78 AP I); and prisoners of war (arts. 38, 72 and 125 GC III).
74. Additional Protocol II obliges parties to a non-international armed conflict, States and non-state armed groups, to provide children with a number of fundamental guarantees. They must provide them with the care and aid that they require. In particular, children must e.g. receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care (Art. 4.3(a) APII)."
75. The protection against the violation of this right extends against attacks on education institutions because schools and other educational facilities are presumed to be civilian objects and are thus protected against attack; like for all other civilian objects, protection may cease when educational institutions are turned into military objectives. Even in such case, all feasible precautions would have to be taken when attacking such military objective to avoid or at least minimize incidental harm to civilian students and educational personnel, facilities, and attacks expected to cause excessive incidental harm are prohibited.
76. Attacks on students, educational personnel and schools in the context of armed conflict and insecurity violate the rights of children in various ways. Attacks on education include violence against educational facilities, students and education personnel.<sup>28</sup> Such actions by state security forces and non-state armed groups that target school buildings; violence towards education personnel and students at schools, sexual violence, abduction, and forced recruitment are prohibited. This extends to the use of harassment and threats against teachers, parents and students which culminates in the violation of the right to education. The African Union's Peace and Security Council has urged all Member States to endorse the Safe Schools Declaration, an inter-governmental political commitment aimed at strengthening the prevention of, and response to, attacks on education during

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28 Safe Schools Declaration available at [http://www.protectingeducation.org/sites/default/files/documents/safe\\_schools\\_declaration-final.pdf](http://www.protectingeducation.org/sites/default/files/documents/safe_schools_declaration-final.pdf) (Accessed 26 September 2019).

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armed conflict, including by: collecting reliable data on attacks and military use of schools and universities; providing assistance to victims of attacks; investigating allegations of violations of national and international law and prosecuting perpetrators where appropriate; developing and promoting “conflict sensitive” approaches to education; seeking to continue education during armed conflict; restricting the use of schools and universities for military purposes; and supporting the work of the United Nations on the children and armed conflict agenda.

77. The use of schools and other education institutions by peacekeeping forces can be equally negative for children’s right to education. For this reason, the African Union and other relevant African inter-governmental organizations that authorize peace support operations should adopt an explicit ban on the use of schools in their operations.
78. Attacks on education institutions has a disproportionately negative effect on girls, for example, if they are specifically targeted for sexual violence or abduction if they are displaced to a more distant school, if infrastructure such as toilets is destroyed or occupied or isn’t appropriate to cater for their needs, or if they are perceived to be at risk of sexual and gender based violence or harassment from occupiers. In some instances, attacks are motivated by opposition to girls’ education.
79. State parties shall secure equal opportunities to every child who dropped out of school as result of armed conflicts, tension and strife. And provide the necessary adequate institutions such as vocational training centres, accelerated education, mobile education teams. To ensure their obligations according to article 11 of the ACRWC.
80. The ACERWC uses jurisprudence of the CRC to urge State Parties to provide education as a tool to respect, protect and fulfil the holistic development of children in armed conflict.<sup>29</sup> The enjoyment of the right to education also helps in the re-integration of children who have been affected by armed conflict into the community. As such, asylum-seeking, refugee or migrant children benefit from this right by seeking an education in the host community.<sup>30</sup>

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29 Concluding observations on the report submitted by Portugal under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, paragraph 23 to 24.

30 Regarding these IHL rules, see in particular Article 4(3) of Additional Protocol II; Article 77 of Additional Protocol I, and Rule 135 of the ICRC’s Customary International Humanitarian Law Study [https://ihl-databases.icrc.org/customaryihl/eng/docs/v1\\_rul\\_rule135](https://ihl-databases.icrc.org/customaryihl/eng/docs/v1_rul_rule135)”

81. Female students who are pregnant and/or adolescent mothers, and those who are forced to get married, face very high levels of stigma and discrimination, and may be refused re-entry to schools. States should ensure girls can remain in school, or resume education if they have dropped out because of pregnancy or marriage, by adopting special continuation policies to guarantee their right to education, including in conflict, and provide support to adolescent mothers.<sup>31</sup>
82. The destruction of schools takes on a spiral effect of denying educational opportunities to children, making them vulnerable to human trafficking where they are forced to seek education elsewhere. The perpetrators of human rights violations use the vulnerability of children to abuse them.<sup>32</sup>

## **6.6 RULES OF IHL APPLICABLE IN ARMED CONFLICTS WHICH AFFECT THE CHILD**

83. The IHL rules require that children affected by armed conflict are entitled to special protection, including protection against all forms of sexual violence; separation from adults while deprived of liberty unless they are members of the same family; provision of access to education, food and health care services; evacuation from areas of active conflict for safety reasons; reunification of unaccompanied children with their families.

## **6.7 SITUATIONS OF INTERNAL ARMED CONFLICTS, TENSION AND STRIFE**

84. The point of departure between armed conflict and tension and strife is the nature and effect of the internal disturbance to affect the political social and economic routine of a given community.<sup>33</sup> The internal disturbances may be either political or violent in nature affecting the realization of children's rights. The internal disturbance has to be durable to be qualified as tension or strife. Tension and strife may include examples such as gang violence, inter-communal violence, and electoral violence,

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31 See African Charter on the Rights and Welfare of the Child, arts. 21(2), 11(3)(e) and 11(6); African Youth Charter, art. 13(1) and art. 13 (4)(b); African Commission on Human and Peoples' Rights and African Committee of Experts on the Rights and Welfare of the Child, "Joint General Comment on Ending Child Marriage, 2017, para. 31.

32 This can be avoided through the development of a curriculum that promotes durable peace, without propaganda overtures against one group or the other. Furthermore, out of school education should be monitored to avoid radicalising children.

33 Vité, S. (2009). Typology of armed conflicts in international humanitarian law: legal concepts and actual situations. *International Review of the Red Cross*, 91(873), 69-94, 74.

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ethnic and religious violence. For tension and strife, there will be serious or lasting internal confrontation, which includes acts of violence, from spontaneous isolated acts of revolt to a struggle by groups in various stages of organization against the authorities in power. These situations do not necessarily escalate into open struggle, but the authorities use large police forces, and even the armed forces, to restore order within the country.

## **6.8 ALL NECESSARY MEASURES**

85. The concept of all necessary measures is used in the context of the need to ensure that a child does not take a direct part in hostilities, and is not recruited to take any part in the hostilities. Necessary measures shall include legislative measures that set the age of recruitment at 18 years, that perpetrators of human rights violations and abuses against children in armed conflict are brought to book, and that amnesty for the recruitment and use of children in hostilities is prohibited. State Parties shall ensure protection of all children in their jurisdiction so that they are not abducted for recruitment into armed groups.

86. The State Parties shall ensure birth registration for all children over a sufficient period of time using methods that suit the circumstances of the children.

87. The State Parties have an obligation to ensure that there is a decentralized, effective, well managed and birth registration system especially in areas of armed conflict. The State Parties shall use alternative methods to determine the age of the child in armed conflict, tension and strife. Where the age of the child is in doubt, he or she shall be presumed to be below the age of 18 until the age is determined. This will avert the vulnerability of children to various abuses such as recruitment into armed forces, sexual exploitation and violence, child labour, human trafficking and early marriages. The existence of a birth certificate aid the reconnection between unaccompanied minors or children separated from their parents or caregivers.

## **6.9 HOSTILITIES**

88. Hostilities refer to instances of conflict, tension and strife, with varying nature and effects of the intensity that involve, either a State's armed force against (an) armed

group(s) or between two or more armed groups. Hostilities further include a State's recourse to its military, or altercations between two or more armed groups, for a protracted period, with some acts of violence including in some instances, military operations. In considering the threshold of hostilities, there should also be regard to the nature of the weapons used, displacement of civilians, the control of territories by armed groups and the number of victims affected by the fighting; these will aid the ACERWC and stakeholders in recognition of a hostility.

#### **6.10 DIRECT PART IN THE HOSTILITIES.**

89. State Parties and all parties to conflict shall not target children to gain military advantage. Direct participation in hostilities more commonly refers to the notion that civilians are protected from targeting during armed conflict so long as they are not taking a direct part in hostilities (i.e. fighting on behalf of an armed group). Children who will be participating in armed conflicts in any way shall be deemed as victims requiring DDR.

#### **6.11 THE PROTECTION OF THE CIVILIAN POPULATION IN ARMED CONFLICTS**

90. The protection of the civilian population in armed conflict, tension and strife should be done using the *lex specialis* principle. For internal armed conflicts, tension and strife, State Parties must use a preventive and a human rights violation approach. This approach is instructive in aiding the understanding of both necessary and feasible measures under Article 22.

#### **6.12 ALL FEASIBLE MEASURES**

91. Feasible measures refer to initiatives, interventions and strategies that are at the disposal of the state to protect and care for children. These measures should lead to the protection of children affected by armed conflicts, tension and strife.

92. State parties must prioritize public financing of child protection interventions

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for children who are affected by armed conflicts, tension and strife using the equity approach.

## **7. ROLE OF OTHER STAKEHOLDERS**

### **7.1 STAKEHOLDERS GENERALLY**

93. All persons, organisations, entities that are able to improve the position of a child affected by armed conflict are stakeholders and have a role to play to prevent conflict, to protect children during and after conflict. This role may be carried out by an organisation on its own or in consultation with other stakeholders. Nevertheless, the primary responsibility for the protection of children in armed conflict lays with the state.

### **7.2 NATIONAL HUMAN RIGHTS INSTITUTIONS**

94. National Human Rights Institutions have a key role to play in the monitoring, evaluation and investigation of a State's observance of its human rights obligations. NHRIs have a role to play in holding the State accountable at the international human rights bodies through advocacy, and submission of alternative reports among other roles.<sup>34</sup> The National Human Rights Institutions may participate the meetings and the sessions or attain affiliate status to the ACERWC to add meaningful engagement to the protection of children in armed conflict. This leads to the making of informed decisions by the ACERWC.

95. In complement to National Human Rights Institutions, many State Parties have established National Committees and similar entities on international humanitarian law ('National IHL Committees'). These bodies have a role to advise and assist governments in their actions to enable compliance with the Article 22 obligation to respect and ensure respect for rules of international humanitarian law affecting the child. In particular, these bodies can advise and assist national authorities in implementing, developing and spreading knowledge of the IHL obligations requiring that children are afforded special respect and protection.

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34 Article 20 of the Protocol Establishing the Peace and Security Council.

### **7.3 REGIONAL ECONOMIC COMMUNITIES AND REGIONAL MECHANISMS**

96. The Regional Economic Communities (RECs) and Regional Mechanisms (RM) have a role to set normative standards for State Parties. These normative standards will be instructive in subsequent development of national policies, legislative, judicial and administrative guidelines that are crucial to the protection of the rights of children during armed conflict, tension and strife in their various regions. This role extends to the implementation of the policies and decisions that are coordinated by the AU, and to act as a norm-setting platform for the regions on matters dealing with children in armed conflict in relation to children affected by armed conflict. The implementation of these roles should cover prevention, mitigation, intervention and redress with respect to the rights of children under armed conflict.

### **7.4 MEDIA**

97. State Parties shall provide legislative and policy frameworks for the media to have a role where their reporting ascribes to professional and ethical standards that uphold the holistic welfare of the children involved through the mitigation of traumatic experiences and non-violation of rights of children affected in armed conflicts. The media has to be used as a conduit that disseminates information for prevention, peacebuilding as well as post-conflict reconstruction. The media should be used to disseminate information to educate the masses on the rights of children in armed conflict. The role extends to online platforms where the information that is being distributed is not used to hurt the person of the child in any way. In particular, media should not reveal the identity of any child involved in armed conflict, to prevent unnecessary stigmatization or retaliation.

### **7.5 PRIVATE SECTOR**

98. State parties shall provide regulatory frameworks to govern the operations of private persons, companies or entities to curtail them from violating children's rights. There is evidence that some private companies may finance and supply arms, while others provide security forces to serve in an armed conflict, provide transportation of arms to make profit. These actions that perpetuate the continuance of armed conflict and the violation of the rights of a child shall make the private actors responsible for the violations.

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99. The State Parties have an obligation to regulate the activities of private actors such that their activities do not violate the rights of a child in armed conflict, tension and strife. Conversely, private actors have an obligation not to supply arms that would be used to lead to armed conflict. Private actors that train the military have a role to ensure that the protection of children forms part of the syllabus.

## **7.6 NON STATE ARMED GROUPS**

100. Non-State armed groups that have effective control of territory and are parties to an armed conflict are bound to respect rules of IHL, including Common Article 3 to the Geneva Conventions and Additional Protocol II. State parties and all other stakeholders shall refrain from supporting non state armed groups that violate children's rights.

## **8. REMEDIES**

101. The ACERWC reiterates its mandate in offering remedies through the individual complaints mechanisms, use of mission visits, use of State Party reporting; consideration of State reports and use of Concluding Observations on Reports of State Parties.

102. The State Parties shall provide adequate, effective and comprehensive remedies that provide for reparations that include restitution, rehabilitation compensation, satisfaction and guarantees of non-repetition. This obligation shall extend to all children affected directly or indirectly by armed conflict, tension and strife. Restitution shall be aimed at returning the children affected by armed conflict to positions they were in before. Rehabilitation of child survivors of sexual abuse and gender based violence shall be aimed at restoring the psychosocial, psychological and mental abilities of a child to enhance his or her participation in society.

103. State Parties have an obligation to provide for appropriate remedies for violations of the rights of children affected by armed conflict. Appropriate remedies have to be determined by a competent judicial, administrative, legislative or any other competent authority as provided for by law. The competent authorities should engage administrative and judicial review mechanisms to enable children and individuals affected by armed conflict to apply

for review or appeal any decision denying them any of the rights enshrined in the ACRWC. The mechanisms have to provide for the participation of children affected by any such decision. The remedies that are offered shall be accessible, available and affordable.

104. In the context of internal armed conflicts, tension and strife, state parties shall provide national remedies manual to the children and parents to ensure access to justice is available at any time.

## **9. ACCOUNTABILITY**

105. States shall ensure that their domestic systems reflect their obligations under international law. Whether in legislative or other form, these measures are intended to enable States to respect and to ensure respect for the rules laid down by the treaties.

106. States shall investigate war crimes, including those that concern the protection of children, allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects. During these processes, child survivors should be offered child-friendly processes including when possible, interviews by specifically trained persons in a child friendly setting.

107. State Parties shall hold perpetrators accountable for human rights and IHL violations that occur in the context of children affected by armed conflict." Accountability extends to non-State actors who are in a position of authority in areas of armed conflict, tension and strife. The failure to account by the State Parties leads to ineffectiveness in preventing, stopping or managing conflicts and crisis situations.

108. Commanders and other superiors are criminally responsible for war crimes, including those that concern children, committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were

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committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible.

109. States shall criminalize all human rights violations and war crimes including the recruitment and use of children that take place during armed conflict, tension and strife, and as such establish a criminal responsibility against perpetrators. This is based on the decision by the AU to establish a continental monitoring framework on conflict that requires both political and judicial accountability.<sup>35</sup> The ACERWC reiterates its obligation to work with the PSC to urge State Parties to provide political and judicial accountability in relation to children affected by armed conflict.

110. States shall ensure that their domestic systems reflect their obligations under international law. Whether in legislative or other form, these measures are intended to enable States to respect and to ensure respect for the rules laid down by the treaties. It is suggested that priority be granted to implementation of the following rules.

111. State Parties shall in their State Reports inform the ACERWC on steps taken on children who have been affected by armed conflict, including disarmament, demobilization, rehabilitation, and community reintegration. These reports shall detail measures which State Parties are undertaking to hold perpetrators of violations against children accountable. The reports shall also address the social services that children have been offered and how the mechanisms have treated all children victims regardless of their role in the conflict.<sup>36</sup>

112. State Parties shall from time to time assess the efficacy and accessibility of the accountability mechanisms. State Parties shall pursue the best interests of the child in their quest for accountability.

113. State Parties shall offer accountability through the response mechanisms, and the development of policies that address gender-related challenges and human rights violations against children. This accountability should extend to the reports that are submitted to the ACERWC on steps on the implementation of obligations under Article 22.

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35 This is the Peace and Security Council, a standing organ of the AU for the prevention, management and resolution of conflicts.

36 UNSC Resolution No 2427/2018.

114. State Parties have to align domestic legislation with international norms related to the rights of boys and girls in accordance with the prohibition against 1) the killing or maiming of children 2) using, recruiting, conscripting or enlisting in armed forces and groups; 3) sexual violence against children; 4) abduction of children; 5) sexual exploitation of children; and 6) forced marriage of children during situations of armed conflict. State Parties should ensure that national and local courts are accessible to children and their families. Preventive steps that support training on children's human rights for all stakeholders in the justice system should be promoted.

## **10. DISSEMINATION OF THE GENERAL COMMENT**

115. State Parties, other stakeholders such as the National Human Rights Institutions, Regional Economic Communities, the private sector and the civil society organisations, are urged to widely disseminate this General Comment to all relevant sectors of the state, including the legislatures. The dissemination should be extended to the general public, other professionals such as academics, judges, parents, guardians, teachers, legal aid officers, social workers and other related persons who work with, and for children.

116. Consideration shall be given to introducing this subject into the curriculum of universities and specialized institutions, and to organizing campaigns to raise awareness among the general public, in particular among children and adolescents.

117. This dissemination will be required by the State Parties to adhere to as part of the periodic reporting to the ACERWC on the challenges and measures taken to respect, protect and fulfil children's rights in the context of the armed conflict.



P.O.Box: 3242, Roosevelt Street  
Addis Ababa, Ethiopia  
Tel: +251 -11 551 77 00  
Fax: +251- 11 551 78 44  
Email: info@acerwc.africa

[www.acerwc.africa](http://www.acerwc.africa)

