

Children's India

INDIA CITIZENS' COLLECTIVE CHILD RIGHTS REVIEW, AUDIT & REPORTING

INITIAL ALTERNATIVE COUNTRY REPORT & UPDATE
ON THE
**OPTIONAL PROTOCOL TO THE UN CRC ON INVOLVEMENT OF
CHILDREN IN ARMED CONFLICT**
2005 – 2013



Submitted by the India Alliance for Child Rights on behalf of a country-wide participatory review, audit & reporting, uniting NGOs, networks, institutions, issue-based forums, working in coalition, & in consultation with national human rights & development platforms, and children

July 2013

OPTIONAL PROTOCOL TO THE CRC ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

INITIAL ALTERNATIVE COUNTRY REPORT 2005-2011 WITH UPDATE 2013

Introductory Note on the Review and Reporting Process

This reporting responds to the first formal opportunity offered to the voluntary and non-governmental constituency in India to report on the Optional Protocol to the UN CRC on Involvement of Children in Armed Conflict (OPAC). The Government of India ratified the Protocol in November 2005.

Tracking of the Protocol has run alongside a large part of the shadow reporting process on the Government's 3rd and 4th official Periodic Report on the UN CRC. Slated to cover the 2002-2007 period for CRC implementation, the official exercise ran behind schedule, and was submitted in August 2011. By Government decision, the official Initial Country Reports on this Protocol and the one on Sale and Prostitution of Children and Child Pornography were all submitted together with it. 2011. Initial country reports are supposed to be made two years following ratification. India's submitting of its Initial Country Report so much later has actually extended the reporting period.

In the wake of ratification, India should have made its first OP official report by late 2007. In the delayed process, it actually had over five years to work at implementation. But with the official stand that "India is not in any situation of international or non-international conflict,"¹ the Government's perception of any reporting responsibility on the essential issue is unclear.

This is evident from the selective character and content of its responses in the present report. It is also clear from the many reporting omissions in the 3rd/4th Periodic Report on CRC. It seems many endangered children may have been rendered invisible by a technicality. But the technicality that the Government utilises on the OP cannot fully apply across CRC implementation, or on India's wider obligations on human rights.

The citizens' collective initiative to report on the CRC and the Optional Protocols took a conscious decision to use the State's own official and published information and data as its primary source. In seeking to report on this Optional Protocol, this has proved difficult. The Government's published reports on conflict contradict each other. The Ministry of Home Affairs reports on both internal insurgencies and militancy, and those involving cross-border "infiltration." The Government's official reports to the UN on human rights also cite these.

Why have the OP report and the 3rd/4th CRC Periodic Report remained silent? Why is disaggregated data on children not provided? It falls to the non-governmental constituency to ask questions on both the reports.

¹ This reportedly stems from the interpretation of 'armed conflict' as applying only to being in a state of war with another country. India accepts the Geneva Conventions but holds that they do not currently apply in the country situation ,

This report draws on the many concerns and assessments on children’s safety rights that emerged from the citizens’ collective process of reviewing, discussing, auditing and deriving insights also from dialogue opportunities offered by the Government of India in its 2007 interstate consultations on CRC reporting, and its 2010 consultations on looking at CRC and human rights obligations in the context of national policy. It inevitably links the assessment with larger issues and contexts of rights. The NGO policy review process of 2010 brought special value to the assessment of protection issues because of the interest and involvement of NGOs, institutions, professionals and activists in North-Eastern states.

The findings and conclusions bring together the thinking and contribution emerging from the entire participatory process, as well as insights provided by the wider NGO discourse on human rights and development with justice. Membership of the Wada Na Todo Abhiyan² and of the national Working Group on India and the UN have provided essential insights. Where NGO and other information or views are cited, it is for illustration and to indicate the importance of examining them.

The opportunities provided by many for this long exercise are acknowledged with deep appreciation, and the wide interest and attention it has generated in many parts of India and on many platforms is gratefully acknowledged, and deserves celebration.

This report really belongs to all those who helped to compose it.

Submitted on behalf of country-wide participatory review, audit & reporting, connecting and uniting NGOs, networks, institutions, issue-based forums, working in coalition, and in consultation with national human rights and development platforms, and 1,700 children.

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² WNTA: translates as the ‘Don’t Break Your Promises’ Campaign. WNTA outreach and interaction involve about 4000 organisations and forums. IACR and many of its partners are part of it. IACR coordinated the children constituency in WNTA assessment and advocacy for India’s 12th Five-Year Plan, which worked to invoke CRC and human rights obligations.

Initial Alternative Country Report

This independent alternative report draws primarily on published official information sources and government data -- and reflects a citizens' audit, and questions arising. NGO reports where mentioned or quoted, are cited as deserving attention.

The entire report of the Government is predicated on its stand that "India does not face either international or non-international armed conflict situations." This stand is based on the interpretation that India is not in a state of war with any country or State. The Optional Protocol itself does not state a definition of armed conflict.

The position taken by the Government does not really hold.

As defined under the International Humanitarian Law (IHL), the concepts of armed conflict do not rule out the existence of the 'non-international' form. IHL identifies 'armed conflicts between governmental forces and non-governmental armed groups, as well as among or between such groups. It also distinguishes armed conflict from forms of violence such as internal disturbances and tensions, riots or banditry. The Additional Protocol II (Article 1) indicates that a situation must reach a certain level of confrontation.³

Two ways of assessing the OP initial report were considered:

- One, to comment on it within the technical confines the Government has chosen;
- Another, to look at known realities about vulnerable or affected children, to draw on the Home Ministry reports.

The fact the OP report does -- ambiguously -- admit the possibility of children being affected by conflict situations, and assures the State's commitment to providing 'care and protection,' has enabled the shadow process to at least ask some questions about children caught in such settings and conditions.

However, the OP's own limiting of virtually all its implementation obligations and questions to the child as an armed forces recruit, leaves other child protection aspects in just the preamble and in Article 4. India's response to this Article is that it does not apply. And when the report proceeds to cite protective promises of the Constitution of India and invokes the Juvenile Justice Act and the Integrated Child Protection Services as proof of care and protection services available, it is left unspecified who might be needing these services. From a rights perspective, it is unfortunate that this vagueness also does not make it clear whether 'affected' children who belong to a group opposing or alienated from the State can also qualify for protective care.

Official Annual Reports of the Ministry of Home Affairs (MHA) acknowledge several "non-international" conflict incidents and situations and describe many.⁴ They give accounts of problems, control measures and trends in Jammu and Kashmir state, in the North-East and in states where 'Left-wing extremism' is challenging state stability. The MHA reports relate government measures to address these problems, and provide hard facts and figures of incidents and human loss. The reports are available for all the years of the OP's initial reporting period.

³ ICRC Opinion Paper, March 2008.

⁴ MHA annual reports are published every year, and are public documents.

India's official national reports on human rights (2008 and 2012)⁵ specifically cite externally fostered security threats, and cross-border "infiltration." The MHA annual reports give facts and figures, including numbers of civilian deaths. Neither mention children specifically, but they tell of the damaging effects on daily life in affected areas. Is it possible to find out the fact of child deaths, or other hurt or damage experienced by children? Why should it not be?

MHA reports also give no age-wise data. But news reports speak of children killed. Children have been killed in 'encounters,' and killed or injured in reported 'cross-fire.' Even if only adults die, are their children not affected? It may not be the Home Ministry's job to provide child mortality figures.

The MHA reports give news of official measures to restore or sustain social development services including school education and health care.

As the declared official entity responsible for implementing the OP and coordinating with state and local bodies,⁶ it is the focal Ministry of Women and Child Development that should be able to provide information on children in areas and situations at risk. The report

There is a question about why the OP report remains basically a recitation of various official provisions, rules and regulations, and has nothing to communicate of implementation following ratification. India ratified this OP in November 2005, and should have made its initial report by late 2007 or early 2008, so it has actually had five additional years of implementation time. There is no action information offered.

If this is justified by saying no such situation exists, and the Government considers this as reason enough to say nothing, the report fails on this basic count. India will next have to report in 2016, or thereabouts. Many children's safety needs and rights will arise, and many childhoods may be jeopardised.

In both this initial OP reporting, and in the CRC 1st Periodic Report, ambiguity raises further questions. If CRC Article 2, on children's right to 'non-discrimination' for any reason, is accepted, there can be no justification for debarring any child from expecting the caring protection of the State. While saying JJ Act and ICPS support is available to any child needing it, the report does not offer clear reassurance on this point. Nor is any information provided which could provide evidence of impartiality, or of restoring children to their natural social or domestic setting, or helping them to retrieve their sense of security. It should be clarified what is actually happening. Are such children being sent home -- if their homes still remain -- or are they being sent to 'homes'? Since the report has no implementation news, there is nothing said.

It is interesting to find that the Govt of India's CRC review questionnaire to states in 2007 carried questions on the Optional Protocol on Sale/P/P by name, but did not mention this OP at all, and sought no direct inputs. The questionnaire was used in the 5 inter-state CRC consultations that the focal ministry convened.

⁵ India National Reports on Human Rights, 2008 and 2012, to the UN Human Rights Council, for the Universal Periodic Reviews of those years.

⁶ The OP Report 2011: Article 6(Paras 1, 2): Implementation measures: Para 22.

Comments on the Introduction:

Paras 1 & 2: **The character and extent of consultation are not clear.** In the process expected following the 2007 appointment of the Government's 'High-Powered Committee' for the CRC reporting, it was expected that there would be due focus on the initial country reports for this and the other Optional Protocols. Since the Committee was reconvened only once following its formation, this did not visibly happen.

Para 3: The questionnaire flagged this OP in its title, had no separate named sub-section, but in its section on child protection (#7.B), it posed six sharp questions on "Children in or affected by conflict situations." (See the text on Article 6 (Para 3) in this report).

These were good questions, seeking solid information, and inviting some evaluation of effectiveness. They also virtually repeated some of the information-seeking questions posed in the UN reporting guidelines (Paragraph 3 of Article 4).

These must have elicited replies from all responding state governments. The state government reports were not made publicly available. It can be assumed that their information inputs were duly considered in the national formulation of the 3rd/4th PR on CRC, and the two OPs' initial reports. But the OP report gives no indication of any information.

Para 4: The Government's commendable investment in inter-state consultations, using the questionnaire to state governments, offered discussion space to both governmental and NGO representatives. All of them had some group discussion on child protection overall. (The absence of a senior-enough and responsible Govt of India official in all but one consultation was an avoidable lapse in according due importance to the consultative process. State government participation was consequently patchy. NGOs invited gave these forums their best, but State-Society interaction was below potential). Consultation proceedings reports were circulated to participants, but their use or fate thereafter is not clear.

Note: It was perhaps not sufficiently appreciated by the Government's focal ministry in 2007-08 that danger and risk are realities in childhood, and that troubled areas in India provide disturbing evidence of this. In completing the OP initial report, in the final run-up to the 2011 submission, the ministry, and the Government overall, should surely have been more aware. If the OP report was to be guarded in its disclosures or admissions, the CRC Periodic Report should have acknowledged the issues, and not left the affected or threatened children in the shadows.

Overall Observations, and some General Concerns:

- I. It has to be said that the Optional Protocol's own stated expectations fail to encompass the depth and range of the issue of children getting "involved" in armed conflict. Its preamble begins by acknowledging many impacts on children; notably these include 'harmful and widespread impact of armed conflict on children,' and 'targeting of children' in armed conflict situations. The OP provisions do not follow through. If OP reports remain studiously limited to repeating recruitment regulations, and CRC reports choose to say nothing much at all, where and how will the facts about fallout on children emerge, and have a chance of being addressed? This could result in a reporting

government being asked more about symptoms than about related underlying factors; children deserve application of a more incisive standard.

- II. The protocol does not build on CRC Article 38: point 4, or on Article 39. India's CRC PR 2011 response on Article 38 evades even mentioning any occurrence of relevant situations during 2002-2010/11, and it does not report at all on Article 39.
- III. The term 'involvement' is not defined. But while strictly curbing its information, the Government's own report does not completely restrict its reference to involvement only to being a 'child soldier.' It does allude to those affected. In its response to Article 4, the OP report has brought up the JJ Act and ICPS. As interpreted, they do not relate to children acting as 'soldiers,' but to other children in the troubled situations. But if the caring and protection offered does relate to children retrieved from armed activity or functioning as armed fighters, this is also not said in the report.
- IV. The OPAC implementation provisions of course limit the child rights mandate to stopping recruitment and use of children as 'soldiers.' Definitions are not helpful as children may be actively involved in a variety of activities tied to conflict situations and conflict-related or conflict-affected activities and groups. It is unclear where they belong, and whose protection they can claim.
- V. The ILO Convention 182's listing of 'worst forms of child labour' includes "forced or compulsory recruitment of children for use in armed conflict." This does not at all say the use of such children as combatants or 'soldiers' -- they could be used for many things. India has not to date agreed to accept this ILO Convention, although it has told the UN Human Rights Council that the Government 'subscribes to its objectives,' and is 'working on the modalities' of ratifying it. A reason cited is the ILO age specification of 18 as compared to India's specification of 14 years. The Government must have its own reasons for not ratifying either this convention or ILO # 138. However, even while keeping this action on hold, Indian law can make an appropriate provision. If India agrees in principle that the use of children in armed conflict is in the category of worst forms of child labour, what prevents it from adding the use or engagement of children for any task in armed conflict situations or settings to the CLPRA listing of hazardous occupations?
- VI. A contradiction -- or at least an ambiguity -- runs through the OP report text, as the Government makes references to provisions for care and protection of children affected by armed conflict (using the term), citing laws and schemes in operation. It is not made clear whether these are on offer, or being applied. What is welcome is the hint of some entitlement.
- VII. If it is accepted that children in conflict or conflict-risk settings are technically not within the OPAC purview if they are not actually soldiering, then India is entitled to a small credit for its stated assurance in Article 4: Points 17 and 18 that there are 'legislative provisions the prevent involvement of children in armed conflict and provide care and protection to children affected by armed

conflict' -- without any comment about which "side" in a conflict situation the children in question might be placed.

UPDATE: The focal Ministry of Women and Child Development has to its credit a recent decision to commission a national survey of violence against children, and the situations, settings and predisposing factors to be explored do not exclude a look at what happens in situations where hostility or unrest make peace precarious, and children's very expectations are disturbed. Such study and analysis might help to clarify the type of safeguarding that children need, as well as providing insights into the kind of trust there should be between children at risk and the representatives of State authority. The study is slated to begin in the current year.

VIII. The point arises as to whether children caught in any way in such situations provide examples of discrimination Which children -- or who among children -- are likely to get classified as 'non-eligibles' for State protections? Who are likely to find themselves in detention, or some other kind of custodial placement, or simply be left unsupported? The CRC's Article 2 clearly absolves the child of any liability or 'labelling' for the status, activities, expressed opinions or beliefs of parents, legal guardians or family members, and obliges the State to ensure rights to each child in its jurisdiction without discrimination of any kind, irrespective of identity, activities, occupation or behaviour, political or other opinion of such adults in the group or community to which he or she belongs, or with which he or she is identified. The onus for upholding this immunity lies upon the State.

VII.a. The CRC Article 27 goes a step further: it enjoins upon the State to uphold for every child a standard of living adequate for the child's physical, mental, spiritual, moral, and social development. Between the lines, safety is surely implicit. Sadly, even the UN CRC reporting guidelines, and the less formal implementation handbook do not insist that this critical right deserves probing assessment and the reporting of each dimension of development and dignity. Does this CRC provision have a bearing on children in conflict situations? It does. The tenuous character of a childhood rendered unsafe even by apparent choice, is not a minor shadow on the child.

IX. In the case of any child seen as within a grouping or structure in confrontation or contention -- or disagreement --with the State, who is to say whether such a child is positioned by choice or by compulsion? Children "involved in armed conflict" could well be conscripts. As long as the Government limits its reporting to military recruitment and regulations, and underlines that all official armed forces enlistment is voluntary, answers to these questions are hard to even guess at. But they have to be asked.

X. The report is silent on actual application of caring and protecting. Is it to be assumed that the entire responsibility of the State is docketed within the word "If"? If this is so, then the main CRC Periodic Report should be providing information on all forms of protection in all incidents of any kind of conflict.

- XI. Are institutional mechanisms available and able to operate in risk areas? In the 3rd/4th PR on CRC, the Government states that the 2006 JJ Amendment Act ‘makes it mandatory for every state to set up Child Welfare Committees, Juvenile Justice Boards and Special Juvenile Police Units. Can they really function in troubled areas? Do they? And can children, or families, approach them? If these questions belong in the CRC PR, they are not answered there either. The impact of any kind of “commotion” on children’s security and confidence is real, and can be brutal.
- XII. The reporting guidelines do ask India for information on ‘measures adopted for with regard to disarmament, demobilisation, assistance for physical and psychological recovery and social reintegration (Article 6/Para 3).It also asks for (i) disaggregated data on such children involved in such proceedings, and (ii) the criminal liability of children for crimes they may have committed, and respect for their rights. The OP report responds by citing the JJ Act 2006, and 2007 Rules, and tells of adoption of a ‘child-friendly approach.’ It says that although the JJ Act 2000 provides for alternatives to institutionalisation, “progress in promoting these non-institutional rehabilitative options has been rather slow, except for a few states” -- but offers neither facts nor locations. It does not say who the children are who have been thus served. It provides no disaggregated data of any kind on who has been rescued or rehabilitated. In responding at all, the Government does indicate that it has relevant information.
- XIII. It is not clear whether this part of the reporting has any real reference to children from conflict situations, let alone ‘retrieved’ armed fighters of any kind. If it does, good. If it does not, the response needs to be explained. Children involved in armed conflict, particularly in actual armed activity, are not just children in the general JJ Act coverage constituency. And if the OP report also claims that there is no such armed conflict situation in India, who are these children?
- XI. It is not really possible to separate comment on the CRC PR from this initial report on this OP. They cannot be surgically separated -- because of the important rights question of whether the rights of children in any conflict setting are being addressed at all. Implementation of the JJ Act, and of ICPS, should be on record, and accessible.
- XII. Perhaps it could be technically argued that all these observations and questions belong in alternate reporting on the CRC, and not on the OP. But the core point is that they have to belong, and appear, and be addressed somewhere, in order to reflect what India sees as its duty to ensure all children’s safety in any situation where stability or peace are uncertain -- and what it is doing to fulfil this duty.
- XIII. On the question of being held responsible for their actions, as inferred by the points made on whether actions are ‘voluntary,’ children’s right to choice, and to meaningful participation in decisions and processes affecting their lives, the issues of both rights and responsibilities deserve deeper consideration. They are not addressed in the OP report. (See the official statement on Article 3).

- XIV. On applicability of the OP obligations, and on the State's responsibility to answer for anything other than its own military and armed forces, the Government has taken the same stand, with the same statement, in its 3rd/4th Periodic Report on CRC implementation.
- XV. The report does not name or mention the Armed Forces Special Powers Act of 1958 (AFSPA). It is in force in some areas of the country where security operations are under way, or where a special security vigil is ongoing. The OP report's response to the Article 6 query on the competent government bodies responsible for OP implementation, names the Ministry of Women and Child Development 'in collaboration with' the Ministries of Home Affairs and Defence. State governments are named at 'the decentralised level.'
- XV.a. In areas of the country where it is being applied, AFSPA overrides other laws. The operation of AFSPA is with the Ministry of Defence. The possibilities for JJ Act provisions in such settings are not mentioned.
- XVI. On the 'mechanisms and means used for monitoring and periodically evaluating' OP implementation, the NHRC and NCPCR are named, with mention of their state commissions as 'functioning' wherever they have been set up.⁷
- XVII. The National Human Rights Commission (NHRC) has itself raised questions on AFSPA's impact. In a landmark report in its 2011 independent submission to the UN Human Rights Council's Universal Periodic Review of India's human rights performance (2008-2012) has specifically mentioned; 'the Armed Forces Special Powers Act (AFSPA) remains in force in Jammu and Kashmir and the North-Eastern States, conferring an impunity that often leads to violation of human rights.' It does not specifically refer to children here. It points to India's non-applicability statement as a contradiction in juxtaposition to the existing official stand that India is not in any situation of international or non-international armed conflict.
- XVIII. India's official human rights reports of 2008 and 2012 however defend the constitutionality of AFSPA, arguing that it is 'necessary.' The 2012 report affirms that it 'remains committed to fulfil its obligation' to secure all civil and political rights to all its citizens.
- XIX. These two official human rights reports neatly divide people into boxes and categories, with references to children limited to sub-sections designated for literally-defined child-related subjects, failing to notice them in grown-up situations like conflict. This sits oddly with both ground evidence and official recognition of the fallout on children of overt hostility and conflict. Among independent stakeholder reports to the 2011/2012 UPR, some child-focused NGO reports have flagged the child's importance in the India human rights

⁷ States where SHRCs exist: States where SCPCRs exist:

agenda. Several countries have asked India to pay more attention to children's rights in the 2012/16 UPR cycle.

UPDATE: As of March 2012, the Govt of India has submitted its second national report on human rights implementation to the UN Human Rights Council, for its 2012 Universal Periodic Review. As of September 2012, the Council has approved 169 recommendations for India's action (given by UN member states), and India has accepted 67 of them. (See Annexure to this report).

UPDATE: As of November 2011, the NHRC submitted its independent report to the UN Human Rights Council (for UPR-2012), flagging several concerns on situations and interventions in troubled areas. This brought into question the 2012 Govt of India national report to the Council for this UPR.

XX. In its 2001 First Periodic Report on the UN CRC (prior to the OP ratification), India had a first-time chapter on armed conflict, recovery and social reintegration. In this it said, "CRC amplifies other international instruments by providing a special obligation on the part of governments to respect the rights of children in situations of armed conflict. While India is not in a situation of armed conflict, there are major instances of terrorism, both cross-border and internal, and children are the unwitting victims of such strife." The chapter then briefly described some rehabilitation measures relating to violence in the state of Punjab, and in some other states, in 1990, 1992 and 1994, all prior to the due reporting period of 1997--2001). The entire text ran to one and a half pages. Still, it was a break-through official acknowledgement of the effects of strife on children -- and of State acceptance of responsibility to care for children affected).

XXI. References to the 3rd/4th Periodic Report:

XXI.a. The 3rd/4th PR has no chapter on armed conflict, but the relevant subsection in Chapter 8/Section 8A2 (8A 2.1. - 2.3) affirms India's commitment to the 1949 Geneva Convention, repeats the statement made in the OP Initial Country Report, states that the Juvenile Justice (Care and Protection of Children) Act 2000 "protects the interests of all children in need of care and protection." It cites the JJ provisions in the context of the Principle of Safety. It also assures shelter and rehabilitation through the Integrated Child Protection Scheme (ICPS) for children needing care and protection "including those affected by various forms of exploitation and abuse, and victims of any armed conflict or civil strife."

XXI.b. It does not say how or whether the JJ Act actually manages to operate in conflict-affected areas of the country, or whether the ICPS is running there. The whole question of how children of groups regarded as opposing the State and its authorities can hope to access the benevolence of Indian law, and seek JJ or ICPS 'care and protection' provisions is not addressed).

XXI.c. Children of the kind implied in Para 3 of Article 3 are not mentioned.

XXII. The Government has chosen not to make any comment on the OP preamble, which provides the framing context of the protocol, and makes cross-

references to the UN CRC. It is worth noting that in amending its 1986 Juvenile Justice Act in 2000, India stated that CRC conformity as an aim. In invoking the JJ Act in this initial reporting on OPAC as the core legal ‘caring provision,’ India has referred to the 2006 amendment to the Act, but has not cited the 2000 provision or its 2006 reiteration to include and cover children who are “victims of any armed conflict, civil commotion or natural calamity.”⁸ While the JJ Act does not define ‘armed conflict,’ at least it covers the possible setting. The OP report does not cite any such point of relevance.

XXIII. The whole question of age determination should be objectively addressed. With such uneven achievement in birth registration, and so many households unable to produce a birth certificate, how is the Government able to say that the recruits into the armed forces are actually of the stipulated age -- as also young people in militias or armed groups.

XXIV. Another point of relevance regarding JJ Act provisions remains unstated: this is the fact that the Act in all its incarnations aims at addressing both children in need of care and protection and ‘children in conflict with the law.’ The OP report invokes only the care and protection aspects and provisions. However if any situation of any kind of conflict is in violation of any Indian law (including the JJ Act), the children caught in it, in any capacity, are in conflict with the law, and thus may have dual status. This then raises the applicability of JJ provisions for such status. What should this imply for any child in a situation that the Government is currently acknowledging in the present OP report? Can the law be selectively invoked? The eligibility of a child to be served by JJ provisions is set by what the law includes in its definition of the child.

XXV. The OPAC report offers no implementation news, and so does not indicate any actual application of JJ Act provisions or of ICPS. The questions of both applicability and any actual caring implementation come to attention in the case of Jammu and Kashmir State, which is constitutionally outside the writ of most national laws. In practical application, the J & K Juvenile Justice Act 1997 operates in that state, reflecting provisions of the original 1986 JJ Act. Is there no information on the results of its operation?

UPDATE: As of March 2013, the J&K Juvenile Justice (Care & Protection) Act of 2013 has come into force in the state. This contains the inclusion of “(e) child in need of care and protection: (x) ‘victim of any armed conflict, civil commotion or natural calamity.’” in its definitions. Which are the armed conflict situations it can address?

UPDATE: As of November 2012, the Protection of Children from Sexual Offences Act (POCSO) has come into force. Two of its three key provisions relate to:

- Inducement or coercion of a child to engage in any unlawful sexual activity;

⁸ Juvenile Justice (Care & Protection of Children) Act 2000: Definitions: (d) ‘child in need of care & protection’ means (ix)/Govt of India. The 2006 JJ Amendment Act retains this element in the definition. The 1986 Act had no specific definition of the ‘child;’ it defined a ‘juvenile’ simply a person aged below 18 years.

- Exploitative use of children in prostitution or other unlawful sexual practices [this includes sexual harassment];

XXVI. POCSO is not applicable to J & K State. It is applicable to all the rest of India, and this encompasses many troubled areas in the country, where children are at risk -- and the question of sexual insecurity hangs over many who are in some form of conflict or hostility situation, whether as participants of any kind, or as children affected or child victims. The OP report's recognition of care and protection responsibilities, as stated in its submission on Article 4 [paras 16, 17, 18 and 19] applies here. The vulnerability of girl children, in particular, is known and is periodically reported. Prior to POCSO, is there any information on protective measures that the Government could have provided? The JJ Act's clear provision would apply.

XXVII. The Constitution of India, in its listing of fundamental rights, pledges 'equality before the law' to everyone within the territory of India. But constitutional provisions specific to Jammu and Kashmir result in many laws not being applicable to that state. The Juvenile Justice Act is one of them. How then can due care and protection be extended to children in the state? The present initial country report insists that the provisions of the JJ Act for children needing care and protection will and do suffice, as "all measures available under this Act are available for such children." Except where they are not, because mechanisms are not able to operate; except where children own identities obstruct their expectations of state benevolence, and except where they are not even available by law.

XXVIII. The Govt of India's 2008 national report to the UN Human Rights Council cited "terrorism aided and abetted from outside" having emerged as "a serious challenge for India." It was ambiguous about internal and international influences. But it did not use the term 'armed conflict.' Its 2012 report cites 'terrorist activities from across the border,' with 'insurgency in some parts' adding 'another dimension.' On AFSPA, the 2012 report argues that the Act is necessary to deal with 'serious terrorist and insurgency/militancy situation(s) arising in certain parts of the country. The Government speaks of 'the very lives of citizens' being at stake, and the public being intimidated. In a section on recent developments and issues, the 2012 report points to 'an internal challenge of left wing extremism and violence,' mentions 464 civilians and 142 security forces personnel killed during 2011, saying most of the civilian casualties were from 'poor and marginalised sections of society.' There is no information offered on age. There is no clear official information on who among those involved, or killed, were "involved" in conflict in which arms were used, or used arms themselves.

XXIX. Official casualty reports from troubled areas, published by the Ministry of Home Affairs (2011-12) do not give ages of those killed. News reports speak of children among casualties of shooting, firing, encounters. In a recent report on India, the UN Special Rapporteur on Extra-Judicial Executions took note of children killed in a shooting "encounter" with law-enforcement agencies.

XXX. Questions arise about what protections children in troubled areas and situations have -- in entitlement or actuality. Questions arise about whether they are drawn into 'involvement.' The OP itself is inherently weak on what involvement means. Its preamble recognises a range of possibilities; the provisions are limited to enlistment and conscription. Questions arise also about whether OPAC provisions extend to para-military and/or police forces, especially if assigned to locations or settings affected by conflict or hostility. Some of the situations the Government has reported as 'violence, killings and attacks' and regards as hostility against the State, do not involve the military; do they qualify?

XXXI. Risks to children include encroachments on other rights. News reports and NGO assessments showing children in apparent police 'service' and a report by the Asian Centre for Human Rights have drawn attention to two possible aberrations, both of which could jeopardise children's interests. XXXI.a. There are ambiguous reports of the presence and use of children as police employees, serving as 'balarakshaks' and 'boy orderlies' in police stations in Chhatisgarh and Madhya Pradesh states; The ambiguity is over whether they are office boys or get into any police activities. These reports need to be investigated.

UPDATE (Officially unconfirmed): Newspaper photographs show a child in uniform. One report says sons of police personnel killed on duty are offered part-time employment in police stations, and supported for part-time attendance at school. If true, this raises questions about child labour laws as well as the Right to Education Act. What is the great benefit to a child or to a police station if a 'tea boy' comes in on three days a week? It could be argued that such children are engaged in a 'hazardous occupation' but argued too that working at a police post has not so far been classified by law to be a child rights hazard.⁹ Whether the RTE Act has any power to get such children back to class is possibly not worth asking. Why a caring police station could not ensure their full-time schooling is inexplicable.

XXXII. The omission of any official mention of child recruitment by armed groups, could mean that such use of children remains officially invisible. That this should happen in a government report due to a stance on classification leaves an issue of child safety and protection unaddressed.

XXXIII. Who is responsible for acknowledging their existence and their plight, and for doing something to help them defend or regain their childhoods? This is a concern in alternative assessment of both this OP report and the 3rd/4th Periodic Report.

Questions on omissions in the OP Report:

Wider NGO Concerns and Questions raised at a joint-NGO consultation in the reporting process¹⁰

⁹ Child Labour Prohibition & Regulation Act (1986).

¹⁰ Reported here as received in the open process. They are not presented as the views of the citizens' collective audit.

- No reference is made to the situations where children are killed in any encounter.
- There is ambiguity with the childhood age because of provisions of different provisions and laws
- The Report has not provided a definition for ‘direct participation’ as given/used in India law and practice.
- How stringent is the Indian army in terms of verifying the age, through a legitimate form of identification such as a birth certificate, of every person who signs up? Do we have any information on how strictly this is monitored? What changes has the government made since the age change from 15 years (CRC, Article 38) to 18 years (Optional Protocol)?
- The Government of India may have accepted the Optional Protocol only to internationally convey its good intentions.
- The OP does not talk about children whose lives are brought to a stand-still because of conflict and civil strife. Protective provisions qualify for mention, but there is no news of even good work done for any troubled child.
- Children are being penalised for getting involved in insurgencies and conflict situations.
- **Child participation in conflict-ridden areas, where children are used for political and armed work should be considered as “vulnerability” rather than “criminality”**
- No mention/focus of internally displaced people for whatever reason
- There are increased vulnerabilities like abuse.
- **People may be rendered disabled in situations of conflict and there is no mention of the provisions for their life-long rehabilitation.** This applies to children affected, and could include children who took part in fighting/used arms.
- Standard Operating Procedures are required for police to deal with cases of missing children; should be made and instituted for all State Police.
- What is the current status of recruits under Salwa Judum, now disbanded ? Where
- Where conflicts are taking place in the border areas, what is the government doing to co-operate with neighbouring governments to ensure effective implementation of the Protocol? (Refers to Article 7).

Other observations and questions from the Citizens’ Process:

- During the same reporting and update period, India has submitted two official national reports on the Human Rights condition in India¹¹. These are relevant to the present assessment both for what they say and what they do not say.
- The 2008 UPR National Report acknowledges the existence of ‘terrorism aided and abetted from outside’ as a serious challenge to the country. It does not classify this as armed conflict in the technical sense as the Government has used in the OP report.
- The 2012 UPR National Report talks of the threat posed by ‘terrorist activities from across the border’ and speaks of ‘insurgency in some parts...perpetration of violence and killings’..., affecting people’s enjoyment of human rights. It describes these as existential threats. It reports an internal challenge of left-wing extremism and violence.’ It states India’s “commitment to meet such threats with compassion,

¹¹National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21, March, 2012.

people-oriented development and resolve.”¹² There is a need for further investigation to know the reality of children inside these circles of risk, and how are they treated.

- It is neither clear, nor explained, in either the UPR reports or the CRC PR, much less in the OP report, what determines a child’s eligibility to receive compassion, and visible in the queue awaiting it. What is visible is a gap between words and deeds.
- The larger issue of conflict and its impact mentioned in the Preamble of the OP deserves India’s attention, although it is not an OP implementation obligation. As a country affected by a variety of conflict situations as stated by the Government in the UPR India could have made some principled comment -- without committing any action or reporting -- on relevant sections of the OP preamble.
- In the frame of actual governance within the country, the larger context deserves attention as a reality factor in today’s India.
- There is need for specific information on how the ICPS and the JJ Act are applying their provisions in any of the troubled areas and in situations inferred by the OP reporting guideline questions.
- There is also a question on the children caught in the cross-fire of security or law-enforcement operations which is not specifically aimed at them. What is their status? Is the caring and protecting arm of the State reaching out to them -- and reaching them? Does it matter who they are?
- The National Foundation for Communal Harmony (NFCH) is an official body under the Ministry of Home Affairs that provides assistance for child victims of violence (children affected by violence). However, the government has no specific measures or programmes to support and rehabilitate children formerly participating in activities of armed groups (State and non-State). The Government could provide any information it has on any service rendered by NFCH in situations of hostility or violence, including any use of arms, where questions of community/religion are involved. Was the Foundation consulted, or a party to the report?
- What other programmes and support, exist for providing psychological and other forms of support to children who have been affected by conflict?

Other Govt of India official reporting on human rights:

- The 2008 UN review of India’s earlier report raised questions about AFSPA and its impact on communities. The 2012 National UPR Report has reacted to these. The report argues that AFSPA provides necessary “powers, legal support and protection to the armed forces for carrying out proactive operations against the terrorists in a highly hostile environment.” It says the terrorists continue to intimidate the public. It also says that extension of declaration of “disturbed areas” is periodically reviewed with state governments and security agencies.
- The two national Government submissions do not mention children in these sections of either report. There are, of course, children in all these risk locations.

UPDATE: While the Government may continue to defend the way it has made its OP report, it needs also to justify what is said and unsaid in the protection sections of the 3rd/4th CRC periodic report. Were all the 464 civilians (plus 142 security forces) killed in Maoist incidents between 1st November 2011 and 31st

¹² Pg 6; National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21, March, 2012.

December 2011 aged over 18 years? Were any others injured? Who were they? Any child casualties, intentional or not, belong in the official reporting.

Observations and Questions on Articles of the OP & on the Report:

Article 1:

The meaning of ‘direct participation’ as it stands in Indian law and practice is sought. This is not directly answered. The report states the minimum age of recruitment “of prospective officers” into the Indian military is 16 ½ years. It does not give an age for enlistment into the ranks. {It gives this in Article 3}. It says recruitment into the central para-military forces is at 18 years. It is not clear in the report how much the para-military forces are accepted as being included in the OP purview.

Concerns and Questions raised at a joint NGO consultation invited by IACR in the reporting process¹³

- Minimum age of recruitment in armed forces should be increased from 16 ½ to 18 years so that a child has the ability to make a mature choice
- There has been no response on the recruits aged below 18 getting captured, despite their non-combatant status.

Comments:

- India has given a blanket response on age of Armed Forces recruitment (16 ½ years) and age of deployment (18 years).

Article 2:

The report says India has no conscription [compulsory recruitment] into the armed forces.

Comments: GOI has given a general response that India has not forced or coerced recruitment into the armed forces, and stated that Art. 2 does not apply to India. It has not volunteered any information about para-military forces.

Article 3:

The report says recruitment is ‘purely voluntary’ and a person below 18 cannot be inducted directly. It describes recruitment processes, primarily focusing on officer ranks. It gives the minimum entry age/s for schools run or controlled by the armed forces.

Concerns from the Citizens’ process:

- What happens in situations when children involuntarily get involved in non-state groups?
- **The OP report has not responded on this. It has not responded on the issue of any recruits aged below 18 getting captured, despite their non-combatant status.**
- How does the Government of India categorise the situation in North East, J & K and the “red corridor”? The UPR reports speak of these situations. The Home Ministry gives details. (See Annexure 1).

¹³ Children’s India Country Child Rights Audit, June 23, 2013

Article 4:

India is asked for information on “armed groups operating on or from the territory of the State, and on their recruitment practices, and any commitments on not using children / those aged below 18 in hostilities. The report makes the statement of non-applicability. It also cites Article 21 of the Constitution on safeguards to personal liberty, and special protections for children. It makes the statement on providing care and protection to children “affected” by armed conflict.

In its Paragraph 17, the OP report makes its non-specific statement about JJ Act provisions for children in need of care and protection. Paragraphs 18 and 19 merely go on to describe these provisions.

It is in India’s national reports on human rights that some details emerge, but those two reports do not name children among those affected. Their presence in dangerous settings is left to be guessed at.

The limitations to child protection actually posed from the enforcement of special security laws and measures remain unclarified. The question remains: if neither the OP report nor the 3rd/4th CRC Periodic Report acknowledge this, where is objective information on realities to be found? [See also Paragraph 3 in Article 5].

Some Concerns and Questions posed during the review and reporting process ¹⁴.

- As per Article 4, the ICPS provides for safe and secure environment for children and improvement in their well-being in difficult circumstances which implies introduction of operational evidence-based monitoring and evaluation. The question arises: who does this in or for ICPS? Is it any body/commission or a designated individual?

Article 5:

India is asked to state any applicable national legislation or international instrument/law applicable which is more conducive to child rights realisation. The report states the OP ratification year, and says “since then, the country had initiated the process of implementation of various Articles of the Convention.” Since India initiated CRC implementation in 192/93, this is a little unclear. After ratification of the OP, the Government should be implementing the Protocol, as far as it accepts its applicability (eg: in care and protection). The response should have given some information on OP application, if any. Reporting in 2011, it could offer some information on the care and protection provided.

Concerns and Questions raised in the 2012-13 final review and NGO audit process:

- There has been no response on the domestic legislation and amendments introduced
- We understand that relevant legislation has not been amended or new legislations framed.
- Point 22 on OP implementation responsibility: There is no way in which the state departments of women and child development can make their way into areas of armed conflict. All activities get subsumed into administration of AFSPA.
- The Ministry of Home Affairs should be the implementer; MWCD should be the support ministry for monitoring and evaluation.

¹⁴ Children’s India Country Child Rights Audit, June 23, 2013

- NCPCCR/SCPCR do not extend to places where AFSPA is in force
- All states do not have SCPCRs.
- Determination of the ‘criminal’ liability of children for what they may have done in conflict with law stays with the armed forces.
- The implementation of JJ Act is slow except in a few states. Which states are facing the problem of slow implementation?
- There is no data/information provided in the report.

India’s answers on implementation issues:

Article 6:

India is asked to provide implementation information on seven points. It has given five responses:

- Domestic legislation review:
No reply is given. It is not clear whether this means that nothing has happened or that nothing is being said about it.

UPDATE: As of 23rd March 2013, the Jammu and Kashmir JJ (Care and Protection of Children) Act is in force.

- Legal status of the OP in national law

Para 21. The statement that this is similar to the status of other international covenants and treaties tells us nothing. The CRC is mentioned: India’s accession to it amounts to a treaty obligation. The CRC can be invoked in court proceedings. But it is not installed or adopted as Indian law. It has not been presented or ‘adopted’ in Parliament. By extension, the OP should have similar treaty obligation status. The fact remains that the OP report response is not forthcoming, and leaves it to the UN Committee to discover what it means.

- Government department responsible for implementation, and its coordination with regional and local authorities and with civil society.

Para 22. A part of the query is answered here. The designated authority is MWCD, ‘in collaboration with the Ministries of Home Affairs and Defence. How they actually connect or collaborate on the ground is not said. In areas where AFSPA is in force, this is a question mark since its administrators have over-riding authority, whenever and wherever the Act has been invoked.

Para 23. The report names the National Coordination Group (NCG). Certainly, between 2005 and 2011, the NCG has not been convened even once for this purpose, or received any communication on it. The official CRC report process began in 2007; and the NCG was also reconstituted that year, but it was not linked to the High-Powered Committee for CRC reporting [NGO appointee members of the Group can vouch for this]. So, what such an entity can do or is doing to coordinate CRC and OPs’ implementation is another question to answer.

- Mechanisms and means for monitoring and evaluation.

Para 24 The response creates an impression of many monitors. Later in the text, the Government indicates that NHRC and NCPCR are “two autonomous bodies” that monitor violation of human rights and child rights. NCPCR is not autonomous, falling short of the Paris Principles. The NHRC is higher-powered, and in this review cycle has spoken out. The OP Report gives no indication of whether it, or NCPCR, were substantively involved in the official reporting process. [Both were present at the sole August 2009 official High-Powered Committee meeting on the CRC reporting (at which this OP was not discussed)]¹⁵.

UPDATE: As of September 2012, NHRC has set up a joint process with strong NGO representation to monitor India’s follow-up action to address UPR recommendations on human rights concerns. Child rights NGOs are participating members of this initiative. So is NCPCR.

On this monitoring agenda, the following recommendations awaiting national action are to be officially tracked:

- i. From UPR-1(2008): 18 (2 on protection, and children)
[See the Annexure to this report]
- ii. From UPR-2(2012): 67 out of 169 (of which 38 refer to children)
[See the Annexure to this report]

It is up to NGOs and civil society to track what happens on the many more UPR recommendations that India has not accepted from the 2012 UN Human Rights Council review exercise and formal adoptions. An initiative has been taken by the NGO Working Group on Human Rights and the UN in India¹⁶ to track and monitor the entire .list of recommendations. But the next UPR reporting is only in 2016. And the next OP reporting will not be before that either.

- Measures to train peace-keeping personnel on the rights of the child, including the OP provisions.

India has not answered this point.

- Dissemination of the OP to children and adults, notably military recruitment authorities; appropriate training of those working with and for children.

There is no response on this.

- Measures to train peace-keeping personnel on the rights of the child, including the OP provisions.

India has not answered this point.

- Dissemination of the OP to children and adults, notably military recruitment authorities; appropriate training of those working with and for children.

The report lists national and state-level human rights institutions (commissions). It does not say who is being informed or trained, or who is informing or training whom.

¹⁵ At that sole substantive meeting, the focal ministry (MWCD) did not take up or specifically discuss the OPs’ report drafts. When the presiding official indicated lateness of the hour, enquiring if discussion was specifically requested, it was not. Participants were asked to send their suggestions. It is not known whether any ministry/state govt sent any suggestions.

¹⁶ This group, WGHR (a cross-section of NGOs working on international rights obligations) is to pursue a watching brief on all human rights. It has elected to monitor all the UPR 2012 recommendations for India, whether or not the Govt of India has accepted them. WGHR has child rights NGOs in its membership, and in its consultative outreach.

The CRC 3rd/4th Periodic Report on CRC, under the section 1.8 in the Chapter on General Measures of Implementation, lists nine different awareness generation initiatives. This is to meet CRC Article 42 requirements of making the CRC “widely known.” There is no mention of child protection issues, except domestic violence, There is no information on effects of anything done. Notably, there is no mention of either of the Optional Protocols. In the CRC PR chapter on Special Protection Measures, the sections on awareness generation speak of child labour, drug abuse, sale, trafficking and abduction.

It would appear that the issue of children and armed conflict are not on the public education agenda. Bad news comes and goes in media reporting and NGO communications.

Paragraph 3:

- India is asked to indicate measures adopted regarding disarmament, demobilisation (for release from service) and provision of appropriate assistance for physical and psychological recovery and social reintegration of children, with a special mention of girls’ situation. The first query arising is on who such children are. Do they include children in areas or situations of conflict covered by the OP -- whether ‘retrieved’ from actual armed engagement, or those otherwise affected -- or both? A second query: If the Indian situation is not one that invokes the OP, why are the questions answered? Are this enquiry and the response to be taken in the context of “If”? The responses that the OP report gives do seem to reflect some activity ongoing. (See Annexure 1).
- The first information requested is disaggregated data, listing children included, their participation, their status relating to ‘the armed forces’ or armed groups, such as when they stop being members of the ‘forces’ or such groups. (See Annexure 1).
 - **The OP report does not answer this query.**
- The second information request is for budget allocation, personnel involved and their training, organisations concerned, including CSOs, communities and families.
 - The OP report says the child protection component of the Central budget ‘covers all children in need of care and protection.’ It then admits that the budget allocation is only 0.53% of resources, which it says is “small” given “the huge population of children exposed to various kinds of risks,” and deserving State protection. Who the children are in the OP context is not stated.
- The third information request is for details of measures adopted for social reintegration, taking due note of special needs including those of age and sex.
 - The OP report lists out the JJ Act care and protection provisions, says services adopt a “child-friendly approach.” In dealing with cases, citing attention to the best interests of children, for their “ultimate rehabilitation.” Nothing is said about who these children are.
- The fourth information request is for information on what is done to ensure confidentiality and protection of children involved in such programmes from media exposure and exploitation.
 - The OP report cites the JJ Act and its rules, as promoting “child-friendly measures, process and treatment that is humane and considerate, and in children’s/juveniles’ best interest.” It says the special juvenile police units function as watchdogs to ensure legal protection abuse or exploitation of

juveniles. On institutionalisation, it says alternatives have been provided (it does not say what), but reports ‘rather slow’ progress on promoting them.

- The fifth request is for information on measures to ensure confidentiality and to protect children involved in such programmes from media exposure and exploitation.
 - The OP report cites the 2007 JJ Rules, recommending closed proceedings, conducted in an informal and friendly manner. It cites the 2006 JJ Act prohibition of media disclosure of names or other identifying information, or publication of pictures. It does not indicate who these children might be, and in what situations.
- The sixth request is for legal provisions adopted for criminalising the recruitment of children, the inclusion of that crime in the competence of ‘any justice-seeking mechanism “established in the context of conflict (war crimes tribunal, truth and reconciliation bodies), and asks to know of safeguards for the child’s rights as a victim and as a witness.
 - The OP report says the JJ Act 2000 ensures that a child’s right as victim or witness are “respected.” It says the Act provides for proper care, protection and treatment.
- The seventh request is to indicate children’s criminal liability for crimes they may have committed “during their stay with armed forces or groups,” and what judicial procedures apply -- and what the safeguards to ensure that the child’s rights are respected.
 - **The OP report gives no separate answers to these points.** It could be that the previous answer is seen to apply. In having answered the first information request in this section of the reporting, the Government is apparently agreeing or letting it be inferred that there are children of these kinds or categories who are in troubled areas, and that the State is dealing with them. This includes the ‘demobilised.’ The lack of specificity leaves the information unclarified, and only reflects a bid to portray the State as caring and protective. In areas where AFSPA or other strict security mandates are operating, it is even less clear how -- and where -- the provisions here acknowledged are applicable on the ground.
- The eighth request is to know provisions of relevant peace agreements dealing with disarmament, demobilisation and recovery and reintegration of “child combatants.”
 - **The OP report gives no response to this point.**

Earlier Official Assessment:

In 2007, the Government questionnaire issued to state governments and used in inter-state consultations mentioned both OPs in its title, did not have a separately named subsection on this OP, but asked very specific questions about protection of children’s safety and access to services when “in or affected by conflict situations. The information queries echo parts of the OP reporting guidelines.

States must have reported in response to each question. In seeking information “since 2004,” the Government was asking for not only situation data but also information on action taken.

Questions asked in the 2007 CRC/OPs questionnaire on ‘Information Required.’¹⁷

1.	Since January 2004, have there been any conflict situations (including caste/communal riots) which disrupt normal life and the security of children in the state? Provide details. What have been the contributory factors? Provide details on the number of women and children affected by such conflict situations in the state.
2.	What measures are being taken / safeguards being put in place by the state government to check violation of child rights under such circumstances? Provide details.
3.	What measures have been taken by the state government to prohibit and prevent the recruitment of children under the age of 18 in relation of (to) their rights? Provide details.
4.	What measures have been adopted by the state government to ensure to various services [sic] such as access to education, health care including nutrition, and protection of children in or affected by conflict situations? Provide details of children having access to these services.
5.	What measures are being taken to ensure confidentiality and protection of children affected by conflict situations from media exposure and exploitation?
6.	How does the state government ensure proper investigation of violation of rights of children in or affected by conflict situations, prompt persecution of perpetrators and adequate reparation of child victims in conflict situations?

The OP report does not reveal any of the information on and from states. Keeping in mind the Government’s technical defensiveness on applicability, this can only be noted here. But the 3rd/4th CRC PR has no reason to be equally mute on what has been done for children ‘in or affected.’ Unfortunately, it is. What was the Government’s purpose in seeking all this information, and then not using it? No information seems to be available on what the 16 state governments who served on the ‘sleeping beauty’ High-Powered Committee might have reported on these questions in their state reports, or said in their feedback to the August 2009 meeting of the said Committee.

Such information could have been used to demonstrate government action, at state or country level, in the wake of OP ratification. There is of course no indication of information sought or compiled from 2005-06 onwards to the time of finalisation of the OP report.

Article 7:

India is asked for information on ‘cooperation’ for implementing the OP. The report says: “Not applicable.”

The OP report makes no observation here about any general official position on regional cooperation on issues of violence or risk to children. It has not exercised the choice to mention the Government’s commendable official initiatives on children’s safety in the region,

¹⁷ Govt of India/MWCD-2007: ‘Information required for the 3rd Periodic report on the Convention on the Rights of the Child, & Optional Protocols on the Involvement of Children in Armed Conflict & on the Sale of Children, Child Prostitution and Child Pornography. The focal ministry asked for state reports. The questionnaire was also used in its five inter-state consultations (2007).

both through signing on to inter-governmental agreements and through providing funding support.¹⁸

Our Comment: The query here is whether India has sought or offered technical cooperation or financial assistance to further OP implementation, or is in multi-lateral or bilateral relationships on the issue. The point could be that there are positive examples of India's attitude and initiatives at least in addressing child protection questions in the South Asia regional frame, where border crossings occur for a range of reasons, and children are visible in the movement. If this OP report had been silent about lateral fallout on children when conflict risks or damage occur, this omission could be self-explanatory. But the OP report contains conscious mention of such realities, and takes pains to emphasise India's caring and protective stance. Cases of children's detection, custodial placement, and restoration even during times of border tensions could only serve as positive illustrations of the care and protection claim and of placing children's well-being above other considerations.

While India's two national reports on human rights issues and performance pointedly mention cross-border problems and incursions, they do not detail anything about children involved, even though there are reported cases of children even straying across in or during risky situations, including hostile conditions. Some of these children have ended up in police custody and even in prison, and the news media prominently reports both their distress (on either side of a national border) and their officially conducted repatriations. None of this finds mention in the 3rd/4th CRC Periodic Report either. The relevant text in the PR only recites the JJ Act provisions.

Overall Comment:

The ambiguity in this initial country report is largely because of all that it has chosen to say about children among "others affected," and about how sincerely the government cares about protecting them when need arises.

It must be noted that in its Concluding Observations of January 2004 on India's First Periodic Report, the UN Committee had expressed concern 'that the situation in areas of conflict, particularly J&K and the north-eastern states, has seriously affected children, particularly their right to life, survival and development,' and it raised serious concern about reports of children being involved in and are victims of these conflicts.¹⁹ It recommended pro-active measures to 'ensure respect for human rights and humanitarian law aimed at the protection, care and physical and psycho-social rehabilitation of children affected by armed conflict, notably regarding any participation in hostilities by children.' It called upon India to 'ensure impartial and thorough investigation in cases of rights violations committed against children, and the prompt prosecution of those responsible, 'with just and adequate repatriation to victims.' In assessing the OP report and the 2002-2011 3rd/4th CRC Periodic Report it is clear that both these reports fail to give a status update on the Concluding Observations of 2004 or even comment on the issue of children in armed conflict situations.

¹⁸ An ancillary development is India's involvement and financial and technical support for a South Asia initiative to end violence against children, under the aegis of the South Asia Association for Regional Cooperation (SAARC). India is playing a positive role in helping to fund this 8-country venture (SAIEVAC), but the OP report and 3rd/4th CRC PR do not refer to it, even though much is said about the JJ Act care and protection umbrella. Perhaps it has been considered irrelevant, since the chosen 5 issues of child protection in the regional initiative do not make any overt mention of conflict-related rights risks or violations, which may well be factors in at least some of the five violence against children issues (trafficking, labour, sexual abuse and exploitation, corporal punishment and early marriage).

¹⁹ UN[CRC]: CRC/C/15/Add.228, dated 26 February 2004: Concluding Observations: India [Pt 69].

In deciding not to acknowledge or comment on children who may be influenced by, or involved in armed groups, or insurgents, the OP report reflects its stated interpretation of the Protocol's wording of the articles of implementation. That is the Government's choice. However, in doing so, it renders the reality of children caught in various dangers invisible.

The fact that the Ministry of Home Affairs has published statistics year after year, means that the Government must have some figures available on children affected. The Home Ministry reports efforts to provide social services and supports to affected people. If provided, this would be positive information on official intent and action. No such information is provided, so even potential good news is lost.

The fact that such children cannot be found in the 3rd/4th CRC Periodic Report is a grave concern to anyone who can recall the Constitution's promise to safeguard children from moral and material abandonment. To those children themselves, it is a denial of the most basic recognition.



Annexures to the Alternative Report

Annexure 1.

The ‘non-international’ conflict reality, and risks to children

INFORMATION NOTE

If one looks at the concepts of armed conflict as defined under the International Humanitarian Law (IHL) it cannot be ruled out that India does face the ‘non-international armed conflict’ type of situation. Under IHL, this covers armed conflicts between governmental forces and non-governmental armed groups, or between or among such armed groups. IHL also distinguishes armed conflict from supposedly less grave forms of violence, such as internal disturbances and tensions, riots or acts of banditry (Article 3 of the Geneva Conventions of 1949), the situation must reach a certain threshold of confrontation (Article 1 of Additional Protocol II).²⁰

In India, there are armed groups operating who use arms, and the State also employs arms to quell them. . Children are exposed to such hostile settings and situations, and are affected in several ways. The child’s involvement is by no means restricted to being a recruited fighter. By being part of groups that are affected or engaged, they too are inevitably involved in some way or other.

The Government’s OP report needs to explain what it means by ‘conflict’ before it dismisses the fact of it. Between technicalities and realities, the issue of how armed conflict impacts on childhoods and children deserves an objective and factual audit, based on the principles of human rights. The first official report fails to even comment on the principles.

Armed conflict in India can be slotted into three major regions, the Maoist and security forces conflict concentrated in the tribal belts of Andhra Pradesh, Chhattisgarh, Jharkhand, Bihar and Orissa; the Jammu and Kashmir conflict zone and the conflicts in the northeastern states of Assam, Manipur, Nagaland and Tripura. Children are reportedly detained in conflict areas in Jammu and Kashmir under the Public Safety Act, 1978. Manipur state has only one Government-run Special Home at Takyelpat in the capital Imphal, which indicates that children who are apprehended by the army and para-military forces are not produced before the Juvenile Justice Boards and Observation Homes but detained in their camps and in the best circumstances sent to the police lock-up or prisons.²¹ In 2005, in Chhattisgarh a reported police firing on a group of young persons who had been abducted by Maoists resulted in the killing of three boys whose ages were uncertain. The bodies were said to have been disposed of by the police.²² As many as 227 persons were reported killed between 5 June 2005 and 6 March 2006 including 47 government security personnel and 30 alleged Maoists. Of 150 reported civilian deaths, out of which 138 at the hands of the Maoists and 12 at the hands of security forces and Salwa Judum²³ activists. Out of these, 63 persons including 33 security forces and 30 civilians were killed in landmines planted by the Naxalites.²⁴ All these accounts indicate that there are hostilities and

²⁰ How is the Term "Armed Conflict" Defined in International Humanitarian Law? International Committee of the Red Cross (ICRC), Opinion Paper, March 2008

²¹ Manipur: Juvenile Justice Suspended, ACHR, Oct 2012

²² <http://www.childlineindia.org.in/children-in-armed-conflict.htm>

²³ State-supported anti-Maoist vigilante group

²⁴ The Adivasis of Chhattisgarh Victims of the Naxalite movement and Salwa Judum campaign, Asian Centre for Human Rights, 2006

these cannot be slotted as less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, etc. These are examples, where the hostilities are of a collective character or where the government is obliged to use military force and legislation to curb further escalation of hostilities as in the case of Jammu and Kashmir and the North Eastern States and the use of para-military forces in the so called 'red corridor' or Maoist-affected states. The groups have organised armed militias with command structures. Hostilities over the years have resulted in forced migration, displacement of children and communities and increased vulnerabilities.

Annexure 2:

Data and excerpts from Ministry of Home Affairs Annual Reports 2008 -- 2013.

Wherever civilian deaths are reported, there must be information available on how many, and who, were children among them. Why is it not made available in any official report to the UN on the status and condition of children among people as a whole? Are children not there? Have no children lost their lives? This question should be answered by the focal ministry (MWCD).

Ministry of Home Affairs Annual report 2008-09

Trends of violence in Jammu & Kashmir

The state of Jammu & Kashmir has been subjected to sever terrorist and secessionist violence, sponsored and supported from across the border, for the past two decades. More than 13,500 civilians and 4500 security personnel have lost their lives.

Year	Incidents	SFs killed	Civilians killed	Terrorists killed
2004	2565	281	707	976
2005	1990	189	557	917
2006	1667	151	389	591
2007	1092	110	158	472
2008	708	75	91	339
2009*	95	15	7	47
*(till March)				

The number of militants who have surrendered during the past five years are as below:

Year	2005	2006	2007	2008	2009
Number of militants	555	1430	524	1112	398*
*upto March 31, 2009					

State wise details of assistance released to NE States under the SRE scheme during the last eight years are as under:

State	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	Total (including amount)
Assam	63.97	92.86	68.01	50.80	75.40	63.91	90.86	75.61	108.60	690.02
Nagaland	7.50	12.71	22.42	19.17	26.49	24.83	25.55	21.97	33.13	193.77
Manipur	14.18	7.75	7.64	4.00	9.44	33.65	13.60	14.45	21.58	126.29

Tripura	15.00	27.70	29.85	34.33	36.17	27.00	18.24	16.47	45.04	249.80
Arunachal Pradesh	1.00	1.90	0.95	2.47	1.35	1.35	1.28	3.02	6.24	18.77
Meghalaya	3.21	0.60	8.35	1.92	1.56	13.17	3.91	5.88	5.45	44.84
Total	104.86	143.52	137.22	112.69	150.41	163.91	153.44	137.40	220.04	1323.49

Annual report 2009-10

Year	Incidents	SFs killed	Civilians killed	Terrorists killed
2004	2565	281	707	976
2005	1990	189	557	917
2006	1667	151	389	591
2007	1092	110	158	472
2008	708	75	91	339
2009	499	64	78	239

The number of militants who have surrendered in the years 2005-2009 (upto 31.12.2009) are as under:

Year	2005	2006	2007	2008	2009
Number of militants	555	1430	524	1112	1109

Annual report 2010-11

Year	Incidents	SFs killed	Civilians killed	Terrorists killed
2004	2565	281	707	976
2005	1990	189	557	917
2006	1667	151	389	591
2007	1092	110	158	472
2008	708	75	91	339
2009	499	64	78	239
2010	488	69	47	232

The statistical details relating to infiltration since 2005 are given below:

Year	2005	2006	2007	2008	2009	2010
Total	597	573	535	342	485	489

Security situation in north eastern states during the period 2006 to 2010

Head	2006	2007	2008	2009	2010
Incidents	1366	1489	1561	1297	773
Extremists arrested/killed/surrendered	3231	2875	4318	3842	3306
SFs killed	76	79	46	42	20
Civilians killed	309	498	466	264	94

State-wise left wing extremist violence from 2008 to 2010

State	2008		2009		2010	
	Incidents	Deaths	Incidents	Death	Incidents	Death
Andhra Pradesh	92	46	66	18	100	24
Bihar	164	73	232	72	307	97

Chhattisgarh	620	242	529	290	625	343
Jharkhand	484	207	742	208	501	157
Maharashtra	68	22	154	93	94	45
Madhya Pradesh	35	26	01	-	07	01
Orissa	103	101	266	67	218	79
Uttar Pradesh	04	-	08	02	06	01
West Bengal	35	26	255	158	350	256
Others	14	04	05	-	04	-
Total	1591	721	2258	908	2212	1003

Annual report 2011-12

Year	Incidents	SFs killed	Civilians killed	Terrorists killed
2005	1990	189	557	917
2006	1667	151	389	591
2007	1092	110	158	472
2008	708	75	91	339
2009	499	64	78	239
2010	488	69	47	232
2011	340	33	31	100

The reported infiltration attempts in Jammu & Kashmir since 2004 is indicated in the table below:

Year	2004	2005	2006	2007	2008	2009	2010	2011
Total	537	597	573	535	342	485	489	247

Security situation in north eastern states during the period 2007 to 2011

Head	2007	2008	2009	2010	2011
Incidents	1489	1561	1297	773	627
Extremists arrested/killed/surrendered	2875	4318	3842	3306	3377
SFs killed	79	46	42	20	32
Civilians killed	498	466	264	94	70

The number of militants who have surrendered in the years 2005-2011 is as under:

Year	No. of Militants
2005	555
2006	1430
2007	524
2008	1112
2009	1109
2010	846
2011	1122

Helicopter on wet lease by State Governments	Type of Helicopter	No. of flying hours sanctioned per annum
Tripura	Bell-406 single engine	480
Arunachal Pradesh	1 st MI-172	960
	2 nd MI-172	1200
	Bell-412 double engine	1300
Sikkim	Bell-405 single engine/double engine	1200

Meghalaya	Dauphin double engine	720
Nagaland	Dauphin/bell double engine	480

State-wise left wing extremist violence from 2008 to 2011

State	2008		2009		2010		2011	
	Incidents	Deaths	Incidents	Death	Incidents	Death	Incidents	Death
Andhra Pradesh	92	46	66	18	100	24	54	09
Bihar	164	73	232	72	307	97	314	62
Chhattisgarh	620	242	529	290	625	343	465	204
Jharkhand	484	207	742	208	501	157	517	182
Maharashtra	68	22	154	93	94	45	08	00
Madhya Pradesh	35	26	01	-	07	01	109	54
Orissa	103	101	266	67	218	79	192	53
Uttar Pradesh	04	-	08	02	06	01	01	00
West Bengal	35	26	255	158	350	258	90	41
Others	14	04	05	-	05	-	05	01
Total	1591	721	2258	908	2213	1005	1755	606

Annual report 2012-13

Year	Incidents	SFs killed	Civilians killed	Terrorists killed
2005	1990	189	557	917
2006	1667	151	389	591
2007	1092	110	158	472
2008	708	75	91	339
2009	499	64	78	239
2010	488	69	47	232
2011	340	33	31	100
2012	220	15	15	72

The reported infiltration attempts in Jammu & Kashmir since 2005 is listed below:

Year	2005	2006	2007	2008	2009	2010	2011	Oct. 2012
Total	597	573	535	342	485	489	247	249

Security situation in north eastern states during the period 2007 to 2013 (upto 28.02.2013)

Head	2007	2008	2009	2010	2011	2012	2013 (upto 28.02.2013)
Incidents	1489	1561	1297	773	627	1025	113
Extremists arrested/killed/surrendered	2875	4318	3842	3306	3377	3562	524
SFs killed	79	46	42	20	32	14	004
Civilians killed	498	466	264	94	70	97	007

The number of militants who have surrendered in the years 2005-2012 (upto 31.10.2012) is as under:

Year	2005	2006	2007	2008	2009	2010	2011	2012 (upto 31.10.2012)
No. of militants	555	1430	524	1112	1109	846	1122	1195

Helicopter on wet lease by State Governments	Type of Helicopter	No. of flying hours sanctioned per annum
Tripura	Dauphin double engine	480
Arunachal Pradesh	1 st MI-172	960
	2 nd MI-172	1200
	Bell-412 double engine	1300
Sikkim	Bell-406 single engine/double engine	1200
Meghalaya	Dauphin double engine	720
Nagaland	Dauphin/bell double engine	480
Mizoram	Dauphin double engine	960

State-wise left wing extremist violence from 2009 to 2012

State	2009		2010		2011		2012	
	Incidents	Death	Incidents	Death	Incidents	Death	Incidents	Death
Andhra Pradesh	66	18	100	24	54	09	67	13
Bihar	232	72	307	97	314	63	166	44
Chhattisgarh	529	290	625	343	465	204	370	109
Jharkhand	742	208	501	157	517	182	480	163
Maharashtra	154	93	94	45	08	00	11	0
Madhya Pradesh	01	-	07	01	109	54	134	41
Orissa	266	67	218	79	192	53	171	45
Uttar Pradesh	08	02	06	01	01	00	02	0
West Bengal	255	158	350	258	92	45	06	0
Others	05	-	05	-	06	01	08	0
Total	2258	908	2213	1005	1760	611	1415	415

Annexure 3: Universal Periodic Review Recommendations for India 2008 and 2012 (UN Human Rights Council)

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. Started by the United Nations in April 2008 it reviews reports on the human rights practices of all member States, once every four years. The UPR is a State-driven process, under the auspices of the UN Human Rights Council, providing each State the opportunity to state what it has done to improve the human rights situations in its territory and to fulfil its human rights obligations.

- (i) Recommendations that India accepted directly citing children in conflict-related situations: None
- (ii) Recommendations that have a bearing on children in conflict situations (See table below):
- (iii) On AFSPA, three recommendations have been made, of which two call for review and one calls for repeal. While none of them names children directly it is obvious that children are affected.

2008 UPR Session: Recommendations to India from governments participating.

S. No.	Recommendations that cite/mention children	Status
1.	UPR 1 –	Accepted

	Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation.	
2.	UPR 1 – Review the reservation to Article 32 of the Convention on the Rights of the Child.	Accepted

2012 UPR Session: Recommendations to India from governments participating.

S. No.	Recommendations that cite/mention children	Status
1.	UPR 2 – Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved.	Accepted
2.	UPR 2 – Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.	Accepted
3.	UPR 2 – Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
4.	UPR 2 – Take further practical steps to reduce the high level of maternal and child mortality, inter alia, through better access to maternal health services.	Accepted
5.	UPR 2 – Strengthen its efforts to improve maternal health and act to effectively balance the skewed sex ratio among children, including by combating female foeticide.	Accepted
6.	UPR 2 – Enhance the coordination of both the central and state governments in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.	Accepted
7.	UPR 2 – Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted

8.	UPR 2 – Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted
9.	UPR 2 – Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.	Accepted
10.	UPR 2 – Continue legal efforts in the protection of women as well as children’s rights as well as improve measures to prevent violence against women and girls, and members of religious minorities	Accepted
11.	UPR 2 – Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted
12.	UPR 2 – Continue its efforts with regard to education for children and take the necessary measures to allow women to participate on an equal footing with men in all developmental efforts.	Accepted
13.	UPR 2 – Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities	Accepted
14.	UPR 2 – Continue legal efforts in the protection of women as well as children’s rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
15.	UPR 2 – Strengthen legislations to combat sexual offences against minors.	Accepted
16.	UPR 2 – Take effective measures to dissuade child marriage to protect the fundamental rights of the children.	Accepted
17.	UPR 2 – Introduce legislation to prohibit corporal punishment of children. (Deleted portion: in all settings)	Accepted
18.	UPR 2 – Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse	Accepted

19.	UPR 2 – Continue measures to increase opportunities for consultations on child rights issues with relevant stakeholders.	Accepted
20.	UPR 2 – Continue the implementation of the National Child Labour Project (NCLP) aiming at the rehabilitation of child labourers.	Accepted

S. No.	Recommendations that related to children	Status
1.	UPR 2 – Review the law on the special powers of the armed forces to align it with its obligations under the International Convention on Civil and Political Rights	Not accepted
2.	UPR 2- Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims’ right to appeal in accordance to international standards.	Not accepted
3.	UPR 2- Carry out an annual review of the 1958 Armed Forces Special Powers Act aiming to gradually reduce its geographic scope.	Not accepted
4.	UPR 2 – Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
5.	UPR 2 – Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers	Not accepted
6.	UPR 2 – Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament.	Not accepted
7.	UPR 2 – Prioritise the review and implementation of the Prevention Against	Not accepted

	Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	
8.	UPR 2 – Consider the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
9.	UPR 2 – Continue its efforts to achieve balance between its counter terrorism strategies and the need to fore stall the spread of xenophobia.	Not accepted
10.	UPR 2 – Enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes, child marriage, female foeticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
11.	UPR 2 – Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture	Not accepted
12.	UPR 2 – Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations.	Not accepted
13.	UPR 2 – Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted
14.	UPR 2 – Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted
15.	UPR 2 – Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities.	Not accepted
16.	UPR 2 – Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge.	Not accepted

17.	UPR 2 – Amend the Special Marriage Act before its next review.	Not accepted
18.	UPR 2 – Set up State and District Commissioners for the Protection of Child Rights in all States and Districts.	Not accepted
19.	UPR 2 – Implement the recommendations included in the OHCHR report on street children (A/ HRC/19/35).	Not accepted
20.	UPR 2 – Abolish anti-conversion laws in relation to religion and grant access to justice to victims of religious violence and discrimination.	Not accepted

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