



# **Alternative report to the Committee on the Rights of the Child**

on the implementation of the Convention on the Rights of the Child

## **Italy**

## **2018**

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## 1. Introduction

Child Soldiers International submits the following report in advance of the Committee on the Rights of the Child's ('the Committee') consideration of the combined fifth and sixth reports of Italy.<sup>1</sup> The report focuses on section 11 of the report on follow-up to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).

## 2. Special protection measures

### Criminalisation and extraterritorial jurisdiction

Existing provisions of the State party's legislation could be applied to prosecute an individual for criminal offences associated with the recruitment and use of children by armed forces and armed groups, including articles 270-bis, 270-quarter, 270-quinquies, 600 and 605 of the Criminal Code,<sup>2</sup> and article 185-bis of the Military Criminal Code of War.<sup>3</sup> However, there is no standalone provision in the Criminal Code that expressly criminalises the recruitment and use of children by armed forces and armed groups.

Enlisting or conscripting children under the age of fifteen and using them to participate actively in hostilities is a war crime under articles 8(2)(b)(xxvi) or 8(2)(e)(vii) of the Rome Statute of the International Criminal Court (ICC), which Italy ratified under Law No. 232 of 12 July 1999. However, Italy has still not passed the necessary implementing legislation that would make it possible to investigate and prosecute crimes under the Rome Statute in its domestic courts.<sup>4</sup> Law No. 237 of 20 December 2012 provides for procedural cooperation between Italy and the ICC, but does not establish the crimes defined in the Rome Statute as part of Italy's substantive criminal law.<sup>5</sup>

### Recommendations

The State party should:

- Implement the Rome Statute substantively into its domestic criminal law, ensuring that the war crime of conscripting or enlisting children or using them to participate actively in hostilities is incorporated into national legislation. In doing so states should ideally set at 18 years the age below which the war crime applies.

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<sup>1</sup> Fifth and sixth reports of Italy on the implementation of the Convention on the Rights of the Child, UN Doc. CRC/C/ITA/5-6, 5 July 2017:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2f5-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2f5-6&Lang=en)

<sup>2</sup> Articles 270-bis, 270-quarter, 270-quinquies, 600 and 605, Codice Penale Italiano:

<http://www.altalex.com/documents/codici-altalex/2014/10/30/codice-penale>

<sup>3</sup> Article 185-bis, Codice Penale Militare di Guerra:

[https://www.difesa.it/SMD/\\_CASD/IM/ISSMI/Corsi/Corso\\_Consigliere\\_Giuridico/Documents/95805\\_CPMG.pdf](https://www.difesa.it/SMD/_CASD/IM/ISSMI/Corsi/Corso_Consigliere_Giuridico/Documents/95805_CPMG.pdf)

<sup>4</sup> Amnesty International, "Law reform needed to implement the Rome Statute of the International Criminal Court", September 2005: <https://www.amnesty.org/download/Documents/84000/eur300092005en.pdf>

<sup>5</sup> Diritto Penale Contemporaneo, "Il lento adeguamento dell'Italia allo Statuto della Corte Penale Internazionale", 11 January 2013: <https://www.penalecontemporaneo.it/d/1988-il-lento-adequamento-dell-italia-allo-statuto-della-corte-penale-internazionale-pubblicata-la-legge>

## Minimum age for voluntary enlistment

The binding declaration submitted by Italy upon ratification of OPAC, as required under Article 3.2, appears to be out of line with current policy and practice, and should be updated.

The binding declaration states that “Italian legislation on voluntary recruitment provides that a minimum age of 17 years shall be required with respect to requests for early recruitment for compulsory military service or voluntary recruitment (military duty on a short-term and yearly basis).” However, in its combined fifth and sixth reports under the CRC, the State party stated that the minimum age for voluntary enlistment is 18 years, with two exceptions under the Code of Military Rules (CMR) (Decree No. 66/2010).<sup>6</sup>

The first exception is for admission to military schools from the age of 15 under article 711 of the CMR.<sup>7</sup> However, the State party has explicitly clarified that these are secondary school students who are not classified as members of the armed forces and are free to leave the institution at any time.<sup>8</sup>

The second exception allows children who have reached the age of 17 and have parental consent, “to apply to participate in the admissions process,” under article 635(m)(2) of the CMR.<sup>9</sup> In its current report, the State party confirms that this provision relates to competitive admission to higher military schools and that these students cannot participate in military activities until after completion of their studies (ranging from 2–5 years).<sup>10</sup> The State party adds that age requirement for “the initial career” is 18 years, suggesting that these 17-year-old students are not considered members of the armed forces.

## Questions

- Please provide further clarification on the precise status of 17-year-old students who are admitted under article 635(m)(2) of the CMR, including at what point they lose civilian status and become recognised as military personnel, subject to military law?
- How many 17-year-olds recruited in accordance with article 635(m)(2) of the CMR are typically admitted each year?

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<sup>6</sup> Fifth and sixth reports of Italy on the implementation of the Convention on the Rights of the Child, UN Doc. CRC/C/ITA/5-6, 5 July 2017, paragraph 240:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2f5-6&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fITA%2f5-6&Lang=en).

The Italian Ministry of Foreign Affairs Also confirmed, in a letter to Child Soldiers International dated 31 October 2017, that the minimum age for voluntary enlistment is 18 years. Letter held on file.

<sup>7</sup> Article 711, Decreto Legislativo 15 marzo 2010, n. 66 Codice dell’ordinamento militare:

<http://www.gazzettaufficiale.it/gunewsletter/dettaglio.jsp?service=1&datagu=2010-05-08&task=dettaglio&numgu=106&redaz=010G0089&tmstp=1274953468670>

<sup>8</sup> State party’s Statement to the CRC Committee on the implementation of the two Optional Protocols to the Convention on the Rights of the Child, 2006:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC-OP-AC%2fSTA%2fITA%2f42%2f11290&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCRC-OP-AC%2fSTA%2fITA%2f42%2f11290&Lang=en)

<sup>9</sup> Article 635(m), Decreto Legislativo 15 marzo 2010, n. 66 Codice dell’ordinamento militare:

<http://www.gazzettaufficiale.it/gunewsletter/dettaglio.jsp?service=1&datagu=2010-05-08&task=dettaglio&numgu=106&redaz=010G0089&tmstp=1274953468670>

<sup>10</sup> Op Cit, UN Doc. CRC/C/ITA/5-6, para 240.

## **Recommendations**

The State party should:

- Amend its binding OPAC declaration to reflect a minimum age for voluntary enlistment of 18 years.
- Ensure that students in military schools who are under 18 are regarded as civilians and their rights as children respected. The civilian status of students in military schools should be established in law, ensuring that:
  - They are not subject to military law, discipline or punishment;
  - They may not be mobilised in times of national emergency;
  - They have access to an independent complaints and investigation mechanism;
  - They may leave voluntarily at any time and do not have a legal liability for formal military service upon graduation;
  - They do not receive weapons training and in no circumstances may they be used in hostilities in any role;
  - Military training and activities do not dominate the curriculum to the detriment of subjects normally studied by children of the same age group in civilian life;