

Ratification of the Optional Protocol on the Involvement of Children in Armed Conflict (2000) by Ethiopia: What is the Added-Value?

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Abstract:

In armed conflicts in different parts of the world, the involvement and recruitment of children seem to be inevitable part of the story. In order to stop involvement of children in armed conflict, the UN has come up with Optional Protocol on the Involvement of Children in Armed Conflict in 2000. The Federal Democratic Republic of Ethiopia (FDRE, hereinafter) has ratified the Optional Protocol.¹ This writer sees the important values the Optional Protocol has added to the already existing human (child) rights system as the ratification of the Optional Protocol by the FDRE has enabled the country to import these added values to the existing domestic human rights system per Art.9(4) of its Constitution. The government failed to fix 18 years under the new Defence Forces law and hence to work towards establishing 18 as minimum requirement age under the law. Thus the ratification imports a law that cures this defect. The writer argues that the persisting challenges are the absence of proper birth registration and absent or defective procedures for age verification. The researcher further argues that the Ethiopian recruitment procedure is not reliable. He argues also that incorporation of substantive provisions as to cross-border recruitment, training and use of child soldiers, and provisions relating to specific problems to girl child soldiers or indirect participation should be soldiered on.

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¹ Proclamation No.826/2014, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts Ratification Proclamation, Federal Negarit Gazette, 20th Year No.20.

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1. Introduction

There are armed conflicts in different parts of the world today. The involvement and recruitment of children into these conflicts seem to be an inevitable part of the story. It is estimated that some 250,000 to 300,000 children are today involved in more than 30 conflicts worldwide.² In order to stop the involvement of children in armed conflict, international, regional and national efforts have been aggressively taken since, at least, 1940s. These subsequent efforts finally culminated in the UN Optional Protocol on the Involvement of Children in Armed Conflict (2000). Given the various conventions and efforts discussed below what is the need for this Optional Protocol? Does it add any value? This issue would be discussed in this article. However, this work will be limited to the discussion of the protection of children from recruitment and participation in armed conflicts as provided for under international instruments specifically dealing with children. As mentioned above, the work particularly focuses on the appraisal of the added-value of the Optional Protocol on the Involvement of Children in Armed Conflict (Optional Protocol) on the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). What new additions are made to the already existing protections under the CRC and the ACRWC by the Optional Protocol? Is there any additional protection offered by this Optional Protocol so as to praise its adoption by FDRE and to lobby for its ratification by other states in the world?

In doing so, the work will be divided into five sections. The first section gives a brief survey of the reasons for child soldiers' recruitment, its consequences and efforts made to stop the involvement of children in

² United Nations General Assembly, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/60/335, 7 September 2005, p.1; Eben Kaplan, Child Soldiers Around the World, available at, <http://www.cfr.org/human-rights/child-soldiers-around-world/p9331#>, visited on 27/3/2014; Children of Conflict, available at <http://www.bbc.co.uk/worldservice/people/features/childrensrights/childrenofconflict/>, visited on 27/3/2014.

armed conflicts. The second section deals with the protection of children from recruitment into and participation in armed conflict as provided under the CRC. The third section deals with the protection of children from recruitment into and participation in armed conflict under the ACRWC. The fourth section will be devoted to discussion on the Optional Protocol and evaluation of the added- value of same to the CRC and ACWRC. Finally, a brief conclusion and recommendation will be made.

2. Brief Overview of reasons for Child Recruitment, consequence of their participation, and the overall international response

The involvement of children in these armed conflicts is multi-dimensional. They are used not only as fighters in frontlines like adult soldiers but also as spies, messengers, sentries, porters, servants, sexual slaves and human shields.³ Though the problem is most critical in Africa and Asia, children are used as soldiers by both armed groups and governments in a number of countries in America, Europe and the Middle East.⁴ Internationally, though more than 130 states, in line with the recommendations of expert international human rights bodies, have set their minimum armed forces recruitment age at 18 or above, states like the UK, Iran, North Korea and Zimbabwe do recruit children at 16 years of age and the US recruits at the age of 17.⁵

³ The Roméo Dallaire Child Soldiers Initiative, *Child Soldiers: A Handbook for Security Sector Actors*, 2nd Ed., 2013, Canada, pp.25-29.

⁴ Action for the Rights of Children, *Child Soldiers: Critical issues*, 2002, p.4.

⁵ Coalition to Stop the Use of Child Soldiers, *Catch 16-22 Recruitment and retention of minors in the British Armed Forces*, 2011, UK, p.1; Child Soldiers International, *Report to the Committee on the Rights of the Child in advance of the United States of America's second periodic report on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, April 2012, UK, p.5; United States Code, Title 10, Subtitle A, Part II, Chapter 31, section 505(a), enacted by act Aug. 10, 1956, updated January 2012, available at <http://www.law.cornell.edu/uscode/text/10>, visited on 27/03/2014.

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Looking into the national recruitment legislation of FDRE, it is possible to conclude that military service is not compulsory in Ethiopia.⁶ With respect to recruitment of members of the defence forces, however, there is no specific age limit fixed. The law simply states that the Ministry of National Defence ‘may, in accordance with its criteria issued from time to time, recruit persons fit and willing for military services.’⁷ However, the criteria issued have defined a minimum recruitment age of 18 years as seen in call up notices. The FDRE Constitution states that children will ‘not be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to [their] health or well-being.’⁸ As FDRE is party state to ILO Convention 182⁹ (thus it is part of the law of the state)¹⁰ and since the human rights part of the FDRE Constitution is to be interpreted in light of the international human rights agreements the country adopted,¹¹ it is understandable that recruitment of children (persons less than 18) into the defence forces is prohibited in Ethiopia. This is what the interpretation of the Constitution dictates. This was confirmed by the UN Special Representative of the Secretary-General for children and armed conflict. Upon visits to Ethiopia in 2002, the UN Special Representative of the Secretary-General for children and armed conflict reported that ‘no systematic recruitment and use of child soldiers had been taking place during the conflict in either Ethiopia or Eritrea’, and recommended ratification of the Optional

⁶ It is possible to read this from the term ‘willing’ under the law and the practice in place. Proclamation No.809/2013, The Defence Forces Proclamation, Federal Negarit Gazette, 20th Year No.7, Art.5 (1).

⁷ Ibid. The national reserve force recruitment law also does not fix 18 years of age. See Proclamation No.327/2003, Establishment of the National Reserve Force Proclamation, Federal Negarit Gazette, 9th Year No.47.

⁸ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, *Federal Negarit Gazeta*, Year 1 No.1, (FDRE Constitution), Art.36 (?).

⁹ Proclamation No.335/2003, The Convention Concerning Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Ratification Proclamation, Federal Negarit Gazette, 9th Year No.55.

¹⁰ Id, Art.9 (4).

¹¹ Id, Art.13.

Protocol.¹² Accordingly, Ethiopia has ratified the Optional Protocol in 2014.

When one inquires into the reasons why children are recruited into armed groups or government armed forces, there are various reasons for it. These reasons are also complex. Some children are ‘driven into armed forces by poverty, alienation and discrimination.’¹³ Moreover, many other children ‘join armed groups because of their own experience of abuse at the hands of state authorities.’¹⁴ The other reason for recruitment of children is the shortage of adults and ‘special quality’ they possess as compared to adults. These special qualities are that children can easily be used in battles; they can easily be manipulated; they are adventurous; they are quick to learn fighting skills; they do not compete for the leadership role; they are less costly; and, they pose a moral challenge for enemies.’¹⁵

The recruitment may also be voluntary or forced. But the voluntariness of child recruitment is doubtful especially in Africa as children are driven to armed group and armed forces due to poverty, discrimination and abuse, to mention few, not out of free will.¹⁶ A recruitment resulting from such factors can hardly be said voluntary in the strict sense.

The effect of conflict on children is enumerable let alone when they are involved in it. Involvement of children in conflict has been said to have many disastrous consequences on their physical and moral wellbeing. To mention such effect in simple language, various studies find out that the involvement of children in armed conflicts deprives of their childhood.¹⁷

¹² Child Soldiers Global Report 2004 with Respect to Ethiopia, p.1.

¹³ Action for the Rights of Children, at note 3 above, p.4.

¹⁴ Ibid.

¹⁵ Id, p.8; Abraham, S. ‘Child Soldiers and the Capacity of the Optional Protocol to Protect Children in Conflict,’ *Human Rights Brief*, Volume 10 Issue 3, p.4.

¹⁶ Machel, G. Impact of armed conflict on children, available at <http://www.un.org/rights/introduc.htm>, accessed on 29/10/13.

¹⁷ Ibid.

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This makes regulation of recruitment of child soldiers very important as it has to do with protecting the wellbeing of the new generation. Accordingly, various attempts to regulate this problem of child participation in armed conflicts have been made at different levels.

At international level, the attempt to protect children during armed conflicts dates back to the 1940s, at least. The protection of children under a binding international instrument has been provided for the first time under the Geneva Conventions of War in general and the Fourth Geneva Convention in particular.¹⁸ This Convention provides that the Occupying Power may not, in any case, enlist children in formations or organizations subordinate to it.¹⁹ In 1970s, two Additional Protocols to the Geneva Conventions were adopted and these Additional Protocols have provided for the protection of children during armed conflicts. The First Additional Protocol provided for prohibition of recruitment of children below fifteen years of age into armed forces and protected children of this age from direct participation in hostilities.²⁰ The Second Additional Protocol also provided for similar protection except that it is applicable towards non-international armed conflicts. It provides that

¹⁸ Mezmur, B.D. 'Children at both ends of the gun: Child soldiers in Africa,' in *Children's rights in Africa: A legal perspective*, Sloth-Nielsen, J. (ed.), Ashgate publishing company, England, 2008, pp.200-201.

¹⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, (Geneva Convention IV), Art.50, second para.

²⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Article 77(2). It reads: 'The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.' This protection extends to children fall into the hands of adversary. Sub-article (3) of the same article provides that 'If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.'

‘[c]hildren who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.’²¹

These international agreements were followed by the Convention on the Rights of the Child, 1989 (CRC). The CRC has been adopted as a comprehensive convention on the rights of the child under the auspices of the United Nations and has also provided for the primary and secondary protection for certain category of children from taking direct part in hostilities.²² By the same token, the African counterpart of the CRC, the African Charter on the Rights and Welfare of the Child, 1990, (ACRWC) has provided for primary protection for all children from taking direct part in hostilities and recruitment.²³

Subsequently, in 1993, the World Conference on Human Rights was held in Vienna.²⁴ This Conference resulted in the Vienna Declaration and Programme of Action. With respect to the rights of the child ‘The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces.’

²¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977, Article 4(3)(c). For interesting discussion on the protection of child soldiers under the Geneva Conventions and their Additional Protocols, see Wells, S. L. ‘Crimes against child soldiers in armed conflict situations: Application and limits of international humanitarian law,’ *Tulane Journal of International and Comparative Law*, Vol.12, 2004.

²² Convention on the Rights of the Child, adopted by the UN General Assembly, Res. 44/25, 20 November 1989, (CRC), Article 38(2) (3). Article 38(3) also puts States Parties, ‘[i]n recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.’

²³ African Charter on the Rights and Welfare of the Child, adopted by the Sixteenth Ordinary Session of the OAU Assembly of Heads of State and Government, Res. 197 (XVI), Monrovia, 17–20 July 1990, OAU Doc. CAB/LEG/24.9/49 (1990),, 1990, (ACRWC), Art.22 (2). Article 22 (2) provides: ‘States Parties to the present Charter shall ... refrain, in particular, from recruiting any child.’

²⁴ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, GENERAL A/CONF.157/23, Vienna.

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Thus participant states have declared that there is a need to raise the minimum age of recruitment into armed forces.

The year 1996 was remarkable in that concern of child soldiers became among the leading concerns in the UN. Hence, Graça Machel was mandated by the United Nations to study the impact of armed conflict on children. She came up with prominent report. As part of the reports' recommendations, the General Assembly established the mandate of the Special Representative of the Secretary General for Children and Armed Conflict.

As part of the effort to deal with the tragic and growing problem of children involved in armed Forces and groups, the NGO Working Group on the Convention on the Rights of the Child and UNICEF conducted a symposium in Cape Town (South Africa) from 27 to 30 April 1997. The symposium was intended to bring together experts and partners to develop strategies for preventing recruitment of children, in particular for establishing 18 as the minimum age of recruitment, and for demobilizing child soldiers and helping them reintegrate into society. The symposium culminated in the Cape Town Principles and Best Practices.²⁵ These Principles and Best Practices recommend actions to be taken by governments and communities in affected countries to end violation of children's rights.

After this came the Rome Statute on International Crime (1998). This Statute also protects children below fifteen years of age from recruitment and participation in hostilities. The ICC exercises jurisdiction over the most serious crimes of concern to the international community as a whole. It has jurisdiction in accordance with its Statute with respect to the

²⁵ The NGO Working Group on the Convention on the Rights of the Child and UNICEF, Cape Town Principles and Best Practices, adopted at the symposium on the prevention of recruitment of children into the armed forces and on demobilization and social reintegration of child soldiers in Africa, 27-30 April 1997, Cape Town, South Africa, preamble.

following crimes: The crime of genocide; Crimes against humanity; War crimes; and the crime of aggression.²⁶ For the purpose of the ICC Statute, ‘war crimes’ means: Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the acts against persons or property protected under the provisions of the relevant Geneva Convention including in particular ‘[c]onscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities.’²⁷ Therefore, the offences provided for under this Statute are three different crimes of conscripting or enlisting children, or using them in hostilities.

In 1999, the International Labour Organization adopted a convention that requires each State party to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.²⁸ It also thereby declares child soldiering an intolerable form of child labour and calls for an end to recruitment of children under 18 for use in armed conflicts under Convention No. 182 on the Worst Forms of Child Labour (1999).²⁹

Finally, in 2000, the UN Optional Protocol on the Involvement of Children in Armed Conflict has been adopted. Given the above conventions and efforts what is the need for this Optional Protocol? Does

²⁶ Rome Statute of the International Criminal Court, Art.5.

²⁷ Id, Art.8, (vii). Cases before ICC on child soldiering include Thomas Lubanga Dyilo (Democratic Republic of the Congo), Germain Katanga & Mathieu Ngudjolo Chui (Democratic Republic of the Congo), Jean-Pierre Bemba Gombo (Central African Republic), Joseph Kony et al. (Uganda) cases.

²⁸ International Labour Organization (ILO) Convention 182, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Adopted by the General Conference at Its 87th Session, Geneva, 17 June 1999, Article 1. This Convention is ratified by Ethiopia (see, Proclamation No. 335/2003, A Proclamation to ratify the International Labour Organization Convention on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, *Federal Negarit Gazeta*, Federal Democratic Republic of Ethiopia, 9thYear No. 55, 8th May, 2003).

²⁹ Id., Article 3 (a).

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it add any value? This issue would be discussed in the subsequent sections of this article.

3. The protection of children from recruitment into and participation in armed conflicts as provided under the CRC

The CRC is a comprehensive document on child rights adopted under the auspices of the United Nations. As a result, it deals with the issue of recruitment into and participation in armed conflict of children as well. It provides for different rules relating to child soldiers. First, it provides that 'States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.'³⁰ The protection from recruitment offered to this category of children is complete protection hence one may call it primary protection. The primary protection under the CRC is limited to children less than fifteen years of age.³¹ Therefore, excluded are children who attained the full age of fifteen and below eighteen years. This makes CRC weak and also strong at the same time.

It is weak having regard to the fact that it offers protection to persons less than eighteen years, generally speaking, in other cases but limits it self to less than fifteen years in case of protection to child soldiers, which is low.³² It is strong as it avoids states' discretion as far as children less than fifteen years are concerned. The strength in this regard is significant if seen in light of the discretion left to states to set minimum ages for criminal responsibility³³ and the practice thereto as some countries fixed very low age as the minimum age for criminal responsibility. Another

³⁰ CRC, Article 38 (3). This is the case under the Geneva Conventions and their Additional Protocols.

³¹ This is a compromised age at the time of drafting the CRC. See Mezmur, cited at note 16 above, p.202; Hackenberg, M.L. 'Can the Optional Protocol for the Convention on the Rights of the Child protect the Ugandan child soldier,' *Indiana International and Comparative Law Review*, Vol.10, 2000, p.428.

³² Becker, J. 'Child soldiers: Changing a culture of violence,' *WTR Human Rights*, Vol.32, 2005, p.16.

³³ CRC, Article 40 (3) (a).

point of weakness of the CRC is that it does not protect all children, even those less than fifteen years of age, in respect to conscription as it provides only for recruitment.³⁴ Finally, states are obliged to prioritize the recruitment of the old ones in case of recruitment of children between fifteen years of age to eighteen years of age.³⁵ This is what we call secondary protection.

Second, the CRC provides that ‘States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.’³⁶ In this respect, it is possible to see three problems. The first problem is that the CRC is limited only to children who are less than fifteen years. This makes it less protective for the same argument forwarded above in respect to recruitment. The second problem relates to the language it uses. It obliges states to ‘take all feasible measures.’ But it does not define acts that constitute such measures. It also employs the phrase ‘direct part.’ Some writers argue that there is no protection from indirect participation.³⁷ They also argue that what constitutes direct and indirect part in hostilities is not clear.³⁸ The third problem relates to the lack of clarity as to whether this obligation under the CRC obliges states to ensure that children of this age group do not take a direct part in hostilities as members of their armed forces only or in armed groups in their territory as well.³⁹ This is to say that whether the emerging jurisprudence in human rights that informs states are liable for human rights violations within their territory regardless of their effective control applies to cases of child soldiers in armed groups or not

³⁴ Hodgkin, R. & Newell, P. *Implementation handbook for the Convention on the Rights of the Child*, United Nations Children’s Fund, 2002, p.572.

³⁵ CRC, Article 38 (3).

³⁶ CRC, Article 38 (2).

³⁷ Detrick, S. *A commentary on the United Nations’ Convention on the Rights of the Child*, Marthinus Nijhoff, 1999, p.652.

³⁸ Ibid.

³⁹ Escobar V. ‘Reclaiming the ‘Little Bees’ and the ‘Little Bells’: Colombia’s failure to adhere to and enforce international and domestic laws in preventing recruitment of child soldiers,’ *Fordham International Law Journal*, Vol.26, 2003, p.839.

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is not well settled. The emerging jurisprudence in the international human rights arena is that states are responsible for acts of human rights violations by armed groups within their territory regardless of their effective control.

Third, the CRC provides that states are obliged to adhere to international humanitarian laws protecting children.⁴⁰ This should be taken as referring to the Geneva Conventions and their Additional Protocols, and customary international humanitarian law. Fourth, states are obliged to ‘take all feasible measures to ensure protection and care of children who are affected by an armed conflict’ in accordance with their obligations under international humanitarian law.⁴¹ Here, too, it is clear to see that the CRC is infested with imprecise phrases-what is ‘feasible measures?’, which laws are ‘international humanitarian laws protecting children?’, and what are ‘their obligations under international humanitarian law?’

Finally, the CRC deals with the duty of a state to ‘take all appropriate measures to promote physical and psychological recovery and social reintegration of a child’ who is victim of armed conflicts.⁴² What constitutes ‘all appropriate measures’ is left unclear. Related to this duty is the duty of a state to carry out the promotion of the physical and psychological recovery and social reintegration of children affected by armed conflicts ‘in an environment which fosters the health, self-respect and dignity of the child.’⁴³ This has to do with rehabilitation and reintegration of child victims but does not provide for disarmament and demobilization of child soldiers expressly.

To conclude, it is important to see that an attempt for regulation of child soldiering has been made under the CRC. However, the protection of

⁴⁰ CRC, Article 38 (1).

⁴¹ Ibid.

⁴² Id, Article 39.

⁴³ Ibid.

child soldiers provided is insufficient and problematic. Despite this fact, the attempt made by the CRC to provide for a framework of protection of child soldiers should be appreciated. In particular, the emphasis given to regulate the situation can be seen from devoting separate provision on the protection of child soldiers, making cross reference to international humanitarian law and imposing additional or specific state obligations in respect to child soldiers in addition to the general state obligations on the implementation of the CRC under Article 4. It also provides for the reintegration and rehabilitation of child victims. Finally, it is important to note that the CRC as human rights document applies only to states. Hence, the protection it provides to child soldiers is limited to protection of child soldiers in relation to the state (if only a party), not child soldiers in armed groups.

4. The protection of children from recruitment into and participation in armed conflicts as provided under the ACRWC

ACRWC is a regional counterpart of the CRC. In the same vein as the CRC, it deals with child soldiers under some provisions. It has been said that one of the reasons that necessitated the formulation and adoption of ACRWC 'was the use of children as soldiers and the required establishment of a compulsory minimum age for military service.'⁴⁴ Consequently, it is possible to expect that the ACRWC to provide for a better protection. Is this expectation realized or not will be answered after the discussion in this section.

The ACRWC deals with child soldiers under Article 22. Under this Article, various rules have been provided for. First, it prohibits states 'from recruiting any child'⁴⁵ into their armed forces. 'Any child' here refers to any person under the age of eighteen years as child is defined

⁴⁴ ACRWC, preamble, para.4.

⁴⁵ Id, Article 22 (2).

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under ACRWC as ‘every human being below the age of 18 years.’⁴⁶ This shows that the ACRWC has a wider room of protection of child soldiers unlike the CRC, which is limited to children of less than the full age of fifteen years. But it did not cure the defect under the CRC, namely, the failure to prohibit conscription of children into armed forces in clear terms. Second, the ACRWC obliges states to ‘take all necessary measures to ensure that no child shall take a direct part in hostilities.’⁴⁷ This protection is similar to the CRC. The criticisms in relation to the CRC made above equally apply to the ACRWC as far as this protection is concerned. For instance, when can one say ‘all necessary measures’ are taken? What is taking direct part in hostilities as opposed to indirect part? Third, the ACRWC also requires states to adhere to their obligations under international humanitarian law relevant to protect child soldiers in armed conflict.⁴⁸ This should be taken as, like in the case of the CRC, referring to the Geneva Conventions and their Additional Protocols, and customary international humanitarian law. Fourth, states are obliged to ‘take all feasible measures to ensure the protection and care of children who are affected by armed conflicts’ in accordance with their obligations under international humanitarian law.⁴⁹ Here, too, it is clear to see that the ACRWC, like the CRC, is infested with imprecise phrases-what is ‘feasible measures?’, which laws are ‘international humanitarian laws protecting children?’, and what are ‘their obligations under international humanitarian law?’

To conclude, the protection to child soldiers under the ACRWC is more or less similar to the CRC. But the former uses ‘a straight’ eighteen years position.⁵⁰ This makes it better than the CRC. The CRC is better for it deals with the physical and psychological recovery and social integration of child soldiers affected by armed conflicts unlike the ACRWC. Hence,

⁴⁶ Id, Article 2.

⁴⁷ Id, Article 22 (2).

⁴⁸ Id, Article 22 (1).

⁴⁹ Id, Article 22 (3).

⁵⁰ Id, Arts22 (2) & 2.

the only improvement to the CRC made by the ACRWC is the increment of the age of children protected from taking direct part in hostilities and recruitment to eighteen years. As Ethiopia is a member state to the ACRWC, what is the value added by ratification of the Optional Protocol by Ethiopia? This would take us to the next section.

5. The protection of children from recruitment into and participation in armed conflicts under the Optional Protocol on the Involvement of Children in Armed Conflict

Under this section, the writer deals with the protection of child soldiers as provided under the Optional Protocol on the Involvement of Children in Armed Conflict, 2000 (the Optional Protocol) and the value-added to the existing protection systems particularly the CRC and the ACRWC. In doing so, the discussion begins with the historical background of adoption of the Optional Protocol.

As mentioned in section two, the fifteen age limit for protection of child soldiers under Article 38 of the CRC is a compromised age. This compromise was made only to get the adoption of the CRC as soon as possible, not because the protection for child soldiers was deemed to be sufficient. Therefore, the United Nations appointed a working group with a mandate to draft an optional protocol to the CRC that would raise the minimum age for recruitment of child soldiers to eighteen years in 1989.⁵¹ This attempt was slow to come up with optional protocol until it was energized by a report written by Graça Machel in 1996 in which ‘she stressed the urgent need to stop the use of child soldiers and further recommended the imminent need for the optional protocol’ and pressure from different reports and actors like the Coalition to Stop the Use of Child soldiers founded in 1998 by six Non-Governmental

⁵¹ Vachachira, J.S. ‘Implementation of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in Armed Conflict,’ *New York Law School Journal of Human Rights*, Vol.18, 2002, p.544.

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Organizations.⁵² The increasing concern for child soldiers culminated into the Optional Protocol in 2000.

The Optional Protocol has strengthened protection to children in relation to armed conflict. It obliges states to ‘take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.’⁵³ This shows that the Optional Protocol increases the age for taking direct part in hostilities to a straight eighteen years of age.⁵⁴ This can be seen as a value-added on CRC as the protection in the CRC is limited to children less than fifteen years of age. But it does not have added-value in respect to the ACRWC in this respect. In addition, the Optional Protocol is still defective as it does not expressly deal with protection in the case of indirect participation in hostilities. But it has been suggested that direct participation should be interpreted to include not only active participation in combat but also military activities and direct support functions.⁵⁵ If such wider interpretation is accepted, the Optional Protocol clarifies the concept of taking direct part under both the CRC and ACRWC. This can also be taken as one added-value to the CRC and the ACRWC. What about recruitment, i.e. conscription and enlistment?

Second, the Optional Protocol obliges states to ‘ensure that persons who have not attained the age of 18 years are not compulsorily recruited into

⁵² Ibid.

⁵³ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000, entered into force on Feb.12, 2002, (Optional Protocol), Article 1. The ILO Convention 182 is the first international instrument to set participation in military at the age of eighteen. See Abraham S., cited at note 13 above, p.5.

⁵⁴ Cohn, I. ‘Progress and hurdles on the road to preventing the use of children as soldiers and ensuring their rehabilitation and reintegration,’ *Cornell International Law Journal*, Vol.37, 2004, p.532.

⁵⁵ The United Nations Children’s Fund (UNICEF), *Guide to the Optional Protocol on the Involvement of Children in Armed Conflict*, United Nations Children’s Fund, New York, 2003, p.14.

their armed forces.’⁵⁶ By imposing such obligation, it excludes compulsory recruitment (conscription) of persons under the age of eighteen.⁵⁷ This shows that the Optional Protocol affords a wider protection to children than the CRC. This can be taken as one area of value-added to the CRC by the Protocol as it affords protection to children above fifteen but below eighteen years of age. But it adds no value to the ACRWC.

Third, the Optional Protocol provides for voluntary recruitment (enlistment) of children with safeguards.⁵⁸ This may also be taken as an added-value to protection of children under Article 38 of the CRC. But as far as the ACRWC is concerned, it adds no value as the ACRWC prohibits recruitment, even if it is through enlistment, of a child. In addition, ACRWC provides a better protection than the Optional Protocol as the safeguards provided for voluntary recruitment under the latter are not viable safeguards in the African context.⁵⁹ One example of the safeguards that are not feasible in the context of Africa is the requirement of ‘reliable proof of age’⁶⁰ as birth registration is rare in many countries in the continent.⁶¹ Relating to voluntary recruitment, it is important to see that the Optional protocol ‘requires parties to raise the age of voluntary enlistment to at least one year above the fifteen-year age limit’ provided under the CRC.⁶² This can also be taken as an added-value of the Protocol.

⁵⁶ Optional Protocol, Article 2.

⁵⁷ UNICEF, cited at note 54 above, p.4; Cohn, cited at note 52 above, p.532.

⁵⁸ Optional Protocol, Article 3. In this respect, the ACRWC is better as it prohibits the recruitment of child soldiers be it voluntarily or compulsorily.

⁵⁹ Mezmure, cited at note 18 above, pp.205-206. Such minimum safeguards are ‘Such recruitment is genuinely voluntary; such recruitment is done with the informed consent of the person’s parents or legal guardians; such persons are fully informed of the duties involved in such military service; and, such persons provide reliable proof of age prior to acceptance into national military service.’ Optional Protocol, Art.3 (3 a-d).

⁶⁰ Optional Protocol, Article 3 (3) (d).

⁶¹ Mezmure, cited at note 18 above, p.205

⁶² Cohn, cited at note 52 above, p.532.

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Fourth, the Optional Protocol, unlike other human rights treaties, deals with armed groups.⁶³ It prohibits the recruitment or use of children below the age of eighteen years of age by armed groups.⁶⁴ This prohibition is indeterminate in the sense that it prohibits both voluntary and compulsory recruitment or use of children by armed groups. Such stringent standard with respect to armed groups while allowing states to voluntarily recruit children below eighteen years of age is said to reflect the world's reality. In reality, children are mostly recruited by armed groups. This fact necessitated such commendable standard with respect to armed groups.

As far as this feature of the Optional Protocol is concerned, the Protocol has two added-values with respect to both the CRC and the ACRWC. First, it applies to armed groups and states unlike the CRC and the ACRWC, which are limited only to states as they are the only signatories governed by the terms of the conventions. Second, it provides for a higher standard of protection for children with respect to recruitment and use of children below the age of eighteen years in hostilities by armed groups. In relation with armed groups, the Optional Protocol not only prohibits the recruitment or use of children less than eighteen years of age by armed groups but also obliges states to 'take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.'⁶⁵ This shows that the Optional Protocol requires the enforcement of the obligations of armed groups by feasible means possible. This can also be seen as an added-value to the CRC and the ACRWC. But, critically seen the application of this value of the Optional Protocol is very doubtful as Africa is a continent where many armed groups exist and at the same time economically poor. It can not economically afford to run programs necessary to implement the Optional Protocol.

⁶³ Optional Protocol, Article 4.

⁶⁴ Id, Article 4 (1).

⁶⁵ Optional Protocol, Article 4 (2).

Fifth, the Optional Protocol explicitly provides that states are obliged to carry out a task of promotion with a view to making the principles and provisions of the Optional Protocol known to both children and adults.⁶⁶ The CRC and the ACRWC do not explicitly impose such obligation on states specifically for protection of children from armed conflict. Hence, this can be seen as one added-value to the CRC and the ACRWC. This is significant for Africa where human rights awareness in general and child rights awareness in particular is very low for various reasons like illiteracy and poor media accessibility.

Sixth, the Optional Protocol provides for the principles of demobilization, disarmament and reintegration.⁶⁷ It provides that children recruited or used in hostilities in violation of the Optional Protocol be demobilized or released from service and given 'appropriate assistance for their physical and psychological recovery and their social reintegration' when necessary.⁶⁸ The value-added to the CRC under this principle of the Optional Protocol is that the latter includes a new concept of disarmament, which is not present under both Article 38 and Article 39 of the CRC. As far as the ACRWC is concerned, the Optional Protocol has two added-values. First, it includes a concept of demobilization which is not there under the ACRWC. Second, the Optional Protocol includes the idea of reintegration which is not also there under the ACRWC. Finally, it is important to see that the Optional Protocol, though not clear, seems to incorporate the concept of rehabilitation to children recruited or used in hostilities contrary to its principles. This can be seen from the clause 'appropriate assistance for their physical and psychological recovery' and the term 'rehabilitation'⁶⁹ under Article 7 (1) of the Optional Protocol. If this is acceptable, it is possible to see that the Optional Protocol adds a new concept of rehabilitation to children recruited or used in hostilities in

⁶⁶ Id, Article 6 (2).

⁶⁷ Id, Article 6 (3).

⁶⁸ Ibid.

⁶⁹ See also Optional Protocol, Preamble, para.17.

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violation of the Optional Protocol into the CRC and the ACRWC. This is significant for Africa as many of its children are victims of armed conflicts and need social reintegration and rehabilitation programs.

Seventh, the Optional Protocol calls for international cooperation with respect to implementation of the principles enshrined therein.⁷⁰ This may also be taken as an added-value of the Optional Protocol to the CRC and the ACRWC as the latter two do not have such obligation with regard to the protection of children from participation in armed conflicts but general cooperation obligation with regard to the implementation of the CRC and ACRWC in general. This difference is significant in relation to rehabilitation and social integration. The Optional Protocol emphasis international cooperation with regard to the rehabilitation and social integration of children who are victims of acts contrary to the principles of the Optional Protocol.⁷¹ This is significant as rehabilitation programs and social integration activities need cooperation as they are costly and require experience sharing on what programs and activities are required in a certain situation and how it should be carried out. This may be taken as one praiseworthy added-value of the Optional Protocol to the CRC and the ACRWC.

Moreover, the Optional Protocol shows that the implementation of the principles incorporated thereunder calls for the involvement of relevant organizations as well as states.⁷² It also envisages the idea of participation of local actors, in particular participation of the community in the implementation of the Optional Protocol.⁷³ It has also made children not only recipients of protection but also agents that should participate in the implementation of the Optional Protocol actively.⁷⁴ This shows that the Optional Protocol provides for a comprehensive approach to end the act

⁷⁰ Id, Article 7 (1).

⁷¹ Ibid.

⁷² Ibid.

⁷³ Id, Preamble, para.18.

⁷⁴ Ibid.

of recruitment or use in hostilities of children in violation of the Optional Protocol. Such approach is described by a certain writer as '[t]he most effective means of ending this offensive practice.'⁷⁵ It is very true that it is only through a multidimensional approach that involves states, relevant international organizations, local actors and affected children that the dreams under the Optional Protocol can be realized.

The significance of such approach can be seen in light of the difficulty some State Parties to the Optional Protocol like the Democratic Republic of Congo, the Sudan, and Somalia may face in implementing the principles under the Optional Protocol unless international assistance, for instance, is not offered to them.⁷⁶ Such multifaceted approach that allows the involvement of various actors in the implementation of the principles under the Optional Protocol could be seen as an added-value of the Protocol to the CRC and the ACRWC. CRC and the ACRWC though require international cooperation in their general implementation only and do not incorporate comprehensive means for their implementation at all. This feature of the Optional Protocol is significant for Africa as most states are poor to cover all costs necessary to implement the Optional Protocol, particularly to run disarmament, demobilization, reintegration and rehabilitation programs. Moreover, cooperation of states for implementation of the principles of the Optional Protocol may be helpful to reduce incidents of cross-boarder recruitment prevalent in Africa as states may not allow armed groups of neighboring countries in particular to crossover their boundaries and recruit child soldiers. This can be achieved through cooperation relating to tightening boarder security through bilateral and multilateral cooperation and agreements.

Ninth, the Optional Protocol requires states to report to the Committee on the Rights of the Child providing comprehensive information on the

⁷⁵ Abraham, cited above at note 13, p.2.

⁷⁶ Bainham, A. & Rwezaura, B. *International Survey of Family Law 2006*, International Society on Family Law, 2006, p.4.

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measures they have taken to implement the provisions of the Optional Protocol in general and those on participation and recruitment in particular.⁷⁷ This report is additional to the report required under Article 44 of the CRC and Article 43 of the ACRWC.⁷⁸ This would strengthen the overall enforcement mechanism of child protection from participation in armed conflicts and recruitment into armed forces and groups. This in effect may have an added-value on strengthening the enforcement mechanism of the CRC and the ACRWC.

Finally, the Optional Protocol takes one step ahead of the CRC though in weak form in that it reiterates the concern for cross-boarder recruitment, training and use of children in hostilities.⁷⁹ But it does not deal with cross-boundary recruitment in its substantive provisions. This makes it weak. But, it has at least lifted the concern at preambular level and this is important in the implementation of the principles it contains. The provisions of the Optional Protocol should be interpreted having regard to such cross-boarder problem enshrined in the preamble as the preamble tells the purpose of the Optional Protocol. In this respect, it is possible to see an added-value of the Optional Protocol to the CRC and the ACRWC. Having regard to the African problem of cross-boundary recruitment of child soldiers, the Optional Protocol is typically significant.

Coming to the Case of FDRE, the Optional Protocol is significant in that it is part and parcel of the laws of the land as per Art.9 (4) of the FDRE Constitution. Thus, some values added to the CRC and to the ACRWC are also imported to the domestic human rights system as the result of ratification of this Protocol. However, it does not have any added value with respect to two significant points: a) the 18 years limit as this has already been done by adopting the ACRWC, and b) the criminalization of acts of recruiting child soldiers in times of war, armed conflict or

⁷⁷ Optional Protocol, Article 8 (1).

⁷⁸ Id, Article 8(2).

⁷⁹ Id, Preamble, para.11.

occupation as this has already be done under the FDRE Criminal Law. The Criminal Law has put that the act of organizing, ordering or engaging in child recruitment in times of war, armed conflict or occupation is a criminal act.⁸⁰ However, it is significant in that it adds the value that dictates criminalization of the act of child recruitment during other times.

6. Conclusion

The involvement of children in armed conflicts has been increasing since the beginning of the twentieth century. The protection of children from participation in armed conflicts, therefore, has been getting attention as of 1940s. The matter, though insufficiently, has been regulated since the Geneva Conventions, 1949 at the international level. The Additional Protocols on these Geneva Conventions also addressed the problem of child participation and recruitment in armed conflicts to some extent. Similar trend was adopted under the CRC and the ACRWC. However, these instruments address the problem in an incomplete manner.

The tremendous growth in participation of children in armed conflicts after the adoption CRC and the ACRWC made the issue a serious concern. Consequently, the Optional Protocol was adopted in 2000 and entered into force in 2002. This Optional Protocol has some added-values to the already existing system of child protection form participation in armed conflicts as established by the CRC and the ACRWC. These added-values include the increment of the age of children at which they participate in armed conflicts to eighteen years; attempt to regulate the recruitment of children under the age of eighteen by armed groups; effort

⁸⁰ Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, Art.270 (m). It reads: ‘Whoever, in time of war, armed conflict or occupation organizes, orders or engages in, against the civilian population and in violation of the rules of public international law and of international humanitarian conventions: (m) recruiting children who have not attained the age of eighteen years as members of defence forces to take part in armed conflict is punishable with rigorous imprisonment from five years to twenty-five years, or, in more serious cases, with life imprisonment or death.’

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to establish a comprehensive mechanism of implementation of the Protocol; and, emphasis is made on post-conflict issues as well by providing for the application of principles of demobilization, disarmament, reintegration and rehabilitation of child victims.

Given these facts, states should ratify the Optional Protocol so that children in their territory benefit from these added-values. Thus Ethiopia, by ratifying the Optional Protocol, has offered a wider space of protection for children in its territory. This Optional Protocol has now become part and parcel of its domestic laws. Thus, children in the territory of Ethiopia benefit from these added-values. The new Defence Force Proclamation shall be read in light of this Optional Protocol and the rules enshrined therein. The new Defence Force Proclamation says that the Ministry of National Defence ‘may, in accordance with its criteria issued from time to time, recruit persons fit and willing for military services.’ This Defence Force Proclamation does not fix the age limit for recruitment. This seems Ethiopia’s failure to meet its international or regional obligation assumed as per the ratification of the ACRWC, which fixes 18 years. Thus, the ratification of the Optional Protocol shall be regarded as a reminder to Ethiopia of its obligation under the Optional Protocol and at the same time amendment of the Defence Force Proclamation. As the Optional Protocol and the Defence Forces Proclamation are, arguably, laws of equal status the new law, i.e. the Optional Protocol ratified by Proclamation No.826/2014, shall be taken as the prevailing law. Therefore, members of the Defence Forces recruitment age shall be above 18 years of age.

7. Recommendations

It can be said that, in Ethiopia, children are not at risk of recruitment. 18 years of age is established in call up notices as a minimum recruitment age. However, the following factors, among others things, constitute ongoing risks.

- A. How much is the law and sanctions attached to breaking it known to the public and recruiting organs? In particular, since one of the requirements is completion of 10th grade in school and this can be completed at 16, how is the government ensuring under 18 requirements even if call up notice is fixed at 18? There is no convincing answer to these questions. Therefore, the government should work towards ensuring 18 as minimum requirement age as put under the Optional Protocol, and raising the public awareness as to such law and sanctions attached to breaking such law. Beside this, breaches of the minimum age law requirement must be aggressively investigated and seriously punished.
- B. Is the recruitment procedure, i.e. recruitment through agency of the 'kebeles', reliable? The recruitment is highly dependent on the enlistment and registration by 'kebeles'. It is obvious that in the long existing Ethiopian administration, though improvements are witnessed recently, these organs are not praised for their integrity and are not reliable. Therefore, there should always be independent monitoring on the recruitment made by the 'kebeles'.
- C. Is the birth registration system in Ethiopia well developed? In Ethiopia, there exists a low rate of birth registration and absent or defective procedures for age verification. Given this fact, it is recommended that this matter should be given serious attention if Ethiopia has to discharge its obligation under the Optional Protocol.

As researches in many countries show, it is not difficult to prohibit child recruitment but to enforce such prohibition. In other words, it has been boldly witnessed that the real challenge is not establishing 18 as a minimum recruitment age in law; rather, it is the matter of enforcing that law. Ethiopian authorities should bear in mind that enforcement of the Optional Protocol by addressing the risk factors could be effectively addressed through a range of measures as the Optional Protocol declares it itself. Thus Ethiopia should come up with clear and comprehensive minimum legal, policy and practical

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measures to prevent the admission of children into armed forces and armed groups. It shall in particular:

- Criminalize the act of organizing, ordering or engaging in child recruitment in other times in just like the case of in times of war, armed conflict or occupation.
- Ensure recruitment only through formal, standardized or reliable recruitment procedures. In case of recruitment by proxy in particular and recruitment in general independent monitoring of military recruitment processes must be realized.
- Establish birth registration system and ensure any candidate presents verifiable proof of age for recruitment. Related to this, the criminal justice system must be able to effectively investigate and prosecute allegations of unlawful recruitment and use of a child.

Finally, given the values added by the Optional Protocol, first, states should be encouraged to ratify the Optional Protocol so that children in their territory benefit from these added-values. Second, State Parties should work towards the implementation of the principles of the Optional Protocol and realization of the protection offered by same. This is true for Ethiopia as well. Third, the United Nations and the Committee on the Rights of the Child should work towards incorporating substantive provisions relating to cross-border recruitment, training and use of child soldiers, and provisions relating to specific problems to girl child soldiers or indirect participants into the Optional Protocol.