Optional Protocols to the Convention

There are two Optional Protocols to the Convention on the Rights of the Child, both adopted by the UN General Assembly on 25 May 2000. These are the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, which came into force on 18 January 2002, and the Optional Protocol on the Involvement of Children in Armed Conflict, which entered into force on 12 February 2002. The Optional Protocols were drafted on issues for which States parties felt ready to adopt stronger commitments than those outlined in the Convention.

Optional Protocol on the Involvement of Children in Armed Conflict
The Convention’s consensual drafting process resulted in the minimum age for the involvement of children in armed forces being set at 15 years — an age deemed far too young by many countries. The Optional Protocol requires States parties to prohibit the conscription of anyone under 18, adopt all feasible measures to ensure that voluntarily recruited soldiers under the age of 18 do not fight, and criminalize the recruitment of children under 18 by rebel groups.

The protocol resolved the contradiction in the Convention that did not afford soldiers under 18 the same rights and protection as all other children, establishing a legal norm and international standard that makes it easier to hold nations accountable and encouraging the passing of national laws in accordance with its principles. By July 2009, it had been ratified by 128 countries and signed by a further 28.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography was devised to strengthen protection for children against these forms of exploitation. Among its provisions are recommendations about the criminalization of such practices; procedures for extradition of those guilty of such offences; calls for international co-operation in tracking and prosecuting offenders; procedures for protecting and assisting child victims; and calls for the promotion of public awareness.

A peculiarity of the Optional Protocols is that they contain a unique provision that allows them to be ratified by the United States and Somalia, the two countries that have not ratified the Convention. The US Government ratified both Optional Protocols on 23 December 2002; Somalia has signed but not ratified the Optional Protocol on the Involvement of Children in Armed Conflict.

See References, pages 90–92.

affirms that States parties “shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

This universal application today is a core element of any human rights instrument, but in 1959, a separate provision in a draft version of the UN Declaration of the Rights of the Child affirming equality of rights for children born inside and outside marriage was removed from the document. That the principle of non-discrimination is of paramount importance becomes clear when considering, for example, the situation of a child living with disability, an undocumented migrant or a child orphaned by AIDS. Children must also be protected from discrimination that is based on the beliefs of their parents, other family members or legal guardians. The principle of non-discrimination echoes the ethos of the 1965 Convention on the Elimination of Racial Discrimination and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (hereafter referred to as CEDAW).

Disparities in the realization of child rights are apparent in all countries. Even as global economic growth during the 1990s and for much of this decade led to remarkable reductions in absolute poverty in many developing countries – most notably China and India – gaps in maternal, newborn and child health care and in education enrolment among income and population groups have widened markedly. There is concern among child rights advocates that the recent global economic crises may result in further widening of these gaps.