



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-third session

11–29 January 2010

Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Concluding observations: Israel

1. The Committee considered the initial report of Israel (CRC/C/OPAC/ISR/1) at its 1475th meeting, held on 19 January 2010 (see CRC/C/SR.1475), and adopted at its 1501st meeting, held on 29 January 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report. The Committee further welcomes its written replies (CRC/C/OPAC/ISR/Q/1/Add.1) to the list of issues. The Committee appreciates the constructive dialogue with a multisectoral delegation, which included a representative of the Ministry of Defence, which shed light on the implementation of the provisions of the Optional Protocol, as part of Israel's broader commitment to children's rights in general.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's initial report on 4 October 2002 (CRC/C/15/Add.195).

4. The Committee reiterates that, in accordance with State responsibility in international law and under the prevailing circumstances, the provisions of the Convention and optional protocols apply to the benefit of the children of the occupied Palestinian territory, notably with regard to all conduct by the State party's authorities or agents that affects the enjoyment of rights enshrined in the Convention. The Committee underlines the concurrent application of human rights and humanitarian law, as established by the International Court of Justice in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, and recalls the explicit references to humanitarian law in the Optional Protocol.

5. The Committee notes the difficulties of the State party in fully implementing the Optional Protocol. The Committee recognizes the climate of fear which persists and the deliberate and indiscriminate targeting and killing of Israeli civilians, including children by Palestinian armed groups, some of whom carry out terrorist attacks. At the same time, the Committee recognizes the illegal occupation of Palestinian territory, the bombing of civilian areas, extrajudicial killings, the disproportionate use of force by the Israel Defense Forces, the demolition of homes, the destruction of infrastructure, the construction of the wall and mobility restrictions resulting in the denial of access to education, health care, clean water and employment, all of which have a severe impact on Palestinian children. The Committee reiterates that the daily humiliation of Palestinians continues to contribute to the cycle of violence.

I. Positive aspects

6. The Committee notes as positive the State party's ratification of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 15 March 2005.

7. The Committee welcomes information provided by the State party that asylum-seeking children who have been recruited or used in armed conflict have been granted refugee status on the basis of having been used as child soldiers in armed conflict.

II. General measures of implementation

Non-discrimination

8. The Committee is concerned that Israeli legislation continues to discriminate in the definition of the child between Israeli children (18 years) and Palestinian children in the occupied Palestinian territory (16 years) according to Military Order No. 132.

9. The Committee reiterates its recommendation that the State party rescind the provision of Military Order No. 132 concerning the definition of the child and ensure that its legislation conforms to the Convention on the Rights of the Child in this regard.

Right to life, survival and development

10. The Committee is concerned over the violations of the right to life, survival and development of children within the jurisdiction of the State party. The Committee, while noting that Israeli children are affected, is concerned that Palestinian children are disproportionately vulnerable. The Committee expresses grave concern for the serious violations suffered by children in Gaza during the Operation "Cast Lead" in December 2008 and January 2009 owing to the disproportionate violence, the lack of distinction for civilians and the obstruction of humanitarian and medical aid, notably documented by the United Nations Fact-Finding Mission on the Gaza Conflict, endorsed by the General Assembly (A/RES/64/10) and the Human Rights Council (A/HRC/RES/S-12/1). Furthermore, the Committee is concerned over the threat to the life of children posed by anti-personnel mines, originating from the State party, which have been placed in parts of the occupied Palestinian territory, southern Lebanon and the occupied Syrian Golan.

11. The Committee urges the State party to :

(a) Take prompt measures to comply with the fundamental principles of proportionality and distinction enshrined in humanitarian law, including the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, which set out the minimum standards for the protection of civilians in armed conflict ;

(b) Pay special attention to the right to life of Palestinian children and recommends the State party to, as a matter of urgency, discontinue the blockade and support the reconstruction of homes, schools and hospitals ;

(c) Comply with the recommendations of the United Nations Fact - Finding Mission on the Gaza Conflict , while paying particular attention to those recommendations which directly or indirectly affect children ;

(d) Clear all anti-personnel mines in the occupied Palestinian territory, southern Lebanon and the occupied Syrian Golan and seek international cooperation for this purpose, as necessary.

Dissemination and awareness

12. The Committee, while noting information on measures undertaken by the State party, is concerned that awareness of the Optional Protocol among the general public remains low .

13. The Committee recommends, in the light of article 6, paragraph 2, of the Optional Protocol, that the State party ensure that the principles and provisions of the Optional Protocol are widely disseminated to the general public and among both Israeli and Palestinian children.

Training

14. The Committee is concerned that relevant professional categories, in particular the military, the police and those working for the administration of justice, do not receive adequate training on the provisions of the Optional Protocol.

15. The Committee recommends that the State party strengthen human rights training for members of the Armed Forces with specific training on the provisions of the Optional Protocol. Furthermore, the Committee recommends that the State party develop awareness-raising, education and training programmes on the provisions of the Optional Protocol for relevant professional groups working with children, notably prosecutors, lawyers, judges, law enforcement officers, social workers, medical professionals, teachers, media professionals and local and district officials. The State party is invited to provide information in that respect in its next report.

Data

16. The Committee regrets the reiterated refusal of the State party to provide any information on the situation of children in the occupied Palestinian territory. The Committee further regrets the absence of data on the number of children in armed groups and children who have been charged and prosecuted for security offences.

17. The Committee urges the State party to provide relevant information in its next periodic report under the Convention and that data on the occupied Palestinian territory be included therein .

III. Prevention

Compulsory recruitment

18. The Committee, while noting information provided by the State party during the dialogue that persons under 18 years of age cannot take direct part in hostilities, nevertheless remains concerned that the State party fails to fully comply with article 2 of the Optional Protocol by designating persons below 18 years for compulsory recruitment. The Committee is concerned over information provided by the State party that persons under 18 years of age may be recruited to combat units.

19. The Committee recommends that the State party revise its laws and ensure that its policy on compulsory recruitment is consistent with the provisions of the Optional Protocol.

Voluntary recruitment

20. The Committee notes that the minimum age of voluntary recruitment is 17 years and that those volunteers are not allowed to be

deployed to armed duty.

21. The Committee notes that the great majority of States parties to the Optional Protocol do not permit voluntary recruitment of children. The Committee therefore encourages the State party to raise the minimum age for recruitment into the Armed Forces to 18 years in order to promote the protection of children by means of a legal standard that is higher overall .

Military education

22. The Committee is concerned that the curricula of programmes that combine military service with Talmudic studies (*hesder yeshivas*), such as programmes that explicitly encourage students to volunteer for recruitment and seek active combat duty, are contrary to the aims of education and human rights values enshrined in article 29 of the Convention.

23. The Committee recommends that any military education should take into account human rights values and article 29 of the Convention , and that the educational content of such programmes should be periodically monitored by the Ministry of Education. Furthermore, the Committee recommends that the State party ensure that all students, including those undertaking military and religious studies, have access to an independent complaints mechanism.

Use of children as human shields and informants

24. The Committee is deeply concerned over the persistent practice whereby Palestinian children are used as human shields and informants for intelligence purposes. Furthermore, the Committee regrets that the State party declines to provide information on compliance with the ruling of the Israeli High Court of Justice in *Adalah et al. v. Commander of the Central Region et al.* (HCJ 3799/02, Judgement of 23 June 2005). In view of reports indicating the use by the Israeli army of Palestinian children as human shields, including during Operation “Cast Lead” in Gaza in December 2008 and January 2009, the Committee notes information from the State party provided during the dialogue that investigations have been initiated. However, the Committee is concerned over delays and the lack of information regarding the outcome of such investigations.

25. The Committee urges the State party to ensure strict compliance with humanitarian law, abide by the ruling of the Israeli High Court of Justice in *Adalah et al. v. Commander of the Central Region et al.* and revise its Defence Services Law No. 5746- 1986 accordingly. Furthermore, the Committee urges the State party to promptly and impartially investigate reports of such crimes and ensure that those responsible are duly prosecuted and sanctioned with appropriate penalties.

Peace education

26. The Committee notes information from the State party regarding efforts to promote peace education in Israeli schools, but is concerned that peace education is extremely limited in Israel and the occupied Palestinian territory. The Committee is concerned over the lack of access to education in the occupied Palestinian territory. Furthermore, the Committee is concerned at the contrasts in the values promoted in education and, in particular, the extensive militarization of the educational system in Israel and the inclusion of mandatory military components as part of the school curricula.

27. The Committee recommends that the State party ensure that the education curricula is consistent with article 29 of the Convention and encourages the systematic inclusion of peace education both in the Israeli and Palestinian school system. For this purpose, the Committee encourages its general comment No. 1 on the aims of education to be taken into account. The Committee encourages joint initiatives, bringing together both Israeli and Palestinian children, to be undertaken to promote peace education.

IV. Prohibition and related matters

Legislation

28. The Committee, while noting provisions on unlawful military activities in the Israeli Penal Law, is concerned that it fails to specifically include the crimes covered in the Optional Protocol.

29. In order to further strengthen international measures for the prevention of the recruitment of children and their use in hostilities, the Committee urges the State party to:

(a) Revise the Penal Code and include a provision which explicitly criminalizes violations of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities and include a definition of direct participation in hostilities;

(b) Ensure that all military codes, manuals and other military directives are in accordance with the provisions of the Optional Protocol.

Extraterritorial jurisdiction

30. The Committee notes the statement of the State party that it may assume extraterritorial jurisdiction for the war crime of conscripting or enlisting children under the age of 15 years; however, the Committee is concerned over the lack of a specific legal basis on which such jurisdiction could be exercised.

31 . The Committee recommends that the State party review its legislation in order to establish extraterritorial jurisdiction for crimes under the Optional Protocol.

32 . The Committee recommends that the State party consider ratifying the following international instruments, already widely supported by the international community:

(a) The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977;

(b) The Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977;

(c) The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997;

(d) The Rome Statute of the International Criminal Court, 1998;

(e) The Convention on Cluster Munitions, 2008.

V. Protection, recovery and reintegration

Prosecution of children on terrorist charges

33. The Committee is seriously concerned that the State party has failed to comply with the recommendations issued in 2002 (CRC/C/15/Add.195, paras. 62 and 63) regarding the practices of arrest and interrogation of children in the occupied Palestinian territory. The Committee expresses concern that provisions in military orders (specifically Nos. 378 and 1591) continue to be in violation of international standards on the administration of juvenile justice and the right to a fair trial. The Committee further notes with concern information regarding attempts to incorporate juvenile justice standards within military courts.

34. The Committee is gravely concerned over reports that more than 2,000 children, some as young as twelve, have been charged with security offences between 2005 and 2009, held without charge for up to eight days and prosecuted by military courts. The Committee is particularly concerned that children charged with security offences are subjected to prolonged periods of solitary confinement and abuse in inhumane and degrading conditions, that legal representation and interpretation assistance is inadequate and that family visits are not possible as relatives are denied entry to Israel. The Committee is disturbed by information indicating that children have been subjected to administrative detention orders for renewable periods of up to six months. Finally, the Committee regrets the insufficient information provided by the State party on the above concerns.

35 . The Committee urges the State party to :

(a) Rescind the Military Orders Nos. 378 and 1591, as previously recommended in 2002;

(b) Never hold criminal proceedings against children in military courts and not subject children to administrative detention;

(c) Guarantee that juvenile justice standards are applied to all children within its jurisdiction and any trials should be conducted in a prompt and impartial manner, in accordance with minimum fair trial standards;

(d) Ensure that any definition of terrorist crimes is brought in line with international standards and norms, as recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/6/17/Add.4, para . 55) ;

36. The Committee furthermore recommends that the State party :

(a) Ensure that children are only detained as a measure of last resort and for the shortest possible time period. If in doubt regarding the age, young persons should be presumed to be children;

(b) Guarantee that children, if accused of having committed security offences, are detained in adequate conditions in accordance with their age and vulnerability;

(c) Inform parents or close relatives where the child is detained and allow contact;

(d) Provide adequate free and independent legal advisory assistance for all children;

(e) Guarantee children a periodic and impartial review of their detention;

(f) Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated promptly in an impartial manner;

(g) Provide educational programmes and recreational activities, as well as measures for all detained children's social reintegration;

(h) Provide all professionals working in the juvenile justice system with training on the Convention, the optional protocols , other relevant international standards and the Committee's general comment No. 10 on children's rights in juvenile justice.

Assistance for physical and psychological recovery

37. The Committee notes the information provided on physical and psychological recovery for Israeli children, but regrets the absence of information on such measures available for Palestinian children. In particular, the Committee is deeply disturbed by the psychological effects on children in Gaza resulting from Operation "Cast Lead" and the lack of assistance for these children. The Committee is furthermore concerned over the lack of adequate programmes for rehabilitation of children who have been victims of anti-personnel mines.

38. Given the psychological trauma on children as a consequence of the disproportionate attacks on civilians by Israel Defense Forces, the Committee urges the State party to assume its responsibility for providing assistance for the physical and psychological recovery of all affected children, Israeli and Palestinian. Furthermore, the Committee recommends that the State party support specific programmes for children who have been victims of anti-personnel mines.

VI. International assistance and cooperation

International cooperation

39. The Committee welcomes information that the State party supports Security Council resolution 1612 (2005) and recommends that the State party further strengthen its cooperation with the Special Representative of the Secretary - General for Children and Armed Conflict in order to effectively implement Security Council resolutions 1612 (2005) and 1882 (2009) within its jurisdiction.

Arms export

40. The Committee observes that Israel is a significant arms exporter and notes information from the State party indicating that legislation adopted in 2007 (Israeli Security Export Control Law No. 5767-2007) regulates the exportation of such materials in accordance with an assessment which takes into account the respect of children's rights; however, the Committee is concerned over the absence of an explicit prohibition of arms export to countries where children are recruited or used in hostilities.

41. The Committee recommends that the State party expressly prohibit in its legislation, the sale of arms when the final destination is a country where children are known to be or may potentially be recruited or used in hostilities.

VII. Follow up and dissemination

42. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to the Ministry of Defence, the Ministry of Education, the Cabinet and the Knesset for appropriate consideration and further action.

43. The Committee recommends that the initial report submitted by the State party and concluding observations adopted by the Committee be made widely available to the public at large and children in particular in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. The Committee specifically requests that the State party ensure that the recommendations are disseminated both in Israel and the occupied Palestinian territory.

VIII. Next report

44. In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next periodic report under the Convention on the Rights of the Child, due since 1 November 2008.