



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-fourth session

25 May-11 June 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: Colombia

1. The Committee considered the initial report of Colombia (CRC/C/OPAC/COL/1) at its 1528th meeting, held on 4 June 2010 (see CRC/C/SR.1528), and adopted at its 1541st meeting, held on 11 June 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/COL/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue with a high level and multi-sectoral State party delegation, lead by the High Commissioner for Peace, which included representatives of the Ministry of Defence.

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 third periodic report on 8 June 2006 (CRC/C/COL/CO/3) and with the concluding observations adopted on the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/COL/CO/1) on 11 June 2010.

4. The Committee expresses its concern over the violent and complex armed conflict which has affected the people of Colombia for decades, the difficulties to find an enduring solution and an end to this suffering.

I. Positive aspects

5. The Committee welcomes the adoption of the Law on Childhood and Adolescence No. 1098 of 2006 (*El Código de la Infancia y Adolescencia*) and its provision on protection against use and recruitment by armed groups (art. 20).

6. The Committee notes as positive the extensive references to international human rights standards in the jurisprudence of the Colombian Constitutional Court, including the judgment T-025 of 2004 and the subsequent orders, in particular Auto 251 of 2008, which is devoted to guarantee the protection of internally displaced children.

7. In relation to international cooperation in the area of human rights, the Committee notes as positive the State party's:

- (a) Open invitation to all thematic special procedures of the Human Rights Council and the numerous visits by such human rights mechanisms, which have raised issues relating to children in armed conflict and provided recommendations in this regard;
- (b) Continued collaboration with the Office of the United Nations High Commissioner for Human Rights through the presence of a national country office in Colombia since 1997;
- (c) Voluntary acceptance in 2008 of the reporting and monitoring mechanism under Security Council resolution 1612 (2000) on children and armed conflict;
- (d) Cooperation with the Special Representative of the Secretary-General for Children and Armed Conflict.

II. General measures of implementation

Right to life, survival and development

8. The Committee, while noting measures taken by the State party since 2008, reiterates its concern (CRC/C/COL/CO/3, para. 44) over reports of extra-judicial killings by the armed forces of civilians, including children, who have been presented as guerrilla members killed in combat. The Committee is concerned that these serious violations of the right to life continue to be reported and that insufficient measures have been undertaken to conduct investigations and sanction those responsible, as was recognized by the State party delegation during the dialogue. Furthermore, the Committee is concerned that the military justice system continues to claim jurisdiction over related investigations.

9. The Committee urges the State party to take prompt measures to ensure that extra-judicial executions of children by the armed forces are effectively halted and that prompt and impartial investigations are conducted and that those responsible are duly suspended, prosecuted and sanctioned with appropriate penalties. Witnesses in the investigations proceedings should be provided protection measures. The Committee underlines that the military penal jurisdiction is not competent to conduct related investigations.

Coordination

10. The Committee notes that the Colombian Family Welfare Institute (ICBF) is responsible for coordination of implementation of the Protocol, however is concerned that coordination with other relevant entities, including the Human Rights Ombudsman's Office (La Defensoría del Pueblo), the Ministry of Defence, the High Commissioner for Peace, the Attorney General's Office (La Fiscalía General de la Nación), the Inspector General's Office (La Procuradería General de la Nación), the judiciary and regional and local authorities is insufficient.

11. The Committee recommends that the State party ensure that coordination is strengthened among the ICBF and other relevant entities, including the Human Rights Ombudsman's Office, the Ministry of Defence, the High Commissioner for Peace, the Attorney General's Office, the Inspector General's Office, the judiciary and regional and local authorities.

Dissemination and awareness

12. The Committee is concerned that awareness of the Optional Protocol among the general public is low and that efforts to disseminate the relevant provisions, especially among children, families, teachers and local authorities in areas affected by the armed conflict, are insufficient.

13. The Committee recommends, in 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, local authorities, teachers and among children, in particular in areas affected by the armed conflict. The Committee recommends that the State party pay particular attention to counteracting negative media portrayals of children who may have been used in hostilities.

Training

14. The Committee is concerned that relevant professional categories, in particular the military, the police and those working with the administration of justice, receive inadequate 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 also 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, local and district officials. The State party is invited to provide information in that respect in its next report under the Convention.

Data

16. The Committee notes efforts by the State party to collect information in relation to the number of children who have participated in reintegration programmes, however the Committee is concerned that efforts to coordinate data relevant for the implementation of the Protocol are insufficient. The Committee furthermore notes that official data available on the number of children who were demobilized from paramilitary groups is incomplete and that the State party is undertaking efforts to identify those who were children when they were recruited by paramilitary groups.

17. The Committee recommends that the Government authority responsible for the collection of statistics, the National Administrative Department of Statistics (DANE), undertake further measures to coordinate and systematise data from various entities, including ICBF, the Ministry of Defence, the Human Rights Ombudsman's Office, the Attorney General's Office, the Inspector General's Office and the High Commissioner for Peace. The Committee recommends that the collected data be appropriately disaggregated according to sex, age and ethnic group and used for policy planning and evaluation.

III. Prevention

Prevention measures

18. The Committee welcomes the numerous efforts undertaken in the area of prevention of child recruitment, including the following:

(a) The Early Alert System (SAT). The Committee however notes the high number of risk reports (*informes de riesgo*) which indicate possible child recruitment and forced displacement and that the majority of these are not converted into early alerts (*alertas tempranas*);

(b) The important role of the Human Rights Ombudsman (*La Defensoría del Pueblo*) and the presence of community-based human rights ombudsmen (*defensores comunitarios*) in areas which are particularly vulnerable to armed conflict, including indigenous and Afro-Colombian communities. The Committee, however, is concerned that the children's unit (*Delegada para los derechos de la Niñez*) within the Human Rights Ombudsman lacks resources and that the community-based ombudsmen lack sufficient coverage and sustained State funding;

(c) The creation of the Intersectoral Commission for the prevention of child recruitment in 2007 (Decree 4690) and that some 120 municipalities have been identified for priority interventions. The Committee however notes that it lacks resources for operations at the local level and that its cooperation with civil society is insufficient.

19. The Committee recommends that the State party;

(a) Provide the Early Alert System (SAT) with adequate resources and that particular attention is paid to the obligation to prevent child recruitment in the risk analysis and in the design of measures taken in response to risk reports and alerts;

(b) Expand, through increased and sustained State funding, the presence of the human rights ombudsman (*La Defensoria del Pueblo*) and in particular the community-based human rights ombudsmen (*defensores comunitarios*) in areas affected by the armed conflict, including indigenous and Afro - Colombian communities, where children are particularly vulnerable to recruitment by illegal armed groups;

(c) Ensure that the Intersectoral Commission for the prevention of child recruitment is provided with adequate and sustained resources, including at the local level. Efforts to coordinate between different State entities involved in prevention should be enhanced, cooperation with civil society and consultations with children should be strengthened and measures to evaluate the impact of the programme should be designed and implemented.

Human rights defenders

20. The Committee is deeply concerned over the persistent attacks and intimidations against human rights defenders, including those working on children's rights.

21. The Committee urges the State party to take effective preventive measures to protect human rights defenders and prompt investigations into attacks against them. In this regard, the Committee recommends that the State party implement the recommendations of the Special Rapporteur on the situation of human rights defenders, following her mission to Colombia in 2009 (A/HRC/13/22/Add.3) and the Inter-American Commission on Human Rights' report on human rights defenders in the Americas (2006).

Landmines

22. The Committee notes that efforts have been made through the Presidential Programme for Integral Action against Landmines. The Committee, however, is concerned that efforts to prevent the use of landmines are inadequate, that demining is insufficient and civilian casualties remain underreported.

23. The Committee recommends that State party expand existing landmine - prevention programmes aimed at reducing injuries to children and ensure that educational child-friendly measures are implemented, in coordination with civil society, especially at the municipal level in rural areas where landmine risks have been identified or are suspected.

Peace education

24. The Committee notes that the State party promotes peace education and that a strategy has been initiated in 120 municipalities to promote a culture of non-violence and to make children aware of their rights, however is concerned that current efforts are insufficient, especially in areas affected by armed conflict.

25. 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 school system. For this purpose, the Committee encourages that reference be made to its general comment No. 1 on the aims of education (CRC/GC/2001/1).

IV. Prohibition and related matters

Recruitment by non-State armed groups

26. The Committee abhors the continued extensive recruitment and use of children by illegal armed groups. The Committee deeply regrets that despite having made commitments not to recruit children under the age of 15 years, both the FARC-EP and the ELN continue such practices, which constitute serious war crimes. The Committee is gravely concerned that children who refuse to be recruited are killed or forcibly displaced and that Afro Colombian and indigenous children are particularly vulnerable as their communities often are affected by the armed conflict. The Committee is furthermore concerned over reports that new illegal armed groups have emerged following the demobilization of paramilitary organizations and that these organizations recruit and use children in violation of article 4 of the Protocol.

27. The Committee recommends that:

(a) In the light of article 4 of the Protocol, the State party take all feasible measures to eliminate the root causes and prevent recruitment and use of persons below the age of 18 years by armed groups that are distinct from the armed forces of the State. Particular attention should be paid to preventing recruitment and use of Afro - Colombian and indigenous children and that such measures should be developed in consultation with the affected communities;

(b) The State party ensure that special and adequate attention is paid to children who have been recruited or used in hostilities when entering into negotiation and talks with illegal armed groups;

(c) During ceasefire and peace negotiations all parties be made aware of their obligations under the Optional Protocol, which should form an integral part of any peace agreements and their subsequent implementation;

(d) The State party ensure the effective enforcement of existing penal provisions on child recruitment.

Legislation

28. The Committee welcomes that recruitment of children below the age of 18 years is clearly criminalized in the Colombian Penal Code (Law No. 599 of 2000, article 162). The Committee also notes as positive that this provision is applicable to both illegal armed groups as well as the armed forces and that the definition of the crime includes both direct as well as indirect participation of children, including the use of children for intelligence purposes. The Committee takes note of the information, provided by the State party, indicating that 1,015 investigations into reported cases of child recruitment are pending. The Committee however expresses serious concern that the majority of cases fail to proceed beyond preliminary stages to open formal investigations and it is concerned at the very low number of convictions, only two, according to information provided by the State party.

29. The Committee urges the State party to ensure that the provisions in the Penal Code are enforced through prompt and impartial investigations of reports of child recruitment and that those responsible are duly prosecuted and sanctioned with appropriate penalties.

Law 975 of 2005

30. The Committee is gravely concerned at the very low number of children, less than 400, released during the demobilization of paramilitary groups under Law 975 of 2005, in relation to which over 31,000 persons were collectively demobilised. The Committee notes that the comprehensive handover of all children recruited by illegal armed groups is an essential criterion in order to access legal benefits under Law 975. While the Committee notes information from the State party that the Law 975 must be implemented in accordance with article 162 of the Penal Code, the Committee is deeply concerned that Law 975 has in practice entailed impunity for war crimes of child recruitment as there have been 1,137 confessions of having recruited children but only 92 charges presented and no convictions to date.

31. The Committee urges the State party to ensure that the legal framework applied to the demobilization of illegal armed groups complies with international human rights standards and the obligations assumed under the Optional Protocol, the Rome Statute of the International Criminal Court, the American Convention on Human Rights (1969) and the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

Jurisdiction and extradition

32. The Committee regrets information provided by the State party that legislation regarding extraterritorial jurisdiction and extradition does not include the provisions of the Protocol.

33. The Committee recommends that the State party consider establishing extraterritorial jurisdiction for war crimes of child recruitment if committed by or against a person who is a citizen of or has other links with the State party. The Committee furthermore recommends that the State party ensure that extraditions be conducted in a manner that recognizes the obligations under the Optional Protocol.

Sexual violence

34. The Committee is deeply concerned over reports indicating increasing numbers of children, especially girls, who are victims of sexual violence by illegal armed groups as well as by the armed forces. The Committee recalls article 8 (2) (b) (xxii) of the Rome Statute of the International Criminal Court, and Security Council resolution 1882 (2009) and that rape, sexual slavery, enforced prostitution and forced pregnancy constitute serious war crimes.

35. The Committee reiterates the recommendation, contained in the OHCHR annual report of 2009 to the Human Rights Council on the situation of human rights in Colombia (A/HRC/13/72, para. 105 (d)), that the Attorney General create a system of reliable information collection on the occurrence of any acts of sexual violence and gender-based crimes and that the Ministry of Defense undertake a “zero tolerance” policy for these violations, including the immediate separation from service of those responsible. The Committee underlines the obligation to prevent impunity and urges the State party to undertake prompt and impartial investigations of such crimes. The Committee furthermore urges the State party to strengthen resources for physical and psychological recovery for girl victims of sexual violence and ensure that secondary victimization in the access to justice be avoided.

36. The Committee recommend that the State Party fully comply with the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará, 1994) and the recommendations of the Inter-American Commission on Human Rights in their report on violence and discrimination against women in the armed conflict in Colombia (2006).

Use of children as informants

37. The Committee is deeply concerned, that despite clear military instructions to the contrary (State party report, paras. 189-190), children continue to be used as informants for intelligence purposes, as recognized by the State party during the dialogue, exposing them to subsequent retaliations by illegal armed groups. In particular, the Committee is concerned at the number of children who have been captured by the armed forces or who have demobilized from illegal armed groups and subsequently subjected to interrogations. The Committee notes with regret that the military does not always hand over children to civilian authorities, notably to ICBF, within the stipulated time period of 36 hours and that guarantees to protect the confidentiality of information provided by children to ICBF are insufficient.

38. The Committee urges the State party to ensure strict compliance with military directives which prohibit any use of children for intelligence objectives. ICBF should ensure that any information provided by demobilized children is maintained confidential in order not to expose children to security risks or potential retaliations. Furthermore, the Committee urges the State party to conduct prompt and impartial investigations of reports that children have been interrogated for intelligence purposes and ensure that those responsible within the armed forces are duly suspended and sanctioned with appropriate penalties.

Use and occupation of schools

39. The Committee reiterates its concern at reports indicating that illegal armed groups use schools for child recruitment and at the executions of teachers, who attempt to prevent such recruitment. The Committee is also concerned over continued reports indicating the occupation of schools by the armed forces and over military operations in the vicinity of schools. The Committee recognizes the State party's duty to guarantee the right to education throughout the territory, however it underlines that military presence in the vicinity of schools significantly increases the risk of exposing school children to hostilities and retaliations by illegal armed groups.

40. The Committee urges the State party to take all preventive measures to stop illegal armed groups from recruiting children in schools, including improved protection schemes for teachers. The Committee urges the State party to immediately discontinue the occupation of schools by the armed forces and strictly ensure compliance with humanitarian law and the principle of distinction. The Committee urges the State party to conduct prompt and impartial investigations of reports indicating the occupation of schools by the armed forces and ensure that those responsible within the armed forces are duly suspended, prosecuted and sanctioned with appropriate penalties.

Civic military activities

41. The Committee welcomes article 41, paragraph 29, of the Law on Childhood and Adolescence 1098 of 2006, according to which the armed forces must abstain from using children in civic-military activities. However, the Committee is concerned that considerable civic-military activities by the armed forces continue to take place inside schools as well as in the community and that children are invited to visit military installations and to wear military and police uniforms. The Committee notes the statement by the State party delegation during the dialogue that activities with children undertaken by the armed forces with the aim of promoting the role of the military need to be reviewed.

42. The Committee notes as positive information provided during the dialogue that the State party is aware of the need to revise such practices in the armed forces and urges the State party to effectively implement the relevant provisions in the Law on Childhood and Adolescence No. 1098 of 2006. The Committee furthermore reiterates its previous recommendation (CRC/C/COL/CO/3, para. 77 (j)) to refrain from involving children in any military activities, including study visits to military bases or military events in schools as such involvement, given the ongoing internal conflict, compromises the humanitarian law principle of distinction of the civilian population and places the children at risk of retaliation by members of illegal armed groups.

V. Protection, recovery and reintegration

Assistance for physical and psychological recovery

43. The Committee welcomes the demobilization programme run by ICBF which has assisted more than 4,200 children over the past decade. The Committee also notes as positive that the administrative reparations programme established under Decree 1290 of 2008 has identified children who have been recruited by armed groups and victims of land mines as a priority groups of beneficiaries. The Committee however remains concerned over the high number of children who have been victims in the armed conflict and that many fail to receive comprehensive reparations and adequate assistance for their physical and psychological recovery. The Committee is concerned at potentially discriminatory treatment of children depending on which illegal armed group they are demobilized from and that children who have been informally released from illegal armed groups do not receive assistance and recovery measures.

44. The Committee recommends that the State party continue and strengthen its efforts to provide children with comprehensive reparations measures and to ensure that gender perspectives are adequately taken into account and that measures are provided in a non-discriminatory manner irrespective of the illegal armed group from which the children are demobilized.

45. The Committee encourages the State party to be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20), should child victims testify in criminal proceedings.

VI. International assistance and cooperation

International cooperation

46. The Committee 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.

47. The Committee welcomes the commitment expressed by the State party to ensure that children do not remain in illegal armed groups and encourages the State party to support the development of action plans with relevant parties in this regard, as recommended by the Secretary - General (S/2009/434, para. 83).

48. The Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, in particular OHCHR and UNICEF, and non-governmental organizations, in the development and implementation of measures aimed at an adequate application of the Optional Protocol.

49. The Committee recommends that the State party ratify the Convention on Cluster Munitions of 2008 (signed on 3 December 2008).

Arms export

50. 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

51. 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 Congress and relevant government entities, including the Office of the High Commissioner for Peace, the Ministry of Defense, the ICBF, the judiciary regional and local authorities for appropriate consideration and further action.

52. 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, the media and to children in particular in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

VI II. Next report

53. 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.