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Convention on the Rights of the Child

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-seventh session

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: Germany

The Committee considered the initial report of Germany (CRC/C/OPAC/DEU/1) at its 1293rd meeting, held on 18 January 2008, and adopted, at its 1313th meeting, held on 1 February 2008, the following concluding observations.

Introduction

The Committee welcomes the submission of the State party's initial report, although notes that it did not fully follow the reporting guidelines. The Committee further welcomes its written replies (CRC/C/OPAC/DEU/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue held with the multisectoral delegation, which included a representative of the Ministry of Defence.

The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on 30 January 2004 on the State party's second periodic report (CRC/C/15/Add.226).

A. Positive aspects

The Committee welcomes the State party's:

Declaration under article 38 upon ratification of the Convention on the Rights of the Child expressing regret that the minimum age limit of 15 years for taking part in hostilities is incompatible with the consideration of the best interests of the child;

Contributions to projects for the rehabilitation and reintegration of child soldiers in several countries experiencing conflict or in post-conflict situations;

Support for the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict;

Efforts to promote the implementation of the Guidelines on Children and Armed Conflict adopted by the European Union's General Affairs and External Relations Council in December 2003, and updated in 2005.

The Committee further commends the State party's accession to or ratification of international instruments related to the Optional Protocol, including:

The Rome Statute of the International Criminal Court, on 23 April 2003;

International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 18 April 2002.

I. General measures of implementation

Dissemination and training

The Committee notes with appreciation that military personnel, including the participants of peacekeeping missions, receive training on human rights, including on the provisions of the Convention on the Rights of the Child and the Optional Protocol. The Committee is however concerned that certain categories of professionals working with children may not receive sufficient training.

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 Protocol are widely disseminated to the general public and State officials. The

Committee also recommends that the State party develop systematic awareness-raising, education and training programmes on the provisions of the Protocol for all relevant professional groups working with children (asylum-seeking and refugee children who may have been recruited or used in hostilities), notably teachers, medical professionals, social workers, police officers, lawyers, judges and journalists. The State party is invited to provide information in that respect in its next report.

Data

The Committee regrets the lack of data on children, especially those who are 16 or 17 years old, present in the jurisdiction of the State party who have been recruited or used in hostilities.

The Committee urges the State party to establish a central data system in order to identify and register all children present within its jurisdiction who have been recruited or used in hostilities. In particular, the Committee urges the State party to ensure that data is available regarding refugee and asylum-seeking children who have been victims of such practices.

II. Prevention

Voluntary recruitment

The Committee notes that the age for the recruitment of volunteers at 17 is valid only with the consent of their legal representatives and that those volunteers are not allowed to be deployed to armed duty.

The Committee notes that the great majority of States parties to the 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 through an overall higher legal standard.

Human rights and peace education

The Committee welcomes the information on human rights education provided by the State party, but regrets that human rights education and peace education are not elements of the curricula of all schools at all levels.

The Committee recommends that the State party further strengthen its efforts to provide human rights education and, in particular, peace education, for all children in school and train teachers with respect to including these themes in children's education.

III. Prohibition and related matters

Legislation

The Committee welcomes the State party's provisions on war crimes in section 8 of the Criminal Code and the affirmation that extraterritorial jurisdiction may be exercised over recruitment of children under the age of 15 years into armed forces or groups. The Committee notes that such jurisdiction can also be established for children between 15 and 17 years of age, but regrets that it is subject to the criterion of double criminality.

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

Consider extending extraterritorial jurisdiction for crimes of recruitment and involvement of children in hostilities without the criterion of double criminality;

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

IV. Protection, recovery and reintegration

Assistance for physical and psychological recovery

The Committee welcomes amendments to the Youth Welfare Act and the Immigration Act of 2005, which recognizes the recruitment of child soldiers as a form of persecution on the grounds of which refugee status can be granted. The Committee regrets that sufficient measures are not applied in order to identify refugee or asylum-seeking children entering Germany who may have been recruited or used in hostilities abroad. Furthermore, the Committee is concerned that unaccompanied children may be detained, and that for those who have attained 16 years of age a guardian in the asylum-seeking procedure might not be assigned in a timely manner.

The Committee also remains concerned that unaccompanied asylum-seeking and refugee children involved in hostilities abroad have insufficient access to specialized professionals who can provide multidisciplinary assistance for their physical and psychological recovery and social reintegration in Germany. The Committee is concerned that within the migration authorities, specially trained staff is inadequate, in particular for the determination of asylum cases of children who are 16 or 17 years of age.

The Committee recommends that the State party provide protection for asylum-seeking and refugee children arriving in Germany who may have been recruited or used in hostilities abroad by taking, inter alia, the following measures:

Identify at the earliest possible stage those refugee and asylum-seeking children who may have been recruited or used in hostilities;

Improve the access to information, including through help lines, for asylum-seeking children, reinforce the legal advisory services available to them, and ensure that all children under 18 years are assigned a guardian in a timely manner;

Carefully assess the situation of these children and provide them with immediate and culturally and child-sensitive multidisciplinary assistance for their

physical and psychological recovery and their social reintegration in accordance with article 6, paragraph 3, of the Optional Protocol;

Ensure the availability of more specially trained staff within the migration authorities and that the best interests of the child and the principle of non-refoulement are primary considerations taken into account in the decision-making process regarding the repatriation of a child. In this regard, the Committee recommends that the State party take note of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, in particular paragraphs 54-60;

Include information on measures adopted in this regard in its next report.

V. International assistance and cooperation

Financial and other assistance

The Committee commends the State party for its financial support to multilateral and bilateral activities aimed at protecting and supporting children who have been affected by armed conflict.

The Committee recommends that the State party continue and strengthen its financial support for multilateral and bilateral activities to address the rights of children involved in armed conflict, in particular by promoting preventive measures as well as physical and psychological recovery and social reintegration of children victims of acts contrary to the Optional Protocol.

The Committee, while noting with appreciation the State party's active contribution to United Nations Peacekeeping Operations, invites the State party to continue to ensure that its personnel are fully aware of the rights of children involved in armed conflicts; and that military contingents are aware of their responsibility and accountability.

Arms export

The Committee welcomes the adherence by the State party to the principles of the EU Code of Conduct on Arms Exports, but notes that among these principles there is no specific mention, as a criterion for excluding their sale, to the possible recruitment/use in hostilities of children in the country of final destination of the arms.

The Committee recommends that the State party consider introducing a specific prohibition with respect to 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.

VI. Other legal provisions

Given the potential connection between the sale of children and their recruitment into armed groups, the Committee recommends that the State Party proceed to ratifying the Optional Protocol on the sale of children, child prostitution and child pornography in order to further improve the protection of children's rights.

VII. Follow-up and dissemination

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 relevant Government Ministries, the *Bundestag* and *Bundesrat*, as well as to the authorities of the *Bundesländer* and *Kreise* for appropriate consideration and further action.

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

VIII. Next report

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 third periodic report under the Convention on the Rights of the Child, due on 4 April 2009, in accordance with article 44 of the Convention.

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