



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Brazil under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*

1. The Committee considered the initial report of Brazil (CRC/C/OPAC/BRA/1) at its 2038th meeting (see CRC/C/SR.2038), held on 22 September 2015, and adopted the following concluding observations at its 2052nd meeting (see CRC/C/SR.2052), held on 2 October 2015.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPAC/BRA/Q/1/Add.1). The Committee expresses its appreciation for the constructive dialogue held with the multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's combined second to fourth periodic report under the Convention on the Rights of the Child (CRC/C/BRA/CO/2-4), adopted on 2 October 2015.

II. General observations

Positive aspects

4. The Committee welcomes the accession or ratification by the State party of:
- The Rome Statute of the International Criminal Court, in June 2002;
 - The Geneva Conventions of 1949, in June 1957 and the Additional Protocols I and II thereto, in May 1992;
 - The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, in March 2006;

* Adopted by the Committee at its seventieth session (14 September-2 October 2015).



(d) The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (with Protocols I, II and III), in October 1995.

5. The Committee welcomes the various positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular:

(a) The adoption of the Military Service Law, which established the minimum age for induction into the armed forces at 18 years, in 1964;

(b) Presidential Decree No. 5006, which incorporated the Optional Protocol into domestic legislation, in 2004;

(c) The adoption of the Law 10,826 on Disarmament Statute (2003), which prohibits the possession of firearms for people below the age of 18 and the manufacturing, selling, commercialization or importing of toys resembling firearms, in 2003;

(d) The adoption of the National Policy of Exports of Material of Military Use, which regulated exports of conventional weapons by Brazilian companies, in 1974.

III. General measures of implementation

Legislation

6. The Committee welcomes that the Optional Protocol was incorporated into the State party's domestic legislation and that the minimum age for conscription is set at 18 years under the Military Service Law. It is nevertheless concerned about the absence of specific legislation on the direct participation of children in hostilities, as stipulated in article 1 of the Optional Protocol.

7. The Committee urges the State party to undertake a review of its domestic legislation with a view to fully incorporating the provisions of the Optional Protocol into its domestic legislation, especially regarding the participation of children in hostilities, in line with article 1 of the Optional Protocol.

Coordination

8. While noting that the Ministry of Defence has primary responsibility for the coordination of activities related to national security and recruitment to and training of the armed forces, the Committee regrets the lack of information provided by the State party about coordination among different institutions to allow for the adequate implementation of the Optional Protocol.

9. The Committee urges the State party to establish a body with sufficient authority and a mandate to coordinate all activities related to the implementation of the Optional Protocol at the cross-sectoral, federal, state and municipal levels. The State party should ensure that such a coordinating body is provided with the necessary human, technical and financial resources for its effective operation.

Independent monitoring

10. While noting that the Secretariat for Human Rights discharges an ombudsman's function in matters regarding citizenship, children, adolescents, older persons and minorities, the Committee remains concerned at the absence of an independent national human rights institution for the promotion and monitoring of the implementation of the Optional Protocol, with the mandate to receive and investigate complaints by children on alleged violations of their rights under the Optional Protocol.

11. **In the light of its recommendations under the Convention (CRC/C/BRA/CO/2-4), the Committee urges the State party to establish expeditiously an independent mechanism for monitoring the implementation of the Optional Protocol, with a mandate to receive and investigate complaints by children on violations of their rights under the Optional Protocol.**

Dissemination and awareness-raising

12. While noting as positive the efforts that have been made to increase knowledge and awareness of children's rights in general through programmes and campaigns organized by the Secretariat of Human Rights, the Committee is concerned that there are no targeted efforts to educate and raise the awareness of children and the public at large on the provisions and principles of the Optional Protocol. The Committee further notes that the State party has undertaken some initiatives to disseminate the Optional Protocol, including by publishing it in the Official Gazette and posting it on the websites of the official bodies associated with its application. It regrets, however, the lack of adequate information provided on the content and extent of these initiatives and on the groups targeted.

13. **Pursuant to article 6 (2) of the Optional Protocol, the Committee recommends that the State party enhance its efforts to widely disseminate and increase awareness and knowledge of the provisions of the Optional Protocol to the public at large, and in particular to teachers, children and their families, through, inter alia, school curricula and long-term awareness-raising campaigns and training about the preventive measures and harmful effects of all offences referred to in the Protocol.**

Training

14. While it appreciates the training initiatives provided to military personnel and those involved in international peacekeeping forces on international humanitarian law and children's rights, respectively, the Committee regrets the absence of systematic training programmes on the provisions of the Optional Protocol for all relevant professionals working with and/or for children, in particular military personnel, law enforcement officers, border and immigration personnel, social workers and medical professionals.

15. **The Committee recommends that the State party ensure that the provisions of the Optional Protocol are included in the training programmes addressed to all relevant professionals working with and/or for children, in particular military personnel, law enforcement officers, border and immigration personnel, social workers and medical professionals.**

IV. Prevention

Age verification procedures

16. The Committee notes that a birth certificate is required as a proof of age for any individual before being recruited into compulsory or voluntary military service. However, the Committee is concerned that, in the absence of an official birth certificate, admission to the armed forces can be allowed on the basis of statements of two identified witnesses about the name, date and place of birth, parents' names, marital status, residence and profession of the recruited person.

17. **The Committee urges the State party to effectively prevent the recruitment of children into the armed forces by establishing and systematically implementing safeguards to verify the age of individual recruits on the basis of objective elements, such as birth certificates, school diplomas and, in the absence of documents, a**

combination of elements, including a medical examination, to determine the age of the child.

Voluntary recruitment

18. The Committee notes that, owing to the large number of military contingents, no volunteers under 18 years of age have been enrolled in the armed forces in recent years. It however notes that, according to the State party's declaration upon ratification of the Optional Protocol, the Military Service Law (1964) and the Regulation of the Military Service (1966), children may be voluntarily recruited into the armed forces from the age of 16. The Committee is concerned that:

(a) Volunteers who have reached the age of 17 are not required to present written consent from their parents or guardians upon the act of incorporation or enrolment to the military service;

(b) The right of volunteers under 18 years of age to be discharged of their military service at any time and not to pursue a military career is not explicitly stated in the Military Service Law, which sets out the conditions for the early interruption of service applying to all recruits;

(c) Specific information on the duties and obligations involved in the military service is not made available to the volunteers and to their parents or legal guardians, other than the existing laws and regulations on the matter;

(d) Underage volunteers are subject to military discipline and, under certain circumstances, may be subject to military criminal law, placing them under the military judiciary.

19. **In order to promote and strengthen the protection of children through an overall higher legal standard, the Committee encourages the State party to consider, as far as possible, amending its domestic legislation with a view to raising the minimum age of voluntary recruitment into the armed forces to 18 years, so as to reflect the situation in practice. The Committee also recommends that the State party take all necessary measures to:**

(a) **Ensure that the recruitment of volunteers into the army at the age of 17 only occurs with prior consent of the parents or legal guardians;**

(b) **Review its legislation to guarantee the right of volunteers under 18 years of age to be discharged of their military service at any time and not to pursue a military career;**

(c) **Make information available to the volunteers and to their parents or legal guardians in order to ensure that the recruitment of children into the armed forces is genuinely voluntary and made on the basis of an informed decision;**

(d) **Ensure that no underage volunteer is subject to military discipline and military law or to trial by military courts and that, if charges are brought against underage volunteers, trials are held in civilian courts and are consistent with the standards on juvenile justice set out in the Convention.**

Military schools and preparatory military schools

20. The Committee notes that children enrolled in military schools are allowed to join and leave them voluntarily, are not considered military personnel, do not receive military training, are not subject to military discipline or to mobilization in case of an armed conflict and are not obliged to pursue a military career. It is, nevertheless, concerned about:

(a) Students below 18 years of age who are enrolled in the reservist training course or in preparatory military schools receiving specific military training, including on the use of firearms, and being subject to the Military Penal Code and to the army's disciplinary regulations;

(b) The lack of disaggregated data by age, state, rural/urban areas and socioeconomic and ethnic origin on the students attending these military schools and preparatory military schools;

(c) The lack of access to an independent complaints and investigation mechanism for students under the age of 18 years enrolled into military schools and preparatory military schools.

21. The Committee recommends that the State party take all necessary measures to:

(a) **Ensure that children who are enrolled in the reservist training course or in preparatory military schools are considered as civilians until they turn 18, are exempt from receiving military training, in particular on the use of firearms, and are not subject to military discipline or punishment;**

(b) **Provide systematic information and disaggregated data by age, region, rural/urban areas and socioeconomic and ethnic origin on the students attending military schools and preparatory military schools;**

(c) **Provide children attending military schools and preparatory military schools with adequate access to independent complaints and investigation mechanisms.**

Human rights and peace education

22. While noting the efforts made by the State party to raise awareness of children's rights, the Committee is concerned about the insufficiency of information on the promotion of the culture of peace, including issues relating to the Optional Protocol and human rights education, as a mandatory part of primary and secondary school curricula and in teacher training programmes.

23. In line with its general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party include human rights and peace education in the curricula of all schools and in teacher training programmes, with specific reference to the Optional Protocol.

V. Prohibition and related matters

Criminal legislation and regulations in force

24. The Committee is concerned that the recruitment of children under the age of 18 years by non-State armed groups, including private security companies, has still not been explicitly criminalized in the State party's legislation.

25. The Committee recommends that the State party promptly enact in its legislation the explicit prohibition and criminalization of the recruitment of children under the age of 18 years by non-State armed groups, including private security companies.

Control of weapons

26. The Committee notes as positive that, under Law 10,826 of 2003 on Disarmament Statute (2003), the possession of firearms is restricted to people over the age of 25 years and provides financial reparations to those willing to surrender their firearms. It is nevertheless concerned about the lack of information on specific measures to prevent children and adolescents from gaining access to firearms, and additional measures that have been adopted to recover the firearms that are currently being used by children and adolescents in the State party.

27. **The Committee recommends that the State party take all measures necessary to:**

(a) **Seize all the arms currently in the possession of children and ensure that they do not have any access to arms or ammunition, including by allocating adequate human, financial and technical resource for the implementation of Law 10,826 on Disarmament Statute (2003);**

(b) **Investigate all cases of the sale of firearms to children, prosecute alleged perpetrators and punish adequately those convicted;**

(c) **Ensure that those responsible for disarmament and for controlling the sale of firearms and ammunitions are made aware of the Optional Protocol, and that their decisions are guided by its provisions.**

Extraterritorial jurisdiction

28. The Committee notes that, according to article 7-II-a of the Criminal Code, the State party may exercise extraterritorial jurisdiction over offenses outlined in international treaties or conventions to which it is a party. It is concerned, however, that the requirement of double criminality for the domestic prosecution of crimes under the Optional Protocol allegedly committed abroad hampers the prosecution of offences under the Optional Protocol.

29. **The Committee recommends that the State party remove the requirement of double criminality for the prosecution of offences under the Optional Protocol committed abroad when exercising its extraterritorial jurisdiction.**

VI. Protection, recovery and reintegration**Measures adopted to protect the rights of child victims**

30. While noting the creation in 2015 of a working group on the situation of migrant and unaccompanied children with a view to improving procedures related to documentation and migratory regularization, the Committee remains concerned about the lack of mechanisms for ensuring the early identification of refugee, asylum seeking or migrant children who may have been recruited or used in hostilities abroad. The Committee also regrets the lack of information on the steps taken by the State party to provide for their physical and psychological recovery and rehabilitation and to promote their reintegration into society.

31. **The Committee recommends that the State party:**

(a) **Provide systematic training on the early identification of migrant, refugee and asylum seeking children who may have been recruited into armed conflicts to all professionals working with and/or for children, particularly immigration personnel, law enforcement officers, judges, prosecutors, social workers and medical professionals;**

(b) **Collect comprehensive data on those children disaggregated by age, sex and nationality;**

(c) **Take all necessary measures to ensure that those children are provided with physical and psychological recovery and have access to rehabilitation and reintegration programmes. Such measures should include careful assessment of the situation of those children, reinforcement of the legal advisory services available for them and the provision of immediate, culturally responsive, child-sensitive and multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with the Optional Protocol;**

(d) **Seek technical assistance from the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees for the implementation of these recommendations.**

VII. International assistance and cooperation

International cooperation

32. **The Committee recommends that the State party continue and strengthen its cooperation with the International Committee of the Red Cross and with the Special Representative of the Secretary-General for Children and Armed Conflict, and that it explore increased cooperation with UNICEF and other United Nations entities for the implementation of the Optional Protocol.**

Arms export and military assistance

33. **The Committee notes that the State party takes into consideration existing sanctions imposed by relevant international bodies, such as the Security Council, and the international obligations derived from binding international agreements before authorizing the trade and export of arms to a foreign country. It is nevertheless concerned that the State party has no legislation to prohibit the trade, export and/or transit of arms, including small arms and light weapons, and the provision of military assistance to countries where children may be recruited into armed conflict.**

34. **The Committee recommends that the State party:**

(a) **Enact legislation to prohibit the sale or smuggling, export and/or transit of arms, including small arms and light weapons, and the provision of military assistance to countries where children may be recruited into armed conflict;**

(b) **Expedite the ratification of the Arms Trade Treaty, which regulates the international trade in conventional weapons and prohibits States from exporting conventional weapons to countries when they know those weapons will be used for genocide, crimes against humanity or war crimes.**

VIII. Follow-up and dissemination

35. **The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations by, inter alia, transmitting them to the Parliament, relevant ministries, including the Ministry of Defence, the Supreme Court, and to local authorities, for appropriate consideration and further action.**

36. **The Committee recommends that the initial report and written replies submitted by the State party and the related concluding observations adopted by the**

Committee be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Ratification of the Optional Protocol on a communications procedure

37. The Committee recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, in order to further strengthen the fulfilment of children's rights.

X. Next report

38. In accordance with article 8 (2) of the Optional Protocol the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.
