



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-sixth session

17 January–4 February 2011

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: Ukraine

1. The Committee considered the initial report of Ukraine (CRC/C/OPAC/UKR/1) at its 1602nd and 1603rd meeting (see CRC/C/SR.1602 and 1603), held on 28 January 2011, and adopted at its 1611th meeting, held on 3 February 2011, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report under the Optional Protocol (CRC/C/OPAC/UKR/1) and the written replies to its list of issues (CRC/C/OPAC/UKR/Q/1/Add.1), but regrets that the initial report submitted by the State party was not in compliance with the revised guidelines regarding initial reporting under the Optional Protocol. Further, the Committee regrets that neither the initial report nor the written replies to its list of issues provided comprehensive information relating to the implementation by the State party of the Optional Protocol throughout its jurisdiction.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the State party's third and fourth periodic report under the Convention on the Rights of the Child (CRC/C/UKR/3-4), adopted on 3 February 2011.

II. Positive aspects

4. The Committee notes as positive the declaration made by the State party on ratification of the Optional Protocol that the minimum age for voluntary enlistment (on a contractual basis) in its national armed forces is 19 years.

5. The Committee welcomes the endorsement by the State party in 2007 of the Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups, and the Paris Principles and guidelines on children associated with armed forces or armed groups.

6. The Committee welcomes the ratification in May 2004 of 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.

II. General measures of implementation

Legal status

7. While taking note of information that under a provision in the Constitution the Optional Protocol has the status of national law, the Committee regrets that the State party did not clarify whether the Protocol is directly applicable throughout its jurisdiction, and can be directly invoked before domestic courts.

8. In order to further strengthen the prevention of the crimes under the Optional Protocol, the Committee recommends that the State party take all necessary measures to ensure the direct applicability of the Optional Protocol in its domestic legal system. The Committee recommends that the State party consider full incorporation of the Optional Protocol into domestic legislation.

Dissemination and awareness raising

9. While noting information that provisions of the Convention and the Optional Protocol are discussed during educational and training activities for teachers, health care workers, and public civil servants working on children's issues, the Committee remains concerned that awareness of the principles and provisions of the Optional Protocol among the general public remains low.

10. In light of article 6, paragraph 2, of the Optional Protocol, the Committee recommends that the State party enhance its efforts to make the principles and provisions of the Optional Protocol widely known to the public at large, and children in particular, including through greater involvement of the media and awareness - raising programmes and activities in schools.

Training

11. The Committee welcomes the mandatory training regarding children in armed conflict, including on the Convention and the Optional Protocol, that is provided to Ukrainian military personnel participating in international peacekeeping operations, and notes that such training can be further strengthened by operational guidelines on child protection. The Committee is nevertheless concerned at the lack of information relating to training on the Optional Protocol for members of the armed forces, the judiciary, teachers, officials of Ukraine State Border Guard Services, staff of the State Committee on Nationalities and Religions of Ukraine, and of the Centres for Family Support and Social and Psychological Rehabilitation, as well as the Ukrainian Special Export (UkrSpetsExport).

12. The Committee recommends that the State party develop training programmes on the Optional Protocol for members of the State party's armed forces, as well as relevant professional groups working with children, in particular teachers, members of the judiciary, border control and immigration officials, staff of the State Committee on Nationalities and Religions of Ukraine and of the Centres for Family Support and Social and Psychological Rehabilitation, as well as the Ukrainian Special Export (UkrSpetsExport). The Committee further recommends the development of operational guidelines on child protection in situations of armed conflict for Ukrainian military personnel participating in international peacekeeping operations.

Data

13. The Committee is concerned at the lack of systematic data collection on aspects relating to children involved in armed conflict, and offences under the Optional Protocol, including official statistics of asylum-seeking and refugee children of 15 to 18 years of age. In this regard, the Committee is concerned that a majority of unaccompanied asylum-seeking children are from countries where children have or were known to have been involved in armed conflict.

14. The Committee recommends that the State party systematically collect data on all asylum-seeking and refugee children to ensure that data is available regarding such children who may have been recruited or used in hostilities.

II. Prevention

Military schools

15. The Committee notes the long tradition of military secondary education in the State party and its social protection function for children of vulnerable groups. The Committee further notes that according to the Military (General Conscription and Service) Act (art. 20) the minimum age for enrolling in higher military academies or higher education institutes with military studies departments is 17 years of age. In this regard, the Committee notes with satisfaction information that currently there are no children below this age studying in such schools. The Committee is, however, concerned about the report that at least one secondary school offered two years' intensive military preparation for children from the age of 15, more specifically orphans and children of military personnel.

16. The Committee recommends that the State party:

(a) Strictly ensure that no children under the age of 17 are enrolled in military secondary schools, and offer integration into general secondary schools to orphans and children under this age who may be attending military secondary schools;

(b) Ensure that all children attending military schools receive education in a manner consistent with the Convention, in particular arts . 28 and 29, duly taking into account General comment No. 1 (2001) on the aims of education (CRC/GC/2001/1).

Peace education

17. The Committee welcomes information provided in the written replies to the list of issues that fostering respect for human rights is among the objectives of higher military educational institutions. While further noting as positive that the Convention and the Optional Protocol is studied at school from fifth to ninth grade, and included in exams on international humanitarian law in higher military educational institutions, the Committee is concerned that there are no programmes to systematically include peace education into the State party's school curricula.

18. With reference to its General comment No. 1 (2001) on the aims of education, the Committee recommends that the State party undertake efforts to include peace education in the school curricula and in teachers' training courses, with special reference to crimes under the Optional Protocol.

III. Prohibition and related matters

Criminal legislation and regulations in force

19. The Committee welcomes that children are prohibited from taking part in military operations or armed conflict under article 30 of the Child Protection Act. While further welcoming amendments in 2006 to the Criminal Code, criminalizing the use of trafficked

children in armed conflict (art. 149 of the Criminal Code) and providing for up to 12 years imprisonment, the Committee regrets that the recruitment and use in armed conflict of persons under the age of 18 years is not explicitly prohibited nor criminalized in domestic legislation.

20. The Committee recommends that the State party ensure that violation of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities be explicitly prohibited and criminalized in the Criminal Code. It further recommends that the State party ensure that military codes, manuals, standard operating procedures and other military directives are in accordance with the provisions and the spirit of the Optional Protocol.

Jurisdiction

21. While the Committee takes note of article 8 of the Criminal Code pursuant to which foreigners can be held liable for grave crimes and crimes stipulated in international treaties, it is concerned that the Criminal Code does not specifically allow extraterritorial jurisdiction for crimes under the Optional Protocol. While further noting that the State party has signed the Rome Statute of the International Criminal Court, it notes that constitutional amendments are required for ratification.

22. The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over war crimes related to conscription and enlistment of children in hostilities. It urges the State party to intensify its efforts to amend the Constitution (article 142) and, subsequently, to ratify the Rome Statute of the International Criminal Court.

IV. Protection, recovery and reintegration

Assistance for physical and psychological recovery

23. The Committee welcomes the provision of assistance to children involved in armed conflict, including health and social rehabilitation to Iraqi children living in a zone of armed conflict in 2004, and psychological and social assistance for refugee children who have participated in hostilities abroad, at Centres for Family Support or Centres of Social and Psychological Rehabilitation. The Committee nevertheless expresses concern at the:

- (a) Absence of a provision in domestic law making psychological and social assistance to refugee or asylum-seeking children who have been recruited in or used in hostilities abroad mandatory;
- (b) Absence of a mechanism to identify whether refugee or asylum-seeking children have, or may have been, recruited or used in hostilities abroad;
- (c) Absence of a standard methodology for age assessment of children, including refugee or asylum-seeking children, in the State party;
- (d) Absence of free interpretation services to asylum-seekers and refugees.

24. The Committee recommends that the State party:

- (a) Continue and strengthen the provision of physical, psychological and social assistance to all children who have, or may have been, recruited or used in hostilities, including refugee and asylum-seeking children, and ensure that such assistance is regulated by law;**
- (b) Establish a mechanism to identify children who may have been recruited or used in hostilities, including in the refugee status determination procedure,**
- (c) Consider including the recruitment and use of children in armed conflict as grounds for refugee status;**
- (d) Introduce a standard procedure and methodology for assessing the age of children, including refugee and asylum-seeking children;**
- (e) Amend the Law on Refugees to include a provision on the right of asylum-seekers and refugees of all ages to free interpretation and legal assistance.**

V. International assistance and cooperation

Arms export and military assistance

25. The Committee notes the significant stockpile of small arms and light weapons (SALW) inherited by the State party in the aftermath of the disintegration of the Soviet Union, and efforts by the State party to report regularly on exports of such weapons. Nevertheless, the Committee is deeply concerned about the export of SALW to countries where children have been recruited or used in hostilities, and the export of weapons to countries where they may pose a threat to children. Further, the Committee is concerned at the lack of legislation specifically prohibiting the trade and export of small arms and light weapons to countries where children are or may have been involved in armed conflict.

26. The Committee recommends that the State party:

- (a) Continue and strengthen efforts to regularly report, and make public, information on weapon exports, including the**

export of small arms and light weapons, and take steps to include information on the end-users of such exports in its public reports;

(b) Ensure that domestic legislation explicitly prohibits the trade and export of small arms and light weapons to countries where children are known to have been or are involved in armed conflict;

(c) Consider seeking assistance from regional and international organizations to:

(i) apply the criteria of relevant regional code of conduct on arms export;

(ii) undertake a comprehensive analysis on the impact on children of Ukrainian weapon export.

Follow-up and dissemination

27. 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, members of the Cabinet and the Verkhovna Rada (Parliament).

28. The Committee recommends that the initial report submitted by the State party and the Committee's concluding observations be made widely available to the public at large, the media and children in particular, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

Next report

29. In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol and these concluding observations in its next periodic report under the Convention on the Rights of the Child, due on 26 September 2018.