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COMMITTEE ON THE RIGHTS OF THE CHILD

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WRITTEN REPLIES BY THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA CONCERNING THE LIST OF ISSUES (CRC/C/OPAC/TZA/Q/1) TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE INITIAL REPORT OF THE UNITED REPUBLIC OF TANZANIA 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 (CRC/C/OPAC/TZA/1) *

[Replies received on 22 August 2008]

THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA

CONSIDERATION OF TANZANIA'S INITIAL REPORTS TO THE OPTIONAL PROTOCOLS TO THE CRC - GENEVA SWITZERLAND, 29 SEPTEMBER 2007

Optional protocol on the involvement of children in armed conflict

Q. Issues

Action taken

Enabling domestic legislation is not yet in place.

The Ministry of Defence is in the process of advising the Government on consequential amendments of various legislations so that they are in line with the Optional Protocol, for example Section 29(6) of the National Defence Act Cap 192 (R.E. 2002) that provides for the age of recruitment of persons into the armed forces.

1. Progress made in incorporating the Optional Protocol into the domestic legislation.

The Ministry of Defence and National Service presented a bill to the National Assembly on the amendment of Section 29 (6) of the National Defence Act, in order to raise the age of recruitment in defence forces from 15 to 18 years.

Lack of having a National Committee on International Humanitarian Law is an impediment because it would act as an advisory body in spearheading the implementation of these legislations.

Section 67 of the Defence Force Regulations prohibit the recruitment of persons apparently under 18 years of age into the armed forces, "except that where a person is not of the apparent age of 18 years he/she may be enrolled in the Defence Forces with the consent in writing of one of his parents or guardian, or, when the parents or guardian are dead or unknown, with the consent of the District Commissioner of the district in which that person resides". The regulations provided that no child under the age of 18 would be used directly in armed conflict.

2. According to paragraph 12 of the State party's report, in exceptional circumstances, the Law allows for the recruitment of persons under the age of 18 years. In practice there has been no such recruitment and no members of the Tanzania People Defence Forces (TPDF) are under 18. Please elaborate further.

The Government reported that although the recruitment of under 18 years appeared to be a possibility in exceptional circumstances, in practice there was no such recruitment of under 18 years in the Tanzania People Defence Forces (TPDF).

When acceding to the Optional Protocol on the involvement of children in armed conflict in November 2004, Tanzania stated in

<p>3. Provide further information on the criteria of recruitment into the armed forces and in particular on the “apparent” age of 18 years. How does lack of birth registration impact on the recruitment process?</p>	<p>its declaration that “the minimum age for the voluntary recruitment into armed forces is 18years”.</p> <p>In July 2007 the Government stated that the age of voluntary recruitment to all defence forces was set at 18 years and that birth and other certificates were scrutinized to prevent the recruitment of under-18 years. It also stated that only over-18 years could enlist, and that some military training was provided. There was no compulsory recruitment.</p> <p>Impact of the lack of birth registration on the recruitment process:</p> <p>Increase of vulnerability:</p> <p>It increases the risk that violations of children’s rights will go unnoticed</p> <p>It increases child trafficking and abuse</p> <p>It is hard to prove the nationality of the applicant</p> <p>If there is an age limit set to the recruitment exercise, this cannot be possible without knowing children’s birth registration</p> <p>In case a person is recruited, he will be easy to trace when he attains his service completion and if he dies during a war, it will be easy to locate his whereabouts</p> <p>The question of a person of “apparent” age of 18 is dangerous because you can recruit a person who is under or over that age, but with birth registration you will be sure of the age</p>
<p>4. Provide information on the mandate of the Tanzanian Commission for Human Rights and Good Governance and the role it plays in monitoring the implementation of the Optional Protocol.</p>	<p>It is very unfortunate that our legislation does not have provisions which criminalizes such recruitments</p> <p>The Commission for Human Rights and Good Governance is the National Human Rights Institution and is non-conflict in nature. It plays an active role of monitoring but there are no cases or situations reported on the implementation of the Optional Protocol. Negative effects concerning involvement of children in any conflict formed part of public awareness programmes in areas where there are signs of conflicts e.g. between pastoralist and farmers.</p> <p>National Defence Act Cap 192 does not provide even on the issue of age of majority let alone criminalizing it. It just provides: “apparent age of 18” in section 29 (6).</p>
<p>5. Indicate whether there is any legal provision on the State Party’s legislation which criminalizes the recruitment of Tanzanian persons under 18 by armed groups.</p>	<p>There is no specific provision that prohibits/criminalizes armed groups to recruit Tanzanian persons under 18 into the armed forces.</p> <p>However, article 147 of the Constitution only empowers to create a National Army within the spirit of the National Defence Act.</p> <p>The State Party has ratified the 1998 Rome Statute of the International Criminal Court (ICC) that prohibits war crimes. However the same has not been domesticated and so assuming extraterritorial jurisdiction becomes a challenge for the national courts.</p>
<p>6. Provide information as to whether the State Party assumes extraterritorial jurisdiction over the war crime of conscripting or enlisting children under the age of 15 into the armed forces or using them to participate actively in hostilities. Also in relation to extraterritorial jurisdiction, please indicate whether Tanzania courts have jurisdiction in case of compulsory recruitment or involvement in hostilities of a person under 18 if committed outside the United Republic of Tanzania, by or against Tanzanian citizens.</p>	<p>However under international treaties like ICC we have an obligation to provide assistance in searching victims/suspects, investigating crimes etc.</p> <p>The Tanzania Courts have no specific provision to prevent minors under 15 to participate actively in hostilities. This also includes extraterritorial jurisdiction except for the general power of the court in Employment and Labour Relations Act (ELRA) No. 6 of 2004. The child who is talked about here is of under the age of 14 years. Also unfortunately Section 6(2)(a) of the ELRA does not protect children who are under forced labour and it excludes categorically children who do any work exacted</p>

under the 1966 National Defence Act Cap 192 cited above.

7. Provide disaggregated data, including by sex, age and country of origin covering the years 2005, 2006 and 2007 on the number of unaccompanied asylum-seeking, refugee and migrant children coming to the United Republic of Tanzania from areas affected by armed conflict. In this respect, please provide information on physical and psychological recovery and social reintegration programmes for asylum-seeking, refugee and migrant children in the United Republic of Tanzania who may have been involved in or affected by conflicts abroad.

No data available in the Refugees Department of the Ministry of Home Affairs.

8. Indicate whether the State Party's legislation prohibits the trade and export of small arms and light weapons as well as military assistance to countries where children are involved in armed conflict if not. Has the State Party given consideration to adopting such legislation?

There is law on small arms that prohibits the trade and export of small arms and light weapons. However the legislation does not specifically prohibit the trade and export of small arms and light weapons as well as military assistance where children are involved in armed conflict.

Any military assistance is given to a State and through agreements.

Since we are a State party to the Optional Protocol, implicitly we would prohibit this for children.

There is a National Policy on Small Arms and Light Weapons that has an objective of reviewing various laws on small arms and light weapons such as Arms and Ammunitions Act 2001, Explosive Act 1953, Armament Control Act No. 1 of 1991, etc. so that they go in line with international instruments on small arms and light weapons.

The draft bill on incorporating these changes is awaiting to be tabled before the Inter-Ministerial Technical Committee (IMTC) for discussion.

There is a National Committee on Small Arms and Light Weapons that is comprised of various stakeholders including the Ministry of Home Affairs, the Ministry of Constitutional Affairs and Justice, the Commission for Human Rights and Good Governance, the Ministry of Defence and National Services and Tanzania Intelligence Security Services and others. It has an advisory role on these issues.

Sections 8 and 9 of the Arms and Ammunitions Act Cap 223 are simply too general, they do not distinguish children and adults. Therefore as such this cannot be helpful to children.

Section 5 of the Arms and Ammunition Act Cap 223 provides granting licence to carry or possess arms or ammunition but are limit to provide for granting of licence.

Armaments Control ActCap 246 is also silent on these matters.
