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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-eighth 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: United States of America

The Committee considered the initial report of the United States of America (CRC/C/OPAC/USA/1) at its 1321st meeting (see CRC/C/SR.1321), held on 22 May 2008, and adopted, at the 1342nd meeting, on 6 June 2008, the following concluding observations.

Introduction

The Committee welcomes the State party's initial report and takes note of the written replies to the list of issues. The Committee appreciates the constructive dialogue with a high-level multisectoral delegation, which included representatives of the Department of Defense.

The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the same day on the State party's initial report under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (CRC/C/OPSC/USA/CO/1).

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A. Positive aspects

The Committee welcomes:

The State party's contributions to projects for the rehabilitation and reintegration of child soldiers in several countries experiencing conflict or in post-conflict situations;

Information from the State party indicating the extended application to the military justice system of the abolition of the death penalty for persons who committed a crime while under 18 year of age by the Supreme Court in 2005 (*Roper v. Simmons*).

The Committee also welcomes the ratification by the State party of:

The Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography on 23 December 2002;

International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 12 February 1999.

I. General measures of implementation

Reservations

The Committee regrets the restrictive interpretations of the provisions of the Optional Protocol lodged as "understandings" at the time of ratification.

The Committee recommends that the State party review with a view to withdrawing its understandings of the provisions of the Optional Protocol in the interest of improving the protection of children in situations of armed conflict.

Dissemination and training

The Committee regrets that the training for members of the armed forces of the State party does not cover the provisions of the Optional Protocol.

The Committee encourages the State Party to provide training on the Optional Protocol to all members of its armed forces, in particular those involved in international operations, including on the obligations in articles 6, paragraph 3, and 7.

The Committee recommends that further training on the provisions of the Optional Protocol be provided for professionals dealing with children, in particular teachers, migration authorities, police, lawyers, judges, military judges, medical professionals, social workers and journalists.

Data

The Committee takes note of the statistics provided, disaggregated by sex and ethnicity, on the number of voluntary recruits under 18 years of age in the armed forces. Furthermore, the Committee notes the data provided on refugee and asylum-seeking children from countries where children may have been recruited or used in hostilities, however the Committee regrets that the statistics only cover unaccompanied children.

The Committee recommends that the State party ensure that disaggregated data, by sex and ethnicity, is available on voluntary recruits under the age of 18. Furthermore, the Committee recommends the State party to establish a central data collection system in order to identify and register all children present within its jurisdiction who may have been recruited or used in hostilities. In particular, the Committee recommends the State party to ensure that data is available regarding refugee and asylum-seeking children who have been victims of such practices.

II. Prevention

Participation in armed conflict

The Committee, while taking note of the amended policy of the State party to avoid direct participation in hostilities of members of the armed forces who are under 18 years, is nevertheless concerned that the State party failed to prevent the deployment of volunteer recruits below the age of 18 years to Afghanistan and Iraq in 2003 and 2004.

The Committee recommends the State party ensure that its policy and practice on deployment is consistent with the provisions of the Optional Protocol.

Voluntary recruitment

The Committee notes that the age for the recruitment of volunteers at 17 is valid only with the consent of their legal guardian. The Committee is concerned over reports indicating the targeting by recruiters of children belonging to ethnic and racial minorities, children of single female-headed households as well as children of low income families and other vulnerable socio-economic groups. Furthermore, the Committee is concerned over reported misconduct and coercive measures used by recruiters. The Committee regrets that the use of the No Child Left Behind Act for recruitment purposes is incompatible with respect for the privacy and integrity of children and the requirement of prior consent of parents or legal guardians. The Committee is furthermore concerned that parents are not fully informed of their right to request that schools withhold information from recruiters and that parents are only involved at the end of the recruitment process.

The Committee encourages the State party to review and raise the minimum age for recruitment into the armed forces to 18 years in order to promote and strengthen the protection of children through an overall higher legal standard.

The Committee recommends that the State party ensure that recruitment does not occur in a manner which specifically targets racial and ethnic minorities and children of low-income families and other vulnerable socio-economic groups. The Committee underlines the importance that voluntary recruits under the age of 18 are adequately informed of their rights, including the possibility of withdrawing from enlistment through the Delayed Entry Program (DEP).

The Committee furthermore recommends that the content of recruitment campaigns be closely monitored and that any reported irregularity or misconduct by recruiters should be investigated and, when required, sanctioned. In order to reduce the risk of recruiter misconduct, the Committee recommends the State party to carefully consider the impact quotas for voluntary recruits have on the behaviour of recruiters. Finally, the Committee recommends the State party to amend the No Child Left Behind Act (20 U.S.C., sect. 7908) in order to ensure that it is not used for recruitment purposes in a manner that violates the children's right to privacy or the rights of parents and legal guardians. The Committee also recommends the State party to ensure that all parents are adequately informed about the recruitment process and aware of their right to request that schools withhold information from recruiters unless the parents' prior consent has been obtained.

Military schools and training

The Committee notes the extensive use of Junior Reserve Officer Training Corps (JROTC) in high schools and notes with concern that children as young as 11 can enrol in Middle School Cadet Corps training

The Committee recommends the State party ensure that any military training for children take into account human rights principles and that the educational content be periodically monitored by the federal Department of Education. The State party should seek to avoid military-type training for young children.

III. Prohibition and related matters

Legislation

The Committee, while noting as positive that the United States War Crimes Statute (18 U.S.C., sect. 2441) establishes extraterritorial jurisdiction over certain war crimes, is concerned that criminal legislation fails to specifically include the crimes covered in the Protocol. The Committee further notes the draft Child Soldier Accountability Act of 2007, which would include recruitment of children under the age of 15 in the United States Criminal Code.

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

Ensure that violations of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities be explicitly criminalized in the State party's legislation. In this regard, the State party is recommended to expedite the enactment of the Child Soldier Accountability Act of 2007;

Consider establishing extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State Party;

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

The Committee recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further improve the protection of children's rights.

Furthermore, the Committee recommends that the State Party consider ratifying the following international instruments, already widely supported in the international community:

The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977;

The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1977;

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997.

The Committee, consistent with its practice in this regard, invites the State party to reconsider its position in relation to the Rome Statute of the International Criminal Court, 2001.

IV. Protection, recovery and reintegration

Assistance for physical and psychological recovery

The Committee regrets that the measures to identify refugee and asylum-seeking children who may have been recruited or used in hostilities are inadequate. Furthermore, the Committee is concerned that refugee and asylum-seeking children, who have previously been recruited or used in hostilities, may be ineligible for protection unless they also claim persecution on the basis of membership of a particular social group.

The Committee recommends that the State party provide protection for asylum-seeking and refugee children arriving to the United States of America 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 abroad;

Recognize the recruitment and use of children in hostilities as a form of persecution on the grounds of which refugee status may be granted;

Improve the access to information, including help lines, for children who may have been recruited or used in hostilities, reinforce the legal advisory services available for 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, culturally and child sensitive multidisciplinary assistance for their physical and psychological recovery and their social reintegration in accordance with the Optional Protocol;

Ensure the availability of 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 repatriation of such children;

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

Captured child soldiers

The Committee notes the presence of considerable numbers of children in United States- administered detention facilities in Iraq and Afghanistan. The Committee, while taking note of the measures undertaken to establish educational programmes for children detained in Iraq, regrets that not all detained children have access to education. The Committee is concerned at the number of children detained over extended periods of time, in certain instances for one year or more, without adequate access to legal advisory services or physical and psychological recovery measures. Furthermore, the Committee is concerned over reports indicating the use of cruel, inhuman and degrading treatment of detained children.

The Committee is concerned at reports indicating the detention of children at Guantánamo Bay for several years and that child detainees there may have been subject to cruel, inhuman or degrading treatment. Furthermore, the Committee is seriously concerned that children who were recruited or used in armed conflict, rather than being considered primarily as victims, are classified as “unlawful enemy combatants” and have been charged with war crimes and subject to prosecution by military tribunals, without due account of their status as children.

The Committee recommends that the State party:

Ensure that children are only detained as a measure of last resort and that the overall number of children in detention is reduced. If in doubt regarding the age, young persons should be presumed to be children;

Guarantee that children, even if suspected of having committed war crimes, are detained in adequate conditions in accordance with their age and vulnerability. The detention of children at Guantánamo Bay should be prevented;

Inform parents or close relatives where the child is detained;

Provide adequate free and independent legal advisory assistance for all children;

Guarantee children a periodic and impartial review of their detention and conduct such reviews at greater frequency for children than adults;

Ensure that children in detention have access to an independent complaints mechanism. Reports of cruel, inhuman and degrading treatment of detained children should be investigated in an impartial manner and those responsible for such acts should be brought to justice;

Conduct investigations of accusations against detained children in a prompt and impartial manner, in accordance with minimum fair trial standards. The conduct of criminal proceedings against children within the military justice system should be avoided;

Provide physical and physiological recovery measures, including educational programmes and sports and leisure activities, as well as measures for all detained children’s social reintegration.

V. International assistance and cooperation

Financial and other assistance

The Committee commends the State party for its significant financial support to multi- and bilateral activities aimed at protecting and supporting children who have been affected by armed conflict. The Committee also notes as positive the support of the State party for the Special Court of Sierra Leone, which has played a significant role in promoting accountability of those who have recruited and used children in 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 through promotion of preventive measures, as well as of physical and psychological recovery and social reintegration of child victims of acts contrary to the Optional Protocol.

Arms export and military assistance

The Committee takes note that the State party is the world’s largest arms exporter. While noting that the Arms Export Control Act (22 U.S.C., sect. 2778) regulates the private sale of arms export, the Committee regrets that it does not specifically restrict the sale of arms to countries where children are recruited or used in hostilities

The Committee recommends the State party to include a specific prohibition in legislation with respect to the sale of arms when the final destination (end use) is a country where children are known to be, or may potentially be, recruited or used in hostilities.

The Committee notes information from the State party that Foreign Military Financing (FMF) may not be provided to Governments where the State or State-supported armed groups recruit children, however the Committee regrets that this restriction may be waived under certain circumstances if deemed important to the national interests of the United States. The Committee notes as positive the draft Child Soldiers Prevention Act of 2007 which, if adopted, would restrict military assistance for countries where State forces or paramilitaries are known to recruit and use child soldiers.

The Committee recommends that the State party abolish Foreign Military Financing, when the final destination is a country where children are known to be - or may potentially be - recruited or used in hostilities, without the possibility of issuing waivers. In the interest of strengthening measures to prevent the recruitment or use of children in hostilities, the Committee recommends that the State party adopt the draft Child Soldiers Prevention Act of 2007.

VI. Follow-up and dissemination

(a) Follow-up

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 members of Government Departments, the Congress and to State authorities, for appropriate consideration and further action.

(b) Dissemination

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

VII. 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 next report on 23 January 2010.

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