



Convention on the Rights of the Child

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Committee on the Rights of the Child Seventieth session

Summary record (partial)* of the 2046th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 29 September 2015, at 3 p.m.

Chairperson: Mr. Mezmur

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties (continued)

Initial report of Cuba on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (continued) (CRC/C/OPAC/CUB/1; CRC/C/OPAC/CUB/Q/1 and Add.1; HRI/CORE/1/Add.84)

1. *At the invitation of the Chairperson, the delegation of Cuba took places at the Committee table.*

2. **Ms. Reus González** (Cuba) said that, in keeping with the relevant national legislation, military service was compulsory for all young men who had reached the age of 18. The enlistment process began when young persons turned 16, at which point their names were added to the military register and they were enrolled in pre-recruitment preparatory activities and training. While the minimum age of recruitment stood at 18, an exception was made for young people who had been accepted to university, who were offered the possibility of completing their military service in one year rather than two if they enlisted voluntarily at the age of 17, subject to the informed consent of their parents. The age of criminal responsibility was 16, and a system of differentiated treatment applied to young offenders between the ages of 16 and 18.

3. **Mr. Amorós Nuñez** (Cuba) said that the declaration deposited by Cuba to the Optional Protocol was in full conformity with article 3 of the Optional Protocol. Since the conditions relating to the declaration had not changed, Cuba did not intend to withdraw it. That said, the issue of voluntary enlistment at the age of 17 would be discussed in connection with the legislative review that had been under way since 2013 and would continue until 2017.

4. As to the ratification by Cuba of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, he noted that, in principle, Cuba had always emphasized reliance on national mechanisms for the protection of human rights and considered its system for handling complaints to be effective. Since, to date, there had not been any need for recourse to an outside body, the Government did not anticipate the need to ratify the most recent Optional Protocol at any time in the foreseeable future.

5. In the course of its participation as an observer in the discussions of States parties to the Rome Statute of the International Criminal Court, Cuba had become concerned at what it perceived to be a lack of impartiality on the part of the Court. That perception stemmed from the Court's relationship with the Security Council, which was reflected by the fact that the Council could, on the same footing as States parties to the Rome Statute, refer to the Prosecutor situations in which a crime or crimes appeared to have been committed. In view of the Security Council's lack of representativeness and transparency, it would be surprising if those deficiencies did not adversely affect the Court's impartiality. As a result, Cuba had no plans to ratify the Rome Statute, although it had always supported, and would continue to support, an impartial, non-selective, effective and just international criminal court, as a complement to national judicial systems.

6. **Ms. González Ferrer** (Cuba) said that the provisions of the Convention on the Rights of the Child and its Optional Protocols had been incorporated into academic curricula and had been selected as the subject of student debates. The provisions of those instruments had also been disseminated throughout the country by means of radio and television broadcasts and in the written press. The international law section of the Cuban Bar Association had a division on international humanitarian law, which

coordinated with radio and television stations in order to spread information on such topics as international humanitarian and human rights law and public international law, including the Convention. It also organized in-service training on those topics for public servants, judicial officers, police officers and medical doctors. With the support of United Nations Children's Fund (UNICEF), the Ministry of Justice had organized an awareness-raising campaign entitled "For a right-side up world" (Por un Mundo al Derecho). The Ministry also coordinated the operation of children's rights centres in each province that promoted the dissemination of information on children's rights in schools and health-care centres. International medical brigades were also trained in the provisions of the Optional Protocol.

7. **Mr. Loureiro Arencibia** (Cuba), responding to a question concerning the participation of recruits under 18 in the event of a general mobilization, said that, as stipulated in the Constitution and, by extension in the National Defence Act No. 75, an extraordinary situation, including a general mobilization, could be declared in certain specific circumstances. Article 10 of the Act stipulated that, in such situations, the National Defence Council was authorized to adopt provisions that were binding on all persons and that could be adapted to the circumstances and the parts of the country where the situation existed. Among the measures that might be taken was compulsory recruitment for military service or civilian mobilization, for as long as was deemed necessary. The Government had understood its obligation under the Optional Protocol to be to ensure that persons who had not attained the age of 18 years did not take a direct part in hostilities. In the case of compulsory recruitment following the declaration of an extraordinary situation, the State would determine which measures to take in order to avoid the involvement of children in armed conflicts.

8. **Ms. Riello Ruiz** (Cuba) said that the Camilo Cienfuegos military schools were vocational schools that trained students for a career in the armed forces. Enrolment in military schools was voluntary, and students could return to mainstream schools at any point without any negative repercussions on their academic record. While the core curriculum of military schools was identical to that of mainstream schools, some of the additional subjects taught in military schools were human rights, including the Convention on the Rights of the Child and its Optional Protocols, the promotion of a culture of peace and international humanitarian law. Students in military schools were not considered military personnel, and the schools did not use firearms or train students to use them.

9. **Ms. Silot Navarro** (Cuba) said that the Criminal Code set out several definitions of criminal offences that involved illegal recruitment into the armed forces, including that of persons who were underage.

10. **Mr. Cardona Llorens** requested clarification of the voluntary enlistment process. Assuming that voluntary enlistment took place during the year that a student turned 17, it could conceivably occur when the young person concerned was still 16. The fact that military service for students who enlisted on a voluntary basis was reduced to one year seemed to act as an incentive for such enlistment.

11. **Mr. Madi** requested an account of the precise contexts in which the recruitment of a minor was criminalized under the Criminal Code. Although there were no armed groups in Cuba that were distinct from the armed forces of the State, he recalled that article 4 of the Optional Protocol required all States to adopt the legal measures necessary to prohibit and criminalize the recruitment or use in hostilities of persons under the age of 18 by such armed groups. He asked whether Cuba had asserted extraterritorial jurisdiction in respect of the various forms of conduct that were prohibited under the Optional Protocol.

12. **Ms. Aho Assouma** requested an explanation of the system of birth registration in Cuba and asked whether all children in Cuba had a birth certificate. She wished to know whether there was any legislation under preparation that would increase the penalties for the advertisement and sale of tobacco products to minors; whether information was provided on the health risks of such tobacco products; and whether there were any bans on smoking in the country.

13. **Mr. Gastaud** asked whether the Optional Protocol could be invoked directly in civil or criminal proceedings and whether the delegation could provide any examples of cases in which that had been done. He wished to know whether the Criminal Code defined the involvement of children in armed conflict as a punishable offence.

14. **Ms. Reus González** (Cuba) said that young people could voluntarily enlist for military service in the year of their seventeenth birthday, but only if they had successfully completed the requisite pre-university studies, which guaranteed their subsequent enrolment in a university programme. The aim of reducing military service to one year was to ensure that the fulfilment of military service did not interfere with the university studies and future professional development of students. Persons under the age of 18 who joined the armed services on a voluntary basis accounted for less than 10 per cent of all recruits. All other young people were recruited for military service upon reaching the age of 18.

15. **Ms. Silot Navarro** (Cuba) said that there were no armed groups in Cuba that were distinct from the armed forces. Given that the function of recruitment was, by law, the exclusive province of the Ministry of the Revolutionary Armed Forces, and that article 102 of the Criminal Code provided custodial penalties for anyone who knowingly usurped an exclusive function of any constitutional organ of the State, it followed that anyone who recruited a minor was liable to punishment under article 102. Article 111 of the Criminal Code also prescribed custodial penalties for anyone who, without the authorization of the Government, recruited an individual in the national territory for military service in a foreign State. In addition, article 207 of the Criminal Code prescribed penalties for persons who formed a gang for the purpose of committing offences.

16. **Ms. Reus González** (Cuba) said that Cuban legislation did not provide for the exercise of extraterritorial jurisdiction; however, in accordance with the extradition treaties concluded by the State, penalties could be imposed on foreign nationals present in Cuban territory if the offence had been committed in Cuba. Moreover, Cuba had concluded agreements for mutual legal assistance with more than 54 countries, according to which the Government cooperated in supplying information relevant to the prosecution of Cuban nationals suspected of having committed an offence in the territory of those countries.

17. With regard to birth registration, it was a point of pride for Cuba that more than 99.9 per cent of the infants born in the country were delivered in hospitals. As a result, birth registration was virtually automatic, and each child who left the hospital did so with proper identity documents. There were only a small number of children born outside of the hospital for whom birth registration had to be carried out within three days following birth. The birth registration system in Cuba was an important safeguard in ensuring compliance with the Optional Protocol inasmuch as it provided a reliable system for establishing the age of recruits for military service.

18. **Ms. Silot Navarro** (Cuba) said that members of the judiciary were well-versed in the Convention on the Rights of the Child and its associated Optional Protocols. In that connection, the provisions of those instruments could be — and, indeed, had been — invoked by judges. The People's Supreme Court had, for example, issued Instruction No. 173/2003 on obtaining statements from and preventing the

revictimization of child victims of crimes. Instruction No. 216/2012 sought to protect the best interests of the child and ensure their right to be heard in cases that affected them, while Instruction No. 1/2013, from the Attorney General's Office, governed the conduct of public prosecutors in cases of child sexual abuse.

19. **Ms. González Ferrer**, replying to question from Ms. Aho Assouma about tobacco consumption, said that a major anti-smoking campaign was currently under way in Cuba. Restrictions had been placed on the sale of tobacco products to children in shopping centres and other points of sale. Smoking was banned in all public health facilities and the Ministry of Health was in the process of drawing up guidelines for a ban on smoking in all public places. The ultimate goal was to harmonize the existing sector-based policies with a view to creating a single, overarching policy to reduce tobacco consumption.

20. **Mr. Cardona Llorens** said that, while noting the steps taken to prevent under-18s from being involved in hostilities, he wished to know whether 17-year-old members of the Defence and Production Brigades could be mobilized in the event of an armed conflict. In that connection, and in view of article 90 of the Constitution, he wondered what measures were in place to explicitly prevent minors from being deployed if a general mobilization were to be decreed by the Council of State. Lastly, he sought clarification on media reports that child refugees from the Western Sahara were receiving military education in Cuba.

21. **Mr. Madi** said that, while acknowledging that Cuba had a system of extradition in place, unless the Government enacted explicit legislation to criminalize the recruitment of children in non-State armed groups, Cuba would not be able to exercise extraterritorial jurisdiction over such crimes. The current legislative review under way in Cuba might thus present the perfect opportunity to expressly prohibit that crime.

22. **The Chairperson**, said that he wished to know what, if any, sanctions were applied to under-18s who refused or failed to enrol in military service. Moreover, could a young person legitimately refuse to perform military service on the grounds of conscientious objection?

23. **Ms. Reus González** (Cuba), replying to questions posed by members of the Committee, said that the Defence and Production Brigades were involved in civil order and defence matters, such as protecting the population in the event of natural disasters and were not trained for participation in armed conflict. Members were generally seasoned reservists who had specific skills or areas of expertise, such as food production. Accordingly, all recruits were over the age of 18.

24. Regarding general mobilization in times of conflict, she wished to clarify that such an exceptional circumstance would involve the enlistment of only the active population and that there was no provision for under-18s to be called up for military service.

25. As to extraterritorial jurisdiction, she said that the issue of non-State armed groups was a complicated one given that they simply did not exist in Cuba. There had, consequently, been no cases in which any Cuban children had been recruited in that way, either on Cuban soil or elsewhere. Under the existing framework, the national legislation or extradition procedure would be applied to foreign nationals who committed offences in Cuba. However, the constructive comments provided by the Committee on that subject were most welcome and would be conveyed to the Cuban authorities so as to help give shape to the legislative review that was currently under way.

26. On the subject of sanctions for failure to enrol in military service, mandatory conscription applied only to over-18s. Enrolment for 17-year-olds was on a voluntary

basis only and, as such, it was not possible for minors to incur penalties. As to conscientious objectors, the system provided for alternatives to military conscription, such as performing civilian service in a State organization.

27. **Mr. Amorós Núñez** (Cuba) said that thousands of students came to Cuba to study, often in relation to medical or technical subjects. However, military training did not form part of their studies and, moreover, was not the purpose for their visit. In that connection, refugees to the country, although few and far between, were treated with dignity and in full compliance with international conventions, and the media reports alleging their involvement in military education were without foundation.

28. Regarding Cuban 17-year-olds who voluntarily entered military service early, only about 10 per cent were still under 18 years of age when it came to enrolment and most turned 18 within the first few months of service.

29. **Mr. Gurán** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) thanked the delegation for a fruitful and interesting dialogue. He expressed the hope that the Committee's concluding observations would help Cuba to prepare for the major changes on the horizon and lessen any adverse impact they might have on Cuban children.

30. **Mr. Noguiera Neto** (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) expressed the hope that Cuba would be able to buck the trend of an increasingly violent world by carrying out a steady approach to transition. He was heartened by the delegation's presentation, which had gone some way to debunking some of the myths surrounding Cuba. Any remaining uncertainties would in all likelihood be clarified as Cuba continued its process of transition.

31. **Ms. Reus González** (Cuba) said that while it was clear that Cuba still had some way to go in terms of implementing both of the Optional Protocols, the Government was firmly committed to protecting children's rights. In conjunction with civil society organizations, the Government would make every effort to ensure that Cuban children could continue to live in a society where they were not at risk of economic exploitation. Cuba would carry on perfecting its socialist system to pave the way to further prosperity. In that regard, it would continue to make progress in terms of legislation, inter-institutional coordination and international cooperation. She expressed the hope that the Committee would see the value of a society in which children were not at risk of armed conflict, violence or exploitation.

32. **The Chairperson** thanked the delegation for the constructive dialogue and expressed the hope that many of the outstanding issues would be given due attention in the State party. He also encouraged the Government of Cuba to ratify the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

The public part of the meeting rose at 4.15 p.m.