



Convention on the Rights of the Child

CRC/C/OPAC/DEU/117 April 2007

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 8, PARAGRAPH 1, OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Initial reports of States parties due in 2007

GERMANY

[5 January 2007]

GE.07-41181

Report by the Federal Republic of Germany

pursuant to article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

1. The fight against recruitment of child soldiers is an important concern within the Federal Government's international human rights policy. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict plays a crucial role therein. Germany took an active part in negotiating the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Hence the Federal Republic of Germany already signed the Optional Protocol in the year 2000, and it was ratified in 2004.

2. Both in the United Nations and in the European Union (EU) context as well as bilaterally, the Federal Government firmly supports an improvement in the protection of children in armed conflicts, including implementation of the Optional Protocol and its application if possible on a worldwide basis.

3. Hence Germany is involved, together with its EU partners, in the rigorous application of the EU Guidelines on Children and Armed Conflict of December 2003. In the wake of a review of this Guideline in December 2005, the EU adopted Council conclusions with recommendations of a more extensive nature, and in April 2006 it also adopted an implementation strategy for the application of these recommendations. Their implementation will be a main focus of attention when Germany holds the EU Council Presidency during the first six months of the year 2007.

4. In May 2006 the EU States adopted a new batch of measures for bringing the subject of "protection of children in armed conflicts" into European Security and Defence Policy (ESDP) operations.

5. In July 2006 Germany gave its support – together with its EU partners – to a declaration by the President of the Security Council on the subject of "Children and Armed Conflict", which, amongst other things, contains an appeal to the international community of States to make a common effort to bring about a distinct improvement in the protection of children in conflict situations of this kind.

6. Germany is also one of the States that has been giving financial and political support, from the very outset, to the Office of the Special Representative for children and armed conflict, which was established in 1996.

7. At the national level, the Federal Government is promoting institutions and aid programmes for demobilization and rehabilitation of former child soldiers as well as to prevent contraventions of the Optional Protocol, *inter alia* through the regular voluntary German contribution and also through the funding of UNICEF projects, as well as through projects for the promotion of human rights. Germany is also making a contribution to rehabilitation and social reintegration of child soldiers, using the instrument of the Civil Peace Service with a number of peace specialists, e.g. those working in the field of trauma treatment.

8. Pursuant to article 8 of the Optional Protocol each State party is required, within two years following entry into force, to submit a report to the Committee on the Rights of the Child, providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol.

9. The Optional Protocol came into force for the Federal Republic of Germany on 13 January 2005. The report pursuant to article 8 of the Optional Protocol had to be submitted, in other words, by 13 January 2007.

Article 1

10. On deposit of the instrument of ratification, Germany made the following declaration:

The Federal Republic of Germany hereby declares that it regards a minimum age of 17 years as binding for commencement of voluntary service as a soldier in its armed forces within the meaning of article 3, paragraph 2, of the Optional Protocol. Persons under 18 years of age are recruited to the armed forces solely for the purpose of beginning military training.

Protection of volunteers under the age of 18 years, within the context of their decision to enter the armed forces, is ensured, *inter alia*, by virtue of the consent that has to be given by their statutory representatives and by the mandatory requirement of presentation of their identity card or passport as reliable proof of their age.

11. This means that volunteers under the age of 18 years are not allowed to perform any functions outside military training, meaning functions where they could be forced to use arms. In particular, they are not allowed to be deployed for armed guard duty. The use of arms by volunteers is to be confined in the case of volunteers under the age of 18 years solely to training and is to be placed under strict supervision.

12. In a letter dated 9 September 2004 from the State Secretary in the Federal Ministry of Defence (annex I) this directive was transmitted to the Bundeswehr (Federal Armed Forces) via the Director of the Armed Forces Staff.

13. Reference is also made in this letter to the existing directive by virtue of which volunteers under 18 years of age are under no circumstances allowed to be involved in Bundeswehr (Federal Armed Forces) operations.

Article 2

14. Pursuant to section 1, subsection (1), of the Conscription Act, all men are liable to military service upon reaching the age of 18 years. However, the Conscription Act gives young men with German nationality the opportunity, on attaining the age of 17 years, to make an application for early recruitment to basic military service (sect. 5 (1a)). Consent of the conscript's statutory representative is needed for this. The same requirement applies when a 17-year-old is commissioned with the service status of temporary-career volunteer.

15. The first step of so-called military ascertainment is the pre-induction examination. This examination will decide whether, and if so for which tours of duty, a conscript can be brought in for deployment in the armed forces. Pursuant to section 16, subsection (3), of the Conscription Act, the pre-induction examination takes place at the earliest six months before attainment of the age of 18 years; so far as an application has been made, with the consent of the applicant's statutory representative, for early recruitment to basic military service, this examination may take place six months before the applicant has attained the age of 17 years.

Article 3

16. Since on principle it is permissible in Germany to recruit volunteers for service in the armed forces as soon as they have attained the age of 17 years, it is mandatory to apply the safeguards pursuant to article 3, paragraph 3, of the Optional Protocol. This happens in Germany as set out as follows:

- Regarding subparagraphs 3 (a) and (b): pursuant to section 5, subsection (1a), of the Conscription Act, the military recruitment authorities (i.e. authorities entrusted, *inter alia*, with the pre-induction examination, recruitment to military service and monitoring of persons liable to military service) are under an obligation to restrict conscription - for the purpose of undergoing basic military service – only to such persons under the age of 18 years who have already attained the age of 17 years and who have also made the relevant application with the consent of their statutory representative. This restriction has been made the focus of attention in a directive issued by the Federal Ministry of Defence to all military recruitment authorities. There is general awareness of this restriction on the part of the military recruitment authorities. The application and the statutory representative's declaration of consent are placed on record in the personnel files;

- Regarding subparagraph 3 (c): when the pre-induction examination has taken place and availability for military service has been ascertained, applicants who are still minors will be given an instruction sheet by the military recruitment authority (annex II), giving them comprehensive information on the duties involved in military service. In particular, their attention is drawn to the fact that the use of arms is confined solely to training and that there is no question of their being placed on armed guard duty. In addition to this, each military formation deploying a conscript who has not yet attained the age of 18 years is given a special instruction letter containing information from the military recruitment authority to the effect that, in accordance with the Optional Protocol, the conscript is not to be brought into operations that might foreseeably lead to armed conflicts (annex III). Corresponding orders ensure that minors will, in no event, take part in hostilities;

- Regarding subparagraph 3 (d): through a directive issued by the Federal Ministry of Defence, it is ensured that, at the pre-induction examination, a person liable to military service has to present proof of his identity by producing an identity card or a passport. This ensures that reliable proof of age is provided before commencement of service.

Articles 4 to 6

17. The situation described in article 4 does not exist in the Federal Republic of Germany.

18. Given that German law already corresponds to the provisions of the Optional Protocol, implementation has been confined to the directives, enclosed in the annex, where explicit reference is made to the Optional Protocol.

Article 7

19. The Federal Republic of Germany is cooperating bilaterally and, within the framework of international organizations, with other

State parties in order to achieve the objectives laid down in article 7. In doing so, Germany provides technical support and, to a considerable extent, financial assistance. Hence, within the framework of bilateral State development cooperation with Angola, Burundi, the Democratic Republic of the Congo, Liberia, Rwanda and Sierra Leone, there were projects worth about 83 million euros in the first quarter of 2006 designed to reintegrate ex-combatants, especially child soldiers. Further resources amounting to about 1.4 million euros have been committed for the care of child soldiers through Civil Peace Service programmes in Uganda, Sierra Leone and the Democratic Republic of the Congo.

20. Furthermore, former child soldiers are profiting from the various bilateral development cooperation programmes generally dedicated to the prevention of violence and conflict relating to children and juveniles.

ANNEXES

Annex I

Office of State Secretary Biederbick

Berlin, 9 September 2004

Director

Armed Forces Staff 16 September 2004

copies:

Director-General Law Director-General WV

Office of Parliamentary State Secretary Kolbow

SUBJECT: Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The Act passed by the Bundestag in respect of the Optional Protocol of 25 May 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict will soon be entering into force.

In this Act consent is given to the Optional Protocol on condition that the Federal Republic of Germany shall, on depositing the instrument of ratification, make the declaration, for which provision is made in the Protocol by article 3, paragraph 2, to the effect that commencement of voluntary service as a soldier in the armed forces of the Federal Republic of Germany is permissible as soon as a person has attained the age of 17 years.

This means that it remains possible for a person to enter the Bundeswehr (Federal Armed Forces) voluntarily as a soldier at the age of 17 years, for the purpose of beginning military training. Juveniles are able to undergo military service immediately after they have finished their (school) education without waiting periods occurring and needing to be bridged.

In this connection, State Secretary Biederbick requests addressees to ensure that in future soldiers who are minors do not perform any functions on their own responsibility and outside military training, being functions where they could be forced to use arms. In particular, they are not to be placed on armed guard duty. In the case of soldiers who are still minors, the use of arms is to be confined solely to training and is to be placed under strict supervision.

The directive issued by State Secretary Biederbick, by virtue of which soldiers who are minors shall under no circumstances be made to take part in Bundeswehr operations shall remain in force without limitation.

For the Federal Ministry of Defence

Conradi

Annex II

District Military Recruitment Office

Information for minors on basic military service and voluntary

service in the armed forces

You want to undergo military service or voluntary service in the armed forces before you have attained the age of 18 years. This leaflet is designed to inform you and your parents or, as the case may be, the persons legally responsible for your education on the special protection to which you are subject, as a soldier who is still a minor, and to give you a concise but not complete statement of your rights and duties.

Soldiers who have not yet attained the age of 18 years are subject to special protection. In the case of such soldiers, the use of arms is solely confined to training and under strict supervision. You do not take part in operations that might foreseeably lead to armed conflicts. You are not allowed to perform any functions on your own responsibility and outside military training, being functions where you could be forced to use arms; in particular, you will not be placed on armed guard duty.

On principle, soldiers have the same civil rights as other citizens do. However, some of these rights – as the following sections of the

Soldiers Act (the “SA”) will show – are restricted because of the special status involved in being a soldier, and for the purpose of securing life in the military community and fulfilment of the mandate entrusted to soldiers (e.g. ban on political activity in barracks, ban on wearing uniform at political events).

Section 7 SA – Basic duty of a soldier

As a soldier you under a duty of loyal service to the Federal Republic of Germany as well as courageous defence of the rights and liberty of the German people. This core statement constitutes, so to speak, the fundamental description of the task you perform as a soldier. All other duties are derived therefrom and ultimately serve the purpose of performance of this task. In your day-to-day service, the duty of “loyal service” covers such obvious things as treating equipment and materials in a responsible way, as much as it covers being willing to show courageous commitment to others and their rights.

Section 8 SA – Commitment to the democratic basic order

It is necessary that you regard the democratic basic order of our country as being right and valuable, and that you are committed to its preservation. The democratic basic order constitutes, so to speak, the collection of the highest principles of the Federal Republic of Germany and finds expression in our constitution – the Basic Law. It means, amongst other things, that there is respect for human rights, that the people can elect their respective representatives in general, direct, free, equal and secret elections and that every form of violence and arbitrary regime is ruled out.

Section 10 SA – Duties of a superior

Soldiers exercising the function of a superior must always set an example in their attitude and in the performance of their duties. They are responsible for their subordinates and must exercise care in respect of them: orders which a superior is required to enforce, if need be also with the use of reasonable means, may only be given for the purposes of performance of duties and in accordance with the laws in force and with service provisions. If a superior contravenes these principles, the subordinate need not – and in certain cases, is not allowed to – carry out the consequently unlawful order.

Section 11 SA – Obedience

The duty of obedience means that lawful and binding orders are to be carried out to the best of one’s ability, in full, conscientiously and without delay.

Section 12 SA – Comradeship

In the absence of sustained comradeship soldiers will not meet the high requirements posed by their duties. The duty to conduct oneself in a comradely manner constitutes more than being willing to contribute to a good working atmosphere; rather, it specifies the clear rules of conduct that are required for joint fulfilment of demanding tasks also under circumstances where there is a high degree of physical and mental strain. Comradeship embodies the duty to respect the dignity, the honour and the rights of one’s fellow-soldier; to come to his or her assistance in an emergency and in the face of danger; and to show mutual respect and consideration. The special relationship of trust existing between soldiers comes from this source, and this relationship means that a soldier can rely on one’s fellow-soldier in every situation and that one is not left “on one’s own”.

Section 13 SA - Truth and Section 14 SA Secrecy

Explicit adoption of these duties in the Soldiers Act makes it clear that, in case of doubt, the safety of many fellow-soldiers will depend on an individual soldier telling the truth, or also on his or her maintaining the relevant secrecy.

Section 15 SA – Political activity

While on duty a soldier is not allowed to become politically active. This means, in particular, that a soldier is not allowed to promote a political group by making speeches, distributing writings or working in a political organisation as a representative. Such conduct would seriously disrupt comradeship and therefore also joint duty.

Section 17 SA – Conduct on duty and off duty

A soldier is required to behave on duty and off duty in such a manner as to do justice to the reputation of the Bundeswehr (Federal Armed Forces). The population expect a soldier not only to behave in accordance with generally accepted manners but also to set an example in his or her behaviour and outward appearance.

I / We have taken note of this information.

Date name, signature of the applicant

Name, signature of the statutory representative

Annex III

Military Administration

District Military Recruitment Office [location]

[military formation]Personal number:

[street, number][[pn]

[postal code] [location]File number:

[file number]

Clerk:

[form of address clerk]

Tel. no:

[tel. no. of clerk]

Information on the use of soldiers under the age of 18 years

Mr. [surname, first name], [pn] was enlisted by me on [date] as an early temporary-career volunteer for undergoing basic military service.

He will attain the age of 18 years only on [date].

Until that date he shall not be allowed, in accordance both with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and with the consequent obligations of the Federal Republic of Germany under international law, to be brought into operations that might foreseeably lead to armed conflicts.

I request compliance herewith.

For the Federal Ministry of Defence

[name of the signatory]
