



STATE PARTY EXAMINATION OF COLOMBIA'S INITIAL REPORT ON THE OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

54TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Contents

Opening Comments	1
General Measures of Implementation	2
Information Related to Non State Actors	2
Prevention	2
Prohibition and Related Matters	4
Protection, Recovery, and Reintegration	4
International Assistance and Cooperation	5
Concluding Remarks	6

Colombia ratified the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) on 25 May 2005. On 4 June 2010 the Committee on the Rights of the Child (the Committee) considered Colombia's initial report under the OPAC.

Opening Comments

Mr. Frank Pearl, the High Commissioner for Reintegration, informed the Committee of the recent steps taken to implement the OPAC. Even before Colombia had ratified the OPAC, it had criminalized the recruitment of children into the armed forces, regardless of whether parental consent had been given. In addition, a law on children and adolescents had been approved, and an intersectoral commission had been established to handle issues related to recruitment, anti-personnel mines, displacement and child labour. There were services for children who had left armed groups through the Family Welfare Institute, and they also had the right to reparations. Despite the rescue efforts of the state, there were still children who had not been demobilised. He acknowledged that Colombia needed to improve the content of social investment programmes and cover all areas of the country and ensure that the relevant bodies received the resources to implement those programmes in order to address the risk factors that allowed armed groups to recruit children. Colombia had guidelines to train security forces to prevent the use of children, and there was a complaints mechanism to denounce violations of the OPAC. When violations did occur, the sentence for the offender could be up to 15 years. He stressed that Colombia had a clear legal framework, reintegration programmes and social policies that targeted children at risk, but admitted that the disarmament process was not perfect, and asked the Committee to demand that the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) stop using children in armed conflict.

Mrs. Villaran, the Country Rapporteur, welcomed the delegation and wished for a fruitful dialogue to ensure peace, leave behind fear and suffering and punish rights violations. She said that while Colombia had made progress, children were still affected by violence, as recruitment, death, sexual violence, injury by anti-personnel mines and disappearances were rampant. She noted that Colombia had not followed the reporting guidelines. While she welcomed the legal and legislative advances, she wanted to focus on their actual impact.

General Measures of Implementation

The Committee asked about the resources allocated to the judiciary and Attorney General's office. The delegation could not give specific numbers on the investment in the Attorney General's office, but said that there had recently been further specialisation in the Attorney General's office, so that the officials focusing on children in armed conflict could address their work more efficiently. The delegation explained that there were special judges and courts to deal with adolescents, as well as a specialised unit in the Attorney General's office.

The Committee asked for clarification on the roles of the Family Welfare Institute and Ombudsman. The delegation explained that the family defender was an administrative unit that looked after family welfare, which went hand in with the work of the Ombudsman. The Family Welfare Institute was responsible for reaching out to children to prevent their participation in armed conflict as well as conduct recovery and reintegration efforts.

The Committee asked if there was any monitoring of the circulation and sale of arms. The delegation said that the state, in conjunction with the military, was responsible for arms control, and that there was an Office of Control and Trade in Weapons and Explosives. In order to obtain a license to possess weapons, a person had to be over 18, a Colombian citizen, meet medical requirements and have a clean criminal record.

Information Related to Non State Actors

The Committee asked about the distinction between illegal armed groups and emerging criminal gangs, and why children recruited by emerging criminal gangs were protected by the ILO Convention 182 on Child Labour rather than the OPAC. The delegation explained that a distinction was made between the recruitment of children into armed groups and the use of children in organised crime, but that children were legally protected for both offences. The delegation said that the prosecutors did not press charges against children who had been involved in organised crime, and that 77 children who had been involved in criminal groups were received treatment and psychosocial care by the Institute for Family Welfare with the aim of eventual reintegration. However, they did not have the right to reparations. The Committee asked for confirmation that no children were prosecuted for involvement in armed conflict. The delegation replied that children who had been involved in armed conflict were never prosecuted, and that they were taken to the Institute for Family Welfare to receive assistance. Children who committed crimes independently of an armed group, such as robbery, could be tried, but would be given a special defender. There was a legal distinction for children who had borne arms, and they were placed in special judicial proceedings to restore their rights and were not sanctioned. The delegation clarified that children who committed an offence had to undergo examination in a specialised court with the assistance from the Attorney General's office to determine if they had been in an illegal armed group. If they had been involved in such a group, they would not be prosecuted.

Prevention

The Committee noted that there seemed to be an increase in recruitment of children by illegal

armed groups despite the government's efforts, and asked how the government was working to prevent recruitment, especially of marginalized or at-risk children. The delegation acknowledged that recruitment was often the result of social factors such as poverty, lack of opportunities and domestic violence, and said that their approach was therefore not exclusively a military security strategy, but also social, with the aim of strengthening families, communities and state institutions. The delegation said that it was adopting a risk prevention system modelled after an NGO which had successfully prevented the recruitment of at-risk children by involving them in programmes or residential housing to make them inaccessible to armed groups. The delegation acknowledged that there were still flaws in their prevention strategy, but said that due to focus and strengthened local authorities, they believed that progress could be made. Fourteen children had been saved in the course of two months, which the delegation said was promising for the future. For example, a mother had gotten in touch with an inspector in a rural municipality to report that an illegal armed group had threatened to take her children, and the family was taken out of the situation and received support.

The Committee asked about the measures in place to provide extra protections to vulnerable groups, such as communities of indigenous peoples or of African descent and displaced children. The delegation acknowledged that minorities faced higher risk of recruitment and said that efforts were made to prevent recruitment in a culturally sensitive manner, as well as taking gender into account. For example, indigenous families received grants and there was an increase in social programmes. Government officials had made an effort to personally talk to indigenous groups to find out about their priorities, and as a result, stepped up nutritional and early childhood programmes. The Committee pointed out that it was important to execute these programmes in a socially sensitive manner, as indigenous peoples might find it difficult to take advantage of programmes like residential homes due to cultural differences.

The Committee asked if children were at risk of recruitment during the *baditas*¹, in cases where children could not produce the *libreta military* (a card about the military status of a person). The Committee pointed out that the large numbers of displaced, orphaned or abandoned children, who would be too young to be recruited into military service under the OPAC were often illiterate or impoverished, and may not have been registered at birth. Therefore, despite their status as children exempt from military service they might not be able to produce the *libreta military* and risked being conscripted into the Colombian army. The delegation indicated that they sometimes checked adults to ensure that they had completed their compulsory military service. However, the local mayor, Ombudsman and military commanders controlled recruitment to prevent the recruitment of children. If a child appeared for recruitment, they would be taken to the child welfare office.

The Committee asked how the government ensured that schools did not become targets for illegal armed groups, given that the military sometimes occupied schools. It was concerned with guaranteeing the right to education and making schools a safe environment for children. The delegation explained that there had been requests from the civilian population for continued military presence in rural areas, as there was continued instability. For example, an instructor working in an employment training agency was killed by FARC, even though the civilian population was happy with his work.

The Committee asked if the government was pursuing peace education and human rights as a sustainable form of prevention, and if there were programmes that taught peace education in a culturally sensitive manner. The delegation stated that social investment was much higher

¹ These are raids which are carried out in order to conscript those who had not performed their mandatory military service.

than investment in defence in terms of percentage of GDP. The government had focused on 120 municipalities, 98 of which had displaced persons, and used European Union funds to develop peace education programmes and train community leaders. They were willing to review commitments and standards relating to promotion and dissemination of the OPAC.

The Committee asked for more information on the training of teachers in military schools. The delegation explained that traditional military colleges were an authorized part of the education system. In the last two years of attendance, students could carry out their national military service. The delegation expressed willingness to review commitments and standards in this area.

Prohibition and Related Matters

The Committee asked for more information on sexual violence, as many cases were tried in military courts, which could lead to impunity. While the delegation did not have data on the number of convictions, they stated that 148 cases on sexual offences were going through the courts.

The Committee asked about the measures in place to definitively stop extra-judicial executions. The delegation acknowledged that many cases had been reported in the past, and said that in reaction, the government had taken drastic measures, such as removing several high ranking officers from the military. Since then, there was a significant reduction in the number of complaints of extra-judicial killings, leading the Special Rapporteur on Extra-judicial Executions to note that Colombia displayed strong political will through its monitoring and reduction in cases. There were 125 cases of children who had been victims of extra-judicial executions, and 299 cases had been voluntarily transferred from military courts to human rights courts. The Committee noted that these transfers could result in delays, and encouraged Colombia to avoid making it a systematic practice. The delegation replied that the issue had been discussed very recently with a rapporteur and that all cases of alleged human rights violations would be referred to civilian courts. The government was working with OHCHR on these issues.

The Committee asked how the government was ensuring that human rights violators were held accountable, especially in light of the Justice and Peace Law. The delegation explained that the right to truth was addressed in the Peace and Justice Law, so if a violator of the OPAC confessed, he or she would face a maximum sentence of 8 years. However, there were two parallel justice systems, and the other did not involve reduced sentencing in exchange for confessions. The ordinary justice system had seen 239 cases in the past year, with 36 resulting in convictions. Under the Peace and Justice Law, recruiters from illegal armed groups had confessed to 1,925 charges of recruiting children in exchange for lighter sentences. In addition, there were cases involving officials in the Colombian military, which would be examined by the ordinary justice system. The delegation reported that more than 20,000 victims had been registered and given restoration, the opportunity to confront the offenders and reparations. Previously, the Supreme Court of Justice had held that partial convictions (for one murder out of ten with which the accused had been charged, for example) were not permitted. However, that had recently changed, so the delegation predicted a higher rate of convictions.

Protection, Recovery, and Reintegration

The Committee asked how many children had managed to leave armed groups and how the government was reaching out to demobilise more child soldiers. Once demobilised, the Committee asked how the children were helped by the Family Welfare Institute to reintegrate

society and if there was any monitoring of the process. In addition, it asked how they ensured that there was no violence in transitional institutions. The delegation explained that children who had left armed groups received psychosocial care and reintegration guidance in a comprehensive programme run by the Family Welfare Institute and the High Commissioner for Reintegration. The focus was on restoration of rights, psychosocial attention and successful return to a community. The programme ensured that the children had adequate skills to reintegrate. The delegation said that assessments were carried out by civil society, as well as UNICEF and the International Organisation for Migration.

The Committee asked about reports that children were being used as informants in military operations after being removed from illegal armed groups, and if any compromising or military questions were asked during the interviews that took place in reintegration facilities. The delegation said that the information gathered during the interviews to identify children in armed conflict was well protected and that only five people had access to the information. In addition, there were two guidelines that clearly stipulated that children who had left armed groups could not be interviewed on intelligence issues. These children had to be handed over to the Family Welfare Institute and Family Ombudsman within 36 hours. The interviews took place to ensure that children really had been involved in illegal armed groups, because some children only pretended to be involved in order to avoid sanctions for crimes that had not actually been committed while the child was a member of an armed group. In response to the Committee's comment that reports had been made of children being used as illegal informants, the delegation responded that the government had received no such reports and did not believe that such behaviour was taking place. However, the delegation noted that if there were any complaints of mistreatment or abuse that they should be made to the competent authorities so that the government could effectively address them. The Committee understood that such behaviour was illegal, but said that there were still reports of children being used as informants or in military operations, including a social consolidation project. The delegation explained that all citizens were involved in certain civic military actions addressing issues like health, natural disasters, rebuilding infrastructure, and dissemination, and that the military presence was not a threat, but rather there to protect communities.

The Committee asked how reparations were awarded to children who had been affected by armed conflict, and whether material compensation could detract from psychosocial recovery. The delegation did not think that financial compensation was counterproductive, as it was dependent on victims receiving psychosocial support.

International Assistance and Cooperation

The Committee asked how the government had reacted to the United Nations Secretary General's recommendation that the government negotiate with illegal armed groups to completely stop the use of children in armed conflict. The delegation replied that as they had not received the official report, they could not comment, but that the State did not close any doors despite the reluctance of armed groups to cooperate. However, Security Council Resolution 1612 (which established a monitoring and reporting mechanism on the use of child soldiers) was being considered.

The Committee asked about the level of cooperation with UN agencies. The delegation replied that Colombia had a very positive relationship with the UN and highly valued cooperation and welcomed the UN's recommendations. In addition, Colombia had invited the Special Rapporteur on Children in Armed Conflict to visit, and accepted a mechanism for oversight and reporting. The Committee asked about the guarantees in place to ensure that UN agencies could carry out their mandates effectively. The delegation mentioned a case of

theft against a UN official, which the government had condemned.

The Committee asked if there were mechanisms in place to allow for extradition and extraterritorial jurisdiction in cases of OPAC violations, particularly recruitment. The delegation explained that Colombia could not judge foreigners who had committed crimes abroad. However, they could judge a national who had committed a crime abroad. The delegation did not think that the OPAC was an adequate basis for extradition, so additional treaties or agreements would be needed for extradition. The Committee clarified that the OPAC was intended to facilitate mutual assistance between states on extradition, and that there was an express provision that encouraged states to consider the protocol as a sufficient basis for extradition. The delegation believed that Colombia had not received any requests for extradition based on the OPAC, but if they did, and the request was covered by the protocol, the government would proceed in line with the OPAC.

Concluding Remarks

Mrs. Villaran thanked the delegation for the frank and fruitful dialogue and for all the information. She noted that there were still some areas that Colombia needed to improve. First of all, it needed to fully harmonize domestic legislation with the OPAC. In addition, although the budget for social programmes was impressive, the government needed to strengthen institutions and work on coordination. She noted that considerable progress had been made with plans to investigate and punish violations of the OPAC. She wished for peace in Colombia and hoped that the delegation would take the remarks into account.

The delegation invited the Committee members to visit Colombia, which they described as a beautiful but transitioning country. They reiterated their commitment to children's rights and thanked the Committee for the support and constructive opinions.