



ngo group for the crc

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

### 46<sup>TH</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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*France ratified the OPAC on 5 February 2003. On 26 September 2007, the Committee on the Rights of the Child (the Committee) examined France's Initial Report on the OPAC.*

#### Opening Comments

Mr. Mario Bettati, Counsellor to the Minister of Foreign Affairs and Head of Delegation, introduced the report. He reminded the Committee that France is a great defender of the rights of the child as evidenced by the measures it has taken that go well beyond the protocols. French policy focuses on families and at-risk children. On the subject of child soldiers and sexual tourism, France raised awareness among travellers and French society. Its commitments went beyond the United Nations (UN), as illustrated by its ratification of the convention from the Council of Europe on Trafficking and its assistance in drafting the Council of Europe convention on children.

Mr. Bettati noted that domestic legislation and practice were in conformity with the OPAC, the most recent effort being the adoption of Article 241 of the Defence Code. France was an active participant at the international level as evidenced by its sponsorship in partnership with UNICEF of the Paris Conference entitled "Let's Free Children from War." This was an important step forward towards stopping the use of children in armed conflict and reintegrating victims into society.

The Country Rapporteur, Mr. Pollar, praised the state's efforts in keeping to its commitments in the OPAC. He raised questions in several areas, namely: the recruitment of minors in the Foreign Legion, the legislative coverage in overseas departments, government and NGO coordination, data on asylum seekers, and the definition of "direct participation in hostilities."

The second Country Rapporteur, Mr. Citarella, praised France as one of the most advanced countries on human rights. He enquired about further clarification on the adoption of legislation to overseas territories, the curriculum and administration of military schools, and services available to asylum-seeking children.

## **Military Schools**

The Committee asked if military schools were only military in title and if the students were subject to military discipline. They asked if the curriculum included instructions on how to use armaments in times of war as well as if it covered education in peaceful conflict resolutions or peace. The Committee enquired about the expectations for children upon graduation of from military schools, such as the enrolment into the armed forces. They asked if these schools provided for student participation such as student councils. The delegation responded that there were six schools that fell under the Ministry of Defence. Neither the schools nor the students had military status nor were they under military disciplinary action. The schools followed the national education curriculum and functioned in the same way as non-military schools. Thus, they had student representatives and elected student governments. The only exception was the technical training school for the air force, which had two hundred students. The latter received military status at the age of 16. The curriculum included civic training and military ethics to prepare students to be sub-officers in the air force.

## **Asylum-Seeking Children**

The Committee asked for data on asylum seekers. More specifically, they wanted information on how asylum-seekers, many of whom were unaccompanied minors, were identified as children in armed conflict and if these children could be recruited or had been recruited for future conflict. The Committee was concerned that former child soldiers risked being sent back immediately. The delegation responded that a child was not returned to the country of departure until a comprehensive history was established. Children were not returned unless the French authorities had decided that it was appropriate. The Committee also asked to know the available support for asylum seeking children who had taken part in armed conflict. The Committee asked about the percentage of children actually returned to their home countries. It speculated that with France's extensive bilateral relations, France might send children back to their country of origin, and not just the country of transit into France. The Committee asked who oversaw the requests for asylum, where the asylum seeker waited for the verdict, and the process if asylum was refused. Before describing the procedure for asylum-seeking minors, the delegation noted that France took into account the best interest of the child. This included the request for asylum and that the authorities remained vigilante. The code of entry prohibited the entry of foreigners, but the request for asylum resulted in a stay-period of 48 hours to 4 days. A judge could permit an 8-day stay which could be renewed once for unaccompanied minors. During this time the asylum-seeker was detained in a holding-zone. The asylum-seeker was guaranteed an ad-hoc administrator to provide legal aid as soon as the administrator received the request from the police. If the asylum seekers were authorised to enter France, the child was hosted and monitored in a specific area. If asylum was refused, the return of the minors was organised with careful preparation. This included contacting the embassy in the country of origin to identify family members or a guardian who could take responsibility for the child upon his or her return.

## **Holding Zones for Asylum Seekers**

The Committee was under the impression that these holding zones were similar to correctional facilities. It asked if the best interest of the child was taken into account when placing them in these facilities. The Committee enquired into what happened in the holding zones; they were concerned that child soldiers were not being detected and consequently being returned to their countries. The delegation responded that the interest of the child was always taken into account. It emphasised the fact that the holding zones were not detention centres. They did not fall under the penitentiary bodies, but had structures for welcoming the asylum seekers. The delegation reassured the Committee that the holding zones were more than decent facilities. The section of the holding zone for children was separate from the adult section. The child was allowed phone calls and visits, the main restriction was that he or she could not come and go as they pleased. The Committee asked for data on the number of children passing through these holding zones. The delegation responded that

in 2006 there were 600 minors that passed through them, and as of July 2007 there were 374. The Committee asked how many children could be accommodated in these holding centres, but the delegation did not respond.

The Committee asked how long a child could stay in the holding zone. It seemed unfair to leave a child in the holding zone until all background information was collected. The delegation responded that the child was placed in the holding zone until a comprehensive picture was discovered through questioning done by social services and asylum-granting bodies. The delegation repeated that the typical timeframe for a child to be in the holding zone was 48 hours. The judicial authority could extend the stay to 8 days, renewable once. The ad-hoc administrator was working simultaneously to obtain a status for the child to enter. A law passed in July 2006 required the police, upon arrival of an unaccompanied minor seeking asylum, to immediately notify the procure who could then quickly refer to the judge for children. The latter could have a child placed in an educational facility separate from adults outside of the usual holding zone. This was separate from the special area of the holding zone for children under 13 years of age. Unaccompanied asylum-seeking minors received a thorough background check to discover family ties, past experiences, and so on. These educational service centres provided personnel specifically trained to help children who had participated in armed conflict. In 2006 there were 1,006 minors in these educational centres, 50 of whom were unaccompanied minors of which 17 had participated in armed conflicts. These 17 children came from places in Africa and the former Yugoslavia. The Committee asked if these 17 children had received asylum, but the delegation did not have specific information on the outcome of these cases.

The Committee knew that in some countries the Red Cross monitored officials at entry ports, and wanted to know if France too had independent authorities monitoring entry ports. The delegation responded that a group of associations that provided help to foreigners and the Red Cross were active in all holding zones. The Committee asked how staff and ad-hoc administrators in these holding zones were trained. The delegation replied that the staff consisted of educators who had specific training (as did the police officers) in sensitivity listening and welcoming. The police officers were unarmed.

## **Implementation of the OPAC**

The Committee was concerned with the adaptation of national legislation to French overseas departments and territories (DOMTOM). The delegation reassured them that norms for minors were applicable to all territories without any special procedures. The Committee asked how the government, non-governmental organisations (NGO) and others coordinated the implementation of the OPAC. The Committee enquired after the participation of NGO's in the preparation of the initial report. The delegation responded that the Consultative Body on Human Rights was consulted for the preparation of the initial report. The Body consisted of 75% of NGOs and had a division devoted to children's rights. The delegation stated that at least 10 NGOs were present for the consultation of the initial report.

The Committee asked for the definition of "direct participation in hostilities." It suggested that the transport of arms and information by minors was a form of direct participation and asked if French legislation prohibited these activities. In reference to the OPAC, the delegation stated that France had chosen a broad definition of "military operations" which included war, war operations, peace, peace support, rescue, and so on. There was no specific definition of "direct participation" in military operations, because France adopted a broad definition. The transmission of information was considered to be part of military operations. The Committee asked if France considered the recruitment of minors into any armed group a crime. The Committee asked if France had adopted the European Code of Arms, and if this helped prevent arms exports to countries that used child soldiers. The delegation responded that France followed the European Code, which had criteria on the consideration of the final destination. The rights of the child were taken into account for the country of destination.

Furthermore, the Committee enquired about the criminalisation of the recruitment of minors into armed groups outside the national military. It was concerned that minors may be recruited for conflicts outside France and asked if this phenomenon occurred. The delegation responded that in the criminal code there was a provision for the incrimination of participation in mercenary activities, including recruitment. The person was sentenced to a fine of 5,000 Euros and 7 years in prison. If the act was committed abroad by a French citizen or on French territory, the crime fell under French jurisdiction. The Committee further questioned if there were aggravating circumstances if the person recruited was under 18. The delegation replied no. The criminalisation of recruiting people in mercenary activities did not distinguish between minors or adults. The Committee was concerned with the role of France in peacekeeping missions. They asked about the kind of training received for these personnel on human rights, particularly children's rights. They also enquired about the process if a French peacekeeper violated human rights. The delegation had no specific information on such violations by French peacekeepers. The criminal code was fully applicable even if the crime was committed abroad (including for the military). They were aware, through the press, that there were pending cases concerning this question.

The Committee enquired about the investigation of complaints under the OPAC and if a Defender of Children and/or an Ombudsman dealt with these complaints. It also asked if these authorities had jurisdiction over the military. The delegation responded that there was no Ombudsman in France, but rather a Defender of Children. The role of the latter was to receive individual complaints, address authorities and find means to help, and to establish dialogue. The Defender was not responsible for investigation, but rather to receive requests and bring information to the authorities. They could ask questions and encourage specific assistance even in the military schools. The Committee was concerned that the Defender could not take the situation into his or her own hands, but the delegation reassured that he/she could do so. The Committee enquired if international treaties prevailed over domestic law and if they were directly applicable. They asked if a judge could dismiss the OPAC especially in application to foreigners. The delegation replied that a judge would not set aside the application of protocol but it could only be applied directly. There was no reason to think the judge would react differently if the protocol was invoked.

## **Implementation of the International Agenda**

The Committee requested further information on the Paris Conference because they had not been consulted for this conference. It was concerned that the principles established at the Paris Conference were not inline with the OPAC. They asked if there was a study of the compatibility of the principles and the OPAC. The delegation responded that the principles of the Conference were created when the OPAC was in the drafting stages, but the delegation reassured the Committee that the principles were based on and followed the OPAC. In addition, UNICEF had overseen the conference. The Committee was concerned that there was no place for the Committee in the responsibilities of the Security Council's Working Group on Children in Armed Conflict chaired by France. They asked how much the OPAC was on the agenda of the Working Group and were concerned with the seeming lack of coordination between the various groups concerned with children in armed conflict. The delegation replied that the resolution that created the Working Group did not explicitly refer to the OPAC, but five resolutions before that mentioned it. The delegation could not provide further clarification.

## **Closing Remarks**

Mr. Pollar asked for further information on: data, position of the Committee on the Security Council Working Group, the sale of arms to organisations that might recruit children, holding zones, the definition of "direct participation in hostilities," and the rules associated with adapting legislation in DOMTOM.

Mr. Bettati thanked the Committee. He agreed that the next time France would provide more precise and reliable statistics and data. He stated that the questions, observations and even doubts of the Committee had been most helpful for France to refine its practices.