



ngo group for the crc

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

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

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*Germany ratified the OPAC on 13 December 2004. On 18 January 2008 the Committee on the Rights of the Child (the Committee) considered the state's initial report.*

#### Opening Comments

Ms. Birgitta-Maria Siefker-Eberle, Deputy Permanent Representative of the Permanent Mission of Germany in Geneva, stressed Germany's commitment to implementing the OPAC. She highlighted work on the Paris Principles and the development of 'local implementation strategies' for the European Union (EU) Guidelines on children in armed conflict during Germany's EU presidency.

Dr. Almut Wittling-Vogel, the Federal Government Commissioner for Human Rights Matters, mentioned recent efforts on the dissemination of the OPAC, including its publication (in German) on the websites of relevant ministries. The Federal Human Rights Institute (FHRI) had also been asked to focus on the OPAC.

She emphasised that the minimum age for voluntary recruitment was seventeen, which coincided with the school leaving age. This enabled seventeen year olds to complete their military service early or begin a career in the armed forces without delay. This minimum age was established in the decree on military careers, which was formally published in the gazette. The legislation did not mention parental consent, but the agreement of both parents or the legal guardian was a fundamental requirement in practice. She stressed that the government had met with NGOs, including the author of the Shadow Report, and the FHRI, who agreed that the state was not in violation of its obligations. She stated that volunteers only used weapons for training and were not deployed in places where there was a risk of involvement in conflict, nor sent on guard duty. Seventeen year olds who chose to do their military service early could withdraw within two weeks without giving a reason, and either complete their military service or apply for civilian service as conscientious objectors. Temporary career volunteers could leave without giving a reason during the first six

months of their service. The time spent in training would count towards their compulsory military service.

Before being sent on international missions soldiers received extensive training which addressed both the legal and practical issues. If they were likely to encounter child soldiers the 'pocket-cards' issued to the troops contained information on dealing with these children as well as more general information on the mission. Additional training could be provided during their deployment, if necessary.

She admitted that there was a lack of data on asylum cases, since the reason for flight was not collected and included. In principle, all unaccompanied minors (UAM) were interviewed by a special commissioner of the Federal Office for Migration and Refugees (FOMR) and received medical and psychological care. The new immigration law adopted in 2005 recognised the possibility of being recruited as a reason for granting refugee status to a minor.

Ms Smith, the country rapporteur, welcomed the large delegation and Germany's commitment to implementing the OPAC. She noted its contribution to rehabilitation and reintegration programmes in conflict and post-conflict zones as well as its support for the EU Guidelines and the Special Representative of the Secretary General on Children and Armed Conflict. She noted that the report did not follow the reporting guidelines and lacked important information, although some of these deficiencies were compensated by the written replies and opening statement. She agreed that voluntary recruitment at seventeen was not a violation of the state's commitment under the OPAC, but urged them to consider raising the age to eighteen. She expressed doubts about the interpretation of article 6.3 of the OPAC as applying only to states involved in armed conflict. A universal application was more in agreement with the principles of the CRC and she hoped that this interpretation did not extend to a refusal of the obligation to provide assistance to children in the state's territory. She praised the inclusion of recruitment by non-state actors as a reason for granting asylum, but emphasised the problem of identification. She observed that the reform of the Youth Welfare Act had extended its protection to children over sixteen and asked for more information on the treatment of this age group in the asylum process. She also asked whether psychological support was routinely offered to UAMs and whether these services received sufficient funding. Finally, she noted the accession to the Rome Statutes of the International Criminal Court (ICC) and the existence of extraterritorial jurisdiction over the recruitment of children, but was concerned that this provision might be restricted by the requirement of dual criminality.

## **Legislation and Jurisdiction**

The Committee asked about the state's interpretation of article 6.3 of the OPAC. The delegation stated that this was the official understanding of that provision, but repeated the state's commitment to providing support to children affected by war, both within its territory and through international assistance.

The delegation did not answer on the definition of 'direct hostilities' in the legislation.

The Committee noted that jurisdiction over the crime of recruiting children was not addressed in the report. It asked whether jurisdiction extended to a foreigner residing in Germany, who had committed crimes abroad and whether dual criminality was required. The delegation explained that the Code on International Crimes provided universal jurisdiction over recruitment of children under fifteen, in compliance with the Rome Statutes without any requirement of dual criminality. Domestic legislation also allowed prosecution for recruitment of children over fifteen if it was a crime in the state where it was committed (dual criminality) or if there were no prosecuting officials in that state. The criminal code provided the possibility of trying a non-national for a crime committed abroad, provided that he had some connection with Germany, which could include residence. The delegation admitted that there were no cases under these laws. The Committee asked, hypothetically, about the status and treatment of a non-state-actor known to recruit children who entered the state. The delegation replied that if the public prosecutor had sufficient evidence, such a person could be tried

(entering the state established sufficient connection). The difficulty lay in acquiring sufficient evidence, since the public offices had a limited capacity for investigation. If there was insufficient evidence for prosecution, the person could be put under observation.

The Committee asked about the sale or export of arms to countries where children were recruited. The delegation replied that the Federal Security Council and the Ministry of Economic Cooperation considered each case separately. There was, however, a general principle not to export weapons to crisis regions.

## **Recruitment and Treatment of Volunteers under eighteen**

While the Committee agreed that the recruitment of seventeen-year-old volunteers was not contrary to the OPAC, it urged the state to consider raising the minimum age to eighteen. It asked about incentives for school leavers to join the armed .The delegation replied that there had been a detailed discussion on raising the minimum age before ratification. It might be possible after a reorganisation of the armed forces and after political debate, but since the legal situation had not changed this was unlikely to happen.

The Committee asked whether the two separate groups of seventeen-year-old volunteers (those performing compulsory military service early and ‘temporary career volunteers’ who wished to enter the army as a career) were trained separately. The delegation replied that these recruits were not separated from the other troops. The Committee asked about training with different sorts of weapons. The delegation replied that basic training covered the use of the standard hand weapon, and that recruits had access to weapons only for training. The Committee asked about instruction in non-military subjects. The delegation replied that the army provided non-military vocational training to volunteers who wanted to learn a profession after completing basic military training.

The Committee was concerned that the information provided before recruitment was not child friendly. It noted that Germany was the first country to extend child psychiatric services to those over eighteen and urged the state to display a similar understanding of the limits of childhood in the establishment of the age for voluntary recruitment.

The Committee asked about protection from bullying and complaint mechanisms for young volunteers. The delegation explained that all soldiers had access to a complaints procedure and the possibility of contacting the Parliamentary Commissioner for the Armed Forces. It confirmed that the Youth Protection Chamber of the regional Court would deal with disciplinary cases involving children.

## **Deployment of Troops Abroad**

The Committee asked about the training of soldiers before deployment and how it was assessed. It asked if training included information on all children affected by war and victims of violence, particularly sexual violence, as well as children involved in hostilities. The delegation repeated that all troops deployed were over eighteen. The pre-deployment training included ethical, moral, legal, cultural and psychological instruction, and covered child soldiers specifically, if this was a problem in the region. The Committee asked about content of the ‘pocket-cards’ and the treatment of child soldiers. The delegation replied that if troops were likely to encounter child soldiers the pocket cards explained this and gave instructions on getting them out of the conflict zone and providing assistance. When children were encountered, the priority was the provision of protection and medical or psychological assistance. Children were then reunited with their families if possible or handed over to an NGO to receive assistance. A similar process was followed for victims of violence, including sexual violence. Various mechanisms ensured that child soldiers received protection. The most important was the principle of proportionality. The troops were instructed that military force must be the last resort, although, of course, they were entitled to protect themselves, if there was a threat. The delegation clarified that child soldiers were not treated as prisoners of war.

The Committee was concerned about the allegations in the book 'Final Station Kabul' about the use of children to gather information and de-mine areas and how these matters were investigated. The delegation did not respond to these questions. In addition it did not provide answers about mechanisms for soldiers to report on conditions in the country and make suggestions on the direction of future assistance. The Committee asked about reports of violations by peacekeeping troops and the measures taken to prevent them. The delegation explained that the troops lived in military compounds and only left for professional activities and always in company, so it ought to be impossible for this situation to arise.

## **Refugee and asylum seekers**

The Committee asked about the number of UAMs identified as affected by armed conflict and the means of identifying them. It wondered whether the experience gained through international operations was useful for this. The delegation explained that children over sixteen were treated as adults in the asylum system, and were therefore not included in the data on UAMs. A decision to focus on this older age group meant that they would be included in the statistics from the start of 2008. The Committee asked about the provision of services to children over sixteen under the reformed Youth Welfare Act and the treatment of these children in the asylum procedures. The delegation replied that a guardian was appointed and could attend the asylum procedure if the child wished. The special commissioners were contacted if the child had difficulty representing their situation and would benefit from the commissioners experience in dealing with vulnerable people. The reform of the Social Code in 2008 obliged the youth welfare services to take in and appoint guardians for all UAMs. The delegation confirmed that psychological support and interpretation services were routinely provided to UAMs.

The Committee asked about the training of migration officials, who provided this training and whether there were enough trained officials to deal with all cases. It also asked about the gender sensitivity of the interviews. The delegation explained that the Federal Office for Migration and Refugees was represented in all the regions of the state. The special commissioners who interviewed UAMs were trained on dealing with vulnerable groups, including basic psychological training, and provided a more sensitive asylum procedure. There were 32 special commissioners dealing with UAMs, a number which had decreased over the past decade because of the decreasing need. They received training from UNHCR, NGOs, Welfare Officers and other external experts as well as internal lecturers. In response to further questions, the delegation admitted that specific training on the OPAC would only be included in the latter half of 2008.

The delegation did not provide any additional information on the treatment of children who were indirect victims of armed conflict or the safety of deported children.

## **International Cooperation**

The delegation did not answer questions on their role and position in negotiations with armed groups known to use children as soldiers, the assistance provided to children who have lived through wars, or efforts to promote a culture of peace through assistance programmes.

## **Dissemination and Peace Education**

The Committee asked about peace education and how closely this was analysed in relation to the state's history. The delegation explained that human rights and peace education began in primary school. The FHRI provided information and resources to schools. The study of history, social sciences and ethics also contained reference to Human Rights.

The Committee asked how the dissemination of and training on the OPAC was guaranteed throughout the state. The delegation replied that a conference of the relevant ministers made decisions on general education matters, which included human rights education, although not the OPAC specifically. The FHRI distributed information throughout the country and routinely included

the OPAC in information on the CRC. The Committee asked about the training provided to professionals working with children. The delegation replied that they received training in their individual academies, and that where there was no specific course on the OPAC this was included under the CRC.

The Committee asked about the involvement of civil society in the preparation of the report. The delegation admitted that civil society had not been consulted during the preparation of this report, while pointing out that the state generally had good contacts with NGOs. They claimed that they had initiated a meeting with NGOs and the FHRI after the submission of the State party report. The FHRI had led consultations with the central administration, the federal states and NGOs after the publication of the concluding observations from previous reports and was expected to do so again.

## **Concluding Remarks**

Ms. Smith noted that some questions remained unanswered, and commented that it might have been more useful to have prioritised different issues. However, there were improvements, particularly in the area of asylum seekers, but challenges remained, particularly in the identification of children who might have been engaged in armed conflict. She urged the state to continue working in this area, pointing out that children between sixteen and eighteen were not adults and should not be treated as such. She noted that a major weakness seemed to be in the area of dissemination. Finally, she urged the state to consider raising the minimum age for voluntary recruitment to eighteen.

Ms. Birgitta-Maria Siefker-Eberle thanked the Committee for the positive atmosphere, specialised questions and its interest and promised to take home the need for more dissemination and training on the OPAC particularly among the officials of the Federal Office for Migration and Refugees.