



ngo group for the crc

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

55TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
13 SEPTEMBER – 1 OCTOBER 2010

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Sri Lanka ratified the Option Protocol on the Involvement of Children in Armed Conflict (OPAC) on 8 September 2000. On 24 September 2010, the Committee on the Rights of the Child (the Committee) examined the initial report of Sri Lanka.

Opening Comments

The delegation of Sri Lanka was led by Ms Hiranti Wijemanne, Consultant to the Ministry of Justice. She was supported by a medium sized delegation consisting of representatives of the Ministry of Child Development, Ministry of Justice, Permanent Mission in Geneva and Child Authorities.

Ms Lee, the Country Rapporteur, welcomed the delegation and congratulated Sri Lanka for its initial report on the OPAC. She mentioned that the Committee was fully aware of the difficulties including the decades of armed conflict and the tsunami. However, despite the end of the conflict there were still challenges. She noted the ratification of the OPAC and of the OPSC in 2002 and 2001 respectively, and the amendment of article 16 of the Penal Code on the enrolment of children as well as the return of 200,000 Internally Displaced Persons (IDPs) to their homes. She asked several question on the consultation process for the report; the election of the members of the National Human Rights Commission (NHRC) and other bodies; the Bill on Assistance and Protection of Victims of Crime and Witnesses; the prosecution of violations of the OPAC; the centres for rehabilitation; the issuing of death certificates and the situation of children in the high security zone in Colombo.

General Measures of Implementation

The Committee noted that Sri Lanka had not followed the reporting guidelines and asked about the involvement of children and civil society in the report. The delegation answered that they tried to conform to the guidelines and added that the report was initiated by the Ministry of Foreign Affairs and the delay was due to the consultation process. Civil society had been involved in the preparation of the report through consultative groups but due to a lack of time, extensive discussions with children were impossible.

National Human Rights Institution/Ombudsman

The Committee noted the 18th amendment to the Constitution and its effect on the NHRC. It was confused by the fact that the President appointed the members of the Commission as well as the judges of the Supreme Court. It asked whether the amendment gave full power to the President. It also asked if he appointed the chairman and the members of the Department of Probation and Child Care Services (DPCCS), National Child Protection Authority (NCPA), National Police Commission, the Commission to Investigate Allegations of Bribery and Corruption as well as the judicial officers, the Attorney General and the Ombudsman. The delegation explained how commissioners were appointed: prior to the 17th amendment to the Constitution, it was the duty of the President to appoint the members of the National Human Rights Commission. The 17th amendment created a Constitutional Council which proposed candidates to the President but this system failed and the Council had to be closed. The 18th amendment provided that the commissioners were chosen by the Parliament, which included members from the opposition parties. The delegation added that the Parliamentary Council's role in the nomination process was advisory and that once appointed the members became independent. Checks and balances were ensured through the opposition's opinion. The Committee questioned the independence of the commissioners if they were appointed by the President. The delegation said that if nominees of the minority were elected by the President the independence was guaranteed. It added that even in the United Nations system, appointed experts remained independent and that it was common to several jurisdictions.

The Committee enquired about the system of independent monitoring and the role of the Ombudsman and the NHRC in monitoring the implementation of OPAC. It asked if children had access to complaints mechanisms. The delegation said that they were independent from each other and both bodies could receive complaints. It added that the NHRC had a broader jurisdiction than the Ombudsman's and that the Commission monitored the implementation of the CRC and the OP. The Ombudsman was recognised by article 144 of the Constitution and the general public could complain to it. Parliamentarians could also collect complaints and make recommendations to the government or give the information to the Ombudsman.

Allocation of resources

The Committee noted the large budget allocations for defence, while resources for education and other services at local level had decreased. The delegation replied that the defence budget encompassed the salaries of civilian staff, military equipments, compensation paid (including for victims of war). It stressed that the war only ended in 2009 and that a large amount of the budget had been spent in demining efforts. It added that part of the education budget was allocated to salary and that the full component of the budget did not go to children. It also said that the Ministry for Education was split into two institutions, the Ministry of Higher Education and the Ministry of Education, which were not funded by the same body.

Military schools

The Committee noted the existence of military schools, which contradicted the value of peace supported by the country. It asked for information regarding the possibility of leaving the military school system, the content of the curriculum and the existence of a complaint mechanism within this system. The delegation answered that it was an academy and that no one under 18 was able to apply. The Committee was concerned however that from 16 to 18, enrolment was voluntary and that children were involved in military parades. It explained that cadet schools as such were not a problem if there was no training with arms and no military parades with weapons involving children and recommended not to militarise these cadets. The delegation said that the firing mechanisms were not functioning and that it was just a ceremony. The Committee also enquired about the agreement between the Ministry of Education and the Ministry of Defence and about the teaching materials used in military school, human rights education and the content of textbooks regarding human rights.

Information Related to Non State Actors

Prosecution of children

Regarding the prosecution of children associated with armed groups, the Committee asked about the steps taken to ascertain the age of the detainees and if children under 18 were detained with adults. It was concerned that children arrested could be dealt with by military courts and asked about the steps taken to ensure that children were not treated like adults. The Committee repeatedly asked if children could be prosecuted for crimes in association with armed groups. The delegation answered that they could be prosecuted but that many of those who had been forced to join armed groups were not charged.

Prevention

Small arms and landmines

The Committee expressed its concern about landmines and light arms and asked if a plan of action had been set up to destroy them and reduce the number of small arms. The delegation replied that demining was in progress and the programme had been extended in order to find weapons, ammunition and other remnants of war.

Prohibition and Related Matters

Data collection

The Committee asked who was responsible for data collection. It wanted to know whether the State had a system and if it could provide any data regarding recruited children, children in resettlement centres or returned home, on the conditions in the centres and any analysis on the support given to children. The delegation answered that the relevant ministries were in charge of data collection and that there was no specific body in charge of collecting all the data. The Committee asked if there was a centralised system for all the data and if it was disaggregated, as this could help formulate policies. The delegation replied that it would love to have a system of data collection for children but recalled that in 60 years of independence, 40 years had been spent at war. It added that a meeting with the director of census was planned to discuss a work plan.

Recruitment

The Committee noted the amended criminal law on recruitment and asked if the courts used it and if there had been any prosecution and conviction. It asked why no prosecution in relation to recruitment had occurred, especially since Sri Lanka had reported to the European Union Commission that two persons had been arrested. The delegation answered that they had not received complaints and that an investigation had been launched based on UNICEF information but that it concerned only one case. The Committee wanted to know if the recruitment of children was criminalised under the criminal code. In particular, it asked if a child had been involved in the recruitment, whether it would be considered an offender or a victim. The delegation said that it was not aware of any other prosecuted case nor any formal complaint to the police enabling the Attorney General to investigate the case. The Committee stressed that in the case of vulnerable children the prosecutor had to file a complaint and that under the OPAC, follow-up had to be conducted and crimes had to be prosecuted. It highlighted that the international community was aware of the leaders' responsible for child recruitment and wondered if prosecutions occurred if nobody filed a complaint to the police. The delegation replied that the Attorney General was responsible for the prosecution but had no investigative powers and thus a formal complaint was needed. The Committee reminded the delegation that the OPAC provided duties and rights to States and that protecting children from being enrolled by armed groups was the responsibility of the State. It underlined that the Attorney General did not have to investigate if a fact finding commission was set up and highlighted the risk of impunity and future recruitment of children if no investigation was conducted. The delegation described the Lessons Learned for Peace and Reconciliation Commission. This Commission could ask the Attorney General to conduct an investigation. The Committee then asked if Sri Lanka had extraterritorial jurisdiction on that matter. The delegation replied that certain acts were criminalised even if committed abroad, such as hijacking, and that extraterritoriality was recognised in the judicial system. The Committee stressed they wanted to know more about crimes against children and not about general law.

Protection, Recovery and Reintegration

The Committee noted the Assistance and Protection to Victims of Crime and Witnesses Bill and asked if children providing evidence against a member of the military or a recruiter would be protected, especially since it was known that two persons in the government were involved. It further asked about the safeguards in place. The delegation answered that the Bill would be effective following its adoption by the parliament.

Rehabilitation centres

The Committee noted the existence of two types of facilities, namely accommodation centres and rehabilitation centres. The latter were institutions for children who were associated with armed groups. It asked if the age at the time of surrender was important and also noted that 3 centres had been created by the Emergency Regulation No. 1580/5 of 2008 relating to Child Friendly Rehabilitation and Reintegration Procedures of the Child Surrendees /Arrested. The delegation responded that in the protective and rehabilitation centres, priority was given to the protection of children. Children could opt to continue their formal education in centres in Colombo and children over 16 could opt for vocational training if they wanted to work. The Committee asked about the length of stay in those centres. The Committee also asked if pre-trial detention was taken into account in the length of the detention if children were convicted. The delegation answered that children had begun to go back to their families at the end of 2009 and that no legal action had been taken against them. It added that the centres were monitored by UNICEF and that the persons in charge were usually school masters.

The Committee requested information about the military presence in those centres and asked about the demilitarisation process. The delegation said the protection outside the centre was carried out by the military and that there were only civilian staffs inside the centres. It added that the aim was to protect children from outsiders.

Follow-up to rehabilitation

The Committee requested clarifications on the follow-up system and services received by children who left the rehabilitation centres. It asked if social counselling was still in place, if there was a follow-up system regarding school or vocational training and if these children suffered from stigmatisation. The delegation said that many children decided to return to the same school they were sent to during their institutionalisation when they returned to their families. The government was stayed in contact with the families and the children. The Committee asked about the follow-up carried out with children who had returned home and the support services provided. It expressed concern about the sustainability of the recovery services for children in IDP camps given the restricted access of humanitarian organisations. The delegation mentioned a programme for the training of child guardians aimed at supporting and protecting children. This programme worked with social coordinators, probation officers and child care officers. It also said that projects were conducted by the government and NGOs in the north and east and that they needed more staff to monitor what was done by partners in the regions.

Special Protection

The Committee enquired if children were treated as victims of the conflict and if special protection measures were undertaken. The delegation answered that they were treated as victims and that they were given protection. The Committee asked for assurances that no child was under the Emergency Regulation relating to Child Friendly Rehabilitation and Reintegration Procedures of the Child Surrendees/Arrested within high security zone in Colombo and wanted to hear more about this Emergency Regulation, especially regarding the rehabilitation procedure for children who surrendered or were released.

Missing Children

The Committee noted that many of the missing children were in hospitals, camps or dead and asked if there was a system for tracing families. It wondered if this was successful, if enough capacity was devoted to this task and if the people involved had the necessary language skills. It also asked whether death certificates were given to families. The delegation said that parents of missing children had been invited to a programme of sensitisation. All the parents were advised to file a complaint to the police or to one of the bureaus in charge, the police would then investigate the case and a death certificate could be given to the parents. The Committee asked if the government was doing its best efforts to recover missing children and family tracing, if the National Council of Child Protection was working in conflict affected areas and if special police forces identified lost children. The delegation replied that families had to report the case first and only then did the government begin the investigation.

Legal Provisions

The Committee requested information about laws against terrorism and especially if children could be charged under them. The delegation answered that relevant laws included the Prevention of Terrorism Act and the Security Council Resolution, but the legislation against terrorism did not cover the special case of children and normal law therefore applied. The

Committee recalled that the Ambassador of the EU on reconciliation stated that 2000 children had been arrested for terrorism and asked if these children were held responsible under the Act. The delegation said that children were prosecuted and their age was taken into account.

Peace treaty

The Committee asked if an agreement had been signed at the end of the conflict and if the conditions and situation of children under 18 were taken into account. The delegation said that no truce agreement had been signed and mentioned that the conflict ended without agreement. It added that if a child committed murder, the crime was not prosecuted because s/he was not part of the armed groups freely.

Universal jurisdiction

The Committee noted that Sri Lanka did not ratify the UN Convention relating to the Status of Refugees (the Refugee Convention) or the Rome Statute of the International Criminal Court. The delegation answered that the Rome Statute was used when the State was not capable to prosecute and that they did not need to ratify it since Sri Lanka had a strong legislative system. It also mentioned that the United States of America was not part of that treaty. The Committee specified that the Rome Statute was a tool reinforcing the prosecution of war criminals and was ratified by countries offering all guarantees. The delegation replied that Sri Lanka wanted the Rome Statute covers acts of terrorism, but that it was not accepted when the treaty was negotiated. It added that Sri Lanka did not ratify the Refugee Convention.

International Assistance and Cooperation

The Committee asked about the peace and consolidation period and the involvement of civil society, NGOs and international bodies in the reconstruction efforts. It was concerned that NGOs had to register with the Ministry of Defence and asked for information on the registration process especially in terms of independent monitoring. It asked if the State intended to create a more accessible system so that civil society could assist with data collection and provide assistance and services to rehabilitate children. The delegation answered that 21 international organisations and 21 NGOs were working in the Northern provinces and that it was necessary for them to register. It added that this system had been created after the tsunami because the country was overflowing with NGOs and there was a need to control the work they did. NGOs previously had to register to the relevant ministry and the system was very complex, whereas now registration was done through the Ministry of Defence which reduced security concerns. The Committee said that article 4 of the CRC intended to maximize the resources available for children through international cooperation. The delegation confirmed that NGOs working in the Colombo area also had to be registered.

Concluding Remarks

Ms Lee stated that it was difficult to fully understand the situation from Geneva. She stressed the importance of prosecuting perpetrators and addressing the situation of missing children, access of humanitarian organisations and rehabilitation. She stated that crimes committed against children had to be addressed under the OPAC and encouraged continued cooperation with UNICEF, the Committee, the OHCHR and the Panel of Experts to Advise on Accountability for Possible Rights Violations during conflict.

Ms Hiranti Wijemanne said she had great hope about the children who were the building blocks of the future. The delegation thanked the Committee for its comments and said that it would bring home all the ideas and begin the work of implementation.