



ngo group for the crc

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

41ST SESSION OF THE COMMITTEE ON THE RIGHTS OF THE
CHILD
9 - 27 January 2006

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Switzerland ratified the Convention on the Rights of the Child (CRC) in 1997, and the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) in 2002. On 9 January 2006, the Committee on the Rights of the Child (the Committee) examined Switzerland's initial report on the implementation of the OPAC.

Opening Comments

In his opening remarks, Mr. Jean-Daniel Vigny, Minister and Member of the Swiss Mission to the United Nations in Geneva, noted that Switzerland was committed to preventing the involvement of children in armed conflicts in Switzerland and abroad, as well as raise awareness on the rights of the child in States that were involved in conflict. Children were neither recruited nor enrolled in the Swiss army below the age of 18. The Armée 21 reform programme was based on the changes of Swiss legislation. The latter had made all the necessary changes to be in compliance with the OPAC prior to All the changes e in Swiss legislation before ratifying it. The army was a militia and all male citizens had to do their military service. These obligations only came into effect during the 19th year of the recruit (this was verified using birth certificate). There were no armed groups operating on Swiss soil, nor had there been any enrolment of children on Swiss territory. If armed groups enrolled children in Switzerland, they would be in violation of the Criminal Code, and would be punished.

Mr. Jaap Doek, who served as country rapporteur, commented on military penal code and its recent amendments. Switzerland's position in protecting children in armed conflict was very straightforward. It was not evident to find matters to discuss as the minimum age for voluntary recruitment had been increased to 18, and its encouragement to other States to ratify and abide to the OPAC.

Definition of ‘Close Link’

Doek observed that if a person with a ‘close link’ to Switzerland recruited a child under 15 abroad, this would apparently fall under Swiss jurisdiction. In such a case, the offence would be under Swiss jurisdiction if committed by an individual having ‘close link’ with Switzerland. He enquired whether the notion of ‘close link’ was applied by judges in court cases. He found the notion vague and asked for a set of established criteria to clarify the meaning of ‘close link’.

The delegation explained that ‘close link’ applied to people: living in Switzerland; refugees or asylum seekers; in hospital for medical treatment; in regular contact with relatives in Switzerland or own property there. Having a bank account or visiting Switzerland was not considered a ‘close link’. The country rapporteur was surprised by the fact that hospitalisation was considered a ‘close link’, while a bank account was not. He also asked if the ‘close link’ was also used for Swiss nationals of 15 years who were victims of recruitment and whether Switzerland would also have jurisdiction over the recruiter. The delegation replied that the definition of ‘close link’ was under consideration in the federal administration so it was impossible to provide a clear answer during the session.

Training Courses

The Committee asked for clarifications concerning pre-military training courses, their content and for whom were they intended. The delegation noted that in English ‘short pre-military training courses’ sounded ambiguous. This term was used in past and was no longer operational. Instead, there were three different courses. The first was ‘Youth and Sport’ to motivate and encourage the engagement in sport. The military department previously ran this course, but there was since a clear separation between armed forces and Youth and Sport. The second course was the Scouts, which also had no real link with the armed forces. The latter just provided some equipment to the Scouts. There was no possibility to recruit Scouts in the armed forces. The third course consisted of schools to train pilots. As this was in the interest of armed forces, they paid for the course. However, graduates were not obliged to join the armed forces as pilots.

Foreign Child Soldiers and Victims of War

The Committee enquired if Switzerland was open to children who had been involved in armed conflicts, and if so, accommodating them as refugees or asylum seekers. It also asked if Switzerland provided rehabilitation and psychological assistance programmes for these children. The delegation responded that if there were child soldiers under 15 in the country for a reason (e.g. war), they could stay in Switzerland, and there was no question of sending them back to their country of origin. Switzerland would take care of them, and it had legal provisions to protect them. If parents of child soldiers were in Switzerland and were asking refugee status, they would most probably be able to stay to facilitate family reunification.

Foreign children victims of torture, who required urgent assistance, could receive medical and psychological assistance. However, any form of compensation was another matter.

Peace Education

The Committee asked if peace education was included in school curriculum as part of human rights education. The delegation explained that education was run by the cantons, so there were 23 different systems. As far as they knew, there was no form of peace education in public schools. However, information on child rights was included in human rights classes and in international human rights law studies at universities.

Development Aid

The Committee asked why only Burundi and Congo were recipients of development aid, as armed conflict was a serious problem in many more countries. The Delegation clarified that the report named Burundi and Congo as examples, as assistance was provided to many other countries in

conflict. It was also noted that Swiss aid was destined to NGOs and the Committee was interested to know if aid was also given to governments. Besides, NGO activities were limited to awareness raising and information, and the Committee enquired if further actions like demobilisation or rehabilitation were also supplied. The Delegation gave an example of a special court it had established in Sierra Leone for the UN. In principal, there was no problem in cooperating with governments. Regarding the introduction of demobilisation activities in Swiss Aid, Vigny shared the concerns of the Committee and promised to pass this recommendation on to the relevant authorities in Bern.

Gender Disparity

The Committee noted that there were disparities in gender provisions in terms of military conscription. Men were automatically enrolled, while women could do it on a voluntary basis. The Committee asked if this provision meant that maybe other provisions in terms of service were different. The delegation referred to the fact that women were only granted the equal right to vote in 1974, so Switzerland still had to catch up with other countries in areas of gender inequalities. However, the Committee was assured that once enrolled in army, everyone regardless of gender, was treated equally and had the same expectations.

NGO Participation

Regarding the preparation of the report, the Committee asked for clarifications concerning NGO participation. In the report it mentioned the 'submission' of the report to the NGOs. It was therefore not certain whether this meant that NGOs actually collaborated in preparing the report. The Delegation confirmed that the report was indeed prepared in collaboration with NGO network.

Recruitment of Minors

The Committee noted that even if international law stipulated that recruitment of children under 15 was a crime, Switzerland could go further and use the age 18 as a benchmark. After all, children were recruited not only for participation in war, but could also become victims of sexual exploitation. Such provisions under domestic law (not military or criminal law) could be a good measure. The Committee commented that the CRC prohibited the recruitment of 15 year-olds regardless of whether they were engaged in armed conflict as it was in general a violation of article 38.

Concluding Remarks

Doek recommended to assume jurisdiction on recruitment of 15, 16, 17 year olds as a crime if perpetrated on Swiss soil, not necessarily a war crime, but include it in national law, and allow to issue an international warrant if the perpetrator fled Switzerland. He also remarked that Switzerland had firm measures for prosecution, but the purpose of the OPAC was to strengthen the prohibition of recruitment of children under 15.

The Delegation took note of the Experts' comments and assured that they would be communicated to the authorities in Bern, particularly when working on the legislation.