



ngo group for the crc

**STATE PARTY EXAMINATION OF THE UNITED STATES OF
AMERICA'S
SECOND PERIODIC REPORT ON THE OPTIONAL PROTOCOL ON
THE INVOLVMENT
OF CHILDREN IN ARMED CONFLICT**

**62ND SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
14 JANUARY – 1 FEBRUARY 2013**

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The United States of America ratified the Optional Protocol on the involvement of children in Armed Conflict (OPAC) on 23 December 2002. On 16 January 2013, the Committee on the Rights of the Child (the Committee) examined the second periodic report of the United States of America. It was last examined on 22 May 2008. The State party has a declaration in relation to article 3, paragraph 2 and understandings with respect to articles 1, 3, and 4.

Opening Comments

The delegation of the United States of America (the USA) was led by The Honourable Mr. Harold Hongju Koh, Legal Adviser at the Department of State. He was supported by a delegation consisting of representatives of the Department of State, the Department of Defence, the Department of Justice and the Department of Homeland Security, as well as the Ambassador, Permanent Representative of the United States of America to the United Nations and other International Organisations in Geneva.

Mr. Koh expressed his pride in the USA having an all-volunteer armed force, which meant no member had been forcibly recruited into USA Armed forces and no individual under the age of 18 would take part in direct hostilities. In its efforts abroad, the USA sought to prevent and mitigate the harms resulting from the involvement of children in armed conflict and to support rehabilitation programmes for former child soldiers. The delegation expressed the current Administration's intention to ratify the Convention on the Rights of the Child (CRC), but that this would require a majority vote in the Senate, which had until the time of the review not been possible to secure. The delegation emphasised the fact that the non-ratification did not reflect a lack of commitment to the protection of children's rights.

Ms. Lee, the Country Rapporteur, thanked the delegation for the State party's factual and legalistic report. She said that many of the Committee's previous concluding observations had been implemented, while others had not received sufficient attention from the State party. She welcomed the enactment of the Child Soldier Accountability Act and the Child Soldier Prevention Act, both of 2008. Ms. Lee expressed concern about whether the CRC would even be forwarded to the Senate for consideration.

General Measures of Implementation

Legislation

The Committee asked whether the State party would raise the age for voluntary recruitment from 17 to 18 years. The delegation expressed no such intention.

Dissemination and training

The Committee asked about the efforts undertaken by the Government to inform relevant groups – including the general public – about the provisions of the OPAC and the involvement of NGOs and the Armed Forces in these efforts. The delegation said that there was a range of programmes in place to educate law enforcement officials on the protection of children. The main tool used by the government at all levels to disseminate and educate the public on human rights was through the protection of freedom of expression and freedom of association rights.

The delegation was asked whether human rights and peace education were part of the national school curriculum. The delegation explained that there was no national curriculum, but that the Department of Education provided guidance on how to develop curricula for human rights subjects.

Data Collection

The Committee asked about available data on military recruiter irregularities.

Understandings

Although the USA had not placed any reservations on the OPAC, it had placed understandings, which the Committee considered as amounting to reservations. The Committee asked whether the understandings would be withdrawn. The State party replied that it did not believe that those understandings amounted to reservations and that it did not consider them incompatible with the objectives of the OPAC; thus, it did not intend to withdraw them.

The Committee asked for a clarification of the terms “hazardous duty pay” and “imminent danger pay”. The delegation referred to paragraph four of the State party's written replies to the Committee's list of issues and said that these terms should not be confused with taking direct part in hostilities.

Prevention

Military schools and fire arms training

With regard to the Junior Reserve Officer Training Corps (JROTC) and the USA Cadets Programmes, the Committee noted that according to the information it received, 45 per cent of children leaving these programmes were recruited into the USA Armed Forces.

Furthermore, it expressed its concern that fire arms training was offered on a voluntary basis and asked whether there were any age restrictions. The delegation said that the JROTC was not a military training programme. In marksmanship courses, air guns were being used in sporting activities, for which there was no age restriction.

Military recruiters

The Committee expressed its concern about military recruiters having access to school grounds, in particular schools receiving funding through the No Child Left Behind Act. The delegation stated that the age of high school graduation marked a point in life when young people decided whether to continue their education or to enter the working world. The State party considered the military to be a career path like any other and as such military recruiters were granted the same access to schools as other employers or universities. Recruiters were considered guests on school territory, thus bound by the rules set by the schools.

The Committee asked what measures were being taken to ensure that parents, students and schools were aware of the voluntary nature of the Armed Services Vocational Aptitude Battery (ASVAB) test. With regard to the No Child Left Behind Act and the disclosure of students' personal information to recruiters, the Committee wanted to know what measures were being taken to inform parents of the possibility to opt out of this disclosure. The delegation explained that the local education agencies were required to inform parents annually about these options.

Voluntary recruitment

The Committee recalled that there should be no recruitment of individuals under the age of 18, even voluntarily. As 17-year-olds made up approximately 5 per cent of the State party's armed forces each year, the Committee asked whether those 15,000 additional soldiers were truly necessary. The delegation answered that age consideration was not based on the need for soldiers. Recruitment was a way to present young people with additional education and character-building opportunities.

The Committee identified failure to receive parental consent as a common error by recruiters. The Committee asked what measures were being taken to involve parents throughout the recruitment process. The delegation explained that recruiters were held accountable for their practices and underwent periodic revision of their conduct. The recruitment process had safeguards built in to ensure that it was voluntary; that duties, obligations and expectations were well understood; and that parental consent was obtained for applicants aged 17, unless they were married.

The Committee asked for information on the location and the role of the three currently deployed individuals who were under the age of 18.

Non-state actors and private security companies

The Committee addressed the issue of non-state actors (forcibly) recruiting children – for instance in schools. The delegation considered it important not only to address accountability aspects, but also to address the vulnerability of children to recruitment. Keeping children in school and building strong local communities were seen as ways to reduce the vulnerability of children to forced recruitment. Initiatives and programmes of the U.S. Agency for International Development (USAID) pursued this goal.

The Committee enquired what measures were in place in active conflict zones with State party presence to monitor, report and prohibit the recruitment of children by non-state actors.

The delegation replied that in Afghanistan, the Taliban were tracked with intelligence resources and if the level of evidence permitted, there would be investigations.

The Committee asked about the laws regulating the conduct of private security companies operating abroad and whether there was any evidence of the employment of children. The Committee observed that the wages paid by private security companies could be attractive for young people. The delegation responded that besides contracts and performance standards, domestic law regulated the conduct of all firms under USA jurisdiction. The State had a Military Extraterritorial Jurisdiction Act and a number of incidents had led to a discussion about the enactment of a Civilian Extraterritorial Jurisdiction Act, which would permit extraterritorial actions to be prosecuted.

The delegation acknowledged that the difficulty was enforcing contracts and ensuring the respect of the law by firms operating in difficult conditions such as active conflict zones where there was often a lack of reliable birth certificates. The delegation said that the State party, in partnership with those States where they were involved in a conflict, had launched the Voluntary Principles on Security and Human Rights. The State party welcomed the increasing number of signatory companies to the International Code of Conduct for Private Security Service Providers. This would gradually ensure the incorporation of the rights enshrined in the OPAC on the level of contracts, rather than only on the level of criminal prosecution.

The Committee enquired whether the State party was working with international organisations such as Geneva Call, or engaging in any negotiations with non-state actors to address child recruitment. The delegation replied that the State party did not engage with non-state actors bilaterally, but worked with the International Committee of the Red Cross (ICRC) on this issue. Furthermore, it was active in the United Nations Working Group on Children and Armed Conflict and actively supported the work of the Special Representative of the Secretary General for Children and Armed Conflict.

Civilian casualties in Iraq and Afghanistan

Concerning the death of hundreds of children during conflict in Iraq and Afghanistan, the Committee asked what precautionary measures were undertaken to avoid those deaths and how those responsible were held accountable. The delegation responded that the State party made concerted efforts to prevent the number of civilian casualties. While unable to communicate specific numbers, the delegation stated that this number was currently at the lowest level ever in Afghanistan.

With reference to the case of sergeant Bales who had allegedly murdered 16 individuals in Afghanistan – among them nine children –, the Committee asked about investigations into cases of civilian victims and compensation paid to survivors. The Bales case was being treated as a criminal matter under the Foreign Claims Act and that although the State was not legally obligated to pay compensation to victims in this type of case, financial compensation and medical assistance had been provided to survivors.

The Committee asked whether there were mechanisms in conflict zones to prevent children from getting caught in cross fire and whether there was an accountability mechanism if they were.

The Child Soldier Prevention Act

With reference to the 2008 Child Soldiers Prevention Act, which prohibited specific types of military assistance to states that recruit and use child soldiers, the Committee asked whether

the State party would consider revising the Presidential waivers granted to some countries. While it did not intend to revise the existing four waivers – one of them being a partial waiver – it would consider no longer granting them in the future. These waivers were understood as leverage and were granted on a year-to-year and case-by-case basis.

Prohibition and Related Matters

Extraterritorial jurisdiction

The Committee acknowledged that the Child Soldier Accountability Act had been applied to a case in 2012, resulting in the extradition of a former Liberian military leader. The Committee expressed concern, however, that this person was now free in Liberia and had not faced criminal proceedings. The Committee asked about the application of extraterritorial jurisdiction to prevent further cases of impunity. The delegation replied that the Child Soldier Accountability Act provided jurisdiction over crimes committed elsewhere by anyone present in the State party. As such it had an extraterritorial dimension.

Protection, Recovery and Reintegration

Arrest and detention of juveniles

The delegation underlined that no juveniles were being detained in Guantanamo and that Omar Khadr was no longer in the State party's custody. The State party only detained children when absolutely necessary and for the shortest amount of time possible. The delegation explained that juvenile detainees would not be released if it was felt that the environment which they would be sent into would lead to further mistreatment and possible re-recruitment by non-state armed groups.

The Committee stated that according to its information, 200 children were currently being detained in Afghanistan and that responsibility for those children had been transferred to Afghan authority. The Committee asked whether the State party maintained any degree of responsibility and whether the juvenile detainees were held under Afghan law and what legal services were available to them. The delegation stated that there were currently less than 20 juveniles in the State party's detention facility in Parwan, all of whom were on the way to reintegration. All these detainees would be supported in their reintegration and their cases would be processed under Afghan law. The State party would continue to cooperate closely with the Afghan juvenile justice officers to ensure the protection of these children.

The Committee asked whether the children detained in State party facilities in Afghanistan received any form of protection, - such as separation from adult prisoners - and whether they received psychological support to facilitate their rehabilitation. The delegation said that juvenile prisoners were provided with psychological support as needed and that all children identified as former child soldiers were automatically assigned a psychologist.

The delegation explained that juvenile detainees under the age of 16 were held separately from adults; however, there was no strict policy of separating 16- to 18-year-olds from adults and that at some point there had been instances where these groups were held together with adults. The delegation emphasised challenges in determining the age of some detainees, but stated that in case of doubt, the detainee was treated as a child until the age could be determined.

The Committee asked whether the ICRC and other international humanitarian organisations had access to the juveniles detained in Afghanistan. The delegation replied that the ICRC had access to all detained juveniles and would specifically discuss each detainee with the detention facility personnel.

The Committee asked if there were any foreign juveniles detained in Afghanistan. The delegation answered that there were currently no non-Afghan juvenile prisoners, but that there had been in the past. The State party had negotiated their safe return to their country of origin and safe reintegration into their societies. The State party and the ICRC did follow up on this process.

The Committee asked whether the State party envisaged an independent investigation of the allegations of ill treatment and torture of juvenile detainees in Afghanistan and Guantanamo.

Immigration and asylum

The delegation was asked about the eligibility for asylum of children that had been associated with non-state armed groups, most of which the State party considered terrorist organisations. The delegation said that the State recognised that former child soldiers might face exclusion from asylum and refugee protection on account of their having participated in terrorist activities, or their having assisted in the persecution of others. There were no general exemptions applicable to former child soldiers, but there existed broad group-based exemptions. The administration was currently developing specific criteria which would remove exclusion for former child soldiers acting under duress.

The Committee emphasised that former child soldiers should be treated as victims and explained that in refusing to grant them refuge or asylum, the State would re-victimise these children. The delegation stated that this was an area where discretion was required and that while child soldiers were considered victims, some were responsible for numerous deaths and criminal acts, which would need to be factored into asylum considerations.

The Committee noted that where there was conflict between the best interests of the child and the interest of public safety and security, the latter seemed to prevail.

Concluding Remarks

Ms. Lee concluded that the dialogue contributed to closing some of the gaps in understanding the provisions of the OPAC which existed between the Committee and the delegation, while others remained. She expressed hope that the Committee's concluding observations would be disseminated among the public and made particular mention of the lack of a national school curriculum on human rights. She highlighted the importance of including peace education and the OPAC in school curricula. Finally, Ms. Lee underlined the need to accord necessary importance to the best interest of the child at national and international levels.

Mr. Koh recognised the need to strike a balance between public safety considerations and the best interest of the child, as well as the importance of education. He highlighted the significance of continued national and international coordination and cooperation, as well as partnerships with civil society. The federal system entailed both challenges and a potential for innovation in this regard.