United Nations CRC/C/OPAC/LKA/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child
Fifty-fifth session
13 September – 1 October 2010

Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Concluding observations: Sri Lanka

1. The Committee considered the initial report of Sri Lanka (CRC/C/OPAC/LKA/1) at its 1571st meeting (see CRC/C/SR.1571), held on 24 September 2010, and adopted at its 1583rd meeting (see CRC/C/SR.1583), held on 1 October 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report, although it regrets that the report does not follow the Committee's reporting guidelines under the Optional Protocol (CRC/C/OPAC/2). The Committee further welcomes the written replies of the State party (CRC/C/OPAC/LKA/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue held with the multisectoral delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations on the State party's combined third and fourth periodic report (CRC/C/LKA/CO/3-4) adopted on 1 October 2010.

I. Positive aspects

4. The Committee notes as positive that:

(a) The State party has made a declaration upon ratification of the Optional Protocol stating 18 years as the minimum age for voluntary recruitment to the armed forces;

(b) There is no conscription in the State party and that the minimum age of voluntary recruitment is 18 years without exception;

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(c) The penal code was amended (Amendment Act No. 16 of 1 January 2006) to penalize the engagement or recruitment of children for use in armed conflicts.

5. The Committee also welcomes the ratification of the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182) of the International Labour Organization on 1 March 2001.

II. General measures of implementation

Independent monitoring

6. The Committee notes with concern that the National Human Rights Commission lacks independence and has not been provided with the necessary human, financial and technical resources to carry out its responsibilities effectively. The Committee further regrets that its recommendation to the State party to consider the establishment of a bureau for children's rights within the Commission to enhance access for children has not been followed up.

7. **The Committee urges the State party to take the necessary measures to ensure the independence of the National Human Rights Commission in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Drawing attention to its general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child, the Committee also calls upon the State party to ensure that the National Human Rights Commission is provided with the necessary human, financial and technical resources to carry out its responsibilities effectively. It further urges the State party to consider establishing either a bureau for children's rights within the Commission or an ombudsman for children. The State party should ensure that the bureau or the ombudsman for children has adequate human, technical and financial resources, is accessible to all children and has the power to receive, investigate and address complaints by children, in particular those affected by conflict.**

Dissemination and awareness

8. The Committee is concerned about the very limited measures undertaken by the State party to disseminate the Optional Protocol to the public at large and children in particular.

9. **In the light of article 6, paragraph 2, of the Optional Protocol, the Committee recommends that the State party ensure that the principles and provisions of the Optional Protocol are widely disseminated to the general public and among children.**

Training

10. The Committee is concerned that relevant professional categories, in particular the military, the police and other security personnel and those working for the administration of justice, do not receive adequate training on the provisions of the Optional Protocol, as reflected by the lack of information provided by the State party in this regard.

11. **The Committee recommends that the State party strengthen the human rights training of the members of the armed forces, the police and other security personnel and those working for the administration of justice and ensure that they receive**

specific training on the provisions of the Optional Protocol. Furthermore, the Committee recommends that the State party develop awareness-raising, education and training programmes on the provisions of the Optional Protocol for relevant professional groups working with children, notably law enforcement officers, social workers, medical professionals, teachers, media professionals and local and district officials. The State party is invited to provide information in that respect in its next report.

Killings of children

12. The Committee expresses serious concern that insufficient efforts have been made by the State party to investigate the death of hundreds of children during the final five months of the conflict in 2009 as a result, in particular, of alleged shelling and aerial bombardments of civilians, hospitals, schools and humanitarian operations and deliberate deprivation of food, medical care and humanitarian assistance.

13. **The Committee strongly urges the State party to ensure that prompt, independent and impartial investigations are conducted, that those responsible for the killings of children are duly prosecuted and sanctioned with appropriate penalties and that further killings of children do not take place. To this end, the Committee urges the State party to fully cooperate with the Secretary General's advisory panel of experts on accountability in Sri Lanka which will assist the State party's Commission on Lessons Learnt and Reconciliation in establishing a credible and efficient accountability mechanism and in applying the international best practices in this regard.**

Missing children and data collection

14. The Committee notes with concern that data on children in armed conflict is almost exclusively collected through a United Nations Children's Fund (UNICEF) database established in 2003. The Committee expresses serious concern that while some progress has been made in terms of family tracing, the whereabouts of hundreds of missing children have not been clarified and that many children remain unidentified due mainly to the lack of a coordinated tracing structure and the obstacles met by humanitarian agencies, including those with specific expertise in family tracing and reunification, with regard to access to camps and transit, return and resettlement areas. The Committee is further concerned at the absence of accurate data on children who have died as a result of the conflict and the difficulties of families to obtain death certificates.

15. **The Committee urges the State party to ascertain the whereabouts of all the children whose fate remains unknown and to this end collect accurate data on all areas covered by the Optional Protocol, including children recruited and used in armed conflict, missing children, unaccompanied and separated children and reunited children. The Committee also urges the State party to guarantee full access to the north and east of the country to international and local humanitarian agencies and partners with specific expertise in family tracing and reunification programmes. The Committee further urges the State party, on the basis of data collected, to take all necessary measures to speed up the process of issuance of death certificates and to conduct DNA testing when necessary.**

III. Prevention

Prevention of recruitment by non-State forces

16. The Committee is concerned about the lack of information provided by the State party on measures to prevent the recruitment and use of children in armed conflict. The Committee is also concerned that information in the latest report of the Special Envoy of the Special Representative of the Secretary-General for children and armed conflict on re-recruitment of children in the Ampara district by a former Tamil Makkal Viduthalai Puligal (TMVP) commander could not be verified and that the State party's position that the need for such recruitment no longer exists may impede the adoption of concrete measures to prevent and inquire into possible re-recruitment. The Committee also notes that prevention efforts are hampered by the lack of child protection and child welfare services in the war-affected areas, with only a limited number of qualified officers having been deployed, equipped and funded to deal with thousands of highly vulnerable children.

17. **In the light of article 4 of the Protocol, the Committee urges the State party to take all feasible measures to eliminate the root causes of and prevent recruitment and use of persons below the age of 18 years by non-State armed groups. The Committee encourages the State party to promptly establish the village-level committees for the purpose of surveillance and prevention of recruitment of children for armed conflict as stated in its report (CRC/C/OPAC/LKA/1, para. 95). The Committee further urges the State party to include the welfare and protection of children as a priority in its reconstruction plans for the north and east and re-establish as a matter of urgency child protection and child welfare services in war-affected areas.**

Human rights and peace education

18. While noting that an assessment of the education-sector needs in the conflict-affected areas, which also covered peace education, was conducted in 2003, the Committee expresses concern at the absence of information on specific human rights education provided by the State party in the curricula of all schools at all levels, including in relation to peace education.

19. **Considering that human rights and peace education are essential to enhance a culture of peace and promote harmonious relationships which guarantee the culture of non-violence among children and the larger society, the Committee recommends that the State party take prompt and concrete measures to ensure the provision of human rights education and, in particular, peace education, for all children in school and train teachers and other professionals to help students to resolve conflict through conflict-resolution and peer-mediation training.**

Landmines

20. The Committee notes that despite efforts made by the State party in relation to demining and mine risk education, children have been and remain at high risk of being killed and maimed by anti-personnel landmines and unexploded ordinance. The Committee also expresses concern that not all internally displaced families have received mine risk education before their return to their area of origin and that mine-victim assistance remains underdeveloped.

21. **The Committee recommends that the State party:**

(a) Continue and strengthen mine-awareness campaigns and demining activities, in particular by strengthening funding for demining activities, in cooperation with humanitarian demining units as well as with demining operators from international and non-governmental organizations;

(b) Consider establishing special rehabilitation programmes for children affected by the explosion of mines and other consequences of the armed conflict and ensure that all affected children have access to such programmes through, inter alia, increased allocation of resources to centres for social work and increased coverage of the system of personal disability benefits;

(c) Ensure that internally displaced families are provided with mine risk education prior to, during and after their return and that child-friendly educational measures are implemented, in coordination with civil society, especially at the municipal level, in rural areas where landmine risks have been identified or are suspected;

(d) Consider acceding to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

IV. Prohibition and related matters

Legislation

22. While welcoming the criminalization of the engagement and recruitment of children for use in armed conflict by Penal Code (Amendment) Act No. 16 of 1 January 2006, the Committee expresses serious concern that there has been so far no prosecution under the new law and that all those who recruited and used children continue to enjoy impunity. The Committee notes with particular concern the slow progress in investigating the whereabouts of the remaining cases of children associated with the TMVP and the allegations of government officials' complicity in the recruitment of children by the Karuna group.

23. **The Committee urges the State party to establish as a matter of priority the whereabouts of the remaining cases of children associated with the TMVP as recommended by the Special Envoy of the Special Representative of the Secretary-General for children and armed conflict in his December 2009 report. The Committee also urges the State party to take more concrete steps to implement the recommendation of the Secretary-General (S/2009/325, para. 58 (c)) to ensure effective implementation of its "zero tolerance" position on child recruitment, including systematic and vigorous investigations for every reported case, followed by prosecutions and convictions of responsible perpetrators and to complete the investigation undertaken by the inter-ministerial committee on the government officials' complicity in the abduction and recruitment of children.**

Military occupation of schools

24. The Committee expresses serious concern that some schools remain occupied by the State party armed forces or are used to host "separatees". The Committee is also concerned about the deteriorated state in which school facilities are left at the end of such occupations.

25. **The Committee calls upon the State party:**

(a) To immediately discontinue military occupation and use of schools and strictly ensure compliance with humanitarian law and the principle of distinction and to cease utilizing the primary section of the V/Tamil MV school and the Omantahi Central College in Varuniya to host separatees;

(b) To ensure that school infrastructure damaged as a result of military occupation is promptly and fully restored.

Military school activities

26. The Committee welcomes the State party's assertion that the Ministry of Education oversees the administration, curricula and functioning of the Cadet Corps. However, the Committee expresses concern that the training of the Cadet Corps includes the use of firearms during marching exercises.

27. **The Committee urges the State party to ensure that training of the Cadet Corps does not include military activities. The Committee also calls upon the State party to prohibit the handling and use of firearms for all children in line with the spirit of the Optional Protocol.**

V. Protection, recovery and reintegration

Restrictions on humanitarian access for children

28. The Committee expresses deep concern about orders issued in June 2010 from the Ministry of Defence to all commanders of the Security Forces to curtail humanitarian access for virtually all United Nations agencies, international organizations and international and national non-governmental organizations at a time when internally displaced families, especially families remaining in camps, are facing food shortages and require urgent assistance.

29. **The Committee reminds the State party that international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. It therefore calls upon the State party to immediately lift unnecessary restrictions on the activities of humanitarian organizations and ensure the unimpeded delivery of assistance to internally displaced families and children requiring urgent assistance.**

Protection of victims of crime and witnesses

30. The Committee notes with concern that little progress has been made since 2008 towards the adoption of the Assistance and Protection to Victims of Crime and Witnesses Bill. As a result, there is currently no provision for witness protection in the State party, which hampers effective investigations into cases of recruitment and use of children in armed conflict. The Committee also expresses concern about cases in which persons reporting child recruitment and use in armed conflict have been subjected to reprisals, intimidation and threats. The Committee is also concerned that the draft bill contains several shortcomings and contains insufficient provisions to fully take into consideration children-specific needs.

31. **The Committee urges the State party to carefully review the shortcomings of the witness protection law which could undermine the effective protection of child victims or witnesses, in order to ensure that the law complies with internationally accepted norms and best practices relating to the protection of victims of crime and witnesses, and to expedite its adoption. The Committee also calls upon the State party to ensure that the law fully takes into account children-specific needs in terms of threat assessment, protection and assistance. The Committee further recommends that a witness-protection programme be promptly implemented and well resourced so as to include, in particular in the programme's protection division, staff specifically trained and experienced in working with children.**

Detention of children under emergency regulations

32. The Committee expresses deep concern that children suspected of security-related offenses have and may still be detained under the Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 and the Prevention of Terrorism Act. The Committee is seriously concerned these children may be detained in unpublicized places of detention for up to one year, and denied access to a lawyer, family members, a judge or any other competent authority to challenge the legitimacy of their detention.

33. **The Committee urges the State party to make further and immediate investigations to ensure that children are no longer detained under security or anti-terrorism legislations. The Committee also calls upon the State party to repeal without delay the emergency regulations which can be used to detain children outside of the regular justice system.**

34. The Committee notes the adoption of Emergency Regulation No. 1580/5 of 2008 relating to child-friendly rehabilitation and reintegration procedures for children associated with armed groups, which introduces judicial intervention in the rehabilitation and reintegration process. The Committee is however concerned that this process does not comply with the international juvenile justice standards, in particular as concerns children's rights to be assisted by a legal counsel and to challenge the lawfulness of their placement in a protective accommodation centre. The Emergency Regulation has therefore not received support from United Nations agencies.

35. **The Committee urges the State party to review the legal framework applicable to the rehabilitation and reintegration of children and ensure that children:**

(a) Are able to exercise their right to be heard, are provided with a copy of the social inquiry report and are informed about the evidence examined by the magistrates;

(b) Are allowed the assistance of a legal counsel;

(c) Can challenge the lawfulness of their detention before a higher authority and provide additional evidence in their favour.

Rehabilitation centres

36. The Committee welcomes the information given by the State party that all 667 children who underwent rehabilitation, some of whom had been held in rehabilitation centres and separated from their families for lengthy period of time, have now been released and reunited with their families. The Committee however expresses concern about the involvement of army personnel in the running of the rehabilitation programmes.

37. **The Committee urges the State party to promptly establish family and community-based rehabilitation programmes as provided for in Emergency Regulation 1580/5 and to use centre-based rehabilitation only as a last resort. The Committee also urges the State party to ensure that rehabilitation centres are managed and operated in compliance with the Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, and in particular that army personnel are no longer involved in the running of the centres.**

Criminal liability of children formerly associated with armed groups

38. The Committee notes as positive the assurances given by the State party to the Committee that children formerly associated with armed conflict, including those detained on security and terrorism-related charges, will never face prosecution. However, the Committee expresses concern that in the absence of any official document clarifying the criminal liability of children formerly associated with armed groups, the prosecution of children could still be envisaged in the application of Emergency Regulation 1462/8 of September 2006 and other security and anti-terrorism laws which equally apply to adults and children.

39. **The Committee urges the State party to consider formalizing its commitment not to prosecute children involved in armed conflict by issuing without delay a directive to all judicial authorities clearly stating that children should not be prosecuted for their association with any armed group.**

High Security Zones

40. The Committee notes the explanation given during the dialogue with the delegation of the State party that High Security Zones are maintained for conducting demining activities in war-affected areas. However, it expresses concern that thousands of families and their children remain displaced, some in transit camps, others with host families or without access to their lands, for long periods of time due to the establishment of these High Security Zones, notably in Shanthapuram and Indupuram (Mullativu and Killinochchi districts), in Silvathurai and Mullikulam (Puttalam and Mannar districts) and in Sampur (Trincomalee district) and other ad hoc sites.

41. **Drawing attention to the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, the Committee reminds the State party that all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, and that the State party shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The Committee therefore calls upon the State party to speed up the demining process of war-affected areas so as to promptly dismantle High Security Zones and ensure that families can return to their area of origin.**

Psychosocial support

42. The Committee notes as positive the establishment of a subcommittee with a multi-disciplinary membership under the supervision of the Chairman of the National Child Protection Authority to assess former child combatants in depth and to provide psychosocial support, as well as the development of Guidelines on Protective Care, Rehabilitation and Reintegration of Child Combatants. However, the Committee expresses

concern at the slow progress in providing thousands of former child soldiers with the psychosocial support they urgently need and that mental health services remain insufficient.

43. **The Committee urges the State party to strengthen available psychosocial assistance for children and to recruit more mental health workers and other specialized professional to work with child victims of conflict. The Committee encourages the State party to seek technical assistance in this domain.**

Small arms

44. While noting that the State party is committed to the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and that it established a national commission on small arms in 2004, the Committee expresses concern that the proliferation of illicit small arms in the State party continues to represent a major threat to child safety and security.

45. **The Committee urges the State party to set up, as soon as possible, a policy to eradicate and control the availability of arms, including small arms, and ensure that their sale occurs only under strict governmental control.**

VI. International assistance and cooperation

46. **In the light of Security Council resolution 1882 (2009), the Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, in particular the Office of the High Commissioner for Human Rights and UNICEF, and with non-governmental organizations and to further strengthen its cooperation with the Special Representative of the Secretary-General for children and armed conflict, in the development and implementation of measures aimed at an adequate application of the Optional Protocol.**

47. **The Committee recommends that the State party ratify the Rome Statute of the International Criminal Court.**

VII. Follow-up and dissemination

48. **The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, by, inter alia, transmitting them to the Ministry of Defence, the Supreme Court, members of the cabinet and parliament and to all relevant national and local authorities, for appropriate consideration and further action.**

49. **The Committee recommends that the initial report and written replies submitted by the State party and the related concluding observations adopted by the Committee be made widely available to the public at large, including through the Internet (but not exclusively), civil society organizations, youth groups, professional groups, including social workers, the media and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.**

VIII. Next report

50. **In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Protocol and these**

concluding observations in its next periodic report under the Convention, due on 1 October 2015. The Committee further requests the State party to submit the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography, which was due on 22 October 2008, as soon as possible.