



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### **Concluding observations on the second report of the United States of America submitted under article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, adopted by the Committee at its sixty-second session (14 January–1 February 2013)**

1. The Committee considered the second periodic report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of the United States of America (CRC/C/OPAC/USA/2) at its 1761st meeting (see CRC/C/SR.1761), held on 16 January 2013, and adopted at its 1784th meeting, held on 1 February 2013, the following concluding observations.

#### **I. Introduction**

2. The Committee welcomes the submission of the State party's second report and its written replies to the list of issues (CRC/C/OPAC/USA/Q/2/Add.1) and appreciates the constructive dialogue with the multisectoral delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's second periodic report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/USA/CO/2), adopted on 1 February 2013.

#### **II. General observations**

4. The Committee welcomes the assurances expressed by the delegation during the dialogue that "the Administration supports the treaty's goals and intends to review how it can finally move towards ratification" of the Convention on the Rights of the Child. The Committee however reiterates its previous concluding observations (CRC/C/OPSC/USA/CO/1, para. 34), and urges the State party to accelerate the ratification process to the Convention in order to improve the protection of children's rights in a comprehensive way.

##### **Positive aspects**

5. The Committee welcomes the enactment of:

- (a) The Child Soldiers Accountability Act, Public Law No. 110-340 on 3 October 2008; and

(b) The Child Soldiers Prevention Act, Public Law No. 110-457, on 23 December 2008.

6. The Committee also welcomes positive measures taken in areas relevant to the implementation of the Optional Protocol, in particular, the State Party's support to international and other organizations that combat the recruitment and use in armed conflict of children, including in non-State armed groups.

### **III. General measures of implementation**

#### **Right to life, survival and development**

7. The Committee takes note of the information provided by the State party during the dialogue that civilian casualties have decreased over the last two years. The Committee is nevertheless alarmed at reports of the death of hundreds of children as a result of attacks and air strikes by United States military forces in Afghanistan over the reporting period due notably to the reported lack of precautionary measures and indiscriminate use of force. The Committee expresses grave concern that in fact the number of casualties of children doubled from 2010 to 2011. The Committee further expresses serious concern that members of the armed forces responsible for the killings of children have not always been held accountable and that grievances of families have not been redressed.

**8. The Committee reminds the State party that it is responsible for the protection of civilians, particularly children, who should be prioritized in all military operations and that the State party should prevent civilian casualties in accordance with the principles of distinction, proportionality, necessity and precaution. The Committee urges the State party to:**

**(a) Take concrete and firm precautionary measures and prevent indiscriminate use of force to ensure that no further killings and maiming of civilians, including children, take place;**

**(b) Ensure that all allegations of violations against children perpetrated by United States military forces are investigated in a transparent, timely and independent manner, and ensure that perpetrators of those violations are brought to justice, prosecuted and sanctioned if found guilty; and**

**(c) Ensure that children and families victims of attacks and air strikes always receive redress and compensation.**

#### **Legislation**

9. The Committee, while noting the enactment of the 2008 Child Soldiers Accountability Act to better comply with the Optional Protocol, regrets, however, that the Act does not criminalize recruitment of children up to 18 years.

**10. The Committee recommends that the State Party consider amending the 2008 Child Soldiers Accountability Act to criminalize recruitment and involvement of children up to the age of 18 years.**

#### **Reservation**

11. The Committee regrets the State Party's decision to maintain its restrictive interpretations of the provisions of the Optional Protocol lodged as "understanding" at the time of ratification and in particular the restricted interpretation given to the definition of direct participation in hostilities.

**12. The Committee considers that these understandings amount to a reservation to article 1 of the Optional Protocol and therefore reiterates its previous**

**recommendation (CRC/C/OPAC/USA/CO/1, para.7, 2008) that the State Party withdraw them in the interest of improving the protection of children in situations of armed conflict.**

#### **Independent monitoring**

13. The Committee welcomes the fact that more than half of the states in the State Party have established a Child Advocate or Ombudsman Office. The Committee however regrets that the different Offices of the Child Advocate or Ombudsman vary in roles and degrees of independence, and that no progress has been made to establish an independent national human rights institution in line with the Paris Principles, to regularly monitor progress in the fulfilment of child rights under the Optional Protocol and to receive and address complaints from children.

**14. In the light of its general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2) and of the recommendations made by numerous United Nations human rights bodies on the necessary establishment of an independent national human rights institution in line with the Paris Principles, the Committee urges the State party to establish such a national independent mechanism and encourages those states that have not yet done so to set up an office of the Child Advocate or Ombudsman similarly charged to monitor the fulfilment of rights under the Optional Protocol and deal with children's complaints of violations of their rights in a child-friendly and expeditious manner.**

#### **Dissemination and awareness-raising**

15. **The Committee recommends that the State party ensure that the principles and provisions of the Optional Protocol are widely disseminated among the general public, children and their families.**

#### **Training**

16. The Committee welcomes the information provided by the State party that the Department of Defence and other agencies have incorporated training on the Optional Protocol into the annual training of military and civilian personnel working for the armed forces.

**17. The Committee encourages the State party to continue training on the Optional Protocol for all military and civilian personnel of the armed forces. It further recommends that the State party ensure that all personnel dealing with children, in particular authorities working for and with asylum-seeking and refugee children, police, lawyers, judges, military judges, medical professionals, social workers and journalists receive training on the Optional Protocol.**

#### **Data**

18. The Committee regrets the absence of information on the measures taken to establish a central data collection system in order to identify and register all children present within its jurisdiction who may have been recruited or used in hostilities, as previously recommended by the Committee (CRC/C/OPAC/USA/CO/1, para. 11, 2008). The Committee also expresses concern that the State party does not collect data specifically on asylum seekers or refugees who may have been recruited as child soldiers or used in hostilities, detained, maimed, or killed.

**19. The Committee reiterates its previous concluding observations (CRC/C/OPAC/USA/CO/1, para. 12, 2008) recommending the establishment of a central data collection system in order to identify and register all children present**

within its jurisdiction who may have been recruited or used in hostilities and ensure that data on refugee and asylum-seeking children who have been victims of such practices are properly collected. All data should be disaggregated, inter alia, by sex, age, nationality, ethnic origin and socioeconomic background. Data should also be collected on children detained, maimed or killed as a result of armed conflict.

## IV. Prevention

### Voluntary recruitment

20. The Committee expresses concern that approximately 10 per cent of recruits enrolled in the armed forces are under 18 years and regrets that the State party does not intend to raise the age of voluntary recruitment to 18 years. The Committee is also concerned that:

(a) Recruitment policies and practices, including the quota system, undermine the safeguards contained in article 3, paragraph 3, of the Optional Protocol and question the voluntary nature of the recruitment of children below the age of 18 years;

(b) Under the No Child Left Behind Act, schools are required to provide military recruiters access to secondary school students' names, addresses and telephone listings, and that parents are not always informed of their right to request not to release such information and parental or legal guardian's consent has not always been obtained, as observed in its previous concluding observations (CRC/C/OPAC/USA/CO/1, para. 15); and

(c) Parents and children are often unaware of the voluntary nature of the Armed Services Vocational Aptitude Battery (ASVAB) test organized in schools or its links to the military and that in some instances, students were reportedly informed that the test was mandatory.

**21. The Committee reiterates its previous recommendation (CRC/C/OPAC/USA/CO/1, para. 16, 2008) and recommends that the State party review and raise the current voluntary recruitment age into the armed forces to 18 years in order to promote and strengthen the protection of children through an overall higher legal standard. The Committee also recommends that the State party:**

**(a) Reconsider its recruitment policies and practices, by inter alia amending the No Child Left Behind Act and to ensure that recruitment practices do not actively target persons under the age of 18, abolish the recruiter quota system and ensure that military recruiters' access to school grounds be limited;**

**(b) Prohibit disclosure of information on students without prior parental consent and ensure that recruitment policies and practices are brought into line with the respect for privacy and integrity of children. In this regard, the Committee recommends that the State party continue and strengthen monitoring and oversight of recruiter irregularities and misconduct by effective investigation, imposition of sanctions and when necessary prosecution of recruiter misconduct;**

**(c) Ensure that schools, parents and pupils are made aware of the voluntary nature of ASVAB before consenting to participation in it; and**

**(d) Provide in its next periodic report information on the number of reported cases of recruiter irregularities and the nature of the complaints and sanctions pronounced.**

22. The Committee is seriously concerned that 17-year old service members can be deployed to "hazardous duty pay" (HDP) or "imminent danger pay" (IDP) areas where they can be requested to perform inherently dangerous duties and may be at risk of indirect or direct participation in hostilities. The Committee also expresses concern at the failure to

obtain parental signatures on underage applicants' application forms as highlighted in the 2010 Government Accountability Office report.

23. **The Committee recommends that the State party prohibit the deployment of children under 18 years to areas where HDP and IDP have been granted and to ensure parental consent for underage recruits that wish to join the United States army.**

#### **Military schools**

24. The Committee takes note of the fact that the Junior Reserve Officer Training Corps (JROTC) is a voluntary programme. The Committee is however concerned that:

(a) Children are not always properly informed that enrolment into the JROTC programme is of a voluntary nature;

(b) In some schools, this programme is used as a substitute for students enrolled in oversubscribed classes from which children cannot withdraw without losing their school credit;

(c) Children enrolled into JROTC might be trained to use weapons as recognized by the State party; and

(d) No data on children enrolled and little information on the activities undertaken, in particular on the handling of firearms, in the Army Cadet corps are available and that children as young as 11 years can be enrolled.

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

(a) **Ensure that families and children are properly informed of the voluntary nature of the JROTC programme;**

(b) **Ensure that JROTC is not used as a substitute for regular school activity;**

(c) **Ban military-type training including the use of firearms for children and ensure that any military training for children takes into account human rights principles and that the educational content be periodically monitored by the federal Department of Education as recommended by the Committee in its previous concluding observations (CRC/C/OPAC/USA/CO/1, para. 20, 2008); and**

(d) **Provide in its next periodic report data disaggregated by sex, age, nationality, ethnic origin and socioeconomic background on children enrolled in the Army Cadet corps as well as on the type of activities they undertake.**

#### **Human rights and peace education**

26. The Committee regrets that human rights and peace education, as well as knowledge of the Optional Protocol, are not specifically incorporated as a mandatory part of primary and secondary school curricula and in teachers' training programmes.

27. **The Committee recommends that the State party include human rights and peace education in the curricula of all schools, including military schools, with special reference to the Optional Protocol. The Committee further recommends that the State party consider and adopt a plan of action for the second phase (2010-2014) of the World Programme for Human Rights Education, focusing on human rights education and on human rights training for teachers and educators, law enforcement officials and military personnel (see A/HRC/15/28).**

## V. Prohibition and related matters

### Criminal legislation and regulations in force

28. The Committee expresses concern that the 2008 Child Soldiers Accountability Act only criminalizes the recruitment of children under the age of 15 years and is therefore not in compliance with article 6, paragraph 1, of the Optional Protocol.

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

(a) **Amend the 2008 Child Soldiers Accountability Act in order to criminalize the recruitment and use of children in armed conflict up to the age of 18 years; and**

(b) **Undertake a comprehensive review of all legislation affecting children and take all necessary measures to fully harmonize its legislation and national policies, with the principles and provisions of the Optional Protocol.**

30. **The Committee also reiterates its recommendation (CRC/C/OPAC/USA/CO/1, paras. 24-25) that the State party consider ratifying the following international instruments:**

(a) **The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977;**

(b) **The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977;**

(c) **The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 18 September 1997; and**

(d) **The Rome Statute of the International Criminal Court.**

### Extradition

31. The Committee notes that the State party has adopted extensive jurisdiction over the crime of recruiting or using child soldiers under the age of 15 years. The Committee, however, regrets that in March 2012, a Liberian citizen, resident in the United States, suspected of the war crime of having recruited children below 15 years and having used them in armed conflict in Liberia, was deported following the decision of an immigration judge back to his country and that this person now consequently enjoys full impunity.

32. **The Committee encourages the State party to ensure that all allegations of recruitment and use of children in armed conflict are properly investigated and that suspected perpetrators are pursued effectively and brought to justice in order to prevent and fight against impunity.**

## VI. Protection, recovery and reintegration

### Treatment of children associated with armed groups

33. In the light of its previous observation (CRC/C/OPAC/USA/CO/1, para. 28, 2008) that children had been detained over extended periods of time, in certain instances for one year or more, the Committee notes with deep concern that the State party continues to arrest and detain children in Department of Defence custody. The Committee is particularly concerned that:

- (a) Children continue to remain in detention facilities with only the International Committee of the Red Cross (ICRC) and the Afghan Independent Human Rights Commission being granted access to these children;
- (b) Children are generally denied access to legal assistance;
- (c) Alleged child soldiers have been subjected to torture and/or ill-treatment and abusive interrogations and that in the case of Omar Khadr, the judge barred the defence from presenting significant evidence of Khadr's ill-treatment while in custody;
- (d) Only children under the age of 16 are separated from adults; and
- (e) Children transferred to Afghan custody face torture and/or ill-treatment.

34. **The Committee urges the State party to:**

- (a) Ensure that all children are treated as such and are not detained together with adults but in separate facilities specifically designed for their needs;**
- (b) Investigate alleged cases of torture and/or ill-treatment of detained children in an impartial manner and ensure that perpetrators are brought to justice and sanctioned with penalties commensurate with their crimes if found guilty;**
- (c) Ensure that children are only detained as measures of last resort and for the shortest possible period of time and that in all cases alternatives to detention are given priority;**
- (d) Ensure that all children under the age of 18 be handled by the juvenile justice system in all circumstances and presume young persons to be children if in doubt regarding their age;**
- (e) Conduct investigations of accusations against detained children in a prompt and impartial manner, in accordance with fair trial standards;**
- (f) Grant immediate and unimpeded access to detained children to the United Nations Children's Fund (UNICEF) and other humanitarian agencies;**
- (g) Ensure that children in detention have access to free and independent legal advisory assistance and to an independent complaints mechanism; and**
- (h) Ensure that no child is transferred to Afghan custody if there are substantial grounds for danger of being subject to torture and ill-treatment, in particular where credible allegations or reports are pending full assessment.**

**Measures adopted to protect the rights of child victims**

35. The Committee is concerned that in accordance with the Immigration and Nationality Act (INA) § 212(d)(3)(B)(i), 8 USC § 1182(a)(3)(B)(i), children who provided "material support" to, received "military-type training" from, or fought with non-State armed groups considered to be terrorist organizations by the Department of Homeland Security are refused asylum in the State party. The Committee is also concerned that the State party does not generally grant discretionary exemptions to former child soldiers and does not intend to do so even when the children acted under duress. The Committee is further concerned that the best interests of the child do not play a direct role in determining substantive eligibility under the State party's refugee definition.

36. **The Committee, in the light of article 7 of the Optional Protocol, recommends that the State party take all appropriate measures to ensure rehabilitation and social reintegration of child victims of acts contrary to the Optional Protocol. In this regard, the Committee urges the State party to institute a discretionary exemption from the "terrorist activity" bar to allow the favourable consideration on a case-by-case basis of applications for asylum, refugee protection, or other lasting status for former child**

**soldiers who are otherwise eligible for the protection or benefit they seek. The Committee also recommends that the State party fully take into account the best interests of the child and the right of the child to have her/his best interests taken into account when making substantive eligibility determinations under the United States refugee determination.**

**Assistance for physical and psychological recovery and social reintegration**

37. The Committee is concerned that children detained in the State party's detention facilities in Afghanistan have been and remain almost totally deprived of access to education including vocational training. The Committee is also concerned about the scarcity of physical and psychological recovery measures available for detained and released children who may have been recruited or used in hostilities.

38. **The Committee urges the State party to provide all detained children under the age of 18 with access to education. The Committee reiterates its previous recommendation (CRC/C/OPAC/USA/CO/1, para. 30 (h), 2008) and also urges the State party to take all necessary measures to ensure that all children detained in Department of Defence custody have access to adequate physical and psychological recovery and social reintegration measures. Such measures should include careful assessment of the situation of these children, the provision of immediate, culturally responsive, child-sensitive and multidisciplinary assistance for their physical, psychological and emotional recovery and their social reintegration in accordance with the Optional Protocol.**

## **VII. International assistance and cooperation**

### **International cooperation**

39. **The Committee welcomes the significant financial support to international programmes aimed at preventing the recruitment of children and at reintegrating child ex-combatants into society. In this regard the Committee recommends that the State party continue and strengthen its financial support for multilateral and bilateral activities to eliminate the recruitment and use of children in armed conflict. It also urges the State party, in the light of article 7 of the Optional Protocol, to provide assistance, including technical cooperation and financial assistance, through existing multilateral, bilateral or other programmes and through a voluntary fund established in accordance with the rules of the General Assembly to provide rehabilitation and social reintegration for child victims under the Optional Protocol.**

### **Arms export and military assistance**

40. The Committee, while welcoming that the 2008 Child Soldiers Prevention Act prohibits specific types of military assistance and licences for direct commercial sales of military equipment to governments that are identified by the Secretary of State as having governmental armed forces or government supported armed groups including paramilitaries, militias, or civil defence forces that recruit and use child soldiers, expresses deep concern that :

(a) The 2008 Child Soldiers Prevention Act allows for presidential waivers of any prohibition of military assistance or equipment sales where such waivers are in the national interest of the State party, which allows the export of arms, including small arms and light weapons, to countries where children are known to be, or may potentially be, recruited or used in armed conflict and/or hostilities; and

(b) Waivers were granted to countries listed in the Report of the Secretary-General on children and armed conflict (A/66/782-S/2012/261, annexes 1-2) as recruiting

or using children, killing or maiming children, committing rape and other forms of sexual violence against children, or engaging in attacks on schools and/or hospitals in situations of armed conflict.

41. The Committee urges the State party to enact and apply full prohibition of arms exports, including small arms and light weapons as well as any kind of military assistance to countries where children are known to be, or may potentially be, recruited or used in armed conflict and/or hostilities. To this end, the State party is encouraged to review and amend the 2008 Child Soldiers Prevention Act with a view to withdrawing the possibility of allowing for presidential waivers to these countries.

## **VIII. Ratification of the Optional Protocol on a communications procedure**

42. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

## **IX. Follow-up and dissemination**

43. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations by, inter alia, transmitting them to government departments, the House of Representatives, the Senate, the Supreme Court, and to local authorities, for appropriate consideration and further action.

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

## **X. Next report**

45. In accordance with article 8, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next combined third and fourth periodic report due on 23 January 2016.

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