

INFORMATION NOTE

2nd periodic report of *the United States of America* during the 62nd session of the United Nations Committee on the Rights of the Child

Optional Protocol on the Involvement of Children in Armed Conflict

Summary of juvenile justice related issues

Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-AC), by the United States: December 23rd, 2002

Previous report presented in: May/2007 (48th session of the CRC).

1.1 JUVENILE JUSTICE - KEY ISSUES

I) Legislation:

The Child Soldier Prevention Act came into force in 2008, but a possibility remains for the President to waive the provisions of this Act, thus allowing military assistance to governments using child soldiers despite its prohibition upheld within the Act. The delegation assured the Committee that the United States did not consider using such waiver in the future. These waivers were granted on a case-by-case basis and should not be construed as a free pass.

The United States does not intend to withdraw its understandings on Article 1 of the Optional Protocol and does not consider those as reservations nor as incompatible with the Optional Protocol.

The Child Soldiers Accountability Act of 2008 allows for extraterritorial jurisdiction for crimes committed outside of the United States.

The minimum age at which the United States permits voluntary recruitment into the Armed Forces is 17 years of age. The Delegation stated that their annual recruitment included 17 year olds (total of 5%).

II) Minimum age of criminal responsibility:

Not mentioned

III) Number of children and length of detention:

a) Access to data:

- No
 Yes : *(specify)*

The Committee addressed the question of the detention of children in Guantànamo and Afghanistan and noted that 200 children were allegedly being detained in Afghanistan. The Committee inquired into the possibility that the United States envisages independent investigations regarding such allegations. The delegation assured that less than 20 children were now being detained in Afghanistan.

With regard to the situation in Guantànamo, the delegation referred to the current changing circumstances and to the fact that no juveniles are now detained in Guantànamo. Omar Khadr, for instance, was repatriated to Canada in September 2012 after 10 years spent in Guantànamo (where he was imprisoned in 2002 at the age of 15).

As for the length of detention, the delegation emphasized the fact that the United States had no desire to detain juveniles and has done so only when absolutely necessary and for the shortest period of time possible. No specific duration was mentioned. However, the delegation noted that the issue was not the duration of detention but rather the transfer of juvenile detainees to an appropriate environment where they can be provided with adequate support.

IV) Trial conditions:

The Committee inquired as to whether the United States retained some responsibility over the legal situation of detained juveniles transferred to the Afghan authorities, and whether these children were solely prosecuted under Afghan law. The delegation confirmed that juveniles were indeed prosecuted by an Afghan court.

V) Detention conditions

In relation to detention facilities in Afghanistan, the Delegation stated that detention was sometimes considered as the juveniles' only hope as their release carried the risk that they go back to being enlisted by the Talibans. Reintegration programs prohibit this from occurring.

a) In general (access to health, education, etc.):

The Committee expressed its concern that children in detention were denied access to special care. The Delegation assured that all juvenile detainees were given appropriate care and had access to psychiatric and psychological counselling.

b) Pre-trial detention:

Not mentioned

c) Separation from adults:

The Committee was also concerned that detained children between the age of 16 and 18 were not separated from adults and thus lacking the required special treatment.

Despite the lack of strict policy to separate children from adults, the delegation maintained that all children were treated differently from adults and were indeed separated from them, including those above the age of 16. If those were once detained with adults, it was only because that group of juveniles between the age of 16 and 18 represented a threat to the younger ones and had to be separated from them. The Delegation added that child soldiers usually ended up being the most violent detainees due to their previous enlistment and training by the Talibans.

VI) Preventive measures:

Not mentioned

VII) Alternative measures:

Not mentioned

VIII) Re-adaptation / reinsertion of children:

The Committee was concerned that detained children were denied access to rehabilitation facilities and recovering measures. The Delegation assured that when juveniles are detained, measures are taken to promote their social reintegration into society. Juveniles under the age of 18 are either reintegrated or in the Afghan juvenile court system.

IX) Training of professionals:

Not mentioned

X) Role of the media:

Not mentioned

XI) Child participation and sensibilization:

The Committee noted the lack of efforts on the part of the United States to direct awareness-raising toward children and teachers. This is predominantly taken care of by NGOs.

XII) Post-detention conditions

The Delegation assured that there are no foreign nationals currently detained in Afghanistan, and that when previously this was the case, the United States had made efforts to take them back to their home countries and negotiate for them to be treated in good conditions upon return and prevent repetition of their acts. The United States requires follow-up information on these juveniles, and the International Committee of the Red Cross (ICRC) also follows up on them.

The delegation specified that they do not detain children intentionally, but when they do detain them, they do not transfer them to places where they are likely to be mistreated. They do not send them back to their villages without first having a discussion with the village holders and parents. They enlist village holders to ensure that the child is not made into a fighter by the Talibans.

The Delegation also assured that if the juvenile detainees were not in the category of clearly associating themselves with combating with the Talibans, they were released immediately.

XIV) Other relevant areas:

Organisations such as the International Committee of the Red Cross (ICRC) have access to conflict zones and to children in detention there.

1.2. GENERAL OBSTACLES:

One of the difficulties raised by the Delegation was the identification of child soldiers as children by the military forces, as they are not always aware of their age at the time of their arrest.

As a general comment, the delegation stated that Talibans were recruiting juveniles more and more because they are aware of the difficulties the United States has with the detention of children.

1.3. INTERAGENCY PANEL ON JUVENILE JUSTICE: Did the Committee ask any questions in relation to technical advice and assistance in juvenile justice or if they mention the Panel in any way?

No

Yes : *(specify)*

2. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

(please use bullet points or give title to paragraphs in order to facilitate the reading)

- The Committee noted that the best interest of the child seemed to prevail on a rather exceptional basis over the general public interest and public security;
- The Committee recommended the prohibition of recruitment, even voluntarily, for all persons under the age of 18.

3. (Only if the country has a DCI-section): DCI perspective/response

- info on what DCI sections do on these issues
- recommendations by DCI sections

(to get this information, send the report to the National section and ask them if they have any information for this part).

Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of *country name*.
- United Nations Committee on the Rights of the Child. Initial report and 2nd/3rd periodic reports of *country name* (State reports).
- *country name* NGOs' Working Group 'on Protection of Children Rights', (Alternative report)

4. ANNEX:

5.1. CRC members present

- Ms. Agnes Akosua Aidoo
- Ms. Hadeel Al-Asmar
- Mr. Aseil Al-Shehail
- Mr. Jorge Cardona Llorens
- Mr. Bernard Gastaud
- Mr. Peter Guràn
- Ms. Maria Herczog
- Mr. Sanphasit Koompraphant
- Mr. Hatem Kotrane
- Ms. Yanghee Lee
- Mr. Gehad Madi
- Ms. Marta Mauras Perez

- Ms. Pilar Nores
- Mr. Awich Pollar
- Ms. Kirsten Sandberg
- Ms. Kamla Devi Varmah
- Ms. Hiranthi Wijemanne
- Mr. Jean Zermatten

5.2. Composition of country delegation

- Mr. Harold Hongju Koh, Legal Adviser, Department of State, Head of delegation
- Ambassador Betty King, Permanent Representative of the United States of America to the United Nations and Other International Organizations in Geneva
- Mr. Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Department of State
- Mr. Christopher Arendt, Deputy Director, Accession Policy, Department of Defense
- Mrs. Evelyn Aswad, Assistant Legal Adviser for Human Rights and Refugees, Office of the Legal Adviser, Department of State
- Mr. Daniel Baer, Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State
- Mrs. Theresa Bridgeman, Attorney-Adviser, Office of the Legal Adviser, Department of State
- Mrs. Sally Cummins, Contract Attorney, Office of the Legal Adviser, Department of State, Washington, District of Columbia
- Mrs Anne Gannon, National Strategy Coordinator for Child Exploitation Prevention and Interdiction, Department of Justice
- Mrs Alice Hill, Senior Counselor, Department of Homeland Security
- Mrs Tara Jones, Director, Rule of Law and Detainee Policy, Office of the Undersecretary of Defense for Policy, Department of Defense
- Mr. Gary King, Attorney General, State of New Mexico
- Mrs. Catherine Cortez Masto, Attorney General, State of Nevada
- Mr. Kevin Washburn, Assistant Secretary for Indian Affairs at the Department of the Interior