

COMMITTEE ON THE RIGHTS OF THE CHILD

43rd Session (Geneva, 11 September – 29 September 2006)

Kazakhstan (initial report on the Optional Protocol on the involvement of children in armed conflict)

Information submitted to the Committee

Kazakhstan submitted its initial report on its implementation of the *Optional Protocol on the involvement of children in armed conflict* (OPAC) due in 2005 along with the written answers to the Committee on the Rights of the Child's (the Committee) list of issues¹. Unfortunately the answers were only available in Russian when the meeting was convened. The very short report is mainly focused on the domestic legislation relating to the different provisions of the OPAC. The report also described different initiatives to disseminate the provisions of the OPAC to the general public.

Parallel reports were submitted by the Child Helpline International and by the Working Group 'on Protection of Children Rights' of Kazakh NGOs.² These reports focused on the need for a child helpline; children refugees and access to education. Information from NGOs were examined during the 43rd pre-sessional working group.

Kazakhstan has ratified the Convention on the Rights of the Child (the Convention); the Optional Protocol on sale of children, child prostitution and child pornography (OPSA); and the Optional Protocol on the involvement of children in armed conflict (OPAC). Kazakhstan has made declarations under Article 3 paragraph 2 of the OPAC. This declaration states that the minimum age for voluntary recruitment for military service is 19.

Themes and Issues

Legislative implementation of the OPAC

The Committee expressed its interest in a number of different issues relating to the relationship between international law and domestic law in Kazakhstan. Mr. Hatem Kotrane enquired about the OPAC's status in domestic law and more specifically if the OPAC could be invoked directly before domestic courts. The issue of **extraterritorial jurisdiction** was also addressed by several members. These members were especially interested in whether unlawful recruitment of Kazakh children for other armed groups or forces and the unlawful recruitment of children by Kazakhs outside the State territory is punishable under domestic law. In this regard the Committee was especially worried about countries requiring 'dual criminality'³ in order for extraterritorial violations to be punishable. Without getting into the underlying principles of these questions, the delegation replied that international law is widely referred to in domestic legislation and the Constitution explicitly refers to the primacy of international obligations over domestic law. Regarding questions of

¹ The state report, list of issues, answers to the list of issues, General Comments, and the concluding observations of the Committee as well as the reservations, declarations and understanding of the State party are available at:

<http://www.ohchr.org/english/bodies/crc/crcs43.htm>

² NGO reports are available on the Child Rights Information Network at:

<http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp>

³ The principle of dual criminality provides that in order for a crime committed outside the territory of the State to be punishable it has to be criminalised both within the territory of the State and on the territory of the State where the crime was committed.

extraterritoriality, the delegation replied that both examples would be punishable under domestic law. While the Committee seemed to be looking for information on Kazakhstan's view on principles such as 'dual criminality' and direct applicability of international law, the delegation seemed to take the questions very literally. In its concluding observations the Committee reiterated its concern about the lack of legal provisions stipulating extraterritorial jurisdiction.

On a related subject, several Committee members sought an explanation for why Kazakhstan has not ratified the [*Rome Statute of the International Criminal Court*](#). The delegation replied that it had been involved in the negotiations but had not acceded in time. As some domestic law is not yet in compliance with the *Rome Statute of the International Criminal Court*, ratification is not possible. However, Kazakhstan is in the process of making its domestic law comply. The Committee concluded by recommending that the State party ratify the Rome Statute as this can significantly contribute to the prevention and elimination of recruitment of children in armed conflict.

Refugees

A number of issues relating to refugees were addressed by the Committee during this meeting. The Committee was concerned with the high number of persons especially from neighbouring countries who are not granted **refugee status**. Another main issue of concern was the lack of assistance given to refugees once they are in Kazakhstan. The Committee especially enquired on the delay in adopting the draft *Refugee Act*. The delegation explained that due to a Commonwealth of Independent States (CIS) agreement, nationals of member States cannot receive refugee status in other CIS countries. However, these persons have the option of applying for citizenship. Regarding the issue of assistance to refugees, the delegation explained that the law was still under consideration. However, refugee children have the same rights as Kazakh children and as of 1 July 2006. Education assistance has been given as well. Due to the current economic growth in the country, Kazakhstan is now ready to consider establishing more comprehensive programs to assist refugees. In its concluding observations, the Committee issued a number of specific recommendations relating to both physical and psychological recovery and social reintegration of children. Most noticeably, the Committee requested that the State party ensure that child refugees were given some status guaranteeing their social reintegration and equal access to education, health care and social services. The Committee also referred to its General Comment No. 6 on treatment of unaccompanied children.

Military Schools

The Committee asked a number of questions regarding **military schools**.⁴ The Committee especially focused on the issues of military training of minors, indoctrination of students, the use of disciplinary sanctions and harassment of students. The Committee was concerned that giving military training as a part of the curriculum in these schools would nullify the minimum age for recruitment in the army. Another concern was that the military schools would indoctrinate students to pursue a career in the military. The Committee also enquired about cases of harassment of students and whether disciplinary sanctions were used on them. The delegation explained that the students are not given practical military training. The training consists of physical training and theoretical weapons training. No disciplinary sanctions are used on students just as there have been no cases of harassment in recent years. Regarding the question of indoctrination, the delegation did not feel that this was the case. It also noted that the military schools are very popular amongst children and have a large number of applicants. Taking note of the explanation of the State party, the Committee expressed the need for independent complaints and investigations mechanisms to ensure the rightful treatment of students in all aspects of their education.

⁴ According to paragraph 13 of the State report, the objective of the military schools is to provide secondary education and intensive military training.

Conclusions and next steps

During the meeting the Committee addressed a broad range of issues relating to children and armed conflict and the delegation generally gave detailed answers to most questions. The very interactive discussion was generally conducted in a positive spirit and the Committee managed to explore areas of interest in a comprehensive way.

Towards the end of the meeting, the Chairperson, Mr. Jacob Egbert Doek, expressed his views on Kazakhstan's compliance with the OPAC following the answers provided by the State party. Mr. Doek concluded that on most issues the delegation had sufficiently clarified the situation in Kazakhstan and the Committee seemed satisfied with the explanations provided. However, the Committee remained concerned on the issue of refugee status.

In its concluding observations, the Committee commented on most of the issues taken up during the meeting. Building on the outcomes of this meeting, the Committee gave recommendations on how Kazakhstan could improve the situation of children in relation to armed conflict. While the recommendations regarding extraterritorial jurisdiction and the situation of child refugees were the most elaborate and critical, the Committee maintained a positive spirit with the aim of immediately improving the situation in Kazakhstan.

The Committee concluded by asking the State party to disseminate the Committee's conclusions to relevant ministers and public officials in order to ensure the most effective implementation.