

COMMITTEE ON THE RIGHTS OF THE CHILD

Corporal punishment, torture, and juvenile justice raise controversy during State reviews



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Mother and child in Japan. The Committee on the Rights of the Child reviewed 18 State reports during its 54th session in May-June 2010, including Japan.

The Committee on the Rights of the Child (the Committee) met in Geneva from 25 May to 11 June 2010 for its 54th session and from 14 to 18 June for its 55th pre-session. In addition to reviewing 18 State party reports during the 54th session, it also discussed its treaty-specific guidelines and three general comments, and followed the elaboration of a new optional protocol for a communications procedure. During the 55th pre-session the Committee conducted a preliminary review of State party reports and the alternative reports in the presence of NGOs and certain UN agencies. Both sessions were held in parallel chambers of nine Committee members each. The two chambers will be maintained until September 2010, after which the Committee will meet in one chamber once again.

During the 44th session, the Committee examined Argentina (CRC, OPSC and OPAC), Belgium (CRC and OPSC), Colombia (OPAC and OPSC), Grenada (CRC), Japan (CRC, OPSC and OPAC), Nigeria (CRC), the Former Yugoslav Republic of Macedonia (CRC, OPSC and OPAC), Serbia (OPSC and OPAC), and Tunisia (CRC). It was due to review the report of Guatemala, but the session was postponed until September due to natural disasters in the country.

The work of the Committee was hampered by delays in translation. The Committee consistently raises concerns about the impact of late translations on its work, especially since the situation appears to be worsening. For instance, the written replies for Colombia were not translated in time for the dialogue with the State. Given the seriousness of the issues under the OPAC and OPSC in Colombia, the Committee considered postponing the session to allow time for translation.¹ In the end, it decided to spend one of its closed meetings getting the document translated orally.

NGO PARTICIPATION IN THE SESSION AND PRE-SESSION

Although NGOs can only participate as observers in the session, there was a high turnout of national NGOs from Argentina, Belgium, Colombia, FYR of Macedonia, Grenada, Japan, and Serbia. Japan saw record NGO participation with over 130 persons attending the session. This resulted in creative logistical arrangements, including a second room for the overspill and shifts to attend the session.

The reactions from State delegations to the presence of national NGOs varied greatly. Some States such as Nigeria, Grenada, Belgium, Serbia, and Japan specifically mentioned the NGOs present and the work they do, while others such as Colombia and Argentina appeared to be surprised to see national NGOs at this international meeting. Due to their limited human and financial

¹ The first examination of implementation of the Optional Protocols is particularly important because only then does the Committee do an in-depth and detailed review.

resources to implement the CRC, the delegations of Grenada and Nigeria noted their reliance on NGOs or the UN Children's Fund (UNICEF) to provide services to children.

As the pre-session takes place three months before the relevant session, most NGOs send larger delegations to the pre-session, where they are the Committee's main interlocutors for the preparation of upcoming State examinations. National NGOs from Burundi, Bosnia and Herzegovina, Mexico, Montenegro, Nicaragua, Spain, Sri Lanka, Sudan, and Ukraine attended the 55th pre-session.² There were no NGOs from Angola, as they preferred not to engage in the reporting process.

How to participate in the CRC reporting process

The NGO Group for the CRC facilitates the effective participation of national and international NGOs in the reporting process of the CRC and its Optional Protocols. If you would like to find out more about the process, please contact the NGO Group secretariat at: secretariat@childrightsnet.org.

We are currently looking for information on Cuba and Lao PDR for the October pre-session. If your organisation works in either of these countries and is willing to prepare an alternative report on the CRC, please write to myers@childrightsnet.org.

COMPOSITION AND PERFORMANCE OF STATE DELEGATIONS

With the exception of Grenada, which sent a two person delegation, States sent large, senior and varied delegations (e.g. Argentina, Belgium, Colombia, Japan and FYR of Macedonia). While the delegations often covered all the areas of the CRC and its OPs, the absence of certain key State actors was visible in the delegations of Serbia (no Ministry of Education), FYR of Macedonia (no representatives from the Department for Social Centres and the Ministry of Finance), and Belgium. Colombia, Japan, and Serbia sent representatives from the Ministry of Defence to discuss the OPAC. Some delegations also included 'resource persons' who are non-State representative (Argentina and Nigeria), and a child representative from the Children's Parliament (Nigeria). The Colombian delegation manoeuvred through questions on child soldiers with considerable ease. While admitting that the disarmament process was not perfect, it asked the Committee to demand that armed groups stop using children in armed conflict. Meanwhile the delegations from Argentina, Serbia, and Tunisia often only provided general answers to the more sensitive issues.

THEMES

To cover the issues in the three treaties, the Committee uses a system of clusters. This section will only cover a few themes which were discussed.³

² The NGO reports which have been made public can be found on the NGO Group and CRIN alternative report database, see www.crin.org/NGOGroupforCRC/search.asp.

³ For more detailed information, and reports on each country exam-

General measures of implementation

The challenge of translating the CRC and its Optional Protocols into national legislation, policies, and programmes was discussed at length. In some cases, the CRC was considered to be a 'vision for children's rights' for the legislative framework, rather than a legal instrument (Japan). Other countries, such as Argentina and Nigeria, had developed comprehensive children's codes or legislation. The Committee was particularly concerned by the fact that some federate States had not adopted specific child rights legislation, which led to different standards and levels of implementation throughout the country. The federal or community structures were discussed at length in relation to Argentina, Belgium and Nigeria, as the delegations struggled to provide clear answers on the harmonisation of legislation, coordination, and provision of financial resources.

A common problem for most of the States in implementing the CRC was coordination. Belgium had a coordinating body, but it was challenging to coordinate the different communities. Meanwhile, in most other States, children's issues were dispersed amongst different ministries or buried in an under-resourced ministry, such as the Ministry of Women's Affairs in Nigeria. This led to scattered budgets for children and weak data collection, which made it difficult to assess the implementation of the CRC.

When it came to the Optional Protocols, especially the OPSC, there had been limited efforts to incorporate them into national legislation. Due to the misinterpretation of the term 'sale' which was confused with 'trafficking' (including by Argentina, Belgium, Colombia, and Serbia), the offences related to sale of children were not fully covered under penal law and data was therefore not collected on the offences relevant to the OPSC.

Definition of a child and birth registration

There were many inconsistencies when it came to the definition of the child. For instance, while Nigeria's Child Rights Act (2003) defined a child as a person under 18, some of its federate states had used the age of 16 to define a child. There were also many discrepancies in the age of sexual consent (13 years old in Japan), marriage for girls and boys, criminal responsibility (seven years old in Grenada), and age of voluntary recruitment to the armed forces.

The issue of definition was not helped by the lack of free universal birth registration in certain countries. For instance, in Grenada birth registration was related to religious rituals such as baptism. If parents were not of the dominant religion or non-practicing, children could go unregistered. The issue of unregistered children was of even greater concern when the death penalty existed (Nigeria), and when undocumented children were at risk of being conscripted into the army (Colombia). By not being able to prove their age, children were being tried or treated as adults.

ined, see www.childrightsnet.org.

Civil and political rights and juvenile justice

While States spoke openly and at length about children’s access to health and education, they were less receptive to discussing corporal punishment, torture, and juvenile justice. The Committee covered these issues in depth during the reviews of Argentina, Colombia, Japan, Grenada, Nigeria, and Tunisia. Some of the more contentious issues included: the length of pre-trial detention (e.g. Argentina, Tunisia, Japan); heavy sentences for children (life sentences in Argentina); ill-adapted detention facilities for youth and detention with adults (e.g. FYR of Macedonia, Grenada, Nigeria); use of corporal punishment in detention (e.g. Grenada); low or lowering of the age of criminal responsibility (e.g. Argentina, Grenada, Japan, FYR of Macedonia); and inhumane and degrading treatment of children (e.g. Argentina, Nigeria, Tunisia). Argentina reacted strongly to allegations of ill-treatment and torture and emphasised its zero tolerance of torture. Meanwhile, the Committee was concerned by allegations of the unwillingness of the police or judges to register complaints of children (of human rights defenders or political opponents) who were ill-treated or tortured in Tunisia.

OTHER DEVELOPMENTS

General Comments and guidelines

Some progress was made in developing the new general comments and treaty-specific guidelines. The Committee reviewed a draft of the guidelines for the CRC and its Optional Protocols.

A third draft of the general comment on the abuse and neglect of children (Article 19), which was the initiative of a group of NGOs, will be discussed by the Committee in its 55th session in September 2010. The Committee is also working on a General Comment on the best interest of the child (Article 3). The Committee’s interpretation of this article is anticipated, as it often appears to be misunderstood or misused. Public authorities, families, and professionals working with children, while often well-intentioned, have used the argument of the best interests of the child in ways that contravene other rights under the Convention. In addition, the Committee together with CEDAW have been drafting a joint General Comment on harmful traditional practices.

Day of general discussion

As the Committee is taking advantage of the two chambers to examine as many reports as possible, it will not be holding its usual day of general discussion in September. The Committee will decide about the 2011 day of general discussion during its 55th session.

Changes in the Committee’s composition and upcoming elections

Ms Moushira Khattab, the Committee member from Egypt officially stood down before the session as she had become the Minister of State for Family and Population. The Committee officially approved the appointment of Ms Azza El Ashmawy to

see out the mandate of Ms Khattab which is due to expire in February 2011.

The next elections of Committee members will be on 21 December 2010. To achieve a high level of expertise among the members and ensure the broadest representation of different regions and legal systems, the NGO Group has written to States parties. It is also collaborating with NGOs in different regions to ensure the nomination of highly qualified candidates from every region.

To find out more about the nominees, visit the OHCHR website at:

www2.ohchr.org/english/bodies/crc/elections13th.htm. ■

The NGO Group for the CRC is a global network of 77 national and international NGOs that works through its Secretariat and thematic working groups to promote the monitoring and implementation of the UN Convention on the Rights of the Child and its two Optional Protocols. The NGO Group provides a coordinated platform for NGO action in relation to the Committee on the Rights of the Child and plays a central role in key child rights developments at the international level.

For more information about the NGO Group for the CRC and its activities: www.childrightsnet.org.

Facts about the Committee	
Number of members:	18
Treaties it covers:	<i>Convention on the Rights of the Child (CRC), Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and Optional Protocol on the Involvement of Children in Armed Conflict (OPAC)</i>
Total number of ratifications:	462: CRC 193, OPAC 132, OPSC 137
NGO participation:	With a three-hour pre-session per country, the Committee has one of the best models for NGO involvement in the reporting process
General Comments:	12 adopted and 3 under development