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# COMMITTEE ON THE RIGHTS OF THE CHILD

Focus on the Sale of Children, Child Prostitution and Child Pornography; and on Involvement of Children in Armed Conflict



Photo: Anne Norman

The 55<sup>th</sup> session of the Committee on the Rights of the Child (the Committee) was the last of three sessions in two chambers to help reduce the backlog in reports. From 13 September to 1 October 2010, the Committee examined 18 State party reports from the following States: Angola (CRC), Bosnia and Herzegovina (OPSC and OPAC), Burundi (CRC), Guatemala (CRC), Montenegro (CRC, OPSC and OPAC), Nicaragua (CRC, OPSC and OPAC), Sierra Leone (OPSC and OPAC), Spain (CRC), Sri Lanka (CRC and OPAC) and Sudan (CRC and OPAC).

Having resumed its work in one chamber for the 56<sup>th</sup> pre-sessional working group (4 to 8 October 2010), the Committee conducted a preliminary review of 10 reports in the presence of NGOs and/or UNICEF and other UN agencies. The reports included Afghanistan (CRC), Bahrain (CRC), Belarus (CRC, OPSC and OPAC), Cuba (CRC), Denmark (CRC), Lao PDR (CRC), New Zealand (CRC), and Singapore (CRC).

Given the backlog of reports pending examination, the State party reports are often out-of-date by the time they are reviewed by the Committee. The list of issues and the States' written replies therefore provide an essential up-date for the Committee. However, due to delays in translation, the information is not always available for the Committee in time for the session. In an attempt to address these delays, the Committee has begun bringing two countries, which submit their documents in languages other than English, forward for each pre-session. For instance, Bahrain and Cuba were brought forward for the 56<sup>th</sup> pre-session, but will only be examined in the 57<sup>th</sup> session in June 2011.

Other significant developments which have taken place since the end of the session include the elections of Committee members, as well as the first round of negotiations of a draft Optional Protocol for a communications procedure under the CRC.

## NGO PARTICIPATION IN THE SESSION AND PRE-SESSION

The 55<sup>th</sup> session saw a high turnout of national NGOs, with representatives from Bosnia and Herzegovina, Burundi, Guatemala, Montenegro, Nicaragua, Sierra Leone, Spain, Sri Lanka, and Sudan observing the meeting.

Thanks to the existence of active child rights coalitions and NGOs in most States Parties, the Committee usually sees high participation of NGOs during the pre-session. However, the 56<sup>th</sup> pre-session saw an unusually low participation of NGOs to discuss the implementation of the CRC and/or its Optional Protocols. There were only national and/or international NGOs present for Afghanistan, Belarus, Denmark, New Zealand, and Singapore. Meanwhile, no NGOs were present to discuss Bahrain, Cuba or Lao PDR, as NGOs either preferred not to engage in the reporting process or there were no independent national NGOs present in the country.

## COMPOSITION AND PERFORMANCE OF STATE DELEGATIONS

With the exception of Sierra Leone and Burundi, which sent two- and four-person delegations respectively, State delegations were medium to large in size. In the case of Sierra Leone, only one representative, who was ill-equipped to answer questions, was present in the morning. He was joined by a minister in the afternoon, who, while able to answer a number of questions,

could not cover the necessary details in the OPSC and OPAC. Meanwhile, Montenegro was reporting for the first time since its independence, which was noticeable in its reaction to the many questions early on in the session. The State had brought its own interpreters, which might have also hampered the dialogue.

Many delegations included ministers (Angola, Burundi, Montenegro, Nicaragua, Sierra Leone and Sudan), who in some cases were the main representatives to respond to the questions (e.g. Burundi and Sierra Leone). In some cases, the ministers appeared to be the most knowledgeable members of the delegation. In others it appeared ministers may have been responding to most questions for political reasons (e.g. Burundi and Nicaragua). In the case of Sri Lanka, the head of the delegation was a consultant. While she was knowledgeable about child rights, the Committee questioned the commitment of the Government to child rights, given the head of the delegation was not an employee of the State. The absence of certain key State actors was visible in the delegations of Spain (ministry of economy not represented), Burundi (ministries of education and labour), Sudan (ministries of health, education and social welfare), and Sri Lanka (ministries of education, health and defence). Virtually no States sent representatives from their ministries of defence to discuss the OPAC, with the exception of Montenegro. The absence was especially noticeable for countries that had emerged from conflict where child soldiers had been used (Sri Lanka and Sierra Leone) and ones where there was an ongoing conflict (Sudan).

In view of the referendum in January 2011, it is noteworthy that a representative from South Sudan arrived on the second day of the session. She presented the current situation in South Sudan as though it was a different country from that presented by the Khartoum government. The written replies from Sudan had included a section in Arabic (from the North) and a section in English (from the South).

## THEMES

Ten of the 18 reports examined during the 55<sup>th</sup> session covered the OPSC or OPAC. This section will therefore focus on themes relevant to the two Protocols. Comprehensive country reports on all States under review can be found on [www.childrightsnet.org](http://www.childrightsnet.org).

### Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

One of the main issues related to the OPSC in the States under review was that the definitions of the crimes covered by the treaty were not incorporated into their penal law and could therefore not be invoked by national courts (Bosnia and Herzegovina, Montenegro, Nicaragua, and Sierra Leone). In some cases this was linked to confusion between the term 'sale' and 'trafficking'.

In addition to the existing legislation not fully complying with the OPSC, this problem also had an impact on data collection, with none of the States under review having data on all the different forms of sale. In some cases, the States appeared to be unaware of cases of sale or trafficking, as NGOs, not the State, provided services to child victims (e.g. Montenegro and Sierra Leone).

Other key issues discussed were birth registration (Bosnia and Herzegovina and Sierra Leone), media law and the confidentiality of child victims (Sierra Leone), the rehabilitation of victims and efforts to avoid revictimisation. In order to avoid revictimisation, the Nicaraguan delegation explained its legislation did not use the term 'pornography' when referring to children (which the Committee questioned). The delegation also noted that the local culture did not recognise many of the 'activities' covered by the OPSC as crimes, so these offences were unlikely to be reported.

### Optional Protocol on the Involvement of Children in Armed Conflict

The discussions around OPAC were particularly sensitive for some of the countries under review, as they had either been affected by armed conflict in the recent past (Bosnia and Herzegovina, Sierra Leone and Sri Lanka) or had ongoing conflict (Sudan). Furthermore, child soldiers had been used in certain countries (Sierra Leone, Sri Lanka and Sudan). One of the main issues in all countries under review was that the OPAC was often unknown to the military and the general population.

According to the OPAC, children under 18 years of age cannot be forcibly recruited by the armed forces or by non-state armed groups (although they can be voluntarily recruited by the armed forces). In Sierra Leone, Sudan and Montenegro, existing legislation did not cover the crime of non-state actors recruiting children. In Sierra Leone and Montenegro, the delegations explained that there were no non-state armed groups and children could not be recruited into the armed forces. The issue of birth registration was also brought up, as children were more likely to be recruited in countries where birth registration was limited (e.g. Sierra Leone and Sudan). Another issue in some countries was military schools, where military personnel appeared to be involved in teaching children (e.g. Sierra Leone and Sudan).

The Committee focused on the reintegration and rehabilitation of former child soldiers (Bosnia and Herzegovina, Sierra Leone, Sri Lanka and Sudan) and the measures taken to avoid the prosecution of these children (Sri Lanka and Sudan). The safeguards in place for former child soldiers were discussed at length in relation to Sri Lanka and Sudan. They included the protection of witnesses, verifying the age of detainees to help ensure children were not imprisoned with adults, and whether the age of recruitment or surrender was taken into account in prosecution. In relation to Sri Lanka and Sudan, the Committee was particularly concerned about the prosecution of children who were involved in armed conflicts (focusing on a recent

case in Sudan), and the lack of data on children in camps, rehabilitated or returned to their homes. There was also concern at the apparent impunity of people who had recruited children (only two cases had been brought forward in Sri Lanka). Both in Sudan and Sri Lanka, the Committee had particular concerns about former child soldiers being re-recruited.

## FIRST ROUND OF DISCUSSIONS ON THE DRAFT OPTIONAL PROTOCOL TO THE CRC

From 6 to 10 December 2010, the Open-ended Working Group (Working Group) on an Optional Protocol (OP) to the CRC establishing a communications procedure met in Geneva. The meeting took place at the same time as the 'Bangkok Retreat', organised by Thailand in the context of the review of the Human Rights Council (the Council). Despite this, more than 50 delegations from all regions held lively discussions about the legal provisions of the OP. The Chair and the Vice-Chair of the Committee on the Rights of the Child, Ms Yanghee Lee and Mr Jean Zermatten, as well as an international child rights expert, Mr Peter Newell, were also present to provide expert advice about the provisions of the future instrument. The NGO Group for the CRC (including several of its member organisations), the International Commission of Jurists, the European Disability Forum and UNICEF also intervened throughout the discussions.

While consensus was reached on the most technical and standard provisions, more important issues remain open for negotiation during the second part of the Working Group's second session (10 to 16 February 2011). The latter is expected to be the final round of negotiations before a draft OP is presented to the Council in June for adoption.

One of the most debated issues was the possibility for Ombudspersons, national human rights institutions and NGOs to submit collective communications, which would not identify individual victims. Experts and NGOs were in favour of collective communications, as they would bring to the attention of the Committee situations that could be difficult, if not impossible, to address through individual communications. Other important issues at stake included the representation of children, the scope of the new procedure, confidentiality and protection of users, interim measures, friendly settlements, accessibility for children, deadlines for States parties responses and dissemination of information on the procedure.

For a summary of the Working Group proceedings, please see: <http://bit.ly/eqmNKx>

For more information about the negotiation process, please contact Ms Anita Goh, Advocacy Officer of the NGO Group for the CRC, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

## Election results for nine members of the Committee on the Rights of the Child

On 21 December 2010, 180 of the 193 States Parties to the Convention on the Rights of the Child (CRC) attended their 13th Meeting at the UN in New York to elect nine members of the Committee on the Rights of the Child.

Five members of the Committee ran for re-election, namely Mr Kamel Filali (Algeria) and Mr Hatem Kotrane (Tunisia) for a third term, as well as Ms Agnes Akosua Aidoo (Ghana), Ms Maria Herczog (Hungary) and Mr Dainius Puras (Lithuania) for a second term.

Prior to the electoral process, Burkina Faso, Dominican Republic, Georgia and the United Arab Emirates withdrew their candidates, which resulted in a list of 20 candidates eligible for election.

Although NGOs cannot directly nominate or elect members of the Committee, NGOs in certain countries lobbied their governments to nominate a candidate that meets key criteria, including demonstrated expertise in human/child rights, independence and impartiality, the ability to devote sufficient time to the work of the Committee, a variety of professional backgrounds, experience working with civil society, awareness and sensitivity to cultural differences, and fluency in one of the Committee's working languages.

All nine members were elected during the first round of secret balloting, having received the required majority of 91 votes and the highest number of votes. Three of the five incumbent members of the Committee were re-elected. The results were:

Mr Gehad Madi, Egypt (new member) 118 votes  
 Ms Aseil Al-Shehail, Saudi Arabia (new member) 111 votes  
 Ms Kirsten Sandberg, Norway (new member) 110  
 Ms Aidoo, Ghana (current member) 102 votes  
 Mr Bernard Gastaud, Monaco (new member) 100 votes  
 Ms Herczog, Hungary (current member) 98 votes  
 Mr Kotrane, Tunisia (current member) 97 votes  
 Ms Hiranthi Wijemanne, Sri Lanka (new member) 97 votes  
 Mr Jorge Cardona Llorens, Spain (new member) 95 votes

The new regional breakdown of the 18 members, based on the UN regional groups, is five members from Africa, four from Western European and Others Group (WEOG), five from Asia, two from Latin America and Caribbean States (GRULAC), and two from Eastern Europe.

The new members will officially start their mandate on 1 March 2011, but they will only meet for the first time during their 57th session in May.

For more information on the expertise of the new Committee members, please refer to their CVs on <http://bit.ly/h1ozqC>. ■