



ngo group for the crc

**STATE PARTY EXAMINATION OF DEMOCRATIC REPUBLIC OF
CONGO'S
INITIAL PERIODIC REPORT ON THE OPTIONAL PROTOCOL ON
THE INVOLVMENT
OF CHILDREN IN ARMED CONFLICT**

**59TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
16 JANUARY – 3 FEBRUARY 2012**

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Democratic Republic of Congo ratified the Optional Protocol on the involvement of children in Armed Conflict (OPAC) on 11 November 2001. On 18 January 2012, the Committee on the Rights of the Child (the Committee) examined the initial report of Democratic Republic of Congo.

Opening Comments

The delegation of Democratic Republic of Congo was led by Mr Sébastien MUTOMB MUJING, Chargé d’Affaire of the Permanent Mission of the Democratic Republic of Congo to Geneva. He was supported by a delegation consisting of representatives from the Ministry of Justice and Human Rights, the Ministry of Gender, Family and the Child and the Ministry of Defence.

Mr Mutomb Mujing expressed the pleasure of the delegation to present the initial report of Democratic Republic of Congo on the OPAC. In the opening statement, Ms. Marie-Thérèse Kenge Ngomba Tshilombayi outlined the context in which the report had been drafted, indicating that the country was in a period of transition following a war which had caused millions of victims and the widespread abuse of human and children’s rights. She stressed that the Democratic Republic of Congo was one of the few countries that had ratified the Convention and its two protocols. She added that this ratification, under the presidency of Mr Kabila, who had been elected in 2006 and re-elected in 2011 through transparent elections, was a strong signal that other actions in favour of the protection of the rights of the child would be implemented.

Ms. Ngomba Tshilombayi recognised that there had been grave and widespread violations of children’s rights and indicated that the integration of non-state armed groups into the Armed Forces of the Democratic Republic of Congo (FARDC) had led to the integration of children

within the army. It was stressed that these children had not been recruited by the State armed forces, but rather by the integrated armed groups. She assured the Committee that all children, once identified, had been removed from the State armed forces. She added that the country was a victim and not a perpetrator of the various violations of children's rights such as the use of children in, armed forces, as labourers in mines or as sexual objects.

Ms Ngomba Tshilombayi went on to summarise the content of the State report. Various measures had been taken to strengthen the prohibition of the involvement of children in armed conflict. In particular, she indicated that 30,000 children had been removed from non-state armed groups, and that they had not been recruited by the government. She indicated that a warning system, included in the Executive Unit of the Disarmament, Demobilisation and Reintegration National Program (UEPN-DDR), had been set up to quickly remove children when found within the armed forces. She detailed the position of the country on several issues related to the implementation of OPAC and reaffirmed the prohibition of direct participation of children in hostilities, including the prohibition to send children to the front or assign them to purely military tasks.

Ms. Ngomba Tshilombayi indicated that forced enrolment of children under 18 was prohibited by law and that compulsory military service was not organised. She indicated that the minimum age for voluntary enrolment was 18, in accordance with OPAC. She indicated that the solutions to the prohibition of recruitment of children within armed forces were the integration of armed groups in the FARDC and that those groups had accepted the demobilisation of children. She recognised that foreign armed groups remained problematic, especially the Democratic Forces of Liberation of Rwanda, but that concrete measures, such as Law 009/001 of 2009 implementing the Constitution on this issue, had been taken to implement this prohibition. She assured the Committee that the State was committed to disseminating the OPAC, in spite of the concrete problems encountered in the field. She also reported that a campaign called "Zero Child in Armed Groups and Forces" had been set up with the cooperation of UNICEF to ensure the removal of children from armed forces.

Finally, Ms Ngomba Tshilombayi highlighted the challenges faced by the country. She recalled the need to bring peace to the national territory; the need to continue the removal of, and support to, children recruited by armed groups through the reintegration programme (DDR); and the need to raise new funds to that aim. She stressed the importance of awareness-raising and dissemination of the OPAC. Looking ahead, she stressed the need for judicial support to effectively eliminate the phenomenon of child soldiers; to finalise the National Action Plan in cooperation with the United Nations Information and Supervision Unit; and to implement child protection elements of the UPR and treaty bodies' recommendations.

Ms Yanghee Lee, the Country Rapporteur, welcomed the delegation and congratulated it for submitting the State report and the written replies to the Committee. She indicated that, even though the report had been due in 2004, it was welcomed, especially under the post-conflict circumstances of the country. She recalled that the Democratic Republic of Congo was the country with the highest number of child soldiers in the world and acknowledged the State's ratification of the Central African Convention for the Control of Small Arms, as well as the implementation of the Paris Principles to Protect Children from Recruitment by Armed Forces or Armed Groups. Despite these achievements, Ms Lee asserted the situation was still very difficult. She indicated that, among other facts, one child out of seven died before the age of five and that half of the children under the age of five suffered from stunted growth. She emphasised the fact that there was a decrease of resources allocated to social and

economic rights whereas the budget for defence and security had increased. Finally, she recognised the difficult situation but indicated that many issues still had to be discussed.

General Measures of Implementation

Legislation

The Committee asked about the State's progress in the implementation of the Child Protection Act and what were the obstacles preventing its implementation. It asked for a specific explanation on the length of the procedure to sign the implementation decrees. The delegation indicated that efforts had been made to give effect to the Act and that follow-up committee meetings had been held every four months. It added that the decrees implementing the law would shortly be signed and informed the Committee that the decrees had been drafted and discussed and were now waiting for the signature of the Prime Minister. It explained that some texts needed a longer process to be implemented because they involved a review by experts and a workshop with civil society representatives, but it stated that some texts had already been adopted. The delegation noted that the signature of only two more decrees was needed for the Child Protection Act to be implemented. The Committee expressed its concerns about the length of the time it was taking for this Act to come into force and indicated that the government should reduce the time to adopt the decrees.

Dissemination and training

The Committee asked whether those professionals working with children involved in armed conflict, as well as broader society, were aware of the existence of the OPAC and the Child Protection Act. The Committee explained that the State's actions should not only consist of administrative steps but that the population should actually be aware of the laws and that ground-level measures should be taken. The delegation answered that several awareness-raising campaigns had been launched and that the information on the implementation of some texts was widely known.

Data Collection

The Committee asked whether the State had a database gathering the number of children withdrawn from the armed forces. The delegation answered that there was such a database in the DDR Programme, developed in cooperation with UNICEF, which was being used to inform policy and programme response. The delegation indicated that this database had been used by several partners of the government and that the relevant persons had been trained to use it. It explained that the database included, among other things, information on where rehabilitative support services and activities were located and other services implicated in the various phases of a reinsertion programme. The delegation added that this database was shared with partners, such as UNICEF, which could consult it on request.

Preparation of the Report

The Committee asked whether children or members of the civil society had been consulted for the preparation of the State report. The Committee observed that the structure of the report did not follow the Committee's reporting guidelines. The delegation indicated that the report had been prepared by different ministries and that it was therefore an inter-ministerial report. It added that the report had been submitted to the civil society for comment, and adopted during a seminar. The delegation recognised that no children had been consulted in the reporting process and took note of this suggestion for future reporting.

Prohibition and Related Matters

Recruitment

The Committee indicated that there was evidence to suggest that many children had been recruited by State armed forces and the Republican Guard, and asked how widely known the prohibition of recruitment of children was among military officers and personnel. The delegation answered that there were no cases of child recruitment by the Republican Guard and the State armed forces but that the State had inspected the forces and would discuss the findings with civil society and relevant United Nations agencies. The Committee insisted that this information was widely known and reliable and expressed its concern about this violation of the OPAC by the Democratic Republic of Congo.

The delegation explained that there was confusion between children recruited by the armed groups and those that had been integrated into the armed forces as part of non-State armed groups that had signed a peace agreement with the government and had been absorbed by the State armed forces. It affirmed that children present in the FARDC had been recruited before that group's integration into the State armed forces and that the State, when made aware of the situation, had removed those children from the armed forces. The Committee added that reliable sources indicated that there were 197 new cases of children being recruited into the State armed forces and asked again what the position of the government was on this issue.

The Committee recalled that the State was responsible for non-state actors' conduct in relation to recruitment of children. The delegation answered that it understood the concern of the Committee and confirmed that there were children in the non-state armed forces, but that the State had established a Commission to remove them and provide them with assistance. It added that on average, when the government had demobilised adult soldiers, 10 per cent were children. The delegation assured the Committee that those children had been found after the beginning of the reintegration process and that a verification process had been initiated to identify and remove the children.

The Committee asked the State about the reason why access had not been granted by some military Commanders, for inspections of military bases to verify that there were no child soldiers there. The delegation confirmed that the government inspectors had not been given access to some camps, because they had not received the authorisation to do so from the military Commanders. It indicated that the government inspectors had, however, been guided to several camps and that the children that were found had been released. The delegation added that the UNICEF report indicated that the recruitment of children by the Republican Guard had targeted two regions (Kitana and Kimina), but that the Republican Guard was, in fact, not deployed in that area; the government had seen therefore that there was no need to go there to verify.

Impunity for Recruitment of Child Soldiers

The Committee asked about the impunity of several military officials who had been accused of recruiting children into their armed forces. The delegation reaffirmed that the government was willing to implement the "zero child in armed forces" policy and to try suspects of child recruitment. It added that the United Nations Security Council had provided the government with a list of names of suspected perpetrators of child recruitment into armed forces, but that it had been a difficult process to follow up on. The delegation indicated that an investigation had been carried out in one case and that two officers from the Democratic Forces of Liberation of Rwanda had been tried and imprisoned. It added that the other officers on the

list received would be prosecuted sooner or later and that there was no time limit for them to be tried since their crimes were serious. The Committee observed that the fight against impunity was not being carried out fast enough.

Concerning two names of officers written on the list given by the Security Council, the delegation informed the Committee that those individuals were not currently on the territory of the Democratic Republic of Congo and that the State needed the help of the international community to bring them to trial. The delegation added that the Democratic Republic of Congo was the only country that had handed over suspects to the International Criminal Court but that no conviction had occurred so far. Answering the question of the Committee on the reason why Ntabo Ntaberi Sheka, suspected of crimes against humanity, had been permitted to run in the recent presidential election, the delegation indicated that it would investigate and transmit any information to the Committee.

On the same issue, the Committee asked why one of the officers prosecuted had been granted amnesty. The delegation explained that there was independence between the judiciary and the executive power but that in this specific case the reason why the suspect could not be found guilty was that the crime of child recruitment had not existed under the military code at the time the offense was committed; however, it was later proved that he had enrolled children and could have been judged by another court. The Committee indicated that the independence of the judiciary and the military courts was still problematic and that the State could not hide behind a system to justify human rights violations. It explained that it was the State's obligation to enact laws and organise justice so that perpetrators did not go unpunished. The Committee welcomed the few decisions taken against certain officers to date. The delegation answered that a reform of the military code was underway and that the crime of child recruitment would be included in the military code, providing for sentences of 10 to 20 years as a penalty for the crime.

The Committee observed that less than one per cent of the State budget had been allocated to the administration of the justice system, which was not enough for such a big country. The delegation indicated that the judicial system was operational in the whole country and that the low budget allocated was already an increase compared to the previous year. The delegation assured that this amount would increase and that an effort would be made to increase the salaries of judges to prevent corruption.

Protection, Recovery and Reintegration

Birth registration

The Committee asked for clarification about the birth registration policy, which had an impact on the identification of children for demobilisation and reintegration, since children who were not registered would not benefit from the reintegration programme (DDR). It recalled that the rate of birth registration was only 28 per cent and asked for details about the finalisation of the national plan on this issue. The delegation recognised that the rate of birth registration was low but that a Follow-up Committee had been set up to develop a National Plan and raise awareness among civil registrar authorities and the entire community about its importance. It added that training had been provided to registrars and that the State was willing to strengthen the institutional framework that would facilitate systematic birth registration for all children.

Recovery of female child soldiers

The Committee asked the delegation about the issue of invisibility of girls in recovery and reintegration programmes. The delegation stated that between 13 and 15 per cent of recovered child soldiers were girls, but that it was difficult to identify them at the beginning of the process and difficult to approach them when they were bearing firearms. It recognised the need to look especially for girls since they were more affected by their experience as soldiers, and added that the State had been active on this issue since 2007. It reported that the literacy programmes that had been set up had attracted more girls than boys and that it was at that moment that authorities realised that those girls had been associated with armed groups. The delegation added that most of these girls were also child mothers and that there was a programme to support them in this role.

Reinsertion and Reintegration Programme

The Committee asked for information about the Reintegration Programme (DDR). The delegation indicated that an Inter-Ministerial Committee was in charge of the DDR, which was made up of representatives from several ministries involved in children's rights, in particular the Ministry of Defence and the Ministry of Justice. It added that some experts were involved, meeting before the gathering of the Committee and submitting information to the Committee

Social assistance

The Committee asked whether the country had a legal framework for social assistance and whether social workers were involved in assisting children who had been removed from armed forces. The delegation indicated that the government had undertaken some reforms and that meanwhile, the government had trained more than three hundred social workers throughout the country.

Child-Specific Courts and Judicial Processes

The Committee asked whether the State had established specific courts and tribunals for children. The delegation answered that a decree had been passed in 2010 to implement an Act of 2009, which established such courts and that the State had already appointed clerks to that aim.

The Committee asked about the existence of specialised human rights courts. The delegation indicated that texts had been given to the Parliament on this issue and assured that when the Parliament session reopened, the government would continue to advocate for the establishment of such courts, which would include competent judges and other professionals for serious crimes and human rights violations.

Arrest and Detention of Child Soldiers

The Committee asked about the situation of children arrested and detained when found to be members of non-state armed groups. The delegation answered that it was not aware of the fact but that they would like to receive such information from the civil society. The delegation affirmed that any arrested and detained children would be identified and released.

Concluding Remarks

Ms Lee thanked the delegation for its explanations, expressed her appreciation for its engagement and noted that the government seemed to be fully aware of the gravity of the situation of children in the country. She recalled the importance that all persons having committed crimes should be brought to justice and to ensure that no more children were used

in armed forces or armed groups. She also asked that all children present within the armed forces be released and that they receive appropriate psychological support. Ms Lee urged the government to fully implement the Child Protection Act and to seek partnership to implement the instrument. To conclude, she insisted on the importance to actively disseminate the OPAC and called on the government to ratify the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the third protocol to the Convention establishing a communications procedure for individual complaints.

The head of delegation said that the government would be keen to receive the recommendations of the Committee in order to implement them. He indicated that he hoped that at the next session, the delegation of the Democratic Republic of Congo would be in the position to describe an improvement of the situation and tangible progress in the protection of the rights of the child.

The Chairperson indicated that the Committee was expecting that the meeting could lead to the dissemination of the recommendations and the improvement of the situation of children in the Democratic Republic of Congo. He added that the Committee was still concerned by the fact that children continued to be involved in armed conflict in the country, and that this situation needed to be significantly and rapidly improved.