



**STATE PARTY EXAMINATION OF MEXICO'S
INITIAL PERIODIC REPORT ON THE OPTIONAL PROTOCOL ON
THE INVOLVEMENT
OF CHILDREN IN ARMED CONFLICT**

**56TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Mexico ratified the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) on 15 March 2002. On 31 January 2011, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Mexico. The State party has an Interpretive Declaration on article 3.

Opening Comments

The delegation of Mexico was led by Mr. Filipe de Jesus Zamora, Undersecretary for Judicial Affairs and Human Rights at the Mexican Government's Secretariat. He was supported by representatives from the Foreign Affairs Ministry, the Ministry of Health, the Ministry of Tourism, the Ministry of National Defense, the Ministry of the Mexican Naval Army, the National System for the Comprehensive Development of the Family, the Government's Secretariat, the Federal Council of Magistrates, the General Attorney's Office, and the Permanent Mission in Geneva.

Mr. Zamora said Mexico had attempted to comply with OPAC despite the challenges the State faced and that the State had the will to contribute towards international law and respect for human rights, particularly the protection of children. Mexico had ratified the relevant conventions in the areas of international human rights and international law, including the Rome Statute, which came into force in Mexico in 2006. Mr. Zamora stated that ratification had occurred in order to guarantee the prosecution of criminals who recruited child soldiers. Mexico promoted cooperation with humanitarian law and implemented training for armed forces personnel and civil servants. Mr. Zamora said the Ministry of International Affairs

worked with the International Committee of the Red Cross and the police in the area of law enforcement.

In 2009 and 2010, in its capacity as a member of the Security Council, Mexico presided over the Working Group on Children in Armed Conflict. Mexico lobbied for the 2009 Security Council Resolution 1862, which aimed to prevent the recruitment of child soldiers and other related abuses of children.

Mr. Zamora summarised the List of Issues stating that there was currently no armed conflict within Mexico, nor was Mexico participating in an international conflict. Mr. Zamora added that forced military service was a constitutional obligation and that the minimum age to be enrolled in military school was 18 years. Voluntary recruitment at the age of 16 required the consent of the child's parents. Mr. Zamora emphasised that under no circumstances did Mexico allow children below the age of 18 to participate in armed conflict. Mr. Zamora noted that one of the alternative reports submitted by a Mexican civil society organisation, called for clear sanctions for violations of the OPAC to be set out in Mexican law. He explained that Mexico had a broad range of legislation aimed at implementing the provisions set out in OPAC and that in August 2009 an Inter-Ministerial Human Rights Committee was set up under the Federal Executive, which established norms in this area and worked towards the implementation of relevant human rights treaties ratified by Mexico. In August 2010, a working group was established under the auspices of this Committee, which was mandated to draft a project of reforms that needed to be made to Mexican legislation in order to sanction those found to be enlisting and/or using children under the age of 18 in armed groups. Mr. Zamora noted that the reforms captured the standard set out in OPAC as opposed to the Rome Statute, as the latter had less exacting criteria. The draft bill of reforms would be submitted to Parliament in due course.

Mr. Zamora emphasised throughout his opening comments that participation in armed conflict by those under the age of 18 years was prohibited in Mexico. He acknowledged that Mexico had an interpretative declaration on article 3(2) regarding the minimum age of recruitment, but adhered to article 3(3) regarding voluntary enlistment of persons under the age of 18. Mr. Zamora reported that a constitutional reform bill on human rights was in the process of being fully adopted and that changes within the legal system strengthened the capacity of the Constitution to provide broad protection for human rights, including those enshrined in the international treaties that Mexico had ratified.

Finally, Mr. Zamora stated that on 26 January 2011, a law had been enacted that provided additional protection for refugees, which had reportedly been described by the UN High Commission for Refugees as one of the progressive such laws in Latin America. He noted that the law makes explicit reference to care for child and adolescent asylum seekers and establishes – in accordance with international standards – a basis for the provision of care and assistance for child and adolescent refugees.

The Country Rapporteur, Mr. Pollar, thanked the head of delegation for the opening statement. He commented that the initial State Party report should have been submitted in 2004 and added that there was no indication that civil society had been involved in the preparation of the report. Mr. Pollar asked whether there were judicial decisions that had affected the implementation of OPAC. Mr. Pollar noted Mexico's declaration on article 3 of OPAC and asked whether this excluded or modified the legal responsibility of the State Party, as this would make the declaration a reservation.

Mr. Pollar noted that Mexico did not allow persons under the age of 18 to participate directly in armed conflict. He also asked how Mexico defined 'direct participation', referring to the delegation's statement that Mexico was not involved in any armed conflict. He queried whether there were non-state forces or private security armed groups in the State. Mr. Pollar also asked if there were measures within the State to prevent attacks on civilian objects and asked whether there were provisions for extraterritorial jurisdiction of offences under OPAC. Mr. Pollar inquired about the status of the UN Security Council Resolution 1612 and the status of cooperation with regard to this resolution. To conclude, Mr. Pollar asked whether Mexico wished to ratify other international instruments to assist in the implementation of OPAC.

General Measures of Implementation

Legislation

The Committee stated that there was a lacuna in international criminal law, which did not address the recruitment of children under 18 as an offence. It asked whether there were provisions which prohibited children under 18 from enrolling in the army and inquired whether children below 18 years could be mobilised in the cases emergencies. The Committee asked whether the Federal Criminal Code prohibited the recruitment of children in armed groups or hostilities and what provisions the State had to counter this. The Committee asked whether the military court constituted standard legal forum.

The delegation reiterated that children under 18 years did not participate in armed conflict and there was legislation which protected children from early active volunteering. It added that Mexican legislation did not allow forced recruitment of children into armed services. Although the State had an interpretive declaration, it complied with article 3 of OPAC. The delegation added that article 24 of the Military Service Act determined that the minors between 16 and 18 years were allowed in communication units, but their contracts would not exceed five years. These contracts could be terminated upon the request of the child.

The delegation explained that under article 13 of the Constitution there were federal, local and military courts. Sentences made by military judges could be analysed and resolved by the Supreme Court and local courts, which demonstrated that military law was integrated into other laws and courts. Internment would be used as an extreme measure, for serious antisocial conduct by adolescents over 14 years, but only for the shortest possible time.

The delegation noted that the State had an Inter-Ministerial body integrated into the Ministry of the Navy and Ministry of International Affairs, which dealt with international human rights law. The State drafted a bill of reform to criminalise the use of children in armed conflict and set up a working group through the inter-ministerial body. The draft would be presented to the Supreme Court shortly.

Complaints

The delegation said that children had access to civil or military authorities to lodge complaints.

Reservations

The Committee noted the interpretive declaration by the State regarding its responsibility for the recruitment of children by non-armed groups. It emphasised that the declaration limited the scope of OPAC as the State did not consider itself responsible for the recruitment of

children by non-armed groups. The Committee asked whether Mexico had intentions to modify the interpretative declaration.

The delegation explained that the State had no aims of countering OPAC, but it sought to ensure that the recruitment of children was avoided. The State shouldered its responsibilities and there had been great developments in terms of the State's adherence to OPAC. The State's efforts were without prejudice to the definition of armed conflict defined in OPAC and this definition was clear under humanitarian law. The delegation added that the State was working on the basis that there was no armed conflict in Mexico. The State was open to revising any declarations.

Dissemination and training

The Committee asked whether children were aware of OPAC and for more information on the working group. The Committee asked whether there was peace education within the schools and military. The Committee noted that members of armed forces were trained in human rights but inquired about training in children's rights and more specifically, OPAC.

The delegation said the Commission for Humanitarian Law was responsible for dissemination regarding OPAC and that there was a specialised course in humanitarian law for armed forces.

The role of civil society

The delegation stated that the report was coordinated by the Ministry of Foreign affairs in collaboration with civil society through the Commission for Government Policy on Human Rights led by the Ministry of the Interior. It noted that the report was opened for comments from different ministries and civil society organisations before submission to the Committee.

Information related to Non-State Actors

Zapatista National Liberation Army

The Committee asked for statistics regarding children recruited into armed forces and whether there was a higher recruitment of children from poor families or disadvantaged groups. The Committee asked whether there were children involved in the Zapatista movement in the Chiapas region, recruited by armed non-state groups. It also asked whether the State punished those involved in recruitment of children. The Committee asked whether there was a distinction between armed groups and criminalised groups.

The delegation stated that the conflict in the state of Chiapas began in 1994 and OPAC entered into force in Mexico in 2002. The Zapatista National Liberation Army, the Mexican government and civil society bodies were working to convert the conflict into a citizen's movement through dialogue. The delegation emphasised that since the ratification of OPAC there had been no armed conflict in Mexico. The State was working towards the prevention of organised crime.

Drug war and organised crime

The Committee inquired about the efforts of the State to counter drug trafficking. It noted that there was a climate of violence in Mexico, citing the high rate at which homicide deaths were occurring as a result of the fight against drug trafficking. The Committee asked what the role of the military was with regards to organised crime. It also asked whether the State was working to counter the homicide rates and inquired which measures were in place to ensure

that murders were not covered and schools were safe places.

The delegation said that 95 per cent of violent deaths had been a product of internal wars on various criminals and gangs. It emphasised that Mexico was a drug corridor surrounded by countries with high production of cocaine. The State was working to increase its capacity to combat criminality by incorporating the army and navy to work against armed groups. The State was also working to establish technology and operative capacities into the police service. The delegation reported that the State sought to ensure that children did not succumb to criminal gangs through educational establishments, public spaces and centres to support drug addicts' nation wide. The delegation added that safe schools rehabilitated school infrastructure to protect children from the use and sale of drugs while simultaneously training teachers and parents on legality and complaints procedures.

The delegation added that the State intensified social crime prevention policies to ensure that delinquents did not recruit children. The State was party to the international regulations to combat international organised crime. The State's definition of organised crime was in accordance to the Convention against Transnational and Organised Crime. The delegation also noted that the State had federal law on organised crime and a list of offences within this law. The State would establish an offense related to the recruitment of children in armed conflict in the reform of the Federal Criminal Code.

Prevention

Military Schools

The Committee asked whether children attending military schools had civilian status and were treated under the juvenile justice system. It also asked whether children in military schools had access to independent complaint mechanisms. The Committee reported that some children in military schools were also participating in the drug war. It asked whether these children were involved in hostilities and if they carried weapons.

The delegation said that the *motus apparenti* of criminals was evident and there was no understanding.

Early Recruitment

The Committee asked whether children who opted for early recruitment in the army could be mobilised in times of emergencies. The Committee noted that voluntary recruitment occurred with the consent of the parents but pointed out that factors such as poverty and unemployment could be influential in voluntary recruitment. The Committee asked whether these children, influenced by socio-economic factors, were considered victims or perpetrators. It also asked whether children could be held criminally liable and how the State treated migrant children seeking asylum from gangs.

The delegation responded that volunteers (children in the military academy and persons no longer active) participated in military service. It added that children who reached the age of 18 (male-born and naturalised citizens) had a constitutional obligation to fulfil their compulsory military service. The military service constituted of painting and cleaning schools – activities that benefited the society. It added that military service could be completed earlier by children who wished to study abroad or leave the country during the period when they would have done their military service (both these cases required the consent of the parents or guardians). The delegation said that in 2010, 1,364 children asked for early military service and this constituted 0.29 per cent of the total population.

Prohibition and Related Matters

Extraterritorial Jurisdiction

The Committee noted that the State exercised no extraterritorial jurisdiction over crimes committed outside of Mexico. It asked whether this was linked to the Statute of Limitations.

The delegation responded that there would be no extraterritorial jurisdiction for child soldiers, as this was not criminalised under federal law. It added that there were three requirements for extradition: the crime had not been previously judged in Mexico, the crime had not been judged in the country in which it was committed and that it was without prejudice to the innocence of another person.

International Assistance and Cooperation

Small Arms

The Committee asked whether there was surveillance on the import and export of weapons, particularly small arms. It also asked whether the State prevented the exportation of these weapons to countries that had children into armed conflict. The Committee also asked how accessible small arms were to children and young people in Mexico and whether there were mechanisms to control the arms trade.

Other Legal Provisions

The delegation noted that the State was up-to-date in submitting all required reports with all treaty bodies. It had submitted seven reports within the last four years and aimed to continue making progress. There were seven visits from international human rights mechanisms and the State worked to implement the recommendations. The delegation also said that the State was party to all human rights treaties, the majority of disarmament conventions and it recognised the Paris Principles.

The delegation added that there was no situation in which the State had found anyone on its territory guilty under the International Criminal Court (ICC) and that it was working on a law of cooperation with the ICC.

Concluding Remarks

Mr. Pollar, the Country Rapporteur, thanked the delegation for the discussion and acknowledged the State's commitment to fulfilling its obligations. Mr. Pollar noted the discussion was wide, as OPAC was in conjunction with article 38 of the CRC and included the right to life. He noted that the question posed on SC Resolution 1612 had not been answered and that the interpretive declaration remained an issue. The Committee would make recommendations reflecting what had been discussed.

The head of delegation expressed gratitude for the Committee's confidence in their work which encouraged the State to move forward in implementing and incorporating OPAC into the public. The delegation wished Ms. Ortiz, a departing member of the Committee, the best.