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STATE PARTY EXAMINATION OF ISRAEL'S INITIAL PERIODIC REPORT ON THE OPAC

53RD SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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Topics covered in this report:

Legislation and implementation, international cooperation, dissemination and training, peace and culture education, definition of the child, army recruitment, military schools, child detention, land mines, child victims, Helpline, juvenile justice, operation Cast Lead.

Israel ratified the Optional Protocol on the involvement of children in Armed Conflict (OPAC) on 18 July 2005. On 19 January 2010, the Committee on the Rights of the Child (the Committee) examined Israel's initial periodic report under the OPAC.

Opening Comments

Mr Daniel Taub, Senior Deputy Legal Advisor from the Ministry of Foreign Affairs, was leading the Israeli delegation. He introduced the small-sized delegation with representatives from the Ministry of Justice, Ministry of Defense, Ministry of Foreign Affairs and the Permanent Mission in Geneva, and explained they were all experts in the dissemination and implementation of the OPAC. Mr Taub declared that Israel's main goals were to establish peace with its neighbours, defend its territory from violence and terrorism and further advance the country's efforts in protection. Since the previous Concluding Observations (COs) in 2002, the country made efforts in further implementing the CRC, increasing its focus on children's rights and recognised the need to raise public awareness irrespective of their economic, social, religious or geographical background. Mr Taub emphasised the reforms made in the legislation since the ratification of the OPAC and stressed the fact that the State party recognised the need to focus on child labour, child soldiers, child trafficking and violence, abuse and other forms of exploitation. He repeatedly mentioned that for Israel basic principles for children were universal and beyond dispute. He said Israel was focusing on building a stronger peace culture by providing education for peace and tolerance which was of utmost importance in establishing long-term relations between Israelis, Palestinians and Arabs. One of these programmes consisted of disseminating the CRC, outlining civic duties on children's rights among pupils, teachers and parents. Another one, called "Imagine", was inspired by Yoko Ono and provided human rights education through music. One of the biggest concerns of the country was the increasing number of children affected by the armed conflict. The national insurance institute provided help to orphans, children with disabilities, and other victims of hostilities. Mr Taub reiterated his willingness to learn, share and engage in dialogue in order to further implement the CRC and the OPAC.

Mr Citarella, the country Rapporteur, welcomed the delegation. He commended that Israel was trying to set up a peace process; he added that it would ensure a better future for children

in the region. Although he positively noted that civil society was very involved in drafting the State party report, he found the report to be too legalistic. He further noted that the report did not give enough details about the actual implementation of the OPAC in Israel. Hence, he asked for more factual information. He remarked that previous COs from 2002 were not implemented and noted that they were linked to the OPAC. According to him, the main challenges faced by the State party were the realisation of the right to health, right to education, right to life, prohibition of using children as human shield and as information providers. Mr Citarella was concerned about the lack of application of the OPAC in the Occupied Palestinian Territories (OPT) and by Israel's statement that the Convention and the OPAC were applicable only in the territory of Israel's jurisdiction. He noted that it was in contradiction with international law as the Convention was applicable in all territories where the State party exercised jurisdiction and therefore also included the OPT.

He pointed out that several definitions, including the definition of the child and minimum criminal liability of the child, were different for Israeli and Palestinian children. Then he added Israel should adopt a new policy to ensure the basic rights for children were respected.

While the Committee acknowledged that there was an indiscriminate targeting and killing of Israeli civilians, including children by Palestinian armed groups, it noted that the occupation of Palestinian territory, the disproportionate use of force by the Israeli Defense Forces (IDF) during Operation Cast Lead and the demolition of homes and schools did not respect the principle of proportionality and had a devastating impact on children. Mr Citarella was concerned about the impact on children in the OPT; the recruitment of children at the age of 17 and below 18; the purpose of military schools for children between 13.5 and 18 years of age; the detention of Palestinian children under military orders; and whether non-State armed groups existed in Israel. Mr Citarella also referred to the findings of the UN Fact Finding Mission on the Gaza Conflict by Justice Richard Goldstone.

Ms Lee, the country co Rapporteur added that one of the biggest challenges for Israel regarding the OPAC was violations of children's rights occurring in the OPT. She also expressed her concern regarding sanctions imposed on Palestinian children. Ms Lee was worried about the consequences of the operation Cast Lead. She asked whether measures were implemented to comply with the UN Security Council Resolution 1612.

Legislation and implementation

The Committee wondered whether the State party had ratified the Rome Statute of the International Criminal Court (ICC). It asked whether the Defense Services Law of 1996 prohibited the use of children in hostilities, for example as human shields or informers. It further enquired about the legislation to prohibit arm sale. Moreover, the Committee asked if the Rome Statute was not ratified, on which legal basis the State party prosecuted cases that were in violation of the provisions of the CRC and the OPAC and were committed outside its territory. The delegation explained that although the State party had not yet ratified the Rome Statute, extraterritorial jurisdiction was applicable through the provisions of the domestic penal law, the CRC and the OPAC.

The Committee wondered how the State party assessed the implementation of the OPAC in the OPT. The delegation answered that the State party could not always apply human rights conventions because of the ongoing-armed conflict. It explained that the safety of the population was the most important issue on the country's agenda. Regarding the use of children as human shields, the delegation explained it was clearly prohibited by the Supreme Court.

International cooperation

The Committee asked whether the State party was cooperating internationally on issues concerning the OPAC. The delegation answered positively, however it did not provide more information on this.

Dissemination and training

The Committee enquired how the OPAC was disseminated and whether the literature was available in Hebrew. The delegation answered that the CRC and the OPAC were available in Hebrew and were widely disseminated. It added that in order to further efforts, a special budget to advance the knowledge on human rights was allocated.

The Committee observed that more systematic efforts should be put in place to train people on the provisions of the OPAC. It asked whether the State planned to improve the programmes involving trainings. The delegation explained training on the provisions of the OPAC was part of dissemination and awareness raising efforts. Furthermore, all the military staff was well trained on human rights issues.

Peace culture and education

The Committee commended the creation of the various programmes promoting peace culture and tolerance and noted the State party should further pursue its efforts in the area of promoting peace and tolerance. It asked whether additional programmes were drafted and if the State party was evaluating existing projects to measure its impact on children. The delegation explained the peace culture was not only promoted among school students, but among the general public. It believed that a better cooperation would enable a peaceful environment. It gave information about a group of Israeli and Palestinian women working together, promoting peace through seminars and workshops.

Definition of the child

Mr Citarella pointed out previous recommendations of the Committee on the definition of a child, which was not implemented. The Committee was worried that different definitions were applied to Israeli and Palestinian children. The delegation explained neither region of the country had a general minimum age set. However, regarding criminal liability, the minimum age was 12 years old. The delegation added the criminal liability in the West Bank was raised when the State party had taken control of this territory. Moreover, the delegation insisted that sometimes children in the West Bank were better protected under the Criminal Law. It went on explaining that under 12 years old, a child could not be criminally liable in the West Bank. From 12 to 14 years old, a child could not be sentenced for longer than 6 months. From 14 until 16, one could not be sentenced more than a year. This, according to the delegation, was not the case in the State party, but only in the OPT.

Army Recruitment

Ms Lee, the country co-Rapporteur, was concerned about the minimum age of recruitment for military service set at the age of 17 both men and women which was in conflict with the Article 2 of the Optional Protocol. She asked whether there were safeguards available to those under 18 years recruits to protect them from being directly involved in hostilities. In addition, Ms Lee asked to clarify the situation when a person aged between 17 and 18 might be recruited to combat units in times of States emergencies. She further asked about the status of students in religious schools where students combined military service with Talmudic studies. The Committee was extremely concerned about the minimum age of recruitment. It asked whether one could be sanctioned for recruiting a minor. It also asked about the differences

between voluntarily and compulsory recruitment. It wanted more clarification on the so called extreme urgency criteria. The delegation answered that voluntary recruitment was a sensitive issue: one had to be at least 17 years old and had to go through a special procedure. The delegation explained a child recruited at 17 would never take part in military actions, as s/he would have to follow a yearlong training. Even in cases of “extreme urgency”, the military would not use untrained soldiers. For example, young recruits would help in non-military actions in case of an emergency, by helping in hospitals, distributing food, etc. The delegation insisted that the legislation would only allow a trained person take part in combat. Regarding compulsory recruitment, it could only happen when the child turned 18 years of age. The delegation emphasized that all military regulations were strictly followed. On whether the child soldiers could file a complaint to the Ombudsman, the delegation responded positively, however it did not give more details on to which Ombudsman or complaints mechanism they could turn to.

Military schools

Ms Lee was deeply concerned about the military academies and schools run by the Israeli Defence for children aged between 13.5 and 18 years and asked about the purpose of these schools and the subjects taught in those schools. The country co-Rapporteur was concerned about the information received about high school students being trained for one week in active military bases and asked for more clarification on this. The Committee also requested more information on the various types of military schools available in the country. The delegation explained military schools provided vocational training for children. However, teachers were not military personnel and the school was not linked to military training. The IDF run schools for children aged between 13.5 and 18 years of age were well known and gave good military career prospects to its pupils. The delegation added that children could leave the school if they wanted to. Concerning regular schools, the IDF often provided pupils with a week long vocational training with an overview of careers in the military. The delegation further said that the Ministry of Education monitored pupils in military schools and the military law did not apply to them. Furthermore, the Ministry of Education oversaw the curriculum of these military schools.

Child detention

The Committee noted that more than 2,000 Palestinian children, some as young as twelve, continued to be detained under military orders and prosecuted in military courts. It asked the delegation to provide more information on the military orders under which Palestinian children were detained and charged with security offences without proportional sentencing, and were subjected to prolonged periods of detention or solitary confinement without any access to their families. The Committee asked what kind of measures the State party took to ensure the protection of children in detention, especially for young Palestinians. The delegation answered that, since May 2009, minors up to 16 years old could no longer be held in military facilities, but they would be detained in regular prisons. Moreover, as explained under the cluster on definition of the child, stricter rules for the detention of young Palestinian offenders were in place to ensure their protection. The Committee further asked why the minimum age to be detained in a military facility detention was 16, instead of 18. The delegation explained that new draft legislation was ongoing to expand child protection.

Land mines

The Committee enquired about the measures taken by the State party to pay compensation to victims of land mines and to de-mine large civilian areas. It added that many Syrian children

were affected by this phenomenon. The delegation admitted that areas such as the Golan Heights were dangerous. It added that it provided help and support in case of accidents.

Child victims

The Committee observed that the figures on services for child-victims of hostilities were low in the State party report. It asked whether there was a systematic data collection mechanism in place. It also noted that the child-victim support seemed reasonable for Israeli children, but nearly inexistent for Palestinians. The delegation answered that social services did not deal with data collection and statistics as they were targeted on the entire family rather than on a single child. It added that the support received was complete. The delegation did not make any mention of the support provided to Palestinian children.

Helpline

The Committee asked whether the State party was supporting the Israeli NGO, called Natal, which was running a child Helpline. It added that if supported by the State, the services provided by the Helpline could meet international standards. The delegation agreed that the Helpline was extremely useful. It explained the State party supported this project, but the Helpline had had some financial constraints.

Juvenile justice

The Committee asked for an update on the issue of juvenile justice. The delegation answered a juvenile military court was recently established in the West Bank. It added that judicial proceedings for children were held separately from that for adults. Regarding the transfer of young Palestinians to the State party, the delegation answered that despite the State party's request to transfer young offenders, not a single case was complied with. The Committee was concerned about the establishment of the juvenile military court. It explained that according to international standards on juvenile justice, children's rights could not be safeguarded by a military court. The delegation added such a court was created due to the increasing number of adolescents involved in violent activities, such as suicide bombing, weapon smuggling, serving as lookouts during terrorist attacks. Regarding the growing cycle of violence, the delegation explained children were more and more recruited by children organisations, through media, cartoons and summer camps.

Operation Cast Lead

The Committee further enquired about the operation Cast Lead and its consequences. It asked how the State party explained attacking civilian targets if there was such a strong focus on human rights during trainings. It remarked that the use of phosphorus munitions was in violation of humanitarian law standards. The delegation explained that the State party had to act in Gaza to stop the tunnels smuggling weapons, respond to the weapons fired on the country on a daily basis. Regarding the civilian target, the delegation stressed the fact that the IDF warned civilians through leaflets and announcement to leave the area. It explained Hamas used their civilians as human shields, increasing the numbers of civilian casualties. The delegation added that investigations were carried out on those who did not behave "appropriately". It stressed that phosphorus munitions, that exploded munitions and smoke projectiles, were used in the beginning of the operation for marking and signalling purposes. It added that both measures were used in other countries and that the State party tried to use it reasonably. The delegation further explained that international humanitarian conduct was implemented during the Operation Cast Lead through human rights education and training among soldiers; through providing legal advice throughout the operation and through carrying out investigation. It added that about 31 cases reached the stage of criminal prosecutions.

Concluding Remarks

Mr Citarella, the country Rapporteur, thanked the delegation for the discussion. He added that the periodic report and the written replies did not provide enough factual information. He said the Committee was still concerned about the territorial implementation of the OPAC in the Palestinian Occupied Territories but also about the legislation and the implementation of OPAC in the State party. He commended the State party for its efforts of promoting peace and stressed that these efforts should be continued.

Ms Lee, the country co-Rapporteur, thanked the delegation for the genuine and constructive dialogue. She said efforts carried out were perceived and should be continued.

The head of the delegation, Mr Taub, thanked the Committee for the useful discussion. He added that Israel's second periodic report on the CRC would be sent shortly. He concluded that the delegation met the Committee with an intention to further the implementation of the universal values of the CRC and the OPAC. It welcomed all the advices provided by the Committee.