



Convention on the Rights of the Child

Distr.: General
16 December 2013

English only

Committee on the Rights of the Child

Sixty-fifth session

13–31 January 2014

Item 4 of the provisional agenda

Consideration of reports of States parties

List of issues in relation to the report submitted by Portugal under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Addendum

Replies of Portugal to the list of issues*

[25 November 2013]

Question 1. Please provide further information on the exact role played by the Ministry of Defense in coordinating the implementation of the Optional Protocol, particularly with reference to coordination among the Ministry of Education, the Ministry of Justice and the Ministry for Internal Affairs, as well as with civil society, academia, the media and other partners

1. As previously reported (see paragraph 10 of the initial report of Portugal concerning the implementation of this Optional Protocol), no specific mechanism was put in place to ensure the implementation of this Optional Protocol and the coordination of concerned departments.

2. However, it is worth mentioning that following a commitment expressed during Portugal's universal periodic review examination in Geneva in December 2009, the Portuguese National Human Rights Committee (PNHRC)¹ which was established in April 2010 by a Council of Ministers Resolution. The PNHRC is responsible for intergovernmental coordination with the aim of promoting an integrated approach to human rights policies. The Committee aims to define Portugal's position in international fora and

* The present document is being issued without formal editing.

¹ <http://www.portugal.gov.pt/media/883250/2013-pnhrc-work-plan.pdf>.



to implement Portugal's obligations under international human rights conventions. The present reply was drafted within the PNHRC.

3. Furthermore, the Working Group created in 2008 to follow-up on the implementation of Security Council resolution 1325 (2000) is, responsible for coordinating the implementation of the National Action Plan on UNSCR 1325 (2009-2014), adopted on August 2009. This Working Group is responsible for undertaking necessary action to pursue the Action Plan's specific purposes and proposed activities, ensuring close collaboration with all services and bodies involved in its execution and mobilizing available financial resources. This Action Plan comprises training activities on the protection of children and the Convention on the Rights of the Child.

Question 2. Please clarify if there are independent complaints mechanisms accessible by children in the military schools or if other mechanisms exist to monitor the rights of children enrolled in such programmes and investigate their complaints

4. Within the Portuguese education system, in both civil and military institutions, there are several administrative, judicial and quasi-judicial redress and complaints mechanisms that children, or their parents or tutors, may avail themselves of should they consider the rights of the child been violated.

5. Such mechanisms include Public Prosecution departments (Ministério Público), the Ombudsman, the National Commission for the Protection of Children and Youngsters at Risk and school boards. Complaints procedures include multiple levels of decision and therefore the right of appeal is guaranteed. Monitoring encompasses national (at the Constitutional and ordinary level), international and European law.

Question 3. Please inform the Committee about any public awareness programmes, including campaigns conducted by the State party, to ensure that all communities, in particular children and their families, are adequately informed about the provisions of the Optional Protocol, including the minimum age for voluntary recruitment of children into the armed forces

6. Children are made aware of their rights through a multitude of educational activities, including within mandatory school curricula. The Portuguese Ministry of Defense organizes since 2004 the National Defense Day, aiming at providing 18-year olds with a full experience of, and awareness activities on, security, defense and armed forces issues. Participation in such activities is mandatory for all 18-year old Portuguese males since 2004 and for all 18-year old Portuguese citizens since 2010.

Question 4. Please provide information on the training activities related to the Optional Protocol for professionals working with children who are likely to have been involved in armed conflict, especially for members of the armed forces, the police, immigration officials, lawyers, judges, medical and social workers

7. Portuguese forces, both military and civilian, deployed to war or humanitarian scenarios receive operational and vocational training on such issues as humanitarian and social interaction with the local population, especially children likely to have been involved in armed conflict.

8. Such training is provided in national armed forces units and regiments, and/or in European, United Nations and NATO schools. All training activities or courses Portuguese forces participate in comply with European, United Nations and NATO standards, depending on the nature of the mission.

9. One of the strategic objectives of this National Action Plan on UNSCR 1325 is ensuring adequate training of persons involved in peace-building processes, on gender equality and other relevant aspects of Security Council resolutions 1325 (2000) and 1820

(2008), by such means as the inclusion in the training curricula of all elements due to participate in international missions of subjects related to human rights and the protection of women and children, including the Convention on the Rights of the Child. Several training activities have been undertaken in this regard.

Question 5. In light of the information provided in paragraph 43 of the State party's report that "in the Military School (*Colégio Militar*), military training is mandatory and taken into account for school progression," kindly clarify what constitutes a military training and whether the activities are comparable to those performed by the military. Kindly explain the procedures followed by the Ministry of Defense and the Ministry of Education to ensure that such activities are suitable for younger recruits in terms of mental maturity and whether the recruits also receive information on the principles and provisions of the Optional Protocol

10. Under the purview of the Portuguese Ministry of Defense, there are currently three military schools: *Colégio Militar*, Instituto de Odivelas and Instituto Pupilos do Exército. In all of them, military training is available for all students, but only in *Colégio Militar* is such training mandatory and accounted for school progression.

11. None of these schools operate as branch military academies (Navy School, Army Academy and Air Force Academy), which are the military institutions responsible for training prospective military personnel after completion of 12-year mandatory schooling (until 18 years of age).

12. Military training provided at *Colégio Militar* – or any other military school – has no point of contact with military training provided within the armed forces, including in military academies. In military schools, such training aims at excelling cultural values and physical fitness, covering such aspects as:

- Core values of the military, such as honor, public service and according duties;
- Hierarchic organization and roles of responsibility;
- Physical fitness, with proficiency in such sports as gymnastics, fencing, horse riding, swimming, athletics and rugby;
- Cultural extracurricular activities such as music, poetry, and arts and crafts.

13. In accordance with a 2006 Joint Order from the Ministries of Defense and Education, the inclusion of military-specific disciplines into the curricula of military schools requires authorization of the Army Commander-in-Chief, upon principal's proposal.

14. Military Schools have a two-century old tradition in contributing to the realization of the right to education in Portugal, providing an academic and scientific educational curriculum blended with the cultural values of the armed forces. Continuous practice of these values and best practices contributes towards better citizenship and enhances excellence levels should students decide to choose a military career.

Question 6. Please clarify if the State party envisions establishing a minimum age for enrolment in military schools. Please provide further information on how the State party ensures that article 3 of OPAC is respected, including as concerns the verification of the voluntary nature of recruitment and the age of recruits. Please indicate the number of students enrolled in the Navy School and in the Air Force Academy who are under the age of 18 years

15. As previously stated, one must bear in mind the different nature of military schools and military academies, and that only the later are responsible for the enrolment of military staff. But, even in military academies, students only acquire military status at the end of

tirocinium (5th year). Up until then, they are mere students of a high education institution. This, combined with the provisions prohibiting any form of recruitment into the armed forces of under 18-year olds, effectively prohibits enrollment or participation in any form of military combat training or enrollment in any branch, force or unit of the Portuguese armed forces, and thus meets the requirements of article 3 of OPAC.

Students Enrolled in the Air Force Academy

		<i>Sex/ Enrolment Year/Age</i>																		
		<i>Female (F)</i>							<i>Male (M)</i>											
		2007	2008	2009	2010	2011	2012	2013	Total	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total	Total
17					3	1		1	5			2	3	2	2	4	1	1	15	20
*					2	1		1	4			2	2	2	2	4	1	1	14	18
**					1				1				1					1	2	

* Students who turned 18 that year.

** Students who turned 18 the following year.

		<i>Number of Students under 18 Enrolled in the Air Force Academy</i>						
		2007	2008	2009	2010	2011	2012	2013
Male		2**	3*	2**	2**	4**	1**	1**
Female					3*	1**		1**
Total		2	3	2	5	5	1	2

* 2 students who turned 18 that year and 1 turned 18 the following year.

** Students who turned 18 that year.

Students Enrolled in the Navy School

		<i>Students under 18 Enrolled in the Navy School</i>					
<i>Year</i>		2009 <i>(until 9/10/09)</i>	2010 <i>(until 8/10/10)</i>	2011 <i>(until 14/11/11)</i>	2012 <i>(until 1/10/12)</i>	2013 <i>(until 11/10/13)</i>	
Male			12	7	3	4	5
Female			4	1	1	1	2
Total			16	8	4	5	7

Question 7. Please indicate whether recruitment of children under 18 into the armed forces and the recruitment and use of children by non-state armed groups are criminalized and sanctioned under domestic legislation and, if so, whether there have been any investigations or prosecutions for violations in this regard

16. As previously reported (see paragraphs 55 to 72 on “Prohibition and Related Issues” of the initial report of Portugal concerning the implementation of this Optional Protocol), article 10 (h) of Act 31/2004, of 22 July punishes the “recruitment or enlistment of children in armed forces, military or paramilitary forces of a State, or in armed groups distinct from the armed forces, military forces or paramilitary forces of a State, or their use to participate in hostilities”, when committed within an international or non international armed conflict against a person protected by international humanitarian law, with 10 to 25 years of imprisonment. Thus, all recruitment is punished, both voluntary and compulsory, as well as all use of children to participate in hostilities, whether directly or indirectly. This crime is

defined as a war crime against persons. Children are specifically defined as “all human beings below 18 years of age, in accordance with the Convention on the Rights of the Child” (Article 2 (g) of Act 31/2004, of 22 July). Persons condemned for such crime can also be declared unfit to elect or be elected President of the Republic, member of Parliament, member of the European Parliament, members of regional legislative assemblies or holders of public office in local authorities, or to be jurors (Article 19 of Act 31/2004, of 22 July, as amended by Act 59/2007, of 4 September).

17. The Code of Military Justice (which would also be applicable in the case of crimes related to the military interests of defence of the Portuguese State and others granted by the Constitution to the Portuguese Armed Forces) also punishes (as a war crime against persons) “the recruitment or enlisting of under 18-year olds in the national armed forces or their active use in hostilities” committed by any Portuguese, foreigner or stateless person residing or staying in Portugal, or against any such person, in times of war, with 10 to 25 years of imprisonment (Article 41 (h)). The concept of “active use” is not defined, and would therefore have to be determined by the judge. Accessory penalties could also be imposed to condemned military, namely compulsory reservation and expulsion from the armed forces (Articles 18 and 19 of the Code of Military Justice).

Question 8. Please provide information on the procedures used to identify as quickly as possible any child refugees, asylum seekers or migrants who have been or are at risk of being recruited or used in armed conflicts. Please also elaborate on the re-integration and rehabilitation services available to such children and whether the alterations to Decree-Law 176/2003 of August 2007 cover also all child refugees and asylum seekers who entered the State party before the amendments were introduced

18. To this date, no requests for asylum were filed in Portugal by children who have been or claim to be at risk of being recruited or used in armed conflicts.

19. Most of the applicants claim to be underage and are undocumented. Their asylum application is not based on fear of individual persecution, but rather on economic grounds or on the need to escape from a situation of generalized insecurity. While this does not constitute grounds for granting asylum it qualifies applicants for the possibility to be granted subsidiary protection.

20. Act 27/2008 of 30 June on Asylum determines that the competent Public Administration authorities must ensure that minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or armed conflict have access to rehabilitation services, as well as adequate psychological assistance, providing, if necessary, qualified support.

Question 9. Please indicate whether national legislation prohibits the trade and export of arms, including small arms and light weapons, as well as military assistance to countries where children are or may be recruited or used in an armed conflict

21. Portugal signed the Arms Trade Treaty (ATT) on June 3rd 2013, the day it was opened for signature and is currently working on its ratification process. The ATT, the aim of which is to regulate the trade of all conventional arms and munitions, calls for the exporting States to assess the risk that such weapons and munitions may be used to commit or facilitate serious acts of violence against children. Portugal, as a Member of the European Union, supported the inclusion of such provision in the negotiations leading to the adoption of the Treaty, recognizing that children are particularly vulnerable in armed conflicts and in instances of armed violence.

22. Furthermore, Portugal fully applies the European Union Council Common Position 2008/944/CFSP, of 8 December 2008, which defines common rules governing control of exports of military technology and equipment, and includes eight criteria against which

exports are checked. Amongst the relevant criteria, the recipient country's attitude towards relevant principles established by international human rights instruments, and international humanitarian law, features prominently. Indeed, children's rights are expressly recognized as an element relevant to this criterion on the User's Guide to the Common Position 2008/944/CFSP. The criteria regarding the internal situation in the country of destination, and the preservation of regional peace are also part of the risk assessment conducted by Portugal before exporting conventional arms, including small arms and light weapons, as well as firearms designed for hunting or sports.

23. In what regards to national implementation measures, in 2011, Portugal adopted legislation (Act 37/2011, dated 22 June), allowing for a more efficient control and supervision of the licensing activities pertaining to the transfer and circulation of small arms, while foreseeing criminal and monetary sanctions to curb infractions. Indeed, Act 37/2011, as well as Act 49/2009, dated August 5, which stipulates the conditions of access to activities of trade and Industry of military goods and technologies, with a particular emphasis on brokering, establish a legal framework underpinned by the criteria of the Common Position 2008/944/CFSP. Furthermore, Act 5/2006, also foresees that exports of firearms designed for hunting or sports must be checked against such criteria.
