



Convention on the Rights of the Child

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Committee on the Rights of the Child

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Item 4 of the provisional agenda

Consideration of reports of States parties

List of issues in relation to the report submitted by the Kingdom of the Netherlands 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 the Kingdom of the Netherlands to the list of issues*

[Date received: 1 April 2015]

Introduction

1. The report by the Kingdom of the Netherlands on the measures taken to give effect to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, under article 8, paragraph 1, was submitted on 30 December 2011 (CRC/C/OPAC/NLD/1). In October 2014 the Netherlands received the list of issues in relation to the report. The Netherlands hereby submits its written response to the List of Issues. It is arranged in the same order as the List of Issues and repeats each of the Committee's questions before proceeding to give its answer.

* The present document is being issued without formal editing.



Answers to the Committee's questions

Question 1: Please clarify which department or body bears primary responsibility for the coordination of activities aimed at the implementation of the Optional Protocol.

2. The Ministry of Defence bears primary responsibility for implementing the Optional Protocol in the armed forces. Other ministries are responsible for implementing those aspects that belong to their fields of competence or governance.

Question 2: Please inform the Committee about public-awareness programmes and activities 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. Please also indicate whether training on the provisions of the Optional Protocol is provided to all relevant professional groups, in particular members of the armed forces at all levels, members of international peacekeeping forces, the police, immigration officials, judges, lawyers, medical and social workers and teachers.

3. As stated in the initial report, the Kingdom of the Netherlands attaches great importance to the adherence to international humanitarian law (IHL) in armed conflict situations. The training of the armed forces and other professionals who are involved in such situations is crucial to ensure compliance with IHL. In the Netherlands, IHL is not only part of the regular curriculum taught to members of the armed forces, but also part of mission-specific pre-deployment training at all levels. The greater the responsibilities of military personnel, the more instruction they receive in IHL. Specific instruction about the rights of children is part of the standard curriculum for officers and non-commissioned officers.

4. In answer to the Committee's question as to whether all relevant professional groups are trained in the provisions of the Optional Protocol, I can inform you that the Training and Study Centre for the Judiciary (SSR), the body responsible for training members of the Public Prosecution Service and the judiciary, provides a two-day course on the Convention on the Rights of the Child. As far as the police service is concerned, the various specialist and job-oriented training courses (e.g. for jobs such as youth detective and assistant public prosecutor) all devote attention to the provisions of the Convention. No specific training courses are provided on the Convention on the Rights of the Child and the Optional Protocol.

Question 3: With respect to the military courses offered by civilian institutions to students enrolled in the security and skills (Veiligheid en Vakmanschap (VeVa)) vocational programmes (formerly peace and security programmes), please provide updated information on:

5. In the secondary vocational education (MBO) sector, trainees follow the qualification file "Security and Skills" (22167), which contains the following four qualifications/courses:

- Trainee, ground operations (95081), MBO level 2;
- Trainee, maritime forces (95082), MBO level 2;
- Trainee, NCO, ground operations (95091), MBO level 3;
- Trainee, NCO, maritime forces (95092), MBO level 3.

6. The report submitted by the Dutch NGO Coalition for Children's Rights and War Child created the impression that VeVa is a military training course that is contracted out. This is incorrect. Security and Skills is a regular MBO course, with the emphasis on preparing candidates for a career in the security sector.

(a) The minimum age of admission to such institutions;

7. The minimum age for enrolment in the Security and Skills MBO course is the same as that for all other MBO courses. However, candidates applying to work for the Defence organisation must be at least 17 years of age. This minimum age applies not only to students seeking to enter through an MBO institution, but also to regular applicants to positions within this ministry. Upon turning eighteen, the person concerned is asked explicitly whether he or she wishes to continue working for the Defence organisation.

(b) The number of students below the age of 18 enrolled;

8. In 2013 the number of students enrolled was 4,077; of these, 2,383 were under 18 years of age on the date of enrolment.

(c) The proportions of academic and military courses in the curriculum and the ratio of military and civilian instructors;

9. In all MBO courses, 80% of the curriculum is based on the qualification requirements listed in the qualification file. This part of the course is devoted to skills specific to the occupation, such as "Ground Operations" or "Maritime", depending on the chosen track. The other 20% of the course is not prescribed: schools can decide how to use this time. The schools have agreed to use this "free space" for the Security module.

10. The occupations of trainee, Ground Operations (military MBO level 2), trainee, Maritime (MBO level 2), NCO, Ground Operations (MBO level 3), and NCO, Maritime (MBO level 3) should be seen as fully-fledged occupations, equivalent to civilian occupations. MBO students are given the opportunity to become acquainted with the occupations of soldier, sailor, or NCO in the course of their training. Not every student who starts on the Security and Skills course ends up taking up a position within the Defence organisation after completing the course.

(d) Whether the material and manuals used for the VeVa training that is a part of those educational programmes contain guidelines developed specifically for children and on the measures taken to ensure that all instructors/teachers are trained in and consistently use those specific guidelines when working with children;

11. The educational materials were produced jointly by MBO teaching staff and experts in the field at the defence ministry, under the oversight of the Practical Training Foundation (Stichting Praktijkleren), an organisation that supplies examination and teaching materials for the economic and administrative occupations and training courses within the defence ministry. This means that the teaching materials are attuned to the needs of the users, i.e. the students.

(e) The proportion of time spent by students as interns in a defence location as part of their programme and the measures taken to ensure the monitoring of internship locations, including regular visits without prior notice to relevant military barracks;

12. The course's structure is based on three weeks of lessons at the MBO institution and one week of workplace training at the defence location (military training centre). Thus, in

each academic year, students spend 30 weeks at the MBO institution and 10 weeks at the military training centre.

13. During the workplace training periods, students are introduced to life in barracks or on a naval base and to their possible future co-workers. Experiencing life in barracks or on a naval base is a standard part of these occupations. Students travel to the centre on the Monday morning of the workplace training week and return home after lunch on Friday afternoon. In other words, each student spends four nights there in total. Students always sleep separately from professional soldiers, in their own designated building.

(f) Whether students have access to independent complaint and investigation mechanisms and, if so, the number and nature of complaints registered and dealt with over the past three years.

14. If students are dissatisfied about the training course, they can submit a complaint to the confidential adviser at their own MBO institution. The complaint will also be discussed with the defence ministry, and the principle of *audi alteram partem* is applied. On average, five to eight complaints a year have been submitted in recent years.

Question 4: Please clarify whether the legislation of the Kingdom fully criminalizes all the offences covered by the Optional Protocol, including the recruitment and use of children in hostilities by non-State armed groups. Please also provide recent disaggregated figures on the number of cases filed under article 205 of the Criminal Code of the Netherlands, including the number of children that have been recruited by non-State armed groups and who have been stopped at Dutch borders. Please also inform the Committee of the progress made by the Government of Aruba in its process aimed at amending the relevant provisions of its Criminal Code referred to in paragraph 78 of the State party's report.

15. The recruitment, drafting into active armed duty, or use for active participation in hostilities of children under 15 years of age by the armed forces or by armed groups is a war crime in the Netherlands under section 5, subsection 5 (r) of the International Crimes Act.

16. Between 1 February 2013 and 4 February 2015, 43 jihadism-related cases involving children were reported to the Child Protection Board. Of these, 31 related to children believed to be leaving with their families, and 12 related to children thought to be planning to leave independently. No other figures are available.

17. Recruiting people for foreign military service or participation in an armed conflict is an offence under the Criminal Code. Under article 205 it is an offence to recruit people to participate directly in an armed and violent conflict. "Military service" includes service in any organisation belonging to the armed forces according to the law of the country in question and all service entailing armed action in a war (militias, combat groups). Article 205 of the Criminal Code thus includes the recruitment and use of children in hostilities by non-State armed groups. This provision applies to the recruitment of both Dutch and non-Dutch nationals. Recruitment activities within the meaning of article 205 of the Criminal Code carry a term of imprisonment not exceeding four years or a fine of the fifth category (i.e. €81,000).

Aruba

18. Article 211 of the old Criminal Code of Aruba provided that whosoever recruited another person for foreign military service without the Governor's consent was liable to a term of imprisonment not exceeding one year. Article 2:163 of the new Criminal Code (which entered into force on 15 February 2014) includes a provision to the effect that

whosoever recruits another person for foreign military service or for armed conflict abroad, without obtaining the permission of the King or the Governor, is liable to a term of imprisonment not exceeding four years. The recruitment of persons for armed conflict (including non-State hostilities) is therefore prohibited, regardless of whether these persons are over 18 years of age.

19. As already noted in the report, it is not possible in Aruba for persons under 18 years of age to enlist in the armed forces of the Kingdom. As regards enlistment in a foreign army or recruitment for an armed conflict (also with regard to question 10 below), reference is made to article 2:163 of the Criminal Code.

Question 5: Please indicate the measures taken to identify children who might be targeted for recruitment by non-State armed groups to be involved in armed conflicts abroad. Please also describe any measures, such as peace education in the school curricula, which have been developed to promote awareness among children of the harmful consequences of involvement in armed conflicts.

20. Having regard to the Convention on the Rights of the Child and the accompanying Optional Protocol, the Netherlands considers that it has a positive obligation to prevent children from becoming involved in an armed conflict. To prevent children from taking part in an armed conflict or from being recruited for the violent jihadist struggle in countries such as Syria or Iraq, Dutch municipalities are given support enabling them to strengthen and train networks of key figures; special trainers and confidential inspectors are deployed at schools; the cooperation of the person's family (parents, siblings) is actively sought in speaking out against jihadism and strengthening resilience in their own social circle.

21. Schools, community workers, municipal authorities, police, civil society organisations and others who hear of the planned participation of a minor in an armed conflict can enlist the help of the Child Protection Board if it proves impossible by other means to stop the minor (and if appropriate, the family to whom he or she belongs) from leaving. Where necessary, the Child Protection Board can ask a children's judge to issue a child protection order and if necessary an out of home placement, so as to prevent the minor from travelling to a third country in which he or she plans to take part in, or may become involved in, an armed conflict. A family supervisor arranges for the minor's supervision, to help him or her to work on developing better prospects for the future. As mentioned above, between 1 February 2013 and 4 February 2015, 43 jihadism-related cases involving children were reported to the Child Protection Board. Of these, 31 cases related to children believed to be leaving with their families, and 12 to children believed to be planning to leave independently.

Question 6: With respect to the application of military criminal law to military trainees (CRC/C/OPAC/NLD/1, paras. 71 and 72), please provide information on the number of children under the age of 18 who have been charged in military tribunals over the past three years, the nature of the charges against them and the outcomes of those cases.

22. In the period 2011–2013, the Royal Marechaussee has submitted 10 dossiers to the Public Prosecution Service involving a suspect who was a minor at the time. Three of these cases have been dropped and six have resulted in a settlement between the suspect and the prosecution. One case was heard by the military chamber of Arnhem district court. This was a relatively minor cases, heard by a single judge sitting in the military chamber, involving an offence under the Road Traffic Act when the suspect was seventeen years of age. At the time the case was heard, the suspect had reached the age of 18. The suspect was sentenced to a fine as well as a probationary period of two years during which he was liable to being disqualified from driving for 2 months.

23. Furthermore, in February 2011 the military chamber of Arnhem district court sentenced an 18-year old to a fine for being away without leave, an offence committed in 2010 when the suspect was 17 years of age.

Question 7: Please provide detailed information on the existence of any mechanisms for the early identification of children who are refugees, asylum seekers or migrants and who may have been or are at risk of being recruited and/or used in hostilities abroad. Please also provide precise data on the number of child victims of offences under the Optional Protocol among refugee and asylum-seeking children living within the jurisdiction of the State party. Please also provide information on the steps taken to provide for their physical and psychological recovery and rehabilitation.

24. When children submit an asylum application in the Netherlands (unaccompanied or accompanied by their parents), the authorities investigate whether they are eligible for an asylum residence permit on the grounds of persecution in their country of origin or because of the risk of torture or inhuman or degrading punishment. As part of this procedure, the authorities therefore examine the situation in which the applicant was living in their country of origin. This may reveal that the child participated in hostilities in their country of origin, or was at risk of participating in hostilities.

25. The Netherlands has no specific policies on preventing migrant or asylum-seeking children from being recruited for armed conflict. Measures are, however, in place to prevent children in general (including children with a migrant background) from becoming involved in armed conflict (see answer to question 5).

26. No figures are available on the number of refugee and asylum-seeking children who have fallen victim to offences specified in the Optional Protocol.

27. Medical treatment is available to children whose applications are being processed. As far as possible, the medical care provided to residents of asylum seekers' centres is equivalent to regular care in the Netherlands. Children granted residence permits are in any case entitled to regular medical care, including psychiatric care.

Question 8: 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 involved or may be recruited or used in an armed conflict.

28. Controls on arms exports in the Netherlands are enshrined in both national and European legislation. All export licence applications are assessed on a case-by-case basis in the light of the European Union Common Position concerning Arms Export Control (2008/944/CFSP), after which a decision is made whether or not to grant the licence.

29. The EU Common Position lays down eight criteria for the export of conventional arms, including whether the proposed exports might:

- Contravene Dutch international obligations and commitments;
- Be used for internal repression or human rights abuses;
- Destabilise the internal situation in the country of final destination;
- Aggravate existing tensions in the country of final destination; or
- Be used aggressively against another country.

30. These criteria have been formulated with a view to preserving national and regional peace, security and stability. Licence applications are assessed on the basis of these criteria,

taking into account the nature of the merchandise, the end user, and the possible (through being diverted or exported) other end user. If the proposed export fails to meet one or more of the criteria, the application will be rejected.

31. There is no policy, regulation or legislation that prohibits by definition the trade and export of arms to countries where children are involved or may be recruited or used in an armed conflict. All arms export licence applications, however, are assessed on a case-by-case basis in the light of the eight criteria of the EU Common Position. Licence applications for the export of arms, including small arms and light weapons, that might be used by children in armed conflict or that would clearly harm children's rights, would not meet the criteria defined in the EU Common Position, and would therefore be rejected.

Question 9: Please indicate whether the State party can establish and exercise extraterritorial jurisdiction over all offences under the Optional Protocol and, if so, under which specific legislation.

Question 10: Please indicate whether the State party defines, in its domestic legislation, the recruitment of children below the age of 15 as a war crime.

32. Answer to questions 9 and 10:

33. The recruitment, drafting into active armed service, or use for active participation in hostilities, of children under 15 years of age by the armed forces or by armed groups is a war crime in the Netherlands under the terms of section 5, subsection 5 (r) of the International Crimes Act. Under the terms of this Act, the Netherlands has jurisdiction to prosecute: anyone who commits international crimes such as war crimes, crimes against humanity and genocide anywhere in the world, provided the suspect is in the Netherlands (section 2, subsection 1 (a)); anyone who commits any of these crimes anywhere in the world against a Dutch national (section 2, subsection 1 (b)); and any Dutch national who commits any of these crimes anywhere in the world (section 2, subsection 1 (c)).
