



Alternative report to

the Committee on the Rights of the Child

on implementation of the OPTIONAL PROTOCOL to the

Convention on the Rights of the Child on the

INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

(OPAC)

ALGERIA

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CORE QUESTIONS AND RECOMMENDATIONS

Questions and recommendations arising directly from the Committee's previous concluding observations on Algeria are marked as such.

Questions

- Does national legislation allow any exceptions to the minimum age of 19 for call up into military service, for example, in states of emergency or at the conscript's own request?
- Are Popular Defence recruits called into service in the calendar year in which they reach 18 years of age, or after their 18th birthday?
- What are the obligations of 16- and 17-year-olds in relation to the Popular Defence Forces?
- Can volunteer career officer recruits enter training and/or service before the date of their 18th birthday?
- Can students at National Cadet Schools leave without penalty at any time?
- Are National Cadet School students obliged to enlist into the armed forces after graduation?
- Are National Cadet School students subject to military law and discipline?
- What is the minimum age limit for membership of the GLD?
- Is the recruitment of persons under the age of 18 by non-state armed groups and/or national armed forces, and their use in hostilities, criminalised under national legislation?
- What measures is the state party taking to prevent recruitment of children by armed groups?
- What role is played by non-governmental organisations, the media, the private sector and the community, in particular children, in the design and implementation of programmes to prevent the recruitment of children by armed groups?
- What public and private programmes exist to enable children to leave armed groups, paying special attention to their safety and protection from reprisals, and physical and psychosocial recovery? In what way do these programmes address the specific needs of girls?
- What measures are in place to identify children, including girls, amongst the asylum-seeking and migrant population who may have been victims of child recruitment or other violations of OPAC, and to provide them with age- and gender-appropriate assistance programmes for their physical and psychosocial recovery?

Recommendations

The state party should:

- Establish by law the minimum age for voluntary recruitment into the national armed forces under which recruitment of children would be prohibited with no exceptions, thus ensuring that persons under the age of 18 do not serve in the Algerian armed forces (CRC/C/DZA/CO/3-4);
- Discontinue weapons training for students in National Cadet Schools and expressly prohibit their participation in hostilities;
- Provide children attending military schools with adequate access to independent complaints and investigation mechanisms;
- Criminalise the recruitment of persons under the age of 18 by both state armed forces and non-state armed groups in both wartime and in peace, and their use in hostilities;
- Empower national judicial authorities to undertake criminal investigations and prosecutions of individuals suspected of unlawfully recruiting children, and using them in hostilities, regardless of where the crime was committed or the nationality of the accused or the victim;
- Accede to the Rome Statute of the International Criminal Court (ICC) and ensure that the war crime of conscripting or enlisting children or using them to participate in hostilities is incorporated into national legislation;

- Take all measures necessary to prevent the recruitment of children by, and protect them from violence from, armed groups and assess the impact of those measures;
- Review security laws and other legislation, including the Penal Code, to ensure children are never detained or prosecuted solely for having been recruited by or associated with armed groups, and that the rights and best interests of such children are fully recognised, respected and protected, including in criminal investigations and proceedings where they may be alleged perpetrators, victims or witnesses of crimes;
- Ensure that all children who have been directly or indirectly involved in armed conflict are protected and to provide children involved in and traumatized by armed conflict with adequate assistance and counselling for their rehabilitation, physical and psychological recovery and social reintegration, in cooperation with national and international non-governmental organisations and United Nations bodies such as UNICEF (CRC/C/15/Add.269);
- Respect the principle of non-refoulement and ensure that the best interests of the child are prioritised in all actions and decisions concerning irregular migrants, refugees and asylum seekers below the age of 18;
- Ensure that unaccompanied foreign children in the jurisdiction of the State party who have been involved in armed conflict are treated in accordance with paragraphs 54 to 60 of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin;
- Adopt legislation to prevent the sale or transfer of arms and other forms of military assistance to states when the final destination is a country in which children are known to be, or may potentially be, unlawfully recruited or used in hostilities by armed forces. This provision should also apply to states that provide direct or indirect support to armed groups that recruit children;
- Accede to the Arms Trade Treaty.

PREVENTION

(arts. 1, 2, 4; para. 2, and art. 6; para. 2)

CONSCRIPTION AND FORCED RECRUITMENT

Conscription is in operation in Algeria, regulated under Law number 14-06 (2014) on National Service. Conscripts must register upon reaching 17 years of age, and are called up for military service at age 19.¹

However, under Law number 87-16 (1987) on Popular Defence, citizens aged 18 – 60 years are subject to ‘Popular Defence’ obligations, unless they are subject to military service obligations, and citizens aged over 16 years ‘may benefit from military training.’² ‘Popular Defence Forces’ are required to perform territorial defence duties and support of the national army (l’Armée nationale populaire), under the control of the Ministry of Defence, equipped by the Ministry of Defence, and in accordance with national defence plans. They also perform civil defence support functions, although these are not detailed further in the legislation.

The Popular Defence Forces are defined as one of the components of ‘the national defence,’ which comprises a combination of structures and institutions contributing to the defence of the country, distinct from the national Army.³ Compulsory military training of 16 and 17-year-olds by these paramilitary forces would appear to be a violation of article 2 of OPAC and ILO Convention 182 on the Worst Forms of Child Labour, both of which prohibit the forced or compulsory recruitment of children below the age of 18 into armed forces or groups. Children in these organisations are also at risk of exposure to participation in hostilities, in violation of article 1 of OPAC.

Questions:

- Does national legislation allow any exceptions to the minimum age of 19 for call up into military service, for example, in states of emergency or at the conscript’s own request?
- What proof of age and identity is required to register for national service and Popular Defence duties?
- Are Popular Defence recruits called into service in the calendar year in which they reach 18 years of age, or after their 18th birthday?
- What are the obligations of 16- and 17-year-olds in relation to the Popular Defence Forces? Are they classified as members of the Popular Defence? Do they have military status? Is military training and/or participation in the Popular Defence Forces compulsory for this age group? If it is voluntary, what measures are in place to ensure participation is genuinely voluntary, and is parental consent required? What measures are in place to ensure children in the Popular Defence Forces do not participate in hostilities?

Recommendations

The state party should:

- Raise the minimum age for recruitment, conscription or any other form of association with national armed forces or Popular Defence Forces, to 18 years or above.

¹ Loi n° 14-06 du 13 Chaoual 1435 correspondant au 9 août 2014 relative au service national, Article 3, 10.

<http://www.joradp.dz/HFR/Index.htm>

² Loi no 87-16 du 1er aout 1987 portant institution, missions et organisation de la défense populaire, Article 3.

<http://www.joradp.dz/HFR/Index.htm>

³ Ibid, Articles 1, 2.

VOLUNTARY ENLISTMENT AND SAFEGUARDS

The Algerian armed forces are primarily a conscripted force. Presidential Decree 08-134 (2008) on conditions of recruitment of career officers of the national Army regulates the recruitment of career-officers on a voluntary basis for a limited number of posts annually, to compensate any shortfalls within the existing force.⁴ Career officers are recruited from civilian life either from military schools, or through competitive examination.

Eligible candidates must be educated to baccalaureate level at minimum and be aged 18 years (minimum) to 21 years (maximum).⁵ The age limit for recruitment is set at 31st December of the year concerned, meaning that candidates could potentially apply at age 17.⁶ Article 14 specifies that “candidates for recruitment who have not reached the minimum age required may be detained on the basis of paternal authorization or legal guardian. In such a case, the contract of employment shall not be definitive until the age of eighteen years has been attained.”⁷ It is unclear whether this means 17-year-olds can enter service and training with parental consent, or whether their application can be held open, with parental consent, until they reach 18 years and can begin service. This ambiguity is reflected in the binding declaration submitted by the state party upon ratification of OPAC:

‘In application of Order No. 06-02 dated 18 February 2006 containing the General Military Service Personnel Act, Presidential Decree No. 08-134 dated 6 May 2008 specifies the conditions for the recruitment of officers serving in the Algerian Army under which the minimum age for the recruitment of persons in this category shall be 18 years...

Furthermore, all the guarantees relating to the voluntary recruitment of those concerned and which, in the case of minors, require the permission of the persons legally responsible for them as well as adequate knowledge of the obligations inherent in military service are contained in the Algerian legal texts. Those texts, in addition to establishing the free and uncoerced nature of recruitment in the ranks of the National People’s Army, are also applicable to holders of the baccalaureate who have reached the age of 17 years and who, by virtue of article 14 of Presidential Decree No. 08-134 dated 8 May 2008, must obtain the permission of their parents or legal guardian.”⁸

Questions

- Can volunteer career officer recruits enter training and/or service before the date of their 18th birthday?

Recommendations

The state party should:

- Issue a revision to Presidential Decree No 08-134 (6 May 2008) to clarify that volunteer career officer recruits cannot enter service or training before they have attained the age of 18 years;
- Establish by law the minimum age for voluntary recruitment into the national armed forces under which recruitment of children would be prohibited with no exceptions, thus ensuring that persons under the age of 18 do not serve in the Algerian armed forces (CRC/C/DZA/CO/3-4).

⁴ Décret présidentiel n° 08-134 du 30 Rabie Ethani 1429 correspondant au 6 mai 2008 fixant les conditions de recrutement des officiers de carrière de l’Armée nationale populaire, <http://www.joradp.dz/HFR/Index.htm>.

⁵ Ibid, Article 10.

⁶ “La date de décompte des limites d’âge pour le recrutement est arrêtée au 31 décembre de l’année considérée”, Article 11.

⁷ “Les candidats au recrutement n’ayant pas atteint l’âge minimal requis peuvent être retenus à titre dérogatoire sur autorisation paternelle ou du tuteur légal. Dans ce cas, le contrat d’engagement ne revêtira de caractère définitif qu’une fois l’âge de dix-huit (18) ans révolus atteint.”

⁸ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en#EndDec

MILITARY SCHOOLS

The National Cadet Schools are regulated under Presidential Decree No 08-340 (2008).⁹ Article 2 of the Decree states that the schools are the responsibility of the Ministry of Defence, and the schools are 'subject to all laws and regulations applicable to military establishments.' The schools provide middle and secondary level education, as well as paramilitary training determined by the Ministry of Defence. The school is headed by a 'commander' appointed according to Ministry of Defence regulations and selected from amongst senior officers.

The educational curriculum follows that of the national education system and is provided by staff appointed by the Ministry of Education, seconded to the Ministry of Defence. Educational programmes are under the remit of a Director of Studies at the school, an education professional, who is appointed jointly by the Ministries of Defence and Education.

There is an examination to determine admission to the school. Candidates must meet the 'educational qualification and age' criteria for middle and secondary level education in the national education system. Further detail on minimum age is not specified. Signed consent of the candidate's legal guardian is required for admission.¹⁰ Cadets receive a study allowance from the Ministry of Defence.

The decree does not specify whether cadets have military status or are bound by military law. It does not specify whether they have the right to leave at any time, or whether they are obliged to enlist in the armed forces upon graduation. Additional decrees establishing each of the schools contain no further detail on these points.

Recommendations

The state party should:

- Clearly establish in law that students at National Cadet Schools have civilian status and benefit from all specific rights and protections applicable to them as children;
- Discontinue weapons training for students in National Cadet Schools and expressly prohibit their participation in hostilities;
- Ensure that all children in military schools receive education according to Articles 28, 29 and 31 of the Convention on the Rights of the Child, taking into account its general comment No. 1 (2001) on the aims of education. In particular, human rights education should be included on the provisions of the Protocol;
- Provide children attending military schools with adequate access to independent complaints and investigation mechanisms.

Questions

- Can students at National Cadet Schools leave without penalty at any time?
- Are students obliged to enlist into the armed forces after graduation?
- In which legislation, decree or policy does it state that students do not have military status (as per the assertion in State Party initial OPAC report)?
- Are students subject to military law and discipline?
- Can students be called upon to participate in hostilities, or assist in military or national defence operations?
- Are National Cadet Schools military sites, or located on military sites?

⁹ Décret présidentiel n° 08-340 du 26 Chaoual 1429 correspondant au 26 octobre 2008, <http://www.joradp.dz/HFR/Index.htm>.

¹⁰ 'L'admission définitive du candidat est subordonnée à la signature d'une autorisation par son tuteur legal.' Article 30.

- Is there an independent body explicitly mandated to oversee the implementation of the state's obligations to protect children's rights, including in relation to military recruitment procedures, to which cadets in military schools can make complaints?
- Are complaints of a potentially criminal nature (for example, physical or sexual abuse) concerning National Cadet Schools investigated by civilian or military police?

PROHIBITION AND RELATED MATTERS

(art. 1, 2, 4, paras. 1 and 2)

NON-STATE ARMED GROUPS

Non-state armed groups including al-Qaida in the Islamic Maghreb and a Da'esh affiliate, Jund al-Khilafah, are active in Algeria and continue to conduct attacks.¹¹ In 2016 it is alleged that 125 members of such groups were killed by national security forces.¹² It is unknown to what extent children may be involved in these groups.

Executive Decree No 97-04 (1997) established community-level paramilitary 'self defence organisations' (known as "GLD"), intended to combat terrorism and crime.¹³ These groups, which are comprised of civilian volunteers, are equipped and armed by the state and directed jointly by the Ministry of Defence and Ministry of Interior. They are authorised to use force and weapons. The legislation does not specify the minimum age limit for membership of the GLD.

Recommendations

The state party should:

- Criminalise the recruitment of persons under the age of 18 by non-state armed groups in both wartime and in peace, and their use in hostilities;
- Prosecute individuals reasonably suspected of unlawful recruitment or use of children, in an independent, impartial civilian court in proceedings that meet international fair trial standards;
- Empower national judicial authorities to undertake criminal investigations and prosecutions of individuals suspected of unlawfully recruiting children, and using them in hostilities, regardless of where the crime was committed or the nationality of the accused or the victim;
- Accede to the Rome Statute of the International Criminal Court (ICC) and ensure that the war crime of conscripting or enlisting children or using them to participate in hostilities is incorporated into national legislation;
- Extend its full cooperation to the ICC in its investigation and prosecution of such crimes, including identifying and locating witnesses, arresting and surrendering accused persons in their territories, and cooperating in the implementation of reparations to the victims;
- Take all measures necessary to prevent the recruitment of children by, and protect them from violence from, armed groups and assess the impact of those measures;
- Review security laws and other legislation, including the Penal Code, to ensure children are never detained or prosecuted solely for having been recruited by or associated with armed groups, and

¹¹ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 2016 Country Reports on Human Rights Practices Report 3 March 2017, Algeria. <https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265490.htm>

¹² Amnesty International, Annual Report – Algeria, 2016/17. <https://www.amnesty.org/en/countries/middle-east-and-north-africa/algeria/report-algeria/>.

¹³ Décret exécutif no 97-04 du 24 Chaabane 1417 correspondant au 4 janvier 1997 fixant les conditions d'exercice de l'action de légitime défense dans un cadre organisé. <http://www.joradp.dz/HFR/Index.htm>

that the rights and best interests of such children are fully recognised, respected and protected, including in criminal investigations and proceedings where they may be alleged perpetrators, victims or witnesses of crimes;

- Ensure the minimum age for membership of GLD and any other armed groups established, controlled, condoned, armed or permitted to bear arms by the state, is at least 18 years;
- Investigate and prosecute any person reasonably suspected of recruiting children into GLD or other state-allied armed groups.

Questions

- What is the minimum age limit for membership of the GLD? How is this enforced? What action is taken against persons suspected of recruiting, or allowing the recruitment of, members below the minimum age limit?
- Is the recruitment of persons under the age of 18 by non-state armed groups and/or national armed forces, and their use in hostilities, criminalised under national legislation? Does this legislation have extraterritorial applicability?
- What measures is the state party taking to prevent recruitment of children by armed groups?
- What role is played by non-governmental organisations, the media, the private sector and the community, in particular children, in the design and implementation of programmes to prevent the recruitment of children by armed groups?
- What measures have been taken to ensure legal, psychological or other training for those who work with children recruited by armed groups or child victims of violence by armed groups?
- What public and private programmes exist to enable children to leave armed groups, paying special attention to their safety and protection from reprisals, and physical and psychosocial recovery? In what way do these programmes address the specific needs of girls?

PROTECTION, RECOVERY AND REINTEGRATION

(art. 6, para. 3)

REFUGEE AND ASYLUM-SEEKING CHILDREN

Migrants and asylum-seekers, including children, have been subject to arrest, detention and arbitrary expulsion from Algeria. According to Human Rights Watch and UNHCR, a group of Syrian asylum-seekers including 22 children, who may have been victims of military recruitment or at risk of such recruitment, were trapped for several weeks between April and May 2017 ‘in abysmal conditions’ in the border area between Algeria and Morocco as neither state would permit them to enter national territory.¹⁴ The asylum-seekers were unable to access essential services, including food and medical facilities, or apply for asylum.

Human Rights Watch has also reported on mass expulsions of migrants, asylum seekers and refugees from Algeria, potentially in violation of the principle of non-refoulement and Algeria’s obligations as party to the 1951 Refugee Convention. A group of almost 1,500 individuals primarily from West and Central Africa, including children, were detained in Algiers in December 2016, and forcibly transferred to Tamanrasset, almost 2,000km south.¹⁵ From here, several hundred individuals were deported en masse to Niger.

Recommendations

¹⁴ Human Rights Watch, Algeria/Morocco: Syrians Stranded at Border, 5 May 2017.

<https://www.hrw.org/news/2017/05/05/algeria/morocco-syrians-stranded-border>

¹⁵ Human Rights Watch, Algeria: Halt summary deportations, 9 December 2016. <https://www.hrw.org/news/2016/12/09/algeria-halt-summary-deportations>

The state party should:

- Ensure that all children who have been directly or indirectly involved in armed conflict are protected and to provide children involved in and traumatized by armed conflict with adequate assistance and counselling for their rehabilitation, physical and psychological recovery and social reintegration, in cooperation with national and international non-governmental organisations and United Nations bodies such as UNICEF (CRC/C/15/Add.269);
- Respect the principle of non-refoulement and ensure that the best interests of the child are prioritised in all actions and decisions concerning irregular migrants, refugees and asylum seekers below the age of 18;
- Ensure that unaccompanied foreign children in the jurisdiction of the State party who have been involved in armed conflict are treated in accordance with paragraphs 54 to 60 of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

Questions

- What measures are in place to identify children, including girls, amongst the asylum-seeking and migrant population who may have been victims of child recruitment or other violations of OPAC, and to provide them with age- and gender-appropriate assistance programmes for their physical and psychosocial recovery?
- What role is played by non-governmental organisations, the media, the private sector and the community, in particular children, in the design and implementation of such programmes? How do these programmes address the specific needs of girls?

INTERNATIONAL ASSISTANCE AND COOPERATION

(art. 7, para. 1)

Algeria has not endorsed the Paris Commitments and Principles on Children Associated with Armed Forces or Armed Groups, the Safe Schools Declaration, or acceded to the Rome Statute of the International Criminal Court or the Arms Trade Treaty. The Stockholm International Peace Research Institute Arms Transfers Database had no records of arms transfers from Algeria to other states or armed groups in the period 2000 – 2016.

Recommendations

The state party should:

- Endorse the Paris Commitments and Principles and the Safe Schools Declaration;
- Accede to the Rome Statute and the Arms Trade Treaty;
- Adopt legislation to prevent the sale or transfer of arms and other forms of military assistance to states when the final destination is a country in which children are known to be, or may potentially be, unlawfully recruited or used in hostilities by armed forces. This provision should also apply to states that provide direct or indirect support to armed groups that recruit children.