

SUMMARY

Alternative report submitted by TRIAL pursuant to the initial report of the Kingdom of Morocco related to the application of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

(CRC/C/OPAC/MAR/1)

DECEMBER 2013

Introduction

The initial Report

On the 19th of June 2012, the Kingdom of Morocco submitted its initial report before the Committee on the rights of the child on the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC/C/OPAC/MAR/1).

The current report submitted to the Committee on the rights of the child (hereafter, “the Committee”) follows the initial report presented by Morocco concerning the implementation of the Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict (hereafter, “the OP-AC”).

Given its mandate and expertise, TRIAL particularly focused on the criminalization of the acts linked to the involvement of children in armed conflicts as embodied in the OP-AC and on the establishment of universal jurisdiction in order to strengthen the effective prosecution and punishment of such crimes, without prejudice to other measures equally “necessary” to be implemented in order to apply the OP-AC, ratified by Morocco the 22nd of May 2002.

A review of the national legislation of Morocco led TRIAL to conclude that the legal framework of the State Party is not in conformity with the commitments undertaken pursuant to Articles 1, 2, 4 and 6 of the OP-AC regarding the criminalization and repression of the offences related to the involvement of children in armed conflicts because of:

- a) the lack of criminalization of the conscription and enrolment of children under 15 years old in the national armed forces and of their use in hostilities; as well as the lack of criminalization of the mandatory enrolment of persons under 18 years old into the State’s armed forces, of their

participation in hostilities and of their recruitment and use in hostilities by non-State armed groups;

- b) the lack of provisions providing national tribunals with universal jurisdiction for the crimes contained in the OP-AC necessary for an effective prosecution and punishment of the perpetrators;
- c) the lack of rules prohibiting the arms trade and export, including small arms and light weapons, in addition to the military assistance to countries in which children take part to armed conflicts;
- d) the lack of explicit definition in its national legislation or codes and military manuals of the concepts of “direct participation” of children and children involved in “hostilities”;
- e) the non-ratification of the Rome Statute of the International Criminal Court, the Kampala amendments and the Agreement on the privileges and immunities; as well as the incompatibility of its national legislation with the obligations deriving from the Rome Statute, notably as a result of the lack of definition, in Moroccan criminal law, of the crimes and general principles embedded in the Rome Statute.

Building on the most recent jurisprudence of the Committee on the rights of the child on the way of interpreting the obligations laid down by the OP-AC, TRIAL is of the opinion that Morocco should:

- a. Adopt new criminal provisions providing for the incrimination and effective prosecution of war crimes consisting in recruiting and involving children under 15 years old in armed conflicts, the compulsory recruitment of persons under 18 years old in the State’s armed forces, their participation in hostilities and their recruitment and use in hostilities by non-State armed groups;**
- b. Provide national criminal courts with universal jurisdiction for crimes contained in the OP-AC, necessary for an effective prosecution and punishment of the perpetrators;**
- c. Prohibit the arms trade and export, including small arms and light weapons, in addition to military assistance for countries in which children are involved in armed conflicts;**
- d. Explicitly define – in its national legislation or codes and military manuals – the concepts of “direct participation” of children and children involved in “hostilities” in line with international standards;**
- e. Ratify the Rome Statute of the International criminal Court (ICC), its Agreement on privileges and immunities; consider the ratification of the Kampala amendments to the Rome Statute; align its national legislation with the obligations deriving from the Rome Statute, in particular by integrating the crimes and general principles defined by the**

Rome Statute; and adopt national provisions permitting an efficient cooperation with the ICC.

In the full version of the report (available only in French), suggestions have been issued regarding the questions to be included by the Committee in the list of issues to be dealt during the consideration of the initial report of Morocco; and conclusions as well as specific recommendations regarding the measures to be implemented by the State party to meet the obligations laid down in articles 1, 2, 4 and 6 OP-AC.