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Committee on the Rights of the Child

Sixtieth session

29 May – 15 June 2012

Consideration of reports submitted by States parties 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

Concluding observations: Australia

1. The Committee considered the initial report of Australia (CRC/C/OPAC/AUS/1) at its 1709th meeting, held on 5 June 2012, and adopted, at its 1725th meeting, held on 15 June 2012, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report under the Optional Protocol and the written replies to the list of issues (CRC/C/OPAC/Q/1/Add.1) and appreciates the positive dialogue with the State Party multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the fourth periodic report of the State party under the Convention on the Rights of the Child (CRC/C/AUS/4) and on the initial report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/AUS/1). The Committee regrets that the State party report did not follow the revised reporting guidelines.

I. General observations

Positive aspects

4. The Committee welcomes as positive the legislative amendments of the Defence Instructions (General) PERS 33-4 in 2005 and 2008, which apply to members of the Australian Defence Force (ADF) who are under the age of 18 years.

II. General measures of implementation

Legal status

5. The Committee is concerned that the State party has not taken sufficient measures to incorporate the provisions of the Optional Protocol into its domestic legislation.

6. **Pursuant to article 6 of the Optional Protocol, the Committee urges the State party to undertake a review of its domestic legislation with a view to fully incorporating the provisions of the Optional Protocol into its domestic legislation.**

Coordination

7. The Committee notes the information received from the State party which indicates that the ADF is responsible for military recruitment practices and training programs. However, the Committee is concerned about the absence of a body mandated to coordinate a comprehensive and effective implementation of the Optional Protocol throughout the State, including at the State and Territory level.

8. **The Committee urges the State party to designate the governmental entity with overall responsibility for the implementation of the Optional Protocol and to put in place an institutional mechanism for effective coordination among ministries and other government entities and partners with respect to the implementation of the Optional Protocol.**

Training

9. The Committee regrets that the training programmes for members of the armed forces and relevant professional groups dealing with children do not cover the provisions of the Optional Protocol.

10. **The Committee encourages the State Party to provide training on the Optional Protocol to all members of its armed forces, in particular those involved in international operations as well as other personnel dealing with children, in particular authorities working for and with asylum-seeking and refugee children, police, lawyers, judges, military judges, medical professionals, social workers and journalists.**

Data

11. The Committee takes notes of the statistics provided on the number of children enrolled in the cadet programme. However, it regrets that the State party has not collected disaggregated data of those children by sex, age, rural/urban origin and ethnicity. In addition, the Committee is concerned about the lack of data and statistics on refugee and asylum-seeking children from countries where children may have been recruited or used in armed conflict and/or hostilities.

12. **The Committee recommends that the State party ensure that data, disaggregated according to sex and ethnicity, on voluntary recruits under the age of 18 years in the ADF and the cadet program is publicly available. Furthermore, the Committee recommends that the State party systematically collect data on refugee, asylum-seeking and migrant children within its jurisdiction who may have been recruited or used in armed conflict and/or hostilities.**

III. Prevention

Direct participation

13. The Committee is deeply concerned that the Defence Instructions 2008 only prevent children under the age of 18 from involvement in hostilities to the extent that it does not adversely impact on the conduct of operations. The Committee notes with concern that the application of this provision could lead to the direct participation of children under the age of 18 years in hostilities.

14. **The Committee recommends that the State party review its domestic legislation and military procedures to ensure that members of the armed forces who are under the age of 18 do not take direct part in hostilities in accordance with Article 1 of the Optional Protocol. In this regard, the Committee further recommends that the State party define the concepts of “direct participation” and “hostilities” in relevant domestic legislation.**

15. The Committee notes that the State party adopted a duty of care policy in the Defence Instructions in 2008. However, the Committee regrets the lack of information on the implementation of this policy.

16. **The Committee recommends the State party to include detailed information on the implementation and effectiveness of the duty of care policy in its next periodic report.**

Voluntary Recruitment

17. The Committee notes that the age of voluntary recruitment into the ADF is 17 years.

18. **In order to promote and strengthen the protection of children through an overall higher legal standard, the Committee encourages the State party to review and raise the minimum age of voluntary recruitment into the ADF to 18 years of age.**

Cadet scheme

19. While recognising that members of the Australian Defence Force Cadets are not members of the ADF, the Committee notes with concern that under the cadet scheme, children are exposed to military-like training activities, including drills, ceremonial parades and the use of firearms at an early age. Furthermore, the Committee is concerned that the ADF active targeting schools for recruits through ‘work experience programs’ may unduly put pressure on young persons, especially from marginalized populations and from different linguistic backgrounds to volunteer, without full informed consent.

20. **The Committee recommends that the State Party:**

(a) **Review the operations of its cadet scheme to ensure that activities in such programs are age appropriate, particularly with respect to military-like activities, and establish clear guidelines on the age requirement for such activities, taking due consideration of the mental and physical effects of such activities on the child;**

(b) **Ensure effective and independent monitoring of the cadet scheme to safeguard the rights and welfare of the child enrolled in the cadet forces and ensure that children, parents and other groups are adequately informed about the recruitment process and are able to present concerns or complaints;**

(c) **Prohibit the handling and use of firearms and other explosives for all children under the age of 18 years in line with the spirit of the Optional Protocol;**

(d) **Ensure that young persons from different linguistic backgrounds and/or from marginalized populations are not overly targeted for recruitment and put in place measures for informed consent; and**

(e) **Include information on how the activities of the cadet forces fit with the aims of education, as recognized in article 29 of the Convention and in General Comment No. 1 of the Committee.**

IV. Prohibition and related matters

Criminal legislation and regulations in force

21. The Committee notes with appreciation that national legislation criminalises the recruitment of all children under the age of 18 years by armed groups or paramilitary groups. Nevertheless, the Committee notes with concern that national legislation only criminalises the recruitment of children under the age of 15 years for the armed forces. Furthermore, the Committee is concerned that the criminalization of the acts prohibited therein is limited to recruitment in the context of an armed conflict and does not apply in peace time.

22. The Committee appreciates the additional information sent by the State party concerning the use of private military and security companies and the recruitment of children by these companies.

23. **In order to further strengthen the prevention of the crimes under the Optional Protocol, the Committee recommends that the State party:**

(a) **Amend the criminal code to explicitly prohibit and criminalize the recruitment and use of children under the age of 18 years by the armed forces and armed groups;**

(b) **Strengthen the provisions of the criminal code to ensure that the crime of unlawful recruitment of children by armed forces and armed groups apply in both peace and wartime;**

(c) **Undertake a comprehensive review of all legislation affecting children and take all necessary measures to fully harmonize its legislation and national policies, including the Defence Instructions 2008 with the principles and provisions of the Optional Protocol;**

(d) **Ensure domestic regulatory legislation on the oversight and accountability of private military and security companies and provide information on the steps taken by the State party in the next periodic report.**

V. Protection, recovery and reintegration

Measures adopted to protect the rights of child victims

24. While noting as positive the State party's amendment to the Migration Reform Act which stipulates that a minor should only be detained as a measure of last resort, the Committee remains gravely concerned that asylum-seeking and refugee children, including those who may have been recruited or used in hostilities continue to be routinely detained in immigration centres often for lengthy periods and without judicial review. The Committee is also seriously concerned at the absence of official statistics and data on asylum-seeking and refugee children in the State party and at the lack of procedures to identify victims of crimes under the Optional Protocol.

25. In light of its obligations under article 7 of the Optional Protocol, the Committee urges the State party to:

- (a) Establish a national system of data collection and registration of all asylum-seeking and refugee children under its jurisdiction;
- (b) Establish an identification mechanism for children, including asylum-seeking and refugee children, who have been or may have been involved in armed conflict abroad, and ensure that personnel responsible for such identification are trained on child rights, child protection and child-friendly interviewing skills; and
- (c) Provide children who have been or may have been involved in armed conflict with appropriate assistance for their physical and psychological recovery and their social reintegration.

VI. International assistance and cooperation

26. The Committee welcomes the State party's contributions to a project for the physical and psychological recovery and social reintegration of child victims of armed conflict in the Asia Pacific region and Africa. Furthermore, the Committee appreciates the financial support to UNICEF's work in the area of child protection for children adversely affected by armed conflict.

Arms export

27. The Committee notes with concern that Australia actively exports arms, including small arms and light weapons to countries where children are known to be, or may potentially be, recruited or used in armed conflict and/or hostilities. The Committee regrets that the State Party does not have any specific legislation to restrict the sale of arms to such countries.

28. **The Committee recommends the State party to introduce legislation specifically prohibiting the sale of arms, including small arms and light weapons, to countries known to be, or may potentially be, recruiting or using children in in armed conflict and/or hostilities.**

29. The Committee notes that the State party introduced the Criminal Code Amendment (Cluster Munitions Prohibition) Bill in the Senate in November 2010. While the Committee appreciates the State party's efforts in ratifying and implementing the Convention on Cluster Munitions, it is concerned that the proposed bill permits Australian forces to assist in activities prohibited by the Convention on Cluster Munitions and explicitly allows stockpiling and transfer of cluster munitions by foreign military allies through Australian territory. Furthermore, the Committee is concerned that the Bill does not explicitly prohibit direct and indirect investment in the development or production of cluster munitions.

30. **The Committee strongly urges the State Party to revise the proposed Bill to ensure that the Australian forces do not engage in activities prohibited by the Convention on Cluster Munitions, including during joint military operations. The Committee further recommends that the proposed legislation be amended to prohibit investment in the development or production of cluster munitions.**

VII. Follow-up and dissemination

Follow-up

31. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, *inter alia*, by transmitting them to all relevant actors in the State party, including the Head of State, the Department of Defence, the Australian Defence Force, the Federal Parliament, the Australian Defence Force Cadets, the Department of Immigration and Citizenship and the Department of Health and Aging for appropriate consideration and further action.

Dissemination

32. The Committee recommends that the initial report and written replies submitted by the State party and the related Concluding observations adopted by the Committee be made widely available, including (but not exclusively) through the internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

VIII. Next report

33. In accordance with article 8, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol and these concluding observations in the next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.
