

CHILD SOLDIERS

INTERNATIONAL

“Working to stop the use of child soldiers worldwide”

Australia

**Report to the Committee on the Rights of the Child in advance of
Australia’s initial report on the Optional Protocol to the Convention
on the Rights of the Child
on the involvement of children in armed conflict**

March 2012

Child Soldiers International
9 Marshalsea Road
London SE1 1EP
United Kingdom

Tel: +44 (0) 20 7367 4110
Fax: +44 (0) 20 7367 4129

info@child-soldiers.org
Director: Richard Clarke

Who are child soldiers?

Child Soldiers International considers the term child soldier to be equivalent to the following description of children associated with armed forces or groups:

A child associated with an armed force or armed group refers to any person below 18 years of age who is, or who has been, recruited or used by an armed force or armed group in any capacity, including but not limited to children, boys and girls, used as fighters, cooks, porters, spies or for sexual purposes. It does not only refer to a child who is taking, or has taken, a direct part in hostilities.

Child Soldiers International was formerly the **Coalition to Stop the use of Child Soldiers**. Child Soldiers International is an international human rights research and advocacy organization. Child Soldiers International seeks to end and prevent the military recruitment and use in hostilities of child soldiers (boys and girls below the age of 18), and other human rights abuses resulting from their association with armed forces or groups. It seeks the release of child soldiers from armed forces or groups, promotes their successful return to civilian life and accountability for those who recruit and use them. Child Soldiers International promotes global adherence to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

www.child-soldiers.org

Child Soldiers International's logo is registered under No.2590778 on the Trade Marks Registry.

Contents

Introduction and principle recommendations	1
Prevention	2
Article 1	2
<i>Direct Participation</i>	2
Article 3	3
Paragraph 1	3
<i>Minimum age for voluntary recruitment</i>	3
Paragraph 3	6
<i>Safeguards</i>	6
<i>Cadet Forces</i>	7
<i>Active targeting of under-18s</i>	9
Prohibition	10
Article 6.1	10
Protection, Recovery and Reintegration	11
Article 6.3	11
<i>Appropriate assistance</i>	11
International assistance and cooperation	14
Article 7	14
<i>Arms Trade</i>	14

Introduction and principle recommendations

Child Soldiers International submits this report for consideration by the Committee on the Rights of the Child (the Committee) in view of its examination of Australia's initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) at the Committee's 60th session.

This report was compiled through desk-based research of available secondary sources, and through communications with Australian NGOs and academics.¹ Information requests sent to the Australian Minister of Defence² and the Australian representative in Geneva were unanswered.³ On the basis of the information gathered, this report summarizes Child Soldiers International's concerns about Australia's implementation of its obligations under OPAC, including in relation to:

- The low minimum voluntary recruitment age into the Australian Defence Forces.
- The inconsistent application of the safeguards specified in article 3.3 of OPAC during the recruitment of under-18s.
- The possibility for deployment into hostilities of under-18s in the Australian Defence Force.
- The use of firearms by under-18s in the Australian Defence Force Cadet scheme.
- The lack of legislation criminalizing recruitment and use of under-18s by armed forces, in both peace and times of conflict.
- The potential for child asylum seekers and refugees, who may be ex-child soldiers, to be detained for long periods of time without access to rehabilitation or reintegration.
- The export of small arms and light weapons to countries where children are known to be participating in hostilities.

In light of these concerns, Child Soldiers International makes the following recommendations for immediate action by the government of Australia:

- Raise the minimum age of voluntary recruitment into the Australian Defence Forces from 17 years to 18 years of age.
- Pending a reform of the minimum voluntary age, review its laws and policies on the deployment of minors to ensure that they are in conformity with article 1 of OPAC and that children are not exposed to the risk of taking part in hostilities.
- Ensure that violations of the provisions of the Optional Protocol regarding the recruitment and use of children under 18 years in hostilities are explicitly criminalized in Australian legislation.
- Establish an identification mechanism for asylum seeking and refugee children, who may have been involved in armed conflict abroad.

In addition, Child Soldiers International recommends that the government of Australia provide information to the Committee on:

¹ Including: Refugee Action Committee; Children out of Immigration Detention; The National Children's and Youth Law Centre; and Steven Freeland, Professor of International Law, University of Western Sydney.

² By letter 22 March 2011, by email 3 February 2012.

³ By letter 14 March 2011, by email 3 February 2012.

- The number of under-18s recruited into the Australian Defence Force and number of under-18s who entered the Australian Defence Force Academy since the entry into force of OPAC in Australia.
- Whether any under-18s were deployed in hostilities since 2009 and if so, to provide disaggregated data.
- The safeguards in place to guarantee the safety of cadets during exercises and whilst they are present on military bases, including information on whether cadets under 18 years are, or may be, trained to use weapons.
- What measures are taken to identify former child soldiers amongst refugee, asylum seeking and migrant children in Australia and how many former child soldiers are believed to be present in Australia; information on what programs are in place to address their specific needs and ensure their adequate physical and psychological recovery, including support, assistance and integration into the local community; and provide information on how these programs specifically address girls' needs.
- The existence of any safeguards in national legislation to prohibit the sale or transfer of small arms and light weapons to countries where children are known to be recruited or used in hostilities.

Prevention

Article 1

Direct Participation

Paragraph 47 of the Defence Instructions of 2008 states that Australian Defence Force (ADF) services must take all 'feasible' measures to ensure that a minor does not participate in hostilities, but only to the extent that it does not adversely impact on the conduct of operations.⁴ Paragraph 48 provides further clarification on the procedures in place to prevent the deployment of under-18s: 'Where a minor is part of a unit that is required to deploy to an area of hostility, that minor is not to deploy with the unit. In the case of a unit that is in transit or on exercise, and is required to deploy at short notice, minors in that unit must be returned to a safe area without undue delay.' Unless: 'a.) circumstances beyond the control of the CO do not permit removal; b.) it would be more dangerous to the minor to attempt to do so; c.) it would prejudice the effectiveness of the mission',⁵ in which case the child could end up being deployed to a hostile scene. Paragraph 50 goes on to emphasize that nothing in paragraph 49 relieves a Commanding Officer of the obligation to do everything possible within their power to prevent minors from directly participating in hostilities. Although clearly worded as an exception, paragraph 49(c) puts military effectiveness before the safety and best interest of minors, to whom the ADF owe a duty of care.

The Coalition to Stop the Use of Child Soldiers' 2001 Global Report stated that, despite the existence of safeguards to prevent the deployment of minors, there had been cases of under-18s being present in East Timor, an area of hostility.⁶ A 2002 Department of Defence review provided further detail when it

⁴ The Defence Instruction (General) PERS 33-4, AMDT No. 2, 22 April 2008, paragraph 47.

⁵ The Defence Instruction (General) PERS 33-4, AMDT No. 2, 22 April 2008, paragraph 49.

⁶ Coalition to Stop the Use of Child Soldiers, 2001 Global Report, page 74.

revealed that four 17-year-olds had served in East Timor between 1999 and early 2000.⁷ Between October 2002 and August 2009 there were no further reported instances of under-18s taking part in ‘warlike military operations’.⁸ However, since 2009 there has been no new information available, and the Australian initial report under OPAC does not provide any new data on the possible deployment of under-18s.⁹

Whilst there is currently no evidence of minors taking part in hostilities as members of the ADF, Australia’s policies still allow for the potential deployment of minors and fall short of the requirements under article 1, as interpreted by the Committee on the Rights of the Child when considering other countries with similar policies.¹⁰

Recommendations

Child Soldiers International recommends that Australia is requested to:

- Provide information on whether minors were deployed in hostilities after 2009 and if yes, to provide disaggregated data.
- Review its law and policies on the deployment of minors to ensure that they are in conformity with article 1 of OPAC and that children are not exposed to the risk of taking part in hostilities.

Article 3

Paragraph 1

Minimum age for voluntary recruitment

According to paragraph 14 of the Defence Instructions, the minimum age of voluntary recruitment into the Australian Defence Force (ADF) is 17 years old.¹¹ However, children who have reached the age of 16 and six months may also apply, with the approval of the single Service Career Management Agency.¹² All applicants under 18 are required to have the written consent of their parents or guardian, and provide

⁷ Department of Defence, *Management of Australian Defence Force Deployment to East Timor*, Audit Report No.38 2001–02, paragraph 5.20.

⁸ Parliamentary Question No. 1494, 18 August 2009 by Senator Scott Ludlum, available here: <http://scott-ludlam.greensmps.org.au/content/questions-notice/youth-australian-military>

⁹ Australia’s Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraphs 24 – 29.

¹⁰ See Committee on the Rights of the Child, Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CRC/C/OPAC/GBR/CO/1, 17 October 2008, paragraphs 10 and 11; Committee on the Rights of the Child, Concluding observations on the initial report of the United States of America, CRC/C/OPAC/USA/CO/1, 25 June 2008, paragraphs 13 and 14; Committee on the Rights of the Child, Concluding observations on the initial report of Viet Nam, UN Doc. CRC/C/OPAC/VNM/CO/1, 17 October 2006, paragraphs 12 and 13.

¹¹ Defence Instructions (General) PERS 33-4, AMDT No. 2, 22 April 2008, paragraph 14.

¹² Australia’s Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraph 25.

reliable proof of age¹³ in the form of a full Australian birth certificate, an Australian passport of more than two years validity, or an Australian citizenship certificate.¹⁴

The ADF recruitment age is not consistent with other policies at the national level which set at 18 years the minimum age on a range of issues: various state and territorial laws describe those under 18 years of age as ‘children’, ‘young persons’ or ‘minors’;¹⁵ persons below the age of 18 are unable to vote¹⁶ or buy alcohol; and most states regard 18 as the age at which a person obtains the legal majority.¹⁷

Australia’s initial report does not provide data on the number of under-18s currently serving in the Australian Defence Force. Information obtained by Child Soldiers International indicates that between 2005 and July 2007 the number of under-18s in the ADF rose sharply from 196¹⁸ to 486.¹⁹ More recent figures on the number of under-18s currently in the ADF are not publicly available.

In 2005 the Commonwealth and Defence Force Ombudsman of Australia conducted a review of the practice of recruiting minors into the armed forces. The report made a series of findings regarding the absence of a duty of care policy for under-18s in the armed forces,²⁰ and the inconsistent and haphazard protection offered by the ADF to minors.²¹ Various recommendations were put forward by the Ombudsman, with the aim of improving the treatment of minors and more clearly defining the ADF’s responsibility. In response to these recommendations, the Government adopted in 2008 a duty of care policy in the Defence Instructions, which is now contained in articles 8-11. Australia’s initial report contains no information on the implementation and effectiveness of this new duty of care policy. However, the government rejected the Ombudsman’s recommendation of an evaluation of the costs and benefits of enlisting minors into the ADF, with a view to raising the minimum age of voluntary recruitment to 18 years.²²

At 15 and a half a minor can prepare their application for the Australian Defence Force Academy (ADFA) - which combines university study with intensive military training - by selecting job preferences and booking their YOU (Your Opportunities Unlimited) session with the ADF,²³ which they can officially attend at age 16. However, the ADFA website states that one must be 17 years old on date of entry, whereupon the recruit is sworn in as either a midshipman or officer cadet in the armed forces,²⁴ paid a

¹³ Defence Instructions (General) PERS 33-4, AMDT No. 2, 22 April 2008, paragraph 14(b) and (c).

¹⁴ Australia’s Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraph 31.

¹⁵ Commonwealth and Defence Force Ombudsman, *Australian Defence Force: Management of Service Personnel under the age of 18 years*, October 2005.

¹⁶ For example see <http://www.aec.gov.au>.

¹⁷ For example see <http://www.dci-au.org/html/juvenile.html>.

¹⁸ Commonwealth and Defence Force Ombudsman, *Australian Defence Force: Management of Service Personnel under the age of 18 years*, October 2005, page 11.

¹⁹ Coalition to Stop the Use of Child Soldiers correspondence with Ministry of Defence, October 2007.

²⁰ Commonwealth and Defence Force Ombudsman, *Australian Defence Force: Management of Service Personnel under the age of 18 years*, October 2005, pages 15, 17, 19.

²¹ Commonwealth and Defence Force Ombudsman, *Australian Defence Force: Management of Service Personnel under the age of 18 years*, October 2005, pages 20, 22, 24, 25.

²² Commonwealth and Defence Force Ombudsman, *Australian Defence Force: Management of Service Personnel under the age of 18 years*, October 2005, Recommendation 11, page 4.

²³ <http://www.defencejobs.gov.au/education/adfa/howToApply/entryRequirements.aspx>

²⁴ For example see: <http://www.defencejobs.gov.au/education/adfa/firstSixWeeks/> 0.53 minutes in they discuss the swearing in and oaths of allegiance; Department of Defence Australian Defence Force Academy, *Joining*

salary by the ADF,²⁵ is subject to military discipline through the Defence Force Discipline Act,²⁶ and committed to six to nine years of service upon graduation.²⁷ Yet, there is evidence pointing to the presence of 16-year-olds in the Academy as recently as 2011,²⁸ which runs contrary to the government's policy on the age of voluntary recruitment and their declaration under article 3.2 of OPAC.

A 2011 report by the Australian Human Rights Commission discerned the particular vulnerability and immaturity of ADFA recruits under the age of 18, finding that they are particularly at risk of exploitation and abuse.²⁹ The report noted that some staff and parents were supportive of raising the age of admission to the ADFA to 18 years.³⁰ It too recommended a review of the appropriateness of the minimum age of entry to the ADFA.³¹

Recommendations

Child Soldiers International recommends that Australia is requested to provide detailed information from official sources on:

- The number of under-18s recruited into the Australian Defence Force and the Australian Defence Force Academy since the entry into force of OPAC in Australia, including disaggregated data on the sex, social and economic background, rural/urban origin, indigenous status and ethnic origin on the recruits under 18.
- The practical implementation of the duty of care standards, introduced after the 2005 Defence Ombudsman's report, and how they satisfy the requirements under article 3.1 of OPAC.

Child Soldiers International recommends that Australia is encouraged to:

- Raise the current voluntary recruitment age into the ADF to 18 years.

Instructions: Australian Defence Force Academy (ADFA) – January 2012 intake midshipmen and officer cadets, ADFA/OUT/2011/2011/1007757/1, paragraph 4.

²⁵ See for example http://www.defence.gov.au/adfa/cadet_life/aimee_tevs.html

²⁶ Department of Defence Australian Defence Force Academy, *Joining Instructions: Australian Defence Force Academy (ADFA) – January 2012 intake midshipmen and officer cadets, ADFA/OUT/2011/2011/1007757/1*, paragraph 13.

²⁷ See for example <http://www.defencejobs.gov.au>

²⁸ Australian Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy. Phase 1 of the Review into the Treatment of Women in the Australian Defence Force*, October 2011, referencing an email from Lt Col N. Fox to the review, 22 August 2011.

²⁹ Australian Human Rights Commission, *Report on the review into the treatment of women at the Australian Defence Force Academy. Phase 1 of the review into the treatment of women in the Australian Defence Force*, October 2011, chapter 1 page 12.

³⁰ Australian Human Rights Commission, *Report on the review into the treatment of women at the Australian Defence Force Academy. Phase 1 of the review into the treatment of women in the Australian Defence Force*, October 2011, chapter 1 page 12.

³¹ Australian Human Rights Commission, *Report on the review into the treatment of women at the Australian Defence Force Academy. Phase 1 of the review into the treatment of women in the Australian Defence Force*, October 2011, page xxviii.

Early discharge

The termination of a recruit's contract is a discretionary power rather than an absolute right, conferred by the Defence Personnel Regulations 2002.³² Chapter 9 Part 2 lays out the various reasons for the termination of a contract for officers and enlisted members. The Regulations specify that if a member is less than 18 years old their employment may be terminated if parental consent is withdrawn. They then go on to state other reasons for termination of service, including (but not limited to) being medically unfit, being incapable of rendering effective service, having committed an offence or being unsuitable for further training.

Yet it is unclear from the text of the Defence Personnel Regulations whether a recruit under the age of 18 has the right to be discharged, without penalty, during training or before they have completed their contracted length of service, independently of the withdrawal of parental consent.

Recommendations

Child Soldiers International recommends that Australia is requested to provide detailed information from official sources on:

- The right of discharge from the armed forces for recruits aged under 18, whether recruits can be discharged irrespective of the withdrawal of parental consent, under what conditions can a request for early discharge be refused, and the number of requests that have been refused since the entry into force of OPAC in Australia, including requests made by under-18s and recruits who were under 18 when recruited.

Paragraph 3

Safeguards

Paragraph 14 of the Defence Instructions of 2008³³ incorporates into Australian legislation the safeguards for voluntary recruitment of under-18s provided for in article 3.3 of OPAC. However, the wording of the Defence Instructions is not fully consistent with OPAC: Paragraph 14(b) requires written parental consent, but does not stipulate that it be 'informed'. This is concerning, and could indicate a lower threshold in Australian law than what was intended by article 3.

According to the Ombudsman's 2005 report, many minors felt that poor quality advice was offered during the recruitment process: no guidance was provided on their status as minors in the armed forces or what was expected from them as under-18s during training and service; and there were doubts regarding the rigorous nature of the assessment of applicant suitability by Manpower, the company who was, and still is responsible, for ADF recruitment.³⁴

Information received during a 2009 Parliamentary question indicates that the only opportunity for parents to receive information regarding their children's future career in the ADF is at military information sessions - where parents go on masse to listen to presentations - or through documents available on the

³² Defence (Personnel) Regulations 2002, available here:
http://www.austlii.edu.au/au/legis/cth/consol_reg/dr2002274/

³³ Defence Instructions (General) PERS 33-4, AMDT No. 2, 22 April 2008.

³⁴ Commonwealth and Defence Force Ombudsman, *Australian Defence Force: Management of Service Personnel under the age of 18 years*, October 2005, page 33.

internet. It appears that parents are not present during the recruit's selection interview, and are therefore unable to pose questions directly to the recruiter.³⁵ The practice of recruiting hereby described may lead to minors and parents being misinformed and recruits being unprepared for military life and suffering for it.

These findings seem to run contrary to Australia's OPAC declaration³⁶ and to the assertion in Australia's initial report, which states that 'Defence Interviewers endeavour to ensure that all candidates, but particularly those under 18, have the maturity to cope with separation from family and psychological rigours of military training'.³⁷

Recommendations

Child Soldiers International recommends that Australia is requested to:

- Provide further clarification around recruitment procedures, and the degree of information provided to potential recruits, with a view to ensuring recruits truly comprehend the duties involved in service.
- Ensure all parents or legal guardians are included from the outset and during the entire recruitment and enlistment process, and are adequately informed about the recruitment process to the degree that their consent is considered 'informed'.

Cadet Forces

The Australian Defence Force Cadet (ADFC) scheme is open to those between 12 and a half and 20 years of age.³⁸ According to Australia's initial report, cadets are not classified as members of the armed forces,³⁹ and, from our research, they do not appear to perform official military or policing duties, nor do they seem to be subject to military law or discipline. However, Child Soldiers International is unable to definitively verify this.

The cadets are described in Australia's initial report as a 'community-based' youth development organization.⁴⁰ Yet, a 2008 independent review of the ADFC, initiated by the Minister of Defence,⁴¹ highlighted the official connection between the cadets and the ADF, when it stated that once a cadet dons their uniform they are regarded in law as Commonwealth employees,⁴² and are considered to be under the command of the cadet's respective Service Chiefs, with ultimate responsibility falling to the Chief of the

³⁵ Parliamentary Question No. 1494, 18 August 2009 by Senator Scott Ludlum, available here <http://scott-ludlam.greensmps.org.au/content/questions-notice/youth-australian-military>.

³⁶ "All applicants wishing to join the ADF must be fully informed of the nature of their future duties and responsibilities. Recruiting officers must be satisfied that an application for membership by a person less than 18 years of age is made on a genuinely voluntary basis." Available here:

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en

³⁷ Australia's Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraph 25.

³⁸ Review of the Australian Defence Force Cadets Scheme, November 2008, section 3.7, available here: http://www.defence.gov.au/dpe/cadetreview/documents/ADFC_Review_Final_Report_Nov_2008.pdf

³⁹ Australia's Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraph 40.

⁴⁰ Australia's Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraph 41.

⁴¹ See <http://www.defence.gov.au/dpe/cadetreview/index.htm>

⁴² Review of the Australian Defence Force Cadets Scheme, November 2008, see 'Glossary of Terms, page vii and paragraph 2.2.1.

Defence Force.⁴³ Additionally, the cadets are partially funded by the Department of Defence, and receive full support from the armed forces through the provision of uniforms, equipment, transportation, and training for the adult supervisory staff.⁴⁴

Child Soldiers International does not have information regarding the number of cadets that do join the defence forces, but it notes that the 2008 report refers to an earlier review, in 2006, which stated that ‘ADF recruitment from cadets was disproportionately high’.⁴⁵

Depending on which service the cadets are in - army, navy or air force - they can participate in activities such as training in drill, first aid, ‘living in the field’, navigation, ceremonial parades, pilot training, survival training, and, notably, the use of firearms.⁴⁶ It appears that each branch of the cadet forces have their own policy governing the use of firearms. The 2004 army cadets’ Policy Manual, which currently governs the conduct and operation of the army cadets, imposes an age restriction on the use of firearms, by stating that cadets must have completed at least one year of cadet service and recruit training, have parental consent, and be considered by their unit commander as suitably mature.⁴⁷ Therefore, it would be possible for a 13 and a half year old army cadet to commence weapons training, so long as they were deemed physically strong⁴⁸ and mature enough to handle the weapon and that the above mentioned conditions (parental consent and unit commander consideration) are fulfilled. These are not particularly stringent conditions that appear to rely more on the discretion of the unit commander than on a policy designed to protect children.

Furthermore, whilst cadet units are predominantly based in non-military settings such as schools, some activities are conducted on military barracks or army depots.⁴⁹ In 2009 there were reports of a foiled terrorist attack on Holsworthy army base in Sydney.⁵⁰ This base plays host to three separate army cadet units, and the children in those units, along with any ADF recruits under-18 present in the barracks, could have been exposed to significant risk if that attack had not been prevented.

In light of the above, Child Soldiers International is concerned that whilst there is no obligation on cadets to join the ADF, the 2008 report reviewing the cadet forces emphasized that although recruitment into the ADF was not the main drive of the cadets, it was an important “side effect”,⁵¹ and suggested ways to increase the number of recruits into the ADF from the cadets. It recommended that the relationship between the Defence Force Recruiting body and the cadets should be further developed by the former taking a more active interest in the cadets and providing more support for recruiting and recruiting publicity.⁵² In light of the above analysis on the weak safeguards during the recruitment process, this desire to see more involvement of the recruiting body in cadet activities is of some concern.

⁴³ Review of the Australian Defence Force Cadets Scheme, November 2008, section 2.7.

⁴⁴ See <http://www.cadetnet.gov.au/aac/whoweare/Pages/History.aspx> accessed 8 August 2011.

⁴⁵ Review of the Australian Defence Force Cadets Scheme, November 2008 para 2.5.16.

⁴⁶ See for example <http://www.cadetnet.gov.au/aac/whatwedo/Pages/whatwedo.aspx> accessed 5 August 2011.

⁴⁷ Australian Army Cadets Policy Manual, 2004, Volume 3, chapter 6, available here:

<http://www.cadetnet.gov.au/aac/Policies/Pages/POLMAN.aspx>.

⁴⁸ <http://www.cadetnet.gov.au/aac/whatwedo/Pages/LiveFiring.aspx> 16 September 2011

⁴⁹ This website provides the locations for some Australian cadet forces <http://www.cadetnet.gov.au/aac/find-unit/Pages/Findaunit.aspx>.

⁵⁰ The Telegraph, ‘Australia foils suicide attack on army base’, 4 August 2009, available here:

<http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/5969085/Australia-foils-suicide-attack-on-army-base.html>.

⁵¹ Review of the Australian Defence Force Cadets Scheme, November 2008, section 2.2.2.

⁵² Review of the Australian Defence Force Cadets Scheme, November 2008 para 2.6.2 and 2.6.3.

Recommendations

Child Soldiers International recommends that Australia is requested to provide detailed information from official sources on:

- The structure of the Australian Defence Force Cadets and the relationship between the cadets and the Ministry of Defence and the Australian Defence Forces.
- What measures are in place to ensure that cadets are not subject to military law and discipline, and do not participate in military or policing operations.
- The number of cadets joining the ADF, disaggregated by age.
- The safeguards in place to guarantee the safety of cadets during exercises and whilst they are present on military bases.
- Whether cadets under 18 years are, or may be, trained to use weapons.

Active targeting of under-18s

The Australian Defence Force run a range of programs aimed at directly targeting under-18s. The Department of Defence encourages work experience within the ADF for those over 15 years of age at the time of the placement,⁵³ in order to expose them to various aspects of military life, with a view to encouraging them to consider a career in the ADF. The placements are diverse in their nature, and range from the experiences of a defence librarian, and performing in the ADF band, to experiencing the duties of an infantry rifleman,⁵⁴ shadowing a flight squadron or participating in explosive ordnance.⁵⁵ In the latter, participants are permitted to use flares and grenades, place active detonators, and handle firearms, including shotguns.⁵⁶ It is unclear whether any age restrictions are imposed on these activities.

Moreover, in 2009 the Ministry of Defence revealed⁵⁷ that ADF recruiters actively target schools through the sponsoring of career promotion teams, who periodically visit Australian secondary schools. These teams provide information to students and those working with them, such as School Career Advisers, about ADF jobs. Australia's initial report provides no information on the age group that these school visits are aimed at, or regarding other ADF recruitment activities focused on children. However, the Committee, in their List of issues, has asked for clarification on these two topics.⁵⁸

Recommendations

Child Soldiers International recommends that Australia is requested to provide clarification on:

- The work experience programs run by the ADF.
- Whether under-18s participating in these programs are, or may be, trained to use weapons or exposed to their use and any potential harm.

⁵³ For example see: <http://www.defence.gov.au/workexperience/whoisitfor.htm>.

⁵⁴ For example see: http://www.defence.gov.au/workexperience/whatsonoffer/nsw/3rar_rifleman_infantry.htm.

⁵⁵ For example see: <http://www.defence.gov.au/workexperience/experiences.htm>.

⁵⁶ For example see: <http://www.defence.gov.au/workexperience/experiences/2010/deots.htm>.

⁵⁷ Parliamentary Question No. 1494, August 2009 by Senator Scott Ludlum, available here: <http://scott-ludlam.greensmps.org.au/content/question/youth-australian-military>

⁵⁸ Committee on the Rights of the Child, List of issues concerning additional and updated information related to the initial report of Australia (CRC/C/OPAC/AUS/1), UN Doc. CRC/C/OPAC/AUS/Q/1, 14 November 2011, Question 2.

Prohibition

Article 6.1

Criminalization

Sections 268.68 and 268.88 of the Criminal Code Act 1995, as amended in 2009, criminalize as a war crime the conscription, enlistment or use of children to participate actively in hostilities in international and non-international armed conflict, and impose a punishment for between 10 and 17 years for these crimes.⁵⁹ Both sections cover crimes committed by the national armed forces and armed groups (armed force or groups other than the national armed forces), yet with one significant difference. The provisions criminalizing use, conscription and enlistment by the armed forces, apply only if the person targeted is under the age of 15 years. Whereas those applicable to armed groups contain the higher threshold of applying to the use, conscription and enlistment of under-18s.

This disparity fails to criminalize the intentional use of recruits under 18 to take direct part in hostilities. Further, it is not in line with Australia's own minimum age of voluntary recruitment (set at 17 years, as noted above) and, more broadly, it fails to reflect the raising of the voluntary recruitment age from 15, as in the Convention, to at least 16 years in OPAC.

Furthermore, Child Soldiers International is concerned that the criminalization of use, enlistment or conscription of under-15s for armed forces and under-18s for armed groups only applies in the context of armed conflict. The Committee has consistently pointed out that the obligation to criminalize unlawful recruitment and use of children in hostilities applies to all states, regardless of whether the state is party to a conflict and/or whether armed groups operate in its territory. The Committee has explicitly recommended that criminalization of the recruitment of children in armed forces is not limited to times of war or armed conflict,⁶⁰ and has expressed concern when the crime of recruitment of children under 18 years into armed forces applies only in times of war/conflict and not to peace time.⁶¹

Recommendations

Child Soldiers International recommends that Australia is requested to:

- Ensure that violations of the provisions of the Optional Protocol regarding the participation of children under 18 years in hostilities are explicitly criminalized in Australian legislation.
- Ensure that the crime of unlawful recruitment and use of children of under 18 years by armed forces and armed groups apply in both peace and wartime.

⁵⁹ The Commonwealth Criminal Code Act 1995, as amended in 2009.

⁶⁰ See for example, Concluding observations on the initial report of Czech Republic, UN Doc. CRC/C/OPAC/CZE/CO/1, 21 June 2006, paragraph 7; Concluding observations on the initial report of Slovenia, UN Doc. CRC/C/OPAC/SVN/CO/1, 12 June 2009, paragraph 11.

⁶¹ See, for example, Concluding observations on the initial report of Croatia, UN Doc. CRC/C/OPAC/HRV/CO/1, 23 October 2007, paragraph 6.b.

Protection, Recovery and Reintegration

Article 6.3

Appropriate assistance

Australia is a signatory to the 1951 Refugee Convention and its 1967 Protocol. Yet, because Australia has not incorporated the Convention or its Protocol into domestic legislation – except the inclusion of the definition of ‘refugee’ into article 36 of the Migration Act 1958 – the protection afforded refugees in the Convention, notably article 31, is not directly enforceable in domestic courts.

The 1992 Migration Reform Act introduced the policy of mandatory detention for all migrants, including asylum seekers, children and adults alike, arriving in Australia without prior authorization. In 1994 amendments to the legislation effectively enabled the indefinite detention of these asylum seekers; the law also prevents detainees from being able to challenge their detention in court, other than via judicial review.⁶²

In 2005 amendments were made to the Migration Reform Act, affirming as a principle the requirement stated in article 37 of the Convention on the Rights of the Child that a minor should only be detained as a measure of last resort.⁶³ As a result children are no longer officially held in high security detention centres.⁶⁴ Yet, according to the Australian Human Rights Commission and NGOs, such as Children out of Immigration Detention (ChilOut),⁶⁵ children, either with their parents or unaccompanied minors, continue to be detained in immigration centres.⁶⁶ The conditions and length of their detention fail to comply with article 37 of the Convention on the Rights of the Child.⁶⁷

Moreover, in May 2011 Australia announced plans to send asylum seekers, including unaccompanied children, to Malaysia where they would be held in detention centres whilst their applications were processed.⁶⁸ The Australian High Court has since declared these proposals to be illegal⁶⁹ and suggested

⁶² Australian Human Rights Commission, *Immigration detention at Villawood: Summary of observations from visit to immigration detention facilities at Villawood*, May 2011, page 8.

⁶³ See for example: http://www.hreoc.gov.au/human_rights/immigration/detention_rights.html#4.

⁶⁴ New Directions in Detention - Restoring Integrity to Australia's Immigration System, Australian National University, Canberra, Tuesday 29 July 2008, available here: <http://www.minister.immi.gov.au/media/speeches/2008/ce080729.htm>.

⁶⁵ Children out of Immigration Detention (ChilOut): <http://www.chilout.org>.

⁶⁶ According to ChilOut, in November 2011 there were still 975 children being detained in immigration centres: 534 were detained in the community under residence determinations; and 441 were in secure locked facilities, 326 of which were held in alternative places of detention (119 of these were on Christmas Island), see <http://www.chilout.org/stats--reports>.

⁶⁷ For further information please see Australian Human Rights Commission, *Immigration detention at Villawood: Summary of observations from visit to immigration detention facilities at Villawood*, May 2011, pages 8 and 13; Australian Human Rights Commission, *Immigration detention at Leonora: Summary of observations from visit to immigration detention facilities at Leonora*, February 2011, page 8.

⁶⁸ BBC News, ‘Australia-bound immigrants to be sent to Malaysia’, 7 May 2011, available here: <http://www.bbc.co.uk/news/world-asia-pacific-13322792>.

⁶⁹ New 24, ‘Australia softens child refugee policy’, 6 June 2011, available here: <http://www.news24.com/World/News/Australia-softens-child-refugee-policy-20110606>.

that other offshore detention centres used by Australia could also be considered illegal.⁷⁰ Nevertheless, there continue to be reports of Government plans to seek to transfer asylum seekers to third countries.⁷¹

With regards the provision of psychological assistance, as required under article 6.3 of OPAC, Child Soldiers International has not been able to establish whether Australia has in place a policy to specifically identify former child soldiers among asylum seekers held in detention, and offer them ‘all appropriate assistance’ for their physical and psychological recovery and social reintegration.

Australia’s initial report states that all refugees and humanitarian entrants are eligible for torture and trauma counselling through the Integrated Humanitarian Settlement Strategy (IHSS).⁷² However, it appears that IHSS support is only available to an individual once their refugee application has been accepted, and their visa obtained.⁷³

Child Soldiers International has received information from the Australian Department of Immigration and Citizenship⁷⁴ indicating that within 72 hours of detention all asylum seekers receive a health induction assessment, which could lead to the provision of torture and trauma counselling should the individual show signs of previous trauma. However, there have been reports of delays in detainees receiving such health assessments⁷⁵ and the quality of care whilst in detention has also been questioned.⁷⁶ Further information has been provided on the physical and psychological assistance available to asylum seekers,⁷⁷ however, it is not clear at what stage these provisions are available – during detention or once refugee status has been acquired -, whether former child soldiers would qualify for the support and how long such programs would last for. This information seems to provide a more up-to-date picture of the level of assistance provided than what was available in the Australian initial report. However, it is still unclear at which stage these means of assistance are provided and whether those who provide it are appropriately trained in dealing with vulnerable children and former child soldiers.

⁷⁰ Sydney Morning Herald, ‘High court sinks Malaysia refugee swap plan’ 31 August 2011: ‘The court also held that the minister has no other power under the Migration Act to remove from Australia asylum seekers whose claims for protection have not been determined’. Available here <http://www.smh.com.au/national/high-court-sinks-malaysia-refugee-swap-plan-20110831-1j11d.html#ixzz11yb9Twbi>.

⁷¹ In August 2011, the Australian Government signed a Memorandum of Understanding for the reopening of a new refugee processing centre on Manus Island, Papua New Guinea. They are also in discussion with the Solomon Islands about them hosting a refugee processing centre, see for example Irin News, ‘Analysis: Outsourcing Asia’s refugees’, 12 September 2011, available here: <http://www.irinnews.org/report.aspx?ReportId=93697>.

⁷² Australia’s Initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, UN Doc. CRC/C/OPAC/AUS/1, 15 September 2010, paragraph 62 - 64.

⁷³ See for example the ‘Eligibility’ section of this webpage: <http://www.immi.gov.au/media/fact-sheets/66hss.htm>, and <http://www.acl.edu.au/ihseligibility.html>.

⁷⁴ Child Soldiers International email correspondence with Department of Immigration and Citizenship, 9 March 2012.

⁷⁵ For example, Australian Human Rights Commission, *Immigration detention at Villawood: Summary of observations from visit to immigration detention facilities at Villawood*, May 2011, page 24.

⁷⁶ For example: Australian Human Rights Commission, *Immigration detention on Christmas Island* October 2010, pages 63-69; Australian Human Rights Commission, *Immigration detention at Villawood: Summary of observations from visit to immigration detention facilities at Villawood*, May 2011, pages 23-28; Australian Human Rights Commission, *Immigration detention at Leonora: Summary of observations from visit to immigration detention facilities at Leonora*, February 2011, pages 10-12.

⁷⁷ For example through the Complex Case support program, available for up to six months to humanitarian and refugee entrants with ‘exceptional needs’ that extend beyond the scope of other services; the Program of Assistance for Survivors of Torture and Trauma available to refugees resettled permanently in Australia, Child Soldiers International email correspondence with Department of Immigration and Citizenship, 9 March 2012.

Further information on this issue would be of particular relevance in light of the concerns on the rights of asylum seekers, including children. The 2011 Annual Publication of Asylum trends from the Department of Immigration and Citizenship highlights that the main countries of origin of those seeking refugee status in Australia between 2010 - 2011 were: Iraq, Iran, Afghanistan and Sri Lanka,⁷⁸ with reports of other applications coming from individuals from Myanmar⁷⁹ and India.⁸⁰ In several of these countries children are (or have been) unlawfully recruited and used in armed conflict⁸¹ and therefore would need specific support and appropriate assistance as per article 6.3 of the OPAC.

Recommendations

Child Soldiers International recommends that Australia is requested to provide detailed information from official sources on:

- The measures used to identify vulnerable asylum seekers and refugees, including under-18s, who may have been recruited or used in hostilities abroad/involved in armed conflict contrary to OPAC, and the protection and support offered them to assist their physical and psychological needs, and social reintegration, and the stage at which these provisions are provided.

Child Soldiers International also recommends that Australia is requested to:

- Establish and implement a mechanism to identify at the earliest possible stage asylum seeking and refugee children entering Australia, who may have been involved or recruited/used in armed conflict abroad.
- Prohibit the detention in any case of asylum seeking, refugee and migrant children who may have been involved in armed conflict and to provide any children with accommodation specifically designed for minors.
- Ensure that any children entering Australia and identified as formerly recruited or used in hostilities are provided with necessary support and supervision as well as culturally sensitive and multidisciplinary assistance for their physical and psychological recovery and social reintegration in accordance with OPAC.

⁷⁸ Department of Immigration and Citizenship, *Asylum trends, 2010-2011 annual publication*, February 2012, table 22, page 26.

⁷⁹ For example: Parliament of Australia, Department of Parliamentary Services, Janet Phillips, *Asylum seekers and refugees: what are the facts?*, updated 14 January 2011, page 9, available here:

<http://www.aph.gov.au/binaries/library/pubs/bn/sp/asylumfacts.pdf>

⁸⁰ See for example statistics provided by the Refugee Council of Australia, available here:

<http://www.refugeecouncil.org.au/arp/stats-02.html>

⁸¹ See *inter alia*, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, UN Doc. A/66/256, 3 August 2011.

International assistance and cooperation

Article 7

Arms Trade

According to the small arms trade database provided by the Norwegian Initiative on Small Arms Transfers⁸² Australia exported small arms and light weapons worth approximately USD 11,001,515 in 2010 (the most recent year for which data was available). The destination of these small arms exports included countries such as India, Israel, Thailand and Pakistan. Grave violations of children's rights, including unlawful recruitment and use in hostilities, have reportedly been committed by parties active in all of these countries in 2010.⁸³ The total amount of small arms and light weapons exported to these countries in 2010 amounted to USD 567,039.⁸⁴

Recommendations

Child Soldiers International recommends that Australia is requested to provide detailed information from official sources on:

- The existence and implementation of national legislation relating to arms sales and transfers, including details of any safeguards or regulations prohibiting the sale of small arms and light weapons to countries where children have been known to be, or may potentially be, recruited or used in hostilities.

⁸² <http://www.prio.no/nisat> and http://balder.prio.no:8080/PublicQuery_SQL.aspx.

⁸³ See *inter alia*, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, UN Doc. A/66/256, 3 August 2011.

⁸⁴ <http://www.prio.no/nisat> and http://balder.prio.no:8080/PublicQuery_SQL.aspx.

CHILD SOLDIERS
INTERNATIONAL
"Working to stop the use of child soldiers worldwide"

www.child-soldiers.org
