

PART 10 OPTIONAL PROTOCOLS TO THE CONVENTION ON THE RIGHTS OF THE CHILD (OPAC)

FOLLOW-UP: CONCLUDING OBSERVATIONS ON 2ND PERIODIC REPORT

CRC/C/15/Add.2.16: Para 52:

The Committee recommends that the State party ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

- 10.1 New Zealand has signed the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, and has taken significant steps towards ratification over the reporting period. A number of legislative amendments have been made or are planned to enable ratification of the Protocol.
- 10.2 The Films, Videos and Publications Classification Amendment Act 2005 came into effect on 22 February 2005. Offences and penalties under the Act will assist compliance with the Protocol's requirements regarding child pornography. The Crimes Amendment Act 2005 implemented the necessary legislation to ratify the Protocol's requirements regarding child prostitution and the sale of children. The Evidence Act 2006 has drawn together the statutory provisions and common law rules of evidence into one comprehensive Act, providing better protections for children giving evidence in sexual abuse cases.
- 10.3 One further legislative amendment is required before the Optional Protocol can be ratified which is the addition of a new offence of improperly inducing consent as an intermediary, for the adoption of a child. This is intended to be progressed as part of a broader review of adoption laws.

FOLLOW-UP: CONCLUDING OBSERVATIONS ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

Use in hostilities

CRC/C/15/Add.2.16: Para 5

The Committee recommends that the State party amend the Defence Force Order to expressly prohibit active service in and outside of New Zealand by soldiers under the age of 18.

- 10.4 The Defence Force Orders for Personnel Administration (DFO 4) have been amended to expressly prohibit active service, both within and outside New Zealand, by members of the Armed Forces who are under the age of 18 years. Specifically, paragraph 2.11 of DFO 4 states:

“Service members are not to be posted on active service unless they have reached the age of 18 years. In addition, Service members under 18 years of age are not to be posted on operational service outside New Zealand.”

- 10.5 In addition, section 37 of the Defence Act 1990 has been amended by deleting the word 'overseas' from the heading and now states that no person serving in the Armed Forces who is under 18 years is liable for active service.
- 10.6 The effect of these amendments is to ensure that members of the New Zealand Defence Force (NZDF) who have not reached the age of 18 years do not take a direct part in any hostilities, irrespective of whether the deployment meets the definition of active service or not.

Voluntary recruitment

CRC/C/15/Add.2.16: Paras 7 & 8

The Committee recommends that the State party amend the Defence Act and the Guardianship Act to specify a minimum age of voluntary recruitment of 17 years for all persons. The Committee further recommends that the State party consider the possibility of increasing the minimum age for voluntary recruitment to 18 years.

With regard to incentives for recruitment, and in light of the fact that a significant proportion of new recruits in the armed forces come from the cadet forces, the Committee requests the State party in its next report to include information on the cadet forces, in particular on how the activities of the cadet forces accord with the aims of education as recognized in article 29 of the Convention and in the Committee's general comment No. 1, and on recruitment activities undertaken by the armed forces within the cadet forces.

- 10.7 In 2001, Section 33(1) of the Defence Act 1990 was amended and sets the minimum age of appointment, enlistment or engagement at 17. A minimum age of recruitment of 17 years has also been provided for in the Care of Children Act 2004 (which replaces the repealed Guardianship Act 1968). This prohibits the recruitment of any person under 17 years of age into the Armed forces.
- 10.8 The possibility of increasing the age of recruitment to 18 has been considered and rejected for the reasons given to the Committee in New Zealand's initial report of 15 July 2003. In reviewing the age of recruitment, the New Zealand Defence Force has determined that the age of voluntary recruitment should remain at 17. In coming to this decision, the following factors were taken into account:
- recruitment in the Armed Forces has offered young people, particularly from lower socio-economic groups, the opportunity to succeed in an environment where all recruits start on an equal footing. Ground level entry and skill development provided by the Armed Forces is often not readily available on the same level elsewhere in New Zealand
 - raising the minimum age to 18 years could disadvantage school leavers who wish to take up indentured trades within the Armed Forces, therefore preventing minors from having a right to pursue the career of their choice. There is, therefore, the risk of losing those school leavers to other areas of employment or study which do not impose age restrictions
 - since 2002, over 1700 under-18 year olds have enlisted in the regular forces. A move to restrict recruiting to those aged 18 years or older would prevent an average of 24% of potential recruits from joining the Armed Forces.

- 10.9 In maintaining the minimum age of recruitment at 17 years, the New Zealand Defence Force has worked to strengthen the safeguards that ensure such recruitment is not forced or coerced. As well as stating the minimum age for recruits, Chapter 2 of Defence Force Orders for Personal Administration requires that:
- reliable proof of age be provided
 - recruitment be genuinely voluntary
 - personnel under the age of 18 be fully informed of the duties involved in military service
 - service members are not to be posted on active service until they have reached the age of 18 years
 - service members are not to be posted on operation service outside New Zealand until they have reached the age of 18 years.
- 10.10 The New Zealand Cadet Forces (NZCF) is a voluntary youth training organisation. It is not part of the NZDF, but is directed by the Chief of the Defence Force (CDF) on behalf of the Minister of Defence. It is also supported by the NZDF in partnership with the community. The organisation aims are to:
- foster a spirit of adventure and teamwork, and to develop those qualities of mind and body essential for good citizens and leaders
 - provide challenging and disciplined training activities, which will be useful in either service or civilian life
 - promote an awareness of the Armed Forces and the role they play in the community.
- 10.11 These aims are accomplished by activity and practical-based training programmes undertaken in a secure and safe environment which emphasises personal development through acquiring skills and achieving goals. While the NZCF is not an educational organisation, or provider of education per se, the aims and values of the organisation and the Code of Behaviour under which all cadet activities and training are conducted, is entirely consistent with and in accordance with the principles of Article 29 of the Convention.
- 10.12 The suggestion that a significant portion of recruits into the Armed Forces are from the NZCF is an overstatement, but unfortunately statistics are not available to quantify the statement either way. Anecdotally, the figure is around the 20% level. While a number of cadets do go on to join one of the Services, recruitment for the NZDF is not one of the aims of the NZCF. However, Armed Forces recruiters do, when requested by cadet units, visit when in the local area to provide presentations and information on careers available in the Services.

Assistance for physical and psychological recovery

CRC/C/15/Add.2.16: Para 9

The Committee requests the State party to provide information in its next report on refugee and migrant children within its jurisdiction who may have been involved in hostilities in their home countries and on the assistance provided for their physical and psychological recovery and social reintegration.

- 10.13 Refer to Part 8 on refugee and migrant children for services the government provides for them.

Training/dissemination of the Optional Protocol

CRC/C/15/Add.2.16: Para 10

The Committee recommends that the State party undertake systematic education and training on the provisions of the Convention for all relevant professional groups, in particular military personnel. In addition, the Committee recommends that the State party make the provisions of the Optional Protocol widely known to children, through, inter alia, school curricula.

- 10.14 Leaders and managers in the New Zealand Cadet Forces go through a training module specifically on UNCROC during the Advanced Leaders Course. In addition, the Cadet Forces and the NZDF's Directorate of Legal Services are in the final stages of developing a detailed training module for all cadets on the Laws of Armed Conflict, UNCROC and the Optional Protocol. Specific information on the Optional Protocol is not generally provided to children, however information on rights are.
- 10.15 All personnel in the Armed Forces are instructed and assessed on the Laws of Armed Conflict. This training syllabus includes sections on UNCROC and child soldiers. All personnel are required to pass assessment, which is one of the prerequisites to completing basic training.

Dissemination of documentation

CRC/C/15/Add.2.16: Para 11

In light of article 6, paragraph 2, of the Optional Protocol, the Committee recommends that the initial report and written replies submitted by the State party be made widely available to the public at large and that the State party consider publishing the report, along with the relevant summary records and concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring within the Government, the Parliament and the general public, including concerned non-governmental organisations.

- 10.16 Full copies of UNCROC, the Optional Protocol to UNCROC on Armed Conflict, all received copies of the Committee comments and concerns and all New Zealand reports are available on the Ministry of Youth Development website. These can be accessed through www.myd.govt.nz and www.uncroc.govt.nz.
- 10.17 A list of interested non-government organisations and individuals are distributed hard copies on request and when new information comes available, including receipt of Committee reports. In addition NZDF personnel receive copies of relevant material during training on the Laws of Armed Conflict as do New Zealand Cadet Forces.