



Convention on the Rights of the Child

Distr.: General
19 November 2012
English
Original: French

Committee on the Rights of the Child Sixtieth session

Summary record of the 1709th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 5 June 2012, at 3 p.m.

Chairperson: Mr. Zermatten

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The meeting was called to order at 3 p.m.

Consideration of reports of States parties *(continued)*

Initial report of Australia on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (continued) (CRC/C/OPSC/AUS/1; CRC/C/OPSC/AUS/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Australia took places at the Committee table.*
2. **Mr. Manning** (Australia) said that the content of the Optional Protocol was not officially taught in schools but its main principles were covered in human rights classes. The text of the Optional Protocol could be consulted on the website of the Department of Foreign Affairs and the Committee's recommendations on the report under consideration would feature on the Attorney General's website. Various initiatives had been taken to publicize the provisions of the Optional Protocol, including the creation of a Youth Advisory Group on Cybersafety. Following extensive consultation with 3,000 school pupils, several interesting suggestions had been identified, in particular the idea of developing a free software application to give children immediate access to advice on what to do in case of online grooming by adults and to find out where to turn for help. More than 300,000 computers had already been equipped with the "Cybersafety help button" software. The consultation process had also given rise to the development of a guide to social media etiquette and the precautions to be taken when using the Internet.
3. Immigration officers were trained to guide victims of trafficking, forced labour and forced marriage to the relevant services and they were familiar with the provisions of the Optional Protocol. The police were also trained to recognize offences under the Optional Protocol. A Government commission, made up of all the executive and policymaking bodies involved in combating trafficking in persons in Australia, coordinated action on the matter.
4. **Mr. Ayres** (Australia) said that, in Australia, teachers were encouraged to make use of all the educational resources at their disposal to ensure that school pupils were aware of the aforementioned programmes and initiatives.
5. **The Chairperson** asked whether the content of the two Optional Protocols was taught as part of the compulsory curriculum.
6. **Mr. Woolcott** (Australia) said that the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime had been launched in 2002 by Australia and Indonesia. The initiative, which aimed to promote dialogue on the development of regional cooperation strategies to combat human trafficking and exploitation, placed emphasis on knowledge-sharing through technical workshops and capacity-building initiatives. The Fourth Regional Ministerial Conference on the Bali Process had taken place in March 2011. The Australian Agency for International Development (AusAID) had launched a comprehensive child protection policy in 2008 — focusing on vulnerable children and children with disabilities in particular — with the aim of preventing any occurrence of ill-treatment or exploitation of children in the implementation of development assistance programmes financed by Australia, including the programmes of NGOs and external service providers.
7. **Mr. Manning** (Australia) explained that, as part of the Australian strategy to combat trafficking in persons, the interests of child victims of sexual exploitation were systematically taken into account in decisions on placement and social care, particularly in the case of unaccompanied children. Alleged victims of sexual exploitation, as well as their

relatives, could also be granted visa extensions after expiry to enable the competent authorities to continue with investigations and prosecutions. Since 2004, 5 of the 190 alleged victims of trafficking dealt with by the Australian social services had been minors. The contact details of specialized services and available resources for the provision of assistance to victims of trafficking had been grouped together in a single, reader-friendly document for NGOs and social services.

8. **Ms. McKenzie** (Australia) said that since 2004 the Support for Trafficked People Programme had enabled 193 persons to receive help from the Australian Red Cross with their basic needs, such as food, accommodation, psychological support and protection. The Red Cross had received 127,000 Australian dollars for the training of social workers to help victims of trafficking. Various support mechanisms, notably legal representation and protection during judicial proceedings, were offered to victims as part of programmes that could last between 28 and 45 days.

9. **Mr. Manning** (Australia) said that, under domestic legislation, a minor who engaged in prostitution could in no event be prosecuted, as first and foremost they were considered to be a victim.

10. **The Chairperson**, noting that the age of consent was set at 16, asked whether children aged between 16 and 18 who engaged in prostitution were protected by the Convention.

11. **Mr. Manning** (Australia) replied that the law made a clear distinction between two concepts: the right of minors to give full and free consent to sexual relations from the age of 16, and the prohibition on coercing or inducing a minor to engage in sexual relations for payment. Thus, even if the minor had consented to engage in prostitution, they were still protected by the Convention.

12. **Ms. McKenzie** (Australia) said that, according to data collected by the Australian Institute of Health and Welfare, 5,437 cases of sexual abuse had been recorded in Australia between 2010 and 2011, which represented an increase of around 1 per cent compared to the period 2009–2010. As sexual abuse was the type of offence least often reported by victims, each Australian state or territory had established a reporting and detection mechanism, which required all professionals working with children to report alleged cases of such abuse. Emphasis had also been placed on other training programmes aimed at child protection professionals and specialized foster families, as well as on developing and identifying best practices in child victim support. A sexual abuse and sexualized behaviour training module had recently been developed for foster families and child protection professionals. The *1800Respect* telephone helpline, in service since 2010, provided direct contact with a qualified counsellor, enabling victims to talk to a listening ear and to be guided in the direction of the most appropriate services in cases of sexual or domestic violence.

13. An innovative campaign entitled “The Line”, aimed primarily at young people between the ages of 12 and 20, had been launched to modify the types of behaviour that contributed to violence. The campaign had been promoted on social networks, such as Facebook, to ensure maximum publicity. According to a recent study, 84 per cent of those who had heard about the campaign had thought it useful and 76 per cent of persons aged between 12 and 24 intended to change how they behaved in relationships in the next six months.

14. The Department for Child Protection had financed 15 non-profit organizations as part of its therapeutic services programme aimed at children who had suffered sexual violence.

15. The Government also financed the “White Balloon Day”, an event held in September of each year in recognition of, and to raise funds for, child victims of sexual violence.

16. **Mr. Kotrane**, referring to paragraph 67 of the State party’s written replies, asked whether the prohibition of online grooming for sexual purposes applied to children over the age of 16.

17. **Mr. Manning** (Australia) said that the age criterion applied to online grooming for sexual purposes related to the age of sexual consent. However, the production of pornographic material featuring persons under 18 years of age was a crime.

18. The Commonwealth Criminal Code criminalized acts of sex tourism committed by Australians abroad. In April 2010, the Government had introduced reforms to strengthen its legislation against child sex tourism. Involvement in, profiting from or encouraging child sex tourism was now subject to a jail sentence of up to 20 years and the planning of child sex tourism offences was subject to 10 years’ imprisonment, whether or not the offences were actually committed. Persons convicted of sex tourism could have their passports revoked if the Department of Foreign Affairs and Trade considered that they might be used for improper purposes. In some cases, individuals had been prohibited from leaving Australian territory.

19. The Australian national sex offender register contained detailed information on convicted paedophiles.

20. **Mr. Guráň** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) wished to know what measures Australia had taken to prevent and punish sex tourism within Australian territory.

21. **Mr. Manning** (Australia) said that the new provision on the planning of sex tourism offences also covered acts committed in Australia. The police were responsible for preventing such acts in Australian territory. Offender reintegration programmes could also be considered as prevention measures.

22. **Mr. Woolcott** (Australia) added that federal police officers had been assigned to several Australian embassies, particularly in South-East Asian States, in order to work with local police on cases of trafficking in persons or drugs, as well as sex tourism. The level of partnership and information-sharing was excellent.

23. **Mr. Zermatten** wished to know whether the national sex offender register was accessible to the general public or only to the police and judicial authorities.

24. **Mr. Manning** (Australia) said that the register contained information on all persons convicted of offences involving children, whether the acts had been committed in Australia or abroad, and that only the police could access the information.

25. **Ms. McKenzie** (Australia) said that the Government had recently announced that 3.5 billion Australian dollars would be invested in a support programme entitled “Stronger Futures”, grouping together several initiatives deemed useful under the Northern Territory Emergency Response, which focused on security, justice, school attendance, combating alcoholism, food security, education and health.

26. In the area of security and justice within communities, the Government planned to spend 619 million dollars over the next 10 years on law enforcement and related services, such as night patrols, in remote areas. Communities greatly appreciated night patrols as they were able to respond directly to their specific needs, for example by picking up children who roamed the streets all night and dealing with individuals who engaged in antisocial behaviour.

27. The Government also planned to allocate 719 million dollars to its health programme, in particular for the establishment of primary health-care services that would be provided by health organizations managed by Aboriginal communities. It was crucially important for the child victims of ill-treatment to have access to appropriate health services which respected their cultural sensitivities.

28. Over 10 years, 443 million dollars would be invested in the establishment of child services in 15 remote communities and would serve also to provide ongoing financing for mobile child protection teams, made up of persons living and working within the community who could identify vulnerable children at an early stage.

29. **Mr. Guráñ** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) asked whether the measures taken to combat the prostitution of Aboriginal children in the Northern Territory had been assessed. He also enquired about the role played by Aboriginal Australians in their implementation.

30. **Ms. McKenzie** (Australia) said that to combat prostitution in Aboriginal communities the Government had created a National Indigenous Violence and Child Abuse Intelligence Taskforce to collect detailed information on the situation and to better address the issue. However, the efficiency of the taskforce had yet to be assessed.

31. **Mr. Manning** (Australia) said that Australia prohibited the possession or sale of persons, irrespective of age, be it abroad or in Australia. Anyone who engaged in child trafficking, a crime under the country's Criminal Code, was liable to a sentence of up to 25 years' imprisonment.

32. On 30 May 2012 the Government had put forward a bill which, if approved by Parliament, would explicitly criminalize the sale of persons for the removal of their organs, exploitative forced labour or forced marriage.

33. **Mr. Zermatten** questioned whether persons acting as intermediaries, who improperly obtained permission for the adoption of a child, were prosecuted under provisions on the sale of children.

34. **Mr. Manning** (Australia) replied that, even if those kinds of acts were not defined as constituting the sale of children, they were punishable under Australian law.

35. **Mr. Zermatten** asked whether legal persons could incur criminal liability for the sale of children, child prostitution or child pornography.

36. **Mr. Kotrane** said that the State party's written replies seemed to suggest that the criminal liability of legal persons was limited to intentional acts relating to slavery; he requested clarification on that subject.

37. **Mr. Manning** (Australia) responded that corporate criminal liability could be invoked. The new legislation submitted to Parliament contained a general principle to that effect which applied not only to slavery.

38. **The Chairperson** asked whether the option of extraditing perpetrators of offences under the Protocol was often used, even in the absence of treaties with the countries concerned.

39. **Mr. Manning** (Australia) replied that cases of that kind had never arisen.

40. **Mr. Woolcott** (Australia) said that there was no national data-collection system on the sale of children, child prostitution and child pornography and that states and territories had their own collection systems.

41. **Mr. Manning** (Australia) said that in the states and territories measures had been taken to make it easier to register births. A birth could be registered irrespective of the age

of the person concerned, for example at the time of school enrolment or when requesting a passport.

42. Victims of sex tourism were entitled to receive compensation under federal law but as yet no applications had been lodged for that purpose. Victims of any of the other offences under the Optional Protocol could also claim compensation.

43. **The Chairperson** asked what protection measures were in place for the benefit of child victims or witnesses during criminal proceedings.

44. **Mr. Manning** (Australia) said that the best interests of the child were protected at every stage of the process. The authorities avoided conducting examinations which could prove to be testing for the child, and victim statements could be given via video.

The meeting was suspended at 4.40 p.m. and resumed at 4.55 p.m.

Initial report of Australia on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (continued) (CRC/C/OPAC/AUS/1; CRC/C/OPAC/AUS/Q/1 and Add.1)

45. **Ms. Lee**, noting that the armed forces of the State party recruited in schools, asked whether children from disadvantaged backgrounds were not targeted for recruitment more than others. She also asked how Australia ensured that the small arms it exported to countries such as Israel, India or Pakistan were not used by minors.

46. **Mr. Cardona Llorens** requested additional information on the exceptional circumstances which could justify a minor's participation in hostilities, particularly in the case where removal from the scene of hostilities "would prejudice the effectiveness of the mission", as specified in paragraph 49 of the Defence Instruction. Referring to paragraph 36 of the State party's report, he asked whether a minor who wished to leave the Australian Defence Force and whose parents did not withdraw their consent would incur sanctions. Lastly, he asked whether private security contractors were subject to detailed regulations prohibiting them from recruiting persons under the age of 18.

47. **Ms. Sandberg** asked whether any children had been prosecuted in terrorism cases.

48. **The Chairperson** said that, although persons under 18 years of age were officially prohibited from handling weapons at military schools, the army's cadet recruitment website vaunted the merits of the training cadets would receive as a unique opportunity to learn how to use weapons, in violation of the provisions of the Optional Protocol.

49. **Mr. Pollar** (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict), noting that according to the Defence Instruction the minimum age of voluntary enrolment was 17, asked how many minors had been recruited into the armed forces since the Optional Protocol had entered into force and how the rule on the duty of protection adopted by the Government in 2008 was applied in practice.

50. **Ms. Wijemanne** asked whether the State party had put in place procedures to separate former child soldiers from other asylum seekers and to offer them social reintegration and psychological support services.

51. **Mr. Dawson** (Australia) said that the Australian armed forces attended school career open days to present information on the careers available and the army's values and mission. Promotional activities took place mainly in secondary schools and no recruitment activities were involved.

52. Regarding the deployment of minors to areas of hostilities, paragraph 47 et seq. of Defence Instruction 33-4 stipulated that in accordance with the Protocol, the services of the armed forces must take all feasible measures to ensure that minors did not participate in hostilities or were not deployed to areas where hostilities were likely to occur. Minors

belonging to a unit required to deploy at short notice must be returned to a safe area without undue delay. The commander was not obliged to prevent a minor from taking a direct part in hostilities where the circumstances did not permit removal or where it would be more dangerous to the minor to attempt to do so or it would prejudice the effectiveness of the mission, but the commander must do everything possible to prevent such situations. In practice, there had been no cases of deployment of minors to areas of hostilities.

53. Regarding the resignation of military personnel aged under 18, where minors had received the consent of their parents or guardians to join the armed forces, the subsequent withdrawal of that consent constituted grounds for terminating their contract. Recruitment into the Australian army was voluntary and all recruits, whether or not they were minors, could resign at any time. No sanctions were taken against them. However, students who withdrew from military school must pay back a part of their study costs, although that obligation did not affect minors as it applied only to those who had completed two years of study.

54. Regarding the use of weapons by cadets, he pointed out that there were three cadet corps, one in each of the three services, but they did not form part of the armed forces. Cadets used weapons only for training, during which they did not shoot at targets depicting humans or animals. They took part in parades, completed obstacle courses, went sailing and swimming and were trained in first aid, but they did not receive military training.

55. **Ms. Lee** said that she still had concerns about secondary school pupils who wished to enrol in the cadet corps or the army, but whose parents did not speak English. She asked whether parents had all the information they needed to give consent for enrolment.

56. **The Chairperson** said that further clarification of the status of cadets was needed: although they did not form part of the armed forces, their training in fact constituted preparation for military life. It was possible to join the cadet corps from the age of 12, whereas according to the Optional Protocol persons under the age of 18 should not receive military training.

57. **Mr. Dawson** (Australia) said that minors joined the army voluntarily and with the written consent of their parents or guardians. They were fully informed about their future duties, since the army's recruitment centres and human resources website provided in-depth information on military careers. Candidates also had to pass an individual interview and a written test. Information sessions were organized for parents or guardians. Everything possible was done to ensure that persons with a poor grasp of English understood the process, as it was not in the interests of the armed forces to recruit members on the basis of a misunderstanding.

58. Cadets were not legally part of the armed forces. Some might go on to a military career, but that was a personal decision which must be taken with the agreement of parents or guardians if they were minors.

59. Young men and women who were recruited into the military academy followed higher education courses and earned a degree in three or four years. It was possible to apply from the age of 16 but the admission age was set at 17.

60. All unit heads with minors under their command were required to ensure that all necessary measures were taken to deal with the particular risks they faced. That meant ensuring compliance with state and territory legislation, particularly in respect of alcohol or tobacco consumption and the safety of minors in relation to such matters as training regimes or no-access areas.

61. **Mr. Cardona Llorens** asked whether persons under the age of 18 had participated in State party missions abroad, for example in the context of United Nations peacekeeping operations.

62. **Mr. Dawson** (Australia) said that the Department of Defence was not aware of any minors having been deployed to any areas of operations or hostilities.
63. **The Chairperson**, noting that, following ratification of the Optional Protocol, the State party had modified its Criminal Code in 2007 to criminalize the recruitment and use of children by armed forces and groups and that those practices were only considered offences if the child concerned was aged under 15 in the case of the armed forces or under 18 in the case of armed groups, enquired about the reason for that age distinction.
64. **Mr. Manning** (Australia) said that he was not in a position to answer that question, but that Australia could provide the Committee with relevant information.
65. **Mr. Woolcott** (Australia) said that Australia did not authorize the exportation of small arms when they were likely to be used by or against children in an armed conflict. The exportation of weapons and other related items was governed by the Customs Act 1901 and the regulations thereto, which required the prior approval of the Minister for Defence or other authorized persons for the export of military or dual-use goods included in the defence and strategic goods list. Arms export requests were considered on a case-by-case basis.
66. **Ms. Lee** said that the Committee had received information that in 2011 the State party had exported weapons to Pakistan, a country where it was beyond question that children had been recruited and used in hostilities.
67. **Mr. Woolcott** (Australia) said that those exports had been deemed to comply with Australia's international human rights obligations.
68. Australia took questions concerning private security firms very seriously and it was committed to complying with the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict and the International Code of Conduct for Private Security Service Providers.
69. Australia was working with the Security Council and its Working Group on Children and Armed Conflict to improve child protection. It had funded various initiatives on the matter and would give 3 million dollars to UNICEF between 2011 and 2013 for its work on a draft monitoring and reporting process on serious violations of the rights of children affected by armed conflict.
70. **Ms. Pope** (Australia) confirmed that Australia had experience in dealing with the arrival on its territory of former child soldiers. A very well-established foundation experienced in caring for former child soldiers could be counted on to provide assistance in that area.
71. **Mr. Manning** (Australia) said that, upon ratification of the Optional Protocol, it had been decided that the Australian Defence Force and the Australian Department of Defence were already fully complying with the provisions of the Optional Protocol and that no changes were therefore needed to the country's defence policy.
72. **The Chairperson** invited Ms. Maurás Pérez, Mr. Guráñ and Mr. Pollar, Country Rapporteurs, to present their findings on the State party's application of the Convention and its two Optional Protocols.
73. **Ms. Maurás Pérez** (Country Rapporteur for the Convention) congratulated Australia on having implemented numerous programmes to improve children's rights. She noted, however, that problems of coherence, coordination and efficiency arose precisely because of the number of programmes. It was to be hoped that the national framework for protecting Australia's children would be extended in the future to encompass all the rights of the child and not only those which were covered at present, and that the exchanges

between the Committee and the State party delegation would help to advance the idea of a human rights charter which would give high priority to the rights of the child.

74. Many questions had yet to be answered. The Committee could still not understand the reasoning which led the State party to maintain its reservation to article 37 (c) of the Convention. In regard to violence, and in particular corporal punishment, the Committee noted all the measures taken by the State party but was firmly convinced that the State party should do more to bring about the cultural shift needed to enable Australia to become a more protective and less violent society. The Committee also did not understand why it was so difficult to strictly prohibit corporal punishment in all contexts.

75. In the area of health, the Committee had not really received any response to its questions on the large number of children who had been diagnosed, seemingly in error, as having attention deficit disorder with hyperactivity and the excessive use of psychotropic medicines to treat the condition. In addition, the Committee noted that breastfeeding continued to be rarely practised in Australia. It also wished to have more information on the root causes of alcoholism in Aboriginal communities and the measures taken to combat that phenomenon.

76. The Committee welcomed the various types of assistance provided to disadvantaged families but questioned their precise objectives. It would have liked to receive more information from the Australian delegation on the reasons why a disproportionate number of Aboriginal children were placed in foster care and the measures taken by the State party to remedy that situation.

77. In the area of juvenile justice, the Committee noted a continuing lack of clarity with regard to the obligation on the judicial authorities to determine whether or not 10 to 14-year-olds understood the seriousness of their acts. It welcomed the efforts made by the State party in regard to children with disabilities and hoped that the next report would give the Committee a better idea of the progress being made towards their social integration.

78. On the subject of Aboriginal Australians, the Committee would have liked to receive more information from the Australian delegation on the National Congress of Australia's First Peoples. It shared the concerns expressed by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/15/37/Add.4) with regard to the Northern Territory Emergency Response.

79. Lastly, the Committee invited Australia to sign and ratify without delay the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

80. **Mr. Gurán** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) said that the State party should redouble its efforts to disseminate information on the Optional Protocol on the sale of children, child prostitution and child pornography, which was not currently the subject of sufficient publicity.

81. It was important for Australia to bring its legislation fully into conformity with the Optional Protocol by criminalizing the sale of children. All acts and activities referred to in the Optional Protocol should be covered by the State party's domestic legislation and should constitute very serious criminal offences under Australian national legislation, over which the State party could exercise extraterritorial jurisdiction.

82. Lastly, the lack of comparative data meant that progress could not be measured across different states and territories in terms of the application of the Optional Protocol and it would therefore be useful to establish common indicators.

83. **Mr. Pollar** (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) said that Australia should continue to play a leading role in the

application of the Optional Protocol on the involvement of children in armed conflict. It should also help other States to prohibit the use of children in armed conflict and to carry out rehabilitation programmes for former child soldiers.

84. **Mr. Woolcott** (Australia) thanked the Committee for its questions and said that the Australian Government was firmly committed to improving the situation of children's rights.

The meeting rose at 6 p.m.