



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 8 (1) OF THE OPTIONAL
PROTOCOL TO THE CONVENTION ON THE RIGHTS
OF THE CHILD ON THE INVOLVEMENT OF CHILDREN
IN ARMED CONFLICT**

Initial reports of States parties due in 2004

NEW ZEALAND*

[15 July 2003]

* Related appendices are available for consultation in the files of the secretariat in the language of submission only.

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**Optional Protocol to the Convention on the Rights of the Child
on the involvement of children in armed conflict**

REPORT BY THE GOVERNMENT OF NEW ZEALAND

(Covering the period November 2001 to June 2003)

(Ratification registered on 13 November 2001)

I. INTRODUCTION

1. This is New Zealand's first report since it ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in November 2001.
2. In order to implement the Optional Protocol, the Defence Act 1990 was amended to prohibit the direct participation of children under 18 years of age in active duties.
3. At the time of ratification, New Zealand declared a voluntary recruitment minimum age of 17 years and outlined the following safeguards to ensure that recruitment is not forced or coerced:
 - (a) New Zealand Defence Force recruitment procedures require that the persons responsible for recruitment must ensure that such recruitment is genuinely voluntary;
 - (b) Legislative requirements that the consent of parents or guardians is obtained for enlistment where such consent is necessary under New Zealand law. The parent or guardian must also acknowledge that the person enlisting will be liable for active service after reaching the age of 18 years;
 - (c) A detailed and informative enlistment process, which ensures that all persons are fully informed of the duties involved in military service prior to taking an oath of allegiance;
 - (d) A recruiting procedure, which requires enlisted persons to provide their birth certificate as reliable proof of age.
4. Relevant government agencies were consulted on the preparation of the present report. Prior to the decision to sign the Optional Protocol, consultations were held with non-governmental organizations and individuals interested in human (specifically children's) rights. At that stage, the Commissioner for Children and other government agencies were consulted. All were in support of New Zealand's signature, and subsequent ratification, of the Optional Protocol.

II. INFORMATION RELATING TO ARTICLES 1-7 OF THE OPTIONAL PROTOCOL

A. Article 1

Legislative measures to prohibit the involvement of children in direct hostilities

5. Prior to ratification, an amendment to the Defence Act 1990 gave statutory effect to the standard limit of 18 years for active service across all three Services (Army, Air Force and Navy), regardless of geographical location. Section 37 of the Defence Act 1990, states that “no person serving in the Armed Forces who is under 18 years is liable for active service”. The relevant sections of the Defence Act 1990 are attached as Appendix One.

6. New Zealand Defence Force Orders for Administration (Defence Force Orders) published on 15 February 2002, sets out the New Zealand Defence Force policy for the recruitment and deployment in operations of persons under the age of 18 years.

7. New Zealand Defence Force Orders are established under Section 27 of the Defence Act 1990. The Defence Act 1990 provides that, in performing the functions and duties and exercising the powers of the Chief of Defence Force, the Chief of Defence Force may from time to time, for the purposes of the Defence Act, issue and promulgate Defence Force Orders, not inconsistent with the Defence Act, the Armed Forces Discipline Act 1971, or any other enactment.

8. Defence Force Orders state that service members are not to be posted on active service or operational service outside New Zealand unless they have reached the age of 18 years.

9. Internal audits by the New Zealand Defence Force are regularly conducted on quality control and assurance to ensure that service members under 18 years are not posted on active services outside New Zealand.

10. The Defence Force Orders for recruitment are attached as Appendix Two.

11. No one under the age of 18 years serving in the New Zealand Armed Forces was taken prisoner or participated in active duty during hostilities outside New Zealand.

B. Article 2

Compulsory recruitment

12. Currently there is no legislation in New Zealand providing for compulsory recruitment or conscription.

13. If, in the future, the Government of New Zealand decides to introduce conscription in any form, specific legislation will be required. In such circumstances, the minimum age of 17 years for voluntary recruitment into the Defence Force would not be affected. In addition, any future legislation establishing conscription would need to comply with New Zealand’s international legal commitments, including article 1 of the Optional Protocol relating to direct participation in hostilities.

C. Article 3

Paragraph 1

New Zealand's minimum age for voluntary recruitment

14. At the time of ratification, New Zealand deposited a declaration that the minimum age for voluntary recruitment into the national armed forces shall be 17 years.
15. The Defence Act 1990 does not currently set a minimum age for voluntary recruitment, although it does specify (sect. 36 (1)) that those under the age of 18 years who are not or have not been married shall not be recruited without prior consent of a parent or guardian. The parent or guardian must also acknowledge that the person enlisting will be liable for active service after reaching the age of 18 years.
16. Defence Force Orders stipulate that individuals shall not be recruited for service until they have reached the minimum age of 17 years. An individual who has not attained the age of 18 years, and who is not, or has not been, married, is not to be recruited without the prior written consent of a parent or guardian. Such personnel are to provide reliable proof of their age prior to acceptance for enlistment into the armed forces.
17. In deciding to maintain the minimum age of 17 years for voluntary recruitment, the factors outlined below were noted.
18. Analysis shows that there is an inverse relationship between the age on enlistment and retention after five years of service. This is seen as an important factor for an organization that is very dependent on the build-up and development of institutional knowledge and experience.
19. The New Zealand Defence Force's recruitment criteria emphasize qualities such as sound reasoning skills and a willingness to work using other more practical attributes, rather than academic qualifications. The New Zealand Defence Force is, therefore, competing with other employers for a relatively limited sector of the labour market. If the recruitment age was raised, prospective recruits may seek alternative employment or remain unemployed, and therefore lose the motivation to join the Armed Forces when they reach the appropriate age.
20. The New Zealand Defence Force currently has difficulty attracting enough recruits to fill technical positions, despite providing technical training to qualification levels. This could be exacerbated by raising the minimum recruitment age.
21. Recruitment into the armed forces has traditionally offered young people from lower socio-economic groups, particularly those who leave school at 17 years, the opportunity to succeed in an environment where all recruits start on an equal footing. Recruitment is especially significant for those who may be less likely to build and develop in other types of career options. Ground-level entry and skill development of the like provided by the armed forces may not be readily available on the same level elsewhere in New Zealand.
22. New Zealand's process of signing and ratifying the Optional Protocol was brought to the attention of non-governmental organizations and individuals interested in human (and specifically children's) rights during the annual consultations of the Ministry of Foreign Affairs

Human Rights Division and in the context of regular general newsletters to the public. There were some concerns expressed about retaining the minimum age of 17 years for voluntary recruitment but, overall, it was assessed that the benefits as outlined above outweighed any disadvantages in the New Zealand context.

Data on the numbers of voluntary recruits under 18 years

23. Disaggregated data on the voluntary recruitment of children under 18 years are attached as Appendix Three. The disaggregated data cover the period since the Optional Protocol entered into force on 12 February 2002 until 30 May 2003.

24. The disaggregated data highlight the number of voluntary recruits living in smaller urban settings and may be reflective of the view that the New Zealand Defence Force offers employment opportunities to persons from areas where full-time employment and career development may be less available.

25. It is also significant that of those voluntary recruits who provided ethnicity data over this period, 29 per cent identified as New Zealand Maori. Previous analysis of recruitment has highlighted that of those Maori recruited below the age of 18 years, almost 25 per cent have opted for technical positions within the armed forces.

Paragraphs 2-4

Binding declaration on minimum age for voluntary recruitment and safeguards

26. New Zealand's declaration on the minimum age for voluntary recruitment also included an outline of the safeguards to ensure that such recruitment is not forced or coerced.

27. The Defence Force Orders cover the four safeguards outlined in article 3, paragraph 3, of the Optional Protocol related to ensuring that recruitment is genuinely voluntary, that recruitment is done with the informed consent of parents or guardians, that recruits are fully informed of the duties involved in military service, and that reliable proof of age is provided. In addition, the Defence Act 1990, section 36 (4), states that:

“subject to section 14 of the Guardianship Act 1961, every application by a minor (being a minor who is not and has not been married) for enlistment in the Armed Forces shall be accompanied by:

- A consent in writing from either parents of a minor, or guardians; and
- A written acknowledgement by the person giving consent that he or she is aware that the person enlisting will be liable for active service at any time after that person attains the age of 18 years”.

The recruitment process

28. The New Zealand Defence Force conducts recruitment drives from time to time which include careers advice to those still at school, advertising in a variety of media and other

activities intended to attract persons of recruiting age to a career in the armed forces. All three branches of the armed forces - the Navy, the Army and the Air Force - operate Internet web sites on careers in the armed forces.

29. There are a number of stages in the process of recruitment to a career with the armed forces. The completion of an application form is merely one aspect of the process, and does not commit an individual to the armed forces in New Zealand.

30. All applicants for voluntary recruitment are required to complete an application form, including providing their birth certificate as reliable verification of their age. As noted above, an additional safeguard for those recruits under 18 years (who are not married) is the requirement to produce written consent from parents or guardians.

31. Defence Force Orders state that personnel who have not attained the age of 18 years are to be fully informed of the duties involved in military service. An Obligations of Service is provided to all volunteer recruits and parents/guardians in discussion and electronic presentations. This information will in future be incorporated in written form into current recruiting forms.

32. The New Zealand Defence Force Obligations of Service (attached as Appendix Four) contains the information that is given to persons who are being attested.

33. The recruitment process includes full medical examination, as well as fitness and aptitude tests, to ensure that applicants are fit and healthy and able to handle the various physical and mental stresses they could encounter while serving in the armed forces. In addition, applicants are required to undergo a security clearance and be either a New Zealand citizen or a permanent resident. All recruits across the armed forces are interviewed and required to attend assessments days that include career counselling, physical activities and preparation training.

34. Following successful completion of these tests, voluntary recruits are required to undergo an interview and undertake basic training with their choice of Service. At any time during basic training, recruits may choose to remove themselves from the Service and depart the armed forces. Once basic training is completed, recruits are physically integrated into the armed forces.

35. All service in the armed forces is voluntary, subject to certain restraints about the amount of notice that must be given if recruits wish to terminate their service. Any member of the armed forces can seek early discharge after giving (usually) three months' notice. During initial training a recruit can seek release almost immediately.

Discipline of voluntary recruits under the age of 18 years

36. Chapter 11 of the Manual of Armed Forces Law provides guidance to officers exercising disciplinary powers and court martials. It states that:

“Generally it is undesirable to sentence members of the armed forces to imprisonment if they are under 20 years of age.

“In general, detention is more suitable punishment for persons under 20 years of age than imprisonment, whatever the nature of the offence.”

37. The Armed Forces Discipline (Exemptions and Modifications) Order 1983, Regulation 8, provides that:

(a) No member of the armed forces who is under the age of 17 years shall be sentenced to detention by an officer exercising summary powers, or by a court martial, under the Armed Forces Discipline Act 1971;

(b) A member of the armed forces who has attained the age of 17 years but is under the age of 18 years shall not be sentenced to detention by an officer exercising summary powers under the Armed Forces Discipline Act 1971, except with the prior approval of a superior commander.

38. Over the period of data collection (12 February 2002 to 30 May 2003), no recruits under 18 years of age have been sentenced to detention across the armed forces.

Paragraph 5

Military schools

39. No military schools are in operation by the New Zealand Defence Forces.

D. Article 4

Armed groups and legislative provisions

40. Existing New Zealand legislation, in broad terms, prohibits and criminalizes the recruitment and use in hostilities by armed groups of persons under the age of 18 years.

41. Section 73 of the Crimes Act 1961 covers treason, making it a crime for persons (of any age) to engage in acts of hostility against the armed forces or use force for the purpose of overthrowing the Government.

42. In addition, sections 66 and 98A of the Crimes Act 1961 are relevant in relation to criminal gangs. Although these sections do not specifically criminalize recruitment to a criminal gang of persons under the age of 18 years, the kind of activities that could constitute a “hostility” would be an offence committed by a member of such a gang at any age.

E. Article 5

Other international instruments and international humanitarian law

43. New Zealand is a party to the Rome Statute of the International Criminal Court. The International Crimes and International Criminal Court Act 2000 gives effect to New Zealand’s obligations under the Rome Statute. Amongst other things, this Act creates new offences of genocide, crimes against humanity and war crimes in the same terms as the Rome Statute. Accordingly, it is now an offence under New Zealand law to conscript or enlist children under 15 years of age into the armed forces or to use them actively in hostilities in either an

international or internal armed conflict (art. 8 (2) (b) (xxvi) and 8 (2) (e) (vii)). The offence carries a maximum penalty of life imprisonment. New Zealand has taken extraterritorial jurisdiction over these offences, and so would be in a position to prosecute New Zealanders who engage in such conduct elsewhere.

44. New Zealand has also ratified the International Labour Organization (ILO) Convention concerning the Elimination of the Worst Forms of Child Labour (Convention No. 182) and will provide its first periodic report to ILO in 2003.

45. New Zealand is a party to the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977. The obligations under those Conventions and Protocols are implemented in New Zealand law by the Geneva Conventions Act 1958 (as amended in 1987).

F. Article 6

Paragraphs 1 and 2

Implementation and enforcement of the Optional Protocol

46. The Defence Act 1990 was amended in 2001 to provide full compliance with the Optional Protocol in respect of article 1.

47. Operational practice, in the form of New Zealand Defence Force Orders, implements the Optional Protocol with regard to the minimum age for voluntary recruitment and the safeguards for the minimum recruitment age outlined in article 3, including ensuring that recruitment is genuinely voluntary; that recruitment is done with the informed consent of parents or guardians; that recruits are fully informed of the duties involved in military service; and that reliable proof of age is provided.

48. The New Zealand Defence Force has responsibility for managing the recruitment and selection of service personnel in conjunction with the armed forces. Implementation of the Optional Protocol is ensured through Defence Force Orders.

49. Members of the armed forces, including those responsible for formulating and implementing recruiting policy and those responsible for recruiting activities, are required by law to comply with the Defence Act and the orders made under it and may face disciplinary action for any failure to do so.

50. The armed forces have, at appropriate levels, inspectorates whose roles and functions include ensuring that the relevant legislation is complied with. These functions are held at the Army, Navy and Air Force headquarters, as well as at the New Zealand Defence Force headquarters. Issues such as the age of recruits and the age of Service members liable to be deployed on active service will be included in the functions of these inspectorates.

51. The New Zealand Defence Force provides regular training on the law of armed conflict and refresher courses for all forces prior to deployment to peacekeeping operations overseas. The law of armed conflict training includes training on respect for human rights and special protection measures appropriate to, amongst others, children.

52. The attached Appendices Five and Six contain a list of prescribed subjects taught in the context of Law On Armed Conflict training to all recruits on the Optional Protocol.

53. New Zealand has not entered any reservations to the Optional Protocol.

Dissemination of the Optional Protocol

54. The Ministry of Foreign Affairs and Trade has worked actively in international human rights forums to promote the ratification of the Optional Protocol and, in the context of its outreach to civil society, has publicized New Zealand's ratification and responsibilities under the Optional Protocol.

55. The New Zealand Agency for International Development (NZAID) has responsibility for international development assistance (see article 7 below).

Paragraph 3

Disarmament and demobilization

56. This article is not relevant to New Zealand.

G. Article 7

Technical cooperation and financial assistance

57. NZAID was established on 1 July 2002, as a semi-autonomous agency within the Ministry of Foreign Affairs and Trade. Since its inception, a considerable amount of work has been undertaken to define NZAID policy framework in line with Cabinet decisions taken by the Government of New Zealand in 2001 on the shape and direction of the New Zealand official development assistance programme.

58. The central focus of the Agency's work and its development activities is poverty elimination, through sustainable and equitable development, for the purpose of achieving a safe and just world free from poverty. Poverty is defined as absolute poverty (failure to meet basic needs), poverty of opportunity (e.g. access to land, education), and vulnerability to poverty (e.g. natural disasters).

59. The Policy framework and activities have been so adapted as to be consistent with the United Nations millennium development goals and other international development targets. Human rights, gender equality and the environment are newly mainstreamed into New Zealand's aid programme.

60. The core geographical focus of NZAID continues to be the Pacific. This recognizes New Zealand's proximity to remote, resource-poor and vulnerable islands. NZAID continues to work in parts of Asia (the current second major geographical focus), where child labour, including soldier issues, are prominent.

61. Education assistance, particularly at the primary level, continues to be a core part of NZAID work, comprising a quarter of the total aid budget.

62. Conflict prevention, peace-building, and post-conflict support are integral parts of New Zealand's efforts to help partner countries reduce poverty, promote economic growth and improve people's lives, in the context of sustainable development. Peace, security and good governance are critical to long-term development efforts. NZAID is currently working to instil a culture of conflict prevention and peace-building in all our work with developing countries, particularly in the Pacific, where lack of full public participation in governance processes, financial and legal vulnerability, and ethnic divisions have fuelled instability in recent years. Each year, NZAID supports a number of projects and programmes on good governance, community participation, democracy-building, land tenure, and specific conflict prevention and post-conflict rehabilitation, all of which are designed to strengthen domestic capacity to manage and minimize conflict and instability and their consequences, and to achieve better governance and democratic processes. We also support a number of more general poverty reduction programmes, particularly in the Asia-Pacific region, which support economic and social development and seek to mitigate the root causes of conflict.

Annex

**SPECIFIC NZAID PROGRAMMING SUPPORT
(since 1 January 2002)**

Global

Coalition to Stop Child Soldiers

Contribution towards the Stop Child Soldiers Campaign.

Bougainville, Papua New Guinea

Caritas

Trauma counselling (May 2002-June 2003) in Bougainville focused on parties to the conflict, which included an adolescent/youth element.

Asia-Pacific Region

Coalition to Stop Child Soldiers

To develop the capacity of the Asia/Pacific Coalition Network to research, monitor, campaign and advocate on behalf of the Stop Child Soldiers movement.

Sri Lanka

Community Children's Fund

To fund the purchase of school equipment for children in the conflict-affected eastern district.

Sri Lanka

Women's Development Centre

Support for revolving credit scheme for sustaining payments to pre-school teachers in conflict-affected eastern districts.

Sri Lanka

People's Progressive Development Society

Funding for basic educational material for children in the conflict-affected eastern districts.

Sri Lanka

People's Progressive Development Society

To purchase educational equipment for a rehabilitation home for children affected by conflict in the north and east of Sri Lanka.

Sri Lanka

Social Welfare Society

To fund purchase of equipment for a mini library to be used by rural children in the conflict-affected eastern part of Sri Lanka.

United Republic of Tanzania

UNICEF working with local NGOs

To support non-formal education and counselling aimed at children in circumstances needing special protection, including refugees affected by armed conflict.
