
Joint Committee on Human Rights: Inquiry into the UK's compliance with the UN Convention on the Rights of the Child.

Submission from Child Soldiers International

Background

In 2009, the previous Joint Committee on Human Rights (JCHR) called on the UK government to implement the recommendations of the UN Committee on the Rights of the Child regarding the UK's compliance with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC).¹

As per Article 1 of the Convention on the Rights of the Child (CRC), a child is defined as any person below the age of 18 years.

Among the Committee on the Rights of the Child's recommendations were these:²

- To review the UK's OPAC Declaration to ensure that children are not exposed to the risk of taking direct part in hostilities and that policy and practice are in conformity with Article 1 of OPAC. (para 11)
- To raise the minimum age for recruitment into the armed forces to 18 years and, in the meantime, in recruiting children, to give priority to those who are the oldest. (para 13)
- To review the requirements for permitting, and to expand the exercise of, the 'discharge as of right' of child recruits. (para 17)
- To ensure that children in conflict with the law, irrespective of its military or civil nature, are always dealt with within the juvenile justice system and are treated in accordance with the standards enshrined in the CRC. (para 31)

In 2011, your Committee's legislative scrutiny report on the Armed Forces Bill noted your continuing concerns and reaffirmed the above recommendations, calling for an action plan to implement them.³ The report expressed disappointment that the government had not heeded the previous JCHR's remarks. You also queried the policy that obligates children in the armed forces to serve a longer minimum period – of up to six years – than that required of adult recruits, of four years.

Current situation

Involvement in hostilities

The UK's OPAC Declaration specifies exceptions to the prohibition of the deployment of children to take a direct part in hostilities. Specifically, the Declaration states that the UK may choose not to

¹ Joint Committee on Human Rights, Children's Rights: Twenty-fifth Report of Session 2008-09, 2009. Committee on the Rights of the Child, Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol on the involvement of children in armed conflict, UN Doc: CRC/C/OPAC/GBR/CO/1, 2008.

² Committee on the Rights of the Child, op.cit.

³ JCHR, Twelfth Report: Legislative Scrutiny: Armed Forces Bill, 2011, Section 8.

exclude children from taking part in hostilities: a) when there is a ‘genuine military need’ to deploy their unit or ship to an area in which hostilities are taking place; and b) by reason of the nature and urgency of the situation: either it is ‘not practicable’ to withdraw such persons before deployment; or to do so would ‘undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel’.⁴

The Committee on the Rights of the Child has expressed concern at the wide scope of the UK’s Declaration and called upon the government to review it.⁵ Child Soldiers International is also concerned that the Declaration’s broad formulation undermines the protective provisions of OPAC and leaves open the possibility that children will be exposed to the risk of taking direct part in hostilities. The object and purpose of OPAC are to raise the age of possible recruitment and to protect all children from involvement in armed conflict, including in the circumstances envisaged in the UK’s Declaration. The Declaration, therefore, may be a reservation incompatible with the object and purpose of OPAC, prohibited under Article 19 of the Vienna Convention on the Law of Treaties, 1969.

According to the Ministry of Defence (MoD), between 2007 and 2010 seven personnel under the age of 18 were sent to Iraq or Afghanistan.⁶ The Ministry has said that these personnel were deployed in error, and that no such under-age deployment is believed to have taken place since then.⁷ In light of these cases, we are further concerned that the policy of recruiting children may not be practically compatible with the policy not to deploy them to war zones.

Recruitment

The complex, legally-binding obligations of enlistment, the substantial risks involved in military employment, and the psychological conditioning inherent to military training, are such that the decision to join the armed forces properly requires the maturity of adulthood. Accordingly, most states – over 130 – now recruit only adults from age 18 or above into their armed forces.⁸ The UK is the only state in Europe and one of fewer than 20 worldwide that still recruits from age 16. The number of children recruited has been in decline over the last decade but remains substantial: intake at ages 16 and 17 stands at around 2,000 per year.⁹

The marketing of military careers to young teenagers entices them to leave education early, while most of their peers stay in the education system and thus enhance their long-term employability. Children who join the army from disadvantaged backgrounds are more likely than others to be enlisted into combat roles, where the risk of subsequent war-related trauma is greatest, and they are

⁴ UN Treaty Collection, Declaration on the Optional Protocol to the CRC on the involvement of children in armed conflict, 2003, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-b&chapter=4&lang=en#EndDec.

⁵ Committee on the Rights of the Child, Concluding Observations on the initial report of the United Kingdom of Great Britain and Northern Ireland under the Optional Protocol on the involvement of children in armed conflict, UN Doc: CRC/C/OPAC/GBR/CO/1, 2008, para 10.

⁶ Rt Hon Mark Francois, Minister of State for the Armed Forces Letter to Alex Cunningham MP, 19 January 2015.

⁷ Rt Hon Mark Francois, op.cit.

⁸ Child Soldiers International, *Louder than words: An agenda for action to end state use of child soldiers*, 2012, pp. 142-160, http://child-soldiers.org/global_report_reader.php?id=562.

⁹ In 2013-14, 2,120 minors were recruited into the British armed forces. Ministry of Defence, UK Armed Forces Annual Personnel Report, 1 April 2014.

more likely to be vulnerable to its effects.¹⁰ Indeed, the Ministry of Defence has said that a benefit of recruiting from such a young age is that it allows the army to compensate for recruitment shortfalls in the infantry.¹¹ Raising the minimum age of recruitment to 18 would *de facto* encourage teenagers to remain in civilian education or training for longer and ensure that the decision to enlist could only be made at the age of adult responsibility.

Child Soldiers International is disappointed to see the UK failing to set high standards on this global child rights issue. Our experience of working in other countries indicates that a change in the UK would remove a political barrier to achieving a global ban on recruiting below the age of 18. In particular, we believe it could spur change in the Commonwealth, where 21 of the 43 countries with national armies have yet to end the recruitment of children.

In addition to the recommendations made by your Committee, your predecessor Committee, and the Committee on the Rights of the Child, there is now widespread support for a change in policy. The four Children's Commissioners for England, Scotland, Wales and Northern Ireland, all support change to a 'Straight-18' policy: the prohibition of compulsory and voluntary recruitment and use of children in hostilities without exception or reservation.¹² The major British children's organisations agree, as do the National Union of Teachers and many faith groups including the Church of Scotland and the Bishops of the Church in Wales.¹³ The Equality and Human Rights Commission has also indicated that the recruitment age should be raised to 18.¹⁴ A poll in 2014 found that 77 per cent of the public who expressed a view believe that the minimum age for joining the British army should be 18 or above; only 14 per cent think it should be as low as 16.¹⁵

Right of discharge

Child Soldiers International welcomes the government's decision of 2011 to allow enlisted minors a legal right of discharge (called DU18).¹⁶ This followed recommendations made by a number of bodies including the JCHR.¹⁷

Once children have served for six months from the date of enlistment, they lose their legal right to discharge at 14 days notice. As of 2011, however, they benefit from the legal right to leave the

¹⁰ Gee, David, *The Last Ambush: Aspects of mental health in the British armed forces*, ForcesWatch, 2013.

¹¹ According to the MoD, Junior Entry recruitment (aged 16-17.5 years) 'presents an opportunity to mitigate Standard Entry (SE) shortfalls, particularly for the Infantry'. 'SE' refers to recruits aged 17.5 years and above. MoD, Policy of recruiting Under-18s (U18), 14 May 2013, obtained under the Freedom of Information Act, Ref. FOI2015/00618, 12 February 2015, p. 2.

¹² Commissioners for Children and Young People for Scotland, Wales and Northern Ireland, joint statement communicated to Child Soldiers International, 28 January 2015: 'The UK is the only state in Europe to recruit 16 year olds into the armed forces. We support the growing global consensus that the minimum age for entry into the armed forces in the UK, should be raised, to 18, as children should not be involved in hostilities, either directly or indirectly and to protect their mental health, education and long-term life chances, especially those in our most disadvantaged communities who – evidence shows – tend to be those being recruited at the youngest ages.' See also Hellen, Nicholas, 'UK soldiers of 16 "too young"', *Sunday Times*, 11 January 2015.

¹³ Child Soldiers International, *Bishops attack army on recruitment of minors while teen enlistment figures plummet*, 2013, http://www.child-soldiers.org/news_reader.php?id=718.

¹⁴ Equality and Human Rights Commission, UK Government UPR Mid-term Report: Report from the Equality and Human Rights Commission, 23 February 2010, http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/hrc13_midterm_report.pdf

¹⁵ Ipsos MORI, Nationwide poll conducted in July 2014 by Ipsos MORI on behalf of the Joseph Rowntree Reform Trust Ltd, http://forceswatch.net/sites/default/files/IPSOSsurvey2014-Forces_age.pdf.

¹⁶ The Armed Forces (Terms of Service) (Amendment) Regulations 2011 (SI 1523).

¹⁷ JCHR, Twelfth Report: Legislative Scrutiny: Armed Forces Bill, 2011, Section 8.

regular armed forces at up to three months' notice, provided that written application to leave is made before their 18th birthday.¹⁸ Recruits are now informed of this right in their enlistment papers.¹⁹

However, it is important to recognise that the DU18 provision does not allow a recruit to leave the armed forces at will in a manner comparable to civilian employment. The child's application to discharge must first be reviewed and enacted by their Commanding Officer, pending a process during which the chain of command may seek to persuade the child to stay. Furthermore, enlisted children are subject to military law and may still be prosecuted for Absence Without Leave and other military offences, in which case the right of discharge is suspended until any sentence imposed is fully served. Nonetheless, the new provision has helped to protect the rights of many children who joined the forces only to find that it was not what they expected it to be.

Detention

The British armed forces try all personnel accused of military offences, including children, in military courts and detain convicted children in a military prison: the Military Corrective Training Centre (MCTC) in Colchester. During the last three years, five armed forces personnel under the age of 18 have served custodial sentences there.²⁰ It is policy at the MCTC to detain 16 year olds separately from adults. 17 year olds may be detained either separately from or with adults according to the child's request, in which case the decision is subject to a risk assessment.²¹

Article 37(c) of the CRC requires that 'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interests not to do so'. The Committee on the Rights of the Child has further specified that a 'child deprived of his/her liberty shall not be placed in an adult prison or other facility for adults'.²² It has also stated that the permitted exception to separation from adults 'should be interpreted narrowly; the child's best interests does not mean for the convenience of the States parties'.²³ The Committee on the Rights of the Child makes clear that States parties should establish 'separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices'.²⁴

In accordance with these requirements, the Committee on the Rights of the Child and the previous JCHR called for children in the armed forces who are in conflict with military law to be subject to the juvenile justice system and not the military justice system.

Terms of service (army)

In 2011, your Committee recorded particular concern that the terms of service for children joining the army are more onerous than those that apply to adult recruits.²⁵ You recommended that the government amend the Armed Forces Bill to equalise the initial minimum period of service for soldiers in both age groups. The government has thus far not done so.

¹⁸ The Armed Forces (Terms of Service) (Amendment) Regulations 2011 (SI 1523), paras 5, 8, 9.

¹⁹ See, for example, British Army, Enlistment Information for Potential Entrants – Regular Army – Full Time, 2013, <http://beforeyousignup.info/Army-Enlistment-Paper.pdf>.

²⁰ Hansard: HC Deb, 26 January 2015.

²¹ Hansard: HC Deb, 9 February 2015.

²² Committee on the Rights of the Child, General Comment No. 10 (2007): Children's rights in juvenile justice, 2007, <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>, para 85.

²³ Committee on the Rights of the Child, op.cit.

²⁴ Committee on the Rights of the Child, op.cit.

²⁵ JCHR, Twelfth Report: Legislative Scrutiny: Armed Forces Bill, 2011, Section 8.

As matters stand, children have to serve for up to two years longer than adult recruits before they may give notice to transfer to the reserve (i.e. leave the Regular Army and join the reserve list).²⁶ This situation is highly invidious. A minor and an adult recruit who join the army on the same day and then serve for three years are not treated alike. After three years' service, the recruit who enlisted as an adult may give 12 months' notice to leave and the recruit who enlisted as a child may not. The enlisted child's legal right of discharge before the age of 18 in no way alters this disadvantage once he or she has served for three years and is no longer a child. This situation is unique to the army; the RAF and navy do not discriminate between the two age groups.

Article 3 of the CRC requires that the best interests of the child are a primary consideration in all of the state's actions concerning children. An application by Child Soldiers International for a judicial review of the army's differential terms of service on grounds of age discrimination has been accepted and the case will be heard in court later this year.

Recommendations

In light of the concerns expressed above, Child Soldiers International invites the JCHR to:

1. Call on the UK government to revise its OPAC Declaration at the earliest opportunity. A revised Declaration should ensure that in no circumstances can children in the armed forces be exposed to hostilities, as required by Article 1 of OPAC.
2. In view of the many concerns raised with regard to the military recruitment of children, reaffirm your recommendation that the government raise the statutory minimum age for enlistment to 18 years.
3. Call on the UK government to end the detention of children in military institutions and comply with international juvenile justice standards.
4. Call on the UK government to equalise the terms of service for all those who enlist into the army, such that enlisted children and enlisted adults are able to leave the army after the same minimum service period, as measured from the date of enlistment.

Child Soldiers International, February 2015

²⁶ The Army Terms of Service Regulations 2007 (SI 3382), as amended by The Army Terms of Service (Amendment etc.) Regulations 2008 (SI 1,849).

