The NGO report to the Committee on the Rights of the Child: The Children and Armed Conflict Unit's submission
by Rachel Harvey, Children and Armed Conflict Unit

In 2000, the Children's Rights Alliance for England (CRAE) set up a number of Task Forces, each charged with analysing specific areas of implementation of the Convention on the Rights of the Child (CRC) by the UK Government. Their main findings were included in the NGO report to the Committee on the Rights of the Child. The Children and Armed Conflict chaired the Task Force on Children and Armed Conflict. Below is the Unit's submission to CRAE regarding the UK's compliance with Article 38 of the CRC.

Article 38: Children in Armed Conflict

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<th>Article 38 requires States Parties to:</th>
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<td>• undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child;</td>
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<td>• take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities;</td>
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<td>• refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest; and</td>
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<td>• in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, take all feasible measures to ensure protection and care of children who are affected by an armed conflict.</td>
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Deployment

The minimum age for deployment is 17 for direct participation in hostilities, although recruits under 17 can be deployed to take an indirect part in hostilities. The Select Committee on the Armed Forces Bill 1996 reviewed the issue of under-18 deployment but concluded that it would be impractical and unpopular with all concerned to place any further restrictions on the ability of under-18s to serve on active duty. Further, the MoD reserves the right to deploy recruits younger than 17 years, if their withdrawal would destabilise their unit.

In addition, while the Government has agreed to abide by the Secretary-General's directive that all UN Peacekeepers be at least 18, and preferably 21, the UK has continued to include under-18s in its contribution to NATO forces operating under UN resolutions. Under-18s were deployed as peacekeepers in conflict areas of the Former Yugoslavia and in 1999, 51 under-18s were sent to the Balkans. Recently, a 17-year-old was included in the British Army contingent to the NATO force sent to collect Albanian rebel weapons in Macedonia, and 10 Royal Navy personnel under 18s served on ships in support of operations in East Timor. It appears unlikely that under-18s were deployed in the British military attacks in Afghanistan.

Recruitment

There is no conscription for any person, regardless of age, in the United Kingdom. While there is no statutory minimum age for Armed Forces recruitment in the UK, the Armed Forces do not recruit under the age of 16. Both males and females may enlist, with parental consent, at 16 years. Recruitment procedures, however, can begin at 15 years and 9 months, which ensures that recruits can be enlisted as soon as possible after their 16th birthday. The UK shares the lowest minimum age of recruitment in Europe and enlists the largest number of under-18s of any European State. There are currently 6,000-7,000 under-18s (male and female) in the Armed Forces.

Targeting of under-18s
The UK has an open recruitment campaign targeting under 18-year-olds, for which the Ministry of Defence has made a huge amount of money available. A number of reasons have been advance by the present Government for this recruitment drive; the Armed Forces struggle to recruit the numbers needed to fulfil military commitments at home and abroad; under-18s provide a rich source for recruitment and represent roughly 1/3 of the annual intake (approximately 40 % of the current military personnel in the UK joined when they were 16 or 17); and those recruited under-18 respond better to training and tend to stay longer in the services. Further, the Select Committee on the Armed Forces Bill 2001 said: “We believe it continues to be important to recruit young people straight from school, including at the age of 16; if they are not caught at this point, they are likely to take up other careers and be permanently lost to the Armed Forces.”

In order to recruit under-18s the Armed Forces, and in particular the Army (which recruits by far the biggest proportion of under-18s), visit schools and youth clubs, and target disadvantaged youths and young offenders. The Ministry of Defence also funds cadet forces, which attract a large number of young people (130,000 between 12-22 years according to the MoD website) and act as a channel for recruitment.

This targeting of under-18s, so that recruitment can take place as close to 16 years as possible, is not in conformity with Article 38(3), which provides that in recruiting under-18s “States parties shall endeavour to give priority to those who are oldest”.

**Terms of enlistment**

An unfair disparity exists between the terms of enlistment into the Army for under-18s and those of their adult colleagues. All recruits must serve a minimum of 4 years, but for those enlisting under-18 this minimum period does not start to run until after their 18th birthday. Thus a recruit joining at just 16 must serve until his/her 22nd birthday (unless exercising an absolute right to leave between the second and sixth months of service) – this has been labelled the ‘6-year trap’.

We note, with concern, that this trap has been extended from 5 years to 6 years since the examination of the UK’s initial report by the Committee in 1995. However, we welcome the recent abolition of similar disparities for the Royal Navy and the Royal Air Force, whose minimum periods of service now apply equally to all recruits regardless of age.

**Treatment of young recruits**

Young people in the Armed Forces are vulnerable to bullying, harassment and abuse and, in severe cases, young people have suffered violence, sexual assault and rape. Examples of such treatment are detailed in the Global Report on Child Soldiers. It is suggested that the prevalence of bullying and ill-treatment in the Armed Forces is largely due to the power relationships in the military. While the MoD claims a policy of ‘zero tolerance’ towards all forms of harassment and bullying, Amnesty International raised concerns that the complaints procedure was not adequately accessible to children. When recruits suffer ill-treatment at the hands of their peers or their superiors, they find it difficult to report incidents or file complaints. Many of those who stay quiet do so because they fear that their complaints will not be taken seriously. Recruits are also discouraged from filing joint complaints against senior officers because of the fear of being charged with mutiny. In addition, there is a popular perception that initiation practices and bullying are an integral part of training, necessary to ‘toughen up’ new recruits.

Almost all cases of absenteeism (AWOL - absent without leave - and desertion) come from the junior ranks and from the Army. A large volume of the absenteeism is made up of young recruits, who have suffered bullying and mistreatment by superiors or colleagues and have felt unable to make use of the complaints procedure.

**Optional protocol**

When the UK signed the Optional Protocol on 7 September 2000, an ‘interpretative declaration’ was entered;

“The UK will take all feasible measure to ensure that members of its armed forces who have not attained the age of 18 years do not take a direct part in hostilities. The UK understands that Article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: (a) there is genuine military need to deploy their unit or ship to an area in while
hostilities are taking place; and (b) by reason of the nature and urgency of the situation: (i) it is not practicable to withdraw such persons before deployment; or (ii) 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.”

This declaration greatly weakens the protection provided by Article 1 of the Optional Protocol, as it allows the UK to deploy under-18s where it deems necessary, a practice that corresponds to existing Armed Forces policy.

Under Article 3 of the Optional Protocol, the onus is on the State to ensure that recruitment is voluntary. Safeguards must be in place to ensure that the consent given is informed. The MoD insists that great care is taken to ensure that young people understand precisely the nature of the commitment they are making and that it takes every measures taken to ensure transparency.

However, the terms of service are complicated and not clearly laid out in the literature available to potential recruits and their parents. To compound matters, on occasion out-of-date literature is distributed, and some recruiters are themselves unsure of precise terms of engagement. While applicants are encouraged to ask questions about anything they do not understand, it is debateable whether all under-18-year-olds (or indeed parents) would have the confidence to do this.

In their report on child soldiers, Amnesty International stated that because of the serious and long-term consequences enlistment has on the child, the onus should be on the Armed Forces to explain the commitment in detail and ensure that the terms of service are fully understood. Furthermore, Amnesty International is of the opinion that the MoD’s claim that great care is taken to ensure that children understand precisely the nature of the commitment may conflict with the drive to recruit under-18s to make up the shortfall in the Armed Forces ranks.

International Co-operation

Britain has promoted a ban on the use of children, under 16, as soldiers in other parts of the world. In March 1999, the International Development Minister explained that a proportion of the British international aid budget would be used for the first time to back military reform in the developing world, and that reducing the number of child soldiers would be among the main aims of this initiative. Following up on this commitment, the UK made financial/military assistance to Sierra Leone conditional on the non-use of child soldiers by government forces. While this initiative is welcomed, it is disappointing that the minimum age requirement was set at 16, in line with Britain’s domestic position.

The UK’s ratification in 1998 of the Ottawa Treaty (1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction) is welcomed. This treaty was implemented into UK legislation by the Landmines Act 1998.

Juvenile Justice in the Armed Forces

Those who breach military law (and those accused of most ordinary criminal offences occurring wholly in a Armed Forces context) are tried within the military justice system. There is no separate system for trying under-18s and, if detained, they are not held separately from adults.

For minor matters, personnel may be tried before their own commanding officer, who has limited powers of detention. However, the commanding officer is in no sense independent. There is no right to legal representation for these hearings, but there is a right to elect trial by court-martial instead.

More serious matters are dealt with by a court-martial, which involve trial before a panel of officers outside the defendants’ immediate purview. However, the panel is clearly part of the relevant branch of the Armed Forces and is therefore not strictly independent. For these more serious matters, there is a right to legal representation, but the right to financial legal aid is very limited, and it is often difficult to find a solicitor both willing to act (perhaps involving travel to a remote military base) and with experience of the courts-martial.

A range of disposition are open to the panel, including deprivation of liberty. According to evidence given to the Select Committee on the Armed Forces Bill 1986 “[s]ervice detention [at the
MCTC is a form of corrective training and includes remedial treatment and rehabilitation, with the aim of restoring the man to the Service or preparing him for civil life if he is to be discharged.” However the evidence goes on to say that “the punishments imposed are a firm reminder to the individual of the seriousness of his offence and a deterrent to others”.

A possible, but not automatic, punishment for going absent without leave (AWOL) is detention at The Military Corrective Training Centre. This is cause for concern, because it amounts to detaining a minor for a breach of ‘contract’ and is disproportionate to the offence. Detention for such conduct is particularly worrying, as a large proportion of those who have gone AWOL have left to escape bullying and ill-treatment. It is unclear whether the reasons for going AWOL are taken into consideration when sentences are determined.

Extracts from the Government’s report to the Committee on the Rights of the Child on Article 38

10.65.1 The United Kingdom’s policies on the recruitment and deployment of those under the age of 18 remain substantially unchanged from those set out in the First Report. However, personnel under 17 are no longer deployed by the Naval Service. Those policies are in accordance with the provisions of international humanitarian law, namely article 77 of the First Additional Protocol to the Geneva Conventions 1949.

10.65.2 The Armed Forces policies on recruitment, deployment and term of service for those under 18 were addressed by the Armed Forces Bill Select Committee in 1991. It recommended, among other things, that the Ministry of Defence should examine the terms of enlistment of those under 18. The Ministry considered those findings, and decided not to make any changes. In 1996 the Armed Forces Bill Select Committee concluded that, on balance, it believed that it would be impractical, and unpopular with all those concerned to place further restrictions on the ability of those under 18 to serve on active duty. It again recommended that careful consideration be given to requiring minors to commit themselves to a period no longer than that of adults.

10.65.3 As a result, a Working Group was set to examine how this anomaly might be removed, and to see whether common terms of service might be introduced across the three services – the Royal Navy, the Army and the Royal Air Force. Work is now under way to draft revised terms for personnel under 18.

Prepared by Rachel Harvey on behalf of the Children and Armed Conflict Unit.

FOOTNOTES

2 with The Netherlands and Belgium.
3 Army Terms of Service (Amendment) (No 2) Regulations 1999.
4 Royal Navy Terms of Service (Ratings) (Amendment) Regulations 2001, article 2 and Royal Air Force Terms of Service (Amendment) Regulations 2001, article 2(2-5).
6 It is expected that the Optional Protocol will be ratified later this year. In anticipation of this ratification, the MoD and FCO are currently drafting an explanatory memorandum, which will detail the changes to be made to deployment practices to ensure that all feasible measures are taken to avoid the direct participation in hostilities by any personnel who are under the age of 18.
7 The Military Corrective Training Centre.