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**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS (ICJ)  
FOR THE EXAMINATION BY THE COMMITTEE ON THE RIGHTS OF THE CHILD  
OF THE FOURTH PERIODIC REPORT OF AUSTRALIA**

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## **ICJ Submission to the CRC for the Examination of the Fourth Periodic Report of Australia**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the examination by the Committee on the Rights of the Child (the CR, or Committee) of the Fourth Periodic Report of Australia under the Convention on the Rights of the Child (the Convention).

### **EXECUTIVE SUMMARY**

2. In this submission the ICJ addresses issues concerning: (1) the Tobacco Packaging Bill and its potential impact on children's rights; (2) mining companies and children's rights; (3) children in migration detention centres; (4) the operation of investment and export credit agencies; (5) the operation of internet service providers; (6) the situation of working parents; and (7) the exploitation of workers' and children's rights. This submission does not represent a full alternative report, but focuses on the issues just identified. The ICJ does not express a view one way or another on the remaining issues, nor concerning other provisions in the Convention.

3. Within each section, the ICJ concludes with a list of proposed recommendations about what steps Australia should undertake in order to improve its adherence to the Convention.

### **THE TOBACCO PACKAGING BILL AND CHILDREN'S RIGHTS**

4. In November 2011, the Australian Government passed the Tobacco Plain Packaging Act 2011<sup>1</sup>. This Act gives tobacco companies one year (until 1 December 2012) to ensure that all tobacco products sold in Australia are packaged without logos, brand imagery, symbols, colours or promotional text. Cigarettes will be packaged in a standard brown colour with all brand names in the same size, font, colour and style. Since then, the legislation has faced several legal challenges from the tobacco industry. Tobacco company Phillip Morris (Asia) Ltd has served the Australian government with a notice of arbitration, while tobacco companies British American Tobacco, Phillip Morris (Australia) Ltd, Imperial Tobacco Australia, and Japan Tobacco International have brought action under domestic law.<sup>2</sup>

5. The benefits of plain packaging in terms of reducing smoking have been recognised by the Australian government, various NGOs, and international organisations. The tobacco industry uses colour, innovation and tailored packaging to increase the attractiveness of cigarette packets and to generate a positive image of smoking. Research suggests that smokers generally continue to buy the brand of cigarettes they chose when they first began smoking and the tobacco industry therefore specifically targets young people, in particular, in their use of packaging.<sup>3</sup> Plain packaging is thus aimed at reducing the attractiveness of cigarettes.<sup>4</sup> This approach is supported by a study that found that smokers of plain package cigarettes were generally perceived to be less trendy and stylish, less sociable and outgoing and less mature than branded pack smokers.<sup>5</sup> The World Health Organisation has supported the move towards plain packaging, arguing that the "packaging [of] individual cigarettes or other tobacco products should carry no advertising or

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<sup>1</sup> Act No. 148 of 2011. See [www.comlaw.gov.au/Details/C2011A00148](http://www.comlaw.gov.au/Details/C2011A00148) for commencement dates.

<sup>2</sup> Vasek L., 'Australia's landmark tobacco packaging laws face world trade challenge', *The Australian*, 6<sup>th</sup> April 2012,

<sup>3</sup> *Ibid.*

<sup>4</sup> Commonwealth of Australia, 'Taking preventative action – A response to Australia: the Healthiest Country by 2020 – the report of the National Preventative Health Taskforce', 2010, [http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/6B7B17659424FBE5CA25772000095458/\\$File/tpa.pdf](http://www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/6B7B17659424FBE5CA25772000095458/$File/tpa.pdf)

<sup>5</sup> Cancer Council Australia, "Position Statement: Plain Packaging of Tobacco Products."

promotion, including design features that make products more attractive".<sup>6</sup>

6. According to the Convention, States have a responsibility to ensure the survival and development of the child (Article 6(1)), and to ensure that children enjoy the highest attainable standard of health (Article 24(1)). Particularly pertinent to the issue of tobacco plain packaging is Article 17(e) of the Convention, which stipulates that States should encourage the development of guidelines to protect children from information and material that could be harmful to his or her well being, which can be construed as including the advertisement of products such as tobacco. The Committee has specifically addressed the need to regulate the marketing and advertisement of tobacco because of the effect of tobacco on the health and development of children and adolescents. It has urged State Parties "to regulate and prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents".<sup>7</sup>

7. The legal opposition mounted by the tobacco industry is an obstacle to the effective implementation of the law on plain packaging.<sup>8</sup> The basis of the notice of arbitration mounted by Philip Morris (Asia) Ltd is that the Australian Government has breached its obligations under its Bilateral Investment Treaty with Hong Kong.<sup>9</sup> In terms of the legal action brought against the Australian Government, tobacco companies argue that the plain packaging law breaches obligations under international trade agreements providing for the protection of intellectual property rights, including trademarks.<sup>10</sup> They argue that the law constitutes an 'acquisition of property' under section 51(xxxi) of the Australian Constitution, thus entitling tobacco companies to compensation.<sup>11</sup> The plain packaging law is also facing international opposition from Honduras and Ukraine, which have lodged official complaints with the World Trade Organisation, arguing that the law will have a negative impact on small tobacco producers,<sup>12</sup> will create unnecessary obstacles to trade, and is inconsistent with Australia's international trade obligations.<sup>13</sup>

#### Recommendations

8. Given the above framework, the Committee may wish to:
- i) *Request that the State Party continue to provide information about the progress of the Tobacco Plain Packaging Act 2011 in Australia, as well as other measures aimed at protecting children from the dangers associated with smoking.*
  - ii) *Encourage Australia to provide information about other steps taken to protect children from the harm associated with smoking, such as social and educational measures.*
  - iii) *Ask about steps taken to revise Australia's international trade and investment agreements, which at present may effectively allow the protection of intellectual property rights to prevent the Government from taking appropriate measures to protect children's rights pursuant to the Convention obligations.*

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<sup>6</sup> World Health Organisation, ' Guidelines for implementation of article 13 – WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship), [http://www.who.int/fctc/guidelines/article\\_13.pdf](http://www.who.int/fctc/guidelines/article_13.pdf)

<sup>7</sup> Committee on the Rights of the Child, *General Comment No. 4, Adolescents health and development in the context of the Convention on the Rights of the Child*, UN Doc. CRC/GC/2003/4, 1 July 2003, para. 25

<sup>8</sup> Vasek L., 'Australia's landmark tobacco packaging laws face world trade challenge'

<sup>9</sup> Australian Government Attorney-General's Department, "Media Release: Government Responds to Philip Morris Trade Claim", December 22, 2011, <http://www.attorneygeneral.gov.au/Media-releases/Pages/22-December-2011--Government-responds-to-Phillip-Morris-trade-claim.aspx>.

<sup>10</sup> Cancer Council Australia, "Position Statement: Plain Packaging of Tobacco Products."

<sup>11</sup> *Ibid.*

<sup>12</sup> Mishkin S., 'Australia stubs out tobacco packaging', *Financial Times*, 21 November 2011

<sup>13</sup> Vasek L., 'Australia's landmark tobacco packaging laws face world trade challenge'

- iv) *Encourage Australia to engage in international cooperation in moving towards tobacco plain packaging, fostering a mentality that prioritises expected health benefits over the supposed economic costs.*

## MINING COMPANIES AND CHILDREN'S RIGHTS

9. Certain Australian mining companies operating overseas have been accused of participation and complicity in the gross abuse of human rights. A notable example is the Australian/Canadian listed mining company Anvil Ltd, which operates in the Democratic Republic of Congo and has been accused of providing logistical support and transport to armed forces in a way that allegedly aided the unlawful killing of twenty six civilians.<sup>14</sup> Another example of Australian mining companies allegedly engaging in human rights abuses can be seen in the operations of Oceanagold Corporation, which operates in the Philippines and has been accused of engaging in forceful land acquisition and the illegal demolition of personal property to make way for the construction of a mine in Didipio.<sup>15</sup>

10. Australian mining companies have also been accused of involvement in human rights abuses as a result of unethical business practices. Recently, mineral exploration conducted by Sydney based company, Arc Exploration, in Indonesia resulted in violent riots, demonstrating the company's failure to engage positively with the local community.<sup>16</sup> Australian companies have also been accused of environmental pollution in the Phillipines, Fiji and Papua New Guinea, which has impaired the rights to health, housing, livelihood and access to clean water.<sup>17</sup> Research has also revealed allegations of Australian companies operating abroad abusing workers' rights to safe working conditions and sufficient conditions of pay, such as in the case of Emperor Mines Ltd operating in Fiji.<sup>18</sup>

11. There are mechanisms in place to regulate the behaviour of Australian mining companies to ensure respect for human rights. To become a member of the Minerals Council of Australia, companies must sign the code of conduct – *Enduring Value: the Australian Minerals Industry Framework for Sustainable Development*, which enshrines principles such as respect for human rights, sustainable development and community engagement, and provides frameworks for project assessment and reporting.<sup>19</sup> While the *Enduring Value* framework is an important development in promoting sustainable mining practices, the protocol fails to provide for independent monitoring of companies' compliance but instead lays down principles for self-assessment,<sup>20</sup> a practice that is not effective in securing compliance and accountability.<sup>21</sup>

12. Importantly, in 2002, Division 268 was incorporated into the *Criminal Code Act 1995 (Cth)(Aust.)*, which criminalises genocide, war crimes and crimes against humanity conducted by corporate entities. Given that the crimes under international

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<sup>14</sup> United Nations Organisation Mission in the Democratic Republic of Congo (MONUC), 'Report on the conclusions of the Special Investigation into allegations of summary executions and other violations of human rights committed by FARDC in Kilwa (province of Katanga) on 15 October 2004, released in September 2004, [http://abc.net.au/4corners/content/2005/MONUC\\_report\\_oct05.pdf](http://abc.net.au/4corners/content/2005/MONUC_report_oct05.pdf)

<sup>15</sup> Shanta M., Vettori L. and McLeod J., 'Mining Ombudsman case report: Didipio gold and copper mine, Extractive Industries program', Oxfam Australia, 1 September 2007, <http://resources.oxfam.org.au/pages/view.php?ref=214>

<sup>16</sup> Brown M., 'Indonesian mine protesters 'shot while lying down'', *ABC News*, 29 December 2011

<sup>17</sup> <https://www.oxfam.org.au/explore/mining/impacts-of-mining/>

<sup>18</sup> Oxfam Australia, *Vatukoula, Fiji*, <http://www.oxfam.org.au/explore/mining/our-work-with-communities/vatukoula-fiji> (consulted on 3 May 2012).

<sup>19</sup> [http://www.minerals.org.au/focus/sustainable\\_development/enduring\\_value](http://www.minerals.org.au/focus/sustainable_development/enduring_value)

<sup>20</sup> Minerals Council of Australia, *Enduring Value: the Australian Minerals Industry Framework for Sustainable Development*, Summary Booklet, June 2005, [http://www.minerals.org.au/file\\_upload/files/resources/enduring\\_value/EV\\_SummaryBooklet\\_Jun\\_e2005.pdf](http://www.minerals.org.au/file_upload/files/resources/enduring_value/EV_SummaryBooklet_Jun_e2005.pdf), Accessed 16 May 2012

<sup>21</sup> See for example: Collins S. J., 'Too many cooks in the mining kitchen', *The Global Mail*, February 6 2012, <http://www.theglobalmail.org/feature/too-many-cooks-in-the-mining-kitchen/18/>, Accessed 16 May 2012

law outlined in Division 268 are subject to universal jurisdiction, Australian corporations are liable for these crimes whether they are perpetrated in Australia or overseas.<sup>22</sup> While this is an important development and has been lauded by the former UN Special Representative on Business and Human Rights,<sup>23</sup> there are severe limitations to the practical efficacy of this legislation, in that prosecution under these provisions of the Criminal Code requires the express written consent of the Attorney General,<sup>24</sup> a feature that some analysts say means that prosecution is linked to political will.<sup>25</sup>

13. The activities of Australian mining companies come into conflict with many different provisions under the Convention, including the need to provide children with the highest attainable standard of health (Article 24), which includes providing adequate nutritious food and clean drinking water (Article 24(2)(c)), and to ensure an adequate standard of living necessary for the child's physical, mental, spiritual, moral and social development (Article 27(1)). Failure to provide workers with adequate wages and suitable working conditions inevitably also affects the rights of children, in that it hinders parents' ability to provide for their children. Forced land acquisition violates Article 16 (1) of the Convention, which preserves children's right not to be subject to arbitrary or unlawful interference with his or her privacy, family, home or correspondence. These practices particularly impact adversely the rights of indigenous children, given their traditional connection to the land and the natural environment. Additionally, given that many traditional rites are connected to the land,<sup>26</sup> forceful land acquisition can be seen as specifically violating children's right to enjoy their own culture and religion (Article 30).

14. The infringement of children's rights by mining companies has previously been addressed by the Committee, which has called upon States to develop a regulatory framework for a "rights-based environmental and social impact assessment" for mining projects.<sup>27</sup> In considering the case of Denmark, for example, the Committee urged the State Party to provide a framework to require Danish corporations to report on children's rights, as well as urging it to investigate all reports of corporations' non-compliance with the Convention.<sup>28</sup>

#### Recommendations

15. Given Australian mining companies' involvement in activities that have a negative impact on the realisation of rights under the Convention, the Committee may wish:

- v) *To request that Australia provide more information about its legislative framework to ensure the legal accountability of Australian companies for human rights abuses committed overseas.*
- vi) *To recommend that Australia lift potential political obstacles to the process of bringing forward claims of abuses committed overseas.*

<sup>22</sup> *Criminal Code Act 1995* (Cth) s. 268.117(a). This section states that "Section 15.4 (extended geographical jurisdiction--Category D) applies to genocide, crimes against humanity and war crimes", while Section 15.4 states that "if a law of the Commonwealth provides that this section applies to a particular offence, the offence applies: (a) whether or not the conduct constituting the alleged offence occurs in Australia; and (b) whether or not a result of the conduct constituting the alleged offence occurs in Australia".

<sup>23</sup> See Ruggie J., *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, [84] UN Doc A/HRC/4/035 (2007).

<sup>24</sup> *Criminal Code Act 1995* (Cth) s. 268.121(1): "Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent".

<sup>25</sup> Kyriakakis, J. 'Freeport in West Papua: Brining Corporations to Account For International Human Rights Abuses under Australian Criminal and Tort Law', (2005) 31 *Monash University Law Review*, 95, 109.

<sup>26</sup> Committee on the Rights of the Child, *General Comment No. 11, Indigenous Children and their rights under the Convention*, UN Doc. CRC/C/GC/11, 12 February 2009, Para. 35

<sup>27</sup> Committee on the Rights of the Child, *Concluding Observations: Peru*, UN Doc. CRC/C/PER/CO/3, 27 January 2006, para. 51

<sup>28</sup> Committee on the Rights of the Child, *Concluding Observations: Denmark*, UN Doc. CRC/C/DNK/CO/4, 04 February 2011, para. 30.

- vii) *To request that the Australian Government take measures to strengthen cooperation with countries in which Australian companies are operating, to ensure accountability for, and work towards the prevention of, human rights abuses against children by Australian corporations operating abroad.*
- viii) *To question the Australian Government about mechanisms to monitor the activities of corporations operating abroad, so as to further work towards accountability and prevention of abuses.*

## CHILDREN IN IMMIGRATION DETENTION CENTRES

16. Conditions in immigration detention centres have long been deficient and incompatible with the enjoyment of Convention rights. A private contracted service provider, Serco Australia, operates selected immigration centres, giving rise to a question of corporate as well as state responsibility.<sup>29</sup> The Australian Human Rights Commission has previously reported on the standards in such immigration detention centres, describing overcrowding, the fact that detainees are located in remote areas, the inadequate level of recreational and educational facilities and raising health and welfare concerns.<sup>30</sup>

17. Australia's immigration detention centres, in their constitution and operation, come into conflict with various provisions of the Convention. For example, the requirement of the *Migration Act 1958* (Cth) for the mandatory detention of all non-citizens illegally present in Australia until such time as they are granted a visa, without providing time limits or mechanisms for judicial review, contravenes the requirement that the detention of children should only be undertaken as a last resort, and should be for the shortest period possible (Article 37(b)). In light of the report by the Australian Human Rights Commission highlighting overcrowding conditions, the immigration detention centres are also in conflict with Article 37(c) of the Convention, which provides that if children are deprived of their liberty they are to be treated with humanity and in a way that takes into account their age. These conditions also undermine the State's obligation to provide appropriate protection and humanitarian assistance to children seeking refugee status (Article 22(1)). In terms of the locations of immigration detention centres, it is important to note that the Committee has stipulated that facilities should not be located in remote areas and that children should be given the opportunity to receive visits, all necessary and appropriate treatment and should be assured of their rights to education and recreation.<sup>31</sup>

18. Importantly, the Australian Government has recently taken steps towards ameliorating the situation of children seeking refugee status. In July 2008 the Minister for Immigration and Citizenship stated that children seeking refugee status would not be detained in immigration detention centres, but instead would be placed in Community Detention arrangements.<sup>32</sup> By June 2011, 62 percent of children seeking asylum were in Community Detention arrangements, which demonstrates significant progress towards this goal.<sup>33</sup>

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<sup>29</sup> Serco Asia Pacific, *Immigration Services: people, passion, professionalism*, [http://www.serco-ap.com.au/immigration/immigration\\_services.html](http://www.serco-ap.com.au/immigration/immigration_services.html), Accessed 16 May 2012

<sup>30</sup> Australian Human Rights Commission, *Australian Human Rights Commission Submission to the Joint Select Committee on Australia's Immigration Detention Network*, August 2011, para. 234, available at [http://www.hreoc.gov.au/legal/submissions/2011/201108\\_immigration.pdf](http://www.hreoc.gov.au/legal/submissions/2011/201108_immigration.pdf) (consulted on 2 May 2012).

<sup>31</sup> Committee on the Rights of the Child, *General Comment no. 5, Treatment of unaccompanied children and separated children outside their country of origin*, UN Doc. CRC/GC/2005/6, 1 September 2005, para. 63.

<sup>32</sup> UN Committee on the Rights of the Child (CRC), *Considerations of the reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: 3<sup>rd</sup> and 4<sup>th</sup> periodic report of States parties due in 2007: Australia*, 25 June 2009, CRC/C/AUS/4, available at <http://www2.ohchr.org/english/bodies/crc/crcwg59.htm>

<sup>33</sup> Minister for Immigration and Citizenship, 'Government meets commitment on community detention', (Media Release, 29 June 2011), at <http://www.minister.immi.gov.au/media/cb/2011/cb167699.htm>

### Recommendations

19. Despite these developments, the Australian Government has yet to bring its detention facilities in line with its obligations under the Convention. As such, the Committee could:

- ix) *Request that the State Party provide further information about any legislation and monitoring mechanisms in place to ensure that private service providers in charge of detention facilities observe the rights of the child as detailed in the Convention, or, in their absence to take steps to ensure adequate legislation and monitoring mechanisms in that respect.*
- x) *Ask Australia to ensure that immigration detention facilities are provided with a protocol to ensure that conditions are in compliance with the requirements of the Convention deal with issues regarding children's rights.*
- xi) *Request that the State Party keep the Committee informed on progress in the implementation of the Government's commitment to move children out of detention centres.*
- xii) *Request that Australia review its legislation to bring the mandatory detention provision in the Migration Act into compliance with the Convention.*

### **INVESTMENT AND EXPORT CREDIT AGENCIES AND CHILDREN'S RIGHTS**

20. The United Nations Independent Expert on the effects of foreign debt and other related financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, has raised concerns about Australia's funding of investment projects overseas.<sup>34</sup> Looking specifically at Australia's export credit agency, whose function is to promote creditor country exports, the Independent Expert has highlighted a number of concerns, including a lack of transparency and accountability.<sup>35</sup> Using examples of projects in the Solomon Islands and Papua New Guinea, the Independent Expert has pointed to issues such as a lack of due diligence, negative environmental and social impacts, and a lack of consultation with local communities.<sup>36</sup> The principal reason Australia's export credit agency is said to facilitate human rights abuses is its failure to incorporate human rights compliance mechanisms into its operations.<sup>37</sup> In addition to a lack of accountability and transparency, the sector has also been criticised for having facilitated the forced displacement of indigenous populations, providing inadequate working conditions, suppressing peaceful protests, having adverse environmental impacts and facilitating the destruction of cultural sites.<sup>38</sup> A notable example is the LNG Project operating in Papua New Guinea, led by Exxon Mobil and Australian companies Oil Search and Santos, which has been subject to opposition from indigenous groups. The resulting unrest led to the deaths of local villagers.<sup>39</sup>

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<sup>34</sup> Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights raised some issues of concerns, *Mission to Australia (7-11 February 2011) and Solomon Islands (14-18 February 2011)*, UN Doc. A/HRC/17/37/Add.1, 25 May 2011

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Human Rights Law Centre, 'Export finance and human rights in Australia: submission to the Productivity Commission's Inquiry into the Export Finance and Insurance Corporation', 21 November 2011, [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0004/113881/sub013.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0004/113881/sub013.pdf)

<sup>38</sup> See, for example, Jubilee Australia, *Risky Business* (above); ECA Watch, *Race to the Bottom – Take II* (2003) available at [http://www.eca-watch.org/eca/race\\_bottom\\_take2.pdf](http://www.eca-watch.org/eca/race_bottom_take2.pdf); Robert McCorquodale and Penelope Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law', (2007) 70 (4) *Modern Law Review* 598-625.

<sup>39</sup> Ilya Gridneff, 'Four Shot Dead at PNG LNG Site', *The Age* (online), 1 February 2010 <<http://news.theage.com.au/breaking-news-world/four-shot-dead-at-png-lng-site-20100201-n80t.html>>.

21. A number of guidelines have been developed to assist export credit agencies in developing environmentally and socially responsible operating principles. Examples include the OECD's Common Approaches, the Equator Principles, and the International Finance Corporation's (IFC) Performance Standards.<sup>40</sup> These guidelines have helped inform human rights standards amongst export credit agencies but have been subject to a number of criticisms, for example concerning their focusing on primarily assessing environmental risks to the exclusion of human rights risks and impacts.<sup>41</sup>

22. Under the Convention, State Parties should engage in international cooperation in advancing the rights of the child (Articles 4 and 45). Additionally, Articles 24(4), 28(3), 17, 35 and 23(4) call for international cooperation for the realisation of rights in the areas of health, education, role of media, prevention of the abduction, sale and trafficking of children, and the situation of children with disabilities.

### Recommendations

23. Within this framework and given the key problems identified above, the Committee may wish to recommend to the State Party:

- xiii) *To provide information on steps taken to ensure the transparency and accountability of its export credit agency and, in particular, steps taken by it to ensure compliance with human rights law and standards through appropriate monitoring and grievance procedures.*
- xiv) *To take measures to ensure that its export credit agency requires its beneficiaries to undertake an assessment of risks of human rights and child rights abuse in the context of their operations, together with a policy and mechanisms to deal with those risks before it provides insurance or guarantees to facilitate investments abroad.*
- xv) *To actively seek ways of engaging in international cooperation to advance the rights of the child.*

### **INTERNET SERVICE PROVIDERS AND CHILDREN'S RIGHTS**

24. Internet service providers can have a role to play in the realization of human rights.<sup>42</sup> In Australia, Internet content is regulated by the classificatory standards applied by the Australian Broadcasting Authority (ABA) and the Office of Film and Literature Classification (OFLC), which are charged with duties including investigating complaints about Internet content, developing standards and improving Internet safety awareness.<sup>43</sup> Concluding Observations on Australia's Third Periodic Report to the Committee recognised the efforts that had been taken in terms of criminalising the use of the Internet to access, transmit and make available child pornography and material related to child abuse in the form of the *Telecommunications Offences and Other Measures Act 2004* (Cth).<sup>44</sup> However, the Committee was still concerned about children's exposure to violence, racism and pornography especially through the Internet.<sup>45</sup>

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<sup>40</sup> See Human Rights Law Centre, 'Export finance and human rights in Australia: submission to the Productivity Commission's Inquiry into the Export Finance and Insurance Corporation', 21 November 2011, [http://www.pc.gov.au/data/assets/pdf\\_file/0004/113881/sub013.pdf](http://www.pc.gov.au/data/assets/pdf_file/0004/113881/sub013.pdf)

<sup>41</sup> Ibid.

<sup>42</sup> Directorate General of Human Rights and Legal Affairs, *Human rights guidelines for Internet service providers: developed by the Council of Europe in cooperation with the European Internet Service Providers Association (EuroISPA)*, Council of Europe, July 2008, Accessed 3 May 2012. [http://www.coe.int/t/information/society/documents/HRguidelines\\_ISP\\_en.pdf](http://www.coe.int/t/information/society/documents/HRguidelines_ISP_en.pdf)

<sup>43</sup> Australian Human Rights and Equal Opportunity Commission, *Internet Regulation in Australia*, October 2002, [http://www.hreoc.gov.au/racial\\_discrimination/cyberracism/regulation.html](http://www.hreoc.gov.au/racial_discrimination/cyberracism/regulation.html)

<sup>44</sup> UN Committee on the Rights of the Child (CRC), *UN Committee on the Rights of the Child: Concluding Observations, Australia*, 20 October 2005, CRC/C/15/Add.268, available at: <http://www.unhcr.org/refworld/docid/45377eac0.html> [accessed 4 May 2012]

<sup>45</sup> Ibid.



25. There are significant concerns about the way that Internet service providers affect the rights of the child. Use of the Internet can, for example, facilitate cyber-bullying. Cyber-bullying can lead to emotional and physical harm, social isolation, loss of self-esteem, feelings of shame and anxiety and concentration and learning difficulties, all of which can have a long-lasting effect.<sup>46</sup> Research demonstrates that approximately 10 percent of students under the age of 18 report being cyber-bullied. Another study shows that one fifth of girls aged between 10-14 have experienced online bullying.<sup>47</sup>

26. The psychological effects that cyber-bullying has on children negatively impacts on the realisation of a series of rights under the Convention, such as the obligation to ensure that children are able to enjoy the highest attainable standard of health (Article 24(1)), and the child's right to education (Article 28(1)).

#### Recommendations

27. Within this framework, the Committee may wish to recommend to the State Party:

- xvi) To take effective measures to protect children from cyber-bullying and to address the associated problems.*
- xvii) To increase cooperation between the State, Internet service providers, and the community, so as to minimise cyber-bullying.*

#### **WORKING PARENTS AND CHILDREN'S RIGHTS**

28. Many Australian parents are still struggling to achieve a balance between work responsibilities and parental responsibilities. The Australian Government has implemented a number of schemes to ease these difficulties, notably the National Paid Parental Leave (PPL) scheme that began in January 2011 and allows eligible employees the chance to gain up to 18 weeks of parental leave pay at the Federal minimum wage.<sup>48</sup> Additionally, the introduction of the New Dad and Partner Pay scheme in January 2013 will provide eligible working fathers or partners with two weeks of pay at the national minimum wage.<sup>49</sup>

29. While these are significant developments, it is important to note the problems that working parents continue to face. In terms of the PPL scheme, while its implementation has been welcomed by the Federal Sex Discrimination Commissioner, Elizabeth Broderick, she has raised concerns that the scheme does not include superannuation, and has also called for the period to be expanded to six months' worth of paid parental leave.<sup>50</sup> Additionally, the expected rising costs of childcare have caused concern amongst parents, who believe that they will need to reduce the number of hours that their child spends in care in the future.<sup>51</sup>

30. Under the Convention, State Parties are bound to use their best efforts to recognise the principle that both parents have common responsibilities and primary

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<sup>46</sup> Australian Human Rights Commission, *Australian Human Rights Commission Submission to the Joint Select Committee on Australia's Immigration Detention Network*, August 2011, available at [http://www.hreoc.gov.au/legal/submissions/2011/201108\\_immigration.pdf](http://www.hreoc.gov.au/legal/submissions/2011/201108_immigration.pdf) (consulted on 2 May 2012).

<sup>47</sup> Ibid.

<sup>48</sup> Australian Department of Families, Housing, Community Services and Indigenous Affairs, *Paid Parental Leave Scheme*, [http://www.fahcsia.gov.au/sa/families/progserv/paid\\_parental/Pages/default.aspx](http://www.fahcsia.gov.au/sa/families/progserv/paid_parental/Pages/default.aspx), Accessed 10 May 2012

<sup>49</sup> Ibid.

<sup>50</sup> Karvelas P., 'Australia gets first national paid parental leave scheme', *The Australian*, June 17 2010, <http://www.theaustralian.com.au/news/australia-gets-first-national-paid-parental-leave-scheme/story-e6frg6n6-1225881031472>, Accessed 9 May 2012

<sup>51</sup> Karvelas P., 'Childcare costs put off plans for more', *The Australian*, 5 May 2012, <http://www.theaustralian.com.au/national-affairs/childcare-costs-put-off-plans-for-more/story-fn59niix-1226347286948>, Accessed 9 May 2012

responsibility for the upbringing and development of their child (Article 18(1)). Additionally, States are bound to take appropriate measures to ensure that children of working parents are able to benefit from child-care services and facilities (Article 18(3)).

### Recommendations

31. Given these circumstances, the Committee may wish to request that the Australian Government:

- xviii) *Outlines measures taken to ensure that working parents are able to effectively balance the demand between their workplace and their responsibilities as parents.*
- xix) *Outlines what measures it will take to ensure that children are given continued access to childcare, and to explore the option of Government-supported workplace crèches.*

### **EXPLOITATION OF WORKERS' AND CHILDREN'S RIGHTS**

32. The above section exploring human rights abuses perpetrated by Australian mining corporations addressed the issue of human rights abuses conducted by Australian companies operating overseas. However this issue is not unique to the mining industry. For example, a Federal Department of Fisheries approved fish-processing establishment, Phatthana Seafood Co. Ltd (Phatthana), operating in Thailand, has been accused of human rights abuses.<sup>52</sup> It is alleged that Phatthana has employed large numbers of undocumented migrant workers mainly from Cambodia, reneging on contractual agreements, confiscating passports and forcing workers into debt.<sup>53</sup> A number of workers allege that they were solicited directly by Phatthana employees. When they arrived in Thailand, they were forced to share small living quarters, subject to having their food allowances modified, given less working hours than had originally been stated and forced to work in unsanitary conditions.<sup>54</sup> There are also reports of underage child workers being employed by Phatthana.<sup>55</sup> While a strike that occurred in early April 2012 resulted in a number of Cambodian workers being repatriated, there are still a number Khmer workers working for Phatthana, who seek to either find alternative employment or be repatriated.<sup>56</sup> It is important to note that Phatthana is not the only company operating in Thailand that has been accused of maltreating migrant workers. In fact, numerous companies have allegedly abused the rights of migrant employees.<sup>57</sup>

33. The operations of Phatthana have significant implications for Australia in respect of its obligations under the Convention. Australia is bound under the Convention to protect children from economic exploitation (Article 32(1)), which is significant given the accusation that underage workers were employed at Phattana. In addition, the conditions that workers are subjected to in Phattana constitute indirect discrimination against children. The fact that Cambodian workers' passports are confiscated and that they are in effect detained in Thailand affects their ability to bear primary responsibility for the upbringing of their children (Article 18(1)), while the fact that many workers are forced into debt will affect their ability to provide for the health and welfare of their children.

34. As discussed above, the incorporation of Division 268 into the *Criminal Code*

<sup>52</sup> Australian Department of Agriculture, Fisheries and Forestry, *The Department of Fisheries, Thailand – List of Approved Fish Processing Establishments*, Last updated 19 March 2012, <http://www.daff.gov.au/aqis/import/food/fish-processing/numerical-order>, Accessed 10 May 2012

<sup>53</sup> Community Legal Education Center (CLEC), *CLEC Investigation: Khmer Workers at Phatthana Seafood Factory – Songkhla Province, Thailand – 10 April to 13 April 2012*, 12 April 2012.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> See Human Rights Watch, *From the Tiger to the Crocodile: abuse of migrant workers in Thailand*, 2010, [www.hrw.org/.../thailand0210webwcover\\_0.pdf](http://www.hrw.org/.../thailand0210webwcover_0.pdf), Accessed 17 May 2012

extends corporations' liability for certain human rights abuses to abuses carried out overseas. However, the fact that prosecution under this act is limited to crimes of genocide, war crimes and crimes against humanity leaves Cambodian workers little recourse under Australian law.

Recommendations

35. The Committee may wish to recommend to the State Party:
- xx) *To conduct an investigation into the claims of workers at the Phatthana Seafood Co. Ltd to uncover the existence and extent of alleged human rights abuses.*
  - xxi) *Request that the State Party outline measures it can take to increase accountability of Australian companies perpetrating human rights abuses overseas, beyond genocide, war crimes and crimes against humanity.*
  - xxii) *Put in place monitoring mechanisms to screen the activities of its business associates, and their mechanisms to address actual and potential abuses of human rights and specifically children's rights.*
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