



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-fourth session

25 May-11 June 2010

Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Concluding observations: Serbia

1. The Committee considered the initial report of Serbia under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/SRB/1 at its 1506th meeting, held on 26 May 2010, (see CRC/C/SR.1506) and adopted at its 1541st meeting, held on 11 June 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report and the replies to its list of issues (CRC/C/OPSC/SRB/Q/1/Add.1). The Committee nevertheless regrets that the State party's report did not follow the guidelines for reporting under the Optional Protocol.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations on the State party's initial report under the Convention on the Rights of the Child ("the Convention") (CRC/C/SRB/CO/1 adopted on 6 June 2008) and the concluding observations on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/SRB/CO/1 adopted on 11 June 2010).

I. General Observations

Positive aspects

4. The Committee notes with appreciation the adoption of the following legislative and other measures:

- (a) The Law on Juvenile Offenders and Criminal Justice Protection of Juveniles (2005);
- (b) The amendments to the Criminal Code and the Criminal Procedure Code (2009);
- (c) The National Plan of Action to Combat Trafficking in Human Beings for the period 2009-2011; and
- (d) The National Strategy for Prevention and Protection of Children from Violence (2008) and the Action Plan for its implementation (2010).

5. The Committee further notes with appreciation the State party's ratification of:

- (a) The Optional Protocol on the involvement of children in armed conflict, in January 2003;
- (b) The Council of Europe Convention on Action against Trafficking in Human Beings (2005) in April 2009; and
- (c) The Council of Europe Convention on Cybercrime (2001) in April 2009.

II. Data

Data Collection

6. While noting that further improvements have been made in the area of data collection, especially through DevInfo, and that some research on the areas covered by the Optional Protocol has been undertaken, the Committee remains concerned at the lack of a systematic and centralized mechanism for collecting data disaggregated inter alia by age, sex, ethnic or social origin and urban/rural areas.

7. The Committee recommends that the State party centralize and further develop its mechanism for systematic data collection, in order to effectively analyse, monitor and assess the impact of laws, policies and programmes for all the

areas covered by the Optional Protocol. This would include data on both the perpetrators and victims of the sale of children, child prostitution and child pornography. Data should be disaggregated by , inter alia, the nature of the offence and by age, sex, ethnic or social origin, urban/rural areas , with particular attention to children who are especially vulnerable to becoming victims of the offences covered by the Optional Protocol. The Committee also recommends that the State party undertake further research on the areas covered by the Optional Protocol to identify the root causes and extent of sale of children, child prostitution and child pornography.

III. General measures of implementation

Legislation

8 . The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is similar , but not identical, to trafficking in persons , in order to adequately implement the provision referring to the sale of children contained in the Optional Protocol.

General Principles of the Convention on the Rights of the Child (arts. 2, 3, 6 and 12)

9. The Committee notes that the general principles of the Convention on the Rights of the Child have been considered to some extent in implementing the Optional Protocol especially in efforts to address the situation of children who are particularly vulnerable, notably Roma children. However, the Committee is concerned at persistent discriminatory attitudes faced by children, especially Roma children, children with disabilities and refugee and internally displaced children, which may affect their protection and prevent their full enjoyment of the rights enshrined in the Optional Protocol. Furthermore, the Committee is concerned that children's views are not given due consideration in all matters affecting them, including the development of policies and programmes.

10 . The Committee recommends that the general principles on the Convention of the Rights of the Child, in particular the principles of non-discrimination and respect for the views of the child be included in all measures taken by the State party to implement the provisions of the Optional Protocol, especially with regard to children who are particularly vulnerable to the offences of the Optional Protocol. Furthermore, it urges the State party to ensure that children's views are taken into consideration in all judicial or administrative proceedings.

National Plan of Action

11. While noting that the draft National Plan of Action for Children 2010-2015 (NPA), reflects some of the Committee's recommendations made following its dialogue on the initial report under the Convention in 2008 (CRC/C/SRB/CO/1), the Committee is concerned that the draft NPA, in its current form, does not comprehensively cover all the areas addressed by the Optional Protocol.

1 2 . The Committee recommends that the State party, in consultation and cooperation with all relevant stakeholders, including children and civil society:

(a) Incorporate in its draft NPA all the issues covered by the Optional Protocol, including protection of children from pornography through the internet;

(b) Provide adequate human and financial resources for its implementation; and

(c) Ensure the effective implementation of all provisions of the Optional Protocol taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congresses against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008 respectively.

Coordination and evaluation

13. The Committee notes it is the role of the Ministry for Human and Minority Rights to collect information from all relevant governmental bodies and mechanisms and NGOs in order to coordinate the implementation of the rights of the child and the Optional Protocol. However, the Committee is concerned that the Ministry does not have sufficient human, financial or technical resources and lacks a mechanism or procedure for evaluating the implementation of the Optional Protocol at the national and local levels.

1 4 . The Committee encourages the State party to establish or strengthen an institutional mechanism for effective coordination among ministries and between the national and local authorities, and in consultation with civil society organizations, in order to create systematic and coherent approaches to address issues covered by the Optional Protocol. The coordinating body should ensure the periodic monitoring and evaluation of the measures taken and use the results for further strategy and policy development i n the areas covered by the Optional Protocol. The Committee urges the State party to provide the coordinating body with adequate human, financial and technical resources to effectively carry out its role.

Dissemination and awareness raising

15. The Committee appreciates the numerous dissemination and awareness-raising activities carried out by the State party in collaboration with international, intergovernmental and non-governmental organizations on the issue of trafficking in human beings. However, the Committee remains concerned that efforts to raise awareness on the Optional Protocol are not systematic, do not include all areas covered by the Optional Protocol and that children, including children of minority communities, children in institutions, refugee and internally displaced children and parents do not have adequate knowledge of the risks of the violation of the rights of

children as enshrined in the Optional Protocol or of strategies to protect children against these violations.

16. The Committee urges the State party:

(a) To continue to make the provisions of the Optional Protocol widely known to the public, particularly to children and their families, through, inter alia, integrating the provisions of the Optional Protocol in school curricula at all levels of the education system and appropriate material created specifically for children; and

(b) In cooperation with civil society, and in line with article 9, paragraph 2, of the Optional Protocol, to intensify and promote awareness - raising among the public at large, including children, through information by all appropriate means, education about the harmful effects of all the offences referred to in the Optional Protocol and to encourage the participation of the community and, in particular, children and child victims of both sexes, in such awareness raising and information and education programmes.

Training

17. While noting that some training activities on trafficking are being carried out, the Committee is concerned that these activities do not include all professionals working for and with children and that they do not adequately include all the provisions of the Optional Protocol.

18. The Committee recommends that the State party:

(a) Allocate adequate earmarked resources for the development of programmes and training materials on all areas covered by the Optional Protocol for all relevant professionals and the public at large; and

(b) Continue and strengthen its training activities, including the development of training programmes and materials, covering all areas of the Optional Protocol, for professionals including medical staff, social welfare officers, police officers, public prosecutors, judges, the media and other groups of professionals concerned.

Independent Monitoring

19. While noting with appreciation the creation of the Office of the Deputy Ombudsman with specialized responsibility for monitoring and defending the rights of children, the Committee regrets the limitations of its capacities and the lack of knowledge about the role of the office on the part of children and their parents .

20. The Committee recommends that the State party provide the Office of the Deputy Ombudsman with sufficient financial, human and technical resources to exercise its mandate, including with regard to monitoring the rights of children under the Optional Protocol. The Committee further recommends that the State Party facilitate widespread knowledge about the role of the Deputy Ombudsman and ensure that children have confidential and child - friendly access to the mechanism for registering complaints of violations of their rights.

Allocation of resources

21. While noting that the general budgets of ministries, agencies, municipalities and local authorities cover issues relevant to children, the Committee regrets that adequate and specific funding has not been allocated for the implementation of the Optional Protocol by the relevant bodies.

22. The Committee urges the State party, when planning its national budget, to allocate adequate financial and human resources specifically for the implementation of the Optional Protocol to cover critical areas of research, policy and strategy development, awareness raising and training, prevention and protection.

The role and contribution of civil society

23. The Committee welcomes the 2009 Memorandum of Cooperation with the non-governmental sector which will increase and enhance the contribution of civil society organizations in policy making and implementation. However, the Committee regrets that civil society and non-governmental organizations were not involved in the consultation process leading to the preparation of the State party's initial report under the Optional Protocol.

24. The Committee recommends that the State party fully consult civil society, including children's organizations, on the various aspects of implementation of the Optional Protocol, including the development of policies and legislation, planning and budgeting of government programmes, monitoring and evaluation. The Committee encourages the State party to support civil society organizations, including NGOs, to build their capacities and to fully utilize the experience and expertise of civil society organizations working on issues covered under the Optional Protocol.

IV. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)

Measures adopted to prevent offences referred to in the Optional Protocol

25. The Committee takes note of the State party's efforts, in collaboration with national institutions and NGOs, to prevent acts that are offences under the Optional Protocol. However, the Committee is concerned at the high number of offences covered under the Optional Protocol occurring within the State Party, particularly against the girl child, and that targeted preventive measures against the

sale of children, including for the purposes of forced labour, child prostitution and child pornography are limited. The Committee is also concerned at the lack of measures to identify the root causes and extent of the problems.

26. The Committee encourages the State party:

(a) To undertake research on the nature and extent of the sale of children, economic and sexual exploitation of children, child prostitution and child pornography, in order to identify children at risk and to address the root causes of the problems and the main risk factors; and

(b) On the basis of the above - mentioned research, to adopt a more targeted approach to address the sale of children, child prostitution and child pornography on prevention, recovery and reintegration measures for the affected children, paying particular attention to the girl child and the gender dimensions of the issues.

27. The Committee regrets the lack of sufficient attention to, and information on, the issue of child sex tourism.

28. The Committee recommends that the State party undertake measures to prevent child sex tourism, by, inter alia, conducting studies and collecting information on known cases to establish its extent and root causes, and by raising awareness among children and the general public. The State party, through the relevant authorities, should strengthen cooperation with the tourism industry, NGOs and civil society and through international cooperation in order to promote responsible tourism. The Committee encourages the State party to disseminate the Code of Conduct of the World Tourism Organization on the protection of children from sexual exploitation in travel and tourism among all relevant partners.

29. The Committee welcomes the steps taken by the State party in the area of cybercrime, including the creation of a special unit within the Ministry of the Interior to combat cybercrime. However, the Committee is concerned at the growing availability of child pornography on the Internet and other evolving technologies and that a certain degree of impunity continues to exist for crimes covered by the Optional Protocol committed through the Internet, especially child pornography.

30. The Committee recommends that the State party:

(a) Continue to take measures to combat cybercrime, especially child pornography on the Internet;

(b) Strengthen its efforts, in cooperation with the media, to inform children and their parents about safe use of the Internet;

(c) Take all appropriate measures to strengthen bilateral, regional and international cooperation to enhance the tracking system with its IP locator in order to track the IP addresses, hosts and websites of offenders and pimps, aiming to use the most accurate IP address location database, through cooperation with Internet service providers, with a view to combating child pornography;

(d) Ensure and monitor the full implementation of the regulations governing the control and regulation of premises providing public Internet services; and

(e) Adopt and implement specific legislation on the obligation of Internet providers to prevent (to the extent possible) the dissemination of and access to child pornography on the Internet.

Programmes targeting particular groups

31. While noting some efforts undertaken to protect children from abuse and neglect, the Committee regrets that there are no specific programmes in place targeting particular groups of children, such as Roma children, refugee and internally displaced children, children in care institutions, children in street situations and the girl child, with the aim of preventing practices prohibited under the Optional Protocol. It also reiterates its concern expressed upon consideration of the initial report of the Republic of Serbia under the Convention in 2008 at the fact that children in street situations are especially vulnerable to economic and sexual exploitation.

32. The Committee encourages the State party to strengthen systematic prevention activities, including birth registration, targeting the particular groups of children listed above, who are especially vulnerable or at risk, in order to protect them from the offences covered under the Optional Protocol.

V. Prohibition of the sale of children, child pornography and child prostitution (arts. 3; 4, paras. 2 and 3; and 5/7)

Existing criminal or penal laws and regulations

33. While noting the amendments to the Criminal Code, the Committee remains concerned that the State party does not explicitly criminalize the sale of children, as defined in articles 2 and 3 of the Optional Protocol. Furthermore, the Committee is concerned that implementation of legislation in practice remains a problem.

34. The Committee urges the State party to ensure that an explicit definition of the crime of the sale of children is incorporated into relevant legislation, in particular the Penal Code and the draft Child Act, in accordance with articles 2 and 3 of the Optional Protocol. The Committee also encourages the State party to make every effort to ensure that legislation providing protection for children from the sale of children, child prostitution and child pornography is fully and effectively implemented.

Legal aspects of adoption

35. The Committee regrets that improperly inducing consent in cases of adoption, as provided for in article 3, paragraph 1 (a)(ii) of the Optional Protocol, is not covered by the criminal legislation of the State party.

36. The Committee recommends that the State party take all necessary measures to ensure that the definition of improperly inducing consent in cases of adoption is incorporated into the penal legislation, as stipulated in article 3, paragraph 1 (a) (ii) of the Optional Protocol.

Jurisdiction and extradition

37. The Committee notes that extraterritorial jurisdiction may be exercised on the grounds of approval by the Public Prosecutor of Serbia. However, it regrets that the penal legislation does not allow extraterritorial jurisdiction for all the cases referred to in article 4, paragraph 2 of the Optional Protocol. Furthermore, the Committee is concerned that extraterritorial jurisdiction is subject to the criterion of double criminality and that extradition is subject to the criterion of reciprocity.

38. The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extra-territorial jurisdiction over crimes covered by the Optional Protocol and recommends establishing extraterritorial jurisdiction over crimes under the Optional Protocol without the criterion of double criminality. The Committee further recommends that the State party consider the Optional Protocol to be a legal basis for extradition without the condition of the existence of a bilateral treaty.

VI. Protection of the rights of child victims (arts. 8; and 9, paras. 3 and 4)

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol

39. While noting the efforts made to protect the rights of child victims of the offences covered by the Optional Protocol, the Committee is concerned that child victims of the offences under the Optional Protocol may not always be considered and treated in practice as victims as provided for in article 8 of the Optional Protocol and that little is done to avoid the marginalization and stigmatization of child victims.

40. The Committee recommends that the State party:

(a) Ensure that child victims of any of the offences under the Optional Protocol are not treated as offenders under the civil or penal law, and that all possible measures are taken to avoid the stigmatization and marginalization of child victims; and

(b) In light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of child victims and witnesses at all stages of the criminal justice process. The State party should be guided in this respect by the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

41. While noting the existence of some services for children who are victims of the offences covered under the Optional Protocol, the Committee is concerned that there is no comprehensive social protection system covering all child victims of all offences under the Optional Protocol in the State party. The Committee is further concerned at the paucity of information about specific efforts to protect children who are most vulnerable, notably Roma children and refugee and internally displaced children.

42. The Committee recommends the State party:

(a) To strengthen efforts to establish a comprehensive social protection system that will extend to all child victims of all the offences covered by the Optional Protocol; and

(b) To ensure holistic and proactive efforts to protect children who are most vulnerable, notably Roma children and refugee and internally displaced children, from becoming victims of offences covered by the Optional Protocol.

Recovery and reintegration of victims

43. The Committee notes efforts by civil society organizations, including NGOs, to provide project-based support to some children who are victims of the offences under the Optional Protocol. However, the Committee is concerned at the lack of compensation possibilities for child victims of the offences and at the absence of comprehensive services of the State party for the recovery and reintegration of children who are the victims of sale, prostitution and pornography. In particular, the Committee regrets the lack of State-run shelters, special psychological and psychiatric assistance and professional social services and the lack of training provided to professionals working with victims of the offences covered by the Optional Protocol. Furthermore, the Committee is concerned at the lack of opportunity for children to participate in developing policies and programmes concerning their recovery and social integration.

44. The Committee recommends that the State party adopt further measures, in cooperation with NGOs, to:

(a) Ensure that all child victims of the offences described in the Optional Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4 of the Optional Protocol;

- (b) Ensure that adequate services are available for all child victims, both boys and girls, including for their full physical and psychological recovery and social reintegration, in accordance with article 9, paragraph 3, of the Optional Protocol and that adequate financial resources and trained human resources are allocated to this end;
- (c) Develop specialized medical and psychological care services for child victims, including by ensuring access to and availability of child mental health professionals;
- (d) Provide access to shelters for victims of the offences covered by the Optional Protocol and ensure that children are separated from adults;
- (e) Take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Optional Protocol, in accordance with article 8, paragraph 4 of the Optional Protocol; and
- (f) Ensure the participation of children in the development of policies and programmes for their recovery and reintegration.

Helpline

45. The Committee recommends that the State party ensure that the existing national child helpline is allocated sufficient resources; that it is accorded a three -digit number to assist child victims; that it is fully accessible and known to all children; and that calls receive prompt and adequate follow-up.

VII. International assistance and cooperation

International cooperation

46. The Committee recommends that the State party strengthen its bilateral, regional and international judicial, police and victim-oriented cooperation activities with other States and international organizations with a view to preventing and combating the sale of children, child prostitution and child pornography. In this respect, the Committee draws the attention of the State party to its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

Ratifications

47. The Committee recommends that the State Party take urgent measures to ratify:

- (a) The 1993 Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption;
- (b) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007); and
- (c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

VIII. Follow-up and dissemination

Follow-up

48. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, by, inter alia, transmitting them to relevant government ministries, the National Assembly, the Supreme Court and to national and local authorities, for appropriate consideration and further action.

Dissemination

49. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups, the media and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Next report

50. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined second and third periodic reports under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 12 March 2013.