



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### **Concluding observations on the initial report of Paraguay submitted under article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-fourth session (16 September–4 October 2013)**

1. The Committee considered the initial report of Paraguay (CRC/C/OPSC/PRY/1) at its 1829th and 1830th meetings (see CRC/C/SR.1829 and CRC/C/SR.1830) held on 24 and 25 September 2013, and adopted at the 1845th meeting, held on 4 October 2013, the following concluding observations.

#### **I. Introduction**

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/PRY/Q/1/Add.1). The Committee also appreciates the constructive dialogue held with the high-level and multisectoral delegation of the State party.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations on the State party's third periodic report under the Convention on the Rights of the Child (CRC/C/PRY/CO/3) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/PRY/CO/1).

#### **II. General observations**

##### **Positive aspects**

4. The Committee welcomes the legislative measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of Act No. 4788/12 on Human Trafficking.

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

- (a) The Convention on the Reduction of Statelessness (2012);

(b) The Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2008); and

(c) The Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2004).

6. The Committee further welcomes the progress achieved in creating institutions and adopting national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) The National Plan for the Prevention and Elimination of the Sexual Exploitation of Children and Adolescents (2012–2017);

(b) The National Strategy for the Prevention and Elimination of Child Labour and the Protection of Adolescent Workers (2010–2015);

(c) The Comprehensive Programme for Children and Adolescents Living on the Streets; and

(d) The Inter-Agency Board on Trafficking in Persons in Paraguay.

7. The Committee notes with satisfaction the cooperation the State party has developed with the human rights adviser to the United Nations country team.

### III. Data

#### Data collection

8. The Committee notes with satisfaction the establishment of the National Strategy on State Development (ENDE), which includes a mechanism for data collection and the development of human rights indicators. However, the Committee remains concerned about the lack of a comprehensive system collecting data on all offences under the Optional Protocol, which would enable the State party to identify the extent and the forms of the sale of children, child prostitution and pornography. The Committee is further concerned that, at present, the State party has not provided statistics regarding the number of cases related to the offences covered under the Optional Protocol, namely the sale of children, child prostitution and child pornography. The Committee also regrets the lack of information on the number of child victims of criminal offences under the Optional Protocol who have received assistance for their physical and mental rehabilitation or social reintegration, or payment of compensation for damages suffered.

9. **The Committee recommends that the State party develop and implement a comprehensive system of data collection, analysis and impact assessment of all the areas covered by the Optional Protocol. The data should be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location, indigenous status and socioeconomic status, paying particular attention to children in vulnerable situations. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence.**

### IV. General measures of implementation

#### National plan of action

10. The Committee appreciates the adoption of the different plans and strategies related to children, and the commitment expressed by the State party to develop the new National

Policy on Childhood. However, the Committee regrets that a comprehensive national plan of action that includes all issues covered in the Optional Protocol has not been adopted. The Committee is concerned that a sectoral approach to the Optional Protocol may lead to the fragmentation of its implementation, as well as to the mismanagement of human and financial resources.

11. **The Committee recommends that the State party expedite the development and adoption of a comprehensive national plan of action to incorporate all issues covered under the Optional Protocol and that takes into account the Stockholm Declaration and Agenda for Action and the Yokohama Global Commitment adopted at the First and Second Congresses against Commercial Sexual Exploitation of Children held in 1996 and 2001, respectively. It also recommends that the plan be regularly evaluated for progress made and be provided with adequate human, technical and financial resources for its implementation, namely for measures aimed at prevention, protection, physical and psychological recovery and social reintegration of child victims and the investigation and prosecution of the offences covered in the Optional Protocol.**

#### **Coordination and evaluation**

12. The Committee notes the State party's National Council for Childhood and Adolescents, National Secretariat for Children and Adolescents, Coordinating Office for the Rights of Children and Adolescents and departmental and municipal councils for children and adolescents, all dealing with issues of children and adolescents. However, the Committee is concerned about the lack of a clear definition of the mandates and roles of these institutions and that the National Council is not fully operational, given the infrequency of its meetings and the insufficiency of its resources. The Committee further regrets that the departmental and municipal councils have not yet been established.

13. **The Committee recommends that the State party:**

(a) **Clearly define the mandates and roles of the National Council for Childhood and Adolescents and the other institutions in order to ensure better coordination on the implementation of the Optional Protocol;**

(b) **Ensure that the National Council becomes fully operational by holding regular meetings and allocating to it sufficient human, technical and financial resources for the effective fulfilment of its mandate; and**

(c) **Expedite the establishment of the departmental and municipal councils.**

#### **Dissemination and awareness-raising**

14. The Committee welcomes the efforts undertaken by the State party in organizing activities to raise awareness on the Optional Protocol. The Committee is, however, concerned that such activities are not widespread and do not include all the issues covered under the Optional Protocol. The Committee expresses its concern at the lack of awareness-raising activities addressed to the media, which, as recognized by the State party in its initial report, continues to present images contrary to the provisions of the Optional Protocol.

15. **The Committee recommends that the State party:**

(a) **Make all the provisions of the Optional Protocol widely known to the public, particularly to children and their families, by, inter alia, developing and implementing specific long-term awareness-raising programmes at national, departmental and municipal levels and including the provisions of the Optional**

**Protocol in school curricula at all levels of the education system, using appropriate materials created specifically for children;**

**(b) Establish guidelines and a partnership with the media with a view to raising awareness on the Optional Protocol; and**

**(c) In cooperation with civil society and the media, intensify and promote awareness among the public at large of the need to prevent and combat crimes under the Optional Protocol, focusing on children who are particularly at risk of becoming victims and their parents, and encouraging the participation of the community, in particular that of children, including child victims.**

#### **Training**

16. The Committee takes note of the training organized by the State party through the International Centre for Judicial Studies on the eradication of child pornography, and the efforts undertaken by the Specialized Unit on Trafficking of the Public Prosecution Service to establish an inter-institutional committee to combat and prevent child sexual exploitation. However, the Committee is concerned that efforts to provide adequate training to professionals working with and for children, in particular judges, prosecutors, law enforcement officers, education and health professionals and social workers, are not systematic and do not include all areas covered in the Optional Protocol.

**17. The Committee recommends that the State party strengthen training activities and allocate adequate resources for the development of training programmes on all areas covered in the Optional Protocol for all professional categories involved in its implementation, including judges, the Ombudsman, public prosecutors, police officers, social workers, health-care staff and other professionals working with and for children, and the media.**

#### **Allocation of resources**

18. The Committee welcomes the State party's commitment to progressively increase, during the period 2013–2018, investment to benefit children to 7 per cent of gross domestic product. However, the Committee is concerned that the State party did not provide sufficient information on the allocation of resources for implementing the Optional Protocol, particularly with regard to resources for research and data collection, prevention of the offences covered in the Optional Protocol, criminal investigations, legal assistance, and physical and psychological recovery measures for child victims.

**19. The Committee urges the State party to ensure that sufficient resources are allocated for implementing the Optional Protocol in all areas, by providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at prevention, protection, physical and psychological recovery and social reintegration of child victims, and the investigation and prosecution of the offences covered by the Optional Protocol.**

#### **Civil society**

20. The Committee welcomes the willingness of the State party to increase its cooperation with civil society organizations, non-governmental organizations (NGOs) and the Ombudsman's Office, following its positive experience in collaborating with civil society organizations and the Ombudsman's Office in the preparation of the report and during the examination under the universal periodic review. However, the Committee remains concerned about the lack of involvement of such organizations in designing policies and conducting activities to implement the Optional Protocol.

21. The Committee encourages the State party to continue and strengthen its collaboration with civil society in all matters concerning the implementation of the Optional Protocol, and to increase the role of NGOs and the Ombudsman's Office in developing and monitoring policies and services.

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

### Measures adopted to prevent offences prohibited under the Optional Protocol

22. The Committee notes with appreciation the State party's efforts to combat international human trafficking, commercial sexual exploitation and child labour by implementing national plans and carrying out activities at the municipal level. In particular, the Committee welcomes the establishment of the Inter-Agency Board on Trafficking in Persons and the Abrazo Programme aimed at reducing child labour on the streets. However, the Committee regrets that preventive measures relating to the specific offences under the Optional Protocol remain inadequate. In particular, the Committee remains concerned that the underlying root causes of the offences under the Optional Protocol, such as poverty and cultural stereotypes, are not sufficiently addressed, which contributes to the persistence of the long-established practice known as *criadazgo*.<sup>1</sup>

23. **The Committee recommends that the State party:**

(a) **Take all possible measures to pay particular attention to the protection of children who are at risk of becoming victims of one of the offences under the Optional Protocol, as required by article 9, paragraph 1, thereof. In this regard, the Committee recommends that the State party intensify and further develop its awareness-raising, monitoring and assistance programmes, especially for children in vulnerable situations; and**

(b) **Carry out research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems and the existence of protection and prevention measures, and adopt targeted measures.**

24. Despite the criminalization of child pornography, the Committee is concerned about the persistence of some practices involving girls in pornography, which are culturally accepted, such as the participation of girls in beauty contests, the publication of erotic photographs of girls in the media, and the production of homemade videos showing sexual acts involving adolescents, which are sold on the streets without any legal restriction.

25. **The Committee urges the State party to take appropriate measures to change the cultural patterns that accept the dissemination of material involving children, in particular girls, in pornography and to develop strong law enforcement mechanisms.**

### Adoption

26. The Committee notes that the National Secretariat for Children and Adolescents and the National Council for Children and Adolescents have initiated an integral review of Act No. 1136/97 on adoption. However, the Committee is concerned that more than 90 per cent of adoptions are granted without the established procedure having been used and that, in

<sup>1</sup> *Criadazgo* is a practice in which children from poor rural areas go to live with family members or friends in the cities where they are supposed to do domestic work in exchange for food, housing and education.

most cases of adoption, parents who intend to adopt do not follow the established procedure and instead select a child and request legal custody (*guarda provisoria*) before the courts, even before the child has been declared eligible for adoption. The Committee is also concerned at the persistence of this practice, which is mainly due to judges misunderstanding the legal adoption procedures and which may enable the sale of children.

27. **In the light of article 3, paragraph 5, of the Optional Protocol and its previous recommendations (CRC/C/PRY/CO/3, para. 45), the Committee urges the State party to:**

(a) **Expedite the review and amendment of Act No. 1136/97 in order to eliminate the practice of pre-adoptive custody in cases of adoption and to harmonize the law with the provisions of the Convention on the Rights of the Child;**

(b) **Adopt all necessary measures to prevent illegal adoption through relevant policies, programmes and awareness-raising activities in order to prevent cases of the sale of children; and**

(c) **Take all legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.**

#### **Child sex tourism**

28. The Committee notes that the State party has undertaken measures to raise awareness of sex tourism, in conjunction with the National Secretariat for Tourism and the International Labour Organization. However, the Committee is concerned that child sex tourism has not been incorporated explicitly as a criminal offence into criminal legislation. The Committee regrets the lack of specific information on policies to prevent child sex tourism and steps taken to ensure that the tourism industry protects children from becoming victims.

29. **The Committee recommends that the State party:**

(a) **Establish and implement an effective regulatory framework to prevent and eliminate child sex tourism;**

(b) **Adopt adequate regulations for prohibiting child sex tourism and commensurate sanctions against perpetrators;**

(c) **Conduct dialogue and advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the Global Code of Ethics for Tourism among travel agents and tourism agencies, and encourage these enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism; and**

(d) **Adopt the necessary measures to prevent acts of sex tourism in view of the forthcoming sporting events that will take place near the triple-border region between Paraguay, Argentina and Brazil.**

#### **Programmes targeting particular groups**

30. Despite the existence of programmes for children in street situations, the Committee notes the insufficient information provided by the State party on measures that it has undertaken to pay particular attention to children in vulnerable situations, in particular girls, children in situations of poverty, indigenous children and children in residential care.

31. **The Committee urges the State party to pay increased attention and strengthen efforts to protect children particularly at risk of becoming victims of any of the**

offences under the Optional Protocol, especially girls, children in situations of poverty — particularly those in extreme poverty, children in street situations, children in residential care, indigenous children and unaccompanied and separated children.

## **VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)**

### **Existing criminal or penal laws and regulations**

32. While appreciating the provisions of the Criminal Code prohibiting sale of children, child pornography and child commercial sexual exploitation, as well as the adoption of Act No. 4788/12 on human trafficking, the Committee remains concerned that criminal legislation does not reflect the definitions of criminal offences as provided in article 2 of the Optional Protocol. The Committee also notes that article 223 of the Criminal Code, which criminalizes trafficking of children, does not include all the elements of the offences specified in article 3 of the Optional Protocol, such as sale of a child for the transfer of organs for profit. Furthermore, the Committee expresses its concern about recent amendments to the Criminal Code that reduce the punishments for offences under the Optional Protocol.

33. **The Committee recommends that the State party undertake a thorough revision of domestic criminal legislation in order to harmonize it with the provisions and principles of the Optional Protocol. In particular, the State party should include:**

- (a) **The sale of children as defined in article 3, paragraph 1 (a), of the Optional Protocol;**
- (b) **Sexual tourism;**
- (c) **Participation in irregular adoptions, particularly the improper inducement of consent for the adoption of a child; and**
- (d) **Penalties commensurate with the gravity of the crimes.**

34. While noting the prohibition of the long-established and socially encouraged practice of *criadazgo*, the Committee regrets that the practice has not been defined as a possible case of the sale of children in accordance with articles 2 and 3 of the Optional Protocol.

35. **The Committee recommends that the State party amend its criminal legislation to criminalize the practice of *criadazgo* as a case of the sale of children whenever it fulfils the criteria in articles 2 and 3 (a) of the Optional Protocol. The Committee also recommends that the State party take appropriate measures to deter this practice.**

### **Impunity**

36. The Committee is concerned at the lack of information on investigations and prosecutions of offences under the Optional Protocol, particularly the sale of children, child pornography and child prostitution. The Committee is also concerned about the high level of corruption in the State party, particularly among law enforcement officers, which means that investigations and prosecution are not carried out, facilitating the persistence of impunity for offences under the Optional Protocol.

37. **The Committee urges the State party to:**

(a) **Take all necessary measures to ensure that crimes under the Optional Protocol are investigated and that alleged perpetrators are prosecuted and duly sanctioned;**

(b) **Strengthen the capacity of the law enforcement authorities and the judiciary to detect and prosecute offences under the Optional Protocol through specialized training;**

(c) **Immediately address the issue of corruption and impunity as a matter of priority, through rigorous investigations of complaints of complicity by government officials and their prosecution for these crimes; and**

(d) **Provide specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol in its next periodic report.**

#### **Liability of legal persons**

38. The Committee is concerned that legal persons, including corporations, are not criminally liable under the State party's legislation for offences covered by the Optional Protocol.

39. **The Committee recommends that the State party revise its legislation to ensure the criminal liability of legal persons for offences related to the Optional Protocol in conformity with article 3, paragraph 4, of the Optional Protocol.**

#### **Jurisdiction and extradition**

40. The Committee is concerned that there are no legal provisions that explicitly provide for extraterritorial jurisdiction for all offences under the Optional Protocol. Furthermore, the Committee is concerned that offences referred to in article 3, paragraph 1, of the Optional Protocol are not included as extraditable offences in the extradition treaties existing with other States.

41. **In accordance with article 4, paragraph 2, of the Optional Protocol, the Committee recommends that the State party take all the necessary measures to ensure that domestic legislation explicitly enables it to establish and exercise extraterritorial jurisdiction over all offences under the Optional Protocol, without the requirement of double criminality. The Committee also urges the State party to ensure that offences referred to in article 3, paragraph 1, of the Optional Protocol are included as extraditable offences in the extradition treaties existing with other States and to consider the Optional Protocol as a legal basis for extradition in respect of these offences, in conformity with article 5, paragraph 2, of the Optional Protocol.**

## **VII. 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**

42. While welcoming the adoption of Act No. 4083, which creates a programme to protect witnesses and victims in criminal proceedings, the Committee is concerned by:

(a) The absence of protocols for handling child victims and witnesses in criminal proceedings;



- (b) The lack of judicial procedures to avoid re-victimization of child victims; and
- (c) The lack of compensation mechanisms for child victims.

43. **The Committee recommends that the State party:**

(a) **Develop specific protocols for the implementation of Act No. 4083 in order to ensure the protection of child victims and child witnesses of criminal offences under the Optional Protocol throughout the criminal proceedings;**

(b) **Ensure that judicial procedures always accept as evidence video recordings of testimonies by child victims or witnesses of offences under the Optional Protocol; and**

(c) **Guarantee that all child victims 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, and establish a victims' compensation fund, for those cases where victims cannot obtain compensation from the perpetrator.**

**Recovery and reintegration of victims**

44. The Committee is concerned that the assistance provided to child victims is limited to the duration of the criminal procedure. The Committee regrets the absence of programmes to assist the recovery and reintegration of child victims of offences under the Optional Protocol, and the poor infrastructure, insufficient human resources and coverage limitations for such programmes.

45. **In accordance with the commitment expressed by the State party during the dialogue, the Committee recommends that the State party take all the necessary measures to ensure that child victims of offences under the Optional Protocol are provided with appropriate assistance, including for their full social reintegration and physical and psychological recovery by, inter alia, effectively implementing rehabilitation programmes. The Committee also urges the State party to ensure the allocation of sufficient human, technical and financial resources for the recovery and reintegration of child victims.**

**Helpline**

46. The Committee welcomes the establishment of the national helpline (Fono Ayuda) for child victims of sexual abuse, and the efforts of the State party to extend the use of the helpline to combat trafficking in the tri-border region between Argentina, Brazil and Paraguay. The Committee is nevertheless concerned that the helpline is limited to the prevention of trafficking and does not cover all offences under the Optional Protocol and that there is a lack of appropriate resources to ensure its sustainability, accessibility and follow-up on information received.

47. **The Committee recommends that the State party:**

(a) **Review the mandate of the national helpline to cover all offences under the Optional Protocol;**

(b) **Ensure that it is accessible throughout the country around the clock; and**

(c) **Ensure the allocation of adequate technical and financial resources and personnel trained to respond to children and analyse calls to decide upon the appropriate action.**

## **VIII. International assistance and cooperation (art. 10)**

### **Multilateral, bilateral and regional agreements**

48. In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries and the Union of South American Nations, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered under the Optional Protocol.

## **IX. Ratification of the Optional Protocol on a communications procedure**

49. While welcoming that the State party is signatory to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the Committee recommends that the State party further improve the fulfilment of children's rights through the ratification of the above-mentioned Optional Protocol.

## **X. Follow-up and dissemination**

### **Follow-up**

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

### **Dissemination of concluding observations**

51. The Committee recommends that the initial report and written replies submitted by the State party and related concluding observations adopted by the Committee be made widely available, including through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

## **XI. Next report**

52. 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 next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.

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