



Convention on the Rights of the Child

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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: Argentina

1. The Committee considered the initial report of Argentina (CRC/C/OPSC/ARG/1) at its 1526th meeting (see CRC/C/SR.1526), held on 3 June 2010, and adopted at its 1541st meeting, held on 11 June 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the initial report of the State party. The Committee further welcomes the written replies to the list of issues (CRC/C/OPSC/ARG/Q/1/Add.1) and appreciates the constructive dialogue held with the multisectoral delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations adopted on the third and fourth periodic report of the State party under the Convention on the Rights of the Child (the Convention) (CRC/C/ARG/CO/3-4) and on the initial report of the State party under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/ARG/CO/1).

I. General observations

Positive aspects

4. The Committee notes with appreciation:

(a) The adoption of Acts No. 26388 on Computer Crimes (2008) and No. 26364 on the Prevention and Punishment of Trafficking in Persons and Assistance to Victims (2008);

(b) The application of a wider definition of article 2 (a), and article 3, paragraph 1(a), of the Optional Protocol with regard to trafficking;

(c) The adoption in June 2008 of Act No. 26390 on the Minimum Age for Admission to Employment.

II. Data

5. The Committee acknowledges the efforts made by the State party in the provincial departments of justice to collect data on the areas covered by the Optional Protocol and appreciates the data contained in the initial report and replies of the State party to the list of issues. Nevertheless, it shares the concern of the State party about the absence of a comprehensive and systematic mechanism of data collection, analysis and monitoring on sale of children, child prostitution and child pornography and on the number of children involved in these activities.

6. The Committee recommends that a comprehensive data collection system be established in order to ensure that data, disaggregated, inter alia, by age, sex, minority group, socio-economic background and geographical area, is systematically collected and analysed as it provides essential tools for measuring policy implementation. Data should also include information on the number of prosecutions and convictions for such offences, disaggregated by the nature of the offence. The State party should, furthermore, seek the assistance of United Nations agencies and programmes, including the United Nations Children's Fund (UNICEF), in this regard.

III. General measures of implementation

Legislation

7. The Committee notes that the legislation of the State party contains provisions that make certain practices under the Optional Protocol punishable; however, it regrets that the State party has not fully implemented its obligations under the Optional Protocol. The Committee notes the efforts of the State party to propose a bill on the sale of children. The Committee further notes the enactment in April 2008 of Act No. 26364 on the Prevention and Punishment of Trafficking in Persons and Assistance to Victims. It is however concerned that the law does not contain a gender perspective and that common forms of human trafficking, such as sex tourism and forced marriage, are not contained in the legislation.

8. The Committee recommends that the State party continue its effort to harmonize its legislation with the Optional Protocol and that it amend Act. No. 26364 on the Prevention and Punishment of Trafficking in Persons and Assistance to Victims to include common forms of human trafficking, such as sex tourism and forced marriage.

9. The Committee reminds the State party that its legislation must satisfy its obligations with regard to sale of children. While the concept of sale of children is similar to trafficking in persons, it is not identical, and in order to fully implement the provisions on sale of children contained in the Optional Protocol, the State party must ensure that its legislation contains specific provisions on the sale of children, as provided by the Optional Protocol.

Coordination and evaluation

10. The Committee notes that the National Secretariat for Children, Adolescents and the Family (SENAF) has the primary responsibility for the coordination and evaluation of the implementation of the Optional Protocol. The Committee, nevertheless, is concerned that SENAF does not sufficiently take the Optional Protocol into consideration in its work and that there is an absence of effective coordination between SENAF and law enforcement agencies, the judiciary and prosecution. It is also concerned at information about a general lack of coordination on the national and provincial levels.

11. The Committee recommends that the State party strengthen the National Secretariat for Children, Adolescents and the Family in order to ensure that implementation of the Optional Protocol is fully incorporated into its functions and that it has adequate human and financial resources to effectively carry out its mandate, including in the provinces. It should further enhance cooperation between the National Secretariat and law enforcement agencies, prosecution and the judiciary.

National Plan of Action

12. The Committee welcomes the development of a National Plan of Action for the Rights of Children and Adolescents, which includes objectives for an active policy on ill-treatment, neglect, exploitation, violence and discrimination. Nevertheless, it regrets that there is no specific strategy in place to implement the Optional Protocol in its entirety.

13. The Committee recommends that the State party:

(a) Design a national strategy to implement the Optional Protocol, in particular to combat and prevent all the offences it covers;

(b) Ensure that all relevant actors, including children and civil society, are consulted in the process of drafting, implementing and monitoring the said strategy;

(c) Ensure that the strategy is adequately resourced in human and financial terms, that it includes specific time-bound and measurable goals, and that it is widely disseminated and regularly monitored.

14. With regard to the recommendations above, the State party is invited to pay particular attention to 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.

Dissemination and awareness-raising

15. The Committee notes the State party's efforts to sensitize the public to the crime of trafficking of children. It is however concerned that children and the general public are not sufficiently aware of the provisions of the Optional Protocol.

16. In line with article 9, paragraph 2, of the Optional Protocol, the State party should make the provisions of the Optional Protocol widely known, including to children and their families and communities, through, in particular, the school curricula and long-term awareness-raising measures, and in a child-friendly manner.

Training

17. The Committee welcomes the efforts of the National Secretariat for Children, Adolescents and the Family to train adolescents, provincial government workers, border personnel and police on trafficking, sexual exploitation of children and child labour. It is however concerned that professionals in contact with children, such as law enforcement

officers, immigration officials, judges, prosecutors, lawyers, social workers and teachers are not sufficiently trained on the provisions of the Optional Protocol.

18. The Committee recommends that the State party increase its efforts to train relevant professionals and children on the provisions of the Optional Protocol. The State party should develop cooperation with civil society organizations and the media in order to support awareness-raising and training activities on the provisions of the Optional Protocol. It should further consider seeking technical support from UNICEF in relation to the recommendations above.

Allocation of resources

19. The Committee notes the establishment of various units competent in the field of certain offences under the Optional Protocol, such as the Special Unit to Promote the Eradication of Sexual Exploitation of Children and Adolescents and the Unit for the Investigation of Crimes against Sexual Integrity, Trafficking in Persons and Child Prostitution within the office of the Attorney-General. Nevertheless, it is concerned at the absence of sufficient allocation of resources to these bodies and the absence of representation in the various provinces.

20. The Committee recommends that the State party allocate, when planning its national budget, financial resources specifically for the implementation of the Optional Protocol. It further recommends that units competent in the field of offences under the Optional Protocol should have adequately resourced representation in the entirety of the State party's territory.

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

21. The Committee notes the development of various offices and programmes for the prevention of offences referred to in the Optional Protocol, such as the Programme for the Prevention and Eradication of Trafficking of Persons and Assistance to its Victims, the Special Unit to Promote the Eradication of Sexual Exploitation of Children and Adolescents, the Victims against Violence Programme, working in coordination with the Center for Care of Victims of Sexual Violence of the Federal Police, and the Unit for the Investigation of Crimes Against Sexual Integrity, Trafficking in Persons and Child Prostitution within the Attorney-General's office. It further notes that only five persons have been sentenced for crimes of trafficking. Nevertheless, the Committee is concerned that the State party's measures of prevention do not sufficiently cover the crime of sale of children and child pornography.

22. The Committee recommends that the State party strengthen its efforts to reduce and prevent the sale of children, child prostitution and child pornography, by, inter alia, ensuring a uniform register of data and undertaking a comprehensive study of the occurrence and the dimension of the problem, designing and implementing comprehensive preventive strategies and policies, and ensuring the prosecution of perpetrators.

23. The Committee welcomes the adoption of the national code of conduct in tourism but regrets the lack of sufficient attention to and information on issues of child sex tourism.

24. The Committee recommends that the State party take measures to prevent child sex tourism, in particular by earmarking additional funds for public campaigns, including the participation of children, for this purpose. The State party should also,

through relevant authorities, strengthen cooperation with the tourism industry, non-governmental organizations (NGOs) and civil society organizations in order to promote responsible tourism through the dissemination of the Code of Conduct of the World Tourist Organization among employees within the tourism industry and through awareness-raising campaigns for the general public.

V. 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

25. The Committee, while welcoming Act No. 26364 on the Prevention and Punishment of Trafficking in Persons and Assistance to Victims, and several provisions in the Penal Code of the State party, is concerned that not all crimes under the Optional Protocol are fully criminalized in accordance with articles 2 and 3 of the Optional Protocol, in particular the lack of a definition of the crime of sale of children.

26. The Committee recommends that the State party revise and bring its Penal Code into full compliance with article 3 of the Optional Protocol, and ensure that the law is enforced in practice, with proper sanctions being imposed on the perpetrators, in order to prevent impunity. In particular, the State party should criminalize:

(a) The sale of children by offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation, transfer of organs of the child for profit, or engagement of a child in forced labour; or improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable legal instrument on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined by article 2 of the Optional Protocol;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography, as defined in article 2 of the Optional Protocol;

(d) Any attempt to commit any of these acts and complicity or participation in any of these acts;

(e) The production and dissemination of material advertising any of these acts.

Adoption

27. The Committee welcomes the information campaign of the State party with regard to the risks of fraudulent adoptions. The Committee shares the concern of the State party with regard to sale of children under the guise of adoption, but is nevertheless concerned at the absence of legislation on international adoption and the absence of ratification of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

28. The Committee recommends that the State party increase its efforts on implementing the provisions of the Optional Protocol with regard to sale of children and that it consider ratifying the Hague Convention on Protection of Children and Cooperation in respect of Intercountry adoption. The State party should further take into account the Committee's recommendation under the Convention on the Rights of the Child with regard to reservations and declarations (CRC/C/ARG/CO/3-4, para. 10).

Jurisdiction

29. The Committee is concerned at the information provided by the State party according to which procedural law and access to justice may be regulated in each of its jurisdictions separately. While acknowledging the fact that the State party is organized in a federal system, the Committee is concerned at possible discrepancies among the provinces, as well as at the absence of measures taken by the State party to establish jurisdiction over all offences covered by the Optional Protocol.

30. The Committee recommends that the State party ensure that jurisdiction over all offences covered by the Optional Protocol is established in the entirety of the State party's territory.

Extradition

31. The Committee notes information that extradition from the State party is regulated by bilateral and multilateral agreements. Nevertheless, the Committee regrets the lack of an explicit reference in the legislation of the State Party to the possibility of extradition of persons who have committed offences addressed in the Optional Protocol.

32. The Committee recommends that the State party ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over crimes under the Optional Protocol. 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

33. While noting the principles of equality and non-discrimination enshrined in Act No. 26061 on Comprehensive Protection of the Rights of Children and Adolescents, the Committee is nevertheless concerned that children who are not nationals of the State party may have limited access to procedures of refugee protection and may be sent back to their country of origin without adequate examination of their individual situation and without monitoring of the conditions under which they may be returned.

34. The Committee recommends that the State party, taking into account its general comment No. 6 (2005) on treatment of unaccompanied and separated children outside their country of origin:

(a) **Ensure that children who are not nationals of the State party and who may be victims of offences under the Optional Protocol have adequate access to procedures of refugee and victim protection and have their individual situation examined before being sent back to their country of origin, even if it is on a voluntary basis;**

(b) **Develop comprehensive procedures for the early identification of child victims of offences under the Optional Protocol, including by ensuring their proper protection so as to encourage them to report cases.**

Criminal justice system protection measures

35. The Committee welcomes the adoption of Act No. 26364, which includes guarantees of free psychological, medical and legal assistance for victims of trafficking. It is however

concerned that the legislation of the State party does not include protection measures for victims of offences, other than trafficking, also covered by the Optional Protocol. Moreover, it is concerned that this programme has not yet been implemented. It further notes the establishment of the Office for the Rescue and Accompaniment of Victims of Trafficking and the Area for the Prevention of Child Sexual Exploitation and Trafficking in Persons within the Ministry of Social Development. The Committee however is concerned at the absence of outreach of these measures and offices in the provinces.

36. The Committee recommends the swift implementation of free psychological, medical and legal assistance for victims of trafficking, as well as the expansion of the programme to victims of all offences under the Optional Protocol. It further recommends that the State party ensure effective outreach of offices created to protect and support victims, including by extending the services to the provinces and ensuring sufficient budget allocations.

37. The Committee notes the provisions of the Penal Code and Act No. 26364, which provide that testimonies by child victims be received in presence of a psychologist, that they may be video or audio taped and that they be limited in number. Nevertheless, the Committee is concerned at information that, in practice, judges, defence lawyers or the prosecution insist on a confrontation between the child victim and the perpetrator.

38. The Committee recommends that the State party ensure that its provisions protecting child victims during testimony and trial are effectively implemented in the entirety of its territory. It should further increase trainings and dissemination to judges, prosecutors and lawyers on article 8, paragraph 1, of the Optional Protocol and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

Recovery and reintegration

39. The Committee notes the Directives and Protocol for Assistance to Victims of Trafficking and of Sexual Exploitation of Children, and the establishment of the Office for the Rescue and Accompaniment of Victims of Trafficking. It is however concerned at the absence of a sustained intervention over a period of time for victims, in particular of trafficking. It is further concerned that the State party has not put in place measures for the recovery and reintegration of victims of all offences under the Optional Protocol. The Committee regrets the absence of information on compensation for victims of offences under the Optional Protocol.

40. The Committee recommends that the State party further strengthen measures to ensure appropriate assistance to victims of all offences under the Optional Protocol, including their full social reintegration, physical, psychological and psychosocial recovery. The Committee, in particular, recommends that the State party:

(a) Continue developing specialized medical, psychosocial and psychological care services for child victims, including by ensuring access to and the availability of child mental health professionals throughout the territory of the State party;

(b) Increase the availability of social services;

(c) Ensure 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.

Helpline

41. The Committee notes the resolution No. 1923 of September 2009 by the National Secretariat for Children, Adolescents and the Family regarding the implementation of

helpline No. 102 on a local level. It remains however concerned that the helpline is not accessible from the entire territory of the State party and that it is not available in all provinces. It is furthermore concerned that children have only limited knowledge of the availability of a telephone helpline for their complaints.

42. The Committee recommends that the existing helpline be expanded to all provinces and that dissemination efforts be increased to make the number widely known to all children.

VII. International assistance and cooperation

International cooperation

43. In the light of article 10, paragraph 1, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures 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. The Committee recommends that the State party continue participating in international and regional frameworks at all levels, and that it seek technical assistance.

VIII. Follow-up and dissemination

Follow-up

44. 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 members of the Cabinet and parliament and to the provinces and municipalities for appropriate consideration and further action.

Dissemination of concluding observations

45. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted by the Committee be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups, children and professional groups in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children, including indigenous children, and their parents through, inter alia, school curricula and human rights education.

IX. Next report

46. 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.