



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-second session

Consideration of reports submitted by States parties under article 12 (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: Yemen

1. The Committee considered the initial report of Yemen (CRC/C/OPSC/YEM/1) at its 1448th meeting (CRC/C/SR.1448), held on 30 September 2009, and adopted at its 1452nd meeting, held on 2 October 2009, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report, in conformity with its reporting guidelines, as well as the replies provided in the responses to its list of issues. The Committee appreciates the open and constructive dialogue with a multisectoral delegation.

I. General observations

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations (CRC/C/15/Add.267) adopted following the consideration of the State party's third periodic report in June 2005.

Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas of relevance for the Optional Protocol, including:

- (a) The creation of the national networks on violence against children and for the welfare of children in conflict with the law, as well as their recent merger into a child protection network;
- (b) The creation of a national committee against child smuggling.

5. The Committee commends the State party on its accession to the Optional Protocol on the involvement of children in armed conflict in 2007.

II. Data

Data collection

6. The Committee notes with appreciation data provided on the number of children deported from neighbouring States and the number of street children assisted by safe childhood centres. The Committee is concerned about the general lack of information on the incidence of crimes under the Optional Protocol and about the absence of an integrated national system for collecting and analysing data and information.

7. The Committee recommends that a comprehensive data collection system be established in order to ensure that data, disaggregated, inter alia, by age, sex, socio-economic background and geographical area are systematically collected and analysed as they provide essential tools for measuring policy implementation. The State party should seek the technical assistance of United Nations agencies and programmes, including UNICEF, in this regard.

8. The Committee reiterates the recommendation of the ILO Committee of Experts on the Application of Conventions and Recommendations to make the effort to undertake research on the extent and trends of the commercial sexual exploitation of children under 18 years in Yemen, so as to have the necessary information to adopt effective and time-bound measures to identify and reach out to children at special risk.

III. General measures of implementation

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

9. The Committee is concerned that the general principles of the Convention on the Rights of the Child, in particular the principles of non-discrimination, the best interests of the child and the right to life, have not been duly taken into account in the design and implementation of measures adopted by the State party to implement the Optional Protocol, particularly with regard to the proper identification and treatment of child victims.

10. The Committee recommends that the general principles, in particular the principle of non-discrimination, the best interests of the child, and the right to life, as contained in the Convention, be included in all measures taken by the State party to implement the provisions of the Optional Protocol, including judicial or administrative proceedings.

Legislation

11. The Committee, while welcoming information that numerous draft laws are pending adoption before the House of Representatives, remains concerned that delays in their adoption hampers the implementation of obligations under the Optional Protocol.

12. The Committee recommends that the State party continue and complete the process of harmonization of its national legislation in line with the Optional Protocol to enable the effective and adequate implementation of the provisions contained therein.

National plan of action

13. The Committee welcomes the adoption of the National Strategy for Youth and children, addressing, inter alia, the issue of child smuggling and identifying as a priority the strengthening of the *Kafalah* system. The Committee is, however, concerned at the lack of a national plan of action addressing the sale of children, child prostitution and child pornography.

14. The Committee recommends that the State party consider elaborating a national plan of action targeting the issues covered by the Optional Protocol. The State party should also provide adequate human and financial resources for the implementation of this plan.

Coordination and evaluation

15. The Committee notes that the Higher Council for Motherhood and Childhood is responsible for overall coordination, and information from the State party that a number of governmental and non-governmental organizations have been involved in the implementation of the Optional Protocol. The Committee is, however, concerned that the Higher Council has neither the technical, human and financial resources, nor the mandate to fulfil its responsibilities and to guarantee the effective coordination of different entities involved in the implementation.

16. The Committee recommends that the State party take all necessary measures to ensure that the Higher Council for Motherhood and Childhood has an adequate level of authority, and adequate technical, human and financial resources so as to be effective both at the national and regional levels. The Council should ensure the closer coordination among State agencies, non-governmental organizations and international agencies active in the implementation of the Optional Protocol, in all regions and governorates.

Dissemination and training

17. The Committee appreciates efforts undertaken by the State party in promoting the Optional Protocol, including information workshops for juvenile judges, prosecutors, social workers, imams, and schoolchildren. However, the Committee is concerned that activities and programmes aimed at disseminating the Optional Protocol and making its provisions known to the public, have not reached all stakeholders and governorates, especially families and communities in remote areas and children out of school.

18. The Committee recommends that the State party:

(a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups and in all governorates;

(b) Promote, in line with article 9, paragraph 2, of the Optional Protocol, awareness in the public at large, including children, through information by all appropriate means, education and training about the preventive measures and harmful effects of all the offences referred to in the Optional Protocol, including by encouraging the participation of the community and, in particular, children and child victims of both sexes. Information and education programmes should be adapted so as to reach also illiterate children and their families;

(c) Replicate best practices such as the cartoon movie “Return of Ahmed”, which has been produced by UNICEF.

Allocation of resources

19. Notwithstanding the statement of the State party's delegation that the lack of human and financial resources hampers the implementation of the Optional Protocol, the Committee is concerned that the State party does not take adequate measures to fully implement its commitments under the Optional Protocol.

20. The Committee recommends that the State party, taking due account of the Committee's recommendations following its 2007 Day of General Discussion on article 4 of the Convention “Resources for the rights of the child –

responsibility of States”, provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention, protection, physical and psychological recovery and social reintegration of child victims, and prosecution of the offences covered by the Optional Protocol .

Independent monitoring

21. The Committee reiterates its concern expressed upon consideration of the third periodic report of Yemen under the Convention (CRC/C/15/Add.267) at the lack of an independent body for monitoring human rights in general and children’s rights in particular.

22. The Committee recommends that the State party, in accordance with the Paris Principles and taking into consideration the Committee ’ s general comment No. 2 (2002) on national human rights institutions, consider the establishment of an independent national human rights institution empowered to receive, investigate and effectively address complaints of violations of child rights, including offences under the Optional Protocol.

Civil society

23. The Committee, while noting information from the State party about the process of preparing the report, regrets the fact that not all civil society actors were adequately engaged in all stages of the preparation of the initial report under the Optional Protocol.

24. The Committee welcomes the continuing coordination and collaboration with civil society and encourages the State party to further strengthen such partnerships, in particular in relation to the implementation of the concluding observations, evaluation of progress made and also in the context of the next reporting process under the Convention and its Optional Protocols.

IV. Prevention of the sale of children, child prostitution and child pornography

Measures adopted to prevent offences referred to in the Optional Protocol

25. The Committee, while noting that some studies have been carried out, notably on street children, child abuse, and on implementing the *Kafalah* system as a form of foster care, by the Higher Council for Motherhood and Childhood, regrets that efforts undertaken to identify children who are particularly vulnerable to practices prohibited under the Optional Protocol remain limited.

26. The Committee recommends that the State party intensify efforts to identify and reflect the special needs of vulnerable children, inter alia, through :

(a) Carrying out surveys and studies on the impact of crimes set out in articles 2 and 3 , of the Optional Protocol on all vulnerable children;

(b) Strengthen efforts, including through the allocation of financial resources, to address the root causes, such as poverty and underdevelopment, as well as cultural attitudes, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography, and child sex tourism, including through international cooperation;

(c) By developing programmes and projects to strengthen community-based monitoring and parental responsibilities, for example, by seeking further technical assistance from UNICEF.

27. The Committee is deeply concerned about the extent of sale of children, particularly from impoverished communities with the consent of the victims’ parents, and at the fact that the sale of children, as defined in articles 2 and 3, of the Optional Protocol, is treated as child smuggling or trafficking. In this regard, the Committee is concerned at the lack of comprehensive preventive measures to address these offences.

28. The Committee recommends that the State party adopt appropriate measures to protect the rights and interests of all child victims of the offences under the Optional Protocol, in particular articles 2 (a) and 3, paragraph 1.

Temporary marriages

29. The Committee is deeply concerned that the deterioration in economic and social conditions plays a significant role in the increase of sexual exploitation of children, conducted especially under the guise of “tourist marriages” or “temporary marriages” in the State party. The Committee is further concerned that criminal legislation currently in force does not prohibit the accepting of a child for the purpose of sexual exploitation, including practices such as “temporary marriages”. The Committee is concerned that the extent of this problem might be greater than perceived at present and about the fact that measures undertaken to protect girls remain mostly administrative.

30. The Committee recommends that the State party address, as a matter of priority, the problem of sexual exploitation, including so-called “temporary marriages” by effectively prohibiting and criminalizing such practices. Specific measures should be taken to protect girls, identify victims and provide full social reintegration and physical and psychological recovery.

Birth registration

31. The Committee, notes that the low levels of birth registration related to the persistence of fees despite the fact that the Government has announced that birth registration shall be issued free of charge, increases the vulnerability of children to practices prohibited under

the Optional Protocol.

32. The Committee, in line with previous recommendations, encourages the State party to take appropriate measures to ensure the registration of all births, including by raising awareness among government officers, midwives, community and religious leaders, establishing civil registration mechanisms in hospitals, and encouraging the use of mobile registration units, particularly in remote and rural areas. The Committee further recommends that the State party prohibit in law and in practice the charging of birth registration fees for all children in its territory and in all governorates.

V. Prohibition and related matters

Existing criminal or penal laws and regulations

33. The Committee, while noting that numerous legislative amendments are pending adoption, expresses concern at the lack of precise definitions reflecting crimes prohibited under the Optional Protocol. The Committee is furthermore concerned that offences under the Optional Protocol are not entirely or explicitly criminalized in national legislation, including illegal adoption, sexual exploitation, the offering of a child for the purpose of transfer of organs, the engagement of the child in forced labour, child pornography, as well as the production and dissemination of material advertising the offences described in the Optional Protocol. The Committee is also concerned that legislation presently in force does not provide equal protection to all children under the age of 18 years.

34. The Committee recommends that the State party ensure that sale of children, child prostitution and child pornography are prohibited in all cases listed under article 3, paragraph 1, of the Optional Protocol and that the definitions of offences are consistent with those contained in the Optional Protocol. The Committee further recommends that the State party ensure that all children up to the age of 18 years are protected in all governorates and for all offences under the Optional Protocol.

35. The Committee, reiterating its previous concern at the high prevalence and social acceptance of child labour and at the fact that many child labourers are vulnerable to abuse, and completely lack protection, is also concerned that the engagement of a child in forced labour is not explicitly addressed in national law.

36. The Committee recommends that the State party criminalize the offering, delivering or accepting, by whatever means, of a child for the purpose of forced labour in relevant legislation in accordance with article 3, paragraph 1, of the Optional Protocol, and protect children from such practices.

37. The Committee is concerned that, while the Code of Offences and Penalties describes the incitement to prostitution as a crime, it prescribes harsher penalties if committed against a minor but only if under the age of 15 years. The Committee also shares the concern of the ILO Committee of Experts on Application of Conventions and Recommendations that the legislation does not prohibit the obtaining of a child for the purpose of prostitution but rather that it prohibits the procuring or offering of a child for prostitution.

38. The Committee recommends that the State party ensure that the upper age for protection for child victims of any of the offences under the Optional Protocol is set at 18 years. The Committee further requests the State party to take all necessary measures to ensure that the obtaining of a child under the age of 18 for the purpose of prostitution is expressly prohibited.

39. The Committee is concerned that child pornography is not well addressed and prohibited in national legislation and that no legislation exists prohibiting child pornography on the Internet.

40. The Committee recommends that the State party adopt and implement specific legislation adequately defining and punishing child pornography in accordance with article 3, paragraph 1 (c), of the Optional Protocol. The Committee in particular recommends that such legislation prohibit the production, distribution, and possession of child pornography, regardless of the child's consent, and that children are not criminalized for their participation in the production of pornography or pornographic performances. Furthermore, the Committee recommends that the State party consider adopting specific legislation on obligations of Internet service providers with a view to prohibiting child pornography on the Internet. The definition of the child for the purposes of such legislation should include all children below the age of 18 years.

41. The Committee is concerned that in light of recent cases of offering, delivering or accepting of a child for the transfer of organs for profit and that this crime is not prohibited and criminalized, in accordance with article 3, paragraph 1, of the Optional Protocol.

42. The Committee recommends that the State party adopt all legislative and other measures necessary to effectively ban and criminalize the sale of children for the purpose of transfer of organs for profit in accordance with article 3, paragraph 1 (a) (i) and (b), of the Optional Protocol, and bring perpetrators to justice.

43. The Committee is concerned that the production and dissemination of material advertising the offences described in the Optional Protocol is not explicitly prohibited.

44. The Committee recommends that the State party enact relevant legislation to explicitly and fully prohibit the production and dissemination of material advertising practices prohibited under the Optional Protocol.

Jurisdiction

45. The Committee notes the existence of legislation concerning crimes committed abroad. The Committee is, however, concerned at

the lack of reference by this legislation to the crimes under the Optional Protocol and that jurisdiction is subject to the existence of double criminality.

46. The Committee recommends that the State party take all necessary measures to establish its jurisdiction over all the offences referred to in the Optional Protocol in conformity with article 4, including in all cases when the victim is one of its nationals, and in particular amend legislation in order to abolish the requirement of double criminality for prosecution of offences committed abroad.

Extradition

47. The Committee welcomes the fact that the State party has concluded extradition treaties with several neighbouring countries and recommends that it ensure, when reviewing its extradition treaties, the explicit mention of the offences referred to in article 3, paragraph 1, of the Optional Protocol.

VI. Protection of the rights of child victims

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

48. The Committee is deeply concerned that the State party does not have specific legislation on child victim protection. In particular, there is no definition of the victim, while child victims are held responsible, tried and placed in detention, and that boys and girls victims of child prostitution may be subject to punitive sanctions and stigmatization. The Committee is, in particular, concerned that article 278 of the Code of Offences and Penalties No. 12 of 1994 prescribes penalties of up to three years of imprisonment for anyone who engages in debauchery or prostitution and about the lack of safeguards to ensure that children are not criminalized by the application of this law.

49. The Committee welcomes the fact that the right of victims to compensation, including children, is guaranteed by the law. The Committee while noting information that, keeping with international commitments, law enforcement authorities are required to adopt measures to protect witnesses, the State party has not yet applied in law the principle of witness protection. Given that the State party has provided information on measures adopted to protect children in conflict with the law, the Committee is deeply concerned that no measures have been adopted to protect the rights and interests of child victims and witnesses at the different stages of criminal investigations and proceedings which concern them.

50. The Committee recommends that the State party take all necessary measures to ensure that child victims of all crimes under the Optional Protocol are properly identified, not subject to any fines or sentenced to imprisonment, protected from future abuse and provided with rehabilitation and reintegration assistance. In matters relating to the treatment of child victims and witnesses, the State party should be guided, in particular, by the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (see Economic and Social Council resolution 2005/20, annex). The Committee recommends that the State party in particular :

(a) Develop comprehensive procedures for the early identification of child victims of offences under the Optional Protocol;

(b) Ensure, including through the adoption of relevant legislative measures, that child victims of any of the crimes under the Optional Protocol are not criminalized. The child victim of sale, prostitution and pornography should be clearly defined in relevant legislation and child victims should be protected at all stages of the criminal justice process in accordance with article 8 of the Optional Protocol;

(c) Set an age limit of 18 years for defining a child for all the offences covered by the Optional Protocol. If in doubt, presume that young victims are children, and not adults;

(d) Provide appropriate support services to child victims throughout the legal process, including adequate witness support, legal representation, information and access to compensation for damages;

(e) Ensure that judges, prosecutors, and law enforcement officers are adequately trained on the provisions of the Optional Protocol and to respect the rights, needs and best interests of child victims.

Helpline

51. The Committee notes the existence of a child helpline, operated by NGOs, but remains concerned that it covers only Sana'a, and does not have a toll-free number. The Committee also notes the low level of awareness among children of the possibility to access this service, as well as the absence of mechanisms to monitor the incidence of crimes covered in the Optional Protocol.

52. The Committee recommends that the State party support the existing child helpline and ensure that a 3-digit, toll-free, 24-hour national helpline is available and known in all governorates for children to make complaints relating to violations described in the Optional Protocol.

Recovery and reintegration of victims

53. The Committee takes note that safe childhood centres have been set up to provide care to street children and shelters exist to accommodate the immediate needs of children returned from border areas. The Committee is, nevertheless, concerned about the

scarce availability of social reintegration and physical and psychosocial recovery measures for child victims, whereas the State party acknowledges the shortage of local expertise, the absence of residential centres, the shortage of centres offering rehabilitation and assistance for social reintegration to child victims.

54. The Committee recommends that the State party:

(a) Design an action plan to protect children from offences under the Optional Protocol;

(b) Increase, as a matter of priority, the number and availability of centres offering protection, rehabilitation and reintegration services to child victims and ensure that such centres are provided with adequate human, technical and financial resources;

(c) Take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with child victims, in accordance with article 8, paragraph 4, of the Optional Protocol ;

(d) Ensure that all child victims have access to and information about their rights and adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol ;

(e) Seek assistance to develop local capacity and expertise, including from UNICEF.

VII. International assistance and cooperation

Multilateral, regional, bilateral agreements

55. The Committee encourages the State party to continue its cooperation with United Nations specialized agencies and programmes and civil society organizations and also through bilateral arrangements in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children, to the sale of children, child prostitution and child pornography.

56. The Committee recommends that the State party continue to seek technical assistance from international and regional partners, including UNICEF, in its efforts to address the lack of national expertise, of practical and theoretical knowledge and of resources to curb the offences listed in the Optional Protocol.

Law enforcement

57. The Committee notes that insufficient information is provided with respect to the assistance and cooperation by the State party at all stages of the penal or criminal procedure with regard to the offences as provided in article 3, paragraph 1, of the Optional Protocol, i.e. in the detection, investigation, prosecution, punishment and extradition proceedings.

58. The Committee encourages the State party to provide more detailed information in this respect in its next report.

VIII. Other legal provisions

59. The Committee notes with regret that the State party has signed but not yet ratified the United Nations Convention against Transnational Organized Crime, and has not taken action with regard to its relevant Protocols.

60. The Committee recommends that the State party consider the possibility of ratifying the United Nations Convention against Transnational Organized Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and Protocol against the Smuggling of Migrants by Land, Sea and Air.

IX. Follow-up and dissemination

Follow-up

61. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, inter alia, by transmitting them to relevant Government Ministries, the National Congress and to local authorities, for appropriate consideration and further action; and by strengthening efforts to mobilize local resources and, where necessary, by soliciting international funding.

Dissemination

62. 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 through the Internet (but not exclusively), to the Supreme Court, and, in a simplified manner, to the public at large, civil society organizations, youth groups, professional groups, and the children's parliament, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

63. 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.