



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: Belgium

1. The Committee considered the initial report of Belgium (CRC/C/OPSC/BEL/1) at its 1521st and 1523rd meetings held on 2 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 State party's initial report, as well as the replies to its list of issues submitted in a timely fashion. It also appreciates the presence of a multisectoral delegation and the frank and open dialogue with the delegation. The Committee nevertheless regrets that the State party did not follow the guidelines for reporting under the Optional Protocol adopted in 2006.

3. The Committee reminds the State party that these concluding observations should be read in conjunction of its concluding observations adopted on the State party's third and fourth periodic reports on 11 June 2010 (CRC/C/BEL/CO/3-4) and on the State party's initial report to the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/BEL/CO/1) on 9 June 2006.

I. General observations

Positive aspects

4. The Committee notes with appreciation the adoption of:

- (a) Act of 10 August 2005 amending various proposals for stepping up the fight against trafficking and smuggling of persons and against the practices of exploiting landlords;
- (b) Royal Decree of 16 May 2004 on combating trafficking and smuggling of persons;
- (c) Act of 9 December 2004 on mutual international legal assistance in criminal matters; and
- (d) Act of 28 November 2000 which broadens the scope of the protection of minors against criminal offences.

5. The Committee also commends the State party's ratification of:

- (a) Council of Europe Convention on Action against Trafficking in Human Beings on 27 April 2009;
- (b) Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption on 26 May 2005;
- (c) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 11 August 2004; and
- (d) International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 8 May 2002.

6. The Committee further welcomes:

- (a) The National Plan of Action against Trafficking and Smuggling of Persons in July 2008;
- (b) The setting up of the Centre for information on and analysis of trafficking and smuggling of persons (CIATTEH);
- (c) The reactivation of the interdepartmental Coordination Unit for Combating Trafficking and Smuggling chaired by the Ministry of Justice;

(d) The specific training on areas covered by the Optional Protocol provided to magistrates, the federal police and the State party's armed forces; and

(e) The wide range of activities of international assistance and cooperation in the field of areas covered by the Optional Protocol.

II. Data

Data collection

7. While noting that the Commission for the Rights of the Child is now responsible for coordinating data collection on all areas covered by the Convention and its Optional Protocols, the Committee regrets the limited data and research available, in particular the absence of reliable data on child sex tourism, on children trafficked for the purpose of sale of children, child prostitution and child pornography and on the recovery and reintegration assistance and compensation to victims of the offences under the Optional Protocol.

8. The Committee recommends that the State party:

(a) Establish a mechanism to collect data disaggregated, inter alia, by age, sex, origin of the victims and the perpetrators;

(b) Provide the National Commission for the Rights of the Child with the necessary financial and human resources to effectively carry out its data coordination role; and

(c) Ensure that data collected is carefully studied in order to measure the implementation of its policy against sale of children, child prostitution and child pornography.

III. General measures of implementation

Legislation

9. The Committee expresses concern that the judiciary is still in the process of deciding on the applicability of the Optional Protocol. It is also concerned there is a confusion in the State party's legislation between trafficking and sale, as a result of which the sale of children as defined in article 3 of the Optional Protocol is not criminalized as a specific crime in the State party's criminal law.

10. The Committee urges the State party to guarantee the direct applicability of the Optional Protocol in domestic order. The Committee also reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, which concept is similar to trafficking in persons but not identical, in order to adequately implement the provision referring to sale of children, contained in the Optional Protocol, and to ensure explicit reference to this act constituting an offence there under.

11. The Committee expresses serious concern about the existing legal grounds for terminating proceedings in cases of procuring children and child pornography, such as "the limited social repercussions", "the occasional nature of the acts" or "the limited capacity to inquire into the case". The Committee considers that these legal grounds constitute a violation of the right of child victim to obtain remedies and lead to the impunity of the perpetrators.

12. The Committee urges the State party to review the legal grounds for terminating criminal proceedings for child procurement and child pornography and ensure that all crimes covered by the Optional Protocol are duly prosecuted.

National plan of action

13. The Committee notes as positive the adoption of a specific National Plan of Action against Trafficking and Smuggling of Persons on 11 July 2008. However, it expresses concern that an overall strategy for the implementation of the Optional Protocol and the elimination of the sale of children, child prostitution and child pornography is lacking in the State party. The Committee is further concerned about the lack of information on the 2001 National Plan of Action against the Commercial Sexual Exploitation of Children and on any evaluation of this plan.

14. The Committee urges the State party to promptly update its 2001 National Plan of Action against the Commercial Sexual Exploitation of Children by ensuring that it is based on a cross-sectoral approach and brings all stakeholders together in a coherent and comprehensive framework for action on all areas of the Optional Protocol. The Committee also urges the State party to ensure the provision of adequate resources and the establishment of a monitoring mechanism for its implementation and a high degree of participation of civil society and children in the activities of the plan and in its evaluation.

Coordination of the implementation of the Optional Protocol

15. While noting that coordination mechanisms have been established at Community levels, the Committee is concerned at the absence of a specific mechanism responsible for the coordination of policies related to the sale of children, child prostitution and child pornography at federal level among the various ministries and authorities involved at community level.

16. The Committee recommends that the State party establish a body to coordinate and evaluate the State party's implementation of the Optional Protocol at federal level and among ministries and authorities including at the community

levels, with active participation of children. It is further recommended that the State party provide the coordinating body with specific and sufficient resources to enable it to carry out its mandate effectively .

Dissemination and awareness-raising

17. The Committee welcomes the awareness-raising campaigns on sexual exploitation of children conducted in 2004 and 2005 and the initiatives undertaken by the State party to raise awareness of trafficking. The Committee is, however, concerned at insufficient efforts to raise awareness about the specific provisions of the Optional Protocol among relevant groups of professionals, children and the public at large.

18. The Committee urges the State party to:

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

(b) In cooperation with civil society and in line with article 9, paragraph 2, of the Optional Protocol, intensify and promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the harmful effects of all the offences referred to in the Optional Protocol and 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

19. While noting that some training activities on trafficking have been carried out (such as the training sessions for the diplomatic staff organized by the service addressing trafficking in persons of the Federal Police), the Committee is concerned that this training does not include all professionals working for and with children or adequately include all the provisions of the Optional Protocol.

20. The Committee recommends that the State party:

(a) Allocate adequate and earmarked resources for the development of training materials and courses 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 materials and courses, covering all areas of the Optional Protocol, for professionals, including police officers, public prosecutors, judges, medical staff, social welfare officers and media and other groups of professionals concerned.

Allocation of resources

21. The Committee is concerned about the absence of clearly identifiable budget allocations assigned to activities carried out to implement the Optional Protocol. The Committee is also concerned that the police and the justice system have not been provided with sufficient human and financial resources for the investigation of complaints for offences covered by the Optional Protocol.

22. The Committee calls upon the State party to clearly identify budget allocations for activities related to the implementation of the Optional Protocol. The Committee urges the State party to allocate resources equally among the different local administrations, through earmarked budgetary funds, in order to ensure prevention, timely investigation and effective prosecution of the crimes covered by the Optional Protocol and protection, care and social reintegration of child victims throughout the country.

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

Measures adopted to prevent offences prohibited under the Optional Protocol

23. The Committee welcomes the preventive actions developed in partnership with non-governmental organizations (NGOs), such as the Belgian Safer Internet Project and the measures to prevent illegal adoptions. The Committee is, however, concerned about the State party's statement that the Communities have not so far defined or invested in policies targeted specifically at the subject matter of the Optional Protocol owing to the relatively low incidence of these phenomena in Belgium.

24. The Committee encourages the State party to follow up on the recommendation of the National Commission on the Rights of the Child to conduct a phenomenological study on child prostitution and to extend the scope of this study to all areas covered by the Optional Protocol, including the root causes of these phenomena.

Sex tourism

25. The Committee notes as positive the circular from the Ministry of Foreign Affairs drawing the attention of all national diplomats to the existence of penal provisions on extraterritoriality in relation to sex tourism and the various measures taken in the Flanders to combat child sex tourism. The Committee is, however, concerned about the lack of information on the measures taken against Belgian nationals involved in child sex tourism.

26. The Committee reminds the State party that it is primarily responsible for preventing and combating child sex tourism. The Committee urges the State party to undertake more practical actions in this regard and notably to organize large awareness campaigns specifically directed at tourists and to cooperate closely with travel operators, the media,

NGOs and civil society organizations to combat all forms of sexual exploitation of children in travel and tourism.

V. Prohibition of the sale of children, child pornography and child prostitution and related matters

Existing criminal or penal laws and regulations

27. The Committee welcomes the adoption of a new law on the protection of minors in the criminal justice system on 28 November 2000 and the Act of 10 August 2005 amending various proposals for stepping up the fight against trafficking and smuggling of persons and the practices of exploiting landlords. However, it expresses concern that the definition of child pornography contained in the declaration made by the State party upon ratification of the Optional Protocol and in the State party's domestic law of assent of 9 February 2006 is restricted to visual representations of the child.

28. The Committee recommends that the State party revise its penal code to ensure that its legislation on child pornography covers representation by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes .

29. While noting that offences under the Optional Protocol are punishable by appropriate penalties in accordance with its article 3, paragraph 3, the Committee expresses concern about the very low percentage of custodial sentences imposed in cases of convictions for child sexual offences. It also notes with particular concern that none of the persons convicted between 2000 and 2007 for keeping a brothel for prostitution involving children have been sentenced to prison.

30. The Committee urges the State party to consider amending the provision of its penal law in order to ensure that offences covered by the Optional Protocol are considered as crimes in Belgian penal law and not sanctioned with light sentences such as fine or sanctions without deprivation of liberty.

Jurisdiction and extradition

31. The Committee welcomes the extension of the extraterritorial competence of the Belgian courts and tribunals by the Act of 28 November 2000 and the fact that judges are competent to try cases of sexual exploitation of children, even if no complaint has been lodged or no official notification has been made, where the wrongful acts are not an offence in the State where they were committed and if the person concerned is not of Belgian nationality. The Committee is, however, concerned that the State party's extraterritorial jurisdiction does not cover child victims between 16 and 18 years. The Committee is also concerned at the lack of information relating to cases over which the State party has established jurisdiction.

32. The Committee urges the State party to amend its law in order to ensure that the extraterritorial competence of Belgium courts and tribunals also applies to sexual exploitation of children from 16 to 18 years and , if necessary, to consider the present Optional Protocol to be a legal basis for extradition in respect of such offences.

VI. Protection of the rights of child victims

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

33. The Committee welcomes the measures taken for the protection of child victims of the offences covered by the Optional Protocol, including the existence of a " service addressing trafficking in persons within the Federal Police, the designation of reference magistrates responsible for all forms of child abuse in each judicial district and the introduction in 2000 of the possibility to use audiovisual recording of hearings to prevent a second victimization of children victims. The Committee is, however, concerned that the possibility to record child hearings is rarely utilized in case of foreign non-accompanied children.

34. The Committee encourages the State party to strengthen its efforts to protect the rights and interests of child victims of offences under the Optional Protocol . The Committee also calls upon the State party to ensure that the possibility to use audiovisual recording of hearings applies equally to foreign non- accompanied children.

35. The Committee expresses deep concern that foreign children victims of trafficking are not adequately protected in the State party, which leads to heightened the vulnerability of children to the offences under the Optional Protocol. In particular, the Committee is concerned that:

- (a) They are granted residency only if they cooperate in the investigation;
- (b) The Guardianship Act of May 2004 excludes European unaccompanied children from receiving the assistance of a guardian;
- (c) Hundreds of child trafficking victims have disappeared from reception centres between 1999 and 2005; and that
- (d) Owing to a shortage of places in the reception centres for children, especially in smaller cities, unaccompanied and separated children victims of trafficking have been placed in centre together with adults.

36. The Committee urges the State party to:

(a) Comply with its obligations to provide protection to all children victims of offences under the Optional Protocol , including trafficking , and grant them residence permits regardless of their willingness or ability to cooperate in legal proceedings.

(b) Guarantee that all asylum - seeking unaccompanied and separated children are appointed a guardian during their asylum procedure regardless of their nationality;

(c) Improve the protection of separated and unaccompanied children, namely their identification, age assessment, registration, family tracing, guardianship, best interests' determination, treatment and care ;

(d) Enhance child rights knowledge and skills of professionals in reception centres and shelters dealing with child victims to ensure that children in these centres receive adequate assistance in all communities and are not exposed to the risk of being trafficked or re-trafficked;

(e) Create more residential structures to provide assistance to child victims of crimes under the Optional Protocol ; and

(f) Take into consideration the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

VII. International assistance and cooperation

Multilateral, regional, bilateral agreement

37. In 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 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.

Law enforcement

38. The Committee encourages the State party to continue its efforts to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of acts involving the sale of children, child prostitution, child pornography and child sex tourism.

VIII. Follow-up and dissemination

Follow-up

39. 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 Council of Ministers, the Parliament (the Senate and the Chamber of Representatives), and to Governments and Councils at Community and regional levels , where applicable, for appropriate consideration and further action.

Dissemination

40. The Committee recommends that the initial report submitted by the State party and these concluding observations adopted by the Committee be made available to children and their parents in all official languages of the State party through, inter alia, school curricula and human rights education. It also recommends that the State party make the Optional Protocol widely known to children and the public at large in order to generate debate and awareness of the Optional Protocol, its implementation and its monitoring.

IX. Next report

41. In accordance with article 12, paragraph 2 , the Committee requests that the State party include further information on the implementation of the Optional Protocol and the present concluding observations in its combined fifth and sixth periodic report under the Convention on the Rights of the Child, which is due on 14 July 2017 , in accordance with article 44 of the Convention .