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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-fourth 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: Kyrgyzstan

1. The Committee considered the initial report of Kyrgyzstan (CRC/C/OPSC/KGZ/1) at its 1221st meeting (see CRC/C/SR.1221), held on 29 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report; however, it regrets that it does not follow the established reporting guidelines. The Committee also appreciates the written replies to its list of issues, as well as the constructive dialogue with the high-level delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 1 October 2004 contained in CRC/C/15/Add.244.

B. Positive aspects

4. The Committee notes with appreciation the following:

GE.07-41604(a) Ratification of seven human rights treaties;

(b) Agreement on Labour Activity and Social Protection of Migrants Employed in Agriculture in Border Areas signed by Kyrgyzstan and Kazakhstan, signed 2002;

(c) Presidential Decree, of 2002, on measures to combat the smuggling and trafficking of persons in the Kyrgyz Republic;

(d) Adoption of the Code of the Kyrgyz Republic on Children in 2006.

C. Principal areas of concern and recommendations

1. General measures of implementation

National Plan of Action and Coordination

5. The Committee welcomes the establishment of the "New Generation" programme on trafficking in and commercial and sexual exploitation of children. However, the Committee is concerned at the absence of a specific plan of action in relation to the sale of children, child prostitution and child pornography. Furthermore, the Committee is concerned that existing financial resources provided to the "New Generation" programme are insufficient and that the coordination and cooperation between the different bodies is not fully effective.

6. The Committee recommends that the State party strengthen its efforts, in consultation and cooperation with its relevant stakeholders, to improve its "New Generation" programme, by paying particular attention to the implementation of all provisions of the Optional Protocol and taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the first and second World Congress against Commercial Sexual Exploitation of Children (Stockholm 1996; Yokohama 2001). Furthermore, the Committee recommends that the State party provide the "New Generation" programme with an increased budget allocation and clearly define the competencies of the different bodies involved in the implementation of this programme in order to improve its cooperation and coordination.

Dissemination and training

7. The Committee appreciates the numerous training and dissemination activities, provided by the State party in collaboration with international organizations and NGOs. The activities included the training of police and justice personnel on trafficking issues, the agreement between Kyrgyzstan and the Government of Sweden on support for training in and development of social work with children in high-risk groups and the requirement for specialists working with children to have obligatory knowledge of the fundamental provisions of the Convention and relevant Kyrgyz legislation. However, the Committee remains concerned that the efforts to raise awareness of the Protocol among relevant professional categories and the public at large and to provide adequate training for judges, prosecutors and social workers who are working with and for children are scattered and fragmented, and thus insufficient, and that they do not cover all areas of the Protocol.

8. The Committee recommends that the State party allocate adequate and earmarked resources for the development of training materials and courses for all relevant professionals including police officers, public prosecutors, judges, medical staff and other professionals involved in the implementation of the Optional Protocol. Furthermore, in the light of article 9(2) of the Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, inter alia, school curricula and long-term awareness-raising campaigns and training, about the preventive measures and harmful effects of all offences referred to in the Protocol, including by encouraging the participation of the community and, in particular, children and child victims.

Data collection

9. The Committee regrets the lack of statistical data on issues covered by the Protocol as well as the lack of research on the prevalence of national and cross-border trafficking, sale of children, child prostitution and child pornography.

10. The Committee recommends that the State party ensure that data disaggregated, inter alia, by age and sex are systematically collected and analysed. The Committee encourages the State party to undertake research on the nature and extent of all forms of exploitation of children, including prostitution, pornography and child labour, in order to identify the causes and the extent of the problem.

Budget allocations

11. The Committee welcomes the information provided on budget allocations for the implementation of the Optional Protocol. However, the Committee remains concerned that the budget allocated does not cover all areas of the Protocol.

12. The Committee recommends that the State party continue and strengthen its budget allocation in order to cover all areas of the Protocol.

2. Prohibition of the sale of children, child pornography and child prostitution

Existing criminal or penal laws and regulations

13. The Committee welcomes that the Optional Protocol takes precedence over national legislation, that a provision on trafficking, including of children, is contained in the Criminal Code and in the recently adopted Code of the Kyrgyz Republic on Children. However, the Committee is concerned that the prohibition of the sale of children, child prostitution and child pornography has not been explicitly included in the national Criminal Code and/or the Code of the Kyrgyz Republic on Children, in conformity with articles 2 and 3 of the Optional Protocol.

14. The Committee urges the State party to implement the Protocol by taking immediate measures to amend the provisions with a view to fully including all purposes and forms of the sale of children, child pornography and child prostitution in accordance with article 3, paragraphs 1 and 2, of the Optional Protocol. The Committee therefore recommends that the State party undertake a legal study in order to identify inconsistencies and gaps between the national legal system and the Protocol and to seek assistance from the United Nations Children's Fund (UNICEF) and other relevant international organizations.

3. Penal/criminal procedure

Jurisdiction

15. While noting the rules contained in the Criminal Code on extraterritorial jurisdiction, the Committee is concerned that this jurisdiction seems to be limited to crimes committed by Kyrgyz citizens and stateless persons and that there is no reference to cases where the victim of a crime covered in the Protocol is a citizen of Kyrgyzstan.

16. The Committee recommends the State party to take the necessary legislative measures to ensure that the domestic law provides for extraterritorial jurisdiction in full compliance with article 4 of the Protocol.

17. The Committee welcomes recent attempts to conduct investigations and prosecutions for incidents involving the sale of children and child prostitution. However, it remains concerned that in a number of cases investigations and prosecutions have not been initiated.

18. The Committee recommends that the State party increase the number of investigations and prosecutions for

incidents involving the sale of children and child prostitution and especially for pornography and make the data available.

4. Protection of the rights of child victims

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

19. The Committee is concerned that the provisions of article 8 of the Optional Protocol have not been adequately integrated into the relevant laws of the State party, in particular that the status of the victim is not well defined in the Criminal Code and the Code of the Kyrgyz Republic on Children and that legislation fails to provide clear sanctions for physical and psychological pressure during interrogations. It is further concerned that measures undertaken for the physical and psychological recovery of child victims of sale, child prostitution and child pornography are exclusively carried out by non-governmental organizations (NGOs) and that no funds are specifically allocated by the State party for the support of child victims.

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

In the light of article 8(1) of the Optional Protocol, protect child victims and witnesses at all stages of the criminal justice process, by taking into account the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20);

Collaborate with NGOs and the International Organization for Migration (IOM) to ensure that adequate services are available for child victims, including for physical and psychological recovery and social reintegration, in accordance with article 9(3) of the Optional Protocol;

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

Allocate adequate funds to programmes and measures necessary for the rehabilitation of child victims.

21. The Committee is deeply concerned to learn that child victims of crimes covered by the Optional Protocol are often stigmatized and socially marginalized and may be held responsible, tried and placed in detention.

22. The Committee recommends that the State party ensure that child victims of exploitation and abuse are neither criminalized nor penalized and that all possible measures be taken to avoid the stigmatization and social marginalization of these children.

23. The Committee recommends that the State party establish, in collaboration with Everychild and other interested NGOs, a 24-hour, toll-free helpline number to assist child victims. In this regard, it recommends that the State party ensure that children are aware of and can access the helpline and facilitate the collaboration of the helpline with child-focused NGOs and the police, as well as health and social workers.

24. While appreciating the fact that the Family Code refers to article 3 of the Convention (best interest of the child) for adoption, the Committee reiterates its recommendations (CRC/C/15/Add. 244) in which it asked for amendment of the legislation and policies with regard to adoption, in order to set up a mechanism for monitoring all adoption processes and the accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

5. 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 remains concerned about allegations of complicity by State officials in trafficking and that corruption is impeding the effectiveness of prevention measures.

26. The Committee urges the State party to ensure that any suspicion of complicity by State officials is thoroughly investigated and adequately sanctioned, if proven.

27. The Committee is especially concerned about the difficult situation of certain groups of children, such as street children and working children, who are particularly vulnerable to all forms of exploitation.

28. The Committee recommends that the State party pay particular attention to the situation of vulnerable groups of children who are at particular risk of being exploited and abused. In this respect it recommends that the State party allocate adequate human and financial resources for the implementation of programmes for the protection of the rights of vulnerable children, with special attention to their education and health care. More attention should also be devoted to raising awareness among these children of their rights.

29. The Committee notes the government programme (approved by the Government decision No. 96 of February 2005) which creates conditions for sustainable, balanced socio-economic development and poverty reduction in Kyrgyzstan.

30. The Committee recommends that further attention be given to the implementation of this programme, including through the appropriate allocation of financial resources for the prevention of sexual and all other forms of exploitation.

31. The Committee welcomes the awareness-raising campaigns that have been conducted for the public, inter alia, via radio and television for the prevention of trafficking. Furthermore, the Committee notes the establishment of a hotline providing information on questions concerning labour migration and the information campaigns conducted in rural areas as well as the creation of special instruction booklets for migrants. However, the Committee is concerned that targeted preventive measures against the exploitation of children, including prostitution, pornography and all forms of labour exploitation, as well as measures to identify the causes and extent of the problem, remain outstanding.

32. The Committee encourages the State party to undertake further targeted preventive measures and liaise with NGOs concerning the implementation of awareness-raising campaigns on all areas covered by the Optional Protocol. In particular, the Committee encourages the State party to undertake research on the nature and extent of exploitation of children, including prostitution and pornography, to identify the causes and extent of the problem.

6. International assistance and cooperation

33. The Committee encourages the State party to continue its cooperation with UNICEF and international NGOs to implement the “New Generation” programme for children’s rights in Kyrgyzstan.

Law enforcement

34. The Committee encourages the State party to undertake regional and international judicial, police and victim-oriented cooperation activities with other States with a view to preventing and combating the sale of children, child prostitution and child pornography and to provide more detailed information in the next report.

7. Follow-up and dissemination

Follow-up

35. The Committee recommends that the State party undertake all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant government ministries, the “Zhogorku Kenesh” and to the Oblast authorities for appropriate consideration and further action.

Dissemination

36. 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 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.

8. Next report

37. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined third and fourth periodic reports under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 6 May 2010.
