



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-third session

11-29 January 2010

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: Estonia

1. The Committee considered the initial report of Estonia (CRC/C/OPSC/EST/1) at its 1462nd meeting (see CRC/C/SR.1462), held on 13 January 2010, and adopted at its 1501st meeting, held on 29 January 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report under the Optional Protocol on the sale of children, child prostitution and child pornography, as well as its written replies to the list of issues (CRC/C/OPSC/EST/Q/1/ and Add.1) submitted in a timely fashion. The Committee appreciates the fruitful and constructive dialogue held with the large multi-sectoral delegation from the State party, which shed light on the determination to implement the provisions of the Optional Protocol as part of Estonia's broader commitment to children's rights in general.

I. General observations

Positive aspects

3. The Committee notes with appreciation the adoption of the following legislative and other measures:

- (a) The increased attention by the Riigikogu (Parliament) to detecting crimes against children and the revision and amendment of the Penal Code and Code of Criminal Procedure in recent years;
- (b) The introduction, as of 2010, of child protection services at every police prefecture in Estonia;
- (c) The active participation of Estonia at the international, regional and subregional levels in forums on combating trafficking, cybercrime and child pornography on the Internet in particular.

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

- (a) The Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138) of the International Labour Organization in 2007;
- (b) The European Convention on the Compensation of Victims of Violent Crimes in January 2006;
- (c) The United Nations Convention against Transnational Organized Crime, in February 2003, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, in May 2004;
- (d) The Council of Europe Convention on Cybercrime in May 2003.

II. Data

Data collection

5. While welcoming data provided in the State party report and in the reply to the list of issues, especially on the number of prosecutions and convictions of offences related to the Optional Protocol, the Committee regrets the lack of a systematic mechanism of data collection, analysis and monitoring of all areas covered by the Optional Protocol. While noting research carried out, including a survey on the extent of and attitudes towards sexual abuse among adolescents, the Committee regrets the lack of research on the specific areas covered by the Optional Protocol, especially on child sex tourism.

6. The Committee recommends that the State party develop and implement a comprehensive and systematic mechanism of data

collection, analysis and monitoring of all the areas covered by the Optional Protocol. The data should be disaggregated by, inter alia, nature of the offence and by age, sex, citizenship, national and ethnic origin, urban/rural areas and with particular attention to the most vulnerable groups of children. The Committee further recommends that the State party undertake studies to determine the prevalence of child sex tourism and other practices prohibited under the Optional Protocol.

III. General measures of implementation

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

7. While noting that the general principles of the Convention have been taken into account in the design and application of measures of implementation adopted by the State party under the Optional Protocol, for example in the text of the Child Protection Act, the Committee is concerned that the principle of the best interests of the child is not a primary consideration in the application of all aspects of criminal justice procedures.

8. The Committee recommends that the general principles of the Convention of the Rights of the Child, in particular the principle of the best interests of the child, be included in all measures taken by the State party to implement the provisions of the Optional Protocol, including judicial or administrative procedures.

Legislation

9. The Committee notes with appreciation the State party's indication that practices under the Optional Protocol are punishable under the Penal Code with relevant proceedings conducted under the existing Code of Criminal Procedure. The Committee notes also that the Riigikogu has before it draft amendments of the Penal Code, which would bring its legislation closer to full compliance with the provisions of the Optional Protocol. Nevertheless, the Committee is concerned that there remains limited harmonization between national legislation, notably the Penal Code, and the provisions of the Optional Protocol.

10. The Committee recommends that the State party continue and complete the process of harmonization of its national legislation with the Optional Protocol in order to adequately implement all provisions contained therein, and, with reference to the Penal Code, to ensure explicit reference to all the acts and activities constituting offences under the Optional Protocol.

National Plan of Action

11. The Committee welcomes the elaboration of a number of policy measures, including the 2004-2008 Strategy for Guaranteeing the Rights of the Child (the Strategy) and the 2006-2009 Development Plan for Combating Trafficking in Human Beings, as well as the Development Plan on Combating Violence for 2010-2014 with a subsection on violence against children. The Committee however regrets that there is no specific plan of action that comprehensively covers all of the areas addressed by the Optional Protocol.

12. The Committee recommends that the State party develop, in consultation and cooperation with all relevant stakeholders, a national plan of action aimed at addressing the sale of children, child prostitution and child pornography, and that the plan include a follow-up mechanism. In doing so, the State party is invited to pay particular attention to the implementation of all provisions of the Optional Protocol taking into account 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.

Coordination and evaluation

13. The Committee is concerned that the inter-ministerial working group appointed for the implementation of the Strategy does not evaluate the impact of activities. In the light of the State party's constraints on the further expansion of public administration, the Committee particularly welcomes the recent establishment of a separate department for child and family policies within the Ministry of Social Affairs, which was due to begin work at the time of consideration. The Committee notes that this department has been tasked with the elaboration of a children's and family policy development plan, the improvement of the Child Protection Act, the promotion of parental education and the prevention of violence against children. However, the Committee is concerned that this department may not have the level of authority, the resources and capacity to ensure the full cooperation between all national authorities and services concerned with the implementation of the Optional Protocol, including police and justice departments.

14. The Committee encourages the State party to ensure that the department for child and family policies within the Ministry of Social Affairs is given sufficient authority and the human, technical and financial resources to fulfil its mandate as a mechanism for coordination between ministries, agencies and services, including the Ministry of Justice, the Ministry of Internal Affairs and the Police Board, and between the national and local authorities in all areas concerning the implementation of the Optional Protocol. Measures should be complemented with mechanisms for periodic evaluation.

Dissemination and training

15. The Committee welcomes numerous efforts undertaken by the State party to train professionals in areas relevant to the Optional Protocol, including, inter alia, training of social workers for dealing with sexually abused or trafficked children, prevention campaigns on child sex tourism and child pornography on the Internet, and seminars and an essay competition on the prevention and consequences of human trafficking. The Committee is nevertheless concerned about social attitudes towards practices prohibited under the Optional Protocol, in particular relatively tolerant attitudes among children towards child prostitution and child pornography.

16. The Committee shares the concern of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/12/23/Add.2, paras. 24 and 25) about the failure of law enforcement officers to recognize cases of children, both girls and boys, sporadically providing sexual services in exchange for consumer goods as child sexual exploitation.

17. The Committee recommends that the State party:

(a) In the light of article 9, paragraph 2, make the provisions of the Optional Protocol widely known to the public at large and to children, including children belonging to the Russian-speaking communities and their families, through, inter alia, the media, school curricula and long-term awareness-raising campaigns in different languages and in a simplified manner;

(b) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all professional groups working with child victims of crimes covered therein, especially but not limited to law enforcement officers.

18. The Committee reiterates the opinion of the Special Rapporteur that increased training of police officers in relevant child protection legislation and policies is required to enable the proper identification of and intervention in cases of child sexual exploitation (A/HRC/12/23/Add.2, para. 25).

Allocation of resources

19. The Committee notes with appreciation that, despite overall cuts in the budget for state administration, which are conditional to Estonia's entry into the euro area, the State party has allocated resources for the establishment and functioning of a new department on child and family policies within the Ministry of Social Affairs. The Committee, nevertheless, regrets that some areas of concern remain, including the insufficient budget, capacities and resources available to civil servants at the local level to offer a real access to justice to victims, as noted in the report of the Special Rapporteur on the sale of children, child prostitution and child pornography following her visit to Estonia in October 2008 (A/HRC/12/23/Add.2).

20. The Committee recommends that the State party allocate, when planning its national budget, financial resources specifically for the implementation of the Optional Protocol. The Committee, in particular, recommends that the State party:

(a) Allocate additional human and financial resources to ensure the full implementation of the Optional Protocol in its entire territory, particularly in each of the 17 regional police units, strategically prioritizing the training and specialization of human resources;

(b) Strengthen the human, technical and financial capacities of the police for conducting criminal investigation of child pornography on the Internet, considering the particular challenges posed by this complex and globalized offence;

(c) Increase the human and financial resources available to social services with a view to raising the number of child protection workers to match the needs of individual local authorities and to raise the ratio of child protection workers deployed per 1,000 children.

Independent monitoring

21. The Committee notes information that the task of monitoring the rights of the child has in practice been delegated to a structural unit within the institution of the Chancellor of Justice, mandated to serve also as an Ombudsman. While taking note that the institution of the Chancellor of Justice may receive complaints directly submitted by children, the Committee is concerned about compliance with the Paris Principles and regrets the very low number of complaints submitted by children. The Committee takes note of current discussions in the State party on the possibility of setting up a children's ombudsman.

22. The Committee recommends that the present office of the Chancellor of Justice be accessible and known to children and their representatives at the national and local levels, that it conform with the Paris Principles and take into consideration the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the protection and promotion of the rights of the child. As an alternative, the Committee encourages the State party to continue and complete plans to set up a separate and independent children's ombudsman. In addition to investigating complaints, the children's ombudsman should have the responsibility to monitor the implementation of and to promote the Convention and the Optional Protocol, and be equipped with sufficient human and financial resources to fulfil its mandate.

Civil society

23. While appreciating the collaboration with civil society for the implementation of the Optional Protocol, including the incorporation of comments from civil society in the initial report, the Committee regrets the low level of involvement and participation of civil society in all areas concerning the implementation of the Optional Protocol.

24. The Committee encourages the State party to continue and strengthen its collaboration with civil society in all matters covered by the Optional Protocol, not only by supporting non-governmental organizations (NGOs) in their efforts to provide adequate services to child victims, but also to increase the role of NGOs in the development and monitoring of policies and services.

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

25. The Committee notes with appreciation numerous initiatives in the State party aimed at preventing practices under the Optional Protocol, including introducing more proportional penalties for sexual offences against children, possibilities to issue restraining orders and to set restrictions on work with children. The Committee especially welcomes measures introduced to prevent the use of the Internet for the perpetration of crimes prohibited under the Optional Protocol, including the preparation of draft legislation for the prohibition of grooming, the entry of a project application to obtain support from the European Union for opening channels for reporting inappropriate Internet content and for providing counselling; and equipping the police with the means to monitor and deal with child pornography on the Internet. The Committee is, nevertheless, concerned that measures aimed to prevent practices under the Optional Protocol have not targeted particularly vulnerable children, children left behind by migrating parents, and Russian-speaking children.

26. The Committee recommends that the State party continue and strengthen measures to prevent the sale of children, child prostitution and child pornography, including in the light of the changing nature of interactions over the Internet, and that it increase the attention given to identify and protect children who are especially vulnerable to these practices. Measures should be tailored to the linguistic needs of Russian-speaking communities.

27. While noting information that the State party has supported activities organized by civil society to raise awareness of child sex tourism, the Committee regrets the lack of sufficient attention to and information on this issue.

28. The Committee recommends that the State party undertake measures to prevent child sex tourism, including by conducting studies and collecting information on known cases to establish its extent and root causes, as well as by raising awareness among the general public. The State party should also, through relevant authorities, strengthen cooperation with the tourism industry, NGOs and civil society in order to promote responsible tourism, including through the dissemination of the Code of Conduct of the World Tourism Organisation on the protection of children from sexual exploitation in travel and tourism among all relevant partners.

V. Prohibition of the sale of children, child prostitution and child pornography (arts. 3, 4, paras. 2 and 3, and 5|7)

Existing criminal or penal laws and regulations

29. The Committee is concerned that all crimes under the Optional Protocol are not fully criminalized in accordance with articles 2 and 3 of the Optional Protocol, including, inter alia, sale for the purpose of transfer of organs for profit and engagement in forced labour. The Committee further regrets the lack of a definition of the crime of sale of a child in Article 173 of the Penal Code. The Committee is further concerned that the upper age of protection for a number of crimes stipulated under the Penal Code is currently set at 14 years, i.e. sexual intercourse with a child (art. 145), satisfaction of sexual desire with a child (art. 146), child stealing (art. 172), and use of minors in manufacture of erotic works (art. 177). In this regard, and in the light of the relatively low age of sexual consent at 14 years, the Committee is in particular concerned that children above 14 years may therefore not be protected.

30. The Committee recommends that the State party ensure, including through necessary amendments, that the definition of sale is incorporated into relevant legislation in accordance with articles 2 and 3 of the Optional Protocol. The Committee further recommends that the State party examine relevant legislation with a view to ensuring that crimes are fully prohibited in accordance with articles 2 and 3 of the Optional Protocol and extending the upper age of protection to 18 years for all crimes under the Optional Protocol, regardless of the age of sexual consent.

31. The Committee is concerned about the possibility to apply pecuniary sanctions for crimes under the Optional Protocol, including child prostitution and child pornography, which in the Committee's view is not a sufficiently stringent and deterrent punishment. The Committee is further concerned that the offences addressing child pornography as defined in articles 177 and 178 of the Penal Code differentiate between pornographic and erotic materials, namely in allowing the use of children aged 14 years and above in the manufacture of erotic pictures, films and other work.

32. The Committee recommends that the State party ensure, including through the review of relevant legislation and established practice, that all offences under the Optional Protocol are punishable by appropriate sentences in accordance with article 3, paragraph 3. The Committee further recommends that the State party extend protection against use in the production of erotic works to all persons under 18 years of age.

33. The Committee, while welcoming numerous activities addressing the risk of child abuse through new technologies, including the Internet, further recommends that the State party consider adopting specific legislation on the obligations of Internet service providers with a view to prohibiting child pornography on the Internet.

Legal aspects of adoption

34. While the Committee notes the legislation on adoption in force in Estonia, it regrets that improperly inducing consent in cases of adoption, as provided for in article 3, paragraph 1 (a)(ii), of the Optional Protocol, is not covered by the criminal legislation of the State party.

35. The Committee recommends that the State party take all necessary measures to ensure that the definition of improperly inducing consent in cases of adoption is incorporated into the penal legislation, as stipulated in article 3, paragraph 1 (a)(ii), of the Optional Protocol.

Statute of limitation

36. The Committee welcomes the fact that the limitation period of offences may be interrupted in Estonia until the victim attains the age of 18 years for offences against the sexual self-determination of a person (a rt. 81 of the Penal Code), and recommends that it be extended to cover all offences under the Optional Protocol.

Jurisdiction and extradition

37. The Committee is concerned that the requirement of double criminality applied by the State party for crimes allegedly committed abroad limits the possibility of the prosecution of offences outlined in articles 1, 2 and 3 of the Optional Protocol and therefore limits the protection of children against these crimes.

38. The Committee recommends that the State party consider taking measures to abolish the requirement of dual criminality for domestic prosecution and/or extradition of individuals accused of crimes committed abroad.

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

39. The Committee notes with satisfaction numerous measures adopted to protect the rights and interests of child victims, including the training of professionals working with sexually exploited or trafficked children, and the maintaining of two specialized centres for sexually abused children. Nevertheless, the Committee regrets the lack of a holistic approach to identifying and protecting child victims of offences under the Optional Protocol, and in particular gaps in information-sharing between the police and the social services. The Committee is further concerned about the lack of information on activities aimed at preventing stigmatization and marginalization of child victims, and about instances of media revealing information which may lead to the identification of child victims.

40. The Committee recommends that the State party create a nationwide policy on coordination, care and support for child victims of practices under the Optional Protocol, including by increasing cooperation and information-sharing between the police and social services. The Committee recommends that the State party establish formal procedures for identifying victims among vulnerable populations. The Committee reminds the State party that child victims of offences covered under the Optional Protocol should not, as such, be either criminalized or penalized, and that they should prevent stigmatization and social marginalization. The Committee further recommends that, in accordance with article 8, paragraph 1(e), of the Optional Protocol, the State party protect the privacy and identity of child victims and witnesses, and take measures, in accordance with national law and by involving the media, to avoid the inappropriate dissemination of information that could lead to their identification.

Criminal justice system protection measures

41. The Committee welcomes measures in place to protect the rights and interests of child victims and witnesses in criminal justice procedures, including the availability of special interviewing rooms for child victims and the possibility to hold a hearing in closed session. The Committee further notes the State party's intention to amend the Code of Criminal Procedure in order to, inter alia, enable the hearing of child witnesses and victims via video-link and limit the number of interviews. The Committee is however concerned that the procedure currently in place for dealing with child witnesses does not afford equal protection to children aged 14 years and above.

42. The Committee recommends that the State party continue and strengthen measures to protect the rights and interests of child victims and witnesses, for all children up to the age of 18 years, in particular, but not limited to, accelerating the proposed amendment of the Code of Criminal Procedure in order to, inter alia, enable the hearing of child witnesses and victims via video-link and limit the number of interviews, in accordance with article 8, paragraph 1, of the Optional Protocol and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20).

Recovery and reintegration of victims

43. While noting with appreciation numerous measures put in place for the protection of child victims, the Committee regrets that there remain existing gaps, in particular as regards the availability of special psychological and psychiatric assistance for child victims, as well as social services for reintegration.

44. The Committee recommends that the State party further strengthen measures to ensure appropriate assistance to victims of offences under the Optional Protocol, including their full social reintegration, physical and psychological recovery. The Committee, in particular, recommends that the State party (a) continue developing specialized medical and psychological care services for child victims, including by ensuring access and availability of child mental health professionals throughout the country, (b) develop child adolescent psychiatry as an independent medical speciality, taking into account the importance of this professional group in the process of evaluation, consultation, treatment and

recovery of child victims and (c) increase the availability of social services .

45. The Committee further recommends that the State party 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.

VII. International assistance and cooperation

International cooperation

46. 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.

Other legal provisions

47. The Committee encourages the State party to ratify the Convention on the Rights of Persons with Disabilities, and the Optional Protocol on the involvement of children in armed conflict, which it has already signed. In addition, the Committee encourages the State party to ratify, as stated by the delegation, the Council of Europe Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed by the State party in 2008.

VIII. Follow-up and dissemination

Follow-up

48 . 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 relevant Government ministries, the Riigikogu, and to national and local authorities, for appropriate consideration and further action.

Dissemination

49 . 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 , the media, youth groups, 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 and their parents through, inter alia, school curricula and human rights education.

IX. Next report

50 . 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.