



# Convention on the Rights of the Child

Distr.: General  
2 July 2013

Original: English

---

## Committee on the Rights of the Child

### **Concluding observations on the second periodic report of the United States of America submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-second session (14 January–1 February 2013)**

1. The Committee considered the second periodic report of the United States of America under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/USA/2) at its 1760th meeting (see CRC/C/SR.1760) held on 16 January 2013, and adopted the following concluding observations at the 1784th meeting, held on 1 February 2013.

#### **I. Introduction**

2. The Committee welcomes the submission of the State party's second periodic report and its written replies to the list of issues (CRC/C/OPSC/USA/Q/2/Add.1) and appreciated the constructive dialogue held with the multisectoral delegation.

#### **II. General observations**

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations on the State party's second periodic report under the Optional Protocol on the involvement of children in armed conflict adopted on the same day, contained in CRC/C/OPAC/USA/CO/2.

4. **The Committee welcomes the assurances expressed by the delegation during the dialogue that the Administration supports the treaty's goals and intends to review how it can finally move towards ratification of the Convention on the Rights of the Child. The Committee however reiterates its previous concluding observations (CRC/C/OPSC/USA/CO/1, para. 34), and urges the State party to accelerate the ratification process to the Convention in order to improve the protection of children's rights in a comprehensive way.**

**Positive aspects**

5. The Committee welcomes the enactment of:
  - (a) The Intercountry Adoption Universal Accreditation Act of 2012, Public Law No. 112-276;
  - (b) The Providing Resources, Officers, and Technology to Eradicate Cyber Threats to Our Children Act (PROTECT Our Children Act of 2008), Public Law No. 110-401, enacted on 13 October 2008; and
  - (c) The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPA) of 2008, Public Law No. 110-457;
6. The Committee further welcomes progress achieved in the creation of institutions and adoption of plans and programmes that facilitate the implementation of the Optional Protocol, including:
  - (a) The Program for Deferred Action for Childhood Arrivals, taking effect in August 2012, which provides unaccompanied children with a temporary permit to remain in the United States; and
  - (b) The National Strategy for Child Exploitation Prevention and Interdiction, (August 2010), which establishes overall national anti-trafficking objectives.

### **III. Data**

**Data collection**

7. The Committee reiterates its concern expressed under the previous concluding observations (CRC/C/OPSC/USA/CO/1, 2008) regarding:
  - (a) The lack of progress on establishing an effective national data collection system on the sale of children, child prostitution and pornography that could be shared by federal, state and local authorities which currently use many different data systems. While noting the further development of the Federal Bureau of Investigation (FBI) uniform crime reporting system by including trafficking, the Committee is concerned that this system focuses mostly on detecting and combating offenders of trafficking and not sufficiently on children as victims or potential victims, overemphasizing law enforcement rather than protection and prevention;
  - (b) Insufficient research and evidence-based policy and programme analysis centred on children and the root causes of the crimes affecting them, and that what exists is overwhelmingly focused on trafficking for sexual exploitation and little on labour exploitation and other offences covered by the Optional Protocol; and
  - (c) Difficulties arising from considering a wide range of criminal activities against children as trafficking in the collection of data and analytical information, including the offences covered by the Optional Protocol. This also leads to misconceptions and variations in the identification of victims and of appropriate strategies to prevent and combat these crimes at national, state, local and international levels.
8. **The Committee urges the State party, as recommended in its previous concluding observations (CRC/C/OPSC/CO/1, 2008) to strengthen its efforts to:**
  - (a) **Develop and implement a comprehensive and systematic data collection system, including for analysis, monitoring and impact assessment, covering all areas provided for in the Optional Protocol and all territories of mainland United States as**

well as the insular areas and other dependent areas over which the State party exercises sovereignty. The Committee further recommends that data should be disaggregated, *inter alia*, by sex, age, nationality, ethnic origin, socioeconomic background, disability and geographical area and should also focus on children placed at specific risk of becoming victims of the offences covered by the Protocol such as unaccompanied foreign children, children accompanying their migrant families, child labourers, the homeless and children in street situations. The Committee also recommends that the State party establish common indicators for data collection to be used at federal and state levels;

(b) Support and establish partnerships with non-governmental organizations (NGOs) and academic centres to conduct in-depth studies on root causes of the crimes affecting children and on the extent and impact of protection measures and programmes, covering sexual as well as labour exploitation and other situations affecting children including poverty and marginalization; and

(c) Consider clarifying, for purposes of data collection as well as for the planning and development of policies and programmes covering all areas of the Optional Protocol, the definitions of offences in line with articles 2, 3 and 10 of the Protocol and differentiating between child and adult victims, and ensuring consistency of their use by legislators, service providers, law-enforcement officials and the general public at federal, state and local levels.

## IV. General measures of implementation

### Legislation

9. While welcoming the TVPA reauthorization of 2008, the Committee remains concerned that, at both federal and state level, the legislation does not distinctly address all offences covered under the Optional Protocol, making sex trafficking of children synonymous with child prostitution, or commercial sexual exploitation of children. The Committee further regrets that, due to the fact that federal implementing legislation is ambiguous and does not comprehensively give effect to all the provisions of the Protocol, it is interpreted differently by states and has thus resulted in inconsistencies in laws and interpretations. The Committee also regrets the lack of harmonization with regard to the age of the child between federal and state legislation and among states.

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

(a) Ensure that the definition of sale of children, which is similar to but not identical to trafficking in persons, is amended in the national legislation in order to adequately implement the provision on sale contained in the Optional Protocol and that all elements of the Protocol are covered under federal legislation so as to ensure consistent application of all the obligations under the Protocol in all states and territories. In so doing, the Committee recommends that the State party ensure the distinction between child and adult victims of the referred offences and that model legislation and training programmes are developed to motivate and facilitate harmonization and strengthening of laws at state level; and

(b) Ensure harmonization between federal and state laws regarding the age of the child, establishing full protection up to 18 years.

### Independent monitoring

11. The Committee welcomes the fact that more than half of the states in the State Party have established a Child Advocate or Ombudsman Office. The Committee, however,

regrets that the different Offices of the Child Advocate or Ombudsman vary in roles and degrees of independence, and that no progress has been made to establish an independent national human rights institution in line with the Paris Principles, to regularly monitor progress in the fulfilment of child rights under the Optional Protocol and to receive and address complaints from children.

**12. In the light of its general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2) and of the recommendations made by numerous United Nations human rights bodies on the necessary establishment of an independent national human rights institution in line with the Paris Principles, the Committee urges the State party to establish such a national independent mechanism and encourages those states that have not yet done so to set up an office of the Child Advocate or Ombudsman similarly charged to monitor the fulfilment of rights under the Optional Protocol and deal with children's complaints of violations of their rights in a child-friendly and expeditious manner.**

#### **National plan of action**

13. The Committee welcomes the information provided by the State party during the dialogue, that it is developing a comprehensive strategic action plan to strengthen services for trafficking victims as well as the appointment of a coordinator within the Department of Justice. However, the Committee is concerned that such a planning exercise may not effectively be linked to the 2010 National Strategy for Child Exploitation Prevention and Interdiction in order to render operational its objectives to prevent and combat the offences under the Optional Protocol.

**14. The Committee recommends that the State party accelerate the adoption and implementation of a national plan of action to prevent and combat the sale of children, child prostitution and child pornography. In so doing, it recommends that the State party, in consultation and cooperation with all relevant stakeholders and children:**

**(a) Ensure that the National Strategy for Child Exploitation Prevention and Interdiction and related planning mechanisms cover all offences under the Optional Protocol with specific objectives and targets, indicators of progress and specific budgetary allocations; and**

**(b) Ensure that such a planning exercise constitutes a model plan for the development at state level of comprehensive and operative plans for implementation of the Optional Protocol.**

#### **Coordination and evaluation**

15. The Committee, while noting the information provided by the State party during the dialogue on efforts undertaken to strengthen coordination, is however concerned that the coordination between federal, state and local authorities, among government agencies and with NGOs working in the implementation of the Optional Protocol remains inadequate.

**16. The Committee recommends that the State party ensure that the National Coordinator appointed within the Department of Justice has the authority and resources to discharge its overall multisectoral responsibility for coordination of the Optional Protocol, and for effective monitoring and evaluation of the National Strategy and related plans of action, policies and programmes to implement the Protocol within the State party. Furthermore, it recommends that the federal government develop proactive coordination and communication policies, monitoring**

**and information mechanisms and channels to encourage states to coordinate efforts to plan and to enforce and implement the Protocol at local level.**

#### **Dissemination and awareness-raising**

17. The Committee welcomes the efforts undertaken by the State party and in particular the Department of Health and Human Services to reach out to the public and providers, the Department of Education's Office of Safe and Healthy Students programme to raise awareness of the issues covered under the Optional Protocol and the Blue Campaign initiative launched by the Department of Homeland Security to raise awareness of human trafficking. The Committee is, however, concerned that these activities focus on human trafficking in general, failing to make the crucial difference between child and adult victims or those at risk of becoming victims of sale, child prostitution and child pornography.

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

(a) **Make all the provisions of the Optional Protocol widely known to the public, particularly to children and their families, through, inter alia, developing and implementing specific long-term awareness-raising programmes, at national and state level, and including the provisions of the Protocol into school curricula at all levels of the education system using appropriate material created specifically for children; and**

(b) **In cooperation with civil society and the media, intensify and promote awareness among the public at large of the need to prevent and combat crimes under the Optional Protocol, focusing on children who are particularly at risk of becoming victims and their parents, and encouraging the participation of the community, in particular that of children including child victims of both sexes.**

#### **Training**

19. While appreciating the statement made during the dialogue that a major component of the strategic action plan will be enhanced training for the officials most likely to come in contact with trafficking victims, as well as the efforts undertaken by the Department of Justice and the National Coordinator to provide training, domestically and abroad, the Committee is nevertheless concerned that training mainly addresses trafficking. Furthermore, the Committee is concerned that training is not sufficiently child-specific and that it does not contemplate evaluation of the impact of training on actual changes in understanding and behaviour.

20. **The Committee recommends that the State party extend and strengthen its training activities and ensure that they include all areas covered by the Optional Protocol and are provided to all relevant professionals working with and for children, including judges, public prosecutors, police officers, immigration and customs officers, medical staff, social welfare officers, religious and community leaders, organizations accredited for adoption, media and other professionals and all technical staff concerned.**

#### **Allocation of resources**

21. The Committee regrets the absence of clearly identifiable budget allocations assigned to activities designated to implement the Optional Protocol at the federal and state levels.

22. **The Committee recommends that the State party provide identifiable budget allocations to implement and evaluate application of the Optional Protocol. In addition, it specifically recommends that funding for research and programmes to prevent crimes under the Protocol is increased and provided to public agencies,**

research institutions and NGOs that focus on understanding the family and community root causes that engender vulnerability to sale, sexual and labour exploitation and pornography.

## **V. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1-2)**

### **Measures adopted to prevent offences prohibited under the Optional Protocol**

23. The Committee regrets that the approach of existing policies, programmes and administrative measures to prevent offences under the Optional Protocol, is law-enforcement oriented to the detriment of a broader approach centred on the life and development of children. The Committee notes with particular concern that:

(a) Limited efforts have been undertaken to reduce the demand for children's sexual services as addressed in its previous concluding observations (CRC/C/OPSC/USA/CO/1, para. 22, 2008), and to raise public awareness among adults who buy sexual services that they may in fact be abusing children;

(b) Research and studies on the root causes and the risk factors of crimes covered under the Optional Protocol are insufficiently supported;

(c) Limited measures have been taken to combat gender-based discrimination and violence which constitute major factors in the sale of children, child prostitution and child pornography; and

(d) Limited or no attention is paid to children in vulnerable situations, such as children living in poverty, migrant children, children living in difficult family situations, including runaway and homeless children, native American children especially females, boys who tend to be throwaways and runaways, lesbian, gay, bisexual and transgender (LGBT) children, adolescent girls and "in-system" children, who are particularly at risk of becoming victims of the offences covered under the Optional Protocol.

24. **The Committee urges the State party, to:**

(a) **Promote awareness and understanding of social norms and perceptions regarding child prostitution and child pornography with a view to changing attitudes and behaviour of those demanding sexual services and of officials enforcing the law in order to prevent child sexual exploitation, whether for commercial or other reasons, and avoid victimization of children. In so doing, focus on family and community efforts to establish the safeguards and barriers required for prevention and protection of children, including the liability of parents;**

(b) **Conduct research on the profile of clients of child prostitution and child pornography, with a view to tackling demand as recommended by the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/16/57/Add.5, para. 109 (f), 2010);**

(c) **Enact the Violence Against Women Reauthorization Act of 2012 – H.R. 4271 – and strengthen efforts to combat gender-based discrimination and violence;**

(d) **Undertake research on root causes, public awareness programmes and public debates in order to identify and protect the most vulnerable children, including children living in poverty, migrant children, children living in difficult family situations, including runaway and homeless children, native American children especially females, boys who tend to be throwaways and runaways, LGBT children, adolescent girls and "in-system" children, who are at particular risk of being victims**

of the offences covered under the Optional Protocol, and provide them with the necessary support and assistance;

(e) **Develop school-based prevention and early intervention programmes and involve all key stakeholders and children; and,**

(f) **Consult and enlist children and young people whose experience and insights can help identify areas for intervention, can design relevant solutions and act as strategic informants of research.**

#### **Economic exploitation of children**

25. The Committee is deeply concerned that in the State party a large number of children are trafficked for the purpose of labour, especially in the agricultural sector, and that many children face the worst forms of child labour, including forced labour. The Committee is also concerned that little data is available on child economic exploitation. Furthermore, the Committee is also concerned at the dearth of relevant legislation regarding child labour and child economic exploitation in the agricultural sector and other sectors employing especially foreign nationals often in conditions amounting to servitude. The Committee is particularly concerned that children under the age of 16 can be hired to work in small farms with parental consent. The Committee is further concerned that children under 18 years and, in some cases, under 16 years are often encountered working in the agricultural sector in hazardous or dangerous conditions.

26. **The Committee urges the State party to take active measures to prevent the sale of children for the purpose of child labour by, inter alia, applying the TVPA to define modern forms of servitude related to child labour and ensure that the burden of proof is on the Government and not on the exploited children who do not have the capacity nor maturity to consent to being sold for this purpose. Furthermore, the Committee recommends that the State party:**

(a) **Adopt a coordinated strategy and a dedicated budget for combating the worst forms of child labour, especially in the agricultural sector;**

(b) **Review and revise laws at federal and state level to ensure that the minimum age of 16 years also applies to small farms with or without parental consent;**

(c) **Strengthen the human, technical and financial resources of the Department of Labor, in particular the Wage and Hour Division at federal and state level, to ensure that inspections, monitoring, mediation and conciliation are undertaken to liberate children safely from economic exploitation and reintegrate them into society with full enjoyment of their rights;**

(d) **Review policies and improve standards regarding United States industries and businesses that hire children both in and outside the country in order to prevent egregious forms of child labour, including in agriculture, some manufacturing industries, childcare and the service sectors; and**

(e) **Collect data on the number, sex and age of children, the conditions of work and life, the impact on their rights and development and improve records related to child labour;**

(f) **Ensure that child labour legislation specifically focuses on unaccompanied foreign nationals who are minors brought or arrived into the country for purposes amounting to economic exploitation; and**

(g) **Ratify International Labour Organization (ILO) Convention No. 138 (1973) concerning the minimum age for admission to employment.**

### **Child pornography**

27. While welcoming the efforts undertaken by the State party to combat child pornography including the PROTECT Our Children Act of 2008, the Committee remains concerned about the growing availability of child pornography online, the use of ever younger children and the increase in the violence of images recorded, as observed by the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/16/57/Add.5, para.100, 2011).

28. **The Committee urges the State party to:**

**(a) Effectively prevent publication and dissemination of pornographic material concerning children through surveillance mechanisms to automatically block offending Internet Service Providers (ISPs), and other media;**

**(b) Take prompt steps to establish an authority for Internet safety, ISP licensing and checks for content harmful to children;**

**(c) Strengthen its measures to identify and assist child victims of child pornography in all settings and media; and**

**(d) Continue to strengthen international cooperation to prevent and punish child pornography worldwide.**

### **Adoption**

29. The Committee appreciates the adoption of the Intercountry Adoption Universal Accreditation Act of 2012, S. 3331 (UAA), expanding the accreditation standards in the Intercountry Adoption Act (IAA) of 2000 to cover all intercountry adoptions. However, the Committee notes with concern that the 2012 UAA establishes a period of 180 days after entering into force for presentation of petitions for cases outside the Convention or orphan petitions without having to comply with the 2000 IAA. Furthermore, the Committee is particularly concerned that:

(a) Ambiguous definitions and legal loopholes persist despite the new accreditation act, such as for example the fact that payments before birth and other expenses to birth mothers, including surrogate mothers, continue to be allowed, thus impeding effective elimination of the sale of children for adoption;

(b) The absence of federal legislation with regard to surrogacy, which if not clearly regulated, amounts to sale of children;

(c) The 2000 IAA requires that the other country involved in intercountry adoption be a signatory to the Hague Convention in order for it to be applied, thus restricting the effective application of the law in all international adoption cases;

(d) The requirement of a “knowing and wilful disregard of the law” as provided for in the 2000 IAA as a ground for prosecution which can result in persons or agencies, involved in illegal acts avoiding culpability and escaping legal proceedings;

(e) The concurrent jurisdiction of state and federal courts which may lead to misuse of the legal system;

(f) The lack of information on the measures taken to ensure that adopted children are not subjected to any form of abuse and neglect; and

(g) The lack of information on the case of Anyelí Liseth Hernández Rodríguez.

30. **The Committee strongly recommends that the State party:**

(a) **Be especially vigilant with respect to petitions for adoption presented during the 180 days period after signature by the President of the 2012 UAA with the purpose of ensuring they do not amount to sale or infringe any other norm contained in the Hague Convention on intercountry adoption and monitor how requests for adoption have been processed;**

(b) **Define, regulate, monitor and criminalize the sale of children at federal level and in all states in accordance with the Optional Protocol, and in particular the sale of children for the purpose of illegal adoption, in conformity with article 3, paragraphs 1 (a) (ii) and 5, of the Protocol; including issues such as, surrogacy and payments before birth and the definition of what amounts to “reasonable costs”;**

(c) **Adequately and effectively implement the Hague Convention on intercountry adoption in order to curb the instances of sale of children for international adoption purposes;**

(d) **Modify the 2000 IAA to better define “knowledge” so that it does not necessarily require actual knowledge of transgressions, but rather allows suspicion as grounds for investigation of abuse or sale or other;**

(e) **Take all necessary measures to prevent agencies or individuals from the State party from entering foreign countries to pursue adoption, disregarding legal procedures of the countries involved;**

(f) **Ensure effective and systematic accreditation and monitoring of all individuals and entities dealing with adoptions directly or as intermediaries, consider limiting their number, and ensure that adoption processes do not result in financial gains to any party;**

(g) **Ensure the provision of adequate social support and counselling for adoptive parents in preparation for the adoption and to help the integration of the adopted child into the adoptive family, and adequately follow up and monitor adoption, including provisions for establishing liability of adoptive parents in cases of abuse, neglect or exploitation;**

(h) **Train and monitor social workers and case managers on adoption laws, regulations and issues; and**

(i) **Ensure that the best interests of the child are the paramount consideration during the entire adoption procedure, in addition to having the child’s view taken into account to the greatest extent possible, having due regard to the child’s age and maturity.**

#### **Child sex tourism**

31. While noting as positive the information given by the State party that recent legislation has expanded the tools with which United States officials can pursue those who engage in sex tourism, the Committee is concerned that little progress has been made concerning the involvement of American citizens in child sex tourism abroad and that the State party remains among the main source countries for child sex tourism. It expresses further concern that reasonable belief that the victim was at least 18 years old can be accepted as legal defence for sex tourists.

32. **The Committee urges the State party to:**

(a) **Review its legislation and ensure that reasonable belief that the victim was at least 18 years old can no longer be accepted as legal defence for sex tourists;**

(b) Strengthen its efforts to combat sex tourism, including by raising awareness to change attitudes, such as the idea that it is acceptable to abuse and exploit children living in poverty in foreign countries, as recommended in its previous concluding observations (CRC/C/OPSC/USA/CO/1, para. 29, 2008);

(c) Advocate with the tourism industry the fact that child sex tourism amounts to trafficking and sale and that these are illegal offences under United States law; and

(d) Widely disseminate the World Tourism Organization (UNWTO) Global Code of Ethics for Tourism among travel agents and tourism agencies, and encourage these enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism and to report publicly on their efforts to preventing child sex tourism.

## **VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (paras. 2-3), 5, 6 and 7)**

### **Existing criminal or penal laws and regulations**

33. The Committee notes that despite the incorporation of some of the prohibitions of the Optional Protocol into some state laws, domestic legislation is still not fully in compliance with the Protocol. The Committee is particularly concerned that:

(a) Federal law does not prohibit the sale of children per se but rather proscribes the sale of children for specific purposes such as child prostitution, child pornography and adoption and that not all states have enacted laws related to the sale of children or even to trafficking as defined at federal level;

(b) Children are still being legally arrested, detained and prosecuted for prostitution in the majority of states which have not passed safe-harbour type laws protecting victims from arrest and even in states that have passed such laws, arrest and prosecution still occur due to gaps and weaknesses therein; and

(c) Child pornography is only considered a crime if expressed visually.

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

(a) **Define and prohibit child prostitution and sale of children for any purpose with or without economic retribution in accordance with articles 2-3 of the Optional Protocol, at federal level and in all states;**

(b) **Legally and effectively decriminalize the involvement of children in prostitution ensuring that no state law on prostitution allows for the arrest and detention of prostituted minors and that the upper age for protection of child victims is set at 18 years throughout the State party's territory;**

(c) **Pass safe-harbour laws in all states that have not yet done so to ensure that prostituted children are protected and not arrested or detained, and provide training and funding for the promotion and application of such laws;**

(d) **Make all the offences under the Optional Protocol punishable by appropriate penalties that take into account their grave nature, both at federal and state level; and**

**(e) Ensure that attempting to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the Protocol.**

35. The Committee is deeply concerned at information of sexual abuse committed by clerics and leading members of certain faith-based organizations and religious institutions on a massive and long-term scale amounting to sexual slavery or servitude of children and about the lack of measures taken by the State party to properly investigate cases and prosecute those accused who are members of those organizations and institutions.

**36. The Committee urges the State party to take all necessary measures to investigate all cases of sexual abuse of children whether single or on a massive and long-term scale, committed by clerics, to issue clear instructions to all relevant authorities to actively prosecute those cases and to engage in a dialogue with faith-based organizations, religious institutions and their leaders, in order to enlist their active and open collaboration to prevent, investigate and prosecute cases. The State party should also draw the attention of law-enforcement authorities to the sanctions that may be imposed on them in case of inaction and/or corruption.**

#### **Liability of legal persons**

37. The Committee acknowledges that in practice the State party recognizes the liability of legal persons who have participated in crimes under the Optional Protocol. Nevertheless, the Committee is concerned that this responsibility is not explicitly reflected in the law and that it has been applied only in relation to employment, mostly to benefit business enterprises involved.

**38. The Committee recommends that the State party explicitly incorporate into law the liability of legal persons who participate in any of the crimes under the Optional Protocol, with the establishment of legal sanctions commensurate with the seriousness of the crime committed.**

#### **Extraterritorial jurisdiction**

39. The Committee reiterates its previous concern (CRC/C/OPSC/USA/CO/1, para. 35, 2008) that the State party's extraterritorial jurisdiction based on the nationality of the offender, does not reach all offences covered by the Optional Protocol. The Committee also notes that federal law does not generally provide for the assertion of extraterritorial jurisdiction where the victim is a State party's national.

**40. The Committee reiterates its previous recommendation (CRC/C/OPSC/USA/CO/1, para. 36, 2008), in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism and recommends that the State party establish its jurisdiction in all cases listed under article 4 of the Optional Protocol. Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Protocol abroad if it does not extradite him or her to another State party and even if the country where the offence was committed is not a party to the Protocol or does not criminalize these acts in its legislation.**

#### **Extradition**

41. The Committee welcomes the fact that the State party included extradition for crimes under the Optional Protocol in bilateral agreements signed after it came into force. Likewise, the Committee acknowledges that the State party considers that the Protocol

modifies all bilateral agreements signed previously to it coming into force with States that have also ratified the Protocol in order to include crimes under it. However, the Committee is concerned that such crimes are not considered to be included in agreements with States that have not ratified the Protocol and that no extraditions would be ruled in the absence of a bilateral agreement even if the other state has ratified the Protocol. Furthermore, the Committee is concerned that in all cases the State party requires double criminality.

42. **The Committee recommends that the State party modify its legislation in order to consider, in all cases, the crimes under the Optional Protocol as crimes that are subject to extradition. Likewise, it recommends that the State party use the possibility provided under article 5.2 to invoke the Protocol as the juridical basis for extradition in respect of crimes included therein, even if no bilateral agreement exists. In any case, it recommends that the State party withdraw the double criminality requisite for all crimes under the Protocol.**

#### **Sale of organs**

43. **The Committee, due to the lack of information with regard to the sale of organs, urges the State party to investigate with a view to preventing it, prosecute those responsible, and protect child victims. The Committee recommends that the State party include information in that regard in its next periodic report.**

## **VII. Protection of the rights of child victims (arts. 8 and 9, paras. 3-4)**

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

#### **Recovery and reintegration of victims**

44. The Committee is deeply concerned that protection services are severely lacking amounting to a few hundred shelter beds throughout the entire State party for sexually exploited children, mostly funded by private institutions and private charity organizations. Even in states with safe-harbour laws which provide for service referral to victims, these are often non-existent resulting in most cases in arrest and detention in order “to protect” children from further violations and suffering. The Committee is also concerned that these children often still lack adequate services for their full physical, psychological and emotional recovery and social reintegration as well as compensation.

45. **The Committee strongly urges the State party to increase the allocation and spending of resources to establish directly or through service providers, the specialized services required for children who have been trafficked, sold for sexual or economic exploitation or otherwise victims of crimes under the Optional Protocol. These should include shelters for immediate relief and longer-term services, especially family reunification, if appropriate, or placement in family settings, and health and education, in order for them to recover physically, psychologically and emotionally and to reintegrate into society. Adequate remedy and reparation should be sought legally and through other means.**

#### **Unaccompanied foreign children, asylum seekers, refugees and migrants**

46. While noting that the TVPA allows trafficking victims to stay in the United States if they suffer extreme hardship involving unusual and severe harm if returned to their home country, the Committee is concerned at the information that the State party is applying a

very narrow definition of what constitutes human trafficking and who is eligible for relief. The Committee, while noting the efforts undertaken to screen unaccompanied alien children, is particularly concerned that trafficked children are often treated by government officials as offenders and reiterates its previous concern that they may face return or deportation as unidentified trafficked victims, without determination of their best interests being carried out.

47. **The Committee recommends that the State party ensure, inter alia through future reauthorization of the 2008 TVPA and the Refugee Protection Act of 2011 that foreign immigrant children victims of offences covered by the Optional Protocol are not returned or deported. The Committee further recommends that the State party provide immigrant child victims with all the necessary services aimed at their physical, psychological and emotional recovery. The Committee further recommends that the State party call for the incorporation of a “best interests determination” for unaccompanied children in all decisions throughout immigration-related procedures and ensure that every unaccompanied child is appointed an independent Child Advocate to protect the child’s best interests in all immigration-related procedures and that every unaccompanied child is represented in all immigration court proceedings by a qualified attorney.**

#### **Criminal justice system protection measures**

48. The Committee is concerned at allegations that children are often interviewed and screened by officials who lack experience in trauma informed interviewing and in inappropriate, uncomfortable and even threatening settings. Furthermore, the Committee is concerned that child victims are often required to testify in open court in front of their trafficker or pimp, as observed by the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/16/57/Add.5, para. 76).

49. **The Committee urges the State party to:**

**(a) Establish clear procedures and standards for the care and protection of child victims and/or witnesses of crimes and that their application is monitored for quality;**

**(b) Ensure that all professionals receive training on child-friendly interaction with child victims and witnesses at all stages of the criminal and judicial process, in accordance with article 8, paragraph 1, of the Optional Protocol and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex);**

**(c) Ensure that in the treatment by the criminal justice system of children who are victims of the offences described in the Optional Protocol, the best interests of the child are a primary consideration;**

**(d) Make legal assistance available to all victims of offences under the Optional Protocol; and**

**(e) Encourage all states to undertake procedural reforms to allow prosecution of perpetrators without victim/witness testimony and use videotaped testimony/interviews as evidence in court in order to avoid revictimization of the child.**

## **VIII. International assistance and cooperation (art. 10)**

### **Multilateral, regional, bilateral agreements**

50. The Committee welcomes the significant international cooperation extended by the State party on issues related to the Optional Protocol. However, the Committee regrets that lack of clarification of the difference between trafficking in persons and sale in children in the State party's national legislation impedes international consistency in the application of the Protocol.

51. **In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral and bilateral agreements, especially with neighbouring countries and the countries of the region, including by clarifying its legislation regarding the difference between trafficking and sale, 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 Protocol.**

## **IX. Ratification of the Optional Protocol on a communications procedure**

52. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC).

## **X. Follow-up and dissemination**

### **Follow-up**

53. 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 departments and agencies, the House of Representatives, the Senate, the Supreme Court and to state authorities, for appropriate consideration and further action.

### **Dissemination of concluding observations**

54. 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, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

## **XI. Next report**

55. **In accordance with article 12, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Protocol and the present concluding observations in its next combined third and fourth periodic report, due on 23 January 2016.**