



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Concluding observations on the report submitted by New Zealand 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\*

1. The Committee considered the initial report of New Zealand (CRC/C/OPSC/NZL/1) at its 2140th meeting (see CRC/C/SR.2140), held on 16 September 2016, and adopted the following concluding observations at its 2160th meeting (see CRC/C/SR.2160), held on 30 September 2016.

#### I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/NZL/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the high-level and multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's fifth periodic report under the Convention on the Rights of the Child (CRC/C/NZL/CO/5), adopted on 30 September 2016, and those on its initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CO/2003/NZL), adopted on 3 October 2003.

#### II. General observations

##### Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

(a) The 2015 amendment to the Crimes Act aimed at criminalizing domestic trafficking and aspects of grooming, and the 2005 amendment aimed at criminalizing

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\* Adopted by the Committee at its seventy-third session (13-30 September 2016).



dealing in children for the purpose of sexual exploitation, the removal of body parts and engagement in forced labour;

(b) The Vulnerable Children Act, in 2014, which sets clear expectations for consistent safety checking across the children's workforce;

(c) The Victims' Rights Amendment Act, the Parole Amendment Act and the Sentencing Amendment Act, in 2014, and the Children, Young Persons and Their Families Amendment Act, in 2016;

(d) The Adoption Amendment Act, in 2011, which inserts sections 27 (A)-(D) into the Adoption Act 1955 and creates the offence to improperly induce consent for the adoption of a child.

5. The Committee further welcomes the adoption in 2012 of the Children's Action Plan, which responds to the White Paper for Vulnerable Children and establishes local Children's Teams to bring together professional people from the health, education and social services sector to develop a single response plan to identify, support and protect vulnerable children.

### III. Data

#### Data collection

6. The Committee welcomes the State party's efforts to improve data collection to better identify children at risk of abuse or neglect through the establishment of the Approved Information Sharing Agreement for Improving Public Services for Vulnerable Children and the Vulnerable Kids Information System. However, it expresses its concern at the lack of a comprehensive system for collecting disaggregated data on areas covered by the Optional Protocol, in particular the sale of children and child prostitution, which limits the State party's capacity to monitor and assess such offences under the Protocol. The Committee is further concerned at the lack of information regarding the number of cases duly investigated and of perpetrators prosecuted and sanctioned commensurate with the gravity of their crimes.

**7. The Committee recommends that the State party continue its efforts to develop and implement a comprehensive, coordinated and effective system of data collection, analysis, monitoring and impact assessment on all areas covered by the Optional Protocol, including on the sale of children and child prostitution. The data should be disaggregated, inter alia, by sex, age, nationality and ethnic origin, region and socioeconomic status, with particular attention to children who are at risk of becoming victims of crimes under the Optional Protocol. Data should also be collected on the number of prosecutions and sanctions, disaggregated by the nature of the offence.**

### IV. General measures of implementation

#### Legislation

8. The Committee welcomes the adoption of the Crimes Amendment Act 2005, which prohibits dealing in children for the purpose of sexual exploitation, the removal of body parts, and engagement in forced labour; the Films, Videos and Publications Classification Amendment Act 2005; and the Prostitution Reform Act 2003. However, it is concerned that the domestic legislation does not fully incorporate all offences under the Optional Protocol

and is not harmonized, particularly concerning the definition and terminology, with its articles 2 and 3.

9. **The Committee urges the State party to continue its efforts to harmonize domestic legislation with the Optional Protocol. In particular, it recommends that the State party, in accordance with its obligation under articles 2 and 3 of the Optional Protocol, define and prohibit all cases of sale of children, child prostitution and pornography, including attempt and complicity to commit any of these acts.**

### **Comprehensive policy and strategy**

10. The Committee welcomes the adoption of the Children's Action Plan, the National Plan of Action to Prevent People Trafficking and the National Plan of Action against the Commercial Sexual Exploitation of Children. However, it is concerned about the continuing lack of a comprehensive policy and plan of action on children that includes all issues covered by the Optional Protocol.

11. **With reference to its concluding observations under the Convention (CRC/C/NZL/CO/5, para. 7), the Committee recommends that the State party adopt a comprehensive policy and corresponding national plan of action that addresses all issues covered under the Optional Protocol and provide adequate human, technical and financial resources for its implementation. In doing so, the State party should 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 Commercial Sexual Exploitation of Children, held in Stockholm, Yokohama, Japan and Rio de Janeiro, Brazil in 1996, 2001 and 2008, respectively. The Committee also encourages the State party to ensure that such policy and strategy be regularly evaluated.**

### **Coordination and evaluation**

12. The Committee notes with appreciation the establishment of the Social Sector Board Deputy Chief Executives as the coordinating mechanism for the implementation of the Convention and its Optional Protocols, and its collaboration with the Convention on the Rights of the Child Monitoring Group. The Committee is, however, concerned about the insufficient information regarding its human, technical and financial resources and its authority to coordinate all activities related to the implementation of the Optional Protocol.

13. **With reference to its concluding observations under the Convention (CRC/C/NZL/CO/5, para. 8), the Committee recommends that the State party ensure that the Social Sector Board Deputy Chief Executives mechanism is provided with the necessary human, technical and financial resources for its effective operation and sufficient authority to coordinate all activities related to the implementation of the Convention and its Optional Protocols at the cross-sectoral, national, regional and local levels.**

### **Monitoring**

14. The Committee is concerned that the National Human Rights Commission does not have an explicit mandate to address human rights violations related to the Optional Protocol, in particular sexual exploitation of children, and that the Children's Commissioner is only mandated to raise awareness of and promote the Convention and not the Optional Protocol.

15. **The Committee recommends that the State party take all necessary measures, including legislative measures, to ensure that the Children's Commissioner has an explicit mandate to promote and monitor the implementation of the Optional Protocol and is provided with adequate human, technical and financial resources to do so. The State party should also ensure that the National Human Rights Commission is able to receive, investigate and address complaints by children for offences covered under the Optional Protocol.**

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

16. The Committee welcomes the efforts made by the State party to increase knowledge and awareness about trafficking, on the one hand, and child sexual abuse and sexual violence on the other. The Committee is, however, concerned that the State party, as acknowledged in its replies to the list of issues (CRC/C/NZL/Q/5/Add.1, para. 12), does not have programmes to raise awareness of the Optional Protocol, which contributes to a low level of understanding and awareness of the Optional Protocol among the general public, children, their families and communities, and professional groups working with and/or for children.

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

(a) **Develop, in close cooperation with relevant government agencies, civil society organizations, the media, the private sector, communities and children, awareness-raising programmes on all issues covered by the Optional Protocol and protection measures provided against such practices in domestic laws;**

(b) **Systematically make the provisions of the Optional Protocol known to the public at large, including to children in a child-friendly manner, their families and communities, and professional groups working with and/or for children.**

### **Training**

18. The Committee notes as positive the various training programmes targeting front-line staff, refugee, protection, health and safety officers and labour inspectors on the detection of victims of trafficking and investigation practices, and for judiciary officials working with child victims. The Committee is concerned, however, that efforts to provide adequate training for professionals working with and/or for children, in particular judges, prosecutors, law enforcement officers, education and health professionals and social workers, are not systematic and do not include all areas covered by the Optional Protocol.

19. **The Committee recommends that the State party extend and strengthen its training activities and ensure that they are systematic and multidisciplinary, include all areas covered by the Optional Protocol, and are provided to all relevant professionals working with and for children, especially judges, prosecutors, social workers, law enforcement and immigration officials at all levels. The Committee also recommends that the State party ensure the systematic evaluation of all training programmes on the Protocol with a view to enhancing their impact and relevance.**

### **Allocation of resources**

20. The Committee is concerned that the State party has not provided adequate information on the budget specifically allocated for the implementation of the Optional Protocol.

21. The Committee recommends that the State party allocate sufficient and targeted resources for the effective implementation of the Optional Protocol at the national, regional and local levels.

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

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

22. The Committee notes with appreciation that the Children's Action Plan deals with the cumulative effect of risk factors affecting children in vulnerable situation. It welcomes the educational and awareness-raising measures and programmes focusing on the identification and the monitoring of vulnerable groups of children who are at risk of becoming victims of the offences covered by the Optional Protocol, especially children who are victims of domestic violence, children using the Internet without proper supervision, child refugees and asylum seekers and children in irregular migration situations. However, the Committee regrets that preventive measures relating to the specific offences under the Optional Protocol remain inadequate. Furthermore, the Committee is concerned that the underlying root causes of the offences under the Optional Protocol, such as poverty, are not sufficiently addressed.

23. The Committee encourages the State party to:

(a) **Undertake research on the nature and root causes of the sexual exploitation of children, in particular child prostitution and pornography, in order to identify children at risk and assess the extent of the problem;**

(b) **Undertake targeted preventive measures, including against exploitation over the Internet, and cooperate with international intergovernmental and non-governmental organizations concerning the implementation of awareness-raising campaigns in all areas covered by the Optional Protocol;**

(c) **Give further attention to the implementation of social and economic development programmes and poverty reduction strategies, including through the appropriate allocation of financial resources for the prevention of all forms of exploitation as defined in the Optional Protocol.**

### **Child sex tourism**

24. The Committee welcomes the measures taken by the State party to prevent child sex tourism, such as the involvement of the New Zealand Police in the South-East Asian law enforcement capability-building project, which focuses on child exploitation, and the establishment of a mechanism for notification of cases of child sex tourism committed in other countries by nationals or foreign residents of the State party. The Committee, however, is concerned that an effective regulatory framework is lacking and measures taken to effectively prevent and combat child sex tourism abroad are insufficient.

25. **The Committee urges the State party to conduct advocacy campaigns with the tourism industry on the harmful effects of child sex tourism, widely disseminate the World Tourism Organization Global Code of Ethics for Tourism among tour operators and travel agents and encourage those enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.**

### **Programmes targeting particular groups**

26. The Committee notes with appreciation the various programmes developed by the New Zealand Police and the Accident Compensation Corporation to raise awareness and teach prevention among schoolchildren on a number of areas covered by the Optional Protocol with a focus on Internet safety. However, it is concerned that those programmes do not incorporate prevention of sexual exploitation of children and are often at the regional level and not provided in all schools.

27. **The Committee recommends that the State party undertake campaigns to raise awareness on and prevent sexual exploitation of children with a view to covering all schools and all regions of New Zealand.**

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

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

28. While noting the criminalization of domestic trafficking and trafficking for the purpose of exploitation in the Crimes Amendment Act (2015), the Committee is concerned that the national legislation does not explicitly define and criminalize all acts committed in the context of sale of children as covered in the Optional Protocol.

29. **The Committee recommends that the State party explicitly define and criminalize all offences committed in the context of sale of children in accordance with articles 2 and 3 of the Optional Protocol.**

30. The Committee is concerned that inducement to trafficking by means of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, is still not criminalized, as required by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). The Committee is also concerned that the Crimes Amendment Act (2015) does not make an exception to the requirement of one or more acts of coercion or deception in the situation of trafficking in children, which is only defined as an aggravating factor when determining sentencing.

31. **The Committee recommends that the State party continue its efforts to ensure compliance with the Palermo Protocol, including by revising the Crimes Amendment Act (2015) to criminalize inducing a person to trafficking by means of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, and trafficking in children even when no coercion, deception or other means of abuse of power are involved.**

32. While noting that the Prostitution Reform Act (2003) establishes the prohibition to use persons under 18 for prostitution, the Committee is concerned that there is no definition of child prostitution in line with article 2 (b) of the Optional Protocol. It is also concerned that some of the acts described in article 3 (1) (b) of the Optional Protocol are not properly reflected in the Prostitution Reform Act (2003) and that attempt or complicity with child prostitution are not explicitly criminalized.

33. **The Committee recommends that the State party review and bring the Prostitution Reform Act (2003) into full compliance with articles 2 and 3 of the Optional Protocol and explicitly criminalize attempt or complicity with child prostitution, in line with article 3 (2) of the Optional Protocol.**

34. The Committee is concerned that the Film, Videos and Publications Classification Amendment Act (2005) only defines child pornography with respect to extraterritorial jurisdiction. Furthermore, while noting the development of the Objectionable Publications and Indecency Legislation Bill, aimed at increasing the penalties for producing, trading or possessing child pornography, the Committee is concerned that attempted or complicity with child pornography are not explicitly criminalized.

35. **The Committee recommends that the State party review the Film, Videos and Publications Classification Amendment Act (2005) in order to expand the applicability of the definition of child pornography to the entirety of the Act and to explicitly criminalize attempted or complicity with child pornography, in line with article 3 (2) of the Optional Protocol.**

36. The Committee is concerned that the Crime Amendment Act (2015) criminalizing aspects of grooming only protects children up to the age of 16 from being exposed to pornographic documents.

37. **The Committee recommends that the State party ensure that all children under the age of 18 are fully protected from exposure to pornographic documents by the Crime Amendment Act (2015).**

### **Liability of legal persons**

38. The Committee notes with concern the limited manner in which legal persons, including corporations, may be held liable for acts or omissions related to the sale of children, child prostitution and child pornography. In particular, the Committee is concerned that the statutory wording or nature of an offence, sexual or otherwise, may mean that a company cannot incur liability as a principal offender.

39. **The Committee recommends that the State party revise its legislation to ensure that all legal persons, including corporations, can be held liable for offences related to the Optional Protocol in conformity with article 3 (4) of the Optional Protocol.**

### **Extraterritorial jurisdiction**

40. The Committee is concerned that the State party does not have extraterritorial jurisdiction under section 7A of the Crimes Act if the victim is a national of New Zealand.

41. **The Committee recommends that the State party take all necessary steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all offences covered by the Optional Protocol, also when such offences are committed against a person who is a citizen of the State party.**

### **Extradition**

42. The Committee notes that extradition is subject to the double criminality requirement and the offence to be punishable by 12 months or more of imprisonment in both the requested and the requesting country.

43. The Committee recommends that the State party remove the limits on extradition for offences under the Optional Protocol, in particular the requirement of double criminality and the requirement of a minimal penalty under its national legislation and consider the use of the Optional Protocol as a legal basis for extradition in the absence of an extradition treaty.

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

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

44. The Committee notes that the 2016 amendments to the Children, Young Persons and their Families Act (1989) provides for care and protection of a child and young person who is being or is likely to be harmed, ill-treated, abused or seriously deprived. The Committee is however concerned that the Victims' Rights Amendment Act (2014), which aims at enhancing victims' rights and role in criminal justice processes and at improving the responses of government agencies to victims of crime, provides no special protections for child victims, as required by article 8 of the Optional Protocol. It is also concerned that child victims of crimes where the crime is handled in district courts or the High Court are only appointed a victim adviser after charges have been filed in court.

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

- (a) **Recognize the vulnerability of child victims and provide for procedures that address their special needs as victims and/or witnesses;**
- (b) **Establish mechanisms and procedures for the early detection and identification of child victims of offences prohibited under the Optional Protocol;**
- (c) **Review the Victims' Rights Amendment Act (2014) to ensure that victim support services are available to child victims from the date that the complaint is made.**

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

46. The Committee notes as positive the measures taken by the State party to guarantee the legal protection and confidentiality of child victims and/or witnesses throughout the criminal proceedings, including the adoption of the Evidence Act (2006) and the Child Protection Protocol, the provision of the Court Education for Young Witnesses and the elaboration of guidelines by the Ministry of Justice for those working with child victims and/or witnesses. Nevertheless, the Committee is concerned that:

- (a) The prosecutor is still required to apply to the court for directions on how a child victim should give evidence;
- (b) There is no appropriate monitoring and accountability mechanism to ensure that those working with child victims and/or witnesses comply with the legislation and procedures in place.

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

- (a) **Ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes are provided with the protection required in the Optional Protocol;**



(b) Expedite the enactment of the Evidence Amendment Bill to allow child victims and/or witnesses to provide evidence via alternative ways, such as closed-circuit television or video recording of their evidential interview, and have access to a support person while providing evidence on a legislative presumption basis;

(c) Ensure the effective implementation of the Child Protection Protocol to guarantee that the requirements about making children safe when going through the legal process and receiving specialized support are duly met;

(d) Ensure that judges, prosecutors, police, social workers, medical staff and other professionals working with child victims and witnesses receive training on child-friendly interaction with them at all stages of the criminal and judicial processes. The State party should be guided in that respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex);

(e) Ensure that child victims and/or witnesses are informed of their rights and role in the criminal proceedings and of the timing and progress of such proceedings;

(f) Ensure that child victims and/or witnesses are able to voice their concerns, views and needs during the criminal justice process, especially when their interests are affected, and that they are afforded appropriate support and assistance accordingly;

(g) Ensure that children's identity and right to privacy is protected throughout the criminal justice process;

(h) Establish monitoring and accountability mechanisms to ensure that those working with child victims and/or witnesses comply with the legislative and procedural measures in place.

## **Recovery and reintegration of victims**

48. The Committee notes with appreciation that children affected by crime and trauma, including victims of sexual exploitation, can have access to help from a free victim support service, available 24 hours a day, throughout the territory of the State party. It further notes that the New Zealand Accident Compensation Corporation funds support, counselling and other treatment, as well as medical care, rehabilitation services and financial entitlements under certain circumstances, for children and young people who may have suffered a mental injury as a result of sexual abuse or assault. However, the Committee is concerned that:

(a) The measures for the recovery and reintegration of victims of all offences under the Optional Protocol remain insufficient;

(b) Child victims of sexual exploitation are not made aware of their eligibility for Accident Compensation Corporation services, which is usually only publicized as an option for victims of sexual abuse or assault;

(c) Child victims have to see an Accident Compensation Corporation-registered counsellor for up to four visits so that the Corporation may determine whether to grant relief;

(d) There is no adequate procedures through which child victims may seek compensation from perpetrators or the Accident Compensation Corporation.

49. The Committee urges the State party to further strengthen measures to ensure appropriate assistance to victims of all offences under the Optional Protocol, including their full social reintegration and physical and psychological recovery. The Committee, in particular, recommends that the State party:

(a) Develop and implement programmes to provide short-, medium- and long-term support for children who have been victims of crimes under the Optional Protocol, and ensure the allocation of adequate human, technical and financial resources;

(b) Ensure that all child victims, including victims of sexual exploitation, are duly informed of their right to have access to Accident Compensation Corporation services;

(c) Take all necessary measures to minimize the trauma caused to child victims seeking rehabilitation from the Accident Compensation Corporation, including by reducing the number of mandatory visits to the Corporation-registered counsellor or eliminating the requirement for physical examinations;

(d) Guarantee that all child victims, including those who are not nationals or residents of the State party, have access to adequate procedures to seek, without discrimination, compensation from those legally responsible, in accordance with article 9 (4) of the Optional Protocol, and consider establishing a victims' compensation fund for those cases where victims cannot obtain compensation from the perpetrator.

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

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

50. In the light of article 10 (1) of the Optional Protocol, 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.

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

### **Follow-up**

51. 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 relevant government ministries, Parliament and national and local authorities for appropriate consideration and further action.

### **Dissemination of concluding observations**

52. The Committee recommends that the report and written replies submitted by the State party and the present concluding observations be made widely available, including, but not exclusively, through the Internet, 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.

## **X. Next report**

53. In accordance with article 12 (2) of the Optional Protocol, 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.

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