



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-fifth session

13 September – 1 October 2010

Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Concluding observations: Montenegro

1. The Committee considered the initial report of Montenegro under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/MNE/1) at its 1562nd meeting, held on 21 September 2010 (see CRC/C/SR.1562), and adopted at its 1583rd meeting, held on 1 October 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report and the replies to its list of issues (CRC/C/OPSC/MNE/Q/1/Add.1). The Committee also appreciates the open, frank and constructive dialogue held with the high-level multisectoral delegation. However, it regrets that the report did not follow the revised guidelines regarding form and contents of initial reports to be submitted by States adopted in 2006 (CRC/C/OPSC/2).

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations on the State party's initial report under the Convention on the Rights of the Child (CRC/C/MNE/CO/1) and the concluding observations on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/MNE/CO/1) adopted on 1 October 2010.

I. General observations

Positive aspects

4. The Committee notes the adoption of the following legislative and other measures related to the implementation of the Optional Protocol, such as:

- (a) The amended Criminal Procedure Code, adopted in August 2009;
- (b) The Strategy for Improvement of the Status of the Roma, Ashkali and Egyptian Populations in Montenegro (2008-2012);
- (c) The Strategy for the Development of the Social and Child Protection System in Montenegro (2008-2012).

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

- (a) The Optional Protocol on the involvement of children in armed conflict, on 2 May 2007;
- (b) The Council of Europe Convention on Cybercrime (2001), in March 2010.

II. Data

6. While noting that data on trafficking in human beings are collected to a certain extent, the Committee regrets that data is available only on cases of trafficking and that an integrated and centralized system of data collection on sale of children, child prostitution and child pornography and on children in general does not exist.

7. The Committee recommends that the State party establish a consolidated system for systematic data collection, in order to effectively analyse, monitor and assess the impact of laws, policies and programmes for all the areas covered by the Optional Protocol. This would include data on both the perpetrators and victims of the sale of children, child prostitution and child pornography. Data should be disaggregated by, inter alia, the nature of the offence and by age, sex, ethnic origin, urban/rural areas, with particular attention to children who are especially vulnerable to becoming victims of the offences covered by the Optional Protocol.

III. General measures of implementation

Legislation

8. The Committee notes efforts undertaken in order to integrate various aspects of the Optional Protocol into the legislation of the State party. However, the Committee is concerned that they have focused almost exclusively on trafficking to the neglect of other aspects of the sale of children. Furthermore, the Committee is concerned that existing legislation does not define the notion of child.

9. The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is not identical to trafficking in persons, in order to adequately implement the provision referring to the sale of children contained in the Optional Protocol. Furthermore, the Committee recommends that the State party define the notion of child as provided for in article 1 of the Convention.

National plan of action

10. The Committee welcomes the adoption of a number of policies, strategies, and plans, including the adoption of the National Plan of Action for Children (2004-2010) and the National Strategy to Fight Human Trafficking (2010-2011) relevant to the implementation of the Optional Protocol. However, the Committee regrets that these plans do not comprehensively cover all the areas addressed by the Optional Protocol.

11. The Committee recommends that the State party, in consultation and cooperation with all relevant stakeholders, including children and civil society:

(a) Incorporate in its new National Plan of Action and the National Strategy to Fight Human Trafficking all the issues covered by the Optional Protocol, including protection of children from pornography distributed through the Internet;

(b) Provide adequate human and financial resources for the implementation of the above-mentioned initiatives ;

(c) Ensure the effective 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

12. While noting the mandate of the Council of Child Rights to monitor the State party's compliance with the Optional Protocol, the Committee is concerned that this body is not sufficiently active in the planning of policies and setting of priorities for the implementation of the Optional Protocol.

13. The Committee encourages the State party to strengthen the role of the Council of Child Rights as an institutional mechanism for effective coordination among ministries and between the national and local authorities, in order to create systematic and coherent approaches to address issues covered by the Optional Protocol. The Council of Child Rights should ensure the periodic monitoring and evaluation of the measures taken and use the results for further strategy and policy development on the areas covered by the Optional Protocol. The Committee also recommends that the State party provide this body with adequate human, financial and technical resources to effectively carry out its role.

Dissemination and awareness-raising

14. While appreciating the importance that the State party is attributing to dissemination and awareness-raising activities, the Committee is concerned that these have been limited to trafficking in human beings and that the Optional Protocol has not been sufficiently promoted and disseminated. In that regard the Committee regrets that children, including children of minority communities, children in street situations and refugee children, as well as parents do not have adequate knowledge of the risks of the violation of the rights of children as enshrined in the Optional Protocol and of strategies to protect children against these violations.

15. The Committee urges the State party:

(a) To make the provisions of the Optional Protocol widely known to the public, particularly to children and their families, by, inter alia, developing and implementing long-term awareness-raising campaigns and integrating the provisions of the Optional Protocol into school curricula at all levels of the education system using appropriate material created specifically for children;

(b) In cooperation with civil society and media and in line with article 9, paragraph 2, of the Optional Protocol, to intensify and promote awareness - raising among the public at large, including children, through information by all appropriate means, about the harmful effects of all the offences referred to in the Optional Protocol and to encourage the participation of the community and, in particular, children and child victims of both sexes, in such awareness - raising and information and education programmes.

Training

16. The Committee appreciates the numerous training activities on issues related to trafficking carried out by the State party and international and non-governmental organizations (NGOs). However, the Committee regrets that these activities are not systematic and do not include all areas covered by the Optional Protocol.

17. The Committee recommends that the State party, in collaboration with the relevant organizations, strengthen training activities and allocate adequate and earmarked resources for the development of training materials and courses on all areas covered by the Optional Protocol for all relevant professionals working with and for children, including judges, public prosecutors, police officers, medical staff, social welfare officers, media and other groups of professionals concerned.

Allocation of resources

18. While noting that some resources for the fight against trafficking in human beings are allocated, the Committee is concerned about the absence of allocation of human, technical and financial resources specifically for the implementation of the Optional Protocol.

19. The Committee encourages the State party to ensure that sufficient resources are allocated for the implementation of all areas covered by the Optional Protocol, by providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological rehabilitation and social reintegration of victims, and the investigation and prosecution of the offences covered by the Optional Protocol.

Cooperation with civil society

20. The Committee welcomes the State party's collaboration with NGOs in order to carry out services related to trafficking. However, it regrets the scarce attribution of financial resources required to carry out their duties effectively.

21. The Committee recommends that the State party provide non-governmental organizations with adequate financial and other resources when they are involved in discharging governmental responsibilities and duties with regard to the implementation of child rights.

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

Measures adopted to prevent offences referred to in the Optional Protocol

22. The Committee notes the information provided by the State party during the dialogue that some anti-trafficking prevention programmes, carried out in collaboration with NGOs and with the participation of the media, and measures to identify the root causes of and extent of the problems exist. However, the Committee regrets the lack of preventive measures targeted specifically against the sale of children, including for the purposes of forced labour and adoption, child prostitution and child pornography.

23. The Committee encourages the State party:

(a) To undertake research on the nature and extent of the sale of children, economic and sexual exploitation of children, child prostitution and child pornography, in order to identify children at risk and to address the root causes of the problems and the main risk factors;

(b) On the basis of the abovementioned research and in collaboration with non-governmental organizations and the media, to adopt a targeted approach to address the sale of children, child prostitution and child pornography by combining prevention, recovery and reintegration measures for the affected children, paying particular attention to the girl child and the gender based dimensions.

24. The Committee recommends that the State party continue and further strengthen measures to prevent child sex tourism, including by conducting studies and collecting information on known cases to establish its extent and root causes, and by raising awareness among children and the general public. The State party, through relevant authorities, should continue its cooperation with the tourism industry, NGOs and civil society and strengthen international cooperation in order to promote responsible tourism. Furthermore, the Committee encourages the State party to continue to disseminate the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, supported by the World Tourism Organization, among all relevant partners.

25. The Committee is concerned at the growing availability of child pornography on the Internet, mobile phones and other evolving technologies, which, inter alia, leads to the increase in the number of children victims of sexual exploitation and abuse. It is further concerned that a certain degree of impunity exists for crimes covered by the Optional Protocol committed through the Internet, especially child pornography.

26. The Committee recommends that the State party:

(a) Take measures, by implementing appropriate policies and programmes, to prevent and combat cybercrime, especially child pornography on the Internet;

(b) Strengthen its efforts, in cooperation with the media and civil society and with the participation of children, to inform children and their parents about safe use of the Internet;

(c) Take all appropriate measures to strengthen its bilateral, regional and international cooperation to enhance the tracking system with its IP locator in order to track the IP addresses, hosts and websites of offenders and pimps, aiming to use the most accurate IP address location database, and to determine the Internet service provider, with a view to combating child pornography;

(d) Ensure and monitor the full implementation of the regulations governing the control and regulation of premises providing public Internet services;

(e) Adopt and implement specific legislation on the obligation of Internet providers to prevent (to the extent possible) the dissemination of and access to child pornography on the Internet.

Programmes targeting particular groups

27. While welcoming the information provided by the State party delegation on programmes in place targeting particular groups of children, such as Roma, Ashkali and Egyptian children and children in street situations to enhance social inclusion, the Committee regrets that children remain vulnerable to the offences covered under the Optional Protocol.

28. The Committee recommends that the State party undertake systematic prevention activities, including birth registration, targeting children who are especially vulnerable or at risk, with particular attention to girls, in order to prevent them from becoming victims of offences covered by the Optional Protocol.

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

Existing criminal or penal laws and regulations

29. The Committee is concerned that under the criminal legislation a child is a person up to 14 years of age, whereas a minor is a person of 14-18 years of age. The Committee is also concerned that the State party does not explicitly criminalize the sale of children, child prostitution and child pornography as defined in articles 2 and 3 of the Optional Protocol. Furthermore, it regrets that the penal law does not envisage the possibility of prosecuting legal persons involved in the sale of children, child prostitution and child pornography.

30. The Committee recommends that the State party revise and bring its Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol and ensure that all children under the age of 18 are fully protected by the Optional Protocol. In particular, the State party should criminalize:

(a) The sale of children by offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation, transfer of organs of the child for profit, or engagement of the child in forced labour or improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable legal instrument on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography;

(d) An attempt to commit any of these acts and complicity or participation in any of these acts;

(e) The production and dissemination of material advertising any of these acts.

31. The Committee further recommends that the State party provide, in its penal law, for the prosecution of legal persons who commit offences under the Optional Protocol. It also encourages the State party to make every effort to ensure that legislation providing protection for children against the sale of children, child prostitution and child pornography is fully and effectively implemented.

32. The Committee recommends that the State party take all necessary measures to combat illegal adoption, including by taking all necessary penal measures with a view to ensure that the crimes covered under the Optional Protocol are fully criminalized and prosecuted. The Committee also recommends that the State party consider ratifying and implementing the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption (1993).

Jurisdiction and extradition

33. The Committee notes that extraterritorial jurisdiction may be exercised on the grounds of approval by the Supreme State Prosecutor. However, it regrets that the penal legislation does not allow extraterritorial jurisdiction for all the cases referred to in article 4, paragraph 2, of the Optional Protocol. Furthermore, the Committee is concerned that extraterritorial jurisdiction is subject to the criterion of double criminality.

34. The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over crimes covered by the Optional Protocol and recommends establishing extraterritorial jurisdiction over crimes under the Optional Protocol without the criterion of double criminality.

VI. Protection of the rights of child victims

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

35. While noting the existence of some services for children victims of trafficking, the Committee is concerned that there is no comprehensive social protection system covering child victims of the offences under the Optional Protocol in the State party.

Furthermore, the Committee is concerned that child victims of the offences under the Optional Protocol may not always be considered and treated in practice as victims as provided for in article 8 of the Optional Protocol and that insufficient measures are taken to prevent the marginalization and stigmatization of child victims.

36. The Committee recommends that the State party:

(a) Strengthen efforts to establish a comprehensive social protection system, by considering collaboration with the Operational Multidisciplinary Teams, for all child victims of all the offences covered by the Optional Protocol;

(b) In the light of article 8, paragraph 1, of the Optional Protocol, ensure the protection of child victims and witnesses at all stages of the criminal justice process and ensure, in particular, equipment for hearings throughout the country. The State party should be guided in this respect by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex);

(c) Ensure that child victims of any of the offences under the Optional Protocol are not treated as offenders under the civil and penal law, and that all possible measures are taken to avoid the stigmatization and marginalization of child victims.

Recovery and reintegration of victims

37. The Committee notes some efforts by the State party in collaboration with civil society organizations, including NGOs, and international organizations to provide some children victims of trafficking with support. However, the Committee is concerned at the absence of comprehensive services of the State party for the recovery, including special psychological and psychiatric assistance and reintegration, of children victims of sale, prostitution and pornography and at the lack of compensation possibilities for child victims of the offences. The Committee is also concerned at the lack of State-run shelters and that child victims of trafficking are placed in institutions of social protection where children without parental care are placed or in shelters for adult victims of human trafficking. Furthermore, the Committee is concerned at the lack of information provided by the State party on opportunities for children to participate in developing policies and programmes concerning their recovery and social integration.

38. The Committee recommends that the State party adopt further measures :

(a) To ensure that adequate services are available for all child victims, boys and girls, including for their full physical and psychological recovery and social reintegration, in accordance with article 9, paragraph 3, of the Optional Protocol and that adequate financial resources and trained human resources are allocated to this end;

(b) To ensure that all child victims of the offences described in the Optional Protocol 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;

(c) To provide access to shelters for victims of the offences under the Optional Protocol and ensure that children are separated from adults;

(d) To ensure the participation of children in the development of policies and programmes for their recovery and reintegration;

(e) To ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Optional Protocol, in accordance with article 8, paragraph 4, of the Optional Protocol.

VII. International assistance and cooperation

39. The Committee recommends that the State party strengthen its bilateral, regional and international judicial, police and victim-oriented cooperation activities with other States and international organizations with a view to preventing and combating the sale of children, child prostitution and child pornography. In this respect, the Committee draws the attention of the State party to its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

VIII. Follow-up and dissemination

Follow-up

40. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, inter alia, by transmitting them to the Head of State, the Supreme Court, Parliament, relevant ministries and local authorities for appropriate consideration and further action.

Dissemination of concluding observations

41. 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 themselves in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Next report

42. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its combined second and third periodic report under the Convention, due on 1 October 2015, in accordance with article 44 of the Convention .