



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-third session

11-29 January 2010

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

Concluding observations: El Salvador

1. The Committee considered the initial report of El Salvador (CRC/C/OPSC/SLV/1) at its 1481st meeting (see CRC/C/SR.1481), held on 21 January 2010, and adopted at its 1501st meeting, held on 29 January 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the initial report of the State party under the Optional Protocol on the sale of children, child prostitution and child pornography and its replies to the Committee's list of issues (CRC/C/OPSC/SLV/Q/1 and Add.1). The Committee further welcomes the frank and constructive dialogue held with the multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations on the third and fourth periodic report of the State party under the Convention on the Rights of the Child ("the Convention"), also adopted on 29 January 2010 (CRC/C/SLV/CO/3-4) as well as with those adopted following the review of the initial report of the State party under the Optional Protocol on the involvement of children in armed conflict on 2 June 2006 (CRC/C/OPAC/SLV/CO/1).

I. General observations

4. The Committee welcomes the numerous measures taken by the State party in areas of relevance for the Optional Protocol, including:

- (a) The 2004 legislative reforms aimed at criminalizing the activities linked to the commercial sexual exploitation of children, including the increase in penalties thereto;
- (b) The creation, in 2004, of a round table ("Mesa") focused on the issue of commercial sexual exploitation of children and composed of representatives from 11 governmental and non-governmental organizations;
- (c) The creation, in 2005, of the National Committee against Trafficking in Persons which is developing a national policy against trafficking in persons (2008-2017) and its action plan (2008-2012).

5. The Committee also welcomes the ratification by the State party of:

- (a) The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) of the International Labour Organization, on 12 October 2000;
- (b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 8 March 2004;
- (c) The Inter-American Convention on International Traffic in Minors, on 22 December 2005.

II. Data

Data collection

6. The Committee, while appreciating the data contained in the replies of the State party to the list of issues, regrets that data on the extent of sale of children, child prostitution and child pornography and on the number of children involved in these activities are limited and not systematized, mainly due to the absence of a comprehensive data collection system. The Committee further regrets the lack of data on the extent of sexual exploitation of children in travel and tourism (sex tourism) in the State party.

7. The Committee recommends that a comprehensive data collection system be established in order to ensure that data, disaggregated, inter alia, by age, sex, minority group, socio-economic background and geographical area, are systematically collected and analysed as they provide essential tools for measuring policy implementation. Data should also include information on the number of prosecutions and convictions for such offences, disaggregated by the nature of the offence. Data on sex tourism, and its link with the issues addressed in the Optional Protocol, should also be collected. The collection of data on these issues could be carried out by the same bodies mandated to analyse and collect data on the implementation of the Convention according to the new institutional structure created for the country through the *Ley de Protección Integral de la Niñez y la Adolescencia* (LEPINA). In this respect, the capacity in terms of human, technical and financial resources should be strengthened. The Committee would also like to receive in its next report information on the activities of and the results obtained by the round table (“Mesa”) focused on the issue of commercial sexual exploitation of children. The State party should also seek the assistance of United Nations agencies and programmes, including the United Nations Children’s Fund (UNICEF), in this regard.

III. General measures of implementation

Legislation

8. The Committee, while welcoming the adoption in 2004 of Legislative Decrees 210 and 457 amending the Penal Code, is concerned at the fact that full harmonization between the national legislation and the provisions of the Optional Protocol is still needed. It is also concerned that, despite various relevant training initiatives targeting law enforcement operators, the Optional Protocol is not well known among judges and lawyers and that it is rarely invoked in courts.

9. The Committee recommends that the State party continue and complete the process of harmonization of its national legislation with the Optional Protocol in order to make effective and adequately implement the provisions contained therein. Furthermore, the Committee encourages the State party to work systematically to make human rights treaties, including the Optional Protocol, part of the curricula of judicial and law academies and schools in order to raise the awareness and facilitate the use of such treaties in litigation.

National Plan of Action

10. The Committee notes that there is a strategic plan against the commercial sexual exploitation of children within the National Plan for the Eradication of the Worst Forms of Child Labour (2006-2009). The Committee, however, is concerned that the time frame of this Plan has now expired and that it has not yet been renewed. Furthermore, the Committee is concerned that there was no specific budget allocated to carry out this Plan nor any monitoring or evaluation system for its implementation.

11. The Committee recommends that the State party renew the strategic plan against the commercial sexual exploitation of children, with a focus on the Optional Protocol, and provide adequate human and financial resources for its implementation.

Coordination and evaluation

12. The Committee notes that the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA) seems to have primary responsibility for the coordination and evaluation of the implementation of the Optional Protocol. With the transitional period pending the entry into force of LEPINA and the resulting changes in the institutional structure for the implementation of the rights of the child, however, there is currently some confusion in the responsibilities of the various bodies, as well as overlap in the mandates of some of the relevant institutions. Furthermore, the Committee is concerned that ISNA is not sufficiently resourced to effectively carry out its mandate for the coordination and evaluation of the implementation of the Optional Protocol.

13. The Committee recommends that the State party provide ISNA or another high level governmental authority working in the area of child rights and child protection with a precise mandate for the coordination and evaluation of the implementation of the Optional Protocol. Adequate human, technical and financial resources should be provided to ISNA (or the relevant high-level body) in order to enable it to carry out its mandate properly.

Dissemination and training

14. The Committee notes (a) the training of the National Civilian Police in the area of commercial sexual exploitation of children, including its incorporation in the curriculum of the National Academy of Public Security, (b) the preventive work on commercial sexual exploitation of children carried out by the National Civilian Police in 100 schools and (c) a training project on prevention of the offences covered by the Optional Protocol carried out by the Ministry of Education and involving about 28,000 students and 700 professors. Nevertheless, the Committee is concerned that the level of knowledge of the Optional Protocol is scarce, not only among the general public and children themselves, but also among the relevant professionals, including law enforcement authorities (see supra, paras. 8 and 9).

15. The Committee recommends that the State party:

(a) Continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups;

(b) Strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, by using school curricula and appropriate material created specifically for children;

(c) In cooperation with civil society, promote, in line with article 9, paragraph 2, of the Optional Protocol, awareness in the public at large, including children, through information by all appropriate means, education and training, about the harmful effects of all the offences referred to in the Optional Protocol, including by translating it into local languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in such information and education and training programmes.

Allocation of resources

16. The Committee recommends that the State party, taking due account of the Committee's recommendations following its 2007 Day of General Discussion on article 4 of the Convention, provide more information on the budget allocations for the implementation of the Optional Protocol. The State party should also provide the necessary human, technical and financial resources for the development and implementation of projects and plans, especially at the local level, aimed at the prevention, protection, physical and psychological recovery and social reintegration of victims and prosecution of the offences covered by the Optional Protocol.

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

17. The Committee takes note of the State party's initiatives aimed at preventing the offences covered by the Optional Protocol, especially within the context of the activities of the round table ("*Mesa*") focused on the issue of commercial sexual exploitation of children. The Committee is concerned, however, that preventive efforts do not cover sufficiently large groups of vulnerable children in the State party, such as children living in poverty, indigenous children, children living in difficult family situations and children left behind by their migrating parents.

18. The Committee recommends that the State party continue and intensify its preventive efforts by giving adequate attention to projects aimed at addressing the root causes, such as poverty, underdevelopment and cultural attitudes, contributing to the vulnerability of children to sale, prostitution, pornography and sex tourism, including at the local level. The State party should also endeavour to promote the strengthening of international cooperation in this respect.

19. The Committee notes the information from the State party that, in the framework of international cooperation, there are efforts currently in place to create specialized units in the National Civilian Police dealing with the crimes covered by the Optional Protocol, including child pornography through the Internet. The Committee is concerned at the absence of a complaint mechanism available to child victims as well as at the lack of a national toll-free helpline for children.

20. The Committee recommends that a specialized body or institution (such as a specialized unit in the police) be created and provided with adequate financial, technical and human resources to deal with the crimes covered by the Optional Protocol. This body should be also mandated to receive and consider complaints by child victims, and give adequate follow-up to them, including prosecution when necessary. The Committee further recommends the establishment of a three-digit, 24-hour toll-free helpline, with an outreach component for the most marginalized groups, including in less accessible areas.

21. The Committee is concerned that little attention is given to measures aimed at reducing demand for commercial sexual exploitation of children.

22. The Committee recommends that demand for sexual services involving the exploitation of children be addressed through both prevention and prosecution measures. Preventive measures should include, among others, public awareness campaigns aimed at the individuals and groups creating demand for sexual exploitation of children.

V. Prohibition and related matters

Existing criminal or penal laws and regulations

23. The Committee notes that the legislation of the State party covers some of the activities included in article 3, paragraph 1 (a)(i), of the Optional Protocol in the context of the sale of children. However, the Committee is concerned that the legislation does not seem to criminalize the sale of children for the purpose of illegal adoption, the sale of children for the engagement of the child in forced labour and the sale for the transfer of organs of the child for profit, which is punished as an aggravated form of trafficking, but not as a separate offence.

24. The Committee recommends that the State party define and criminalize the sale of children in accordance with the Optional Protocol, and in particular the sale of children for the purpose of illegal adoption, for the engagement of the child in forced labour and for the transfer of organs of the child for profit, in conformity with article 3, paragraphs 1 (a)(i) b., 1(a)(i) c., 1(a)(ii) and 5 of the Optional Protocol.

25. The Committee welcomes the introduction in the Penal Code of the crimes of the use of children in pornography and of possession of child pornography. However, while noting the creation of a specialized unit in the National Civilian Police dealing with the investigation of trafficking-related crimes, the Committee is concerned at the information that investigation and prosecution of child pornography is hampered by the lack of specialized staff and technically adequate means of investigation, especially when it comes to child pornography through the Internet. In this respect (see also *supra*, para. 19), the Committee welcomes the information about the upcoming creation of specialized units to investigate crimes related to child pornography.

26. The Committee recommends that the State party strengthen the capacity of law-enforcement officials for the investigation and prosecution of crimes related to child pornography, including, if necessary, the adoption of specific

legislation, notably on child pornography through the Internet and other digital means.

Prosecution

27. The Committee is concerned that there are insufficient investigations, prosecutions and convictions in cases of the sale of children, child prostitution and child pornography. The Committee is also concerned that there is no specialized training for judges and prosecutors for the investigation of these crimes or for dealing with child victims of such crimes.

28 . The Committee urges the State party to intensify its efforts to investigate cases of the sale of children, child prostitution and child pornography, including when there are allegations of the involvement of law-enforcement or other public officials in such criminal activities. Those responsible should be prosecuted and punished, taking into account the grave nature of these crimes . In this respect, the State party is encouraged to provide investigative, law - enforcement and judicial authorities with the necessary technical, human and financial resources to properly carry out their functions.

Jurisdiction

29. The Committee welcomes the information provided by the State party's delegation that the crimes covered by the Optional Protocol may be considered within the scope of article 10 of the Salvadoran Criminal Code, which provides the establishment of universal jurisdiction in case of crimes that seriously undermine universally recognized human rights. However, it is not clear whether the State party's legislation explicitly permits the establishment of jurisdiction in all cases listed in article 4 of the Optional Protocol.

30 . The Committee recommends that the State party take the necessary measures to establish its jurisdiction in all cases listed in article 4 of the Optional Protocol. The Committee also encourages the State party to extend the application of article 10 of the Penal Code to the crimes covered by the Optional Protocol .

Extradition

31. The Committee notes with concern that, according to the State party's declaration entered to the Optional Protocol upon ratification, extradition of nationals will be permitted on the basis of the principle of reciprocity and if the offence was committed in the territory of the requesting country "unless the offence is international in scope". The Committee is concerned at the fact that the State party makes the possibility of extradition conditional to the principle of double criminality.

32 The Committee, in accordance with article 5, paragraph 4, of the Optional Protocol, recommends that the State party:

(a) Consider, for the purpose of extradition between States parties, offences covered by the Optional Protocol as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4 of the Optional Protocol;

(b) Take suitable measures, if an extradition is refused on the basis of the nationality of the offender, to submit the case to its competent authorities for the purpose of prosecution, in accordance with article 5, paragraph 5, of the Optional Protocol;

(c) Amend its legislation in order to abolish the requirement of double criminality for the purpose of extradition and/or prosecution of the offences covered by the Optional Protocol committed abroad.

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

33. The Committee notes that the Salvadoran Institute for the Integral Development of Children and Adolescents provides assistance and support to child victims throughout their contact with the criminal justice system. It welcomes, for instance, the use of special rooms (Gesell domes) for the hearing of child victims in some cases. However, the Committee is concerned that, while there is a Special Law for the Protection of Victims and Witnesses (2006), this law does not seem to target in particular children or the crimes covered by the Optional Protocol. Furthermore, the Committee is concerned that little is done to avoid the marginalization and social stigmatization of child victims.

34 . The Committee recommends that the State party:

(a) Ensure that all possible measures are taken to avoid the stigmatization and social marginalization of child victims ;

(b) Take all necessary measures to 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 shall be a primary consideration;

(c) Ensure that professionals make every effort to enable child victims and witnesses to express their views and concerns related to their involvement in the criminal justice process;

(d) In 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. The State party should be guided in this respect by the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.

Incidence of the offences covered by the Optional Protocol

35. The Committee is concerned about the information that El Salvador is a source, transit, and destination country for women and children trafficked for the purposes of commercial sexual exploitation and forced labour. The Committee also notes that many Salvadoran women and girls are trafficked within the country from rural to urban areas for commercial sexual exploitation.

36. The Committee recommends that the State party:

- (a) Continue to take measures to tackle the offences covered by the Optional Protocol, *inter alia*, by strengthening investigation and prosecution efforts;
- (b) Strengthen awareness-raising campaigns containing specific messages on child rights and the existing sanctions on child abusers;
- (c) Intensify its efforts to effectively prohibit the production and dissemination of material advertising the offences described in the Optional Protocol, in accordance with article 9, paragraph 5.

Recovery and reintegration of victims

37. The Committee notes that there is a centre for victims of trafficking, which provided for the recovery and reintegration of over one hundred children between April 2006 and December 2007. However, the Committee is concerned that, overall, the services available for child victims of sale, prostitution and pornography are insufficient and not distributed uniformly throughout the country.

38. The Committee recommends that the State party:

- (a) Ensure that adequate services are available for all child victims, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol;
- (b) Take measures 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;
- (c) 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.

VII. International assistance and cooperation

39. The Committee recommends that the State party strengthen international cooperation through multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. These arrangements should always be in the best interest of the child and respect international human rights standards.

40. The Committee also encourages the State party to continue its cooperation with United Nations agencies and programmes — including interregional programmes — and non-governmental organizations, in the development and implementation of measures aimed at an adequate application of the Optional Protocol.

41. The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

VIII. Follow-up and dissemination

Follow-up

42. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, *inter alia*, by transmitting them to relevant Government ministries, the judiciary, the Legislative Assembly and to local authorities, for appropriate consideration and further action.

Dissemination

43. 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, media, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Next report

44. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.

