



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Optional Protocol on the sale of children, child prostitution and child pornography

#### Concluding observations on the initial report of the former Yugoslav Republic of Macedonia, adopted by the Committee at its fifty-fourth session (25 May–11 June 2010)

1. The Committee considered the initial report of the former Yugoslav Republic of Macedonia (CRC/C/OPSC/MKD/1) at its 1510th and 1512th meetings (see CRC/C/SR.1510 and CRC/C/SR.1512) held on 27 May 2010, and adopted at the 1541st meeting, held on 11 June 2010, the following concluding observations.

#### I. Introduction

2. The Committee welcomes the submission of the State party's initial report, providing detailed information on legislative, administrative, judicial and other measures applicable in the State party regarding the rights guaranteed by the Optional Protocol. The Committee also appreciates the written replies to its list of issues as well as the constructive dialogue with the high-level multisectoral delegation, led by the Minister of Labour and Social Policy.

#### 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 Convention on the Rights of the Child and initial report under the Optional Protocol on the involvement of children in armed conflict adopted on the 11 June 2010, contained in CRC/C/MKD/CO/2 and CRC/C/OPAC/MKD/CO/1, respectively.

#### 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:

- (a) Amendments to the Law on Child Protection in 2009 (Official Gazette No. 83) aimed at prohibiting, inter alia, the sale of children, child prostitution and pornography;

(b) The insertion of article 418-d (trafficking of an underage person) into the Criminal Code (Official Gazette of the Republic of Macedonia No. 7 of 15 January 2008) explicitly criminalizing all practices under the Optional Protocol and including the possibility of establishing criminal liability for legal persons and the seizure immovable property, items and vehicles used in the perpetration of the crime;

(c) The signing in 2007 of memoranda of understanding between the Ministry of Interior and the Ministry of Labour and Social Policy, as well as between these agencies and civil society organizations; and

(d) That the unit of cybercrime within the Ministry of Interior has been active in uncovering child pornography.

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

(a) The 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption on 23 December 2008;

(b) The United Nations Convention against Transnational Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, on 12 January 2005; and

(c) The Council of Europe Convention on Cybercrime in November 2004.

### **III. Data**

#### **Data collection**

6. The Committee welcomes the collection of centralized data on cases of trafficking in human beings by the National Referral Mechanism and information about ongoing research on children in street situations with a view of informing future measures to protect children from practices under the Optional Protocol. The Committee nevertheless regrets that data is available only on cases of trafficking and child prostitution and the absence of information on the incidence of certain crimes covered by the Optional Protocol, in particular child pornography and sale for the purpose of marriage.

**7. The Committee recommends that the State party undertake in-depth studies into all issues covered by the Optional Protocol, in particular on sale of children for the purpose of marriage, child pornography, and child sex tourism, and that a uniform information system be established in order to ensure that data, disaggregated, inter alia, by age, sex and ethnic or social origin, are systematically collected on all crimes covered under the Optional Protocol and analysed, as they provide essential tools for assessment, policy development and implementation.**

### **IV. General measures of implementation**

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

8. The Committee notes with concern that Roma children are disproportionately represented among children in street situations and in cases of sale of children for the purpose of marriage and is concerned that stereotypes as regards the traditions of their

communities may have inhibited efforts to properly identify them as child victims and provide adequate protection and assistance.

9. **The Committee recommends that the general principles of the Convention, in particular the principle of non-discrimination, be included in all measures taken by the State party to ensure the implementation of the provisions of the Optional Protocol and in particular that child victims of all crimes under the Optional Protocol, including Roma children, are properly identified, protected and assisted.**

### **Legislation**

10. While welcoming efforts to integrate various aspects of the Optional Protocol into the legislation of the State party, the Committee is concerned that they have focused almost exclusively on trafficking to the detriment of other aspects of the sale of children.

11. The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is similar to trafficking in persons but not identical, in order to adequately implement the provision on sale of children contained in the Protocol.

### **National plan of action**

12. The Committee notes the elaboration of several action plans and programmes in areas relevant to the sale of children, child prostitution and pornography, including the National Strategy for Combating Trafficking in Human Beings and Illegal Migration, the Action Plan to Combat Trafficking (2006) and the Programme for Resocialization and Reintegration of Child Victims of Trafficking (2008). The Committee is, nevertheless, concerned that these plans and programmes are poorly coordinated and about the absence of a strategy or a national plan of action specifically addressing the issues covered under the Optional Protocol.

13. **The Committee recommends that the State party develop a national plan of action aimed at addressing specifically all issues covered under the Optional Protocol and provide adequate human 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 and Rio de Janeiro in 1996, 2001 and 2008, respectively.**

### **Coordination and evaluation**

14. The Committee, while noting the statement of the delegation that the National Commission for the Rights of the Child is mandated to monitor all issues concerning the rights of the child, is concerned that this Commission has no specific mandate regarding the implementation of the Optional Protocol. The Committee notes with concern that several agencies have overlapping mandates in the area of coordination, which has resulted in a fragmented approach to the implementation of the Optional Protocol, the lack of identifiable mechanisms for evaluating the impact of activities and the prioritizing of activities targeting trafficking as opposed to other prohibited practices.

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

(a) **Consider designating the National Commission on the Rights of the Child in charge of coordination and evaluation of all activities to implement the Optional Protocol and provide it with the human, technical and financial resources and an adequate position within the Government to carry out its mandate effectively; and**

(b) **Strengthen institutional mechanisms for coordination between all relevant ministries, departments and bodies and between them and the regional and local authorities, in order to create systematic and coherent approaches to addressing all issues covered under the Optional Protocol.**

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

16. While welcoming awareness-raising activities carried out among children by the Ministry of Interior and other institutions, the Committee is concerned that these have been limited to prevention of trafficking and that the Optional Protocol has not been sufficiently promoted and disseminated among the public at large and children in particular, and implementing agencies; and at the absence of education programmes for children.

17. **The Committee recommends that the State party disseminate the Optional Protocol among implementing agencies and make its provisions widely known to the public at large and children in particular, through, inter alia, developing and implementing long-term awareness-raising campaigns and educational programmes, including school curricula, on the preventive measures and harmful effects of all offences covered therein.**

### **Training**

18. The Committee appreciates the numerous training activities provided by the State party in collaboration with international, intergovernmental and non-governmental organizations (NGOs), and others. The Committee remains concerned, however, that efforts to provide adequate training to professionals working with and for children, in particular among judges, prosecutors, law enforcement officers 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, in collaboration with the relevant organizations, strengthen training activities and allocate adequate and earmarked resources for the development of training programmes on all areas covered by the Optional Protocol for all professional categories involved in its implementation, including judges, public prosecutors, police officers, social workers, health-care staff and other categories of professional and the media.**

### **Allocation of resources**

20. The Committee is concerned about the absence of information on resources specifically allocated for the implementation of the Optional Protocol.

21. **The Committee encourages the State party to ensure that sufficient resources are allocated equitably throughout the country for the implementation of all areas covered by the Optional Protocol, by providing, in particular, the necessary human and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological recovery and social**

reintegration of victims, as well as the investigation and prosecution of the offences covered by the Optional Protocol.

### **Civil society**

22. While noting the State party's plans to work with Roma NGOs in addressing specific issues, the Committee regrets that civil society was not consulted in the preparation of the initial report and that civil society organizations, which have developed knowledge and expertise in areas relevant to the Optional Protocol, have not been involved in the design of policies and activities for the implementation of the Optional Protocol.

23. **The Committee encourages the State party to continue and strengthen its collaboration with civil society in all matters concerning the implementation of the Optional Protocol, not only by supporting NGOs in their efforts to provide adequate services to child victims, but also by increasing the role of NGOs in the development and monitoring of policies and services.**

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

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

24. The Committee notes the efforts undertaken by State- and municipal-level authorities aimed at preventing offences under the Optional Protocol. However, the Committee is concerned that targeted preventive measures against the exploitation of children, including their engagement in forced labour, prostitution and pornography, and measures to identify the root causes and extent remain limited. The Committee is further concerned that prevention measures are limited to child trafficking and that the social work centres may not be adequately equipped to carry out activities for prevention and identification as mandated.

25. **The Committee encourages the State party to:**

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

(b) **Undertake targeted preventive measures including in the light of the changing nature of interactions 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; and**

(c) **Seek, for the purpose of more effective prevention in the areas covered by the Optional Protocol, technical assistance from inter alia, the United Nations Children's Fund (UNICEF) and other international organizations and agencies.**

26. The State party should, through relevant authorities, strengthen cooperation with the tourism industry, NGOs and civil society in order to promote responsible tourism, including through the dissemination of the Global Code of Ethics for Tourism of the World Tourism Organization on the protection of children from sexual exploitation in travel and tourism among all relevant partners.

### **Programmes targeting particular groups**

27. Noting that the majority of child victims of practices under the Optional Protocol reported are girls, many of whom Roma, the Committee regrets the absence of measures and programmes targeting vulnerable children, in particular girls, Roma children, children in street situations, children in residential care, children among refugees and persons under subsidiary protection, and unaccompanied and separated children.

28. **The Committee urges the State party to pay increased attention to children particularly at risk of becoming victims of offences under the Optional Protocol, especially Roma children, children in street situations, children in residential care, children among refugees and persons under subsidiary protection, and unaccompanied and separated children, with special attention to their birth registration, education and health care.**

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

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

29. While appreciating the amendments of the Criminal Code with a view of incorporating the provisions of the Optional Protocol, notably the insertion of article 418-d (trafficking of an underage person), the Committee is concerned that the sale of children as defined in article 3 of the Optional Protocol is not criminalized. In this regard, the Committee is concerned that the engagement of the child in forced labour and the improper inducing of consent for the adoption of the child are not prosecuted as cases of sale of children. While noting positive information from the State party's delegation, the Committee is concerned, however, that the relevant provisions of the Criminal Code do not cover all aspects of possession of child pornography.

30. **The Committee recommends that the State party revise the Criminal Code to include the crime of sale of children as defined in article 3 of the Optional Protocol and to prohibit all forms of possession of child pornography.**

### **Jurisdiction and extradition**

31. The Committee, while welcoming the fact that the State party can establish its jurisdiction over crimes committed abroad by or against its citizens, nevertheless 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 and that extradition is subject to the criterion of reciprocity.

32. **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. The Committee further recommends that the State party consider the Optional Protocol to be a legal basis for extradition without the condition of the existence of a bilateral treaty.**

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

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

33. The Committee notes as positive efforts of the State party to improve the protection measures for child victims and plans to identify children who have been exploited for the purpose of begging in tourist resorts and during religious holidays. The Committee is, nevertheless, concerned that protection is not systematically provided to child victims of crimes other than trafficking and child prostitution, in particular to girls who have been sold for marriages or children exploited for forced labour. The Committee is also concerned that child victims of these practices may be stigmatized and socially marginalized.

34. **In the light of article 9, paragraph 3, of the Optional Protocol, the Committee urges the State party to ensure as a matter of priority the provision of appropriate gender-sensitive assistance, including for their full social reintegration and physical and social recovery, to child victims of practices covered under the Optional Protocol, in particular to girls victim to sale for the purpose of marriage or children exploited for forced labour. The Committee recommends that the State party ensure that child victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized and that all possible measures are taken to avoid their stigmatization and marginalization.**

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

35. The Committee welcomes the introduction of a completely new chapter on the protection of victims, witnesses and collaborators of justice in the Criminal Code. The Committee is nevertheless concerned that in some cases courts have allegedly allowed the confrontation of child victims with the accused.

36. **In the light of article 8, paragraph 1, the Committee strongly recommends that the State party 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.**

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

37. The Committee notes numerous measures, including the establishment of a national referral mechanism, of standard operative procedures for processing victims, and a programme for return and reintegration of child victims. The Committee is nevertheless concerned that measures to ensure recovery and reintegration have been concentrated on child victims of trafficking in human beings. The Committee is further concerned about the absence of information on resources specifically allocated for recovery and reintegration of child victims under the Optional Protocol. In addition, the Committee is concerned about the absence of child-specific services for recovery and reintegration, including the lack of specially trained professionals, and that there is a tendency to accommodate child victims with foster carers.

38. The Committee recommends that the State party, in cooperation with NGOs and supporting NGO activities in this area:

(a) Ensure that adequate services are available for child victims of all practices covered under the Optional Protocol, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9, paragraph 3, of the Optional Protocol and ensure that adequate financial and human resources are allocated;

(b) Provide access to shelters for child victims of the offences covered by the Protocol and ensure that children are separated from adults and that the staff of such shelters is provided with appropriate training, in particular legal and psychological training, in accordance with article 8, paragraph 4, of the Optional Protocol; and

(c) Continue developing specialized medical and psychological care services for child victims, including by ensuring access and availability of child mental health professionals.

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

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

39. 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, 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**

40. 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, the Parliament, and to national 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 related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), 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.



## **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 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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