



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-ninth session

16 January – 3 February 2012

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: Thailand

1. The Committee considered the initial report of Thailand (CRC/C/OPSC/THA/1) at its 1683rd meeting (see CRC/C/SR. 1683), held on 25 January 2012, and adopted, at its 1697th meeting, held on 3 February 2012, the following concluding observations.

I. Introduction

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

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the third and fourth report of the State party under the Convention on the Rights of the Child (CRC/C/THA/CO/3-4) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/THA/CO/1).

II. General observations

Positive aspects

4. The Committee welcomes various positive measures in areas relevant to the implementation of the Optional Protocol, in particular the Anti-Human Trafficking Act of 2008.

5. The Committee also welcomes the progress achieved in the creation of institutions and adoption of national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) The adoption of the National Policy and Plan of Action for the Prevention and Suppression of Trafficking in Women and Children of 2012-2016.

(b) The adoption of the National Policies and Plan of Action on the Prevention and Suppression of Commercial Sexual Exploitation of Children in 1996;

6. In addition, the Committee notes with appreciation the ratification of the following international human rights instruments:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), in 2001;

(b) The International Labour Convention No. 182 (1999) concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, in 2001.

III. Data

7. The Committee welcomes the data provided by the State party on the number of prosecutions, victims of trafficking and forced labour, and number of children who received assistance. The Committee, nevertheless, remains concerned that data collection on offences under the Optional Protocol remains general, fragmented and seriously limited and that there is no effective data collection system covering the Convention and the Optional Protocols as indicated in the Committee's concluding observations under the Convention (CRC/C/THA/CO/3-4). The Committee is particularly concerned at the lack of data disaggregated, inter alia, by sex, age, nationality and ethnic origin, region and socio-economic status, and information on sale of children, child prostitution and child pornography which greatly limits the State party's capacity to monitor, assess and prevent offences under the Optional Protocol.

8. The Committee recommends that the State party strengthen its efforts to develop and implement a comprehensive, coordinated and effective system of data collection, analysis, monitoring and impact assessment covering all areas covered by the Convention and the Optional Protocols as indicated in the concluding observations under the Convention. The data should be disaggregated, inter alia, by sex, age, nationality and ethnic origin, region and socio-economic 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 convictions, disaggregated by the nature of the offence. The Committee recommends that the State party continue seeking technical support from, inter alia, the United Nations Children's Fund (UNICEF) in relation to the recommendation above.

IV. General measures of implementation

Legislation

9. The Committee regrets that the definitions of offences under the Optional protocol are established only by the ministerial resolution of 23 November 2005 which does not have the status of law. The Committee is concerned that not all the offences under the Optional Protocol are properly defined in the State party's legislation.

10. The Committee urges the State party to make efforts to harmonize domestic legislation with the Optional Protocol. In particular, the Committee urges the State party to provide a clear definition and prohibit all offences under the Optional Protocol by law according to articles 2 and 3 of the Optional Protocol.

National plan of action

11. The Committee welcomes the adoption of the National Plan of Action against Trafficking (2005-2010) and recent adoption of a new plan of action also specific to trafficking for 2012-2016, which cover some offences under the Optional Protocol. However, the Committee is concerned that these plans do not cover all other offences under the Optional protocol and are limited to offences related to trafficking only. The Committee also regrets the lack of information as to whether the National Child and Youth Development Plan for 2012-2016, as indicated in the concluding observations under the Convention, addresses the State party's obligations under the Optional protocol. It also regrets the lack of information on the outcome of the evaluation of projects under the 2005-2010 Plan which was conducted in 2008.

12. With reference to its concluding observations under the Convention, the Committee recommends that the State party include a comprehensive programme of action targeting specifically all issues covered under the Optional Protocol in its National Child and Youth Development Plan for 2012-2016 and provide adequate human, technical and financial resources for its implementation. In doing so, the Committee recommends that the State party take into account the evaluation and review of projects under the existing Plans of Action. The Committee further recommends that the State party pay 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 Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008, respectively.

Coordination and evaluation

13. The Committee notes that several coordinating agencies have been mentioned by the State party, including the Office of Welfare Promotion, Protection and Empowerment of Vulnerable Groups under the Ministry of Social Development and Human Security (MSDHS) and the National Child Protection Committee. The Committee refers to paragraphs 13 and 14 of its concluding observations under the Convention and is concerned that policies on child rights and their practical implementation are assigned to different agencies within the MSDHS and there is no overall coordination mechanism that is responsible for coordinating activities of all relevant State and non-State agencies under the Convention and the Optional Protocol.

14. With reference to paragraphs 13 and 14 of its concluding observations under the Convention, the Committee recommends that the State party ensure better coordination among the various agencies and committees working on developing and implementing child rights policies, including those under the Ministry of Social Development and Human Security, and designate a unit capable of providing leadership and effective general oversight for the monitoring and evaluation of activities on child rights under the Convention and its Optional Protocols across sectoral ministries and from the central to local government levels.

Dissemination and awareness-raising

15. The Committee welcomes the translation of the Optional Protocol into Thai and its dissemination to various agencies, including government and non-governmental agencies, local administrative organizations and the media since 2001, as well as to various academic institutes and local administrative organizations nationwide. The Committee is nevertheless concerned at the lack of systematic and comprehensive dissemination and awareness-raising activities in the State party on the Optional Protocol, which contributes to a low level of understanding and awareness of the offences of sale of children, child prostitution and child pornography among the public, children and professional groups working with and for children.

16. The Committee recommends that the State party:

(a) Develop, in close cooperation with the community, children and child victims, information and education programmes on preventive measures and harmful effects of the sale of children, child prostitution and child pornography;

(b) Disseminate systematically the Optional Protocol among all relevant professional groups, especially members of the

police, judges, prosecutors, representatives of the media and social workers, and members of the child protection agencies.

Training

17. The Committee notes as positive the sensitization and training on the Convention and the Optional Protocol conducted by the Ministries of Interior, Education, Justice, Labour, Public Health, Social Development and Human Security; the Office of the General-Attorney; the Royal Thai Police; and several non-governmental organizations. It regrets however the lack of information on whether the professional groups working with and for children, including members of the National Child Protection Committee; civil servants working on children's rights at the Ministries of Health, Justice, and Interior; police; social workers, as well as judges and prosecutors, receive systematic, adequate and targeted training specifically on the provisions of the Optional Protocol. It further notes with particular concern that no evaluation has been undertaken with respect to the impact of these training programmes.

18. The Committee recommends that the State party allocate adequate and targeted resources for multidisciplinary training programmes developed through a participatory process involving communities and other stakeholders on all areas covered by the Optional Protocol. Such training should be provided to all relevant professional groups, ministries and institutions working with and for children. The Committee further urges the State party to ensure systematic evaluation of all training programmes on the Optional Protocol with a view to enhancing their impact and relevance.

Allocation of resources

19. While noting the budgetary allocations for care and assistance to trafficking victims, the Committee regrets the lack of information in the State party's report on clearly identifiable budget allocations assigned to activities designated to implement the Optional Protocol by line ministries. In addition, the Committee regrets the absence of information relating to budgetary needs of and allocations to the National Child Protection Committee and other mentioned coordinating agencies.

20. The Committee recommends that the State party take all possible measures to ensure that sufficient resources are allocated for the implementation of the Optional Protocol. In particular, the Committee recommends that the Child Protection Committee, law enforcement agencies and social protection centres be provided with adequate human, technical and financial resources necessary for their activities in respect of the Optional Protocol.

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

21. The Committee notes with appreciation the State party's efforts to provide equal access to education to all, especially to vulnerable groups as well as measures taken to prevent exploitation of children in the labour market. The Committee is however concerned that although prostitution is illegal, this law is mostly ignored and prostitution is practiced quite openly, with involvement of large numbers of children and that corruption and cases of police officers involved in the child sex trade contribute to the problem. The Committee is concerned that existing laws, administrative measures, social policies and programmes of the State party are insufficient and do not adequately prevent children from becoming victims of these offences.

22. The Committee recommends that the State party strengthen its laws, and especially the enforcement of existing laws as well as administrative measures, social policies and programmes aimed at prevention of the sale of children, child prostitution and child pornography. It also recommends that the State party take all necessary measures to prevent and prosecute cases of corruption among police officers, especially those who are involved in child sex trade.

Child sex tourism

23. The Committee welcomes the measures taken by the State party to prevent child sex tourism such as restricting entry into the country for persons with suspicious behaviours or motives and providing training for provincial tourism agencies and members of the private tourism sector. However, in view of the problem of child sex tourism in the State party, the Committee is concerned at the lack of adequate legislative and administrative procedures and social policies to prevent child sex tourism and protect children from becoming victims.

24. The Committee urges the State party to establish and implement an effective regulatory framework and take all necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism. In this regard, the Committee encourages the State party to strengthen its international cooperation through multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism. The Committee further urges the State party to strengthen its advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the Charter of Honour for Tourism and the WTO Global Code of Ethics for Tourism among travel agents and tourism agencies and encourage them to sign up for the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

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

25. The Committee is concerned that:

- (a) Not all elements of the offence of sale of children have been clearly defined in the State party's legislation;
- (b) The offence of child pornography is currently regulated only by the general Computer Crime Control Act of 2007 and the Publishing Registration Act of 2007 which do not specifically mention child pornography.

26. The Committee recommends that the State party continue to revise and bring its Penal Code and other relevant legislation into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the State party should:

(a) 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;

(b) Revise and bring its penal provisions on child pornography into full compliance with articles 2 and 3 of the Optional Protocol.

Impunity

27. The Committee is concerned that comprehensive data was not provided in the State party reports on investigation, prosecution and punishment of perpetrators of all offences under the Optional Protocol and that the numbers provided for prosecution of human trafficking cases are low.

28. The Committee urges the State party to take all necessary measures to ensure that crimes under the Optional Protocol are investigated and that alleged perpetrators are prosecuted and duly sanctioned. The Committee recommends that the State party provide specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol , in its next periodic report.

Jurisdiction and extradition

29. The Committee regrets that the State party's legislation does not explicitly allow extraterritorial jurisdiction for all the cases referred to in article 4, paragraph 2, of the Optional Protocol. The Committee also regrets that jurisdiction over offences under the Protocol necessitates double criminality. While noting the Extradition Act of 2008 and extradition agreements with 14 countries for offences that are punishable with death penalty or imprisonment of over one year, the Committee is concerned that the Optional Protocol is not invoked as legal basis for extradition and that extradition is subject to the existence of a treaty between the State party and the requesting State.

30. The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction, including extraterritorial jurisdiction without the criterion of double criminality, over the crimes under the Optional Protocol. The Committee further recommends that the State party consider the Optional Protocol to constitute 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

31. While noting that assistance to victims have been included in the Prevention and Suppression of Prostitution Act of 1996, the Measures in Prevention and Suppression of Trafficking in Women and Children of 1997 and the Anti-Trafficking in Persons Act of 2008, the Committee regrets the lack of information on measures taken to identify child victims of all offences prohibited under the Optional Protocol, and not only the victims of trafficking. It is further concerned that during the process of repatriation, child victims of trafficking are often held for very long periods of time against their will, which results in their providing false testimonies to the police in order to attain permission to leave shelters and return to their home countries. It is further concerned that despite the law which allows for early deposition of testimonies on video recordings, judges can be reluctant to accept such testimonies by child victims or witnesses and often request their physical presence in the court.

32. The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims of all offences under the Optional Protocol and, in particular:

(a) Establish mechanisms and procedures for the early identification of child victims of the offences under the Optional Protocol, including by establishing cooperation mechanisms between law enforcement agencies, relevant ministries and the Child Protection Committees;

(b) Ensure that children victims of trafficking are not subjected to long periods of time , waiting for their deportation;

(c) Strengthen laws to ensure that video recordings of testimonies by child victims or witnesses of offences under the Optional Protocol are always accepted as evidence.

Recovery and reintegration of victims

33. The Committee notes that the reintegration projects enumerated by the State party refer to projects funded by foreign donor agencies, the United Nations agencies and non-governmental organizations. The Committee regrets lack of information on the State-run rehabilitation and reintegration programmes, and shelters for child victims. The Committee notes the State party's information that it has secured a fund for compensation for victims of trafficking, but it regrets the lack of information on cases where victims of trafficking and other offences under the Optional Protocol received compensation.

34. The Committee urges the State party to:

(a) Strengthen the capacity of government agencies to ensure and coordinate assistance and support to children victims of offences under the Optional Protocol;

(b) Take all necessary measures to ensure that child victims of the offences under the Optional Protocol are provided with appropriate assistance, including for their full social reintegration and physical and psychological recovery;

(c) Guarantee that all child victims 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, and establish a fund for compensation for victims, for those cases where they cannot obtain compensation from the perpetrator;

(d) Seek technical assistance from UNICEF and the International Organization for Migration (IOM) in the implementation of these recommendations.

Helpline

35. With reference to its concluding observations under the Convention, the Committee recommends that the State party consider consolidating existing helplines into a single national helpline for greater efficiency. The helpline should cover the whole country, be accessible 24 hours and should have an easy to remember 3-4 digit numbers and adequate financial and technical resources as well as personnel trained to respond to children and analyse the calls for appropriate action.

VIII. International assistance and cooperation

36. In 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 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

37. 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, Supreme Court, the Parliament, relevant ministries and local authorities, as well as to the National Child Protection Committee and other coordinating bodies at central and district levels respectively, for appropriate consideration and further action.

38. The Committee further recommends that the initial report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups, communities and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

39. 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 next periodic report under the Convention, in accordance with article 44 of the Convention.