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COMMITTEE ON THE RIGHTS OF THE CHILD

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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: Viet Nam

1. The Committee considered the report of Viet Nam (CRC/C/OPSC/VNM/1) at its 1189th meeting (see CRC/C/SR.1189), held on 22 September 2006, and adopted at its 1199th meeting, held on 29 September 2006, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, written replies to its list of issues and additional written information. The Committee also appreciates the constructive dialogue held with a cross-sectoral and high-level delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report (CRC/C/15/Add.200) on 31 January 2003.

B. Positive aspects

4. The Committee notes with appreciation the measures taken by the State party to implement and strengthen the protection of the rights covered by the Optional Protocol. The Committee welcomes in particular:

(a) The National Programme of Action for Children 2001-2010;

(b) The 2004-2010 National Plan of Action Against Trafficking in Women and Children;

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(c) The 2006-2010 intersectoral programme on the prevention of prostitution; and

(d) The national programme on prevention and settlement of street children, sexually abused children and children working under hazardous and dangerous conditions, 2004-2010.

5. Furthermore, the Committee welcomes the ratification of:

(a) The Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict on 20 December 2001;

(b) International Labour Organization Convention No. 138 (1973) concerning Minimum Age for Admission to Employment and ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 24 December 2003 and 19 December 2000 respectively.

C. Principal areas of concern and recommendations

1. General measures of implementation

Dissemination and training

6. The Committee notes that - despite the State party's activities in this regard - measures to raise awareness among the public and State officials on the areas covered by the Optional Protocol remain insufficient. The Committee is also concerned that staff working

with victims of the offences covered by the Optional Protocol still lack adequate skills especially with respect to recovery and reintegration of child victims.

7. The Committee recommends that the State party continue to strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents - including through school curricula and appropriate material - and continue providing appropriate training to all professional groups, in particular those working with and for child victims of sale, trafficking, child prostitution and child pornography. The Committee also recommends that the State party seek technical assistance in this regard from, inter alia, UNICEF.

Data collection

8. The Committee is concerned that, although some progress has been made in this respect, data collection on the issues covered by the Optional Protocol is neither adequate nor systematic and is not supported by sufficient resources. Furthermore, the Committee notes that, while information is available in the area of trafficking, further research is needed to assess the extent and scope of sale of children, child prostitution and child pornography.

9. The Committee recommends that the State party undertake research on the nature and extent of sale of children, child prostitution and child pornography and ensure that data on these issues, disaggregated, inter alia, by age, sex and minority group, are systematically collected and analysed as they provide essential tools for measuring policy implementation.

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

Existing criminal or penal laws and regulations

10. The Committee welcomes the amendment of the Vietnamese Criminal Code in 1997 and 1999 introducing new offences and more severe penalties for crimes related to the commercial sexual exploitation of children and other efforts to bring the legislation in line with the Optional Protocol. The Committee also welcomes the information provided by the delegation that the 2004 Law on Child Protection and Care in conjunction with the 2005 Youth Law would provide for the care and protection of all persons below 18. However, the Committee is concerned that some provisions in the Penal Code (including articles 254 to 256 related to child prostitution) refer to children as to those below the age of 16 only. Furthermore, the Committee is concerned that:

(a) There are no provisions explicitly defining and sufficiently criminalizing child pornography in line with articles 2 (c) and 3, paragraph 1 (c), of the Optional Protocol; and

(b) Article 46 of the Penal Code provides that the author of a crime, including crimes covered by the Optional Protocol, may obtain a reduction of the sentence if he/she make an offer of compensation which is accepted by the child victims or their families.

11. The Committee recommends that the State party:

(a) Amend the Penal Code and - where appropriate - other laws, in order to explicitly criminalize all acts listed in article 3 of the Optional Protocol when committed against all persons below 18;

(b) Reconsider article 46 of the Penal Code in order to make a clear distinction between the sanction that can be imposed on the perpetrator and the reparation which can be claimed by the victim; and

(c) Continue to seek technical assistance in this regard from, inter alia, UNICEF.

3. Penal and criminal procedure

Jurisdiction

12. The Committee notes that article 6, paragraph 2, of the State party's Penal Code allows, in some cases, for the exercise of extraterritorial jurisdiction. However, it is not clear whether this provision covers all the specific situations mentioned in article 4, paragraphs 2 and 3, of the Optional Protocol.

13. The Committee recommends that the State party provide specific information in this regard in its next report, including on the number of cases in which the jurisdiction mentioned in article 4, paragraphs 2 and 3, of the Optional Protocol has been exercised.

Extradition

14. The Committee welcomes the information received from the delegation that article 343 of the Criminal Procedure Code has been brought in line with the provisions of article 5 of the Optional Protocol and that the reservation to this article made upon ratification has become unnecessary and will be withdrawn.

15. The Committee recommends that the State party initiate and complete in a speedy manner the withdrawal of the reservation to article 5 of the Optional Protocol and use this article, when necessary, as a legal basis for extradition in respect of all the offences covered by the Optional Protocol.

4. 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

16. The Committee expresses concern at the information that child prostitution and sex tourism are an increasing problem in the country and that at least 10 per cent of sex workers in Viet Nam are believed to be children.

17. The Committee recommends that the State party increase its efforts to combat child prostitution, including by adequately implementing the 2006-2010 intersectoral programme on the prevention of prostitution. Furthermore, the State party should urgently tackle the rise of sex tourism related crimes, inter alia by developing a specific strategy targeting the tourist industry, including specific messages on child rights and on the existing sanctions against child abusers.

18. While the Committee notes that the official institutions, including the Ministry of Labour, Invalids and Social Affairs (MOLISA), the Women's Union, the Youth Union and the Committee for the Population, Family and Children, have active programmes aimed at victims' protection, it is concerned that many of these efforts lack adequate financial resources. Furthermore, the Committee welcomes the establishment of reception points at the border gates along the border of Viet Nam with China and Cambodia and reception centres for trafficked or sexually abused women and children. However, the Committee is concerned that:

- (a) Recovery and reintegration services are limited in coverage and there is a lack of adequately trained professionals;
- (b) Measures to assist families in the process of reunification with child victims are insufficient;
- (c) With regard to articles 254 to 256 of the Penal Code, victims of prostitution aged between 16-18 may not always be treated as victims under the law and can be administratively sanctioned; and
- (d) There is a lack of specialized teams of police, prosecutors or judges to deal with criminal activities covered by the Optional Protocol.

19. The Committee recommends that the State party give priority to allocating budgetary resources so that adequate services are available for child victims and their families, including physical and psychological recovery, social reintegration and repatriation, when appropriate. To this end, the Committee underlines, inter alia, the need to strengthen training of persons working on social reintegration and physical and psychological recovery of child victims (see also paragraph 6 above).

20. The Committee further 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 be taken to avoid the stigmatization and social marginalization of these children. It also recommends that the State party continue to take measures to protect the rights and interests of child victims of the practices prohibited under the Optional Protocol at all stages of the criminal justice process. In this respect, the Committee recommends that the State party be guided, inter alia, by article 8 of the Optional Protocol as well as by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex). Inter alia, the State party should:

- (a) Allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;**
- (b) Use child-sensitive procedures, including interview rooms designed for children and audio and video recording of the declarations of child victims;**
- (c) Ensure that trials take place as soon as practical, unless delays are in the child's best interests; and
- (d) Set up special teams to investigate crimes covered by the Optional Protocol and train systematically police, prosecutors, judges and other concerned professionals in the areas covered by it.**

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

Measures adopted to prevent offences referred to in the Optional Protocol

21. The Committee, aware of the direct link between poverty, underdevelopment and the risk of being exposed to all forms of exploitation, including sale of children, child prostitution and child pornography, welcomes the "Programme on hunger elimination, poverty reduction and job creation" and the attention given by the State party to children in the implementation of socioeconomic policies and programmes.

22. The Committee encourages the State party to continue giving adequate importance, including at the financial level, to poverty reduction strategies. In this respect, the Committee recommends that the State party continue to enhance and support the capacity of disadvantaged and vulnerable families, including with income generation projects, especially in rural and remote areas. The State party should also take measures to involve children in the development and implementation of social policies and programmes to prevent the offences referred to under the Optional Protocol.

23. The Committee welcomes the setting up by the Commission on Population, Family and Children (CPFC) in cooperation with Plan Viet Nam, of a toll-free child helpline working 14 hours per day through which children receive counselling and assistance.

24. The Committee recommends that the child helpline be expanded so that it may be functional 24 hours per day. The

Committee also encourages the State party to further undertake preventive measures and continue liaising with NGOs in the implementation of awareness-raising campaigns.

Prevention of sale for the purpose of adoption

25. The Committee, while noting the measures taken to prevent and control illegal intercountry adoption, including the establishment of the Department of International Adoption within the Ministry of Justice and the Decree No. 69 of 2006, is concerned that problems persist in the governance and implementation of domestic and intercountry adoption. It is also concerned about a legal vacuum in the legislation in the area of adoption which would impede the prosecution and punishment of persons acting as intermediary for the adoption of a child in violation of applicable international legal instruments, in accordance with article 3, paragraph 1 (a) (ii), of the Optional Protocol.

26. The Committee recommends that the State party take all appropriate measures, including amendments in its legislation, to ensure that all persons involved in the adoption of a child, including the intermediary, act in conformity with applicable international legal instruments and that, especially in intercountry adoption, the placement does not result in improper financial gain for those involved in it. The Committee further recommends that the State party complete the process to become a party to the 1993 Hague Convention on the Protection of Children and Cooperation with respect to Intercountry Adoption.

6. International assistance and cooperation

Law enforcement

27. The Committee notes the regional and bilateral agreements signed by the State party, especially in the area of anti-trafficking, including the bilateral Agreement with Cambodia, the 2004 Greater Mekong Sub-Regional Memorandum of Understanding on Cooperation against Trafficking in Persons and the regional plan of action against trafficking in women and children. However, it is concerned that Viet Nam is a source for trafficking in persons, including children, for the purpose of sexual exploitation, especially to China and Cambodia.

28. The Committee recommends that the State party continue to combat trafficking for the purpose of sexual exploitation, including by adequately implementing the National Plan of Action against Trafficking in Women and Children. The Committee further encourages the State party to continue strengthening its international judicial and police cooperation activities 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. It also recommends that the State party ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, of 2000.

7. Follow-up and dissemination

Follow-up

29. 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 National Assembly and People's Councils, for appropriate consideration and further action.

Dissemination

30. 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 (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring.

8. Next report

31. In accordance with article 12, paragraph 2, the Committee requests that the State party 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, due on 1 September 2007.
