



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-sixth session

17 January – 4 February 2011

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: Belarus

1. The Committee considered the initial report of Belarus (CRC/C/OPSC/BLR/1) at its 1597th and 1598th meetings (see CRC/C/SR.1597 and 1598) held on 25 and 26 January 2011, and adopted at its 1612th meeting, held on 4 February 2011, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report as well as the written replies to its list of issues (CRC/C/OPSC/BLR/Q/1/Add.1), and appreciates the positive dialogue with a high-level delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the State party's third and fourth periodic report under the Convention and initial report on the Optional Protocol on the involvement of children in armed conflict on 4 February 2011, contained in CRC/C/BLR/CO/3-4 and CRC/C/OPAC/CO/1, respectively.

II. General observations

Positive aspects

4. The Committee notes with appreciation the Programme on countering human trafficking, illegal migration and unlawful deeds related therewith 2008–2010.

III. Data

5. The Committee regrets the lack of a systematic mechanism of data collection, analysis and monitoring of all areas covered by the Optional Protocol.

6. The Committee recommends that the State party develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol. The data should be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location, socio-economic status, with particular attention to the most vulnerable groups of children. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. In this regard, the Committee recommends that the State party seek technical support from, inter alia, the United Nations Children's Fund (UNICEF).

IV. General measures of implementation

Legislation

7. The Committee is concerned about the approach of the State party to the sale of children, which it views as an integral part of human trafficking rather than a separate issue.

8. The Committee reminds the State party that it is obliged under the Optional Protocol to prohibit the sale of children in law and in practice, a concept which is similar to trafficking in persons but not identical.

National Plan of Action

9. The Committee notes the various plans and programmes related to the rights of the child, as well as the National Plan of Action on Trafficking 2011–2013, but regrets that there is no specific plan of action covering the Optional Protocol.

10. The Committee recommends that the State party adopt a comprehensive policy and corresponding national plan of action for the implementation of the Convention and its Optional Protocols, and establish adequate monitoring and evaluation systems, including at the local level, in order to ensure effective implementation of the plan, and facilitate greater involvement of all partners concerned, including civil society and children themselves.

Coordination and evaluation

11. The Committee regrets the lack of clarity as to which State institution, among the more than 15 ministries engaged in efforts to prevent the sale of children, child prostitution and child pornography, has the main responsibility for the implementation of the Optional Protocol.

12. The Committee recommends that the State party establish a national coordinating body or mechanism in charge of implementing the Optional Protocol, and ensuring coordination, both horizontal and vertical, and ensure that they have adequate human, technical and financial resources in order to effectively carry out their mandate both at the national and local levels.

Dissemination and training

13. While noting the publicity campaign against trafficking undertaken by State authorities, mass media and international and community organizations, and that schools provide information on trafficking, the Committee is concerned that awareness-raising activities seem to deal mainly with trafficking, and not specifically the offences covered by the Optional Protocol. The Committee regrets that professionals working with and for children do not receive adequate training specifically on the provisions of the Optional Protocol.

14. In line with article 9, paragraph 2, of the Optional Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known to the public at large, including to children, their families and communities, through, in particular the school curricula and long-term awareness-raising measures; and continue and strengthen systematic education and training on the provisions of the Optional Protocol for all professional groups working with child victims of such crimes, inter alia, the police, lawyers, prosecutors, judges, social workers and immigration officials.

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

15. The Committee notes with appreciation information on the State party's efforts to suppress the production and dissemination of child pornography, particularly on the Internet. The Committee nevertheless regrets that the State party has not given priority attention to preventing the offences covered by the Optional Protocol.

16. The Committee recommends that the State party carry out research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems, and the existence of protection and prevention measures, and adopt targeted measures.

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

Existing criminal or penal laws and regulations

17. The Committee is concerned that the criminal code of the State party does not cover all the offences included in the Optional Protocol. However, it welcomes information from the State party delegation that it will review its legislation again, taking into account the recommendations of the Committee.

18. The Committee recommends that the State party revise and bring its Criminal Code in to full compliance with articles 2 and 3 of the Optional Protocol, and ensure that the law is enforced in practice, with proper sanctions being imposed on the perpetrators, in order to prevent impunity. 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) Distributing, importing, exporting, offering, selling, possessing or knowingly accessing/viewing child pornography including virtual child pornography, suggestive representations of children which do not depict children engaged in explicit sexual activity (child erotica); and

(d) The production and dissemination of material encouraging any of these acts.

Criminal liability of legal persons

19. The Committee regrets that the State party's legislation does not establish criminal liability of legal persons.

20. In light of article 3 , paragraph 4 , of the Optional Protocol, the Committee recommends that the State party establish the liability of legal persons for all offences covered under the Optional Protocol.

Jurisdiction and extradition

21. While noting that the State party can establish extraterritorial jurisdiction for trafficking offences, regardless the legislation in the State where the offence took place, the Committee regrets the lack of information on whether this applies to the offences of the sale of children, child prostitution and child pornography that do not involve the element of trafficking. It is further concerned that, in the absence of an extradition treaty, extradition is subject to the criterion of reciprocity.

22. The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all the crimes covered by the Optional Protocol, without the criterion of double criminality. The Committee further recommends that the State party use the Optional Protocol as a legal basis for extradition where there is no bilateral agreement to this effect in force.

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 Protocol

23. The Committee is concerned that certain protection measures such as the presence of a teacher or a psychologist during the questioning of child victims or witnesses are only applied for children up to the age of 14 years. The Committee notes the draft law on trafficking, which provides protection to victims of trafficking, but regrets the lack of information on how this protection applies to children who are victims of sale, child prostitution and child pornography. While noting that this does not apply to victims of trafficking, the Committee regrets that engagement in prostitution for children above 16 years is considered an administrative offence.

24. The Committee urges the State party to include in the draft law on trafficking, protection to children who are victims of sale, child prostitution and child pornography. It also urges the State party to promote a victim-centred approach to prosecuting cases of sale of children, child prostitution and child pornography, and increase resources devoted to victim assistance and protection. The Committee recommends that the State party continue and strengthen measures to ensure that all child victims up to the age of 18 receive adequate protection and specialized assistance, in accordance with article 8 , paragraph 1 , of the Protocol and with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. The Committee further recommends that the State party ensure that child victims of any of the offences prohibited under the Optional Protocol are not considered as offenders and are not punished, and that all possible measures are taken to avoid their stigmatization and marginalization.

Recovery and reintegration of victims

25. The Committee notes that different ministries are responsible for child victims depending on their age, and it is concerned that such a fragmented approach may present difficulties in ensuring that all child victims are provided with appropriate assistance. The Committee regrets the lack of information received on the services provided to child victims of sale, prostitution and pornography.

26. The Committee recommends that the State party strengthen measures to promote the social reintegration and physical and psychosocial recovery for all child victims up to the age of 18 of offences under the Optional Protocol, in accordance with its article 9, paragraph 3, in particular by providing comprehensive and coordinated assistance; and guaranteeing access to child-friendly procedures through which they can seek compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.

VIII. International assistance and cooperation (art. 10)

27. 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, to enhance the tracking system of Internet Protocol locators in order to track Internet Protocol addresses, hosts and websites of offenders. It moreover recommends that the State party identify Internet service providers (ISPs) that host or disseminate offending material, with a view to enabling effective prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered under the Optional Protocol. Toward this end, the Committee recommends that the State party continue participating in international and regional frameworks at all levels.

IX. Other legal provisions

28. The Committee recommends that the State party ratify the Council of Europe Convention on Cybercrime (2001) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007), which are open for accession by non-member States.

X. Follow-up and dissemination

29. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations by , inter alia, transmitting them to members of the C abinet and P arliament and to the municipalities for appropriate consideration and further action.

30. The Committee recommends that the initial report and written replies submitted by the State party and the concluding observations adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups and professional groups , in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through, inter alia, school curricula and human rights education.

XI. Next report

31. 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 these concluding observations in its next periodic report under the Convention on the Rights of the Child, due on 30 October 2017 , in accordance with article 44 of the Convention .