



Convention on the Rights of the Child

Distr.: General
28 October 2015

Original: English

Committee on the Rights of the Child

Concluding observations on the report submitted by Madagascar 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*

1. The Committee considered the initial report of Madagascar (CRC/C/OPSC/MDG/1) at its 2043rd meeting (CRC/C/SR.2043), held on 28 September 2015, and adopted the following concluding observations at its 2052nd meeting (CRC/C/SR.2052), held on 2 October 2015.

I. Introduction

2. The Committee welcomes the initial report of the State party and its written replies to the list of issues (CRC/C/OPSC/MDG/Q/1/Add.1). The Committee welcomes the constructive dialogue with the high-level and multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the combined third and fourth periodic reports submitted by the State party under the Convention on the Rights of the Child (CRC/C/MDG/CO/3-4) and on its initial report submitted under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/MDG/CO/1), adopted on 2 October 2015.

II. General observations

Positive aspects

4. The Committee welcomes the accession or ratification by the State party of the following:

- (a) The Convention on the Rights of Persons with Disabilities, in June 2015;
- (b) The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in May 2015.

* Adopted by the Committee at its seventieth session (14 September-2 October 2015).



5. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including:

- (a) The adoption of the new Law 2014-040 on the fight against human trafficking, on 20 January 2015;
- (b) The adoption of the Law 2014-006 on cybercrime, on 17 July 2014;
- (c) The adoption of the Law 2014-005 on combating terrorism and transnational organized crime, on 17 July 2014.

6. The Committee welcomes the progress made in the creation of institutions and adoption of plans and programmes that facilitate the implementation of the Optional Protocol, including:

- (a) The adoption of a national action plan against trafficking in human beings and the establishment of the National Office for the Fight against Human Trafficking by the decree 2015-269 in 2015;
- (b) The launch of awareness-raising campaigns against early marriage in 2015;
- (c) The establishment of the Independent National Commission on Human Rights, introduced by Law 2014-007 in 2014;
- (d) The creation of the National Committee for the Protection of Children by Decree No. 2012-858 in 2012;
- (e) The adoption of a plan to operationalize the implementation of the recommendations of the universal periodic review, treaty bodies and special procedures in 2012.

III. Data

Data collection

7. The Committee is concerned about the lack of disaggregated data and the absence of information on all areas covered by the Optional Protocol.

8. **The Committee recommends that the State party develop and implement a comprehensive, coordinated and efficient system of disaggregated data collection on all areas covered by the Optional Protocol, 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.**

IV. General measures of implementation

Legislation

9. The Committee notes that the State party has a legal framework for the protection of children and initiated a major legal reform in order to align the existing legal framework on the fight against trafficking with 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), including the adoption of the new law on the fight against human trafficking. It also notes that the new law criminalizes the sale of children. However, it is concerned that existing legislation is not effectively and fully implemented.

10. **The Committee urges the State party to ensure that legislation aimed at protecting children against all types of offences prohibited under the Optional Protocol is fully implemented, that effective investigations are conducted and that perpetrators are prosecuted and punished in order to strengthen the deterrent effect of the law.**

Comprehensive policy and strategy

11. The Committee notes that there are several sectorial policies and plans of action for children, including the National Plan Against Trafficking in Human Beings adopted in 2015. The Committee is nevertheless concerned at the absence of an overall national policy on children that would integrate all sectorial policies and strategies.

12. **The Committee recommends that the State party develop a national action plan to specifically address all the issues covered by 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 in the light of the Declaration and Programme of Action and the Global Commitment adopted at the first, second and third World Congress against Sexual exploitation of Children.**

Coordination and evaluation

13. The Committee notes that the Ministry of Population, Social Affairs and the Promotion of Women established the National Child Protection Committee, responsible for the direction of policies and national programmes on child protection matters and the coordination of actions relating to child protection. The Committee on the Rights of the Child is, however, concerned about the extremely limited resources allocated to the National Committee, and the fact that it has yet to play a coordinating role.

14. **Referring to paragraphs 10 and 11 of its concluding observations under the Convention, the Committee recommends that the State party make available to the National Child Protection Committee adequate financial, human and technical resources to enable it to fulfil its function, including to monitor and evaluate the implementation of the rights and provisions of the Optional Protocol.**

Dissemination and awareness-raising

15. The Committee welcomes the celebration in the State party of 4 March as World Day against the sexual exploitation of children, and the formal adoption of a charter in this context in 2014, and the awareness-raising activities conducted on the fight against sex tourism, the sexual exploitation of children and child trafficking. However, it notes that those activities were mostly implemented by civil society without the support of the State party.

16. **The Committee recommends that the State party strengthen its cooperation with civil society and the media to support advocacy and training on issues related to the Optional Protocol. It also recommends that it publicize the provisions of the Protocol and the measures to prevent the practices prohibited under the Protocol and the adverse effects thereof, particularly among children, their families and communities, especially through school programmes and awareness campaigns.**

Training

17. The Committee takes note of the State party's efforts to conduct outreach and training activities in the areas of children's rights, as well as the multi-year programmes planned on the fight against human trafficking and the protection of child victims.

However, it is concerned about reports that the number of child prostitutes has increased, the age of entry into prostitution has decreased and the high level of staff turnover in the Government and the various networks have brought new, unskilled actors into the system who do not have the ability to correctly identify the types of offences prohibited under the Optional Protocol. It further notes that the National Office for the Fight against Human Trafficking is not yet operational and therefore cannot undertake all the planned training activities.

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

(a) **Continue and strengthen its efforts, particularly with new players, to raise awareness of children's rights, particularly among vulnerable children, parents and other caregivers of children, all professional groups and traditional and religious leaders. The State party should develop educational programmes on the harmful effects of the sale of children, child prostitution and child pornography, on preventive measures and on the importance of reporting such offences;**

(b) **Seek the active support of local leaders, including traditional and religious leaders, as part of its outreach efforts and intensify its cooperation with the various community networks of child protection in order to define the specific obstacles faced by advocacy and outreach activities related to the offences prohibited under the Optional Protocol, and to identify opportunities in this area;**

(c) **Take all necessary steps to make the National Office for the Fight against Human Trafficking operational as soon as possible, so as to undertake all its planned training activities.**

Allocation of resources

19. The Committee is concerned that insufficient resources have been allocated to the implementation of the Optional Protocol, and in particular by the extremely limited resources allocated to the Ministry of Population, Social Affairs and the Promotion of Women. The Committee notes with concern that the decrease of the budget devoted to the sectors of health and education and reports that the high level of corruption faced by the State party continue to divert the scarce resources allocated to the implementation of the Optional Protocol.

20. **The Committee recommends that the State party provide a sufficient operating budget to bodies monitoring violations of children's rights, such as the National Child Protection Committee, the National Action Committee against child labour and the Independent National Commission on Human Rights, to help ensure the implementation and monitoring of the Optional Protocol. Adequate resources must be allocated to the Ministry of Population, Social Affairs and the Promotion of Women to ensure the sustainability of child protection networks and the adequate training of actors in those networks in each region. The Committee urges the State party to provide adequate resources for health and education and to intensify its efforts to combat corruption through the rigorous investigation of any diversion of resources allocated to the implementation of the Optional Protocol and to ensure that any act of corruption is penalized.**

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

Measures to prevent offences prohibited under the Optional Protocol

21. While welcoming the efforts undertaken by the State party to reintegrate children who had dropped out of school, the Committee remains concerned that education and awareness-raising measures are not enough to prevent children from becoming victims of offences prohibited under the Optional Protocol. The Committee is particularly concerned that 20 per cent of children are not registered at birth, which puts them at greater risk of becoming victims of sale, prostitution and pornography, and that few targeted activities are carried out for children in the most vulnerable situation, such as children living in extreme poverty, orphans, children living or working on the street and child domestic workers.

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

(a) **Take all necessary measures to ensure that all children are registered at birth;**

(b) **Develop educational programmes for parents and children to address the customs and discriminatory traditions and stereotypes regarding the roles and responsibilities of women and girls in the family and society;**

(c) **Adopt a comprehensive and targeted strategy, especially for the most vulnerable children, to study the root causes and the risk factors for offences prohibited under the Optional Protocol, including poverty and lack of parental protection, and address these factors;**

(d) **Strengthen its efforts to design and implement prevention strategies for all offences, set up adequate mechanisms where children can report violations under the Optional Protocol and take concrete steps, including by setting up effective mechanisms, to identify, report and refer children in need of protection.**

Adoption

23. The Committee notes that the State party has developed a domestic legal framework governing adoption, including through the Adoption Act no. 2005-014. However, it remains concerned about the lack of material and financial resources allocated to the Central Authority of Adoption, and about information concerning falsifications of birth certificates.

24. **The Committee reiterates its previous recommendations (CRC/C/MDG/CO/3-4, para. 44) and urges the State party to make every effort to ensure that all adoptions comply fully with the principles and provisions of the Convention on Protection of children and Cooperation in respect of Intercountry Adoption, of the Convention on the Rights of the Child and other relevant international instruments. The Committee also recommends that the State party allocate to the Central Authority of Adoption all necessary resources to enable it to ensure due process and avoid cases of illegal adoption, and to take all necessary measures to effectively prevent and combat the falsification of birth certificates, including through the opening of judicial proceedings against those responsible, and promote legal adoptions.**

Sale of children

25. The Committee reiterates its concern at the widespread and continuing practice of child and forced marriages (CRC/C/MDG/CO/3-4, para. 53) and harmful practices, such as probationary one-year marriages involving underage girls (*moletry*) and “de facto unions” that can amount to the sale of children. It is particularly concerned about the lack of

preventive measures, the small number of cases identified and the alarmingly low number of prosecutions.

26. **In the light of its concluding observations on the implementation of the Convention (CRC/C/MDG/CO/3-4, para. 54), the Committee urges the State party to intensify its efforts to ensure that laws against child and forced marriages are duly implemented.**

Child sex tourism and travel

27. The Committee notes that child sex tourism is expressly prohibited by the law on trafficking in persons and sex tourism (2007-038 2008 Act), but is deeply concerned that child sex tourism is growing and that the measures taken by the State party to combat this phenomenon are insufficient.

28. **The Committee urges the State party to take more concrete measures to prevent child sex tourism in the country and deal with the child sex tourism business with the utmost rigor. It urges the Government to strengthen its advocacy work with the tourism industry on the harmful effects of child sex tourism, widely disseminate the Global Code of Ethics for Tourism established by the World Tourism Organization among travel agents and tourist agencies, and encourage them to subscribe to 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 (2) and (3), 5, 6 and 7)

Criminal laws and regulations

29. The Committee notes that the offences defined in articles 2 and 3 of the Optional Protocol are generally covered by the Malagasy Criminal Code but not always aligned with its provisions, owing to the fact that the Code focuses on trafficking and does not expressly cover all cases of sale. The Committee is particularly concerned that article 333 (3) of the Act n°2007-038 defines “exploitation” as including prostitution or other forms of sexual exploitation, slavery or servitude, but does not cover the possession without intent to distribute or disseminate pornographic material featuring children.

30. **The Committee recommends that the State party take additional measures with a view to:**

(a) **Defining all cases of sale of children, as provided for by the Optional Protocol, and not limit the definitions to cases of trafficking in persons;**

(b) **Promptly penalizing the offence of offering, obtaining, procuring or providing a child for child prostitution;**

(c) **Extending penalization to the offence of possession without intent to distribute or disseminate child pornography material.**

Impunity

31. The Committee is concerned that thousands of children are victims of sexual exploitation for commercial purposes, trafficking for domestic servitude and sexual exploitation, and practices akin to sale. It is also concerned that the number of prosecutions and convictions for offences prohibited by the Optional Protocol is extremely low, a

situation that fosters impunity, and that harmful practices are widely present and accepted in most communities, including amicable settlements between the victims and the offenders.

32. **The Committee urges the State party to:**

- (a) **Fight corruption and impunity at all levels of the criminal justice system;**
- (b) **Prohibit harmful practices that encourage the sale of children and child prostitution through the adoption of appropriate legislation and by adopting awareness-raising measures on the prohibition of sexual exploitation, including prostitution, of children, in particular among children in vulnerable situations and professionals working with such children;**
- (c) **Allocate adequate budget for police officers, allowing them to carry out investigations, conclude procedures, resist attempts of corruption and combat peddling;**
- (d) **Train magistrates and judges on convictions for violations of offenses prohibited under Optional Protocol, so that the relevant laws are enforced.**

Extraterritorial jurisdiction and extradition

33. The Committee notes that the 2008 Act No. 2007-038 establishes extraterritorial jurisdiction of courts in matters of Malagasy trafficking offences, sexual exploitation and sex tourism, but is concerned that the law does not recognize all offences prohibited under the Optional Protocol, such as offences related to child pornography. The Committee also regrets that extraterritorial jurisdiction over offences prohibited under the Protocol necessitates double criminality. The Committee further notes that the Optional Protocol is not invoked as a legal basis for extradition.

34. **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 offences prohibited under the Optional Protocol and without the criterion of double criminality. The Committee further recommends that the State party consider the Optional Protocol to constitute a legal basis for extradition in respect of such offences.**

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

Recovery and reintegration of victims

35. The Committee takes note of the adoption in 2014 of a reference guide for the treatment of victims of exploitation and violence. It also notes that institutions offer rehabilitation programmes in a number of cities, but is concerned that their capacity is very limited.

36. **The Committee recommends that the State party ensure the provision of adequate human, financial and technical resources and quality services to provide assistance to all child victims, and to promote their physical and psychological recovery and full reintegration in accordance with article 9 (3) of the Optional Protocol.**

Helpline

37. The Committee welcomes the creation of a helpline for children but remains concerned about the inadequacy of resources allocated to ensure the sustainability of its existence.

38. The Committee recommends that the State party support the existing helpline by allocating sufficient resources to ensure the quality of its services and the sustainability of its activities.

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

39. In the light of article 10 (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 prohibited under the Optional Protocol.

IX. Ratification of the Optional Protocol on a communications procedure

40. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

X. Follow-up and dissemination

41. 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 the relevant government ministries, the parliament and national and local authorities, for appropriate consideration and further action.

42. The Committee recommends that the report and written replies submitted by the State party and the related concluding observations adopted be made widely available, including 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 Optional Protocol and its implementation and monitoring.

XI. Next report

43. In accordance with article 12 (2) the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next periodic report to be submitted in accordance with article 44 of the Convention.
