



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: Mexico

1. The Committee considered the initial report of Mexico (CRC/C/OPSC/MEX/1 and Corr. 1) at its 1604th and 1605th meetings (see CRC/C/SR.1604 and 1605), held on 31 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 initial report of the State party. The Committee further welcomes the written replies to the list of issues (CRC/C/OPSC/MEX/Q/1/Add.1) and appreciates the constructive dialogue held with the multisectoral delegation.

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

II. General observations

Positive aspects

4. The Committee notes with appreciation:

(a) The Refugees and Complementary Protection Act, approved by the Senate in December 2010;

(b) The Prevention and Punishment of Trafficking in Persons Act (2007);

(c) The decree amending the Federal Penal Code, Federal Code of Criminal Procedure and the Federal Organized Crime Act with respect to commercial sexual exploitation of children (2007).

III. Data

5. The Committee regrets the lack of a system 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 system of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol, in cooperation with non-governmental organizations (NGOs). The data should be disaggregated, inter alia, by sex, age, nationality and ethnic origin, state and municipality, 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 seek technical support from, inter alia, the United Nations Children's Fund (UNICEF) in relation to the recommendation above.

IV. General measures of implementation

Coordination and evaluation

7. The Committee notes that the National System for the Comprehensive Development of the Family (Sistema Nacional para el Desarrollo Integral de la Familia) is the coordinating body for the implementation of the Optional Protocol, but it remains concerned that a comprehensive child-rights approach across all sectors has not yet been established.

8. The Committee recommends that the State party establish a national comprehensive system for the coordination of the implementation of all children's rights, covering both the Convention and the Optional Protocols, and ensure effective policy and programme implementation and monitoring, both horizontal and vertical, among all the entities concerned with children, especially regarding child victims or children at risk of becoming victims of the crimes under the Optional Protocol. The Committee further recommends that the State party closely coordinate and evaluate activities undertaken with civil society organizations.

Legislation

9. The Committee notes the State party's legislation relating to trafficking, but is concerned that the sale of children is not explicitly criminalized.

10. The Committee recalls the State party's obligation 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.

11. The Committee recommends that the State party define a list of the worst forms of child labour, in accordance with International Labour Organization Convention 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms Of Child Labour.

National Plan of Action

12. While welcoming the 2002 National Plan of Action to Prevent, Monitor and Eradicate the Commercial Sexual Exploitation of Children, the Committee is concerned at the lack of information on whether this Plan covers all the offences under the Optional Protocol, and if its implementation has been evaluated. The Committee also welcomes the 2011 National Programme to Prevent and Punish Trafficking in Persons, but regrets that the Programme was not elaborated with sufficient participation of all actors, and that compliance of the Programme with the requirements of the Optional Protocol is not ensured. The Committee further regrets the lack of information on the coordination between these two plans.

13. The Committee recommends that the State party adopt a comprehensive plan of action in consultation with relevant actors, including children and civil society, ensure that this plan covers all the offences under the Optional Protocol, ensure resources for its implementation, and evaluate the Plan in a participatory manner. The Plan should take into account indigenous peoples and children and their right to participate, in a culturally sensitive manner, taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

Dissemination and training

14. While welcoming the State party's efforts to raise the public's awareness about trafficking and sexual exploitation of children, such as the sensitization campaigns on radio, television and in print media, the Committee is concerned that these campaigns did not sufficiently take into account all the provisions of the Optional Protocol. The Committee is concerned that children and the general population, including indigenous children, do not have adequate knowledge to identify the risks related to the offences covered by the Optional Protocol or where and how to report cases.

15. The Committee is further concerned that professionals working with and for children lack knowledge on the provisions of the Optional Protocol.

16. The Committee recommends that the State party:

(a) In line with article 9, paragraph 2, of the Optional Protocol, make the provisions of the Optional Protocol widely known to the public at large, including by elaborating, together with children, communication programmes and campaigns aimed at children, their families and communities;

(b) Develop cooperation with civil society organizations and the media in order to support awareness-raising and training activities on the provisions of the Optional Protocol;

(c) Continue and strengthen systematic education and training, including in universities, on the provisions of the Optional Protocol for all professional groups working with child victims or with children at risk of becoming victims of such crimes, inter alia, the police, lawyers, prosecutors, judges, social workers and immigration officials;

(d) Seek technical support from, inter alia, the Office of the United Nations High Commissioner for Human Rights and UNICEF in relation to the recommendations above.

Allocation of resources

17. The Committee is concerned that the budget allocations to the relevant institutions for implementation of the Optional Protocol at national and state levels are insufficient in order to implement the provisions of the Optional Protocol.

18. The Committee encourages the State party to increase budget allocations for coordination, prevention, promotion, protection, care, investigation and prosecution with regard to acts covered by the Optional Protocol, including by earmarking adequate human and financial resources for the implementation of programmes relating to its provisions at national, state and municipal level.

Independent monitoring

19. While noting information from the State party delegation that children can submit complaints to the National Human Rights Commission, the Committee is concerned that only the Federal District Human Rights Commission receives complaints from children, while complaints to all state human rights commissions require a parent's approval. The Committee is also concerned at the limited independence and capacity of the human rights commissions at the state level.

20. The Committee recommends that the State party ensure the full independence of the human rights commissions at the state level, and their accessibility to children. In this regard, the Committee recommends that the State party take into account the Committee's general comment No. 2 (2002) on the role of independent national human rights institutions in the promotion and protection of the rights of the child.

Human rights defenders

21. The Committee is deeply concerned over the persistent attacks and intimidations against human rights defenders, including those working on children's rights.

22. The Committee urges the State party to take effective preventive measures to protect human rights defenders and promptly investigate attacks against them, in line with the recommendation made by the Human Rights Committee in 2010 (CCPR/C/MEX/CO/5, para . 20).

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

Measures adopted to prevent offences referred to in the Optional Protocol

23. While welcoming that the State party has introduced several initiatives to prevent sexual exploitation and trafficking of children, including a programme that involves children themselves as rights promoters (*difusores de derechos*), the Committee regrets:

(a) That measures to prevent the offences referred to in the Optional Protocol are still inadequate, as evidenced by the massive quantity of child pornography produced in the State party, the large number of child sex tourists, and the high number of children involved in prostitution;

(b) The large number of unaccompanied children entering the State party from neighbouring countries, at risk of trafficking for purposes of sexual or labour exploitation;

(c) The high number of kidnapping of migrants, including children.

24. The Committee recommends that the State party:

(a) Carry out research on the nature and extent of the sale of children and the use of children for prostitution and pornography, in order to identify the root causes, the extent of the problems, and the existence of protection and prevention measures, paying special attention to indigenous children, and to adopt targeted measures;

(b) Take measures to identify children who are especially vulnerable to becoming victims of the crimes covered by the Optional Protocol, such as unaccompanied immigrant children, children affected by poverty and children in street situations, and link these measures to existing programmes such as the " Oportunidades " initiative ;

(c) Ensure that the perpetrators of these crimes are properly prosecuted and punished.

25. The Committee is concerned that almost 30 per cent of children do not attend school, which places them at risk of becoming victims of sale, prostitution or pornography. The Committee is also concerned that the education and health systems do not sufficiently take into account the content of the Optional Protocol.

26. The Committee recommends that the State party reinforce its efforts to ensure universal access to education and health services, and that both systems contribute to the prevention and protection of children against sale and their use in prostitution and pornography.

Child sex tourism

27. The Committee, while noting efforts to combat child sex tourism, including the elaboration of codes of conduct with the tourism industry, is nevertheless concerned at the still high level of child sex tourism in the State party, especially in tourist areas.

28. The Committee recommends that the State party take preventive measures, including awareness - raising efforts, to combat child sex tourism and that it properly investigate, and prosecute and punish when appropriate, all cases.

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. The Committee, while noting the amendments to the Federal Penal Code and the Prevention and Punishment of Trafficking in Persons Act, is concerned:

- (a) That not all offences covered by the provisions of the Optional Protocol have been fully incorporated into the Federal Penal Code;
- (b) That not all the states have introduced legislation criminalizing all the offences of the Optional Protocol, and at discrepancies between the Prevention and Punishment of Trafficking in Persons Act and state-level legislation;
- (c) At the lack of information on whether the legislation has been enforced in practice;
- (d) At the short statute of limitations for the offences covered by the Optional Protocol;
- (e) At reports of corruption and impunity relating to the offences under the Optional Protocol.

30. The Committee recommends that the State party revise and bring its federal and state penal codes in to full compliance with article 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, both at the federal and state levels, the following acts :

- (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 a 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, as defined in article 2 of the Optional Protocol;**
- (c) **Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography as defined in article 2 of the Optional Protocol;**
- (d) **Any attempt to commit any of these acts and complicity or participation in any of these acts;**
- (e) **The production and dissemination of material advertising any of these acts.**

Criminal liability of legal persons

31. The Committee is concerned that there are presently no provisions in the State party's legislation for the liability of legal persons.

32. The Committee recommends that the State party include provisions for the liability of legal persons in the federal and state penal codes, in conformity with article 3, paragraph 4, of the Optional Protocol.

Adoption

33. The Committee is concerned that domestic adoptions may be carried out privately, without proceeding through the authority responsible for adoption processes (National System for the Comprehensive Development of the Family).

34. The Committee recommends that the State party establish mechanisms to ensure that the biological parent has given free and informed consent to adoption, and that the principle of the best interests of the child is given due consideration. It further recommends that all domestic adoptions proceed through the National System for the Comprehensive Development of the Family .

Jurisdiction

35. The Committee regrets that the State party's jurisdiction over offences committed abroad covered by the Optional Protocol is subject to the criterion of double criminality.

36. The Committee recommends that the State party ensure that all legal and practical measures necessary be taken in order to be able to effectively establish jurisdiction over offences in accordance with article 4 of the Optional Protocol.

Extradition

37. The Committee is concerned that the State party only accepts requests for extradition on the basis of reciprocity.

38. The Committee recommends that the State party amend article 10, paragraph 1, of the International Extradition Act, ensuring that requests for extraditions will be granted regardless of the principle of reciprocity.

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

39. The Committee notes that positive actions are currently being taken, but need to be expanded, to address more demanding criminal realities. The National Victim Care Network is not sufficiently funded, and does not place sufficient emphasis on children.

The Committee is concerned that the measures taken to identify children who have been victims of offences under the Optional Protocol are still insufficient. It is also concerned that the procedures for the identification of and assistance given to victims vary from one state to another, and at the lack of an effective system, including coordination with relevant actors, to protect and assist victims. The Committee is further concerned that there is no child protection system for unaccompanied migrant children in the State party.

40. The Committee recommends that the State party continue and strengthen measures to ensure that all child victims receive adequate protection and specialized assistance in all areas of the State party, in accordance with article 8 , paragraph 1 , of the Optional Protocol and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20 , annex). In particular, the State party should develop comprehensive procedures for the early identification of child victims of offenses under the Optional Protocol, and ensure that judges, prosecutors, social workers, medical personnel and police officers are adequately trained on the provisions of the Optional Protocol.

Criminal justice system protection measures

41. The Committee is concerned that the State party has not undertaken the necessary legal measures for witness support and victim protection programmes to protect children during the criminal justice process. The Committee is also concerned that child victims of the offences covered by the Optional Protocol are sometimes treated as criminals and not as victims.

42. The Committee recommends that the State party ensure, through adequate legal provisions, procedures and regulations, that all child victims and witnesses of crimes are protected through all stages of the criminal process as required by the Optional Protocol.

Helpline

43. The Committee notes that the Casa Alianza foundation operates the national child helpline in the State party, but it is concerned that it is only toll free for calls from land lines.

44. The Committee recommends that the State party ensure that the helpline is toll free also from mobile phones. It urges the State party to ensure that the helpline is able to assist effectively in addressing and preventing the sale of children, child prostitution and child pornography. To this end the State party should:

- (a) Allocate appropriate resources to the helpline to ensure accessibility outside the national capital;**
- (b) Allocate appropriate financial resources to support long-term activities of the helpline, including for training and capacity - building to meet international quality standards;**
- (c) Raise awareness of the existence of the helpline and how it can be reached.**

Recovery and reintegration

45. The Committee recognizes the efforts of the State party, but is concerned that the measures for social reintegration, physical and psychosocial recovery measures and compensation for child victims are insufficient. The Committee is particularly concerned at the vulnerability of asylum-seeking and refugee children.

46. The Committee recommends that the State party:

- (a) Ensure that resources be earmarked in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular by providing child victims with interdisciplinary assistance;**
- (b) 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;**
- (c) Include specific measures for the protection of asylum-seeking and refugee children in the implementing regulations of the 2010 Refugees and Complementary Protection Act , in order to ensure adequate protection and effective access to refugee status determination procedures for foreign children who may have been victims of trafficking, prostitution and child pornography and who have a well-founded fear of persecution in their country of origin. In this regard, the State party should take into account the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, and seek technical assistance from the Office of the United Nations High Commissioner for Refugees .**

VIII. International assistance and cooperation

47. 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 and mechanisms to coordinate the implementation of such arrangements, with a view to improving the prevention, detection, investigation, prosecution and punishment of those

responsible for any of the offences covered under the Optional Protocol. The Committee recommends that the State party continue participating in international and regional frameworks at all levels.

IX. Follow-up and dissemination

48. 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 members of the Cabinet and Parliament and to the states and municipalities for appropriate consideration and further action.

49. 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, 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.

X. Next report

50. 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, due on 20 April 2011, in accordance with article 44 of the Convention.