



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-fourth session

25 May-11 June 2010

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 : Japan

1. The Committee considered the initial report of Japan (CRC/C/OPSC/JPN/1) at its 1513th meeting (see CRC/C/SR.1513), held on 28th May 2010, and adopted, at its 1541st meeting, held on 11 June 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report, as well as its written replies to the list of issues (CRC/C/OPSC/JPN/Q/1/Add.1), and appreciates the constructive dialogue with a 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 11 June 2010 on the State party's third periodic report under the Convention (CRC/C/JPN/CO/3) and on its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/JPN/CO/1).

I. General observations

Positive aspects

4. The Committee notes with appreciation:
 - (a) The enactment of the Online Dating Site Regulation Law in June 2003 to combat child sexual exploitation through internet dating sites;
 - (b) The amendment of the Immigration Control and Refugee Recognition Act in June 2005 to ensure that victims of trafficking are not subject to deportation;
 - (c) The 2009 Action Plan for Measures to Combat Trafficking in Persons;
 - (d) The 2005 Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, promoted by the United Nations Children's Fund and signed by representatives of the travel and tourism industry.

II. Data

Data collection

5. While acknowledging the State party's information on the number of arrests in relation to acts constituting violations of the Optional Protocol, the Committee is concerned at the lack of data, disaggregated by age, sex, ethnic group and geographic location, on the prevalence of the sale of children, child prostitution and child pornography from the perspective of the number of child victims, and at the lack of research on the specific areas covered by the Optional Protocol.
6. The Committee recommends that the State party conduct research and establish a central database for registering offences covered by the Optional Protocol and ensure that such data is systematically collected and disaggregated, inter alia, by the victims' age, sex, ethnic group and geographic location, as it provides an essential tool for measuring policy implementation. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offences.

III. General measures of implementation

Legislation

7. The Committee is concerned that, despite the volume of existing legislation in this area, harmonization between domestic law and the provisions of the Optional Protocol remains limited and that the sale of children is not included as a specific offence.

8 . The Committee recommends that the State party continue and complete the process of harmonizing its national legislation with the Optional Protocol.

9 . The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is similar, though not identical, to trafficking in persons, in order to adequately implement the provisions regarding the sale of children contained in the Optional Protocol.

National Plan of Action

10. While noting the adoption of the National Action Plan Against Commercial Sexual Exploitation of Children in 2001 and the existence of the National Action Plan for Measures to Combat Trafficking in Persons (2009), the Committee notes the lack of information on the relationship between the two Action Plans, their impact and whether they cover all areas of the Optional Protocol.

(a) The Committee recommends that the State party:

(i) Review and, if necessary, update, the Action Plans with a view to harmonizing their implementation and ensuring the comprehensive protection of all children, taking into account all the provisions of the Optional Protocol;

(ii) Implement the Action Plans in consultation with relevant stakeholders, including children and civil society;

(iii) Ensure that the Action Plans receive adequate human and financial resources and that they include specific, time-bound and measurable goals; and widely disseminate and regularly monitor their implementation.

11. In this regard, the State party is invited to take into account the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congress against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008 respectively.

Coordination and evaluation

12. The Committee expresses concern that there is no mechanism charged with coordinating the implementation of the Optional Protocol and of relevant activities.

13. The Committee recommends that the State party establish a coordinating body, with adequate financial and human resources to ensure the effective implementation of the Optional Protocol and the strengthening of coordination between the national and local authorities.

Dissemination and training

14. The Committee notes with concern that awareness-raising activities on the provisions of the Optional Protocol are inadequate.

15 . The Committee recommends that the State party:

(a) Ensure that the provisions of the Optional Protocol are widely disseminated, particularly to children, their families and communities, through, inter alia, the school curricula and long-term awareness-raising programmes, including campaigns;

(b) Promote, in line with article 9 , paragraph 2 of the Optional Protocol, awareness among the public, including children, through training and education campaigns, of the harmful effects of the offences set out in the Optional Protocol, as well the avenues for redress available to victims;

(c) Develop cooperation with civil society organizations and the media in order to support awareness-raising and training activities on issues related to the Optional Protocol.

16. The Committee is concerned that training on the Optional Protocol among professionals, apart from law enforcement and correctional authorities, is insufficient.

17 . The Committee recommends that the State party strengthen systematic gender-sensitive education and training on the provisions of the Optional Protocol for all professional groups working with child victims of the crimes covered by the Optional Protocol.

Allocation of resources

18. The Committee is concerned that the State party's report does not include information on the allocation of resources for the implementation of the Optional Protocol, particularly with regard to resources for criminal investigations, legal assistance and physical and psychological recovery measures for victims.

19 . The Committee encourages the State party to ensure sufficient budgetary allocations to relevant authorities and civil society organizations for the coordination, prevention, promotion, protection, care, investigation and suppression of acts covered by the Optional Protocol, including by earmarking human and financial resources for the implementation of programmes relating to its provisions, and in particular for criminal investigations, legal assistance and physical and

psychological recovery and social reintegration of victims.

Independent monitoring

20. The Committee expresses concern at the absence of an independent mechanism to monitor the implementation of the Optional Protocol at the national level. In this regard, the Committee notes the State party's information that five municipalities have appointed ombudspersons for children. The Committee, however, regrets the absence of information on their mandate and functions, the financial and other resources available to ensure their independence and efficacy and their envisaged relationship with the Human Rights Commission to be established under the Human Rights Protection Bill of 2002.

21 The Committee recommends that the State party:

(a) Expedite the passing of the Human Rights Protection Bill and the establishment of a National Human Rights Commission, compliant with the Principles relating to the status of national institutions (The Paris Principles), and provide it with the mandate to monitor the implementation of the Convention, receive and follow-up complaints and investigate systematic violations of child rights;

(b) Provide information, in its next report, on the mandate, functions and resources allocated to the ombudspersons;

(c) Take account of the Committee's general comment No. 2 (2002) on the role of independent human rights institutions.

22. While noting with appreciation the State party's information that five municipalities have appointed ombudspersons for children, the Committee is concerned that there is no national mechanism to monitor the implementation of the Optional Protocol and that the remaining municipalities are not served by ombudspersons.

23. The Committee recommends that the State party ensure that a national mechanism is established in conformity with the Principles relating to the status of national institutions (The Paris Principles) (to monitor the implementation of the Optional Protocol and that ombudspersons are appointed for the municipalities which are not currently served by an ombudsperson's office.

Civil society

24. The Committee regrets the low level of the State party's cooperation and collaboration with civil society in all areas concerning the implementation of the Optional Protocol.

25. The Committee encourages the State party to strengthen its collaboration with civil society in all matters covered by the Optional Protocol, including by supporting non-governmental organizations in their efforts to provide adequate services to child victims of violations of the Optional Protocol, and promoting their role in the development and monitoring of policies and services.

IV. 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

26. The Committee welcomes the efforts of the State party to combat child pornography and child prostitution. The Committee, however, is concerned that, in view of the prevalence of these offences, preventive measures remain inadequate. Furthermore, the Committee notes the lack of detailed information on measures to combat organized crime involving the offences set out in the Optional Protocol.

27. The Committee encourages the State party to:

(a) Intensify its efforts to prevent the sale of children, child prostitution and child pornography, including through collaboration and bilateral agreements with neighbouring States;

(b) Consider adopting a plan of action to combat organized crime, taking into account technological advances which facilitate the commission of these crimes, particularly across international borders;

(c) Consider ratifying the 2000 United Nations Convention against Transnational Organized Crime.

28. In view of the fact that the possession of child pornography is necessarily a consequence of the sexual exploitation of children, the Committee expresses its concern that, although article 7, paragraph 2, of the Law Banning Child Prostitution and Pornography criminalizes the possession of child pornography "for the purpose of offering it to a few, specific persons", the possession of child pornography remains legal.

29. The Committee strongly urges the State party to amend its legislation to include possession of child pornography as a criminal offence in line with article 3, paragraph 1(c) of the Optional Protocol.

V. 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

30. The Committee is concerned that the offences set out in the Optional Protocol are not fully covered under the State party's penal law in accordance with articles 2 and 3 of the Optional Protocol, and that, particularly, there is no definition of the sale of a child.

31. The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles 2 and 3 of the Optional Protocol, ensure that the law is enforced in practice and that perpetrators are brought to justice 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) **Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography;**

(d) **An 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.**

32. The Committee is concerned that, although the Online Dating Site Regulation Law aims to eliminate the use of online dating websites to facilitate child prostitution, other types of websites are not similarly covered by law.

33. The Committee recommends that the State party revise the Online Dating Site Regulation Law with a view to prohibiting the solicitation of child prostitution through all internet sites.

34. The Committee, while welcoming the measures to address various elements of the crimes set out in the Optional Protocol, is concerned that victims of child prostitution may be treated as criminals.

35. The Committee recommends that the State party ensure, by appropriate amendments to its legislation, that all children who are victims of violations of the Optional Protocol be treated as victims, not offenders.

Statute of limitations

36. The Committee notes with concern that, under the Code of Criminal Procedure, some of the offences covered by the Optional Protocol are subject to short periods of prescription. Given the nature of these offences, as well as the reluctance of victims to report them, the Committee is concerned that the prescription periods stipulated in the Code of Criminal Procedure may lead to impunity.

37. The Committee urges the State party to consider the repeal of this provision or, alternatively, to consider increasing the periods of prescription with a view to ensuring that all perpetrators are held accountable for acts constituting offences under the Optional Protocol.

VI. 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

Criminal justice system protection measures

38. The Committee welcomes measures in place to protect the rights and interests of child victims and witnesses in criminal justice procedures, including the availability of separate interviewing rooms and the possibility to hold a hearing in closed session. Nevertheless, the Committee is concerned that victims of crimes under the Optional Protocol who are witnesses in criminal proceedings do not receive adequate support and assistance throughout the criminal and judicial processes. In particular, the Committee expresses concern at the inadequacy of formal arrangements to limit the number of times children are required to testify and that the use of video evidence, in lieu of oral testimony, is not accepted during criminal proceedings.

39. The Committee recommends that the State party:

(a) **Urgently review, in consultation with experts in the field, its procedures for the provision of support and assistance to child victims who are witnesses, with a view to ensuring that children are not subjected to additional trauma as a result of being required to testify repeatedly and consider, to this end, the use of video evidence rather than oral testimony in such proceedings;**

(b) **Strengthen measures, including through the amendment of the Criminal Procedure Code, to protect the rights and interests of child victims, for all children under the age of 18 years, in accordance with article 8, paragraph 1 of the Optional Protocol and the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC res. 2005/20);**

(c) **Ensure that judges, prosecutors, police and other professionals working with child witnesses receive training on child-friendly interaction with victims and witnesses at all stages of the criminal and judicial processes.**

Recovery and reintegration

40. The Committee notes that, despite the measures taken by the State party in this regard, such as the provision of counselling services, physical and psychosocial recovery and social reintegration measures for victims of offences under the Optional Protocol

remain inadequate.

41 . The Committee recommends that the State party ensure that resources be earmarked in order to strengthen physical and psychosocial recovery and social reintegration measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular by providing interdisciplinary assistance for child victims and through collaboration and bilateral agreements with victims' countries of origin, where appropriate.

VII. International assistance and cooperation

International cooperation

42. The Committee commends the State party for its financial support to multilateral and bilateral activities and programmes, including support for the Bali Process and financial assistance to the International Organization for Migration, aimed at protecting children from sexual and other forms of exploitation prohibited under the Optional Protocol. The Committee notes, however, that the arrangements on mutual legal assistance between the State party and other concerned States in connection with investigations and criminal and extradition proceedings, including assistance in obtaining evidence necessary for the proceedings, are not adequate.

43 . The Committee recommends that the State party continue its financial support for activities to address the rights of children exploited contrary to the provisions of the Optional Protocol, in particular by promoting preventive measures as well as physical and psychological recovery and social reintegration of victims. The Committee also recommends that the State party strengthen coordination between the State party and the other States in conformity with any treaties or other arrangements on mutual legal assistance that may exist.

VIII. Follow-up and dissemination

Follow-up

44. 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, members of the Diet and other relevant authorities, for appropriate consideration and further action.

Dissemination of concluding observations

45. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available to the public, civil society organizations, the media, youth groups and professional groups in order to generate 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 through, inter alia, school curricula and human rights education.

IX. Next report

46 . In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined fourth and fifth periodic report under the Convention on the Rights of the Child, due on 21 May 2016.