



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: Colombia

1. The Committee considered the initial report of Colombia (CRC/C/OPSC/COL/1) at its 1530th meeting (see CRC/C/SR.1530), held on 4 June 2010, and adopted at its 1541th meeting, held on 11 June 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report. The Committee further welcomes its written replies (CRC/C/OPSC/COL/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue with a high-level and multi-sectoral State party delegation, led by the High Commissioner for Peace. The Committee however regrets that the report was overdue and did not follow the reporting guidelines. Furthermore, the Committee notes that the report is primarily devoted to sexual exploitation of children rather than the specific situations covered by the Optional Protocol and that there is a lack of information about the specific programmes and actions undertaken by State party.

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 on 8 June 2006 (CRC/C/COL/CO/3) and with the concluding observations adopted on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/COL/CO/1) on 11 June 2010.

I. General observations

Positive aspects

4. The Committee notes with appreciation the adoption of the following legislation:

(a) *The Law 1098 of 2006 on Childhood and Adolescence (El Código de la Infancia y Adolescencia)* ;

(b) The Law 1329 of 17 July 2009 on provisions to combat commercial sexual exploitation of children (Por medio de la cual se modifica el título de la Ley 599 y se dictan otras disposiciones para contrarrestar la explotación sexual comercial de niños, niñas y adolescentes);

(c) The Law 1336 of 21 July 2009 on reinforced measures against exploitation, pornography and sexual tourism with children (Por medio de la cual se adiciona y robustece la Ley 670 de 2001 de lucha contra la explotación, la pornografía y el turismo sexual con niños, niñas y adolescentes).

II. Data

5. The Committee, while appreciating the information contained in the State party reply to the list of issues, regrets that data on the extent of sale of children, child prostitution and child pornography and on the number of children involved in these activities are limited and not systematized, mainly due to the absence of a comprehensive data collection system. The Committee furthermore is concerned over the lack of information regarding the number of cases that have been investigated and the number of offenders who have been prosecuted and sanctioned.

6. The Committee recommends that the State party develop measures to identify children who have been victims of crimes under the Protocol and establish a central database for registering violations of child rights in order to ensure that data relating to offenses covered by the Protocol are systematically collected and disaggregated, inter alia by age, sex and ethnic group and analysed, as they provide essential tools for measuring policy implementation. Data on the number of reported cases and the related investigations and prosecutions should also be systematized. The Committee recommends that the Government authority responsible for the collection of statistics, National Administrative Department of Statistics (DANE), undertake further measures to coordinate, systematize and

unite data from various government entities, such as the Colombian Family Welfare Institute (ICBF), the Human Rights Ombudsman's Office (*La Defensoría del Pueblo*), the Attorney General's Office (*La Fiscalía General de la Nación*) and the Inspector General's Office (*La Procuradería General de la Nación*).

III. General measures of implementation

Legislation

7. 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 to trafficking in persons but not identical, in order to adequately implement the provision of sale contained in the Optional Protocol.

Coordination

8. The Committee notes that ICBF is responsible for coordination of implementation of the Optional Protocol, however it is concerned that there is not a specific unit within ICBF in charge of the coordination with other relevant entities, including the Human Rights Ombudsman's Office, the Attorney General's Office, the judiciary and regional and local authorities and that the coordination to promote and comprehensively apply the State party's obligations are insufficient.

9. The Committee recommends that the State party ensure that coordination is strengthened between ICBF and other relevant entities, including the Human Rights Ombudsman's Office, the Attorney General's Office, the judiciary and regional and local authorities.

National Plan of Action

10. The Committee welcomes the National Plan of Action for the Prevention and Eradication of Commercial Sexual Exploitation of Children and Adolescents 2006-2011, however is concerned that it only covers certain provisions under the Optional Protocol and that its impact on implementation has yet to be evaluated.

11. The Committee recommends that the State party ensure that a National Plan of Action cover all areas of the Optional Protocol, is provided with adequate human and financial resources for its implementation and its impact periodically evaluated.

Dissemination

12. The Committee is concerned that public awareness of the provisions of the Optional Protocol is insufficient, especially among children themselves and in particular among vulnerable groups of children, such as those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.

13. The Committee recommends that the State party:

(a) Make the provisions of the Optional Protocol widely known in the public at large, including to children in a child-friendly manner, their families and communities, through the school curricula and long-term awareness-raising measures;

(b) Develop cooperation with civil society organisations, the media and the private sector in order to support awareness-raising and training activities on the provisions of the Optional Protocol, particularly in areas with high risks of incidence of such crimes.

Training

14. The Committee is concerned that relevant professional categories, in particular the police and those working with the administration of justice receive insufficient training on the provisions of the Optional Protocol.

15. 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 crimes, inter alia the police, lawyers, prosecutors, judges, medical staff, social workers, migration officials and the media.

Allocation of resources

16. The Committee is concerned that resources have not been sufficiently allocated to implementation of the provisions of the Optional Protocol, especially regarding prevention of root causes and in order to provide assistance to child victims for their social reintegration and physical and psychological recovery. Furthermore, the Committee is concerned that a majority of actions on the ground are financed through international cooperation and by NGOs rather than by the State party.

17. The Committee encourages the State party to increase budget allocations for coordination, prevention, promotion, protection, care, investigation and suppression of acts covered by the Optional Protocol, including by earmarking human, technical and financial resources from the regular budget for the implementation of programmes relating to its provisions, and in particular for criminal investigations, legal assistance and physical and psychological recovery of victims to relevant regional and local authorities and civil society organisations.

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

18. The Committee notes as positive certain preventive initiatives, such as codes of conduct for the tourism industry. The Committee however notes that prevention efforts are inadequate, in particular given the large number of victims and the lack of targeted measures for vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.

19. The Committee encourages the State party to carry out further documentation and gender-sensitive 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 prevention measures which specifically contemplate prevention of crimes under the Optional Protocol and targeted measures for vulnerable groups of victims.

Adoption

20. The Committee is concerned that not all of the intercountry adoptions are officially administered by ICBF. The Committee is furthermore concerned over the practice of private adoption houses for pregnant women as this may influence their informed consent to adoption and promote the sale of children for adoption.

21. The Committee reiterates its recommendation (CRC/C/COL/ CO/ 3, pa ra. 57) that the State party ensure that all national and intercountry adoptions be administered through ICBF, which has been nominated as the competent authority in accordance with article 21 of the Convention and the Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993, to which Colombia is a party. Furthermore, the Committee recommends that the State party prohibit adoption through private adoption houses for pregnant women where children may be sold for adoption.

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

22. The Committee welcomes the adoption of new legislation against exploitation, pornography and sexual tourism with children (Law 1336 of 2009) and on commercial sexual exploitation of children (Law 1329 of 2009). However, the Committee is concerned that all crimes under the Optional Protocol are not fully criminalized in accordance with its articles 2 and 3. The Committee is concerned that existing penal provisions only contemplate trafficking but not sale of children and regrets the lack of provisions covering legal persons. While the Penal Code contains a provision (art. 232) on irregular adoption for lucrative purposes, it fails to clearly define improperly induced consent by an intermediary. The Committee is concerned that the absence of adequate penal provisions precludes the possibility of investigating crimes under the Protocol and has resulted in impunity.

23. The Committee recommends that the State party revise and bring its Penal Code in 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. 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, as defined in art 2 of the Optional Protocol;
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography, as defined in art 2 of the Optional Protocol;
- (d) An attempt to commit any of these acts and complicity or participation in any of these acts; and
- (e) The production and dissemination of material advertising any of these acts.

Jurisdiction and extradition

24. The Committee welcomes information provided in the State party report (para. 192) that the Optional Protocol provides sufficient basis in order to establish extraterritorial jurisdiction without the requirement of any bilateral extradition treaty. The Committee notes that the State party has extradited a person for prosecution on charges relating to the Optional Protocol.

25. The Committee recommends that the State party ensure that all legal and practical measures necessary be undertaken in order to be able to effectively establish extraterritorial jurisdiction over offences in accordance with articles 4 and 5 of 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

26. The Committee notes as positive the establishment of the Centres for Integral Attention for Victims of Sexual Violence

(CAVIDAS) and of the Family Defenders within the ICBF, however is concerned that they have not been sufficiently trained on the provisions of the Optional Protocol. The Committee is concerned over information indicating that the protection provided by the Attorney General's Office for victims and witnesses at risk in conjunction with the prosecution of members of networks responsible for child prostitution and trafficking is inadequate. The Committee regrets that information from the State party on protection measures is lacking.

27. The Committee recommends that the State party:

(a) Develop comprehensive procedures for the early-identification of child victims of offenses under the Optional Protocol;

(b) Take all necessary measures to ensure that child victims of any of the crimes under the Protocol not be stigmatized. Child victims should be protected at all stages of the criminal justice process in accordance with article 8 of the Optional Protocol;

(c) Allocate adequate financial and human resources to the competent authorities in order to ensure access to the legal representation for child victims;

(d) Presume, if in doubt, that young victims of sexual exploitation are children, and not adults.

28. Furthermore, the Committee encourages the State party to be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20) and should in particular:

(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 to protect children from hardship during the justice process, including by the use of special interview rooms designed for children, child-sensitive methods of questioning; and by reducing the number of interviews, statements and hearings.

Recovery and reintegration

29. The Committee notes efforts by ICBF and the Family Defenders, however it is concerned that social reintegration and physical and psychosocial recovery measures for child victims are insufficient and that victims face difficulties in accessing compensation. In particular, the Committee is concerned over the lack of recovery and reintegration measures for vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children.

30. The Committee recommends that the State party:

(a) Ensure that resources be earmarked in order to provide adequate social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3, of the Optional Protocol, in particular by providing interdisciplinary assistance for child victims, both girls and boys, while paying particular attention to vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro-Colombian and indigenous children;

(b) Guarantee that all child victims of the offences described in the Optional Protocol have access to adequate procedures and to seek, without discrimination, compensation for damages from those legally responsible, in accordance with its article 9, paragraph 4.

VII. International assistance and cooperation

31. The Committee recommends that the State party strengthen international cooperation through multilateral, regional and bilateral arrangements 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. These arrangements should always be in the best interests of the child and respect international human rights standards.

32. The Committee also encourages the State party to continue its cooperation with United Nations agencies and programmes, in particular UNICEF, as well as interregional programmes and non-governmental organizations, in the development and implementation of measures aimed at an effective application of the Optional Protocol.

33. The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

34. 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.

VIII. Follow-up and dissemination

Follow-up

35. 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 the Congress and relevant government entities, including the ICBF as well as regional and local authorities for appropriate consideration and further action.

Dissemination

36. 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, 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.

IX. Next report

37. 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 next periodic report under the Convention on the Rights of the Child.