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Convention on the Rights of the Child

COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES 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

Initial reports of States parties due in 2006

OMAN

GE.09-40242[11 October 2007]

Ministry of Social Development

Follow-up Commission on Implementation of the Convention on the Rights of the Child

1. Introduction

The Sultanate of Oman takes pleasure in submitting, pursuant to 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, its initial report on the measures that it has taken to implement the Protocol.

The Sultanate affirms that the laws in force guarantee the protection of human rights, including the rights of children, particularly with regard to the sale of children, child prostitution and child pornography.

The Sultanate furthermore takes this opportunity to reiterate its commitment to the international treaties, conventions and covenants to which it is a party and by which it is bound pursuant to article 10 of the Basic Law of the State.

The Sultanate has submitted two State party reports under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, the first of which is contained in document CRC/C/78/1/Add.1 and the second in document CRC/C/OMN/2. In so doing, it complied with the guidelines of the United Nations Secretariat on the form and content of State party reports which the Committee on the Rights of the Child adopted at its thirteenth session held in October 1996.

The Sultanate affirms its commitment to the Convention on the Rights of the Child and to its implementation (having due regard to its reservations that it should be discussed or amended).

The Basic Law of the State takes precedence over any law, statute or regulation. Articles 72, 76 and 80 of the Basic Law stipulate that the Basic Law shall be applied without prejudice to the treaties and conventions which the Sultanate concludes with international institutions and organizations and to their implementation and primacy over domestic law. Consequently, the Optional Protocol is immediately applicable.

With regard to the information contained in the Sultanate's second periodic report (CRC/C/OMN/2) on the measures taken to disseminate the principles of the Convention, we confirm that, according to the laws in force in Oman, all laws, including those pertaining to the ratification of international treaties, must be published in the Official Gazette. In addition, the general principles of the Convention on the Rights of the Child have been incorporated into the curricula for general and basic education.

With regard to the information in the Sultanate's second periodic report on the measures taken to provide training on the Convention, the laws of Oman affirm the principles of non-discrimination, equality before the law and equality in regard to rights and duties. These principles apply to adults and children alike, whether they be citizens or residents of Oman or refugees or asylum-seekers. The principle of the best interests of the child is the primary consideration in the laws, policies and measures applied in the health, social services and other spheres in the Sultanate of Oman. The law and national policy guarantee the child's right to life, survival and development. Thus, a child may not be denied the right to life, by virtue of a statutory enactment, an executive measure or wishes of

an individual. Protection is afforded to children, even in the womb. Abortion is permitted, however, when the continuation of the pregnancy would pose a definite threat to the mother's life, whether or not the foetus is deformed, based on the principle of the lesser of two evils, and also when the foetus has a serious deformity that is not treatable. Evidence of these conditions must be provided firstly in a report by a medical panel consisting of medical specialists and, secondly, a report prepared by a medical panel based on laboratory tests.

Lastly, the draft juvenile law of Oman is in the final stages of enactment. It regulates the administration of juvenile justice with regard to testimony and questioning of witnesses, hearing of victims and the procedure for involving them in the judicial process. The Code of Criminal Procedures includes provisions which safeguard children and their right to express their views and concerns about the judicial process.

The National Follow-up Commission on the Implementation of the Convention on the Rights of the Child and its subcommittees have been officially mandated to prepare, draw up and revise reports on the Convention and the two Protocols; the Commission represents different government departments and civil society institutions.

2. Prohibition of the sale of children, child prostitution and child pornography: articles 1 to 3 of the Protocol

The laws in force in the Sultanate of Oman guarantee protection of children's rights, including the prohibition of the sale of children, child prostitution and child pornography. The laws in question are:

2.1 The Basic Law of the State

Chapter II of the Basic Law of the State lays down the guiding principles of State policy. These principles include those relating to the Convention on the Rights of the Child and the two Optional Protocols. The following social principle is articulated in article 12, paragraph 3, of the Basic Law:

"The family is the foundation of society and the law regulates the means for protecting it, preserving its legal existence, strengthening its ties and values, caring for its members and creating conditions conducive to the development of their aptitudes and capacities."

Chapter III of the Basic Law sets out rights and duties which are of relevance to the Convention on the Rights of the Child and the Optional Protocol. Article 26 states that medical experiments or operations may not be performed on anyone without his or her freely-given consent.

2.2 The Omani Criminal Code

Section 2, Chapter V, of the Omani Criminal Code contains provisions of relevance to the Optional Protocol which criminalize anyone who incites others, including children, to engage in prostitution or acts of depravity. The Code increases the penalty for such offences where the victim is under 18. The articles in question are:

Article 220: A penalty of from three to five years in prison shall be imposed on anyone who uses coercion, threats or deception to induce a person to engage in acts of depravity or prostitution. The penalty shall be not less than five years, if the victim was under 18.

Article 221: A penalty of from three months to three years in prison and a fine of from 20 to 100 rials shall be imposed on anyone who lives wholly or in part off the depravity or prostitution of a person under his or her protection, influence or control.

Article 223 furthermore states that a penalty of from 20 days to 1 year in prison and a fine of from 2 to 50 Omani rials shall be imposed on anyone who makes, acquires, distributes or displays indecent messages or images or other obscene articles. A scientific or technical product shall not be regarded as an obscene article unless it is shown, for a non-educational purpose, to a person under the age of 18.

Section 2, Chapter VI, of the Code contains provisions of relevance to the Optional Protocol which make it an offence to deprive a person of his liberty. The articles in question are:

Article 256: A penalty of from six months to two years in prison shall be imposed on anyone who resorts to abduction or any other method in order to deprive another person of his liberty.

Article 257: The same penalty as is prescribed in the preceding article shall be imposed on anyone who knowingly conceals the whereabouts of a person who has been abducted.

Article 258 (3): The abductor shall be subject to a penalty of not less than 15 years in prison, if the person deprived of his or her liberty is subjected to physical or mental torture, raped or forced into prostitution.

Article 260 of the Code prescribes a penalty of from 5 to 15 years' imprisonment for anyone who enslaves or places a person in a condition of virtual enslavement.

The Omani Criminal Code defines slave trafficking as a criminal offence. Article 261 states that a term of from three to five years in prison shall be imposed on anyone who brings a person in a condition of involuntary servitude or slavery into or out of Oman, or in any way disposes of, receives, takes possession of or acquires that person or keeps him or her in that condition.

In addition, the Criminal Code devotes a special section to the statute of limitations on offences. Article 71 stipulates that offences for which the penalty is death or life imprisonment are time-barred from prosecution once 25 years have elapsed since their commission;

the time limit for any other major offence is 10 years. As for lesser offences, the time limit for the imposition of corrective penalties is five years, while the time limit on other penalties for indecent acts is two years.

As for attempts to commit any of the offences enumerated in the Protocol, article 86 of the Code stipulates that an attempted offence shall be treated as if it were the offence itself, if its non-commission can only be attributed to circumstances beyond the perpetrator's control. Article 87 states that attempted offences of a less serious nature can only be punished under specifically defined circumstances.

The Code punishes participation in a crime. Article 93 stipulates that the author of a crime is anyone who is responsible for any of the constituent elements of a crime or who participates directly in, or instigates, its commission. Article 95 stipulates that an accessory to a crime is anyone who aids and abets or conspires with the perpetrator or knows the offender's criminal history. Article 96 punishes anyone whose participation was indispensable for the commission of a crime as if he were the author of the crime.

2.3 The Code of Criminal Procedures

The Children's Act provides legal protection for children to enable them to apply to the courts to seek protection of their interests and to submit complaints against their legal guardian. If a child has no one to represent his or her interests or his or her interests are in conflict with those of his or her representative, the public prosecutor shall act as the minor's representative.

The public prosecutor must appoint a tutor for the lawsuit to represent the plaintiff or the defendant, if the minor has no representative or the minor's interests conflict with those of his or her representative.

3. Criminal/penal procedures: articles 4-7 of the Protocol

Legal jurisdiction

Section 2, title I, of the Criminal Code defines the territorial scope of Omani criminal law on the basis of four criteria:

1. Territorial, i.e. relating to the place in which the offence was committed: jurisdiction in this case is defined as territorial jurisdiction;
2. Inherent, i.e. relating to the interest of the Omani State in the offence: jurisdiction in this case is inherent jurisdiction;
3. Personal, i.e. relating to the nationality of the author: jurisdiction in this case is defined as personal jurisdiction;
4. Subject matter, i.e. relating to the type of offence and the commitment of the Omani State to participating in international efforts to combat crime; jurisdiction in this case is known as comprehensive jurisdiction.

Under article 3 of the Code, Omani law applies to all offences committed in the Sultanate and the territories under its control. With regard to territorial jurisdiction, article 5 of the Code states that: "Omani territory includes the layer of air above it, i.e. Omani airspace. For the purposes of the application of Omani law, Omani territory is defined as:

1. The territorial waters, as defined in a special law;
2. The airspace above the territorial waters;
3. Omani vessels and aircraft, wherever they may be;
4. Non-Omani territory which is legally part of Omani territory.

Furthermore, based on the criterion of inherent jurisdiction, Omani law applies to any Omani or foreigner who engages in, incites or is an accessory to the enslavement, trafficking or placement of an Omani in a condition of involuntary servitude (art. 8).

Article 10, concerning the criterion of personal jurisdiction, stipulates that Omani law applies to any Omani who is the author or instigator of, or an accessory to, a serious or lesser offence committed outside Omani territory which is punishable under Omani law, unless the offence has been adjudicated pursuant to a final judgement handed down abroad and the sentence has been served, in the case of a conviction, or the prosecution or sentence has been discontinued pursuant to a general amnesty, a special pardon or by virtue of the lapse of time.

The Code also refers to the criterion of comprehensive jurisdiction in article 12, which states that Omani law applies to every foreigner who, in the capacity of author, instigator or accessory to an offence, commits a serious or lesser offence that is punishable under Omani law and is present on Omani soil after committing the said offence. The only conditions stipulated in such cases are that the law of the State in which the offence was committed must prescribe a penalty of three years' imprisonment for the offence, that no request for extradition of the foreigner must have been made or granted and that the foreigner must not have been convicted abroad pursuant to a final court judgement.

Extradition of criminals

The Omani Extradition Act issued in Sultani Decree No. 4/2000 states, in article 1: "Without prejudice to treaties which the Sultanate concludes with other States, the arrests and extradition of criminals to requesting States shall be effected in conformity with the present Act."

Article 2 of the Act furthermore provides that extradition is permitted in two cases: first, where the offence was committed in the State requesting the extradition or the perpetrator is a national of that State and, second, where the offence was committed outside

the requesting State and it damaged that State's security, financial position or the authoritative nature of its official stamps.

According to article 3, there are several circumstances in which the Act does not permit extradition, including where the person whose extradition is sought is an Omani national and where the offence or any act representing a consistent element of the offence was committed in the Sultanate.

Article 4 states that no one being sought by another State may be arrested before an extradition request has been received, together with the documents specified by law, which must be officially authenticated and stamped by the competent judicial authority in the requesting State.

Article 6 states that where extradition requests are submitted by several States for the same person and in respect of the same or different offences, the appeal court shall choose the State to which the person will be extradited, bearing in mind all the contingent circumstances and, in particular, the nationality of the person sought, the place where the offence or offences occurred, their relative gravity and the date of receipt of the request. Priority for extradition shall be given to a State with which Oman has concluded a relevant treaty.

The Act requires the prosecution service to question the person being sought and, as the case may be, to detain, release or prohibit the person from leaving Oman until a decision on the extradition request has been taken.

In addition to the foregoing, we refer to the annex to the second periodic report of the Sultanate (CRC/C/OMN/2), which provides statistical information on offences. We should add that the sale of children, child prostitution and child pornography is not a perceptible phenomenon in the Sultanate, since Omani society has a conservative Islamic or Arab culture that encourages affection, respect and protection for children.

Seizure and confiscation of articles and property and closure of premises

Confiscation, closure and disqualification from business activities are some of the subsidiary penalties prescribed in the Omani Criminal Code. Article 52 of the Code states that a court, when handing down a conviction, may order the confiscation of seized items used or intended for the commission of an offence and items stolen during, or accrued as a result of, an offence, without prejudice to the rights of good faith third parties.

Furthermore, in keeping with the Protocol, especially its provisions concerning seizure and confiscation, article 53 of the Code stipulates: "It must in any case order the confiscation of items that were made, acquired or used illegally, even if they do not belong to the defendant or convicted person and the prosecution does not result in a conviction."

Article 55 contains a provision authorizing the closure of any premises in which a serious or lesser offence is committed or specific preparations were made for the commission of an offence.

4. Protection of the rights of child victims: article 8 of the Protocol

4.1 The Basic Law of the State issued by Sultani Decree No. 101/96

Chapter III of the Basic Law of the State sets out rights and duties which are relevant to the Convention on the Rights of the Child and the Optional Protocol on the sale of children, child prostitution and child pornography as follows:

All citizens are equal before the law and in regard to their rights and public duties. There shall be no discrimination between them on grounds of sex, origin, colour, language, religion, creed, ethnic origin or social status.

Article 17: Personal freedom is guaranteed by law. No one may be arrested, searched, detained, imprisoned, obliged to live in a specific place or subjected to restrictions on his or her freedom of residence or movement unless in conformity with the law.

Article 19: No one may be detained or imprisoned in a place not designated for that purpose by the prison laws and which does not provide health care and social welfare services.

Article 20: No one may be subjected to physical or mental torture, enticement or degrading treatment. The law shall define the penalties for committing such acts. In addition, any statement or confession which is proven to have been obtained by means of torture, enticement or similar treatment or threats shall be deemed null and void.

Article 21: *Nulla poena sine lege* (There shall be no penalty without a law). No penalty shall be imposed for acts other than those prohibited by law.

Article 22: Defendants are innocent until their guilt is proved in a legal trial which affords the necessary guarantees for the exercise of the legal right to a defence. It is prohibited to inflict physical or mental harm on a defendant.

Article 23: The accused is entitled to appoint a person who is capable of defending him at trial. The law shall specify the circumstances in which a lawyer must be present with the defendant and shall provide persons with limited financial resources access to the courts and the means to defend their rights.

Article 24: Anyone who is arrested or imprisoned must be informed immediately of the reasons for his arrest or imprisonment. He shall have the right to contact any person of his choosing to inform them of what has happened or ask for assistance, in keeping with the rules of law. He shall be promptly informed of the charges against him and he and his representative may appeal to a court against the decision depriving him of his liberty. The law regulates the right of appeal, guaranteeing that appeals are adjudicated within a specific time limit; failing this, the person in detention will be released immediately.

4.2 The Omani Criminal Code issued by Sultani Decree No. 7/74

The Code grants injured parties the right to claim compensation for material or moral damages arising from an offence.

The Code punishes public officials who deprive a person of his liberty arbitrarily or in circumstances not provided for by law.

The Code does not allow public servants to enter a private home without the owner's consent, in circumstances that are not provided for by law, or in disregard for the provisions of the Code.

The Criminal Code provides for special treatment of juvenile offenders, who are regarded as the victims of social circumstances. Articles 104-107 of the Code refer to social welfare for the purposes of the reform and rehabilitation of juvenile offenders.

4.3 The Code of Criminal Procedures issued by Sultani Decree No. 97/99

We refer to the information contained in paragraph 2.3 concerning the Code of Criminal Procedures, and should like to explain that, in the absence of a special law applicable to children in the event of a legal dispute, the Code of Criminal Procedures applies to all the parties in a criminal case, whether they are defendants or victims, minors or adults, having due regard to the rules on children set out in the Criminal Code, which prescribes lower penalties for juvenile offenders and includes protection measures for their rehabilitation.

The Code lays down the conditions for hearing, questioning and confronting witnesses, stating, for example, that the public prosecutor must hear all the witnesses separately. He may also hold a confrontation among the witnesses and with the defendant and may hear testimony from anyone under the age of 18 in order to confirm facts.

The Code stipulates that hearings must be held in public, although a court may decide to hear all or part of a case in camera for reasons of public order or the protection of public morals.

The courts may engage a person who knows sign language or is able to communicate with persons under the age of 18 or suffering from an illness or disability that makes it impossible to communicate with them otherwise.

Article 41 of the Code of Criminal Procedures articulates as a general principle that no one may be subjected to degrading treatment, torture, coercion or enticement. If this rule is intended to apply to the treatment of defendants, it applies even more so to victims.

Article 74 of the Code of Criminal Procedures allows defendants, victims, plaintiffs, respondents and defence counsel for any accused person to be present during the preliminary examination. A person accused of a crime may be accompanied by a lawyer.

The Code allows all defendants (both adults and children alike) to have access to legal aid and other assistance in order to prepare their defence during the different stages of a case. This right is firmly established in article 181 of the Code of Criminal Procedures, which states that the parties and their representatives may attend trial hearings, even if conducted in camera, and may not be removed from the court, unless they behave in a manner that demonstrates contempt for the court or that disrupts the hearing. These rights are also laid down in article 24 of the Basic Law of the State.

Article 177 of the Code of Criminal Procedures allows a court to hear a case in camera in order to protect public morals and public order, ensuring the non-disclosure of family secrets or of private details that would cause embarrassment of any kind. The same applies to cases of rape and sexual abuse. The Code of Civil and Commercial Procedures contains similar provisions.

Articles 90-92 of the Code of Criminal Procedures protects the confidentiality of correspondence, telegrams and conversations conducted in a private place from any form of surveillance, unless it is conducted in connection with an offence or pursuant to a warrant issued by the prosecution service.

The treatment of child victims and witnesses and the arrangements for dealing with children and providing for their psychological and physical rehabilitation (social reintegration) are governed by the Omani Juveniles Act, although these matters are also addressed in the framework of the Code of Criminal Procedures and the Code of Civil and Commercial Procedures.

4.4 The Code of Civil and Commercial Procedures issued by Sultani Decree No. 29/2002

The Code defines the rights of children who are affected by or are a party in a court case. It protects the interests of the child in clear and explicit terms, allowing for proceedings to be brought in regard to child maintenance, custody, transfer of custody to the father or access visits in their place of residence. The Code also allows for the issuance of temporary orders regarding the payment of maintenance, access to children and the surrender of a minor to a person entitled to care for him or her. Access visits must be conducted in a place where the child feels at ease.

The Code covers all aspects of children's welfare, rights and interests, including:

Guardianship of children and its legal conditions and effects;

The protection, administration and investment of children's property and assets and related legal conditions and regulations.

The prosecution service may intervene in a civil case, pursuant to article 91 of the Code.

5. Prohibition of the sale of children, child prostitution and child pornography (Protocol, art. 9)

We refer to paragraph 2.4 of the second periodic report of Oman (CRC/C/OMN/2) on the implementation of the Convention on the

Rights of the Child, which describes the measures taken to disseminate the principles of the Convention on the Rights of the Child and the Optional Protocols.

We also refer to part 12 of the list of issues (CRC/C/OMN/Q/2/Add.1) to be taken up in connection with the consideration of the same report, submitted for discussion in 2006, which contains updated information on efforts to provide training on and awareness of the Convention, the Optional Protocols and the rights of children in general.

6. International assistance and cooperation (prevention, protection of victims and implementation of laws on financial and other forms of assistance): article 10 of the Protocol

We refer to paragraph 2.2 of the second periodic report of Oman (CRC/C/OMN/2). We also refer to part 13 of the list of issues (CRC/C/OMN/Q/2/Add.1), which contains updated information on cooperation with civil society and local communities, including non-governmental organizations, to prevent these crimes and protect and assist victims, and on law enforcement.

7. Other legal provisions

The Sultanate has acceded to a number of international conventions of relevance to the rights of the child and the Optional Protocol on the sale of children, child prostitution and child pornography. These include:

The International Convention on the Suppression and Punishment of the Crime of Apartheid, pursuant to Sultani Decree No. 80/1991;

The ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182), pursuant to Sultani Decree No. 138/2001;

The International Convention on the Elimination of All Forms of Racial Discrimination, pursuant to Sultani Decree No. 87/2002;

The United Nations Convention for the Suppression of Transnational Organized Crime and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, pursuant to Sultani Decree No. 37/2005;

The Convention on the Elimination of All Forms of Discrimination against Women, pursuant to Sultani Decree No. 42/2005.
