



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-fifth session

13 September-1 October 2010

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

Concluding observations: Nicaragua

1. The Committee considered the initial report of Nicaragua (CRC/C/OPSC/NIC/1) at its 1572nd meeting (see CRC/C/SR.1572), held on 24 September 2010, and adopted at its 1583rd meeting, held on 1 October 2010, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the initial report of the State party, as well as its written replies (CRC/C/OPSC/NIC/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue held with the high-level delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations adopted on 1 October 2010 (CRC/C/NIC/CO/4) following consideration of the State party's fourth periodic report, and the concluding observations also adopted on 1 October 2010 (CRC/C/OPAC/NIC/CO/1) following consideration of the State party's initial report under the Optional Protocol on the involvement of children in armed conflict

I. General observations

Positive aspects

4. The Committee notes with appreciation that the Penal Code, which entered into force in 2008, criminalizes certain aspects of the sale of children, child prostitution and child pornography.

II. Data

5. The Committee is concerned about the absence of a comprehensive and systematic data collection mechanism, to analyse and monitor the sale of children, child prostitution and child pornography, and the number of children involved in these activities.

6. The Committee recommends that the State party develop and implement a comprehensive and systematic data collection mechanism to analyse, monitor and assess the impact of activities in all the areas covered by the Optional Protocol. The data should be disaggregated, inter alia, by nature of offence, sex, age, national and ethnic origin, urban/rural areas and socio-economic status, with particular attention to children in vulnerable situations. The Committee recommends that the State party seek technical support from, inter alia, the United Nations Children's Fund (UNICEF) with regard to the above recommendation.

III. General measures of implementation

Legislation

7. While welcoming the adoption of the Penal Code which entered into force in 2008 and the regulations of the General Tourism law, the Committee nonetheless regrets that the State party has not fully implemented its obligations under the Optional Protocol. Furthermore, the Committee is concerned that the Penal Procedure Code, adopted in 2001, has not been adapted to the Penal Code of 2008.

8. The Committee recommends that the State party urgently amend its Penal Procedure Code in order to harmonize it with the Penal Code. The Committee reminds the State party that its legislation must satisfy its obligations with regard to the definition of the sale of children. Since the concept of sale of children is not identical to that of trafficking, in order to fully implement the provisions on the sale of children contained in the Optional Protocol, the State party must ensure that its legislation contains specific provisions on the sale of children, as provided for in the Optional Protocol.

Coordination and evaluation

9. The Committee regrets that the National Council for the Comprehensive Care and Protection of Children and Adolescents (CONAPINA), established by the Children and Adolescents Code, with civil society participation, at the presidential level, and which was previously in charge of coordinating child policies, has lost its authority by virtue of Law 290 (2008) and is now under the Ministry of Family, Adolescence and Childhood (MIFAN), thereby affecting overall coordination, including with civil society. It is further concerned that a new National Social Welfare System (*Sistema Nacional de Bienestar Social*) has taken over the overall coordination of social policy, including that related to children, and consequently, promotion and protection of children's rights in general, not only those at risk, have lost specificity and transparency.

10. The Committee recommends that the State party consider strengthening the leadership and coordinating functions of CONAPINA, as set out in the Child ren and Adolescents Code, and, in th at respect, streamline the roles and activities of both MIFAN and the National Social Welfare System to ensure a comprehensive and well articulated system to promot e and protect children's rights.

National Plan of Action

11. Based on the statement by the delegation, the Committee notes that the State party has a new Strategic Plan against Trafficking in Persons (2010-2014) which is implemented by the National Coalition against Trafficking in Persons (*Coalición Nacional Contra la Trata de Personas*). However, the Committee has no information on how the said plan is coordinated with the Amor programme (*Programa Amor*), whether it has the mandate to prevent and combat all offences under the Optional Protocol, and whether it has adequate human and financial resources.

12. The Committee recommends that the State party:

(a) Ensure that the new Strategic Plan against Trafficking in Persons (2010-2014) has adequate human and financial resources, includes specific time-bound and measurable goals, and is widely disseminated and regularly monitored;

(b) Pay particular attention to the scope of the Strategic Plan with regard to implement ing the Optional Protocol, in particular combat ing and prevent ing all the offences it covers;

(c) Link the Strategic Plan with the Amor programme and the National Plan of Action for Children and Adolescents 2002-2011 and/or a new comprehensive plan of action for children; and

(d) Take into account the Declaration, Agenda for Action and Global Commitment adopted at the World Congress against Sexual Exploitation of Children, held in Stockholm (1996), Yokohama (2001) and Rio de Janeiro (2008).

Independent monitoring

13. While welcoming the active involvement of the Office of the Ombudsperson on Human Rights (*Procuraduría Nacional de Derechos Humanos*) and the Office of the Special Ombudsperson for the Protection of Children and Adolescents (*Procuraduría Especial de la Niñez y la Adolescencia*) in the promotion, protection and investigation of violations of children's rights, the Committee is concerned at the inadequacy of human, technical and financial resources available for this important work. It is also concerned about undue delays in the designation of the Ombudsperson.

14. The Committee recommends that the State party assign greater human, technical and financial resources to the Office of the Special Ombudsperson for the Protection of Children and Adolescents to ensure full exercise of its functions to oversee and defend the rights of children and adolescents. It further recommends that independence in the designation and operation of the Human Rights Ombudsperson be guaranteed. 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.

Dissemination and training

15. While welcoming the State party's efforts to make the provisions of the Optional Protocol regarding, inter alia, information and sensitization actions for teachers and students known through the Ministry of Education (*Red de Consejeros Escolares*), the Committee is concerned that children and relevant professionals in contact with them, are not sufficiently aware of 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 Protocol widely known in a child-friendly manner to the public at large, including children, their families and communities, through, in particular, school curricula and long-term awareness-raising measures;

(b) Enhance cooperation with civil society organisations 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 on the provisions of the Optional Protocol for all professional groups working with child victims of the crimes covered, inter alia, police officers, lawyers, prosecutors, judges, social workers and immigration officials; and

(d) Seek technical support from UNICEF, among others, with regard to the above recommendations.

Allocation of resources

17. The Committee notes with concern the State party's information that no specific budget allocation has been made for the implementation of the Optional Protocol.

18. The Committee strongly recommends that the State party provide a specific budget allocation for the implementation of the Optional Protocol, ensuring a balanced distribution of resources throughout the country and taking into account the rights of children who are particularly vulnerable to acts constituting violations of the Optional Protocol. The Committee further recommends that the State party introduce resource - tracking from a child rights perspective with a view to monitoring resource allocations for children.

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 Protocol

19. While noting the development of various offices and programmes for the prevention of offences covered by the Optional Protocol, such as the National Coalition against Trafficking in Persons, the special police stations for women and children, the Special Ombudsperson for children and adolescents and the special unit for children and adolescents within the Office of the Public Prosecutor (*Ministerio Público*), the Committee notes that preventive measures are weak, fragmented and inadequate, and that documentation and research on the root causes, nature and extent of the sale of children, child prostitution and child pornography are insufficient.

20. 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, extent of issues, including within the indigenous and Afro-descendant populations, and undertake prevention measures and adopt targeted measures.

Child sex tourism

21. While welcoming the fact that article 177 of the Penal Code criminalizes the promotion of child sex tourism, and the existence of the regulations of the General Tourism law, which establish administrative penalties for companies, and the fact that the tourism sector has adopted a code of conduct, the Committee is concerned that child sex tourism remains a serious problem in the State party, and that children are trafficked within the country for sex tourism.

22. The Committee recommends that the State party:

- (a) Take measures to prevent child sex tourism, in particular by earmarking additional funds for public campaigns, with the participation of children, for this purpose;
- (b) Continue and strengthen, through relevant authorities, cooperation with the tourism industry, NGOs and civil society organizations in order to promote responsible tourism by disseminating the code of conduct among tourism industry personnel and conducting awareness-raising campaigns for the general public;
- (c) Conduct systematic education and training on the provisions of the Optional Protocol for all professional groups working with and for children; and
- (d) Strengthen the role of the business community with regard to the provisions of the Optional Protocol in light of corporate social responsibility.

V. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (paras. 2 and 3), 5-7)

Existing criminal or penal laws and regulations

23. The Committee is concerned that the Penal Code only partly incorporates the offences covered by the Optional Protocol. It does not criminalize the sale of children for the purpose of transfer of organs of the child for profit or engagement of the child in forced labour, and it does not explicitly cover prostitution of children 14 years of age or older, nor the possession of pornographic material.

24. The Committee recommends that the State party revise and harmonize its penal law to comply fully with articles 2 and 3 of the Optional Protocol. 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 the child's organs for profit or engagement of the child in forced labour;
- (b) Possessing child pornography;
- (c) Attempt to commit any of the above acts and complicity or participation in any of these acts; and

(d) Production and dissemination of material advertising any of these acts.

Irregular adoption

25. While noting that article 182 of the Penal Code covers the sale of children for the purpose of illegitimate adoption, the Committee regrets that the act of improperly inducing consent in cases of adoption, as provided for in article 3, paragraph 1 (a) (ii), of the Optional Protocol, is not specifically criminalized.

26 . The Committee recommends that the State party take all necessary measures to ensure that “ improperly inducing consent in cases of adoption ” is criminalised, as stipulated in article 3, paragraph 1 (a) (ii) , of the Optional Protocol.

Prosecution

27. While appreciating the efforts of the State Party to bring its Penal Code into conformity with the Optional Protocol, the Committee is concerned that the number of investigations brought to trial is low and that many cases end with a lack of prosecution or non-lieu. Furthermore, the Committee is concerned by provisions in the Penal Procedure Code that allow the Public Prosecutor to stop public action in case of withdrawal of the victim's complaint, even in very serious crimes, including incest.

28 . The Committee urges the State party to amend chapter 5 of its Penal Procedure Code and strengthen its penal law by providing for the prosecution of all crimes covered by articles 2 and 3 of the Optional Protocol, with a view to preventing impunity and punishing perpetrators.

Jurisdiction

29. The Committee welcomes the fact that article 19 of the Penal Procedure Code provides for universal jurisdiction, but is concerned that article 16 of the Penal Code, which lists the offences covered by the principle of universality, does not explicitly refer to the sale of children, child pornography and child prostitution.

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

Extradition

31. The Committee notes that according to article 348 of the Penal Procedure Code, extradition is not conditional on the existence of a treaty and requests for extradition are decided upon by the Supreme Court (Sala de lo Penal de la Corte Suprema de Justicia).

32. The Committee recommends that the State party:

(a) Include as extraditable offences in all existing extradition treaties, as well as all future extradition treaties, the offences described in article 3, paragraph 1, of the Optional Protocol; and

(b) Take suitable measures to submit cases to the competent authorities for the purpose of prosecution in the event that an extradition request is rejected .

VI. Protection of the rights of child victims (arts. 8 and 9 (paras. 3-4))

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Protocol

33. The Committee is concerned at the insufficient measures taken to identify child victims and provide them with effective access to judicial remedies.

34 . The Committee recommends that the State party allocate sufficient resources and develop comprehensive procedures for the early identification of child victims of offences under the Optional Protocol. It further recommends that the State party 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

35. The Committee is concerned at the lack of measures in place to protect the rights and interests of child victims and witnesses in the criminal justice system. It is particularly concerned that child victims are required to be present during proceedings, thereby exposing them to re-victimization. Furthermore, the Committee is concerned that the State party does not systematically provide video or audio devices when interviewing child witnesses and victims, and does not formally limit the number of interviews.

36. The Committee recommends that the State party continue and strengthen measures to protect the rights and interests of child victims and all children under the age of 18 years, 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 (ECOSOC resolution 2005/20) , including by providing for video or audio devices when interviewing child victims or witnesses in order to limit the number of interviews and avoid direct contact between the child victim and alleged perpetrator.

Recovery and reintegration

37. The Committee is concerned at the absence of sustained intervention over a period of time for victims, in particular of trafficking. It is further concerned that the State party has not put in place measures for the recovery and reintegration of victims of all offences under the Optional Protocol. The Committee regrets the fact that victims of offences under the Optional Protocol wishing to obtain compensation have to introduce a civil process.

38. The Committee recommends that the State party:

(a) Implement the recovery programme for child victims proposed by the Amor programme , including psychological and health care services, education, training and employment opportunities, and implementation of processes for safe family reinsertion;

(b) earmark resources 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 interdisciplinary assistance for child victims; and

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

VII. International assistance and cooperation

International cooperation

39. The Committee recommends that the State party continue and strengthen international cooperation and conduct research to examine cross-border protection issues between Nicaragua and neighbouring countries. It also recommends strengthening bilateral and multilateral agreements and cooperation with Interpol and intelligence services. The Committee further encourages the State party to seek technical support from, inter alia, UNICEF and the ILO for the above purpose.

40. The Committee urges the State party to accept the request to visit from the Special Rapporteur on the sale of children, child prostitution and child pornography.

VIII. Follow-up and dissemination

Follow-up

41. 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 Head of State, the Supreme Court, National Assembly, relevant ministries and municipal authorities for appropriate consideration and further action.

Dissemination

42. The Committee further recommends that the initial report and written replies submitted by the State party and the related recommendations (concluding observations) adopted be made widely available in the languages of the country, including (but not exclusively) 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, its implementation and monitoring.

IX. Next report

43. 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 consolidated fifth and sixth periodic report under the Convention on the Rights of the Child, due on 1 October 2015.