



Convention on the Rights of the Child

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Committee on the Rights of the Child

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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: Albania

1. The Committee considered the initial report of Albania under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/ALB/1) at its 1740st meeting, held on 26 September 2012 (see CRC/C/SR.1740), and adopted at its 1754th meeting, held on 5 October 2012, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/ALB/Q/1/Add.1). However, while taking note of the additional information provided by the State party after the dialogue, the Committee regrets the absence of representatives from the Ministry of Justice in the State party's delegation, which impeded the dialogue on the Optional Protocol, in particular on issues related to judicial matters.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations on the State party's combined second to fourth periodic reports under the Convention on the Rights of the Child (CRC/C/ALB/CO/2-4) and on the concluding observations on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/ALB/CO/1), adopted on 5 October 2012.

II. General Observations

Positive aspects

4. The Committee notes with appreciation the State party's accession to or ratification of:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in December 2008;

(b) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in April 2009;

(c) The Hague Convention No. 28 on the Civil Aspects of International Child Abduction, in May 2007;

(d) The Council of Europe Convention on Action against Trafficking in Human Beings, in February 2007;

(e) The Convention on Cybercrime, in June 2003 and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, in November 2004;

(f) The Convention Against Transnational Organized Crime, in August 2002;

(g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in August 2002;

(h) The Protocol against the Smuggle of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational organized Crime, in August 2002; and

(i) The Hague Convention No.33 on Protection of Children and Cooperation in Respect to Intercountry Adoption, in September 2000.

5. The Committee notes the adoption of the following institutional and policy measures related to the implementation of the Optional Protocol:

(a) The establishment of the Anti-Trafficking Unit, attached to the National Coordinator's Office in the Ministry of Interior, in December 2005;

(b) The National Action Plan on the fight against trafficking in human beings, and its supplementing document the National Action Plan on the fight against trafficking in children and protection of children, victims of trafficking 2011-2013, in February 2011; and

(c) The signature of the bilateral agreement with Greece "On the protection and assistance for the children who are victims of trafficking", in February 2006.

III. Data Collection

6. While noting that since 2008, data on trafficking in human beings has been collected by the State party, the Committee regrets that data is available only on cases of trafficking and that an integrated and centralized system of data collection on sale of children, child prostitution and child pornography and on children in general does not exist.

7. The Committee recommends the State party to establish a consolidated system for systematic data collection, in order to effectively analyse, monitor and assess the impact of laws, policies and programmes on all the areas covered by the Optional Protocol. This would include data on both perpetrators and victims of sale of children,

child prostitution and child pornography. Data should be disaggregated, inter alia, by the nature of the offence and by age, sex, urban/rural area, ethnic and socio-economic background and by paying particular attention to children who are especially vulnerable to becoming victims of the offences covered by the Optional Protocol. The Committee also recommends that the State party establish a system of common indicators when collecting data for the various states and territories.

IV. General measures of implementation

Legislation

8. While welcoming efforts to integrate various provisions of the Optional Protocol into the legislation of the State party, the Committee is concerned that such efforts have focused almost exclusively on trafficking and prostitution. The Committee is further concerned that existing legislation does not explicitly address all offences covered under the Optional Protocol, and that the definition of sale of children in State party legislation is not in conformity with the Optional Protocol.

9. The Committee requests the State party to take all necessary measures to fully incorporate the Optional Protocol in its domestic legal system. The Committee recommends that the State party amend the definition of sale of children in national legislation, which is similar to but not identical to trafficking in persons, in order to adequately implement the provision on sale contained in the Optional Protocol.

National Action Plan

10. While noting the National Action Plan on the fight against trafficking in human beings, and its supplementing document the National Action Plan on the fight against trafficking in children and protection of children, victims of trafficking 2011-2013 as well as other national strategies with regard to trafficking, the Committee is concerned that this Action Plan and the national strategies do not cover all the provisions of the Optional Protocol. The Committee is further concerned about the lack of adequate resources devoted to their implementation, the unclear division of responsibilities among governmental bodies and mechanisms to make the Action Plan and the national strategies effective; and the limited measures taken to monitor their impact.

11. With reference to its concluding observations under the Convention (CRC/C/ALB/2-4) paragraphs 11 and 12, the Committee recommends that the State party adopt a comprehensive programme of action targeting specifically all issues covered under the Optional Protocol in its Action Plan for Children 2012-2015 and provide adequate human, technical and financial resources for its implementation. In doing, so the Committee recommends that the State party take into account the evaluation and review of projects under the existing Action Plan and national strategies on trafficking. Furthermore, the Committee recommends the State party to ensure the effective implementation of all provisions of the Optional Protocol taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congresses against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008 respectively.

Coordination and Evaluation

12. With reference to paragraphs 13 and 14 of its concluding observations under the Convention, the Committee recommends that the State party put in place an institutional mechanism with overall responsibility for the coordination and

implementation of the Optional Protocol, which could be the State Agency for the Protection of Children's Rights, for effective coordination among ministries and other government entities and partners with respect to the implementation of all aspects of the Optional Protocol.

Dissemination and awareness-raising

13. While noting as positive the importance accorded by the State party to dissemination and awareness-raising about trafficking in human beings, the Committee is concerned that the Optional Protocol has not been sufficiently promoted and disseminated. The Committee is concerned that children who are particularly at risk of becoming victims of sale, child prostitution and child pornography, and notably, children of minority groups and children in street situations, as well as their parents do not have adequate knowledge of strategies to protect children from these violations.

14. The Committee recommends that the State party:

(a) Make the provisions of the Optional Protocol widely known to the public, particularly to children and their families, through, inter alia, developing and implementing long-term awareness-raising programmes, and including the provisions of the Optional Protocol into school curricula at all levels of the education system using appropriate material created specifically for children; and

(b) In cooperation with civil society and media and in line with article 9, paragraph 2, of the Optional Protocol, intensify and promote awareness raising among the public at large, including children, through information by all appropriate means, about the harmful effects of all the offences referred to in the Optional Protocol and encourage the participation of the community and, in particular, children and child victims of both sexes, in such awareness raising and information and education programmes.

Training

15. While noting that training activities on combating human trafficking are carried out for some professionals, the Committee regrets that these are not systematic and do not include all areas covered by the Optional Protocol, including the sale of children.

16. The Committee recommends that the State party strengthen training activities focused on the rights of children in all areas covered by the Optional Protocol for all relevant professionals working with and for children, including judges, public prosecutors, police officers, medical staff, social welfare officers, media and other groups of professionals concerned.

Allocation of Resources

17. While noting that resources have been allocated for the fight against trafficking in human beings, the Committee is concerned about the absence of allocation of human, technical and financial resources specifically for the implementation of the Optional Protocol.

18. The Committee urges the State party to ensure that sufficient resources are allocated for the implementation of all areas covered by the Optional Protocol, by providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological rehabilitation and social reintegration of victims, as well as the investigation and prosecution of the offences covered by the Optional Protocol.

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

Measures adopted to prevent offences prohibited under the Optional Protocol

19. The Committee is concerned by the limited measures taken by the State party to prevent offences under the Protocol. The Committee is particularly concerned about the lack of attention to identifying causes and risks leading to offences under the Protocol and in particular:

(a) The absence of a legal definition of “child at risk” and a legal basis for addressing emergency child protection situations and the needs of abused children, the absence of specific programmes in place targeting children at risk, such as Roma children, children in street situations, children living in institutions, and in particular girls, and the lack of legal accountability for professionals to identify and refer children in need;

(b) Violence against children, including sexual violence, which is widespread and widely accepted in the State party;

(c) The limited social protection schemes available and the fact that a high number of poor families are left without any economic aid;

(d) The large number of children forced to beg due to extreme poverty, and the high risk of these children becoming victims of offences under the Optional Protocol; and

(e) The situation of children above 15 years who have to leave alternative care institutions without receiving any support from the State party leading to a risk of sexual exploitation.

20. The Committee recommends that the State party ensure the planning and implementation of a well-coordinated set of activities by law enforcement agencies and social protection centres to prevent offences under the Optional Protocol. In particular the State party should:

(a) Undertake comprehensive and multidisciplinary research among different socio-economic and cultural groups on the nature and extent of the sale of children, child prostitution and child pornography in the State party and, on the basis of the findings, adopt a comprehensive and targeted approach to prevent and address offences under the Optional Protocol which focus on the identification of children at risk including by providing a legal definition of “child at risk” and making professionals accountable for the detection and referral of children in need;

(b) Take active measures to protect children from violence, in particular in the home;

(c) Strengthen poverty reduction and supportive social protection measures for economically disadvantaged families, including family protection plans;

(d) Take all necessary measures to address the root causes of forced begging, especially poverty and discrimination, and undertake systematic prevention activities to combat this form of exploitation; and

(e) Extend protection for children in institutions to 18 years of age, and ensure that these children are given appropriate training, guidance and support thereafter.

Child Sex Tourism

21. The Committee welcomes the signing in 2007 of the Memorandum of Understanding between the Ministry of Interior, Ministry of Tourism, Culture, Youth and Sports and OSCE for promoting the Code of Conduct to protect children from sexual exploitation in tourism, in 2007, that a number of enterprises have signed the Code and that some national awareness campaign at border-crossings and a campaign targeting tour operators, were organised. The Committee is however concerned at the lack of measures taken at local level to prevent children from entering into child sex tourism and that national policies such as the Anti-trafficking Strategy and National Strategy for Children do not contain relevant provisions.

22. The Committee urges the State party to establish and implement an effective regulatory framework and take all necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism. In this regard, the Committee encourages the State party to strengthen its international cooperation through multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism. The Committee further urges the State party to strengthen its advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the UNWTO Global Code of Ethics for Tourism among travel agents and tourism agencies, and further encourage these enterprises to become signatories to the national Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

Child Pornography

23. The Committee welcomes the recent awareness-raising initiatives undertaken by the State party to provide information on child protection in online settings. However, the Committee is concerned that the State party has not adopted any laws or normative acts setting out an obligation to prevent the publication and dissemination of child pornography through automatically blocking the internet service providers.

24. The Committee urges the State party to promptly enact legislation to criminalize the downloading or possession of child pornography, and to effectively prevent publication and dissemination of such material through surveillance mechanisms to automatically block offending internet service providers. The Committee further recommends that the State party take prompt steps to establish a central authority for internet safety, ISP licensing and checks for harmful content for children.

VI. Prohibition of the sale of children, child prostitution and child pornography and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)

Existing criminal or penal laws and regulations

25. The Committee is concerned that the State party does not criminalize the sale of children, child prostitution and child pornography as defined in articles 2 and 3 of the Optional Protocol. The Committee is, inter alia, concerned that the engagement of the child in forced labour is not criminalized as a case of sale of children and that the possession of pornographic material is not covered under the Criminal Code of Albania.

26. The Committee recommends that the State party revise and bring its Criminal Code into full compliance 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 organs of the child for profit, 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; and

(e) The production and dissemination of material advertising any of these acts.

27. While noting the information that, in accordance with international instruments ratified by the State party, children exploited in prostitution are not subject to criminal punishment, the Committee is nevertheless concerned that this is not expressly reflected in the existing laws.

28. The Committee recommends that the State party take prompt steps to amend the Criminal Code to expressly ensure that children exploited in prostitution are not subject to criminal punishment.

Prosecution

29. While noting the efforts undertaken by the State party to prosecute individuals for trafficking offences involving children, the Committee is concerned at the low number of convictions that result from such prosecutions. The Committee is also concerned about the lack of information provided concerning reported cases of offences covered under the Protocol, including information on the investigation, prosecution and punishment of perpetrators.

30. The Committee urges the State party to ensure that all crimes under the Optional Protocol are investigated and that perpetrators of such acts are effectively prosecuted and duly sanctioned if found guilty. The Committee urges the State party to provide specific information on investigations, prosecutions and punishments of perpetrators of these offences under the Optional Protocol in its next periodic report.

Criminal liability of legal persons

31. The Committee is concerned that the State party's legislation does not establish the criminal liability of legal persons as requested in article 3, paragraph 4.

32. In the light of article 3, paragraph 4, of the Optional Protocol, the Committee recommends that the State party establish the liability of legal persons for all offences covered under the Optional Protocol.

Extraterritorial jurisdiction

33. The Committee welcomes the extraterritorial application of the State party's criminal law to foreign nationals outside the territory of the State where they have committed crimes to the detriment of the State party or State party nationals, related to the organization of prostitution, trafficking in human beings, children and women, and manufacturing pornographic materials. However, the Committee is concerned that the

application of extraterritorial jurisdiction to crimes committed by an Albanian national in the territory of another State is subject to the requirement of double criminality.

34. The Committee recommends that the State party take measures to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all the crimes covered by the Optional Protocol, without the criterion of double criminality.

Extradition

35. The Committee notes with concern that extradition of an alleged offender is only exercised by the State party when a bilateral or multilateral agreement explicitly specifies it.

36. The Committee recommends that the State party use the Optional Protocol as a legal basis for extradition where there is no bilateral agreement to this effect in force.

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

37. The Committee welcomes that children involved in prostitution in the State party are in practice not subject to criminal prosecution and punishment, and are referred to rehabilitation shelters. However, the Committee is concerned that these centres are of a general nature and do not place any focus on the special needs of children victims of sexual exploitation. The Committee is further concerned that although Law No. 10039 of 22 December 2008 “On Legal Assistance”, provides for primary and secondary legal assistance, this is only available to victims who are part of a program of social protection. The Committee is also concerned that the rights and interests of the child witnesses are not ensured at all stages of the criminal justice process.

38. The Committee urges the State party to establish clear procedures and standards for the care and protection of child victims and or witnesses of crimes. It recommends in particular to provide psychosocial support, case assessment based on the ‘best interests’ determination, temporary and durable solutions, and follow-up until the child reaches the age of majority. The Committee further recommends the State party to ensure that all professionals receive training on child-friendly interaction with child victims and witnesses at all stages of the criminal and judicial process, 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). The Committee also urges the State party to make legal assistance available to all victims of offences under the Optional Protocol.

Recovery and reintegration of victims

39. The Committee welcomes the Law No. 10192 of 3 December 2009 “On the prevention and striking of organized crime and trafficking through preventative measures against the property” that establishes a Special Fund designated for social purposes, including rehabilitation and integration of victims of trafficking. However, the Committee is seriously concerned that:

(a) Children who have experienced commercial sexual exploitation are unable to break the cycle of abuse and are often turning into recruiters or pimps for exploiting younger children; and

(b) The State party's recovery and reintegration measures are limited to victims of trafficking through organized crime and do not adequately take into account the needs of victims of sale of children, child prostitution and pornography offences under the Optional Protocol.

40. The Committee urges the State party to take all appropriate measures for the physical and psychological recovery and social reintegration of child victims of all offences under the Optional Protocol, and ensure that those measures take place in an environment that fosters the self-respect and dignity of the child. It further recommends that child victims provided with appropriate support, including educational and vocational assistance, to help break the cycle of abuse.

VIII. International assistance and cooperation

41. 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 prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered under the Optional Protocol.

IX. Follow-up and dissemination

42. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, *inter alia*, by transmitting them to the Parliament, relevant ministries, in particular the Ministry of Justice, the Supreme Court, and other relevant government entities at local levels, for appropriate consideration and further action.

43. The Committee recommends that the initial report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including (but not exclusively) through the Internet, to the public at large, civil society organizations, youth groups, professional groups, communities and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

44. 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 on the Rights of the Child, in accordance with article 44 of the Convention.
