



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

Fifty-third session

11-29 January 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: Ecuador**

1. The Committee considered the initial report of Ecuador (CRC/C/OPSC/ECU/1) at its 1476th meeting (see CRC/C/SR.1476), held on 19 January 2010, and adopted at its 1501st meeting, held on 29 January 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/ECU/Q/1/Add.1) to the list of issues and appreciates the constructive dialogue with a high-level and multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the State party's fourth periodic report on (CRC/C/ECU/CO/4) and with the concluding observation adopted on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/ECU/CO/1), both adopted on 29 January 2010.

## **I. General Observations**

### **Positive aspects**

4. The Committee notes with appreciation:

(a) The 2005 reform of the Penal Code, which criminalizes sexual exploitation of children, sexual exploitation related to the tourism industry, child pornography, trafficking in persons, and sale of persons for the purpose of exploitation;

(b) The 2006 National Plan to Combat Human Trafficking, Smuggling of Migrants, Sexual Exploitation, Labour Exploitation, Prostitution, Pornography and Other Forms of Exploitation of Women and Children and the Corruption of Minors; and

(c) The 2007 National Tourism Plan (PLANDETUR) aimed, inter alia, at preventing the commercial sexual exploitation of children.

## II. Data

5. The Committee regrets the lack of a systematic mechanism of data collection, analysis and monitoring of all areas covered by the Protocol, and the lack of research on the specific areas covered by the Protocol, especially of child sex tourism.

6. **The Committee recommends that the State party develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of all the areas covered by the Protocol. The data should be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location, socio-economic status, with particular attention to the most vulnerable groups of children. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee recommends the State party to seek technical support from inter alia UNICEF in relation to the recommendation above.**

## III. General measures of implementation

### Coordination and evaluation

7. The Committee notes that the National Council for Childhood and Adolescence (Consejo Nacional de la Niñez y Adolescencia) is responsible for coordinating implementation of the Protocol, and welcomes that the new Constitution gives it constitutional rank, albeit as part of a broader Council for Inclusion and Equality. It is however concerned that the National Council does not sufficiently take the Protocol into consideration in its work.

8. **The Committee recommends that the State party strengthen the National Council for Childhood and Adolescence maintaining its rank, scope and specialization, and ensure that implementation of the Protocol is incorporated into its operation and that it has adequate human and financial resources in order to effectively carry out its mandate at all levels, including regional and local level.**

### Legislation

9. The Committee notes with appreciation the State party's indication that practices covered by the Protocol are punishable under the provisions of the Penal Code. Nevertheless, the Committee is concerned that criminal liability of legal persons is not possible and that there remains limited harmonization between national legislation, notably the Penal Code, and the specific provisions of the Protocol.

10. **The Committee recommends that the State party continue and complete the process of harmonization of its national legislation with the Protocol in order to adequately implement all provisions contained therein, and, with reference to the Penal Code, to ensure explicit reference to all the acts and activities constituting**

offences under the Protocol, including the introduction of criminal liability of legal persons.

## **National Plan of Action**

11. While welcoming the 10-Year National Plan of Action of Comprehensive Protection of Children and Adolescents 2004-2014 (Plan Nacional Decenal de Protección Integral a la Niñez y Adolescencia), the National Plan to Combat Human Trafficking 2006 (Plan Nacional contra la Trata de Personas) and the National Tourism Plan 2007 (Plan Nacional de Turismo) the Committee regrets that there is no specific strategy in place to implement the Protocol. The Committee understands that the new overall National Plan for Good Living (Plan Nacional para el Buen Vivir) (2009-2013) will develop strategies in this regard.

12. **The Committee recommends that the State party:**

(a) **Design a national strategy to implement the Protocol, in particular to combat and prevent all the offences it covers. In doing so, ensure that this is taken into account when reviewing the 10-year National Plan of Action of Comprehensive Protection of Children and Adolescents and its related Social Agenda and when developing the relevant strategies under the Plan of Good Living;**

(b) **Ensure that all relevant actors including children and civil society are consulted in the process of drafting, implementing and monitoring the said strategy;**

(c) **Ensure that the strategy is adequately resourced, in human and financial terms, that it includes specific time-bound and measurable goals, and that it is widely disseminated and regularly monitored;**

(d) **In doing so, the State party is invited to give particular attention to the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congress against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008, respectively.**

## **Dissemination and training**

13. While welcoming the State party's efforts to make the provisions of the Protocol known by the public, the Committee is concerned that children and relevant professionals in contact with them are not sufficiently aware of the provisions of the Protocol.

14. **The Committee recommends that the State party:**

(a) **In line with article 9(2) of the Protocol, make the provisions of the Protocol widely known in the public at large, including to children, their families and communities, through, in particular the school curricula and long-term awareness-raising measures, including in a child-friendly manner;**

(b) **Develop cooperation with civil society organisations and the media in order to support awareness-raising and training activities on the provisions of the Protocol;**

(c) **Continue and strengthen systematic education and training on the provisions of the Protocol for all professional groups working with child victims of such crimes, *inter alia* the police, lawyers, prosecutors, judges, social workers, teachers and immigration officials; and**

(d) **Seek technical support from UNICEF in relation to the recommendations above.**

### **Allocation of resources**

15. The Committee concerned that the budget allocations are insufficient in order to implement the provisions of the Protocol in the entire territory of the State party. While noting the existence of Centros Ternura which provide services to children, it is concerned at the insufficient number of these centres.

16. **The Committee recommends that the State party allocate, when planning its national budget, financial resources specifically for the implementation of the Protocol. In particular, it recommends that the State party:**

(a) **Increase the number of “Centros Ternura” and provide them with the human, technical and financial resources in order to cover all the territory, and**

(b) **Strengthen the capacities of the police for conducting criminal investigation of child pornography on the Internet considering the particular challenges posed by this complex and globalized offence.**

## **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**

17. Recognizing the existence of information material available, including in indigenous languages, the Committee notes that preventive measures are inadequate, and that documentation and research are insufficient on the root causes, nature and extent of the sale of children, child prostitution and child pornography. It is also concerned at the low number of prosecutions of cases of sale of children, child prostitution and child pornography.

18. **The Committee recommends that the State party take measures to identify children who are especially vulnerable to the practices covered by the Protocol, such as children in street situations, girls, children living in remote areas and working children. The Committee encourages the State party to carry out further 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, the existence of protection and prevention measures and adopt targeted measures. It further recommends ensuring that the perpetrators of these crimes are properly prosecuted and punished.**

19. While noting information that the State party has supported activities organized by civil society to raise awareness on the practice of child sex tourism and has signed an agreement with the Chamber of Commerce on the sensitization of main actors in tourism activities, the Committee regrets the lack of sufficient attention to and information on this issue.

20. **The Committee recommends that the State party undertake measures to prevent child sex tourism, including by conducting studies and collecting information on known cases to establish its extent and root causes, as well as by raising awareness among the children who are at risk of exploitation and of the public at large. The State party should also, through relevant authorities, strengthen cooperation with the tourism industry, NGOs and civil society in order to promote responsible tourism,**

including through the dissemination of the Code of Conduct of the World Tourism Organisation on the protection of children from sexual exploitation in travel and tourism among all relevant partners.

## **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**

21. The Committee welcomes the fact that the sale of children for the purpose of transfer of organs for profit is criminalized, but it is concerned that all crimes under the Protocol are not fully criminalized in accordance with Articles 2 and 3 of the Protocol, in particular the lack of a definition of the crime of sale of a child. Furthermore, the Committee notes the lack of information on whether the legislation has been enforced in practice and on the exact nature of the high number of cases of child exploitation reported and that these cases seem not to have been properly investigated and prosecuted.

22. **The Committee recommends that the State party revise and bring its Penal Code in full compliance with article 3 of the Protocol, by criminalizing the sale of children, child prostitution and child pornography as defined in articles 2 and 3 of the Protocol, and ensure that the law is enforced in practice, with proper sanctions being imposed on the perpetrators, in order to prevent impunity.**

### **Adoption**

23. While noting that legislation on inter-country adoption has been implemented and since 2009 closely monitored by restricting the number of international adoption agencies, the Committee is concerned that other agencies advertise the opportunity to adopt children from Ecuador.

24. **The Committee recommends that the State party ensure compliance with the Hague Convention on Inter-Country adoption at all stages of the adoption procedure, by providing adequate human and financial resources to the central adoption authority so that it can implement its programmes adequately, including by maintaining the oversight and control of all the different phases of the adoption proceedings and adoption agencies and by building the capacity of civil servants involved in the process.**

25. While the Committee notes the legislation on adoption in Ecuador, it regrets that improperly inducing consent in cases of adoption, as provided for in article 3, paragraph 1 (a)(ii) of the Protocol, is not covered by the criminal legislation of the State party.

26. **The Committee recommends that the State party take all necessary measures to ensure that improperly inducing consent in cases of adoption is criminalised, in order to prevent intermediaries from attempting to persuade mothers or pregnant women to give their children up for adoption, and to prevent unauthorized persons or agencies from advertising services concerning adoption.**

## **Jurisdiction**

27. The Committee regrets that the State party has not taken the necessary measures to establish its jurisdiction over offences covered by the Protocol.

28. **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 its jurisdiction in accordance with article 4 of the Protocol, in particular:**

(a) **Over offences committed in its territory; and**

(b) **When the offender is present in the territory and the State party does not extradite him to another State party on the ground that the offence has been committed by one of its nationals.**

(c) **The Committee also encourages the State party to establish its jurisdiction when the alleged offender is a national of the State party or has his habitual residence in its territory, or when the victim is a national of the State party.**

## **Extradition**

29. The Committee is concerned at the lack of information provided by the State party on whether all the offences covered by article 3, paragraph 1, of the Protocol are extraditable. It is also concerned that the State party does not rely on the Protocol as a legal basis for extradition.

30. **The Committee recommends that the State party ensure that all the offences referred to in article 3, paragraph 1, of the Protocol are extraditable offences, and that, if necessary, it use the Protocol as a legal basis for extradition in conformity with article 5 of the 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 Protocol**

31. While welcoming the Victim and Witness Protection Programme, the Committee is concerned that the measures undertaken to identify children who have been victims of offences under the Protocol, as well as the training of professionals in contact with child victims, may be insufficient.

32. **The Committee recommends that the State party:**

(a) **Develop comprehensive procedures for the early identification of child victims of offenses under the Protocol, including by ensuring their proper protection so as to encourage them to report cases;**

(b) **Ensure that the best interests of the child are a primary consideration in the treatment afforded by the criminal justice system to child victims; and**

(c) **Ensure that judges, prosecutors, social workers, medical personnel and police officers are adequately trained on the provisions of the Protocol.**

## **Criminal justice system protection measures**

33. The Committee welcomes measures in place to protect the rights and interests of child victims and witnesses in criminal justice procedures, including the possibility to hold a hearing in closed session. It is however concerned that the State party does not provide for video or audio devices when interviewing child victims or witnesses, in order to limit the number of interviews and avoid the child being in direct contact with the perpetrator.

34. **The Committee recommends that the State party continue and strengthen measures to protect the rights and interests of child victims, for all children under the age of 18 years, in accordance with article 8 (1) of the Protocol and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC res. 2005/20), including but not limited in amending the Criminal Procedure Code.**

## **Recovery and reintegration**

35. While noting with appreciation numerous measures in place for the protection of child victims, including the interdisciplinary teams of the “Centros Ternura”, the Committee regrets that there remain gaps, in particular as regards the availability of special psychological assistance for child victims, as well as services for reintegration and compensation possibilities. It is also concerned that some children are sold by their parents for forced labour, and that if recovered, these children may be brought back to live with their parents

36. **The Committee recommends that the State party further strengthen measures to ensure appropriate assistance to victims of offences under the Protocol and the Convention on the Rights of the Child, including their full social reintegration, physical and psychological recovery and establish a system of complaint mechanism. The Committee, in particular, recommends that the State party continue developing specialized medical and psychological care services for child victims. The Committee further recommends that the State party ensure that all child victims have access to compensation for damages from those legally responsible in accordance with Article 9, paragraph 4 of the Protocol. Children placed back in their families should be monitored closely and reviewed regularly, and parents should be given counselling and support. If these situations reoccur, parents should be investigated and penalized if appropriate.**

## **VII. International assistance and cooperation**

### **International cooperation**

37. **In light of article 10 (1), the Committee encourages the State party to continue to strengthen international cooperation by 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 of improving prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered under the Protocol. The Committee recommends that the State party continue participating in international and regional frameworks at all levels, and seek technical assistance.**

## **VIII. Follow-up and dissemination**

### **Follow-up**

38. 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 members of the cabinet and parliament and to the cantons and municipalities for appropriate consideration and further action.

### **Dissemination**

39. 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 Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Protocol widely known to children, including indigenous children, and their parents through, inter alia, school curricula and human rights education.

## **IX. Next report**

40. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Protocol in its next periodic report under the Convention on the Rights of the Child, due on 7 March 2016.

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