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Committee on the Rights of the Child

Sixtieth session

29 May – 15 June 2012

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: Australia

1. The Committee considered the initial report of Australia at its 1709th meeting, held on 06 June 2012, and adopted, at its 1719th meeting, held on 12 June 2012, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report and the written replies to its list of issues (CRC/C/OPSC/AUS/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the State party multi-sectorial delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the fourth report of the State party under the Convention on the Rights of the Child (CRC/C/AUS/CO/4, 2012) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/AUS/CO/1, 2012). The Committee notes with concern that the reporting guidelines were not followed in the preparation of the State party report.

I. General Observations

Positive aspects

4. The Committee welcomes some positive initiatives in areas relevant to the implementation of the Optional Protocol, in particular:

- (a) National Plan of Action to Combat Trafficking in Persons;
- (b) Tomorrow's Children: Australia's National Plan of Action against the Commercial Sexual Exploitation of Children; and

(c) The Australian Policing Strategy to Combat Trafficking in Persons 2011-2013.

5. The Committee further welcomes the support extended by the State party to eliminate offences under the Optional Protocol in the Asia Pacific region, through development cooperation and inter-governmental cooperation.

II. Data

6. The Committee regrets the lack of a systematic mechanism for gathering data on all aspects of the sale of children, child prostitution or pornography as covered by the Optional Protocol. The Committee also notes with concern the lack of comparative data at the federal level on offences related to the Optional Protocol.

7. 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 Optional Protocol. The data should be disaggregated, inter alia, by gender, age, national and ethnic origin, geographical location, indigenous status and 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 also recommends that the State party establish a system of common indicators when collecting data for the various states and territories.

III. General measures of implementation

Legislation

8. The Committee is concerned that the domestic legislation does not fully incorporate all offences under the Optional Protocol and is not harmonised as regards the prohibition and criminalization of these crimes.

9. The Committee urges the State party to continue its efforts to harmonize domestic legislation with the Optional Protocol. In particular, the Committee recommends that the State party, in accordance with its obligation under articles 1, 2, and 3 of the Optional Protocol, define and prohibit all cases of sale of children, child prostitution and pornography.

National Plan of Action

10. While welcoming the National Plan of Action against the Commercial Sexual Exploitation of Children, the National Plan of Action to Combat Trafficking in Persons, and the Australian Policing Strategy to Combat Trafficking in Persons, the Committee is concerned that such national policies lack timetables, indicators, key activities and concrete measures to implement the Optional Protocol and measure results of these plans. The Committee also regrets the lack of information on the coordination between these plans.

11. The Committee recommends that the State party ensure that the National Action Plan to Combat Trafficking in Persons and the National Plan of Action against the Commercial Sexual Exploitation of Children include a separate comprehensive programme of action targeting specifically all issues covered under the Optional Protocol and that the State party provide adequate human, technical and financial resources for its implementation. The Committee also recommends that the State party establish timetables, indicators, key activities and concrete measures to implement the Optional Protocol through the national action plans.

Coordination and evaluation

12. The Committee notes with concern that there is no coordinating body for the implementation of the Optional Protocol. In the states of New South Wales and Victoria, only police departments are listed as implementing agencies. This raises concern over the effective overall coordination of prevention and protection efforts, including awareness raising activities, training, counselling and reintegration efforts.

13. The Committee recommends that the State party establish at both national and state/territory level a coordinating body or mechanism in charge of coordinating implementation of the Optional Protocol, and provide them with adequate human, technical and financial resources in order to effectively carry out their mandate.

Dissemination and Awareness-raising

14. The Committee welcomes the initiatives of the State party to raise awareness about child's rights issues among teachers and students in the public education system. It is nevertheless concerned at the lack of systematic and comprehensive dissemination of the Optional Protocol in the State party, which contributes to a low level of understanding and awareness of the Optional Protocol among the public, children and professional groups working with and for children.

15. The Committee recommends that, pursuant to article 9, paragraph 2, of the Optional Protocol, the State party take all measures necessary to make its provisions widely known among the public, particularly among all professionals working with or for children, including through appropriate media, educational and professional training campaigns.

Training

16. The Committee notes as positive the various training programs for law enforcement personnel on detection of trafficking victims and investigation practices. Nevertheless, the Committee is concerned at the lack of training of appropriate staff in the area of counselling and rehabilitation of victims of sale of children, child prostitution and child pornography.

17. The Committee recommends that the State party allocate adequate and earmarked resources for multidisciplinary training programmes developed through a participatory process involving communities and other stakeholders on all areas covered by the Optional Protocol. Such training should be provided to all relevant professional groups, ministries and institutions at federal and State/Territory working with and for children. The Committee further urges the State party to ensure systematic evaluation of all training programmes on the Optional Protocol with a view to enhance their impact and relevance.

Allocation of resources

18. The Committee regrets the lack of information in the State party's report on clearly identifiable budget allocations assigned to activities designated to implement the Optional Protocol at the federal, state and territory level.

19. The Committee recommends that the State party provide identifiable budget allocations to implement the Optional Protocol.

IV. 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 Protocol

20. While the Committee notes with appreciation the State party's efforts to combat international human trafficking, the Committee regrets that preventive measures relating to the specific offences under the Optional Protocol remain inadequate. In particular, the Committee is concerned that there is a lack of measures to prevent the commercial sexual exploitation of children and that measures to protect vulnerable groups, such as aboriginal girls and homeless children, are inadequate. Furthermore, the Committee is concerned that the underlying root causes of the offences under the Optional Protocol, such as poverty, are not sufficiently addressed.

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

(a) **Take all possible measures to pay particular attention to the protection of children who are especially vulnerable to becoming victims to one of the offences under the Optional Protocol, as required by Article 9, paragraph 1. In this regard, the Committee recommends that the State party conduct awareness raising programs, especially for such vulnerable groups; and**

(b) **Carry out research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems, and the existence of protection and prevention measures, and adopt targeted measures.**

Child Sex Tourism

22. The Committee welcomes the State party's initiatives to address child sex tourism but notes that further efforts are still needed. In particular, the Committee is concerned that few enterprises in the State party have signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel.

23. **The Committee urges the State party to strengthen its efforts to combat child sex tourism. In this regard, the Committee recommends that the State party conduct 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 encourage these enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.**

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

24. While noting as positive provisions in the federal, state and territory legal frameworks on trafficking in persons, sexual exploitation and online sexual abuse, the Committee is concerned that:

(a) The State party has not specifically defined and prohibited all the offences as provided in articles 1, 2 and 3 of the Optional Protocol. In particular, the Committee is

concerned that the sale of children is not defined and criminalized as a specific offence as required by the Optional Protocol; and

(b) Legislation on the offences under the Optional Protocol varies greatly between different states and territories. In particular, the Committee is concerned that some children between the ages of 16 and 18 within the State party who are not fully protected against the offences under the Optional Protocol. It notes with concern that in many States and Territories, child prostitution and child pornography are only criminalized for children between the ages of 16 and 18 if the defendant is in a position of trust or authority. The Committee is also concerned that the criminalization of some relevant offences under the Optional Protocol is linked to the age of sexual consent, which is 16 in most jurisdictions.

25. The Committee urges the State party to review the provisions of its national legislation and ensure that they are in full compliance with the provisions of the Optional Protocol. In particular, the State party should:

(a) **Define and criminalize the sale of children, in accordance with the Optional Protocol, in particular the sale of children for the purpose of illegal adoption, engagement of the child in forced labour and transfer of organs of the child for profit, in conformity with article 3 paragraphs 1 (a)(i)b and c, 1(a)(ii) and 5, of the Optional Protocol; and**

(b) **Define and criminalize all offences under the Optional Protocol so that all children under the age of 18 are fully protected.**

26. While noting as positive cases of prosecution and conviction of perpetrators of child pornography and child sex tourism, the Committee is concerned at the lack of investigations and prosecutions of other offences under the Optional Protocol, particularly the sale of children and child prostitution.

27. The Committee urges the State party to take all necessary measures to ensure that crimes under the Optional Protocol are investigated and that alleged perpetrators are prosecuted and duly sanctioned. The Committee recommends that the State party provides specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol in its next periodic report.

Liability of legal persons

28. The Committee notes with concern the limited manner in which legal persons, including corporations, may be held liable for acts or omissions related to the sale of children, child prostitution and child pornography. In particular, the Committee is concerned that corporations may only be held liable for intentional or reckless acts relating to slavery.

29. The Committee recommends that the State party revise its legislation to ensure that legal persons can be held liable for offenses related to the Optional protocol in conformity with article 3, paragraph 4, of the Optional Protocol.

Jurisdiction and extradition

30. The Committee notes with satisfaction that the State party exercises extraterritorial jurisdiction in cases where Australian citizens engage in child sex tourism abroad. However, the Committee notes with concern that extraterritorial jurisdiction only extends to crimes where Australian citizens or permanent residents engage in, facilitate or benefit from sexual activity with children under 16 years of age, while for children between the ages of 16 and 18, extraterritorial jurisdiction is applied only in cases where the defendant is in a position of trust or authority.

31. The Committee recommends that the State party revise its legislation to ensure jurisdiction over all offenses covered by the Optional protocol, including sex tourism where child victims are between 16 and 18 years of age. The Committee reminds the State party that under the Convention on the Rights of the Child, a child is defined as every human being under the age of 18 years. The Committee recommends that the State party take into account the outcome documents adopted at the 1996, 2001 and 2008 world congresses against commercial sexual exploitation of children held in Stockholm, Yokohama and Rio de Janeiro, respectively.

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

Recovery and reintegration of victims

32. The Committee notes programs such as Support for Trafficked People Program run by the Australian Red Cross and victim support units within various police units of the Territories. However, the Committee is 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. In particular, the Committee is concerned that the State party has not adopted specific measures for the reintegration of homeless children and children in street situations who are vulnerable to becoming victims of one of the offences under the Optional Protocol.

33. **The Committee urges the State party to further strengthen measures to ensure appropriate assistance to victims of all offences under the Optional Protocol, including their full social reintegration and physical, psychological and psychosocial recovery. The Committee, in particular, recommends that the State party:**

(a) **Continue developing specialized medical, psychosocial and psychological care services for child victims, including by ensuring access to and the availability of child mental health professionals throughout the territory of the State party;**

(b) **Increase the availability of social services;**

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

(d) **Guarantee that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol, and establish a fund for compensation for victims, for those cases where they cannot obtain compensation from the perpetrator;**

(e) **Seek technical assistance from UNICEF and the International Organization for Migration (IOM) in the implementation of these recommendations; and**

(f) **Adopt specific measures for the reintegration of homeless children and children in street situations who are especially vulnerable to becoming victims of one of the offences under the Optional Protocol.**

VII. International assistance and cooperation

34. In the light of article 10, paragraph 1, 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.

VIII. Follow-up and dissemination

Follow-up

35. 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 Head of State, the Supreme Council of the Armed Forces, the Supreme Constitutional Court, Supreme Court and the Council of State, the Parliament, relevant ministries and to local authorities, as well as to Child Protection Committees and Sub-Committees at governorate and district levels respectively, for appropriate consideration and further action.

Dissemination of concluding observations

36. 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 through the internet (but not exclusively), to the public at large, civil society organisations, youth groups, professional groups, communities and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

IX. Next report

37. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol and these concluding observations in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.
