



Convention on the Rights of the Child

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Committee on the Rights of the Child

Fifty-fifth session

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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: Bosnia and Herzegovina

1. The Committee considered the initial report of Bosnia and Herzegovina (CRC/C/OPSC/BIH/1) at its 1554th meeting (CRC/C/SR.1554), held on 16 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 State party's initial report and the written replies to its list of issues (CRC/C/OPSC/BIH/Q/Add.1). The Committee highly appreciates the frank and constructive dialogue with the 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 initial report under the Convention on the Rights of the Child (CRC/C/15/Add.260) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/BIH/CO/1).

I. General observations

A. Positive aspects

4. The Committee welcomes various measures in areas relevant to the implementation of the Optional Protocol, in particular:

(a) The withdrawal of the State party's reservation to article 9, paragraph 1 of the Convention;

(b) The adoption of the third National Action Plan to Combat Human Trafficking and Illegal Migration in Bosnia and Herzegovina 2008-2012;

(c) The adoption of the Action Plan for the Improvement of Protection System in the area of Child Pornography and other forms of Sexual Exploitation and Abuse of Children through Internet and Communications Technologies in Bosnia and Herzegovina 2010-2012; and

(d) The adoption of the National Strategy to Combat Violence against Children 2007-2010.

5. In addition, the Committee welcomes the accession to or ratification of the following international or regional instruments:

(a) The International Convention on the Rights of Persons with Disabilities and its Optional Protocol on 12 March 2010;

(b) The European Convention on the Compensation of Victims of Violent Crimes, the Convention on Cybercrime and its Additional Protocol, and the Convention against Trafficking in Human Beings of the Council of Europe respectively on 25 April 2005, on 19 May 2006, and on 11 January 2008.

II. Data

6. The Committee notes that the Ministry of Human Rights and Refugees and the State Coordinator for the prevention of trafficking in human beings and illegal immigration collect some data on child victims of trafficking in human beings, and that the Ministry plans to establish a database to monitor the implementation of the Convention and its Optional Protocols. The Committee nevertheless remains concerned that data is not systematically collected on all crimes covered under the Optional Protocol in both Entities of the State party as well as in Brčko District and at the limited capacity of the State party, including of the Agency for Statistics of Bosnia and Herzegovina, to collect data on children in general, and on the adoption of children in particular.

7. The Committee recommends that the State party further develop and centralize its mechanisms for systematic data collection in all areas concerning the implementation of the Optional Protocol, including the establishment of a database within the Ministry of Human Rights and Refugees to monitor implementation of the Convention and the Optional Protocols. The Committee recommends that the State party develop a coordinated system for comprehensive data collection – disaggregated, inter alia, by age, sex, geographical location and socio-economic background – that cover all persons below the age of 18. In addition, the Committee reiterates its recommendation (CRC/C/15/Add.260, para. 19) that the State party carry out a census of the population.

III. General measures of implementation

Legislation

8. While welcoming efforts to integrate various aspects of the Optional Protocol in the legislation of the State party, the Committee is concerned that they have focused almost exclusively on trafficking of children, neglecting specific offences under the Optional Protocol, namely sale of children, child prostitution and child pornography.

9. The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is not identical to

trafficking in persons, in order to adequately implement the provision contained in the Optional Protocol.

National Plan of Action

10. While noting the adoption of a number of policies, strategies, and plans, including the adoption of the Action Plan for the Protection of Children from Child Pornography 2010-2012, the Committee regrets that the latter does not indicate costing of the envisaged activities and that additional funding is dependent on donor support. The Committee is further concerned that there is no overall plan or policy addressing specifically all issues covered under the Optional Protocol.

11. The Committee recommends that the State party develop a national plan of action aimed at addressing specifically all issues covered under the Optional Protocol and provide adequate human and financial resources for its implementation. In doing so, the State party should pay particular attention to the 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 Commercial Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008, respectively.

Coordination and evaluation

12. While noting the establishment of the State Coordinator for the prevention of trafficking in human beings and illegal immigration and the Task Force to coordinate such activities at State and Entity levels, the Committee is concerned at the poor coordination between structures with responsibilities for the implementation of the Optional Protocol at State and Entity levels. The Committee is particularly concerned that the Council for Children of Bosnia and Herzegovina, set up under the Ministry of Human Rights and Refugees as a coordinating and advisory body on children's rights, de facto ceased to exist in 2007. While welcoming the plan of Ministry to establish a Department for Human Rights of Children, the Committee is concerned that no specific State body is currently mandated to coordinate, monitor and evaluate the implementation of children's rights in general.

13. The Committee recommends that the State party take immediate measures to reactivate the Council for Children of Bosnia and Herzegovina and to establish a Department for Human Rights of Children under the Ministry of Human Rights and Refugees. It further recommends that the State party consider placing the Council for Children or the new Department for Human Rights of Children, or another appropriate body, in charge of the coordination and evaluation of the implementation of the Convention and the two Optional Protocols and provide it with the human, technical and financial resources and authority within the Government to carry out its mandate effectively.

Dissemination and awareness-raising

14. The Committee, while noting awareness raising activities carried out in schools, notably by non-governmental organizations, is nevertheless concerned at the low level of awareness among children and their families of the preventive measures and harmful effects of the offences under the Optional Protocol. The Committee is furthermore concerned at information in the State party's report that media occasionally misrepresents trafficking in persons and contributes to the stereotyping of specific groups in the State party considered more prone than others to engage in the sale of children.

15. The Committee recommends that the State party develop, in close cooperation with the community and in particular children and child victims, information and

education programmes, and long-term campaigns to raise awareness of the preventive measures and harmful effects of the sale of children, child prostitution and child pornography. In addition, the Committee recommends that the State party disseminate the Optional Protocol among all relevant professional groups, especially members of the police, judges, prosecutors, representatives of the media and social workers.

Training

16. The Committee welcomes specialized trafficking awareness training to members of Bosnian troops prior to their deployment to international peacekeeping missions and that the Optional Protocol is included in training carried out by the Centre for the Training of Judges and Prosecutors and by the State Coordinator for the prevention of trafficking. The Committee is nevertheless concerned that professional groups working with and for children, including members of the police, social workers, judges and prosecutors, members of the State Investigation and Protection Agency (SIPA) do not receive adequate and targeted training specifically on the provisions of the Optional Protocol.

17. The Committee recommends that the State party allocate adequate and earmarked resources for the development of programmes and training materials on all areas covered by the Optional Protocol and ensure that such training is provided to all relevant professional groups, in particular to immigration and law enforcement officers, including members of SIPA, judges and prosecutors, social workers as well as members of the European Union Force (EUFOR) currently present in Bosnia and Herzegovina.

Allocation of resources

18. The Committee, while noting difficulties to secure funding for activities relevant to the implementation of the Optional Protocol, regrets that:

(a) The State Investigation and Protection Agency (SIPA) and the Interpol Office in Sarajevo lack the human, technical and financial resources to effectively prevent and investigate crimes committed with the use of new technologies, including the Internet;

(b) The centres for social work and other institutions mandated to carry out prevention and protection activities for children lack the necessary human, technical, and financial resources to do so.

19. The Committee recommends that the State party take all possible measures to ensure that sufficient resources are allocated for the implementation of the Optional Protocol. In particular, law enforcement agencies and centres for social work should be provided with adequate human, technical and financial resources necessary for their activities.

Independent monitoring

20. The Committee is concerned that the process of merging the Entity level Ombudsmen institutions into a single Ombudsman for Human Rights of Bosnia and Herzegovina is not yet complete and that the new structure retains separate Entity level institutions. The Committee is furthermore concerned that overlaps in the mandates of the Department for protection of the rights of the child within the Ombudsman for Human Rights of Bosnia and Herzegovina and the Children's Ombudsman of Republika Srpska may obstruct a unitary approach to monitoring the implementation of the Convention and its Optional Protocols.

21. **The Committee recommends that the State party intensify efforts to consolidate the Ombudsman for Human Rights of Bosnia and Herzegovina and ensure a unitary approach to protecting and promoting human rights, and the Convention and its Optional Protocols in particular.**

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 Optional Protocol

22. The Committee, while welcoming measures aimed at preventing offences under the Optional Protocol, nevertheless regrets that measures adopted to date have primarily focused on the crime of trafficking, while targeted preventive measures specifically against the sale of children, child prostitution and child pornography remain limited. The Committee is particularly concerned at the increase in domestic trafficking of children which may involve the sale of children and may lead to child prostitution and child pornography. The Committee is furthermore concerned at the weak capacity of the State party to monitor the adoption of children and regrets, in this regard, that the State party has not yet ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption .

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

(a) **Adopt a national plan for the prevention of sale of children, child pornography and child prostitution;**

(b) **Ensure concerted and coordinated activities by law enforcement agencies to prevent and eliminate domestic trafficking in children;**

(c) **Strengthen its mechanisms for monitoring the adoption of children and to ratify the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.**

24. While appreciating the adoption of various plans and strategies to enhance social inclusion of children, especially Roma children, the Committee regrets that Roma children, children in street situations, children with disabilities, children involved in organized begging, and children lacking birth registration remain vulnerable to offences under the Optional Protocol.

25. **The Committee encourages the State party to strengthen systematic prevention measures, targeting children who are especially vulnerable or at risk, in order to protect them from the offences under the Optional Protocol. In addition, the Committee recommends that the State party harmonize State and Entities legislation pertaining to civil registration and take immediate and effective measures to ensure the registration of all children at birth.**

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

26. The Committee is concerned that State and Entity level Criminal Codes do not fully incorporate all offences under the Optional Protocol and are not harmonized as regards the prohibition and criminalization of these crimes, and their applicable penalties. The

Committee is particularly concerned that the engagement of the child in forced labour and the improper inducing of consent for the adoption of the child are not covered under the Criminal Code of Bosnia and Herzegovina.

27. The Committee urges the State party to amend its legislation to ensure that the crimes covered under the Optional Protocol are fully criminalized and harmonized in the Criminal Codes at the level of the State, Entities and Brčko District. 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, or 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;**

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

28. The Committee reiterates its concern expressed upon examination of the State party's initial report on the Convention (CRC/C/15/Add.260, 2005, paras. 71 and 72) at the very low number of investigations and prosecution of perpetrators, including public officials, police officers and employees of private security companies.

29. The Committee recommends that the State party take all necessary measures to ensure that crimes are investigated and that alleged perpetrators are prosecuted and duly sanctioned in order to challenge impunity.

Jurisdiction and extradition

30. The Committee, while welcoming the fact that the State party can establish its jurisdiction over crimes committed abroad by or against its citizens, nevertheless regrets that the penal legislation does not allow extraterritorial jurisdiction for all the cases referred to in article 4, paragraph 2 of the Optional Protocol. Furthermore, the Committee is concerned that extraterritorial jurisdiction is subject to the criterion of double criminality.

31. The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over crimes under the Optional Protocol and recommends establishing extraterritorial jurisdiction over crimes under the Optional Protocol without the criterion of double criminality. The Committee further recommends that the State party consider the Optional Protocol to be a legal basis for extradition without the condition of the existence of a bilateral treaty.

Assets seizure and confiscation

32. While noting that the Criminal Code of Bosnia and Herzegovina provides for the seizure of items used to commit and proceeds derived from a crime, the Committee is concerned about the application of these procedures in practice and that the law does not specifically provide for the closure of premises.

33. The Committee recommends that the State party ensure, including through the adoption of relevant legislation, the seizure and confiscation of materials, assets and other goods used to commit or facilitate any of the offences under the Optional Protocol, the seizure and confiscation of proceeds derived from them, and the closure of premises used to commit such offences, in accordance with article 7 of the Optional 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 Optional Protocol

34. The Committee welcomes the adoption of several protection measures, including legislation ensuring access of trafficking victims to the asylum procedure, amendments to the Law on Social Policy which provide that child victims of trafficking be regarded not as “neglected children” but as victims, and the development of guidelines for social workers and police working with child victims. The Committee, however, is concerned that these measures have focused primarily on child victims of trafficking and not on victims of offences under the Optional Protocol. In addition, the Committee is concerned that the procedures for identifying child victims remain weak.

35. The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims of all offences under the Optional Protocol, including through further development of guidelines on child protection work for social workers and law enforcement officials and ensure training on such guidelines. In particular, procedures should be strengthened to ensure a more proactive approach to identifying child victims vulnerable to the offences under the Optional Protocol, including by sensitizing and developing effective partnerships with parents and families of child victims.

Criminal justice system protection measures

36. While noting that the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of Bosnia and Herzegovina requires that children are automatically accorded the status of vulnerable witnesses, the Committee is concerned at the absence of a definition of the status of the child victim in the legislation and that procedures have not been adapted to recognize the special needs of child victims and witnesses. The Committee further notes the adoption in Republika Srpska of the Law on Protection of Children and Minors in Criminal Procedures, but regrets that Federation of Bosnia and Herzegovina has not yet adopted a law to the same effect. Further noting the draft law on the right to pro bono legal aid, which provides for legal aid to victims of trafficking, the Committee is nevertheless concerned that child victims may be experiencing obstacles in accessing legal aid.

37. The Committee recommends that the State party, in accordance with article 8 of the Optional Protocol, adopt appropriate measures to protect the rights and interests of child victims and witnesses at all stages of the criminal justice process. In particular, the Committee recommends that the State party:

(a) Ensure that the Federation of Bosnia and Herzegovina and District of Brčko adopt without delay the Law on Protection of Children and Minors in Criminal Procedures and ensure that the law, and the equivalent law in Republika Srpska, are implemented in practice;

(b) **Ensure that State and Entity legislation provides for the definition of the status of a child victim;**

(c) **Provide appropriate support services to child victims throughout the legal process, including by adopting the draft law on the right to pro bono legal aid, and ensure the availability of legal aid as well as access to adequate procedures to seek compensation for damages from those legally responsible;**

(d) **Ensure that child victims of offences under the Optional Protocol are neither criminalized nor penalized and that all possible measures are taken to avoid the stigmatization and social marginalization of these children;**

(e) **Consider the possibility of using audio and video interviews of children in cases concerning the sale of children, child prostitution and child pornography and that these interviews must be conducted by specially trained police officers in child-friendly interview rooms;**

(f) **Take into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex) in the implementation of the above recommendations.**

Recovery and reintegration of victims

38. The Committee welcomes that children victims of offences under the Optional Protocol can benefit from social services and other protection activities undertaken by the section on victims of criminal offences within the Ministry of Human Rights and Refugees, but regrets that such support is primarily reactive and limited in scope due to inadequate resources and does not apply affirmative social action for the benefit of children in vulnerable situations.

39. **The Committee recommends that the State party establish a unit within the Section on Victims of Criminal Offences specifically mandated to provide assistance and support to children victims of offences under the Optional Protocol and provide it with adequate human, technical and financial resource allocations. The Committee further recommends that the State party pay special attention through affirmative social action to the needs of children in vulnerable situations (para. 24).**

40. The Committee is deeply concerned at the absence of State-run shelters for child victims and that identified child victims do not have access to appropriate care and assistance, including in shelters operated by international and non-governmental organizations. The Committee is particularly concerned that the day-care centres, established to provide shelter children involved in forced begging, do not receive State funding.

41. **The Committee recommends that the State party take all necessary measures to ensure that child victims of the offences under the Optional Protocol are provided with appropriate assistance, including for their full social reintegration and full physical and psychological recovery. In particular, the Committee encourages the State party to ensure the continuity of shelters specifically designated for child victims, including day-care centres for children involved in organized begging. The Committee recommends that the State party integrate the latter among its protection programmes for children.**

Helpline

42. The Committee welcomes information that the State party has established two hotlines for children victims of offences under the Optional Protocol, one on trafficking and

one on child pornography and internet abuse, and that it has created a web hotline (“Safe Child”) to prevent internet abuse.

43. The Committee recommends that the State party allocate sufficient resources to ensure continuity and sustainability of these services and ensure that they are fully accessible and known to all children. The Committee further recommends that the State party conduct systematic training for persons operating the aforementioned hotlines in order to effectively prevent and respond to cases of sale of children, child prostitution and child pornography.

VII. International assistance and cooperation

Multilateral, regional, bilateral agreements

44. The Committee welcomes the adoption of the International Assistance Law in 2009, which allows for joint investigation teams, and recommends that the State party increase efforts to strengthen international cooperation, in particular by bilateral agreements with neighbouring countries, to ensure the protection of victims and the prosecution and punishment of alleged perpetrators.

45. The Committee further recommends that the State party take all appropriate measures to strengthen its bilateral, regional and international cooperation to enhance the tracking system with its Internet Protocol (IP) locator in order to track IP addresses, hosts and websites of offenders of crimes under the Optional Protocol, aiming to use the most accurate IP address location database. The Committee further recommends that the State party take measures to identify the Internet Service Provider (ISP) of such websites with a view to prevent and combat child pornography.

VIII. Other legal provisions

46. The Committee recommends that the State party ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. In addition, the Committee recommends that the State party ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

IX. Follow-up and dissemination

Follow-up

47. 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 Constitutional Court of Bosnia and Herzegovina, the Supreme Court of the two Entities, the Parliamentary Assembly (both the House of Peoples and the House of Representatives), relevant ministries and to State, Entity, cantonal and local authorities, when applicable, for appropriate consideration and further action.

Dissemination of concluding observations

48. 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 organizations, youth groups,

professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

49. 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, in accordance with article 44 of the Convention.
