



Convention on the Rights of the Child

Distr.: General
20 July 2015
English
Original: French
English, French and Spanish only

Committee on the Rights of the Child

Seventieth session

14 September-2 October 2015

Item 4 of the provisional agenda

Consideration of reports of States parties

List of issues in relation to the report submitted by Madagascar 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

Addendum

Replies of Madagascar to the list of issues*

[Date received: 12 June 2015]

Introduction

1. In response to the invitation addressed to Madagascar by the Committee on the Rights of the Child to submit additional and up-to-date information, the Government has prepared this addendum report on issues relating to the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

Data collection mechanism

2. Further to the information provided in paragraphs 132 and 133 of its report (CRC/C/OPSC/MDG/1), the Ministry of Justice has worked in partnership with the United Nations Children's Fund (UNICEF) to introduce a mechanism for collecting and tracking data on abuse, trafficking, prostitution and child pornography.

3. The implementation of this mechanism, which is expected to take two years, will serve to remedy the shortcomings in data collection at both the central and local levels.

4. There are also plans to introduce a mechanism for monitoring and evaluating actions undertaken to protect children's rights.

* The present document is being issued without formal editing.



Statistical data

Information and data on the sale of children, child prostitution and child pornography

Table 1
Sale and trafficking of children

<i>Years</i>	<i>Actions</i>	<i>Suspects</i>	<i>Observations</i>
2008-2013	3 complaints received concerning the sale of children	5 persons implicated	5 persons placed under warrant of committal
2014	2 complaints received concerning the sale and trafficking of children	3 persons implicated	2 persons placed under warrant of committal

Table 2
Child prostitution

<i>Year</i>	<i>Actions</i>	<i>Results</i>	<i>Measures taken</i>
2011	Raid of nightclubs and checking of national identity cards	Of the 3,455 individuals checked, 1,048 were minors, including 546 prostitutes (471 girls and 55 boys)	<ul style="list-style-type: none"> • Review of the situation of victims who are minors • Prosecution of the perpetrators of offences (e.g.: abduction of a minor, pimping, rape)
2012		Of the 3,721 individuals checked, 1,124 were minors, including 501 prostitutes (465 girls and 36 boys)	Prostitution not involving sexual exploitation for commercial purposes
2013		Of the 3,113 individuals checked, 993 were minors, including 423 prostitutes (395 girls and 28 boys)	Prostitution not involving sexual exploitation for commercial purposes
2014		Of the 3,413 individuals checked, 1,021 were minors, including 391 prostitutes (332 girls and 59 boys)	Prostitution not involving sexual exploitation for commercial purposes

Source: Vice and Minors Protection Squad, the NGO Groupe Développement [Development Group] and the International Labour Office (ILO).

Child pornography

One case (2011)

5. A 60-year-old Frenchman abused a 13-year-old girl; the scene was filmed and distributed. An investigation was launched against the perpetrators of the offence and three accomplices were placed under warrant of committal at Toamasina prison in July 2011. The main perpetrator was arrested by the French authorities and imprisoned in France in June 2013.

6. The study on child prostitution conducted by the NGO Groupe Développement in the cities of Antananarivo, Mahajanga and Nosy Be in 2011-2012 showed that the age at which children enter into prostitution in these three locations is between 13 and 17 years of age.

7. The research revealed that, in 56 per cent of cases, children cite financial reasons to explain their entry into prostitution, and 85 per cent of those surveyed stated that they wished to leave prostitution. In Antananarivo, child prostitution is linked primarily to survival (57 per cent engage in prostitution for reasons of survival and 56 per cent of the girls concerned live in slums in the capital city).

8. The research conducted by the ILO on child victims of sexual exploitation in the cities of Antsiranana, Toliara and Antananarivo highlighted the scale of the phenomenon and revealed that the average age of entry into prostitution is 13 for girls and 12 for boys. The Antananarivo Vice and Minors Protection Squad confirmed that child victims of sexual exploitation tend to be increasingly young and that their number is continuously growing.

Coordination of the implementation of the Optional Protocol

9. Further to the information provided in paragraph 163 on the measures taken to coordinate the implementation of the Optional Protocol, Madagascar has set up a National Office to Combat Human Trafficking pursuant to Decree No. 2015-269 of 3 March 2015. Article 4 of the Decree states that the National Office to Combat Human Trafficking is responsible for:

- Formulating a national policy to combat human trafficking;
- Harmonizing and coordinating actions for the prevention of trafficking and the protection of victims;
- Centralizing information and data on human trafficking, and using them to develop a national policy to prevent trafficking-related crime;
- Overseeing the continued implementation of the National Plan of Action to Combat Human Trafficking.

10. Madagascar also has a National Plan of Action to Combat Human Trafficking, including the sale of children, child prostitution and child pornography.

Legislative reforms concerning the sale of children, the transfer of organs and forced labour (paras. 29 to 31 of the report)

11. Madagascar adopted Act No. 2014-040 of 20 January 2015 on the fight against human trafficking. The Act criminalizes the sale of children, as defined in article 2 of

the Optional Protocol, the transfer of a child's organs¹ in exchange for remuneration, and the engagement of a child in forced labour.²

Child pornography (paras. 46 to 56 of the report)

12. The Malagasy Criminal Code prescribes a prison term of between 2 and 5 years and a fine of between 1 and 10 million ariary for any person who produces, distributes, disseminates, imports, exports, offers, sells or possesses for the aforementioned purposes child pornography as defined in article 2 of the Optional Protocol.

13. Act No. 2014-006 of 17 July 2014 on the fight against cybercrime prescribes a prison sentence of between two and five years and a fine of between 2 and 10 million ariary for the distribution of child pornography through a computer or other electronic device.

Liability of legal persons (paras. 57 to 60 of the report)

Offences covered by the Optional Protocol

14. Article 30 of Act No. 2014-040 of 20 January 2015 on the fight against human trafficking establishes the criminal liability of legal persons: "Legal persons, with the exception of the State, can be rendered criminally liable for trafficking offences committed on their behalf by their organs or representatives, through physical persons performing executive, administrative, managerial or supervisory functions or any other persons with delegated authority who have the competence, authority and means required to execute their mandate."

15. The criminal liability of legal persons does not exclude that of natural persons who have perpetrated or been complicit in the offences committed.

16. Legal persons may also incur the following penalties³:

- Prohibition from carrying out certain professional activities directly or indirectly on a permanent basis or for a period not exceeding five years;
- Closure of the establishments involved in committing the offence either definitively or for a period not exceeding five years;
- Dissolution of the legal entity when it was created for the purpose of committing the offences in question;
- Dissemination of the decision by the press or by any other means of audiovisual communication.

¹ "Article 26. If the offence of organ trafficking defined in article 15 was committed against a child, the penalties shall be a prison term of between 5 and 10 years and a fine of between 2 and 10 million ariary."

² "Article 18. If the offence of forced labour listed in article 8 is committed against a child, it shall carry a prison term of between 5 and 10 years and a fine of between 2 and 10 million ariary."

³ A legal person who commits the offence of trafficking as defined in paragraph 1, shall incur a fine of between 100 and 500 million ariary.

Extension of extraterritorial jurisdiction

17. Further to the information provided in paragraphs 18 and 19 of the report, it should be noted that article 38 of Act No. 2014-040 of 20 January 2015 on the fight against human trafficking has extended extraterritorial jurisdiction. It stipulates that:

“The Malagasy courts have jurisdiction to prosecute, try and punish any persons who have committed the offence of trafficking outside the territory of Madagascar if:

- The perpetrator or victim is a Malagasy national;
- The perpetrator of the offence is a foreign national who is present in Madagascar following commission of the offence of trafficking or is ordinarily resident in the country.

The penalties prescribed by this Act shall apply even when some of the constituent elements of trafficking have been committed in other countries.”

Criminalization of the offences referred to in article 3, paragraph 1, of the Optional Protocol in domestic legislation

18. Malagasy domestic legislation, including the Act on the fight against human trafficking, covers all the offences referred to in article 3, paragraph 1, of the Optional Protocol.

19. Article 1 of the Act on the fight against human trafficking covers:

- Exploitation of the prostitution of a person or a group of persons;
- Exploitation of domestic work;
- Forced labour and practices akin to slavery;
- Forced marriage;
- The sale of persons;
- Unlawful adoption;
- Civil debt bondage;
- Exploitation of begging by others;
- Organ trafficking.

20. Trafficking also covers the sexual exploitation of children for commercial purposes.

Extradition

21. Article 50 of the Act on the fight against human trafficking stipulates that “without prejudice to any bilateral convention or any multilateral treaty applicable to cooperation and mutual legal assistance, the provisions of the Act of 10 March 1927 on the extradition of foreign nationals and the provisions of articles 41 to 63 of Act No. 2004-020 of 19 August 2004 on money laundering, tracing, confiscation and international cooperation in relation to the proceeds of crime shall be applicable”.

Judicial remedy mechanism

22. Article 44, paragraph 2, of the Act on the fight against human trafficking allows children to report acts committed against them or to lodge a complaint themselves with the Public Prosecution Service and the competent authorities and to claim compensation for the damage suffered.

23. To date, no such complaints have been lodged. With a view to encouraging children to lodge complaints, there are plans to disseminate the text in order to bring the procedure waiving the requirement for complaints to be lodged by the child's parent or guardian to the attention of child victims.

Awareness-raising and training on the Optional Protocol (paras. 114 to 117 of the report)

24. The National Plan to Combat Human Trafficking, which was approved on 5 March 2015, comprises multi-year awareness-raising and training programmes against human trafficking, including the sale of children, child prostitution and child pornography.

25. The plan targets children and their families in urban and rural settings.

Identification mechanism

26. The aforementioned National Plan includes a component devoted to the identification of victims of human trafficking, including children at risk from the trafficking-related offences covered by the Optional Protocol.

27. The identification mechanism targets children who live on the street and children living in remote areas.

Prevention of offences covered by the Optional Protocol

The fight against poverty

28. Poverty is one of the root causes of the exploitation of children for commercial purposes, prostitution and child pornography. This is why the Government of Madagascar plans to combat the phenomenon of poverty through the implementation of the National Development Plan.

Non-discrimination on grounds of sex and access to education

29. There is no gender-based discrimination in access to education.

30. Education obviates the risk of children falling victim to the forms of exploitation covered by the Optional Protocol. The State has therefore endeavoured to facilitate access to education through:

- The adoption of the 2013-2015 Interim Plan for Education, which is designed to improve access to education without discrimination;
- The reduction of parental burdens by providing school kits to 1,409,890 students in 2011 and to 4,235,000 students in 2013 with the support of the Agence française de développement (Afd), Norway and UNICEF; the abolition of enrolment fees and the payment of 3,000 ariary per student to the school fund;

the construction of school canteens in areas of high food insecurity; the provision of subsidies to teachers paid by the Fikambanan'ny Ray Aman-drenin'ny Mpianatra (FRAM), an association for parents of students, and to teachers who do not enjoy civil servant status, with the support of technical and financial partners; and the recruitment of 10,000 teachers without civil servant status as contractual State employees in 2014 and 10,000 more in 2015.

Birth registration

31. Madagascar implemented a nationwide programme to rehabilitate the registration of births known as “EzakaKopia ho an'nyAnkizy” (EKA) during the period 2004-2013 pursuant to Decree No. 2004-495 of 26 April 2004.

32. The programme was implemented, with UNICEF support, in 921 of the 1,579 communes.

Retroactive birth registration by means of supplementary rulings

33. With regard to retroactive birth registration by means of supplementary rulings, 1,029,005 children out of a total of 1,532,857 found to be without certificates during the period 2004 to 2010 have been entered in the civil registry. According to the available data, 503,852 children without birth certificates are currently due to be registered retroactively.

34. Measures are planned for the 628 communes in which the programme has not yet been implemented.

Systematic registration of births by declaration

35. According to the population and health surveys, the rate of underreporting of children in the 0 to 5 age group declined from 25 per cent in 2003-2004 to 20 per cent in 2008-2009, i.e. a reduction of 5 per cent in five years or an average decline of 1 per cent per year.

Bill on extension of the time limit for reporting a birth

36. With a view to enabling everyone to register their children, a bill extending the time limit for reporting a birth to 45 days has been drafted.

Early and forced marriage

37. With a view to eliminating child marriage practices which persist despite the setting of the minimum age of marriage at 18 years, the Outreach Department of the Ministry of Justice has organized public awareness-raising campaigns in the capital city on the adverse impact of child marriage.

38. Madagascar intends to pursue and expand this campaign in the regions.

39. With a view to combating harmful traditional practices such as child marriage, the Ministry of Justice, with the support of the United Nations Development Programme (UNDP), requested the Miara Mita consultancy group to conduct a study with a view to identifying the root causes of the persistence of early marriage through *moletry*, a practice occasionally used against minor girls.

40. The study also sought to determine the scale of such practices and to identify ways and means of eradicating this type of discrimination against child victims. In 2008 the Ministry of Justice, with UNDP support, organized a workshop in Mampikony attended by all stakeholders.

41. At the end of the workshop, the local, administrative, judicial and police authorities, together with traditional leaders and religious leaders representing all denominations, signed a roadmap providing for specific action to abolish the practice of *moletry* against children.

42. With the same end in view and with the support of UNDP and the United Nations Population Fund (UNFPA), the campaign against early marriage was launched on 2 June 2015 in Antananarivo town hall.

Sexual violence at school, within communities and on the street

43. Act No. 2007-023 of 20 August 2007 concerning children's rights and the protection of children defines abuse, prescribes measures for the protection of children at risk of moral harm or victims of abuse, and specifies reporting procedures.

44. Article 67 of the Act defines abuse as all forms of violence, assaults, physical or psychological brutality, abandonment or negligence, ill-treatment or exploitation, including sexual violence perpetrated against children by their parents, legal representatives or any other person.

45. The article also includes under the definition of abuse different types of punishment inflicted on children within the family or in schools or communities, when such conduct impairs their physical or mental integrity.

46. Any person who commits acts of sexual abuse against minors is liable to aggravated penalties.

47. Article 69 provides for mandatory reporting to the administrative or judicial authorities by parents, family members, neighbours, friends, local authorities, teachers, religious leaders, social workers, medical personnel and the police, failing which they are subject to the penalties provided for in article 62, paragraph 1, of the Criminal Code.

48. In all cases, children themselves may report any abuse of which they are the victims.

49. In addition, failure to report trafficking, sex tourism and incest constitutes an act of complicity pursuant to article 7.3 of Act No. 2007-038 of 14 January 2008 amending and supplementing certain provisions of the Criminal Code concerning the fight against human trafficking and sex tourism.

Measure taken to combat the sexual exploitation of children

50. In addition to the adoption of the Act on human trafficking and the establishment of the National Office to Combat Human Trafficking, article 12 of Decree No. 2007-563 of 3 July 2007 concerning child labour prohibits the employment of children in bars, clubs, casinos, gambling venues and cabarets. The same applies to outdoor stands in the vicinity of the aforementioned sites and any other public site where alcoholic drinks are consumed.

51. Article 13 of the Decree stipulates that "the recruitment, use, supply and employment of children of either sex for purposes of prostitution, production of pornographic material, or commercial sexual exploitation are prohibited".

52. According to article 24 of the Decree, perpetrators of the offences defined in articles 12 and 13 are liable to the penalties prescribed in articles 332 to 347 of the Criminal Code.

Initiative taken to combat pornography on the Internet and the possession of pornographic material

53. Madagascar has adopted Act No. 2014-006 of 17 July 2014 against cybercrime, article 22 and ff. of which prohibit child pornography or pornography involving children on the Internet: child pornography or pornography featuring children is defined as any representation, by whatever means, of a child engaging in explicit, real or simulated sexual activities, or any representation of a child's sexual organs for primarily sexual purposes.

54. A "child" is defined as any person under 18 years of age.

55. Pornography and the possession of pornographic material featuring children are criminalized and prohibited by Act No. 2014-006 of 17 July 2014 against cybercrime.

56. Anyone who supplies or distributes such an image or representation by means of a computer or other electronic device, by importing or exporting it, or by causing it to be imported or exported, is liable to the same penalties.

57. The act of habitually consulting an online public communication service making available such an image or representation, or the possession of such an image or representation by any means whatever, is punishable by between 2 and 5 years' imprisonment and by a fine of between 2 and 10 million ariary.

58. The penalties are increased to between 3 and 10 years' imprisonment and a fine of between 4 and 20 million ariary when a minor under 15 years of age is involved.

59. The act of taking, recording, producing, obtaining or transmitting an image or representation of a minor, when the image or representation is of a pornographic nature, with a view to its dissemination by means of a computer or other electronic device is punishable by between 2 and 5 years' imprisonment and by a fine of between 2 and 10 million ariary.

60. An attempt carries the same penalties.

61. An online public communication service is any transmission of digital data that does not constitute private correspondence by an electronic communication procedure via the Internet which permits the reciprocal or non-reciprocal exchange of data between the sender and the receiver.

62. Malagasy lawmakers have gone even further in article 22, paragraphs 9 and 10, which address the case of pornographic images of a person who physically resembles a minor:

"The provisions of this article are also applicable to pornographic images of a person whose physical appearance is that of a minor, unless it is proved that the person concerned was over 18 years of age on the day his or her picture was taken or recorded.

The following are considered to be images of a pornographic nature:

- An image or representation of a minor engaging in sexually explicit behaviour;
- An image or representation of a person who appears to be a minor engaging in sexually explicit behaviour;
- A realistic image representing a minor engaging in sexually explicit behaviour. The term 'realistic image' refers, in particular, to a falsified

image of a physical person that was fully or partially created using digital technology.”

Action against sex tourism

63. With a view to combating sex tourism in coastal towns, a Code of Conduct in support of the fight against sex tourism was adopted and launched in Nosy Be.

64. Hotels in Nosy Be have joined in the fight against commercial sexual exploitation of children and sex tourism involving children.

65. With the support of the ILO, the Regional Tourism Office of Nosy Be has been involved since December 2011 in the fight against the commercial sexual exploitation of children and sex tourism involving children. The efforts launched in 2011 for Nosy Be hotels through the BIT/IPEC-TACKLE project funded by the European Union in the form of training and awareness-raising activities aimed at combating commercial sexual exploitation of children led to the development of a Code of Conduct.

66. By 19 July 2013 about 60 hotels in Nosy Be had signed the Code of Conduct in support of the fight against commercial sexual exploitation of children and sex tourism involving children.

67. Action will be taken to disseminate the Code widely among hotels in other towns that are exposed to sex tourism risks.

Protection of the rights and interests of children in criminal proceedings

68. The best interests of the child is the rule applied by criminal courts at all stages of criminal proceedings.

69. Article 43 of Act No. 2014-040 of 20 January 2015 stipulates that: “Victims of trafficking shall be exempt from prosecution or punishment for offences related to their status as victims.” This provision may also be invoked to protect child victims of violations of the provisions of the Optional Protocol and to ensure that they are treated as victims and not as perpetrators of offences related to their status as victims.

70. For example, minors holding an identity card that has been falsified to conceal their real age with a view to their exploitation are exempt from all forms of prosecution or punishment for using a false identity card.