



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Cuba 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*

1. The Committee considered the initial report of Cuba (CRC/C/OPSC/CUB/1) at its 2045th meeting (see CRC/C/SR.2045), held on 29 September 2015, and adopted the following concluding observations at its 2052nd meeting (see CRC/C/SR.2052), held on 2 October 2015.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report under the Optional Protocol and its written replies to the list of issues (CRC/C/OPSC/CUB/Q/1/Add.1). The Committee expresses its appreciation for the constructive dialogue held with the high-level and multisectoral delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the second periodic report submitted by the State party under the Convention (CRC/C/CUB/CO/2), adopted on 17 June 2011, and on the initial report submitted under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CUB/CO/1), adopted on 2 October 2015.

II. General observations

Positive aspects

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

(a) The International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182), on 28 September 2015;

* Adopted by the Committee at its seventieth session (14 September-2 October 2015).



(b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2013;

(c) The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2013.

5. The Committee welcomes the revision in 2013 of article 346.1 of the Criminal Code regarding money-laundering to define the sale and trafficking of children and child prostitution as an offence.

III. Factors and difficulties affecting the implementation of the Optional Protocol

6. The Committee welcomes the process of updating the economic and social model developed by the State party and the forthcoming ending of the imposed embargo. This new situation opens up great hopes for the Cuban people, including children. However, the Committee also wishes to express that this situation poses great challenges, many of which fall under the Optional Protocol. This requires the State party to take prompt measures to ensure full respect for children's rights, in particular to prevent and prohibit the sale of children, child prostitution and child pornography and to provide adequate protection and redress to child victims of these offences.

IV. Data

Data collection

7. The Committee is concerned that there is no comprehensive system of data collection on all areas covered by the Optional Protocol and that information is not publicly available.

8. **The Committee recommends that the State party develop and implement a comprehensive and coordinated system of data collection, analysis, monitoring and impact assessment regarding all areas covered by the Optional Protocol, including on the sale of children, child prostitution, child pornography and child sex tourism. The data should be disaggregated, inter alia, by sex, age, ethnic origin, geographic location and socioeconomic status, with particular attention paid to children who are at risk of becoming victims of crimes under the Optional Protocol. The data system should also collect information on the number of cases reported, prosecutions, judgements and redress provided to victims, disaggregated by the nature of the offence, the category of perpetrator and the above-mentioned characteristics of victims. The data should include all victims under the age of 18 and should be made publicly available on a regular basis.**

V. General measures of implementation

Legislation

9. The Committee notes that the Optional Protocol forms part of the State party's national legal framework. However, it remains concerned that national legislation is not in conformity with the Convention and that the age of majority remains 16, leaving children between the ages of 16 and 18 years unprotected.

10. **The Committee recommends that the State party harmonize its legislation with the Optional Protocol, including by criminalizing all offences, particularly child sex tourism and possession of child pornography, and extending protection to all children under the age of 18.**

Comprehensive policy and strategy

11. While noting that the Ministry of Foreign Trade and Foreign Investment in 2014 launched the coordination process for developing a national plan for children for the period 2015-2020, the Committee is concerned about the delay in adopting the plan and the lack of information on how it will include and address the elimination of the sale of children, child prostitution and child pornography.

12. **The Committee recommends that the State party promptly adopt a national plan of action for children, which should include all issues covered under the Optional Protocol, and provide adequate human and financial resources for its effective implementation. In doing so, the State party should take into account the documents adopted at the World Congresses against Commercial Sexual Exploitation of Children.**

Coordination and evaluation

13. The Committee welcomes the appointment of the First Vice-President as the national authority responsible for following and coordinating issues related to children's rights. However, it is concerned about the lack of clarity and the duplication of structures responsible for the implementation of children's rights, as well as the lack of a single entity responsible for ensuring a holistic and coherent approach, including for implementing the Optional Protocol.

14. **The Committee, recalling its previous recommendation (see CRC/C/CUB/CO/2, para. 9), recommends that the State party designate a single entity capable of providing leadership and effective general oversight for the monitoring and evaluation of activities relating to child rights under the Convention and its Optional Protocols, across sectoral ministries and from the central to the local level of government, and to ensure optimal coordination among the various agencies and committees working on developing and implementing policies relating to children's rights.**

Independent monitoring

15. The Committee notes the information provided by the State party regarding the existence of several national monitoring mechanisms. However, it is concerned about the lack of an independent national human rights institution to regularly monitor progress in the fulfilment of children's rights under the Optional Protocol and to receive and address complaints from children.

16. **In the light of its latest recommendation under the Convention (see CRC/C/CUB/CO/2, para. 13), the Committee urges the State party to establish an independent mechanism, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to monitor the fulfilment of rights under the Optional Protocol and to deal with children's complaints in a child-friendly and expeditious manner.**

Dissemination and awareness-raising

17. While welcoming the State party's use of the mass media to raise awareness and inform the population in general regarding issues related to trafficking and prostitution, as well as violence against children, and the existence of the provincial reference centres that

disseminate information and raise awareness of children's rights, including those under the Optional Protocol, the Committee is concerned about the still insufficient knowledge of the content and objectives of the Optional Protocol among the population in general, families and children in particular, civil society organizations and State entities.

18. The Committee recommends that the State party take all measures necessary to make the provisions of the Optional Protocol widely known, and that it:

(a) **Develop and conduct, in consultation with communities, civil society organizations and children, long-term educational and awareness-raising programmes on the preventive measures and harmful effects of all the offences covered by the Optional Protocol, including on assistance and reporting mechanisms established to prevent children from falling victim to offences under the Optional Protocol;**

(b) **Disseminate systematically the Optional Protocol among government officials at the national, provincial and district levels, as well as to all relevant professional groups working with and for children, especially teachers, social workers, border police, judges and prosecutors, as well as tourism agencies and their employees;**

(c) **Incorporate issues related to the Optional Protocol into school curricula at all levels.**

Allocation of resources

19. The Committee notes the economic challenges faced by the State party and the efforts made to maintain the services provided to children. However, it regrets that official information, such as information on budgets, is considered confidential and is not available for an effective analysis of the resources allocated to the implementation of the provisions of the Optional Protocol.

20. The Committee recommends that the State party make visible the budget allocations for the implementation of the Optional Protocol, including by earmarking human, technical and financial resources from the regular budget to set up programmes relating to its provisions, in particular programmes relating to training and dissemination, criminal investigations, legal assistance and the physical and psychological recovery of victims.

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

Measures adopted to prevent offences prohibited under the Protocol

21. The Committee notes that the State party has made some effort to prevent offences under the Optional Protocol, including through the work carried out by community groups relating to prevention, care, social work and the early identification of situations of vulnerability. However, the Committee is concerned that:

(a) Restrictions on data collection and access to information inhibit the ability to form an accurate understanding of the situation and the adoption of adequate and effective preventive measures;

(b) Restrictions on the Internet may limit access to relevant information that enables children to better protect themselves;

(c) There have been reports of persons who are sought as offenders or suspected of child sexual abuse entering the State party.

22. The Committee recommends that the State party:

(a) Adopt a participatory and evidence-based approach to the sale of children, child trafficking, pornography and prostitution, and in particular involve civil society and non-governmental organizations working in the area of human rights, as well as children, in the collection of information on and the development and implementation of preventive measures;

(b) Ensure that children have access to relevant information available on the Internet that enables them to learn about preventive measures regarding and the harmful effects of all the offences covered by the Optional Protocol, and include them in the development of legislation and policy that affects their right to be informed;

(c) Continue to strictly apply its zero tolerance policy towards the trafficking and sexual exploitation of children and, in particular in immigration matters, take additional measures as appropriate to monitor the stay of persons sought as offenders or suspected of child sexual abuse while in the territory of the State party.

Child sex tourism

23. The Committee welcomes the measures taken to prevent child sex tourism, including the prohibition of children's access to nightclubs and cabarets and their unaccompanied access to tourist facilities. The Committee is concerned, however, about the limited information on the measures taken or envisaged to regulate, train and monitor tourism agencies and professionals.

24. The Committee recommends that the State party:

(a) Conduct advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the 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.

(b) Strengthen the knowledge and the monitoring capacity of law enforcement officials with regard to child sex tourism, including through training and collaboration with United Nations agencies, particularly the United Nations Children's Fund and the United Nations Office on Drugs and Crime;

(c) Carry out studies, with the participation of civil society and children, to better understand the gender dimensions of child sex tourism and develop programmes to combat its underlying root causes.

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

Existing criminal or penal laws and regulations

25. While noting that certain offences under articles 2 and 3 of the Optional Protocol are covered by the Criminal Code, the Committee is concerned about remaining gaps in the law, in particular the fact that:

(a) Offences provided for in the Criminal Code, such as the corruption of minors (art. 310.1), are limited to cases involving a child under the age of 16;

(b) The offence of sale of children has not been comprehensively defined and the legislation fails to adequately address all the elements provided for in article 2 (a) of the Optional Protocol;

(c) The definition of the offence of child pornography fails to adequately encompass all the elements provided for in article 2 (c) of the Optional Protocol, and the possession of child pornography without intent to distribute is not criminalized.

26. The Committee urges the State party to bring the Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol, by properly criminalizing all forms of the sale of children and child pornography and ensuring that it covers all children under the age of 18. In particular, the Committee recommends that the State party:

(a) **Amend the Criminal Code to extend the offence of corruption of minors to include children between the ages of 16 and 18;**

(b) **Amend the Criminal Code by incorporating a comprehensive definition of the sale of children, which includes the acts of offering, delivering or accepting a child for the purpose of sexual exploitation, illegal adoption, engagement in forced labour or transfer of organs for profit, in accordance with article 3 (1) (a) of the Optional Protocol;**

(c) **Expand the definition of child pornography in accordance with articles 2 (c) and 3 (1) (c) of the Optional Protocol to explicitly encompass all acts of producing, distributing, disseminating, importing, exporting, offering, selling, possessing or knowingly accessing or viewing child pornography.**

Criminal liability of legal persons

27. The Committee notes the information provided by the State party in its report according to which, under article 39.1 of the Civil Code, legal entities are bodies that have the capacity to enjoy rights and are bound by obligations. However, the Committee expresses concern that this is limited to liability and does not extend to criminal responsibility.

28. The Committee urges the State party to properly establish the criminal liability of legal persons for offences defined in articles 2 and 3 of the Optional Protocol.

Impunity

29. While noting the information on the reported cases of offences related to the Optional Protocol and the judgements issued in 2012 and 2013, the Committee is concerned about the lack of detailed, disaggregated and clear data concerning these processes and about the fact that only a small percentage of these cases lead to prosecution and criminal sanctions. The Committee is also concerned about the lack of clear and detailed information on the processes relating to and sanctions imposed on perpetrators in the educational sector, including measures taken to prevent them from having further contact with children in any official capacity.

30. The Committee recommends that the State party ensure that all reported offences under the Optional Protocol are fully investigated, prosecuted and adequately sanctioned.

Extraterritorial jurisdiction and extradition

31. The Committee notes that the State party has extraterritorial jurisdiction over Cuban citizens abroad who commit offences under the Optional Protocol in countries with which it

has signed extradition agreements. The Committee is concerned about the lack of information on whether these agreements include all the offences covered by the Optional Protocol and about the fact that the Protocol itself is not a basis for extradition.

32. **The Committee recommends that the State party review its legislation in order to establish extraterritorial jurisdiction over the offences referred to in article 3 (1) of the Optional Protocol, especially when the alleged offender is a national of the State party or a person who has his or her habitual residence in its territory or when the victim is a national of the State party, and consider the Optional Protocol as a basis for extradition.**

VIII. Protection of the rights of child victims (arts. 8 and 9 (3) and (4))

Criminal justice system protection measures

33. The Committee notes that article 142.2 and 142.3 of the Criminal Code provides protection to victims and witnesses in cases of trafficking and sexual abuse, with special attention to children, including protection of their identity, non-revictimization, respect for their best interests and measures for recovery and reintegration. However, the Committee is concerned that victims of human trafficking may still be prosecuted and imprisoned under immigration laws.

34. The Committee recommends that the State party ensure that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons, including under immigration laws.

Recovery and reintegration of victims

35. The Committee welcomes the legal, medical, psychosocial, educational and social support provided between 2010 and 2013 to child victims of sexual abuse in the municipal and provincial centres for diagnosis and orientation and the three regional centres for the protection of children. The Committee is concerned, however, that child victims may in practice be treated as offenders and stigmatized. It is also concerned about the lack of information on the support provided to all children involved in the offences reported under the Optional Protocol.

36. **The Committee recommends that the State party ensure that all child victims receive the appropriate legal, medical, psychosocial, educational and social support for their effective recovery and reintegration, and that such support be provided to them separately from children in conflict with the law.**

Helpline

37. While welcoming the creation of a 24-hour telephone line operated by the Attorney General's office to receive and attend to complaints, the Committee is concerned about the lack of information on cases involving offences under the Optional Protocol, the limited training received by the staff of the telephone line and the fact that children do not make use of it.

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

(a) **Collect information on the operations of the telephone helpline regarding offences under the Optional Protocol, namely on the number of cases received, disaggregated by the nature of the offence, the age and sex of the victim, ethnic group, geographic location and socioeconomic background, and on measures taken to immediately provide protection to the victims and investigate such cases;**

(b) Ensure that the telephone helpline is accessible to children and that the staff is adequately trained in child-sensitive procedures and in directing complaints to the relevant services.

IX. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

39. In the light of article 10 (1) of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures and mechanisms for coordinating 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.

X. Ratification of the Optional Protocol on a communications procedure

40. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the Optional Protocol on a communications procedure.

XI. Follow-up and dissemination

41. 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 parliament, relevant ministries and other national and local authorities for appropriate consideration and further action.

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

XII. Next report

43. In accordance with article 12 (2) of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol and the present concluding observations in its next periodic report, to be submitted in accordance with article 44 of the Convention.
