



Convention on the Rights of the Child

Distr.: General
19 September 2014

Original: English

**ADVANCE UNEDITED
VERSION**

Committee on the Rights of the Child

Optional Protocol on the sale of children, child prostitution and child pornography

Concluding observations on the initial report of Venezuela, adopted by the Committee at its sixty-seventh session (1-19 September 2014)

1. The Committee considered the initial report of Venezuela (CRC/C/OPSC/VEN/1) at its 1905th meeting (see CRC/C/SR/1905) held on 2 September 2014, and adopted at the 1929th meeting, held on 19 September 2014, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/VEN/Q/1/Add.1). The Committee expresses appreciation for the high-level and multisectoral character of the 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 State party's combined third to fifth periodic reports under the Convention (CRC/C/VEN/CO/3-5) as well as those on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/VEN/CO/1), adopted on 19 September 2014.¹

II. General observations

Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

- (a) The Law against organised crime and terrorism in 2012 ; and

¹ The term "children" encompasses anyone under the age of 18, including adolescents. In Spanish, it should be translated into "niños, niñas y adolescentes".



(b) The National Action Plan against Sexual Abuse and Commercial Sexual Exploitation in 2007.

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

(a) The International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in October 2005;

(b) The Convention Against Transnational Organized Crime in May 2002; and

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime in May 2002.

6. The Committee further welcomes the progress achieved in the creation of institutions that facilitate the implementation of the Optional Protocol, including the Intersectoral Commission against Sexual Abuse and Exploitation in 2011.

III. Data

Data collection

7. The Committee welcomes the efforts undertaken by the State party to design a System of Statistical Information on Children and Adolescents (SIENNA). However, the Committee is concerned that the slow progress made in establishing it has hampered the collection and dissemination of data needed to assess the implementation of the Optional Protocol.

8. The Committee recommends that the State party expeditiously complete and implement its data collection system (SIENNA) on all the areas covered by the Optional Protocol, as recommended in paragraph 20 of its concluding observations under the Convention. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. In this context, the Committee also recommends that the State party strengthen its technical cooperation with, among others, UNICEF and regional mechanisms.

IV. General measures of implementation

Legislation

9. While welcoming efforts to integrate various provisions of the Optional Protocol into the legislation of the State party, the Committee is concerned that such efforts have focused almost exclusively on trafficking, prostitution and pornography. The Committee is further concerned that existing legislation does not explicitly address all offences covered under the Optional Protocol, and that the definition of sale of children in State party's legislation is not in conformity with the Optional Protocol. The Committee further regrets that a comprehensive legislation to prevent and assist child victims of trafficking in persons, which could be of relevance for the implementation of the Optional Protocol, is still pending to be adopted.

10. The Committee recommends that the State party take all necessary measures to fully incorporate the Optional Protocol in its domestic legal system. It also recommends that the State party amend the definition of sale of children in national legislation, which is similar to but not identical to trafficking in persons, in order to adequately incorporate the provision on sale contained in the Optional Protocol. The

Committee further recommends that the State party expeditiously adopt the draft comprehensive legislation on trafficking in person which would be in accordance with international standards

National Plan of Action

11. The Committee takes note of the various plans, policies and programmes implemented during the reporting period to prevent and protect victims of the offences covered by the Optional Protocol. The Committee is nevertheless concerned that the State party has not yet adopted a national plan of action on children which, inter alia, includes all issues covered by the Optional Protocol.

12. The Committee urges the State party to finalize the National Plan of Action for Children and Adolescents (2015-2019), addressing specifically all issues covered under the Optional Protocol and provide adequate human, financial and technical 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 World Congresses against Commercial Sexual Exploitation of Children.

Coordination and evaluation

13. The Committee is concerned at the lack of an adequate mechanism capable of coordinating, monitoring and evaluating the various institutions working on issues related to the rights covered by the Convention and Protocols.

14. With reference to paragraph 13 of its concluding observations under the Convention, the Committee urges the State party to designate a coordinating body capable of providing leadership and effective general oversight for the monitoring and evaluation of activities on child rights under the Convention and its Optional Protocols at cross-sectoral, national, state and local levels. The State party should ensure that the coordinating body is provided with the necessary human, technical and financial resources for its effective operation.

Dissemination and awareness-raising

15. The Committee notes some initiatives taken by the State party to disseminate and raise awareness on the Optional Protocol. However the Committee regrets the lack of a comprehensive strategy in place to harmonize those initiatives and adequately disseminate the provisions of the Optional Protocol.

16. The Committee recommends that the State party design a strategy to disseminate the Optional Protocol among all relevant professional groups, especially law enforcement officials, border personnel, judges, prosecutors, representatives of the media, social workers, teachers, as well as children -in a child-friendly manner-, their families and communities. The dissemination strategy should specifically provide for the inclusion of issues related to the Optional Protocol in the curricula at all levels of education. The strategy should further provide for the implementation of awareness-raising programmes on preventive measures, assistance programmes and reporting mechanisms on the offences related to the Optional Protocol.

Training

17. The Committee acknowledges the various trainings organized by the State party on the rights related to the Optional Protocol targeting a variety of stakeholders. However, the Committee regrets the lack of evaluation provided by the State party on the implementation

of these trainings as well as the absence of a coordinated training strategy with clear goals and indicators.

18. **The Committee recommends that the State party develop a strategy to ensure that all relevant stakeholders working on children's rights related to the Optional Protocol receive adequate training. The strategy should be provided with adequate human, financial and technical resources for its implementation and should include the designation of a mechanism capable of monitoring, evaluating and improving the quality of the trainings on a regular basis.**

Allocation of resources

19. The Committee regrets the lack of information provided by the State party as to the resources allocated to the implementation of the Optional Protocol during the reporting period.

20. **The Committee recommends that the State party establish specific and clear budgetary allocations for the implementation of the Optional Protocol. The State party should earmark all human, technical and financial resources allocated to programmes conceived to implement its provisions, in particular those related to criminal investigations, legal assistance, compensations and physical and psychological recovery of child victims of crimes related to the Optional Protocol.**

V. 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

21. The Committee notes the significant initiatives undertaken by the State party to reduce poverty and exclusion, which are some of the root causes leading to offences under the Protocol. The Committee also notes the variety of trainings, awareness raising activities and programmes aiming at preventing those offences as well as the establishment of the Intersectoral Commission against sexual abuse and exploitation in 2011. However the Committee is concerned that :

(a) The State party has not undertaken adequate efforts to properly identify and eliminate all the root causes and risks, including the prevalence of discriminatory practices and attitudes, as well as violence –including gender-based violence-, which have a negative impact on children;

(b) A proper identification of children at risk has never taken place before designing prevention programmes;

(c) The State party has not presented any evaluation of the prevention programmes nor explained how these are articulated; and

(d) There is a lack of information provided so as to the composition of the Intersectoral Commission against sexual abuse and exploitation, its functioning and results achieved so far.

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

(a) **Conduct a comprehensive study that addresses the relevant root causes and risk factors of offences under the Optional Protocol, including poverty, discrimination, violence –including gender-based violence- and absence of parental care;**

(b) Undertake an evaluation of the programmes conducted during the reporting period to prevent offences under the Optional Protocol and, building on the lessons learned and on the comprehensive study addressing the root causes, design and implement a consolidated prevention strategy. The strategy should be provided with adequate human, financial and technical resources, including those necessary to support and assist children at risk of becoming victims under the Optional Protocol;

(c) Increase efforts to eliminate discrimination on all grounds against children at risk and, in particular, organize educational programmes targeting relevant stakeholders in order to challenge discriminatory practices and stereotypical attitudes regarding the roles and responsibilities of women and girls in the family and in society;

(d) Strengthen the Intersectoral Commission against Abuse and Sexual Exploitation of Children and Adolescents, monitor its functioning and evaluate its accomplishments; and

(e) Consider ratifying International Labour Organization (ILO) Convention No. 189 (2011) concerning decent work for domestic workers.

Sale of children

23. The Committee is concerned about reports that indigenous children are involved in illegal gold mining, in slavery-like conditions, in the upper Orinoco and the Casiquiare and Guainia-Rio Negro basins and that this may amount to sale of children. In that regard, the Committee is particularly concerned that no case of sale of children has been registered by the State party so far. The Committee is further concerned about reports that those children are also victims of child prostitution and trafficking.

24. **The Committee strongly urges the State party to expeditiously investigate all cases involving children working in illegal gold mining, prosecute the alleged perpetrators of crimes covered by the Optional Protocol, punish those convicted with penalties commensurate with the gravity of the crime, provide rehabilitation and protect and compensate the child victims.**

Child sex tourism

25. The Committee is concerned about reports that girls are sexually exploited in some of the touristic centres of the State party. The Committee is particularly concerned that, while the State party has plans to promote tourism as one of the main pillars of the State party's economy, it has not yet adopted all necessary measures to protect children from violations of their rights arising from tourism activities.

26. **In the light of its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the Committee urges that the State party:**

(a) **Undertake a comprehensive study on the scope of child sex tourism in the State party and undertake all necessary measure to eliminate the phenomenon;**

(b) **Examine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State party's territory, especially in the tourism industry, regarding abuses to child and human rights;**

(c) **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; and

(d) Establish monitoring mechanisms for the investigation and redress of such abuses, with a view to improving accountability, transparency and the prevention of violations to the Optional Protocol.

VI. 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

27. While noting that the legislation of the State party prohibits some of the offences covered by the Optional Protocol, the Committee is concerned that the State party's criminal law does not explicitly prohibits all forms of "sale of children", as well as all aspects of child prostitution and child pornography covered by the Protocol.

28. **The Committee recommends that the State party revise and bring its Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the State party should ensure that all of the following offences are explicitly criminalized:**

(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, 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; and**

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

Impunity

29. The Committee notes the information provided about the low number of cases of trafficking of children, child prostitution and child pornography identified by the State party. However the Committee is concerned that, according to the State party report, only three cases have been successfully prosecuted so far. It is further concerned about reports that child prostitution is especially widespread at the border territories with a neighbouring country and at the lack of appropriate measures taken to prevent, investigate and punish the perpetrators.

30. **The Committee urges the State party to:**

(a) **Enforce the legislation in place for the protection of children from all forms of offences covered under the Optional Protocol, by actively identifying and**

investigating those cases and prosecuting and sanctioning all offenders, with a view to strengthening the deterrent effect of its existing legislation;

(b) Take all necessary measures to increase the human, financial and technical resources of the police, prosecutors and judiciary so they have the capacity to investigate, prosecute and convict individuals involved in the offences under the Optional Protocol; and

(c) Provide specific information on investigations, prosecutions and punishment of perpetrators of offences under the Optional Protocol in its next periodic report under the Convention and ensure that such information is easily and publicly available in the State party.

Liability of legal persons

31. While noting that the State party recognizes the liability of legal persons in the framework of the law against organized crime, the Committee is concerned that the liability of legal persons for all crimes under the Optional Protocol is not included in the law.

32. **The Committee recommends that the State party explicitly incorporate into law the liability of legal persons involved in any of the crimes under the Optional Protocol, with the establishment of legal sanctions commensurate with the seriousness of the crime committed.**

Extraterritorial jurisdiction

33. The Committee takes note of the legal recognition of extraterritorial jurisdiction for offences under the Optional Protocol when committed in the framework of the law against organized crime. However the Committee regrets that extraterritorial jurisdiction is not recognized for all offences covered by the Optional Protocol.

34. **The Committee urges the State party to take the necessary legislative measures to introduce and establish extraterritorial jurisdiction for the prosecution of all offences referred to in article 3, paragraph 1, of the Optional Protocol when they are committed abroad by one of its nationals, by a person who has habitual residence in its territory or when the victim is one of its nationals, and to ensure that there is no requirement of double criminality for the prosecution of such offences.**

Extradition

35. The Committee takes note that article 5 of the Optional Protocol can be used as a legal basis for extradition, in the absence of bilateral or multilateral treaty of extradition. The Committee is, however, concerned that double criminality seems to be required in all cases of extradition.

36. **The Committee recommends that the State party take steps to ensure that a double criminality requirement is not used in cases of extradition for crimes covered by the Optional Protocol.**

VII. 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

37. The Committee notes the legal and administrative measures taken to protect child victims of some of the offences prohibited under the Optional Protocol. While taking note

of the existing Action Plan and protocols on sexual abuse and exploitation, the Committee is concerned at the absence of protocols dealing with sale of children. The Committee is also concerned about the deficiency or unavailability of the services required to properly protect child victims.

38. In the light of article 9, paragraph 3, of the Optional Protocol, the Committee recommends that the State party:

(a) Evaluate the results achieved through the existing Action Plan and protocols on sexual abuse and exploitation and, on the base of lessons learned, improve these instruments and ensure their adequate implementation;

(a) Strengthen all services, including forensic services, related to the protection of rights of children victims of offences covered by the Optional Protocol by providing regularly trained specialized staff, protocols, infrastructure and technical equipment as required;

(b) Establish specialized police services to deal with children, ensure the adequate implementation of the 2011 Resolution on Standards of Police Behaviour, and adopt the complementary standards of police behaviour to apply when children are victims, witnesses or perpetrators of crimes; and

(c) Strengthen child-friendly mechanisms to register, monitor and address complaints related to the offences covered by the Optional Protocol.

Recovery and reintegration of victims

39. The Committee takes notes of the various programmes undertaken to assist children in vulnerable situations, including those implemented by the Missions. However, the Committee is concerned that the services provided are not fully adequate and do not sufficiently respond to the needs of the child victims.

40. The Committee recommends that the State Party

(a) Take all necessary measures to ensure that child victims of the offences covered under the Optional Protocol are provided with appropriate shelter and assistance for their full social reintegration and physical and psychological recovery; and

(b) Seek technical assistance from UNICEF and civil society organizations for the implementation of these recommendations.

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

41. In the light of article 10, paragraph 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 for 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.

42. The Committee encourages the State party to continue its cooperation with United Nations agencies and programmes, such as UNICEF, as well as with non-governmental organisations in developing and implementing measures aimed at the effective implementation of the Optional Protocol.

IX. Follow-up and dissemination

Follow-up

43. 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 relevant Government ministries, the Parliament, the judiciary and to national and local authorities, for appropriate consideration and further action.

Dissemination of concluding observations

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

X. Next report

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