



Convention on the Rights of the Child

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Committee on the Rights of the Child

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

Concluding observations on the initial periodic report of Canada, adopted by the Committee at its sixty-first session (17 September-5 October 2012)

1. The Committee considered the initial report of Canada at its 1743rd meeting, held on 27 September, and adopted, at its 1754th meeting, held on 5 October 2012, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report and the written replies to its list of issues (CRC/C/OPSC/CAN/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the State party's 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 consolidated third and fourth periodic report of the State party under the Convention on the Rights of the Child (CRC/C/CAN/CO/3-4) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/CAN/CO/1). The Committee regrets that the reporting guidelines were not followed in the preparation of the State party report.

I. General observations

Positive aspects

4. The Committee notes as positive the adoption of the following legislative measures:

(a) Bill C-49, an Act to amend the Criminal Code (trafficking in persons) (25 November 2005), which creates indictable offences that specifically address trafficking in persons; and

(b) Bill C-15A (4 June 2002), which strengthened the State party's extraterritorial jurisdiction over child sex tourism.

5. The Committee also welcomes the following institutional and policy measures:
 - (a) National Action Plan to Combat Human Trafficking (June 2012);
 - (b) Homelessness Partnering Strategy (HPS) (April 2007);
 - (c) National Strategy to Protect Children from Sexual Exploitation on the Internet, (May 2004); and
 - (d) The establishment of a national reporting centre for incidents of sexual exploitation of children on the internet, Cybertip.ca, through the Canadian Center for Child Protection in May 2004.

II. Data

6. While it notes as positive the extensive data collected on internet-based exploitation, the Committee is concerned at the lack of data on other offences under the Optional Protocol and notes that data is collected through municipal police records, but not at the federal level. The Committee is concerned about the lack of a comprehensive data collection system covering all offences under the Optional Protocol which would enable the State party to inform policy decisions as well as analyse and assess progress in the implementation of the Optional Protocol.

7. **The Committee recommends that the State party establish a comprehensive and systematic mechanism of federal data collection, analysis, monitoring, and impact assessment covering all areas of the Optional Protocol. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location, indigenous status and socio-economic status, with particular attention to children in the most vulnerable or marginalized situations. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence. The Committee also recommends that the State party establish a system of common indicators when collecting data for the various states and territories.**

III. General measures of implementation

Legislation

8. While commending the State party for the numerous laws adopted in relation to the Optional Protocol such as Bill C-2, which came into force in 2008 and strengthened protections for children in cases of child pornography, the Committee is concerned that such efforts have focused almost exclusively on trafficking. The Committee is further concerned that existing legislation does not explicitly address all offences covered under the Optional Protocol, such as the sale of children, which is not criminalized in the State party. The Committee notes also with particular concern that, due to the lack of federal implementing legislation comprehensively and unambiguously giving effect to all the provisions of the Optional Protocol, it is consequently interpreted differently in each of the provinces and territories and has resulted in inconsistencies.

9. **The Committee requests the State party to take all necessary measures to ensure the full incorporation of the Optional Protocol into its domestic legal system. The Committee recommends that the State party ensure that the definition of sale of children, which is similar but not identical to that of trafficking in persons, is amended in the national legislation in order to adequately implement the provision on sale contained in the Optional Protocol and that all elements of the Optional Protocol**

are covered under federal legislation so as to ensure consistent application of all the obligations under the Optional Protocol in all provinces and territories.

National plan of action

10. While welcoming the existence of various plans of action in relation to the Optional Protocol, in particular *A Canada Fit for Children* (2004), the National Strategy to Protect Children from Sexual Exploitation on the Internet (2004), and the National Plan to Combat Human Trafficking (2012), the Committee is nevertheless concerned by the lack of a comprehensive plan addressing all issues specifically covered under the Optional Protocol.

11. **The Committee recommends that the State party ensure that the national action plan for children, *A Canada Fit for Children*, include a comprehensive programme of action specifically targeting all issues covered under the Optional Protocol, and that it is provided with adequate human, technical and financial resources for its implementation. To this end, 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 Sexual Exploitation of Children, held in Stockholm in 1996, in Yokohama in 2001 and in Rio de Janeiro in 2008.**

Coordination and evaluation

12. The Committee notes as positive the fact that the State party has established task forces and centres to implement various national action plans related to the Optional Protocol, such as the Interdepartmental Working Group on Children's Rights, the Interdepartmental Working Group on Trafficking in Persons, and the National Child Exploitation Coordination Centre. However, the Committee is concerned by the lack of coordination between various task forces and centres at the national, and provincial, and territorial levels for their interventions on cases of sale of children, child prostitution, and child pornography in the State party. Furthermore, the Committee notes that the State party lacks a federal mechanism for overall coordination of the implementation and evaluation of activities under the Optional Protocol.

13. **With reference to paragraphs 14 and 15 of its concluding observations under the Convention, the Committee recommends that the State party coordinate the various agencies and committees working on developing and implementing child rights policies and designate a federal mechanism responsible for leadership and effective general coordination for the monitoring and evaluation of activities on child rights under the Convention and its Optional Protocols among all provinces and territories.**

Dissemination and awareness-raising

14. The Committee notes as positive that the governments of various provinces and territories have partnered with and provided funding to civil society organizations in order to educate various groups on the principles and provisions of the Convention and its Optional Protocols. Nevertheless, the Committee is concerned that this approach has not been far-reaching and is concerned that the State party lacks a systematic and comprehensive approach to the dissemination of the Optional Protocol, which has contributed to a low level of understanding and awareness of the Optional Protocol among the public, children themselves, and professional groups working with children.

15. **The Committee recommends that the State party strengthen its efforts to make the provisions of the Optional Protocol widely known to the public at large, including**

to children in a child-friendly manner, their families and communities. The Committee also urges the State party to:

(a) Systematically incorporate issues related to the Optional Protocol into the curricula of primary and secondary schools;

(b) Develop, in close cooperation with civil society organizations, the media, the private sector, communities and children, awareness-raising programmes including campaigns on issues covered by the Optional Protocol. These programmes should be made available in all the languages of the State party and in forms that are accessible to children; and

(c) Promote and organize, where appropriate, awareness-raising programmes, including campaigns and the use of mass media to disseminate key messages among the general population and children, especially children in vulnerable situations, on the provisions of the Optional Protocol.

Training

16. The Committee appreciates the numerous training activities provided by the State party to law enforcement personnel and judicial authorities on human trafficking. The Committee is however concerned that efforts to provide multidisciplinary training to professionals working with and for children are not systematic and do not include all areas covered by the Optional Protocol.

17. **The Committee urges the State party to strengthen its multidisciplinary training on the Optional Protocol, especially for members of the police, judges, prosecutors, and social workers at all levels of government. The Committee further urges the State party to earmark the necessary resources to conduct such training.**

Allocation of resources

18. The Committee regrets the lack of clearly identifiable budget allocations assigned to activities designated to implement the Optional Protocol, in particular as concerns the prevention of offences and the provision of assistance to child victims.

19. **The Committee recommends that the State party take all possible measures to ensure that sufficient resources are allocated equitably throughout the country for the implementation of all areas covered by the Optional Protocol, by providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological recovery and social integration of victims, as well as the investigation and prosecution of the offences covered by the Optional Protocol.**

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

Measures adopted to prevent offences prohibited under the Protocol

20. The Committee notes the efforts undertaken by the State party aimed at preventing offences under the Optional Protocol, such as measures taken to increase awareness and education about the sexual exploitation of children online, as well as the establishment of mechanisms to track known offenders with the aim of preventing reoffending. However the Committee is concerned that the measures to prevent offences under the Protocol are inadequate, including with regard to:

- (a) Weak enforcement of existing legislation in regards to the offences under the Optional Protocol, as evidenced by the low number of prosecutions and convictions as well as inadequate sentencing for those convicted of crimes under the Optional Protocol;
- (b) Inequitable funding of community and social protection services, especially for disadvantaged groups and children in marginalized situations;
- (c) Inadequate protection for unaccompanied asylum-seeking children and irregular migrant children; and
- (d) Insufficient measures taken to prevent children from being sent abroad or to other religious communities within the State party for the purpose of forced underage marriage, such as the polygamous community in Bountiful, British Columbia, which amounts to the sale of children.

21. The Committee urges the State party to adopt a comprehensive and targeted approach which addresses the root causes of offences under the Optional Protocol and targets children in the most vulnerable and marginalized situations. The Committee further urges the State party to:

- (a) Provide more resources to law enforcement agencies to improve prosecution and conviction rates for crimes under the Optional Protocol. The Committee also urges the State party to ensure that those convicted of offences under the Optional Protocol are punished with sanctions commensurate to their crimes;**
- (b) Ensure equitable funding of community and social protection services to all communities, especially to disadvantaged groups and children in marginalized situations;**
- (c) Ensure the provision of adequate protection measures for unaccompanied asylum-seeking children and children in irregular migrant situations, including by providing them with welfare and community social services; and**
- (d) Take all necessary measures to enforce the legal prohibition of polygamy and prosecute the perpetrators, and provide protection for children forced into early marriages.**

Child sex tourism

22. The Committee welcomes new initiatives by the State party to combat child sex tourism, such as the passage of Bill C-15A, which allows the prosecution of citizens of the State party who engage in child sex tourism abroad even if the State where the crime was committed did not request prosecution. The Committee further notes as positive awareness-raising educational campaigns conducted by the State party on the legal consequences of child sex tourism. Nevertheless, the Committee is concerned that child sex tourism remains a serious issue for the State party and that, despite legislation, prosecution has been weak.

23. The Committee recommends that the State party take measures to strengthen the enforcement of its legislation on child sex tourism through improved detection, investigation, prosecution and punishment of all perpetrators. The Committee further urges the State party to conduct advocacy with the tourism industry on the harmful effects of child sex tourism, widely disseminate the World Tourism Organization (UNWTO) Global Code of Ethics for Tourism among travel agents and tourism agencies, and encourage these to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

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

Existing criminal or penal laws and regulations

24. The Committee welcomes the criminalization of many aspects of child pornography and sexual exploitation of children on the internet. The Committee however notes with concern that, despite the incorporation of some of the provisions of the Optional Protocol into national laws, domestic legislation is still not fully in compliance with all provisions. In particular, the Committee notes with concern that:

(a) The Criminal Code does not cover all offences under the Optional Protocol; and

(b) All forms of sale of children defined in articles 2 and 3 of the Optional Protocol have not been criminalized.

25. **The Committee recommends that the State party revise its Criminal Code and bring it into full compliance with articles 2 and 3 of the Optional Protocol, and ensure that the law is enforced in practice. In particular, the State party should ensure that all offences under the Optional Protocol are criminalized, including:**

(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 by improperly inducing consent, as an intermediary, for the adoption of a child in violation of the applicable legal instrument on adoption; and**

(b) **The production and dissemination of material encouraging any of these acts.**

Prosecution

26. While noting with satisfaction law enforcement initiatives to hold perpetrators of child sexual exploitation on the internet and child pornography accountable, the Committee is deeply concerned at the small number of investigations, prosecutions, and convictions for offences under the Optional Protocol. The Committee is also concerned that sentences for those convicted of offences under the Optional Protocol, even for the most heinous violations, fall far short of the maximum sentencing. The Committee is further concerned that law enforcement has been weak due to a lack of resources in some provinces and territories. Furthermore, the Committee is deeply concerned that cases involving Aboriginal girls, including those who may have been involved in the sex trade, have gone missing or have been murdered, have not been fully investigated, with the perpetrators going unpunished.

27. **The Committee recommends that the State party provide specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol in its next periodic report. The Committee also urges the State party to:**

(a) **Impose adequate sentences for those convicted of crimes under the Optional Protocol to ensure that the punishment is commensurate with the crime;**

(b) **Allocate sufficient funding to enable officials to fully enforce sections of the Criminal Code related to the Optional Protocol and ensure that they receive appropriate training; and**

(c) **Establish a plan of action to coordinate and strengthen law enforcement investigation practices in cases of child prostitution, especially in Aboriginal communities, and to vigorously ensure that all cases of missing girls are investigated and prosecuted to the full extent of the law.**

Liability of legal persons

28. The Committee regrets that the State party's legislation does not clearly establish the liability of businesses involved in child sex tourism for the offences established in the Optional Protocol. The Committee is also concerned that current legislation does not oblige Internet Service Providers (ISPs) to provide information to law enforcement agencies about persons who distribute child pornography and related content.

29. **In the light of article 3, paragraph 4, of the Optional Protocol, the Committee recommends that the State party establish the liability of legal persons for all offences covered under the Optional Protocol, including businesses and tour promoters involved in child sex tourism. The Committee also recommends that the State party amend its legislation to require Internet Service Providers (ISPs) to provide information to law enforcement agencies about persons who distribute child pornography and related content.**

Extraterritorial jurisdiction

30. The Committee welcomes the enactment of Bill C-15A, which strengthens the State party's extraterritorial jurisdiction over child sex tourism. However, the Committee is concerned that not all offences under the Optional Protocol are subject to extraterritorial jurisdiction.

31. **The Committee recommends that the State party ensure that all offences under the Optional Protocol are subject to extraterritorial jurisdiction.**

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

32. The Committee notes as positive the State party's initiatives to train officials, including port of entry officers, on the identification of child trafficking victims. It also notes as positive that the State party has improved the protection of trafficking victims by authorizing renewable Temporary Residence Permits. The Committee is however concerned that:

(a) Some provinces and territories re-victimize child trafficking victims by detaining and deporting them as illegal migrants or filing criminal charges of prostitution against them;

(b) Not all provinces and territories have enacted legislation to allow child victims of the offences under the Optional Protocol to seek compensation in their respective jurisdictions; and

(c) The lack of access to free legal counsel for child victims in some provinces and territories.

33. **The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims in all provinces and territories against all offences under the Optional Protocol and in particular that it:**

(a) Establish mechanisms and procedures to protect the rights of child victims of trafficking and ensure that they are not subjected to lengthy waiting periods prior to deportation and are treated as victims rather than criminals by law enforcement and judicial authorities;

(b) Ensure that all territories and provinces enact legislation to make remedies available to child victims for violations of their rights, including compensation; and

(c) Provide child victims of offences prohibited under the Optional Protocol with adequate free legal aid and psychological, medical and social support.

Recovery and reintegration of victims

34. The Committee notes as positive that victims of human trafficking who receive short-term Temporary Residence Permits are eligible for health-care benefits under the federal health programme, including trauma counselling. However, the Committee is concerned that the State party has not adopted measures for the recovery and reintegration of victims of all offences under the Optional Protocol. In particular, the Committee is concerned about the lack of rehabilitation programmes specifically for child victims of offences under the Optional Protocol, including child victims of sex tourism abroad where the perpetrators were Canadian citizens.

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

(a) **Develop funded programmes to provide rehabilitation and counselling services for all child victims of offences under the Optional Protocol, including child victims of offences abroad, so as to ensure that they do not become victims again and have improved life chances for reintegration;**

(b) **Continue to develop specialist medical, psychosocial and psychological care services for child victims, including by providing access to child mental health professionals throughout the territory of the State party;**

(c) **Adopt specific measures for the reintegration of Aboriginal child victims, who are especially vulnerable to becoming victims of one of the offences under the Optional Protocol; and**

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

VII. International assistance and cooperation

36. In the light of article 10, paragraph 1, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention, detection, investigation, prosecution and punishment of those responsible for any of the offences covered under the Optional Protocol.

VIII. Follow-up and dissemination

37. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, *inter alia*, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court, and to heads of provincial and territorial authorities for appropriate consideration and further action.

Dissemination of concluding observations

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

IX. Next report

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