

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-fifth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES 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**

Concluding observations: UKRAINE

1. The Committee considered the initial report of Ukraine (CRC/C/OPSC/UKR/1) at its 1247th meeting (see CRC/C/SR.1247), held on 4 June 2007, and adopted at its 1255th meeting, held on 8 June 2007, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report. The Committee also appreciates the written replies (CRC/C/OPSC/UKR/Q/1/Add.1) to its list of issues as well as the constructive dialogue with the multisectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 4 October 2002 contained in document CRC/C/15/Add.191.

B. Positive aspects

4. The Committee notes with appreciation:

- (a) The ratification of the Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in 2006;
- (b) The ratification of the Hague Convention No. 28 on the Civil Aspects of International Child Abduction in 2006;
- (c) The creation, within the Ministry of Internal Affairs, of a department to combat offences relating to trafficking in persons in 2005;

- (d) The entry into force of the Organizational and Legal Conditions for the Social Protection of Orphans and Children Deprived of Parental Care (Implementation) Act in 2005; and
- (e) The ratification of the Convention against Transnational Organized Crime and its two protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, in 2004.

C. Principal areas of concern and recommendations

C.1. General measures of implementation

General Principles on the Convention on the Rights of the Child (Arts. 2, 3, 6 and 12)

5. The Committee is concerned that the general principles of the Convention on the Rights of the Child have not been taken into account in the design and implementation of the measures adopted by the State party under this Protocol. The Committee is in particular concerned that children's views are not given due consideration in all matters affecting them, including policies and programmes, and that this may be a consequence of inadequate application of the principle of the right of the child to express its views and having those views given due weight.

6. The Committee recommends that the General principles of the Convention of the Rights of the Child, in particular the child's right to express views and be heard is included in all the measures of the State party to implement provisions of this Protocol on the sale of children, child prostitution and child pornography, including, in relation to judicial or administrative proceedings.

National Plan of Action

7. The Committee notes the draft National Plan of Action for the period 2006-2016 on the implementation of the provisions of the Convention on the Rights of the Child. However, the Committee regrets that there is no specific plan of action covering the areas related to the Optional Protocol.

8. The Committee recommends that the State party speedily adopt its National Plan of Action and develop a specific plan of action aimed at measures needed to prevent and suppress crimes of sale of children, child prostitution and child pornography. In doing so, the State Party should pay particular attention to implementation of all provisions of the Optional Protocol and taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the First and Second World Congresses against Commercial Sexual Exploitation of Children (Stockholm 1996; Yokohama 2001).

Coordination

9. The Committee notes the encouraging contribution of the Coordination Council on Combating the Sale of or Trafficking in Humans, as well as of various Ministries and other central executive authorities, in supporting the implementation of the Optional Protocol. However, the Committee is concerned that the Coordination Council is not fully operational and that the implementation of the Protocol is insufficiently coordinated between the various Ministries involved.

10. The Committee recommends that the State party provides the Coordination Council on Combating the Sale of or Trafficking in Humans with the mandate to develop child rights policies and activities and to coordinate and evaluate the State party's implementation of the Optional Protocol. Furthermore it is recommended that the State party provide the Council with specific and sufficient, human and financial resources to enable it to be fully operational, without further delay. Furthermore, the Committee recommends that the Coordination Council works closely with local authorities in order to support and develop capacity for coordination at local levels.

Dissemination and training

11. The Committee welcomes the organisation of numerous information campaigns, conferences, seminars and trainings related to sale of children, child prostitution and child pornography. However, the Committee remains concerned at insufficient efforts to raise awareness on the Protocol among relevant groups of professionals and the public at large, throughout its territory, and to provide adequate training in all areas of the Protocol.

12. The Committee recommends that the State party allocates adequate and earmarked resources for the development of training materials and courses in all parts of the country for all relevant groups of professionals including police officers, public prosecutors, judges, medical staff and other professionals involved in the implementation of the Optional Protocol. Furthermore, in light of article 9(2) of the Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, inter alia, school curricula and long-term awareness-raising campaigns, including through the medias and training about the preventive measures and harmful effects of all offences referred to in the present Protocol. In this regard the participation of the community and, in particular, children including child victims should be encouraged.

Data collection

13. The Committee regrets that in the collection of statistical data on the implementation of the Convention on the Rights of the Child, on specific issues covered by the Protocol as well as the research on the prevalence of national and cross-border trafficking, sale of children, child prostitution and child pornography remain inadequate.

14. **The Committee recommends that the State party establish a centralised data collection base to ensure that data disaggregated, inter alia, by age and sex, urban and rural area, covering all regions (including the different oblasts and the Autonomous Republic of Crimea) and communities in Ukraine, are systematically collected and analysed for appropriate action. The Committee encourages the State party to undertake research on the nature and extent of all forms of exploitation of children, including prostitution and pornography, in order to identify the causes and the extent of the problem. Furthermore, the Committee encourages the State party to collect data on the effectiveness and efficiency of the programmes and trainings provided and on all relevant information on children involved in these activities.**

Budget allocations

15. The Committee notes that the State party has allocated funds for the Programme to support foster care however, it regrets that the State party does not provide adequate budget allocations for support to families and that these are disproportionate allocation to programmes that institutionalize children. The Committee furthermore regrets that the State party could not provide comprehensive data on government funding for activities to implement the provisions of the Protocol.

16. **The Committee urges the State party to promptly provide adequate resources, including budget allocations, for all the activities aimed at implementing the Optional Protocol, including support to families. Furthermore, the Committee recommends that the State party provide in its next periodic report under the Convention on the Rights of the Child data on government funding, including measurable spending within different Government departments, as well as of the local authorities, for activities to implement the provisions of the Protocol.**

C.2. Prohibition of the sale of children, child pornography and child prostitution

Existing criminal laws and regulations

17. The Committee notes that the Optional Protocol takes precedence over national legislation and welcomes the inclusion in the Criminal Code of a provision on the trafficking of children, the criminal responsibility for the sale of children, forcing or involvement of children in prostitution and the production, sale and dissemination of pornographic materials. However, the Committee notes that the prohibition of the sale of children, child prostitution and child pornography has not been included in the Criminal Code in full conformity with article 2 and article 3 of the Protocol.

18. **The Committee recommends that the State party take measures to amend the provisions of the Criminal Code with a view to ensuring that, as a minimum acts and activities listed in articles 2 and 3 of the Optional Protocol are fully covered under its criminal law, no matter whether these acts are committed domestically, transnationally or on an individual or organized basis. In this regard the Committee recommends that the State party undertake a legal study in order to identify inconsistencies and gaps between the national legal system**

and the Protocol and seek assistance from UNICEF and other relevant international organisations.

C.3. Criminal procedure

Jurisdiction

19. The Committee regrets the absence of information on double criminality.

20. The Committee recommends that the State party ensure that national legislation does not require double criminality for extradition and/or prosecution of offences committed abroad.

C.4. Protection of the rights of child victims

Juvenile Justice

21. While noting that the introduction of specialised judges for children is foreseen, the Committee is concerned at the absence of a separate juvenile justice system which can deal also with children victims of the crimes related to this Protocol.

22. The Committee recommends that the State party speedily introduce specialised judges for children and reiterates its concluding observations under the Convention on the Rights of the Child (CRC/C/15/Add.191) and urges the State party to establish a separate juvenile justice system in conformity with international standards.

23. The Committee is concerned about the information that child victims of crimes covered by the Optional Protocol are often stigmatized, socially marginalized and may be held responsible, tried and placed in detention.

24. The Committee recommends that the State party ensure that child victims of exploitation and abuse are as such neither criminalized nor penalized and that all possible measures be taken to avoid the stigmatization and social marginalization of these children.

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Protocol

25. The Committee notes with appreciation that different measures for the physical and psychological recovery of child victims of sale, prostitution and pornography are provided. However, the Committee is concerned that the provisions of article 8 of the Optional Protocol have not been adequately integrated into the relevant laws and programmes of the State party. In particular the Committee is concerned that the status of the victim is not well defined in the Criminal Code, that legislation does not provide clear and sufficient sanctions for physical and psychological pressure during interrogations of child victims. Furthermore, the Committee is concerned that sanctions, even where adequate, are mostly not enforced.

26. The Committee recommends that the State party:

- (a) In light of article 8(1) of the Optional Protocol, protect child victims and witnesses at all stages of the criminal justice process, by taking into account the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution No. 2005/20);
- (b) Continue to collaborate with non-governmental and international organizations to ensure that adequate services, provided by competent staff are available for child victims, including physical and psychological recovery and social reintegration, in accordance with article 9(3) of the Optional Protocol;
- (c) Allocate sufficient funds to improve the quality of psychosocial rehabilitation services, so that the respective environment and respect for the rights of children is secured in those facilities and to monitor outcomes of performance and quality of rehabilitation services;
- (d) Ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9(4) of the Optional Protocol; and
- (e) Adequately enforce the legislative provisions to ensure that offenders are punished and that victims receive compensation.

Ombudsman for children

27. The Committee is concerned at the absence of an independent mechanism mandated to review the implementation of the Convention and its Protocols, or to receive and consider complaints from children or on their behalf.

28. The Committee recommends that the State party establish an independent and effective Ombudsman for Children in accordance with the Paris Principles and taking into consideration the Committee's General Comment n° 2 on the Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child. Such an institution should be mandated to, *inter alia*, deal with complaints from and on behalf of children in a child-sensitive and expeditious manner and provide remedies for violations of children's rights under the Protocol. In this regard the Committee further recommends providing this body with adequate human and financial resources in order to efficiently and expeditiously perform its mandate.

C.5. Prevention of the sale of children, child prostitution and child pornography

Prevention of sale for the purpose of adoption

29. The Committee notes the information of the Government on initiatives taken on new legislation on adoption as well as stricter control over international adoption and notes that the State Party has introduced measures that enabled more domestic adoptions. However, the Committee regrets that there are still numerous corruption-related obstacles to a transparent procedure for legal adoptions.

30. The Committee urges the State party to accede to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993. Furthermore, the Committee recommends the State party to continue and enforce its anti-corruption measures in order to combat sale of children for

adoption by taking into account Art.21 of the Convention on the Rights of the Child, Art. 3 of this Optional Protocol and the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993.

Measures adopted to prevent offences referred to in the Optional Protocol

31. The Committee welcomes the efforts undertaken by the State party and particularly by the Ministry of Internal Affairs to prevent offences referred to in the Optional Protocol. However, the Committee is concerned that targeted preventive measures against exploitation of children, including prostitution, pornography and engagement of the child in forced labour as well as measures to identify the causes and extent of the problem remain outstanding.

32. The Committee encourages the State party to undertake further targeted preventive measures and cooperate with international organisations and NGOs concerning the implementation of awareness-raising campaigns on all areas covered by the Optional Protocol. In particular, the Committee encourages the State party to undertake research on the effects of the previous actions taken and on the nature and extent of exploitation of children, including prostitution and pornography, to identify the root causes and extent of the problem. The Committee further recommends that the State party seeks, for the purpose of more effective prevention in the areas covered by this protocol, technical assistance from UNICEF and other international organisation and agencies. Furthermore, the Committee encourages the State party to consider adopting specific legislation on the obligations of internet service providers in relation to child pornography on the Internet.

33. The Committee welcomes the establishment of shelters for children throughout the Country. However, the Committee is concerned that there are no other services that could serve as prevention, such as help-lines and emergency psychological and other assistance for children and their families at risk of becoming victims of the offences contained in the Optional Protocol.

34. The Committee recommends that the State Party establish a 3-digit, 24-hour, toll-free helpline to assist child victims and their families and to support such service with adequate readily available psychological assistance and practical arrangements so as to protect children from becoming victims of sale, child prostitution and child pornography. With regard to the helpline the Committee recommends to make it available throughout the country and that the State party include information about the helpline in its child-related programmes.

C.6. International assistance and cooperation

Law enforcement

35. The Committee welcomes the State party's bilateral agreements with several States as well as the close cooperation with UNICEF, OSCE and other relevant

national and international organizations in order to enhance its international coordination in combating offences prohibited in this Optional Protocol.

36. The Committee encourages the State party to continue establishing legal and practical cooperation with other States in order to prevent crimes and prosecute offenders and provide adequate sanctions. The Committee also recommends the State party to strengthen its regional and international judicial, police and victim-oriented cooperation activities with other States and international organizations with a view to preventing and combating the sale of children, child prostitution and child pornography as well as to assist repatriation and rehabilitation of victims taken abroad or child victims from other countries, when appropriate.

C.7. Follow-up and dissemination

Follow-up

37. The Committee recommends that the State party undertake all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant Cabinet of Ministers, the Verkhovna Rada to the Oblasts and the autonomous republic of Crimea for appropriate consideration and further action.

Dissemination

38. 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.

C.8. 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 in its combined third and fourth periodic reports under the Convention on the Rights of the Child, in accordance with article 44 of the Convention (due on 26 September 2008).