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COMMITTEE ON THE RIGHTS OF THE CHILD
Fifty-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 12, PARAGRAPH 1 OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Concluding observations of the Committee on the Rights of the Child: Poland

1. The Committee considered the initial report of Poland (CRC/C/OPSC/POL/1) at its 1436th and 1437th meetings, held on 22 September 2009, (CRC/C/SR. 1436 and 1437) and adopted at its 1453rd meeting, held on 2 October 2009, the following concluding observations.

Introduction

2. **T**he Committee welcomes the submission of the State party's initial report and the replies to its list of issues (CRC/C/OPSC/POL/Q/1/Add.1) submitted in a timely fashion. The Committee nevertheless regrets that the State party's report did not follow the guidelines for reporting under the Optional Protocol.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations on the State party's second periodic report (CRC/C/15/Add.194) and the concluding observations on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict.

I. General observations

A. Positive aspects

4. The Committee notes with appreciation the adoption of the following legislative and other measures:

(a) The amendment of the Penal Code of article 101, paragraph 4 (December 2008)
(b) Other amendments to legislation, the Penal Code, the Code of Penal Proceedings and the Executive Penal Code, introducing new regulations concerning paedophilia and raising the penalties for such offences.

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

(a) The Optional Protocol on the involvement of children in armed conflict, in April 2005;
(b) The Optional Protocol on the sale of children, child prostitution and child pornography, in February 2005.

II. Data

6. The Committee takes note of the data provided to the Committee on such issues as trafficking, child prostitution and child pornography. However, the Committee is concerned that the separate issues of trafficking and the sale of children are nevertheless used interchangeably and the State party does not have a definition of sale of children as separate from trafficking in its legislation. The Committee is also concerned at the lack of a systematic mechanism to collect data in all areas covered by the Optional Protocol. The Committee also regrets the lack of statistics on sex tourism.

7. **The Committee recommends that the State party develop and implement a consistent methodology and a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol. This would include data on both perpetrators and victims of trafficking, sale of children, child prostitution and child pornography. Data should be disaggregated, inter alia, by nature of the offence and by sex, age, urban/rural areas and with particular attention to the vulnerable groups of children. The Committee also recommends that the State party collect and analyse data on sex tourism and its link with the issues addressed in the Optional Protocol. The Committee further recommends that the State party undertake research into issues covered by the Optional Protocol to identify the causes and extent of the sale of children and child prostitution.**

III. General measures of implementation

General principles of the Convention (arts. 2, 3, 6 and 12)

8. While noting that the general principles of the Convention on the Rights of the Child have been taken into account to some extent in the design and application of measures of implementation adopted by the State party under the Optional Protocol, the Committee is concerned that this has not been done fully. The Committee is particularly concerned that children's views are not given due consideration in all matters affecting them, including the creation of policies and programmes, and that this may be a consequence of the inadequate application of the principle of the right of the child to express his/her views and to have those views given due weight. The Committee is also concerned at discriminatory attitudes faced by some vulnerable children, including Roma children and asylum-seekers, which may affect their protection and prevent the full enjoyment of their rights as enshrined in the Optional Protocol.

9. **The Committee recommends that the general principles of the Convention on the Rights of the Child, in particular the principles of non-discrimination and respect of the views of the child, be included in all measures taken by the State party to implement the provisions of the Optional Protocol, including judicial or administrative proceedings.**

National Plan of Action

10. The Committee notes with interest that the issue of sexual exploitation of children has been included in the 2004-2012 National Action Plan for Children. However, the Committee regrets that there is no specific plan of action that comprehensively covers all of the areas addressed by the Optional Protocol.

11. **The Committee recommends that the State party develop, in consultation and cooperation with all relevant stakeholders, a national plan of action aimed at addressing comprehensively all the issues covered by the Optional Protocol and provide adequate human and financial 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 First, Second and Third World Congresses against Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro in 1996, 2001 and 2008 respectively.**

Coordination and evaluation

12. The Committee notes that an Interdepartmental Team for Combating and Preventing the Trafficking in Persons was appointed in 2004. The Committee nevertheless regrets the absence of a mechanism or procedure for coordinating activities and systematically evaluating the implementation of the Optional Protocol.

13. **The Committee encourages the State party to establish an effective institutional mechanism for coordination between ministries and between the national and local authorities in order to create systematic and coherent approach to address issues covered by the Optional Protocol and to ensure the periodic evaluation of the measures taken. Such coordination should also be used for strategy and policy development in the areas covered by the Optional Protocol.**

Dissemination and training

14. The Committee notes with appreciation that information and educational training activities are being carried out on issues addressed by the Optional Protocol. Nevertheless, the Committee is concerned that the Optional Protocol has not been sufficiently promoted and disseminated and that children, parents and professionals do not have adequate knowledge of the risks of the violation of the rights of children as enshrined in the Optional Protocol and of strategies to better protect children against these violations.

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

(a) Strengthen its dissemination and training activities, including the development of training materials and courses, covering all areas of the Optional Protocol, for professionals including police officers, public prosecutors, judges, medical staff, media and other groups of professionals concerned;

(b) Make the provisions of the Optional Protocol widely known to the public, particularly to children and their families, through, inter alia, integrating the provisions of the Optional Protocol in school curricula at all levels of the education system and carrying out awareness-raising campaigns and training on the risks and detrimental effects of all offences referred to in the Optional Protocol.

Allocation of resources

16. The Committee notes that the State party has supported with human and financial resources several programmes that deal with the prevention of offences covered by the Optional Protocol and the protection of child victims. The Committee regrets, however, that specific funding has not been allocated for implementation of the Optional Protocol.

17. **The Committee recommends that the State party allocate, when planning its national budget, financial resources specifically for the implementation of the Optional Protocol.**

Independent monitoring

18. The Committee notes with appreciation that the mandate of the Ombudsman for Children allows it to receive complaints from, or on behalf of children on violations of the Optional Protocol. It is, however, unclear to the Committee whether the Ombudsman for Children collaborates with civil society in carrying out its work.

19. **The Committee recommends that the State party continue to provide the Ombudsman for Children with sufficient financial and human resources to exercise its mandate, including with regard to monitoring the implementation of the Optional Protocol. The Committee further recommends that the State party encourage collaboration between the Ombudsman for Children and civil society in this regard.**

The role and contribution of civil society

20. The Committee notes with regret that there were no consultations with civil society and that no non-governmental organizations were invited to take part in the preparation of the State party's report and that the rich experience and expertise of civil society working on issues covered under the Optional Protocol have not been fully utilized. The Committee is concerned that participation of civil society remains weak in the areas of policy formulation, planning and budgeting of Government programmes related to issues under the Optional Protocol

21. **The Committee recommends that the State party involve civil society, including children's organizations, fully in the various aspects of implementation of the Optional Protocol, including the development of policies and legislation, monitoring and evaluation and the provision of services aimed at protection and recovery of child victims.**

IV. Prevention of the sale of children, child prostitution and child pornography

Measures adopted to prevent offences referred to in the Optional Protocol

22. The Committee takes note of the efforts undertaken by State and municipal authorities in order to prevent acts that are offences under the Optional Protocol. However, the Committee is concerned that targeted preventive measures against the exploitation of children, including prostitution and pornography, as well as measures to identify the causes and extent of the problem, remain limited.

23. **The Committee encourages the State party to:**

(a) Undertake research on the outcome of preventive measures already undertaken and on the nature and extent of sexual exploitation of children, including through child prostitution and child pornography, in order to identify children at risk and to address the root causes of the problem and the main risk factors;

(b) On the basis of the above-mentioned research, adopt a more targeted approach to address the sale of children, child prostitution and child pornography by combining prevention, recovery and reintegration measures for the affected children.

Programmes targeting particular groups

24. The Committee notes that the State party adopted in 2003 the Programme for the Roma Society in Poland, which is intended to continue for ten years and aims to address the social exclusion that affects a large part of the Roma community, including children. The Committee also notes that the State party has taken measures to address the problems of other vulnerable groups such as children left behind when their parents have emigrated, children in residential care institutions and unaccompanied children who have crossed the border and escape from the care institutions in which they are placed.

25. **The Committee encourages the State party to continue systematic prevention activities targeting particular groups of children in order to protect them from the offences covered under the Optional Protocol.**

Awareness-raising

26. The Committee notes with interest that several awareness-raising campaigns have been carried out to protect children from internet related crimes and that information and educational campaigns have been carried out for the general public on violence against children. The Committee also welcomes the State party's indication that the issue of trafficking in persons has been introduced into the basic curriculum of general education in the Polish educational system.

27. **The Committee encourages the State party to continue carrying out awareness-raising campaigns on the issues addressed by the Optional Protocol and training for parents and children, and to effectively cooperate, in this regard, with civil society.**

V. Prohibition of the sale of children, child pornography and child prostitution

Existing criminal or penal laws and regulations

28. The Committee notes with appreciation the amendments to relevant legislation which significantly strengthen the protection of children against the offences covered by the Optional Protocol, including the 2008 amendment to the Penal Code to include the definition of trafficking and to penalize so-called "grooming" and the new Law on Foreigners (2006). However, the Committee remains concerned that the legislation of the State party does not criminalize all the acts constituting offences as per articles 2 and 3 of the Optional Protocol. Specifically, the Committee regrets the lack of legislation specific to the sale of children and is concerned at the absence of a definition of "child prostitution" and of "sale of children" in the Penal Code, as well as at the lack of explicit protection in the Penal Code for children between the ages of 15 and 18 from child pornography or child prostitution. The Committee also expresses concern that implementation of legislation in practice remains a problem.

29. **The Committee urges the State party to provide a definition of "child prostitution" and of "sale of children" under Polish penal legislation and to ensure that children between the ages of 15 and 18 years of age are explicitly protected from child pornography and child prostitution. The Committee also encourages the State party to make every effort to ensure that legislation providing protection for children against child pornography, child prostitution and sale of children is effectively and efficiently implemented.**

Criminal liability of legal persons

30. The Committee is concerned at the information provided during the dialogue that there are no provisions in the Penal Code for the liability of legal persons.

31. **The Committee recommends that the State party include provisions for the liability of legal persons in the Penal Code in conformity with article 3, paragraph 4 of the Optional Protocol.**

Legal aspects of adoption

32. While the Committee notes the legislation on adoption in force in Poland, it regrets that improperly inducing consent in cases of adoption, as provided for in article 3, paragraph 1 (a)(ii) of the Optional Protocol, is not covered by the criminal legislation of the State party.

33. **The Committee recommends that the State party take all necessary measures to ensure that the definition of improperly inducing consent in cases of adoption is incorporated into the penal legislation, as stipulated in article 3, paragraph 1 (a) (ii) of the Optional Protocol.**

VI. Protection of the rights of child victims

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

34. The Committee notes with interest the programme of assistance and protection for victims/witnesses of human trafficking which provides material, medical and psychological support to trafficking victims or witnesses. The Committee notes that an amendment to the Penal Code has been drafted that allows for the possibility to begin penal proceedings within five years of the moment the victim turns 18.

35. **The Committee recommends that the State party adopt the above-mentioned amendment without delay but that it consider extending the period within which a person can begin penal proceedings after he turns 18 to longer than five years.**

Criminal justice system protection measures

36. The Committee welcomes the possibility of using audio and video interviews of children in cases concerning the sale of children, child prostitution and child pornography and that these interviews must be conducted by specially trained police officers in child-friendly interview rooms. The Committee notes with concern, however, that the numbers of properly equipped child friendly interview rooms and of personnel trained to carry out child interviews are not available in all areas of the State party's territory. The Committee is also concerned that child-friendly interview rooms are not always used even where they do exist. The Committee is further concerned that judicial proceedings relating to trafficking cases are unduly long, lasting two years on average.

37. **The Committee recommends that the State party invest adequate resources to ensure that child-friendly interview rooms are properly equipped and that the personnel interviewing children are properly trained in this regard so as to ensure the protection of child victims. The Committee urges the State party to take the necessary measures to**

reduce the trauma suffered by victims of offences under the Optional Protocol, including by shortening the length of judicial proceedings in cases related to offences under the Optional Protocol, while redirecting the focus to the full recovery and reintegration of child victims.

Recovery and reintegration of victims

38. While noting with appreciation that space and funding has been provided to allow NGOs to operate shelters for victims of trafficking, the Committee remains concerned that the number of shelters remains inadequate and that temporary arrangements are frequently resorted to in order to provide medical, psychological, and legal assistance to victims. The Committee also notes with regret the lack of recovery and reintegration programmes for child victims of sexual exploitation and the absence of a comprehensive and systematic approach to addressing the full scope of this problem.

39. **The Committee recommends that the State party create programmes and provide services for child victims of offences under the Optional Protocol to assist recovery and reintegration. In this regard, the Committee urges the state party to ensure that adequate financial resources and trained human resources are allocated for these programmes and services. The Committee also recommends that the State party speed up the adoption of the guidelines on assisting victims of trafficking, developed under the inter-ministerial team's plan of action, which will serve as a pilot programme in police units, and that the State party ensure that the pilot programme is provided with adequate financial and human resources for implementation.**

Helpline

40. The Committee welcomes the launch in November 2008 of a free national hotline for children and youth.

41. **The Committee recommends that the State party continue its efforts to ensure that the helpline provides adequate assistance to child victims. In this regard, the Committee also recommends that the State party ensure that children are aware of the existence of the helpline and are able to access it easily. The Committee further recommends that the State party encourage and facilitate collaboration between the helpline with child-focused non-governmental organizations and the police, as well as with health and social workers.**

VII. International assistance and cooperation

International cooperation

42. The Committee notes with appreciation the State party's involvement in international or regional cooperation programmes and initiatives related to the sale of children, child prostitution and child pornography.

43. **The Committee encourages the State party to consider ratifying the Council of Europe's Convention on Action against Trafficking in Human Beings and Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.**

VIII. Follow-up and dissemination

Follow-up

44. **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 relevant government ministries, the National Assembly, the Supreme Court and to national and local authorities, for appropriate consideration and further action.**

Dissemination

45. **The Committee 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.**

IX. Next report

46. **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 combined third and fourth periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.**
