

UNEDITED VERSION

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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-fourth 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: Costa Rica

1. The Committee considered the initial report of Costa Rica (CRC/C/OPSC/CRI/1) at its 1201st meeting (see CRC/C/SR.1201st), held on 15 January 2007, and adopted at its 1228th meeting, held on 2 February 2007, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, as well as the replies to its list of issues submitted in a timely fashion. The Committee also appreciates the constructive and informative dialogue held with the State party's high-level 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 third periodic report on 3 June 2005 contained in CRC/C/15/Add.266.

B. Positive aspects

4. The Committee notes with appreciation:
 - a) the establishment, in 1999, of a unit to combat sexual exploitation of children within the Ministry of Public Security and of a specialized unit within the Judicial Investigation Department.
 - b) the establishment of the National Commission to Combat the Commercial Sexual Exploitation of Children and Adolescents (CONACOES) as a special thematic commission of the National

- Council on Children and Adolescents; and the participation of non-governmental organizations to this Commission;
- c) the adoption in September 2006 of the “Program for the Integral Care of children and adolescents at risk and in vulnerable situation”, a project implemented by the National Child Welfare Agency (PANI) offices at local level.
5. The Committee also welcomes the ratification, in 2003, of the Convention against Transnational Organized Crime and its two supplementing protocols, to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against the Smuggling of Migrants.

C. Principal areas of concern and recommendations

C.1. General measures of implementation

Coordination and national plan of action

6. The Committee notes that CONACOES is the body responsible for the implementation of the Optional Protocol and the follow-up to the national plan to combat the commercial sexual exploitation of children and adolescent. However, the Committee is concerned that the coordination and cooperation among the different institutions and bodies which compose CONACOES is insufficient and that there is lack of clarity with regard to the sphere of competence of these institutions/bodies. The Committee is further concerned that the lack of a specific public policy to eradicate sale of children, child prostitution and child pornography may also contribute to the low level of cooperation and coordination among the different actors involved.
7. **The Committee recommends that the State party develop a specific and comprehensive policy aimed at eradicating sale of children, child prostitution and child pornography which, *inter alia*, would clearly define the mandate and competencies of the different institutions/bodies which compose CONACOES in order to improve their cooperation and the coordination of their activities.**

Dissemination and training

8. The Committee notes with appreciation the awareness-raising and training activities (large part of which are conducted in cooperation and/or partnership with civil society organizations and international organizations, including UN agencies and programs) targeting key actors in the fight against commercial sexual exploitation of children, including large-scale campaigns to raise public awareness of the consequences of commercial sexual exploitation and to publicize the relevant legislation. However, the Committee is concerned that -despite these efforts- there still appears to be a wide tolerance towards the offences covered by the Optional Protocol.

9. The Committee recommends that the State party:

- a) **continue and strengthen systematic education and training on the provisions of the Optional Protocol for all relevant professional groups;**
- b) **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;**
- c) **promote, in line with article 9(2) of the Protocol, awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the Protocol, including by encouraging the participation of the community and, in particular, children and child victims, in such information and education and training programmes;**
- d) **continue cooperating with civil society organizations and supporting them in their awareness-raising and training activities on issues related to the Protocol;**
- e) **continue to seek the assistance of UN agencies and programs, including UNICEF and ILO/IPEC.**

Data collection

- 10. The Committee regrets the scarce availability of data disaggregated by age, sex and minority group as well as of research on the prevalence of sale, trafficking, child prostitution and child pornography.
- 11. **The Committee recommends that the State party ensure that data, disaggregated, *inter alia* by age, sex, minority group, are systematically collected and analysed as they provide essential tools for measuring policy implementation. In particular, the Committee encourages the State Party to strengthen research on the nature and extent of commercial sexual exploitation of children, including prostitution and pornography, in order to identify the causes and the extent of the issue and develop and implement effective policies to prevent and combat it.**

Budget allocations

- 12. The Committee, while welcoming the information that the budget of PANI has been increased for the year 2007, is concerned at the lack of adequate resources needed for the implementation of the Optional Protocol. In this respect, the Committee notes - for instance - the information that while the National Plan on the prevention of commercial sexual exploitation for the period 2004-2006 proposed by the Ministry of Education has been approved by the National Council on Children and Adolescents, budgetary funds have not been allocated yet for its implementation.

- 13. The Committee recommends that the State party provide adequate resources, including budget allocations, for all the activities aimed at implementing the Optional Protocol, such as the National Plan on the prevention of commercial sexual exploitation. Particular attention should be paid – e.g. via earmarked budget – to prevention, timely investigation and effective prosecution of the crimes covered by the Optional Protocol and for adequate protection, care and social reintegration of child victims.**

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

14. The Committee welcomes the various legislative measures aimed at implementing article 3 of the Optional Protocol. However, the Committee is concerned that possession of child pornography is not yet fully covered under the State party's criminal law, although a Bill to that effect (N° 14568) has been submitted to the Congress.

15. The Committee recommends that the State Party:

- a) **take the necessary measures to ensure that possession of child pornography is fully covered under Costa Rican criminal law in accordance with article 3 (1)(c) of the Optional Protocol. This crime should include the possession of child pornography in a computer system or on a computer-data storage medium;**
- b) **take the necessary steps to adequately define and criminalize trafficking in persons in the criminal legislation in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.**

C.3. Penal/Criminal Procedure

Jurisdiction

16. The Committee notes that in 2000 a Bill (N° 14204) was submitted to the Parliament for the introduction of extraterritorial jurisdiction for sexual crimes against children committed outside the State party's territory. However, the Committee is concerned that this Bill has not been approved yet and that currently Costa Rica does not assume jurisdiction for prosecution of an offence covered by the Optional Protocol when it is committed abroad by a national of Costa Rica and the victim is not a national of Costa Rica.

- 17. The Committee recommends that the State party, especially in the context of prosecution of crimes related to sex tourism, takes the necessary legislative measures, e.g. by adopting Bill N° 14204, to ensure, *inter alia*, that Costa Rican courts, in accordance with article 4 (2) (a) of the Optional Protocol, assume jurisdiction in case that a national of the State party commits abroad an offence covered under the Optional Protocol.**

C.4. Protection of the rights of child victims

18. The Committee welcomes the fact that one of the main areas of focus of the national plan to combat the commercial sexual exploitation of children and adolescents is direct support for victims. It also welcomes that the Children and Adolescents Code provides for psychological assistance to child victims of any offence as well as training to police officers interviewing them and special conditions for hearings in court. However, the Committee is concerned that a right-based victim care system that takes account of sex and age is still lacking and that the area of protection and care of child victims suffers from a shortage of resources.

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

- a) ensure that adequate services are available for child victims, including physical and psychological recovery and social reintegration, in accordance with article 9 (3) of the Optional Protocol; and, in this respect, assess the impact of the newly used method named “Modelo Ciclico de Respuestas Articuladas”;**
- b) take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the Protocol, in accordance with article 8 (4) of the Optional Protocol;**
- c) 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;**
- d) in light of article 8 (1) of the Optional Protocol, continue to protect child victims and witnesses at all stages of the criminal justice process, taking also into account the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution No. 2005/20).**

Smuggling and trafficking in children for the purpose of sexual exploitation

20. The Committee welcomes the measures taken to protect migrant children and/or children who are either smuggled into the country or trafficked for the purpose of sexual exploitation, including the creation of a special desk for them at the international airport of San Jose. The Committee further welcomes the establishment, in 2005, of a National Commission against the Smuggling of Migrants and Trafficking of Persons, of which PANI is a member. However, it expresses concern at the information that smuggling of migrants, including children, and trafficking in children for the purpose of sexual exploitation continue to be serious problems in the country .

21. **The Committee, with reference to the situation of special vulnerability to the offences covered by the Optional Protocol of children victims of smuggling and trafficking, recommends that the State party:**

- a) **increase its efforts to combat these criminal activities, including by adequately implementing the Program of Action against Trafficking of Children for the purpose of Sexual Exploitation, a joint project between the Judiciary and the Foundation PANIAMOR;**
- b) **provide the National Commission against the Smuggling of Migrants and Trafficking of Persons with the adequate resources;**
- c) **consider becoming a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

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

Sex tourism

22. The Committee notes with appreciation that strict controls have been introduced in the tourist sector and partnerships have been established with hotel owners, networks of taxi drivers and other stakeholders in order to prevent offences covered by the Protocol and especially child sex tourism. It also welcomes the adoption, in 2003, of a Code of Conduct for the Protection of Children and Adolescents from Commercial Sexual Exploitation in Tourism, an intersectoral project focused on responsible and sustainable tourism aimed at service-providers, customers and entrepreneurs in the public and private sectors. However, the Committee notes with concern that the practice of purchasing sexual services from children is still socially acceptable especially among men and that Costa Rica is increasingly becoming a popular destination for sex tourism.

23. The Committee recommends that the State party continue to take measures to tackle the increasing problem of sex tourism involving children, including by strengthening awareness-raising campaigns containing specific messages on child rights and on the existing sanctions on child abusers. The State party should also take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the Protocol, in accordance with article 9(5).

Child pornography on the Internet and other evolving technologies

24. The Committee welcomes the steps taken by the State party in the area of cybercrime, including the creation of a special investigation unit for cybernetic crimes, the adoption of “regulations governing the control and regulation of premises providing public Internet services” as well as the project launched in 2003: “Internet security for children: safe surfing”. However, the Committee is concerned at the growing availability of child pornography on the Internet and

other evolving technologies and that a certain degree of impunity continues to exist for crimes covered by the Protocol committed through the Internet, e.g. child pornography.

- 25. The Committee recommends that the State party continue to take measures to combat cybercrime and especially child pornography in the Internet, including by ensuring and monitoring a full implementation of the regulations governing the control and regulation of premises providing public Internet services. The State party should also adopt and implement specific legislation on the obligation of internet providers to prevent (as much as possible) the dissemination of and access to child pornography on internet.**

Contributing factors to sale of children, child prostitution and child pornography

26. The Committee welcomes the National Development Plan 2002-2006 as well as the “New Life” Plan to overcome poverty as these plans address one of the main causes of sale of children, child prostitution and child pornography, thus contributing to their prevention and elimination.
- 27. The Committee encourages the State party to continue to give support, including at financial level, to projects aiming at poverty reduction. The Committee also encourages the State Party to promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism, in accordance with article 10 (3) of the Optional Protocol.**

Prevention of sale for the purpose of adoption

28. The Committee is concerned that problems continue in the governance and implementation of child adoption, especially inter-country adoption, though a proposal aimed at addressing this problem is pending before the Parliament, In particular, the Committee is concerned at the information that there is a different juridical regime applied to inter-country adoptions of children who are processed through the PANI - where all international standards are regularly applied - and inter-country adoptions based on direct consent among the parties in which the intermediation of PANI is actually by-passed.
- 29. The Committee recommends that the State party:**
- a) modify its legislation as to ensure that all requests and procedures regarding adoption, whether national or inter-country, are assessed by PANI and respect applicable international standards;**
 - b) adequately define and punish sale of children for the purpose of adoption in conformity with article 3(a) (ii) of the Optional Protocol;**
 - c) take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments;**

- d) collect information and investigate on the activities of the agencies and/or individuals acting as facilitators and mediators in the adoption procedures and punish those violating national and international legislation.

C.6. International assistance and cooperation

30. The Committee encourages the State party to continue its active cooperation with UN agencies and programs - including interregional programs - and non-governmental organizations, in the development and implementation of measures aimed at an adequate application of the Optional Protocol.

Law enforcement

31. The Committee encourages the State party to continue its efforts to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

C.7. Follow-up and dissemination

Follow-up

32. 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 Parliament (Asamblea Legislativa) and to provincial authorities, where applicable, for appropriate consideration and further action.

Dissemination

33. 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 Convention, its implementation and monitoring.

C.8. Next report

34. 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 next periodic report under the Convention on the Rights of the Child due, in accordance with article 44 of the Convention, on 19 September 2007.