



Convention on the Rights of the Child

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Committee on the Rights of the Child

Fifty-ninth session

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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: Azerbaijan

1. The Committee considered the initial report of Azerbaijan (CRC/C/OPSC/AZE/1) at its 1674th meeting (see CRC/C/SR.1624), held on 18 January 2011, and adopted, at its 1697th meeting, held on 3 February 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/AZEQ/Add.1, 2011). The Committee appreciates the constructive dialogue held with the high-level and multi-sectoral State party delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the third and fourth report of the State party under the Convention on the Rights of the Child (CRC/C/AZE/CO/3-4, 2012) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/AZE/CO/1, 2012).

I. General Observations

Positive aspects

4. The Committee welcomes the adoption State party's adoption of its Law on Combatting Human Trafficking in 2005.

5. The Committee welcomes various administrative measures in areas relevant to the implementation of the Optional Protocol, in particular:

(a) Rules on Urgent and Efficient Handing of Victims of Human Trafficking to Specialized Police Structures (Resolution # 21 of the Cabinet of Ministers of February 1, 2008);

(b) Rules on National Orientation Mechanism on Victims of Human Trafficking (Resolution #123 of the Cabinet of Ministers of August 11, 2009);

(c) Rules (indicators) on Identifying Victims of Human Trafficking (Resolution #131 of the Cabinet of Ministers of September 3, 2009).

6. The Committee also welcomes the progress achieved in the creation of institutions and adoption of national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) The National Action Plan of the Republic of Azerbaijan on Combating Human Trafficking (2009-2013) adopted on February 9, 2009.

7. In addition, the Committee notes with appreciation the ratification of the following international human rights instruments:

(a) The Council of Europe Convention on Action against Trafficking in Human Beings in 2010;

(b) The Council of Europe Convention on Protection of Children against Sexual Violence and Sexual Abuse in 2008.

II. Data

8. While noting as positive the State Committee on Statistics publication of a statistical overview of children in Azerbaijan, and recently established databases on children in institutional care and domestic violence, the Committee reiterates its previous concerns on the continued absence of data necessary for the implementation of the Convention and the Optional Protocol. The Committee remains particularly concerned that data collection on offences under the Optional Protocol is limited and fragmented.

9. The Committee urges the State party to provide all necessary human, technical, and financial resources for the establishment of a comprehensive system for data collection, analysis and monitoring, and that the data collected be disaggregated according to age, gender, nationality and ethnic origin, geographic region and socio-economic background. Furthermore, the Committee recommends that the State party:

(a) Further develop and centralize mechanisms for the systematic data collection in all areas related to the implementation of the Optional Protocol;

(b) Establish a coordinated system for the collection of data – disaggregated by age, sex, geographical location and socio-economic background – specifically on offences under the Protocol, that is coordinated with its central data collection system for the Convention, to cover all persons below the age of 18;

(c) Undertake qualitative and quantitative studies and analysis on the root causes and prevalence of all the offences under the Optional Protocol; and

(d) Consider seeking the assistance of the United Nations Children’s Fund (UNICEF) and other UN agencies and programmes in the implementation of these recommendations.

III. General measures of implementation

Legislation

10. While noting that the State party has adopted a Law on Combating Human Trafficking (2005), the Committee remains concerned that:

(a) The Optional Protocol has yet to be fully incorporated into its legislation and its existing legislation does not explicitly address all offences covered under the Optional Protocol;

(b) Notwithstanding the increasing rates of offences under the Protocol taking place via the internet and with/through mobile telephones, the State party does not have legislation specifically addressing sexual grooming and exploitation offences via the internet and other telecommunications, including mobile telephones.

11. The Committee urges the State party to continue its efforts to harmonize domestic legislation with the Optional Protocol. In particular, the Committee recommends that:

(a) **The State party, in accordance with its obligation under articles 1, 2 and 3 of the Optional Protocol, define and prohibit all cases of sale of children, child prostitution and pornography, a concept which is similar to but not identical to trafficking in persons;**

(b) **The State party consider enacting legislation to specifically address the growing problem of internet and/or mobile telephone based offences against children, including grooming offences.**

National Plan of Action

12. The Committee welcomes the adoption of a National Action Plan on Combating Human Trafficking, in 2004 and subsequently in 2009 for the period of 2009-2013. The Committee is nevertheless concerned at the lack of a comprehensive plan specifically addressing all issues covered under the Optional Protocol.

13. The Committee recommends that the State party ensure that its comprehensive strategy and programme for the implementation of the Convention (CRC/C/AZE/CO/3-4, paras. 13 and 14) includes a separate comprehensive programme of action targeting specifically all issues covered under the Optional Protocol and provide 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, Yokohama and Rio de Janeiro in 1996, 2001 and 2008, respectively.

Coordination and evaluation

14. The Committee notes with concern that the State party does not have a mechanism for the overall coordination, monitoring and implementation of the Optional Protocol. While appreciating that it has established a Working Group consisting of government agencies to combat human trafficking, the Committee remains concerned that this cannot be considered sufficient as an effective mechanism to coordinate the overall

implementation as this Working Group is not mandated to address other issues relating to the sale of children, child prostitution and pornography under the Optional Protocol.

15. With complementary reference to its recommendations on the State party's coordination mechanism for the implementation of the Convention (CRC/C/AZE/CO/3-4, para. 12), the Committee recommends that the State party strengthen cooperation and coordination on the Optional Protocol between the National Commission on Minors and the State Committee on Family, Women and Children's Affairs in particular, and other relevant ministries and government entities. In doing so, the State party is further recommended to ensure that these entities are provided adequate human, technical and financial resources in order to enable them to fulfil their mandate in the implementation of the Optional Protocol.

Dissemination and awareness-raising

16. The Committee notes with appreciation that the Ministry of Justice has made the text of the Optional Protocol available on its website. However, the Committee is concerned that awareness of the Optional Protocol remains low, both among children as well as professionals working with or for children.

17. The Committee recommends that the State party:

(a) Develop, in close cooperation with the community, children and child victims, information, education programmes on preventive measures and harmful effects of the sale of children, child prostitution and child pornography;

(b) Disseminate the Optional Protocol among all relevant professional groups, especially members of the police, judges, prosecutors, representatives of the media and social workers, and members of the Child Protection Committees and of the National Council for Human Rights;

(c) Undertake in-depth studies in different regions and sociocultural groups to identify specific obstacles and opportunities for advocacy and awareness-raising on the offences stated in the Optional Protocol.

Training

18. The Committee notes as positive the State party's training programs on combating human trafficking which have been identified together with representatives of civil society, municipalities' police structure, health and educational facilities, employment centres, transportation. However, the Committee is concerned that there are no training activities specifically focused on all the provisions of the Optional Protocol, including with regard to sale of children.

19. The Committee recommends that the State party allocate resources for multidisciplinary training programmes developed through a participatory process involving communities and other stakeholders on all areas covered by the Optional Protocol. Such training should be provided to all relevant professional groups, ministries and institutions working with and for children. The Committee further urges the State party to ensure systematic evaluation of all training programmes on the Optional Protocol with a view to enhance their impact and relevance.

Allocation of resources

20. The Committee regrets the lack of clearly identifiable budget allocations assigned to activities designated to implement the Optional Protocol.

21. **The Committee recommends that the State party take all possible measures to ensure that sufficient resources are allocated for the implementation of the Optional Protocol. In particular, the Committee recommends that the National Commission on Minors and the State Committee on Family, Women and Children's Affairs, law enforcement agencies and social protection centres be provided with adequate human, technical and financial resources necessary for their activities in respect of 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

22. The Committee notes with appreciation information by the State party regarding its adoption of a Law on Fighting against Human Trafficking and the establishment of its Committee on Family, Women and Children's Affairs which has conducted awareness raising activities on child trafficking, and children in street situations. However, the Committee regrets that these efforts have only been directed at human trafficking and that measures relating to the other offences under the Optional Protocol remain inadequate.

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

(a) **Ensure the planning and implementation of a well-coordinated set of activities by its National Commission on Minors and State Committee on Family, Women and Children's Affairs, law enforcement agencies and social protection centres to prevent, detect, sanction and remedy offences under the Optional Protocol;**

(b) **Strengthen poverty reduction and supportive social protection measures for economically disadvantaged families to prevent their children from becoming victims of the offences under the Protocol;**

(c) **Undertake comprehensive and multidisciplinary research among different socioeconomic and cultural groups on the nature and extent of sale of children, child prostitution and child pornography and, on the basis of the findings, adopt a comprehensive and targeted approach to prevent and address offences under the Optional Protocol;**

(d) **Strengthen its mechanisms for monitoring the adoption of children.**

Child Sex Tourism

24. The Committee takes note of the State party's efforts to combat child sex tourism and raise awareness on the problem. However, the Committee is concerned that awareness of the World Tourism Organisation (UNWTO) Global Code of Ethics for Tourism and the number of travel enterprises who have signed the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism is limited in the State party.

25. **The Committee urges the State party to establish and implement an effective regulatory framework and take all necessary legislative, administrative, social and**

other measures to prevent and eliminate child sex tourism. In this regard, the Committee encourages the State party to strengthen its international cooperation by multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism. The Committee further urges the State party to strengthen its 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 signing up for 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

26. While noting that the State party has introduced Article 144-1 of the Criminal Code on human trafficking, the Committee notes with concern that the provision does not cover all the offences included in the Optional Protocol. Furthermore, the Committee is concerned that although Article 171 of the State party's Criminal Code prohibits involvement of adolescents in prostitution and article 242 of the Criminal Code prohibits production and distribution of pornographic materials, it lacks specific provisions on pornography with the involvement of children.

27. **The Committee recommends that the State party revise and bring its criminal code in full compliance with articles 2 and 3 of the Optional Protocol, and ensure that the law is enforced in practice, with commensurate sanctions being imposed on perpetrators, in order to prevent impunity. In particular, the State party should criminalize:**

(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, or 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) **Distributing, importing, exporting, offering, selling, possessing or knowingly accessing/viewing child pornography including virtual child pornography, suggestive representations of children which do not depict children engaged in explicit sexual activity (child erotica); and**

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

28. The Committee is concerned that comprehensive data was not provided in the State party reports on investigations, prosecution and punishment of perpetrators of all offences under the Optional Protocol. The Committee is also concerned that limited access to justice, including legal aid and accessible complaints and reporting mechanisms, seriously limits investigation, prosecution and punishment of perpetrators of offences under the Optional Protocol.

29. **The Committee urges the State party to take all necessary measures to ensure that crimes under the Optional Protocol are investigated, and that alleged**

perpetrators are prosecuted and duly sanctioned. The Committee recommends that the State party provides specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol in its next periodic report.

Criminal liability of legal persons

30. The Committee regrets that the State party's legislation does not establish criminal liability of legal persons.

31. **In light of article 3(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.**

Jurisdiction and extradition

32. While noting the State party's exercise of extraterritorial jurisdiction, the Committee is concerned at the application of this being subject to the requirement of double criminality and limited to international crimes specified in article 12.3 of its Criminal Code which does not include all the offences under the Optional Protocol.

33. **The Committee recommends that the State party undertake measures to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction over all the crimes covered by the Optional Protocol, without the criterion of double criminality. The Committee further recommends that the State party use the Optional Protocol as a legal basis for extradition where there is no bilateral agreement to this effect in force.**

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 of offences prohibited under the Protocol

34. The Committee notes with appreciation that the State party established its Human Trafficking Victims Support Centre under the Ministry of Labour and Social Protection in 2009. However, the Committee is concerned that its rules and programs are limited to trafficking victims only and no information is provided on mechanisms established to identify and protect victims of offences under the Optional Protocol. The Committee is further concerned at the lack of information on compensation for victims of offences under the Protocol.

35. **The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims of all offences under the Optional Protocol and, in particular, ensure the establishment and operation of mechanisms for identifying and protecting victims of offences under the Optional Protocol and ensure that child victims of offences under it are not treated as offenders. Furthermore, the Committee recommends that the State party take measures to guarantee that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol, and establish a fund for compensation for victims, for those cases where they cannot obtain compensation from the perpetrator.**

36. In accordance with its obligations under article 8 of the Optional Protocol, the Committee further recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Optional Protocol and that the State party take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20).

Recovery and reintegration of victims

37. The Committee welcomes the State party's Rules on the Social Rehabilitation of Victims of Human Trafficking of March 6, 2006 which define mechanisms of implementation of social rehabilitation of victims of human trafficking. It also notes as positive the State party's Rules on Placement and Keeping in Shelters of Children Victims of Human Trafficking of November 19, 2009. Notwithstanding these efforts, the Committee is seriously concerned that the State party's recovery and reintegration measures are limited to victims of trafficking and do not adequately take into account the needs of victims of sale of children, child prostitution and pornography offences under the Optional Protocol. The Committee is further concerned at the severe inadequacy of State-run shelters for child victims and that all identified child victims do not have access to appropriate care, assistance and remedies.

38. The Committee urges the State party to:

(a) Establish a mechanism for providing recovery and rehabilitation support to children victims of all offences under the Optional Protocol;

(b) Take all necessary measures, including by considering the provision of training courses to medical professionals on recognising and treating victims of offences under the Protocol, to ensure that child victims of the offences under the Optional Protocol are provided with appropriate assistance, including specifically for their full social reintegration and physical and psychological recovery;

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

Helpline

39. The Committee recommends that the State party allocate sufficient resources to ensure the quality of the existing helplines and ensure that these are fully accessible and known to all children throughout the country. With reference to its recommendations to the State party (CRC/C/AZE/CO/3-4, paras 71 and 72), the State party is urged to consider establishing one consolidated helpline for children. In doing so, it is further asked to ensure that the personnel providing this helpline be trained on the Convention and its Optional Protocols as well as in providing child-sensitive and friendly assistance. The Committee further recommends that the State party conduct systematic training for persons operating the aforementioned helpline in order to effectively prevent and respond to cases of sale of children, child prostitution and child pornography. It also recommends that the helpline be complemented by a regular and effective monitoring mechanism to ensure the quality of the support and advice provided.

VII. International assistance and cooperation

40. 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

Follow-up

41. The Committee recommends that the State party take all appropriate measures to ensure the full implementation of the present recommendations, inter alia, by transmitting them to the members of the Government, the Parliament, relevant ministries, and other relevant government entities at both governorate and district levels, for appropriate consideration and further action.

Dissemination of concluding observations

42. 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 organisations, youth groups, professional groups, communities and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

43. 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.
