



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by Germany 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*

1. The Committee considered the initial report of Germany (CRC/C/OPSC/DEU/1) at its 1869th meetings (see CRC/C/SR 1868 and CRC/C/SR 1869) held on 28 January 2014, and adopted at the 1875th meeting, held on 31 January 2014, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/DEU/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the high level and multi-sectoral delegation.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations on the State party's combined 3rd and 4th periodic report under the Convention on the Rights of the Child adopted on 31 January 2014, and the initial report under the Optional Protocol on the involvement of children in armed conflict adopted on 1 February 2008, contained in (CRC/C/DEU/CO/3-4) and (CRC/C/OPAC/DEU/CO/1) respectively.

II. General observations

Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including:

(a) The Act to Strengthen the Rights of Victims of Sexual Abuse of 26 June 2013; and

(b) The amendment of the Code of Criminal Procedure to include possibilities for video recording of witness testimony in every phase of the proceedings, as well as using

* Adopted by the Committee at its sixty-fifth session (13-31 January 2014).

the recording as a replacement for witness testimony at trial and/or the simultaneous audiovisual transmission of witness testimony;

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

(a) The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC) in February 2013; and

(b) The Council of Europe Convention on Action against Trafficking in Human Beings in December 2012.

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

(a) The Action Plan of the Federal Government to Protect Children and Teenagers from Sexual Violence and Exploitation of 2011 ;

(b) The establishment of an independent commission charged with addressing the cases in which children were sexually abused, since 2010; and

(c) The joint educational campaign to protect children from sexual exploitation in tourism for the Federal Republic of Germany, Austria and Switzerland, of 2010.

III. Data

Data collection

7. The Committee regrets the lack of a national data collection system on all aspects of the sale of children, child prostitution, child pornography, including child sex tourism. The Committee also notes with concern the lack of comparative data at the Federal level on offences related to the Optional Protocol as well as a lack of common indicators for all the Länder.

8. The Committee urges the State party to develop and implement a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol. In this regard the Committee in particular recommends that:

(a) **The data be disaggregated, inter alia, by sex, age, national and ethnic origin, geographical location and socio-economic status, with particular attention to the most vulnerable groups of children;**

(b) **The data be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence;**

(c) **The State party establish a system of common indicators when collecting data for the various Länder; and**

(d) **The State party undertake qualitative and quantitative studies and analysis on the root causes and prevalence of all the offences under the Optional Protocol, as well as on the impact of the policies implemented and services provided for addressing them.**

IV. General measures of implementation

Legislation

9. While welcoming efforts to integrate the various provisions of the Optional Protocol into the legislation of the State party, the Committee is concerned that such efforts have focused almost exclusively on trafficking, child prostitution and child pornography. The Committee is further concerned that existing legislation does not address all offences covered under the Optional Protocol, particularly the sale of children, a concept which is similar but not identical to trafficking in persons.

10. The Committee recommends that the State party take all necessary legislative measures to ensure the full incorporation of the provisions of the Optional Protocol into its domestic legal system.

National plan of action

11. While welcoming the State party's national plan of action aiming at the protection of children and adolescents from sexual violence and abuse, the Committee regrets the absence of a comprehensive strategy or national plan of action addressing all the issues covered under the Optional Protocol.

12. The Committee recommends that the State party adopt a comprehensive strategy or national plan of action targeting all issues covered under the Optional Protocol and provide adequate human, technical and financial resources for its implementation. The Committee also encourages the State party to ensure that such strategy or plan be regularly assessed and evaluated. Particular focus should be placed on the prevention, protection, physical and psychological recovery and social reintegration of child victims.

Coordination and evaluation

13. The Committee is aware of the federal nature of the State Party and the autonomy granted to the Länder. The Committee notes however with concern that the State party does not have a central body for the overall coordination, monitoring, evaluation and implementation of the Optional Protocol at the Federal, Land and community levels.

14. With reference to its Concluding observations for the implementation of the Convention (CRC/C/DEU/CO/3-4) paragraph 10) the Committee recommends that the State party designate an adequate and permanent Federal body with full mandate, capacity and authority as well as sufficient human, technical and financial resources to effectively coordinate the implementation of the Optional Protocol.

Dissemination and awareness-raising

15. While welcoming several nationwide initiatives and campaigns aimed at raising awareness on the subject of sexual abuse, the Committee is concerned that awareness of the content of the Optional Protocol remains low among children, among parents or legal guardians, and professionals working with and for children.

16. The Committee recommends that the State party take all necessary measures to make the provisions of the Optional Protocol widely known among all professionals working with or for children, as well as among children, in particular children in vulnerable situations and their families, and the public at large, including through appropriate media as well as through the development and implementation of long-term awareness-raising campaigns and educational programmes, including school

curricula, on the preventive measures and harmful effects of all offences covered therein.

Training

17. The Committee welcomes the information provided by the State party during the dialogue on the efforts made by the State party in carrying out training programmes on issues related to the Optional Protocol. However, the Committee is concerned that the training activities are not sufficiently focused on all the provisions of the Optional Protocol and do not address in a proper way the relevant professionals working with and for children, particularly members of the judiciary.

18. **The Committee recommends that the State party strengthen training activities and allocate sufficient and adequate human, technical and financial resources for the development of systematic training programmes on all areas covered by the Optional Protocol for all professionals involved in its implementation, including judges, public prosecutors, police officers, social workers, health-care staff and other categories of professionals working with and for children.**

V. 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

19. The Committee regrets the State party's insufficient efforts to tackle the root causes which place children at risk of becoming victims to the offences under the Optional Protocol such as child poverty and discrimination against children belonging to minority groups as well as against migrant and asylum seeking unaccompanied children.

20. **The Committee recommends that the State party take every necessary effort to tackle child poverty and discrimination towards children belonging to vulnerable groups. In this regard, the Committee further encourages the State party to establish mechanisms to identify and monitor children who are at risk of becoming victims to the offences under the Optional Protocol as well as to provide them with psycho-social support and awareness-raising programmes.**

Child sex tourism

21. The Committee welcomes the measures taken by the State party to prevent child sex tourism, such as the joint educational campaign to protect children from sexual exploitation in tourism by the State party, Austria and Switzerland, and the elaboration of a code of conduct. However the Committee regrets the lack of information on the implementation of policies to prevent child sex tourism, in particular the code of conduct and on steps taken to ensure that the tourism industry protects children from becoming victims. Furthermore, the Committee regrets the lack of information on cases of sex tourism that have been prosecuted in the State party.

22. **The Committee urges the State party:**

(a) 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;

(b) To strengthen its international cooperation through multilateral, regional and bilateral arrangements for the prevention and elimination of child sex tourism;

(c) 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

(d) To encourage travel enterprises to sign the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism.

VI. 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

23. While welcoming the efforts of the State party to include in its Penal Code the offences under the Optional Protocol, the Committee remains concerned that the criminal legislation does not reflect the definition of sale of children as provided by article 2 of the Optional Protocol, and that cases such as sexual exploitation, transfer of organs of the child for profit, engagement in child forced labour, and illegal adoption are not criminalized in the context of sale of children, as required by article 3 of the Optional Protocol.

24. **The Committee recommends that the State party continue to revise and bring its Penal Code and other relevant legislation into full compliance with articles 2 and 3 of the Optional Protocol. In particular, the State party should define and criminalize the sale of children in accordance with the Optional Protocol, and in particular the sale of children for the purpose of sexual exploitation, transfer of organs of the child for profit, the engagement of the child in forced labour, and illegal adoption, in conformity with article 3, paragraphs 1 and 5 of the Optional Protocol.**

25. The Committee also notes with concern that some provisions of the Criminal code punishing crimes under the Optional Protocol, particularly child pornography, only protect children up to the age of 14.

26. **The Committee recommends that the State party ensure that all children under the age of 18 are fully protected.**

Impunity

27. The Committee is concerned at the lack of information on investigations, prosecutions and punishment of perpetrators of all offences under the Optional Protocol.

28. **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 provide detailed information on investigations, prosecutions and punishment of perpetrators of offences under the Optional Protocol in its next periodic report.**

Extraterritorial jurisdiction and extradition

29. The Committee regrets that the State party's legislation does not explicitly allow extraterritorial jurisdiction for all the cases referred to in article 4, paragraph 2, of the Optional Protocol. The Committee also regrets that jurisdiction over offences under the Protocol necessitates double criminality.

30. **The Committee recommends that the State party take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction, including extraterritorial jurisdiction without the criterion of double criminality, over the crimes under the Optional Protocol, as well as to use, where necessary, the**

Optional Protocol as a legal basis for extradition, in conformity with article 5 of the Optional Protocol.

VII. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)

Measures adopted to protect the rights of child victims

31. The Committee is concerned about the insufficient witness protection for child victims of offences under the Optional Protocol coming from abroad, who are not always perceived as victims but might be considered criminals. Furthermore, the Committee notes with concern that children who have become victims to an offence under the Optional Protocol and who are in situation of irregular migration, or whose residence status is unclear cannot adequately benefit from the protective provisions under the Optional Protocol.

32. **The Committee recommends that the State party ensure that child victims to any of the offences under the Optional Protocol are not subject to criminal punishment and are considered as victims. Furthermore, in light of article 9, paragraph 3 of the Optional Protocol, the Committee recommends that the State party take every necessary legislative effort to ensure that every child who has become victim to an offence under the Optional Protocol is given equal access to protective provisions and that the best interests of the child always are a primary consideration, in accordance with article 8, paragraph 3, of the Optional Protocol.**

Criminal justice system protection measures

33. While welcoming the legislative measures taken by the State party to ensure the protection of child victims and witnesses, the Committee notes with concern that child victims and witnesses frequently do not receive sufficient information about their procedural rights. Furthermore, while welcoming the possibility of audio-visual recordings of witnesses, the Committee is concerned at its limited use.

34. **The Committee, in light of article 8, paragraph 1, of the Optional Protocol, recommends that the State party ensure the protection of child victims and witnesses at all stages of the criminal justice process. The State party should be guided in this respect by the United Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council resolution 2005/20. In so doing, the Committee recommends that the State party inter alia place special consideration on sections VII and XI of the guidelines, and take every necessary structural effort and allocate adequate and sufficient human, technical and financial resources to ensure for an effective and exhaustive implementation of the right to information as well as the right to be protected from hardship during the justice process.**

Recovery and reintegration of victims

35. The Committee is concerned about the insufficient measures for the recovery and reintegration of victims to all offences under the Optional Protocol, particularly concerning boys or unaccompanied children, including the low number of counselling centres for children affected by child-pornography or by forced labour exploitation. The Committee also notes with concern the lack of support to families of child victims of trafficking, child prostitution and child pornography and regrets the lack of information on the implementation of the Crime Victims Compensation Act in cases involving offences under the Optional Protocol.

36. The Committee recommends that the State party take all necessary measures to ensure that child victims of offences under the Optional Protocol and their families are provided throughout the country with appropriate assistance, including physical and psychological recovery as well as full social reintegration. In this regard, the Committee further recommends that the State party ensure appropriate legal and psychological training for the persons providing assistance to child victims and provide for a systematic evaluation of these services with the participation of relevant actors, including child victims. The Committee also recommends that the State party ensure that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

Helpline

37. While welcoming the existence of the child and adolescent helpline “Nummer gegen Kummer e.V.”, the Committee regrets that it does not fully reach the actual target group of the Optional Protocol. Furthermore, the Committee notes with concern that both the “Nummer gegen Kummer” as well as the helpline administered by the agency of the Independent Commissioner on Sexual Abuse do provide neither all-day and everyday-service nor service throughout the whole country.

38. The Committee encourages the State party to strengthen its financial support and consider allocating human, technical and financial resources to ensure that:

(a) Professionals working for the helplines are trained on counselling child victims of the offences under the Optional Protocol;

(b) The helplines are accessible through the whole country 24 hours seven days a week; and

(c) The possibility of contacting the helplines for matters related to the Optional Protocol is widely disseminated, particularly among children in vulnerable situations.

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

39. In the light of article 10, paragraph 1, of the Optional Protocol, 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 for 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.

X. Follow-up and dissemination

Follow-up

40. 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 the relevant Government ministries, the Parliament, and to the Federal, Länder and local authorities, for appropriate consideration and further action.

Dissemination of concluding observations

41. 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.

X. Next report

42. 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 next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.