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COMMITTEE ON THE RIGHTS OF THE CHILD

48th 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: United States of America

The Committee considered the initial report of the United States of America (CRC/C/OPSC/USA/1) at its 1320th meeting (see CRC/C/SR.1320), held on 22 May 2008, and adopted at its 1342 meeting, held on 6 June 2008, the following concluding observations.

Introduction

1. The Committee welcomes the submission of the State party's initial report, though not written in compliance with the Committee's reporting guidelines, as well as the replies to the list of issues, which give substantive information on the legislative, administrative, judicial and other measures adopted for the implementation of the Optional Protocol. The Committee also welcomes the open and constructive dialogue held with a high-level and multi-sectoral delegation.
2. The Committee reminds the State party that these concluding observations should be read in conjunction with its concluding observations adopted on the same day on the State party's initial report under the Optional Protocol to the Convention on the involvement of children in armed conflict, contained in CRC/C/OPAC/USA/CO/1.

I. General

Positive aspects

3. The Committee welcomes the wide range of activities of international assistance and cooperation, including technical cooperation, training, raising awareness and assistance to victims provided by the Trafficking in Persons (TIP) Office, with the aim of monitoring and combating trafficking in persons.

4. The Committee welcomes the Innocence Lost Initiative aimed at combating child prostitution in the country through a partnership between the Criminal Division of the Department of Justice, the Federal Bureau of Investigation, and the National Center for Missing and Exploited Children.

5. The Committee further welcomes the passing of numerous pieces of legislation which demonstrates the State party's commitment in the fight against the commercial sexual exploitation of children, including:

- a) the Trafficking Victims Protection Act 2000 and its re-authorizations in 2003 and 2005, which strengthened state programs to prosecute those responsible for child prostitution and enhanced assistance to victims of trafficking in the United States and in other countries;
- b) the PROTECT Act of 2003, which expanded extra-territorial jurisdiction to prosecute State party's citizens committing sex crimes against children abroad;
- c) the Adam Walsh Child Protection and Safety Act, passed in 2006, which increased penalties for child sex offenders and eliminated statutes of limitations for criminal offenses against children.

6. The Committee also welcomes the ratification by the State party of:

- a) ILO Convention N° 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 12 February 1999;
- b) the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 23 December 2002;
- c) 1993 Hague Convention N° 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption, on 12 December 2007.

II. Data

Data collection

7. The Committee notes the State party's commitment and efforts to gather data and conduct studies on commercial sexual exploitation of children, but is concerned that there is insufficient information available on sale of children, child prostitution and child pornography in the State party, due mainly to the lack of a functional data collection system on the issues covered by the Protocol. Furthermore, the Committee notes that the definition of trafficking is based on the Federal Victims of Trafficking and Violence Protection Act of 2000, which broadly interprets that contained in the Palermo Protocol on Trafficking supplementing the United Nations Convention on Transnational Organized Crime. In this respect, the Committee is concerned that defining as trafficking of a wide range of criminal activities against children without differentiating between them, may cause difficulties in the collection of disaggregated data and analytical information on the activities covered by the

Protocol as well as in the identification of victims and of appropriate strategies to prevent and combat these crimes at national and international level.

8. **The Committee recommends that the State party consider developing and implementing a comprehensive and systematic mechanism of data collection, analysis and monitoring on all the issues covered by the Protocol. The data should be disaggregated – *inter alia* – by nature of the offence and by age, sex, ethnicity, socio-economic status and geographical location. The coverage of data collection and studies should include all of mainland United States as well as the Insular areas and other dependent areas over which the United States exercises sovereignty. The Committee also recommends that the State party consider using in the development of programs and activities in all the areas covered by the Optional Protocol, the definitions used therein or contained in other international standards which the State party has adhered to.**

III. General measures of implementation

National Plan of Action

9. The Committee notes that, while several plans and programmes have been adopted and implemented to combat trafficking, notably cross-border trafficking, an overall strategy for the implementation of the Protocol and the elimination of sale of children, child prostitution and child pornography is lacking.

10. **The Committee recommends that the State party develop a National Plan of Action aimed at addressing comprehensively all the issues covered by the Protocol and provide adequate human and financial resources for its implementation.**

Coordination of the implementation of the Protocol

11. The Committee notes that there are several governmental departments or agencies with responsibilities for the implementation of the Protocol such as the Department of Justice, the Department of State and the Department of Health and Human Services, but is concerned at the insufficient level of coordination among them and between federal, state and local authorities. The Committee also notes with concern that coordination is often insufficient between government agencies and non-governmental organizations working in the areas covered by the Protocol.

12. **The Committee recommends that the State party strengthen coordination among the different agencies and governmental departments working in the areas covered by the Protocol both at Federal and State levels. The State party is also encouraged to strengthen the coordination with non-governmental organizations in the implementation and evaluation of the Protocol.**

Dissemination and training

13. The Committee notes the State party has generally high quality training resources and facilities and welcomes the training delivered by the National Center for Missing and Exploited Children to judges, prosecutors and law enforcement officials on investigation and prevention of child sexual exploitation. However, it is

concerned that there is no systematic dissemination of and training on the Optional Protocol both at Federal and state level and that the Protocol and the problems surrounding the issues covered thereto are not very well known.

14. 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, including law enforcement personnel, judges, lawyers, social and health care workers, immigration and customs officers, religious and community leaders, civil society organizations, organizations accredited for adoption etc.;

(b) strengthen measures to disseminate the provisions of the Optional Protocol among its population, especially children and parents, by using school curricula and appropriate material specifically for children;

(c) in cooperation with civil society and the media, 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 all the offences referred to in the Protocol, including by translating into appropriate languages and by encouraging the participation of the community and, in particular, children and child victims of both sexes, in such information, education and training programmes.

Allocation of resources

15. The Committee notes that a significant amount of financial resources is allocated to the prevention of human trafficking, but is concerned that only a small proportion of it is specifically allocated to child victims of trafficking and to victims of other offences covered by the Optional Protocol.

16. The Committee recommends that the State party:

(a) provide more information in the next report on the budget allocations for the implementation of the Optional Protocol, in particular those addressed to services for child victims of the offences covered by the Protocol;

(b) provide the necessary human and financial resources for the development and implementation of projects and plans, especially at local level, aimed at the prevention of the offences, protection and rehabilitation of child victims and prosecution of the perpetrators of all the offences covered by the Protocol;

(c) adopt a human rights approach to its budgeting with particular focus on children.

National Human Rights Institutions

17. While the Committee recognizes the difficulty in creating an independent agency at Federal level to monitor the implementation of the Optional Protocol because most of the laws and services required are a state responsibility, the

Committee is concerned that there is no agency such as an Ombudsman at Federal or state level to monitor the implementation of the Optional Protocol.

18. The Committee recommends that the Federal and state governments consider the creation of human rights institutions in accordance with the Paris Principles to monitor and promote the Optional Protocol. These institutions should be provided with the necessary human and financial resources to carry out their mandates.

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

19. The Committee notes the State party's initiatives aimed at preventing child abuse and neglect, but is concerned that a focus on sale of children, child prostitution and child pornography is still lacking. It is also concerned that preventive efforts are mostly limited to specific areas of the country and do not cover sufficiently large groups of vulnerable children in the State party, such as children living in poverty, migrant children, indigenous children and children living in difficult family situations, who are particularly vulnerable to all the offences covered by the Protocol.

20. The Committee is of the view that the elimination of the sale of children, child prostitution and child pornography would be facilitated by adopting a holistic approach, addressing the contributing factors thereto, and recommends that the State party strengthen its efforts to address the root causes, such as poverty and marginalization, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism. Particular attention in the preventive efforts should be given to protect children throughout the State party who are especially vulnerable to such practices.

21. The Committee is concerned at the paucity of programs focusing on reducing the demand for sexual services involving the exploitation of children, including awareness raising campaigns.

22. The Committee recommends that demand for sexual services involving the exploitation of children be addressed through both prevention and prosecution measures. Preventive measures should include, among others, public awareness campaigns aimed at the individuals and groups creating demand for sexual exploitation of children.

Child prostitution

23. The Committee notes the State party's efforts in addressing child prostitution, with programs focused on a victim-centered approach. However, the Committee is concerned at the information that prostitution of children is a widespread and increasing phenomenon in the State party. It is also concerned at the information that enforcement of child prostitution laws is quite low at state level and that the resources allocated for protection programs, training and education are not sufficient.

24. The Committee recommends that the State party continue to combat child prostitution, both involving foreign children trafficked into the country and 'internal' child prostitution. To this end, the Committee recommends, *inter alia*,

that the State party monitor enforcement and implementation of child prostitution laws at state level and consider increasing human and financial resources for protection programs, including awareness campaigns and trainings.

Child pornography

25. The Committee appreciates the State party's efforts in combating child pornography both internally and as a worldwide phenomenon, including the numerous investigations and prosecutions in this respect, but is concerned that the State party is one of the world's largest producers, distributors and consumers of child pornography and that the incidence of cyber-crimes involving children, facilitated by the emergence of new technologies, is on the rise.

26. **The Committee recommends that the State party**

- a) **improve enforcement of the existing legislative framework on child pornography;**
- b) **intensify its efforts to take the necessary measures to address the rapidly changing nature of technology;**
- c) **strengthen its measures to identify and assist child victims of child pornography;**
- d) **continue to strengthen international cooperation to prevent and punish child pornography.**

Sex tourism

27. The Committee welcomes the launch in 2004 of the "Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism" as well as that the adoption of the PROTECT Act of 2003 has resulted in more than 50 indictments and 29 convictions of State party's nationals involved in child sex tourism abroad. It also appreciates the funding of deterrence and public information campaigns abroad in countries such as Cambodia, Costa Rica, Brazil, Belize, and Mexico, targeted at U.S. child sex tourists. However, the Committee is concerned at the information that the State party remains among the main source countries for child sex tourism.

28. **The Committee recommends that the State party continue to strengthen its measures to combat sex tourism, including by raising awareness to tackle attitudes, such as the idea that is acceptable to abuse and exploit children living in poverty in foreign countries. The Committee also recommends that the State party take further measures to prevent sex tourism, in particular by promoting responsible tourism through awareness campaigns specifically directed at tourists and cooperating closely with travel operators, media, NGOs and civil society organizations to combat all forms of commercial sexual exploitation of children in travel and tourism.**

Illegal adoption

29. The Committee welcomes the recent ratification of the Hague Convention on Inter-Country Adoption and notes that the Department of State (DOS) has been identified as the Central Authority. In this respect, the Committee is concerned about the fact that for-profit persons may be approved to perform Central Authority functions, though they must comply with the requirements and qualifications

indicated in article 22, paragraphs 2 (a) and (b) of the Hague Convention, including integrity, professional competence and accountability. The Committee is also concerned at the information that, according to the current regulations, the payment of prenatal and other expenses to birth mothers abroad would still be possible.

30. In order to strengthen the safeguards against sale of children for adoption purposes, the Committee recommends that the State party:

- a) adequately and effectively implement the Hague Convention on Inter-Country Adoption in order to curb the instances of sale for adoption purposes;**
- b) ensure that not only the accredited agencies, but also the approved persons pursue only non-profit objectives;**
- c) expressly prohibit all forms of possible active solicitation for children, including the payment of pre-natal and other expenses;**
- d) intensify its efforts to prevent and punish all the cases of sale of children, notably those occurring via the Internet, irrespective of the purpose of the sale;**
- e) seek to ensure that the principle of best interests of the child and the safeguards guaranteed in the Hague Convention are equally respected in case of adoption from countries not parties to the Hague Convention;**
- f) effectively apply the principle of subsidiarity as enshrined in Section 303 (a)(1)(B) of the Intercountry Adoption Act of 2000, in order to ensure that U.S. children are primarily adopted in the U.S.**

V. Prohibition and related matters

Existing criminal or penal laws and regulations

31. The Committee welcomes that the State party has generally developed an adequate legislation at Federal level concerning child pornography, transporting of children between states for unlawful sexual purposes and child trafficking. However, the Committee is concerned that some inconsistencies between the legislation at States and at Federal level may result in certain lacunae in the definition and prohibition of all offences covered by the Protocol. In this respect, the Committee is concerned, *inter alia*, that:

- a) there is no Federal law defining or prohibiting child prostitution per se;
- b) while activities related to child pornography are a felony at Federal level, they may be only a misdemeanor in some states;
- c) attempts to commit, or all forms of participation in, the offences covered by the Protocol are not always punished under Federal and state legislation.

32. The Committee recommends that, since criminal law is mainly the responsibility of each State, the State party ensure that all the offences covered by the Protocol are defined and prohibited in accordance with articles 2 and 3

of the Protocol throughout the country. The Committee further recommends that the State Party:

- (a) define and prohibit child prostitution in accordance with article 2 and 3 of the Optional Protocol both at Federal and at State levels;**
- (b) make all the offences under the Protocol punishable by appropriate penalties that take into account their grave nature, both at Federal and state levels;**
- (c) ensure that attempt to commit any of the offences covered by the Optional Protocol as well as complicity or participation therein are punished in conformity with article 3, paragraph 2, of the Optional Protocol.**

33. The Committee further recommends that the United States of America proceed to become a State party to the Convention on the Rights of the Child in order to further strengthen the framework for the protection of children's rights.

Jurisdiction and extradition

34. The Committee, while welcoming the possibility for the State party to establish extraterritorial jurisdiction for sex tourism and child pornography offences committed outside the United States, it is concerned that the State party's extraterritorial jurisdiction based on the nationality of the offender, while provided by some federal laws, such as 18 U.S.C. paras. 1585 and 1587, does not reach all offences covered by the Protocol. The Committee also a note that federal law does not generally provide for the assertion of extraterritorial jurisdiction where the victim is a State party's national.

35. The Committee, in order to strengthen the framework for prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism, recommends that the State party establish its jurisdiction in all cases listed under article 4. Furthermore, the Committee recommends that the State party be able to prosecute an alleged offender present in its territory who has committed one of the offences covered by the Protocol abroad – if it does not extradite him or her to another State party - even if the country where the offence was committed is not a Party to the Protocol or does not criminalize these acts in its legislation.

VI. Protection of the rights of child victims

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

36. The Committee welcomes the measures taken for the protection of child victims of the offences covered by the Protocol in the criminal justice system, including the access to support persons, alternatives for live in-court testimony when it is determined that a child should not testify, the use in many states of closed-circuit television (CCTV) testimony of children, child interview specialists and developmentally appropriate questioning. However, the Committee is concerned at

the information reporting that there are instances where child victims, especially those who are victims of trafficking within the United States and those used in prostitution, may be penalized or criminalized, since state laws have not yet uniformly exempted children, notably those involved in prostitution, from arrest and prosecution.

37. The Committee recommends that the State party:

(a) **Ensure that all persons below the age of 18 victims of any of the offences under the Optional Protocol are as such neither criminalized nor penalized at Federal or state level. To this end the Committee recommends that the State party ensure that the upper age for protection for child victims is set at 18 years throughout the country;**

(b) **take all necessary measures to ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the Protocol, the best interests of the child shall be a primary consideration;**

(c) **in light of article 8 (1) of the Protocol, ensure the protection of all victims and witnesses below the age of 18 at all stages of the criminal justice process, both at Federal and at state levels. The State party should be also guided in this respect by the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC Resolution No. 2005/20).**

Recovery and reintegration of victims

38. The Committee notes with appreciation that with the Trafficking Victims Protection Act, in the United States, non-US citizens who are victims of severe forms of trafficking - which include a person under 18 years of age induced to perform a commercial sex act - are allowed to remain in the US and are eligible to receive certain kinds of public assistance to the same extent as refugees. However, the Committee is concerned that while there are certain services available for child victims of trafficking from other countries, children victim of internal commercial sexual exploitation often lack the adequate services, including transitional shelters, necessary for their physical and psychological recovery and social reintegration. The Committee is further concerned at the information that in some cases foreign victims of trafficking for sexual exploitation may face deportation as unidentified trafficked victims.

39. The Committee recommends that the State party:

a) **ensure that adequate services are available for all child victims of the offences covered by the Optional Protocol, boys and girls, including for their full social reintegration and their full physical and psychological recovery, in accordance with article 9 (3) of the Protocol;**

b) **ensure that foreign children victims of the offences covered by the Protocol are not deported but rather granted the necessary services aimed at their physical and psychological recovery. When return in the country of origin is considered to be the best option**

in the interests of the child, an adequate assessment concerning the situation in the countries of origin, including –if possible- the family environment, should be undertaken.

- c) 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 Protocol;**
- d) ensure that all child victims of the offences described in the present 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 Protocol.**

VII. International assistance and cooperation

40. The Committee welcomes that the State party has substantially contributed to combating human trafficking internationally. It also welcomes the information provided during the dialogue concerning the cooperation between the state of New Mexico and the Mexican state of Chihuahua, which sets a good practice in the fight against trafficking.

41. **The Committee recommends that the State party continue to strengthen international cooperation by multilateral, regional and bilateral arrangements, giving due attention to 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, in accordance with the Optional Protocol. These arrangements should always be in the best interest of the child and respect international human rights standards.**

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

43. **The Committee also encourages the State party to promote the strengthening of international cooperation in order to address the root causes, such as poverty, underdevelopment and weak institutional capacity, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.**

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 Departments and Agencies, the Congress, the Senate and to state authorities, for appropriate consideration and further action.**

Dissemination

45. 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 Optional Protocol in its next report due on 23 January 2010.
