

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-seventh 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, CHILDREN PROSTITUTION AND CHILD PORNOGRAPHY**

**Concluding Observations of the Committee on the
Rights of the Child: Kuwait**

1. The Committee considered the initial report of Kuwait (CRC/C/OPSC/KWT/1) at its 1301st/1302nd meeting (CRC/C/SR.1301 and 1302), held on 24 January 2008, and adopted at its 1313th meeting, held on 1 February 2008, the following concluding observations.

Introduction

2. The Committee welcomes the submission of the State party's initial report as well as the submission of the written replies to its list of issues (CRC/C/OPSC/KWT/Q/1/Add.1). The Committee appreciates the constructive dialogue with a large and inter-sectoral delegation.

I. General Guidelines

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 initial report on 26 October 1998, contained in CRC/C/15/Add.96, and with the concluding observations adopted on the State party's initial report on the Optional Protocol on the involvement of children in armed conflict, contained in CRC/C/OPAC/KWT/CO/1.

Positive Aspects

4. The Committee welcomes the ratification by the State party of:
 - (a) The Optional Protocol on the Involvement of Children in Armed Conflict on 26 August 2006;
 - (b) The establishment in 2007 of the Higher Council for the Family and Children;
 - (c) ILO Convention n° 138 concerning Minimum Age for Admission to Employment on 15 November 1999;
 - (d) ILO Convention n° 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 15 August 2000;
 - (e) The United Nations Convention against Transnational Organized Crime on 12 May 2006;
 - (f) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 12 May 2006; and
 - (g) The Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime on 12 May 2006.

II. Data

5. The Committee welcomes the efforts made by the Ministry of Social Affairs and Labour to update its data collection system to collect information on the number of prosecutions and convictions for offenses covered by this Optional Protocol. However, the Committee regrets that reliable data on the extent of sale of children, child prostitution and child pornography and on the number of children involved in these activities is very limited, mainly due to the absence of a comprehensive data collection system as well as to prevailing taboos in the society surrounding the issue.

6. The Committee recommends that the State party establish a comprehensive data collection system in order to ensure that data, disaggregated, *inter alia* by age, sex, minority groups, vulnerable children, including migrant children and stateless children (Bidoon), and socio-economic background, is systematically collected and analysed as it provides an essential tool for measuring policy implementation. Data should also include information on the number of prosecutions and convictions for such offenses, disaggregated by the nature of the offense. The Committee encourages the State party to seek the assistance of UN agencies and programs, including UNICEF, in this regard.

III. General measures of implementation

Legislation

7. The Committee notes with appreciation the State party's indication that the Optional Protocol has become part of Kuwaiti positive law. The Committee also notes the State party's intention to enact a law on children's rights. Nevertheless, the Committee expresses its concern that there is limited harmonization between national legislation, notably the State's party's Criminal Code, and the provisions of the Optional Protocol.

8. The Committee recommends that the State party continue and complete the process of harmonization of its national legislation with the Optional Protocol in order to adequately implement all of the provisions contained therein and to ensure explicit reference to all the acts and activities constituting offences under the Protocol.

Dissemination and training

9. The Committee notes with interest that the State party conducts special courses for social workers and psychologists and personnel involved in caring for special categories of children.

10. 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; and

(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, with priority given to migrant children and stateless children (Bidoon).

Allocation of resources

11. The Committee takes note with interest of the establishment in 2007 of a centre to regulate the situation of domestic workers. The Committee regrets, however, the absence of information on the allocation of resources to other areas covered by the Optional Protocol.

12. The Committee encourages the State party to ensure that adequate resources are allocated for implementation under the protocol including, inter alia, monitoring and reporting mechanisms, dissemination, awareness raising and training activities.

Independent Institutions

13. While noting the State party's indication that the phenomena of sale of children, child prostitution and child pornography do not exist in its territory, the

Committee notes with regret the absence of institutions with responsibility for receiving complaints regarding violations of children's rights, including offences under the Optional Protocol.

14. The Committee encourages the State party, in accordance with the Paris Principles (General Assembly resolution 48/134) and taking into consideration the Committee's general comment No. 2 (2002) on National Human Rights Institutions, to consider the establishment of an independent national human rights institution empowered to receive, investigate and effectively address complaints of violations of child rights, including offences under the Optional Protocol.

IV. Prevention of the sale of children, child pornography and child prostitution (art.9, paras.1 and 2)

Awareness-raising

15. The Committee notes with interest the awareness-raising and sensitizing activities carried out by the Department for Women and Children, the Subregional Centre for Children and Mothers and the Kuwaiti Society for the Advancement of Arab Children.

16. The Committee encourages the State party to take an active role in promoting awareness-raising activities relating to the sale of children, child pornography and child prostitution.

V. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras.2, 3, 5, 6 and 7)

Existing criminal or penal laws and regulations

17. The Committee, while noting that the State party considers that the phenomena of the sale of children, child prostitution and child pornography do not exist in its territory, expresses concern that:

(a) Kuwaiti law does not explicitly refer to the criminal offence for the sale of children and, while the concept has been included in the offence of human trafficking, this offence does not address all instances of sale of children, prohibiting only the sale of children as slaves;

(b) While the Criminal Code prohibits the printing, selling, distributing or displaying of pornography, possession of such items for personal use is not explicitly prohibited; and

(c) Criminal Code provisions mainly provide protection against sexual exploitation for the girl child as opposed to the boy child.

18. The Committee urges the State party to enact specific legislation by introducing new amendments to the Criminal Code to ensure that all acts and activities referred to in the Optional Protocol are fully covered under its criminal law and that such legislation provides equal protection for boys and girls.

Jurisdiction

19. The Committee notes that the Criminal Code provides for jurisdiction over offences covered by its provisions that occur abroad as long as its effects extend to the State or if the alleged perpetrator is a Kuwaiti national and the act is defined as an offence in both the State party and in the State in which it was committed. However, the Committee is concerned that the exercise of this extraterritorial jurisdiction is dependent on the condition of double criminality and that it does not cover all the offenses and situations referred to in the Optional Protocol, especially when the alleged offender abroad is a Kuwaiti Citizen or a person who has his habitual residence in Kuwait or when the victim is a Kuwaiti citizen.

20. The Committee recommends that the State party take all necessary measures to establish its jurisdiction over all the offenses and situations referred to in the Optional Protocol in conformity with article 4.

Extradition

21. While the Committee notes that the State party's legislation provides for extradition in general terms, it expresses its concern at the lack of explicit legislative reference to the possibility of extradition of persons committing offences addressed by the Protocol. The Committee also notes the State party's reservation, upon accession, in respect of article 5(3) of the Optional Protocol.

22. The Committee recommends that the State party review its legislation with a view to bringing it into conformity with the Optional Protocol and, in particular, article 5 relating to extradition. The Committee encourages the State party to withdraw its reservation to article 5(3) of the Optional Protocol.

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

23. The Committee notes with interest that the Kuwaiti Civil Code provides for compensation for damages, including "moral damages", to victims of wrong doings. The Committee also notes the establishment of a special police force to investigate offences by or against minors. The Committee notes with interest the establishment of a centre to regulate the situation of domestic workers and to ensure that no domestic workers under 18 are brought into the country. Nevertheless, the Committee notes with concern, the continued possibility of exploitation of under 18 domestic workers entering the country.

24. The Committee encourages the State party to develop and implement appropriate and adequate policies and measures in order to ensure that persons under 18 are not trafficked into the country to carry out labour activities, particularly the worst forms of child labour such as prostitution.

Criminal justice system protection measures

25. The Committee is concerned that rather than being viewed as victims, child victims of offences under the Protocol may be considered as child offenders and, as such, may not receive adequate protection in the criminal justice system.

26. The Committee urges the State party, in accordance with article 8 of the Optional Protocol, to protect the rights and interests of child victims, in particular by providing them with adequate and explicit protection in the criminal justice system so as to ensure that they are not considered or treated as juvenile offenders.

Recovery and reintegration of victims

27. While the Committee notes that the State party provides for the needs, including rehabilitation and reintegration services, of individuals in social care institutions, including children, it regrets that no information was provided by the State party on such assistance and physical, psychological and social recovery measures for those not residing in social institutions.

28. The Committee urges the State party to ensure that adequate and appropriate administrative measures, social policies and programmes are in place to protect all children that are vulnerable to the offences referred to in the Optional Protocol and to allow for the full physical, psychological, and social recovery of child victims.

Helpline

29. The Committee notes with regret that children do not have access to any mechanisms through which they can report violations of the Optional Protocol.

30. The Committee encourages the State party to establish a 3-digit, toll-free, 24-hour national helpline for children to make complaints relating to violations of the provisions of the Protocol.

Camel racing

31. The Committee welcomes the steps taken by the State party to end the practice of camel racing with children as jockeys. However, the Committee regrets that Ministerial Decision 125/2004, which prohibits the use of children in camel racing and other harmful activities, nevertheless allows children to take part in camel racing under certain conditions set forth in article 2 of the Decision.

32. The Committee recommends that the State party revise its legislation in order to explicitly prohibit, without any exceptions, the use of children in camel

racing and other harmful activities. The Committee recommends, in particular, that the State party revise Ministerial Decision 125/2004 so as to guarantee complete prohibition of the use of children as camel jockeys, without exception.

VII. Follow-up and dissemination

Follow-up

33. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, *inter alia*, by transmitting them to relevant Government ministries, the National Assembly, the Parliament and to governorate authorities, for appropriate consideration and further action.

Dissemination

34. The Committee recommends that the initial report and written replies submitted by the State party and related concluding observations adopted by the Committee be made widely available, through, *inter alia*, the Internet, school curricula and human rights education, to the public at large, civil society organizations, youth groups, professional groups, community leaders, media personnel and children and their parents, in order to generate debate and awareness of the Protocol, its implementation and monitoring.

VIII. Next Report

35. 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, which was originally due in 1998.
