

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-ninth 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: Austria

1. The Committee considered the initial report of Austria (CRC/C/OPSC/AUT/1) at its 1344th meeting (see CRC/C/SR.1344), held on 15 September 2008, and adopted at its 1369th meeting, held on 3 October 2008, the following concluding observations.

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, though it regrets that the report was not prepared in full accordance with the Committee's reporting guidelines and that civil society was not adequately consulted in the drafting process of the report. The Committee appreciates the constructive and informative dialogue held with the State party's multisectoral 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 second periodic report on 28 January 2005 (CRC/C/15/Add.251) and the concluding observations adopted on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/AUT/CO/1) on 28 January 2005.

I. General Guidelines

A. Positive aspects

4. The Committee notes with appreciation:

- (a) The reform of the penal code, pursuant to the Criminal Law Amendment Acts (2001, 2002 and 2004), which, *inter alia*, broadened the scope of offences relating to child pornography and strengthened penalties relating to sexual offences;
 - (b) The adoption, in 2004, of the National Plan of Action for the Rights of Children and Adolescents, which provides for a series of measures to prevent offences referred to in the Optional Protocol; and
 - (c) The adoption of the National Action Plan against Human Trafficking which draws attention to child-specific aspects of human trafficking, and the establishment, in 2004, of a task force on human trafficking, and a “Sub-Task Force”, in 2007, to identify concrete demand-oriented measures for victims of child trafficking.
5. The Committee further commends the State party’s accession to, or ratification of:
- (a) The Convention Against Transnational Organized Crime, in 2004;
 - (b) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2004;
 - (c) The European Convention on the Compensation of Victims of Violent Crimes, in 2006; and
 - (d) The Council of Europe Convention on Action against Trafficking in Human Beings, in 2006.

II. Data

Data Collection

6. The Committee welcomes the statistical data provided in the State party report and the replies to the list of issues, including data on sale, trafficking, child prostitution and child pornography. However, the Committee regrets that currently, statistics for all sexual crimes against minors are grouped together and are not disaggregated by, *inter alia*, sex and age. The Committee also regrets that disaggregated data on asylum-seeking and refugee children and on domestic and intercountry adoptions is still not available.
7. **The Committee recommends that a comprehensive data collection system be established in order to ensure that data on sale, trafficking, child prostitution and child pornography, are systematically collected and analysed, and that they are disaggregated by, *inter alia*, age and sex, as they provide essential tools for measuring policy implementation.**

III. General measures of implementation

National Plan of Action

8. While welcoming the adoption by the State party of the National Plan of Action for the Rights of Children and Adolescents in 2004 and the steps taken

towards its implementation, the Committee is however concerned that the Plan does not include all areas covered by the Optional Protocol.

9. **The Committee recommends that the State party take all necessary measures to ensure the implementation of the specific obligations arising from the Optional Protocol in its national strategies and programmes in consultation and cooperation with relevant stakeholders, by taking into account the Declaration and Agenda for Action (A/51/385) and the Global Commitment (A/S-27/12) adopted respectively at the First and Second World Congresses against Commercial Sexual Exploitation of Children (Stockholm 1996; Yokohama 2001). In this regard, the Committee recommends that the State party ensure allocation of sufficient resources to ensure full implementation of all existing national strategies and programmes. Furthermore, the Committee encourages the State party to continue to strengthen the follow up of the implementation of the National Plan of Action against Human Trafficking.**

Coordination and evaluation

10. While noting the role played by the various governmental and non-governmental entities in the implementation of the Optional Protocol, the Committee is concerned about the absence of a mechanism mandated to effectively coordinate between these institutions, including at the provincial and national levels.
11. **The Committee recommends that the State party establish a permanent mechanism with the mandate to coordinate and evaluate the implementation of the Optional Protocol, including at the provincial and national levels, with active and systematic participation of children, including, *inter alia*, the Federal Youth Council. Furthermore, it is recommended that the State party provide the coordinating mechanism with specific and adequate mandate, as well as sufficient human and financial resources to enable it to be fully operational.**

Dissemination and training

12. The Committee welcomes the organization of numerous information campaigns related to sexual exploitation of children, aimed at children, the general public and government officials, as well as the training seminars for judges and public prosecutors on child victims of sexual abuse and human trafficking. However, the Committee remains concerned at the insufficient efforts to raise awareness about the Optional Protocol among relevant groups of professionals and the public at large, and to provide adequate training in all areas covered under the Optional Protocol.
13. **The Committee recommends that the State party allocate adequate and sufficient resources for the development of training materials and courses on the Optional Protocol in all parts of the country for all relevant groups of professionals including social workers, police officers, public prosecutors, judges, medical staff, immigration officials and other**

professionals involved in the implementation of the Optional Protocol. Furthermore, in light of article 9, paragraph 2, of the Protocol, the Committee recommends that the State party make the provisions of the Optional Protocol widely known, particularly to children and their families, through, *inter alia*, the media, school curricula and long-term awareness raising campaigns, in different languages, and in a simplified manner, about the preventive measures and harmful effects of all offences referred to in the Optional Protocol. In this regard, the participation of the community and, in particular, children, including child victims, should be encouraged.

Independent institutions

14. While acknowledging the important work of the Child and Youth Advocate Offices (Ombudsmen), the Committee is concerned that their mandate does not explicitly include monitoring the implementation of the Convention and its two Optional Protocols. The Committee is also concerned about the discrepancies in the available resources among the Child and Youth Advocate Offices of different provinces.
15. **The Committee recommends that the State party strengthen the Child and Youth Advocate Offices with the mandate to monitor the implementation of the Convention and its two Optional Protocols, and to ensure that they are sufficiently and evenly staffed and funded across all provinces.**

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

16. The Committee welcomes various initiatives taken by the State party to address trafficking in children, both at home and abroad, including the National Action Plan against Human Trafficking in 2004, however regrets that sale and trafficking in children, including for the purpose of sexual exploitation, remains a problem in the State party. Furthermore, while the Committee notes with appreciation the establishment of the sub-task force on child trafficking, in 2007, it remains concerned about the absence of a comprehensive plan to address sale of children, child prostitution and child pornography that incorporates all aspects of prevention, recovery and reintegration.
17. **The Committee recommends that the State party allocate sufficient budget resources for preventive measures against sale and trafficking in children and that these be carried out in collaboration with relevant international organisations and civil society organisations. Furthermore, the Committee encourages the State party to adopt a more comprehensive approach in tackling the issue of sale of children, child prostitution and child pornography, by incorporating prevention, recovery and reintegration measures.**

18. While welcoming the efforts undertaken to implement the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, as well as the strengthening of extraterritorial legislation by the Criminal Law Amendment Act 2004 for sexual offences committed aboard by Austrian citizens, the Committee is concerned that sex tourism by Austrian citizens continues to be a problem.
19. **The Committee recommends that the State party continue to undertake measures to prevent sex tourism, in particular by allocating additional funds for public campaigns for this purpose. The Committee also urges the State party, through relevant authorities, to strengthen cooperation with the tourism industry, NGOs and civil society organisations in order to promote responsible tourism by the dissemination of the Code of Conduct of the World Tourist Organisation among employees within the tourism industry as well as awareness raising campaigns for the general public.**

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

20. While welcoming the various amendments to the Criminal Code which significantly strengthened protection for children against offences covered by the Optional Protocol, the Committee remains concerned that the State party's legislation does not criminalise all the acts constituting offences against children in full compliance with the definition of offences contained in article 2 and 3 of the Optional Protocol.
21. **The Committee recommends that the State party take further measures to bring its Criminal Code in full compliance with article 3 of the Protocol, including the provision on the definition of child pornography (articles 2(c)). In particular, the Committee recommends that the State party:**
 - a) **Criminalise the possession of child pornography, including virtual pornography, involving children between 14 and 18 years old without requiring the intent of dissemination and regardless of the minor's consent;**
 - b) **Amend the definition of child pornography to include cartoon representation of children; and**
 - c) **Ratify the Council of Europe Convention on Cybercrime, signed by the State party in 2003 and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, signed by the State party in 2007.**

Legal aspects of adoption

22. While noting the extensive efforts taken by the State party to systematically criminalize the sale of children the Committee is concerned that irregular intercountry adoption may not be criminalized as an act of sale of children.

23. **The Committee recommends the State party to take all necessary measures to ensure that the national legislation complies with articles 2 and 3 of the Optional protocol, in particular, the definition of sale (article 2 (a)) and improperly inducing consent in cases of adoption (article 3, para. 1 (a) (ii)) as stipulated in the Optional Protocol are incorporated in the legislation.**

Jurisdiction and extradition

24. The Committee welcomes the Austrian extraterritorial jurisdiction on cases when the perpetrator cannot be extradited but remains concerned by the fact that the Austrian Criminal Code only allows extraterritorial jurisdiction of offences covered by the Optional Protocol to cases where Austrian interests are violated.
25. **The Committee recommends that the State party take all necessary practical measures to effectively establish jurisdiction over offences, in accordance with article 4 of the Optional Protocol, bearing in mind that double criminality is not required under 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

26. The Committee notes the bilateral agreements with Bulgaria and Romania regarding the repatriation of children who may have been trafficked.
27. The Committee, while cognizant that article 195 of the Criminal Codes provides for child protection centres and for special psychological rehabilitation of child victims, and of the role played by non-governmental organisations, notes that, according to the Working Group on Child Trafficking under the Task Force on Human Trafficking in Austria, there is no national co-ordination or care and support concept for victims of child trafficking in line with international standards.
28. The Committee is concerned that some of the state-appointed legal representatives and guardians for asylum-seeking children may lack specific expertise on the needs of child asylum seekers.
29. The Committee is also concerned about the lack of support mechanisms for child victims of sale, prostitution and pornography, including for the purpose of sexual exploitation from abroad and that staff at reception facilities for separated asylum-seeking children may not always be aware of traumatic experiences of children under their care.
30. **The Committee recommends that the State party:**

- a) **Create a nationwide policy on co-ordination, care and support for the child victims of sale, in line with the requirements under the Optional Protocol;**
- b) **Ensure that resources be sufficiently allocated in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9 (3) of the Protocol, in particular by providing interdisciplinary assistance for child victims;**
- c) **Develop and implement comprehensive policy that includes effective reporting and referral system of all cases of child victims of offences under the Protocol with necessary provisions for child-sensitive investigations of such cases;**
- d) **Ensure that the Helpline “147 Rat auf Draht” is sufficiently funded to allow its permanent operation, fully accessible and known to children, and facilitate the collaboration of the Helpline with child-focused NGOs, the police as well as health and social workers;**
- e) **Ensure that legal representatives of separated asylum-seeking children are specially trained persons familiar with the specific needs of child asylum seekers; and**
- f) **Ensure that support services with specifically trained staff are systematically made available to child victims of sale and trafficking from abroad, and ensure that the best interests of the child is the primary consideration in the case of a decision to repatriate a child;**
- g) **Ensure that any bilateral agreements on repatriation should be strictly guided by the best interest of the child principle and that sufficient resources are allocated for adequate monitoring and thorough follow-up of repatriated children; and**
- h) **Guarantee that all child victims of the offences described in the Protocol have access to adequate procedures and to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9(4) of the Optional Protocol.**

Criminal justice system protection measures

- 31. The Committee, while noting with appreciation the interest taken by the State party to ensure the implementation of the UN Guidelines on Justice matters related to children witnesses and victims of crime. The Committee nevertheless notes that some child victims of prostitution may be treated as offenders rather than as a victim.
- 32. **The Committee recommends the State party to continue to consolidate its efforts to bring its legislation and administrative procedures to closer harmony with the Optional Protocol and in this respect, be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20).**

VII. International assistance and cooperation (art.10)

International assistance

33. **The Committee welcomes the State party's extensive support for international cooperation projects relating to implementation of the Optional Protocol in a number of countries, in particular, to address trafficking in children, and urges the State party to strengthen international cooperation to combat sale of children, child prostitution and child pornography, taking into account the relevant concluding observations adopted by the Committee on these countries with respect to the Optional Protocol.**

Law enforcement

34. **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.**

VIII. Follow-up and dissemination

Follow-up

35. **The Committee recommends the State party to take all appropriate measures to ensure full implementation of the present recommendations, within the framework of follow up and implementation of the Committee's concluding observations on Austria's second periodic report (CRC/C/15/Add.251), *inter alia*, by transmitting them to the members of the Council of Ministers, the Federal Assembly, and to Länder Governments and Parliaments for appropriate consideration and further action.**

Dissemination

36. **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 (but not exclusively) through the internet, to the public at large, civil society organizations, the media, youth groups, professional groups in order to generate debate and awareness of the Convention, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through, *inter alia*, school curricula and human rights education.**

X. Next report

37. **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 combined third and fourth periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention, due on 4 September 2009.**