



# Convention on the Rights of the Child

Distr.: General  
7 October 2011

**ADVANCE UNEDITED  
VERSION**

Original: English

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## Committee on the Rights of the Child

Fifty-eighth session

19 September – 7 October 2011

### **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: Sweden**

1. The Committee considered the initial report of Sweden (CRC/C/OPSC/SWE/1) at its 1662nd meeting (see CRC/C/SR.1662), held on 3 October 2011, and adopted, at its 1669th meeting, held on 7 October 2011, the following concluding observations.

#### **Introduction**

2. The Committee welcomes the submission of the State party's initial report, which was informative, analytical and self-critical, and the written replies to a list of issues (CRC/C/OPSC/SWE/Q/Add.1, 2011). The Committee appreciates the constructive dialogue held with the cross-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 fourth report of the State party under the Convention on the Rights of the Child (CRC/C/SWE/CO/4, 2009) and on the initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/SWE/CO/1, 2007).

#### **I. General Observations**

4. The Committee welcomes various positive measures in areas relevant to the implementation of the Optional Protocol, in particular the adoption of Chapter 6, Section 10a of the Penal code, criminalising the grooming of children for sexual purposes, on 1 July 2009;

5. In addition, the Committee notes with appreciation the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, 2005, ratified by the State party in May 2010.

## II. Data

6. The Committee is concerned about the lack of a comprehensive system for data collection. It particularly regrets the absence of national statistical data on child prostitution in the State party as well as on child trafficking victims.

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

**(a) Further develop and centralize mechanisms for the systematic data collection in all areas concerning 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, covering all victims and perpetrators of such offences;**

**(c) Undertake qualitative and quantitative studies and analysis on the root causes and prevalence of all the offences under the Optional Protocol, and the impact of the policies implemented and services provided for addressing them.**

## III. General measures of implementation

### Declarations

8. The Committee is concerned that the State party's declaration to article 2(c), wherein it states that it interprets the words 'any representation' in the article as merely pertaining to 'visual representation' of child pornography, hinders the full implementation of the Optional Protocol for dealing with all forms of child pornography.

**9. The Committee recommends that the State party consider withdrawing its declaration on article 2(c) in order to give full effect to the Optional Protocol in addressing all forms of child pornography.**

### Legislation

10. The Committee regrets that the Convention and its Optional Protocols have not been fully incorporated into the State party's legislation. The Committee is particularly concerned that:

(a) The State party's legislation fails to specifically define and prohibit all the offences, as provided in articles 1, 2 and 3 of the Optional Protocol;

(b) Sexual exploitation is not subject to commensurate criminal sanctions;

(c) The State party's jurisprudence and legislation is not consistently providing adequate protection for child victims above the age of 15;

(d) Crimes such as the purchase of a sexual act of a minor and exploitation of children for sexual posing; are categorised as "less serious sexual offences against children".

**11. The Committee urges the State party to fully incorporate the Convention and its Optional Protocols into its legislation, including by:**

**(a) Ensuring that commercial sexual exploitation is subject to commensurate sanctions under its criminal justice system;**

**(b) Ensuring that all victims of child abuse, particularly those above the age of 15 years, are provided with adequate legal protection;**

(c) **Reconsider their evaluation of the purchase of a sexual act of a minor and exploitation of children for sexual purposes as “less serious sexual offenses against children” and consider removing the requirement of double criminality for such offences when they are committed outside its territory;**

(d) **Enact legislation in full compliance with its obligations under articles 1, 2 and 3 of the Optional Protocol to define and prohibit all cases of sale of children.**

**The Committee reminds the State party that its legislation must satisfy its obligation with regard to the sale of children, a concept which is similar, though not identical, to trafficking in persons, in order to adequately implement the provisions regarding the sale of children contained in the Optional Protocol.**

#### **National Plan of Action**

12. The Committee takes note of the State party’s National Action plan as well as the Action Plan against prostitution and human trafficking for sexual purposes. However, it regrets that the update of the National Action plan has been postponed to 2012. Furthermore, the Committee is concerned that the State party does not have an overall strategy for the implementation of the Optional Protocol and that measures taken to address the underlying demand factors leading to offences under the Optional Protocol remain inadequate.

**13. The Committee calls upon the State party to establish a comprehensive framework for the implementation of the Optional Protocol. In doing so, the Committee recommends that the State party take into account measures for addressing the demand factors leading to violations of the Optional Protocol by:**

(a) **Undertaking further research on offenders, including female and juvenile offenders;**

(b) **Increasing and improving its awareness-raising measures including campaigns;**

(c) **Increasing and strengthening the use of preventive measures.**

#### **Coordination and evaluation**

14. The Committee is concerned that inter-agency collaboration and competence on addressing violation under the Optional Protocol remains inadequate. In this context, the Committee is further concerned that the State party has not established a system for the monitoring and evaluation of bodies responsible for the implementation of the Protocol and coordination of such efforts between relevant regional and local authorities .

**15. The Committee urges the State party to undertake concrete measures to strengthen its inter-agency coordination for addressing violations under the Optional Protocol, including by establishing a system for the monitoring and evaluation of bodies responsible for the implementation of the Protocol and coordination of such efforts between relevant regional and local authorities**

#### **Dissemination and awareness-raising**

16. The Committee notes with concern that awareness of the Optional Protocol among the general public and professionals working with or for children remains low.

**17. The Committee recommends that, pursuant to article 9 paragraph 2 of the Optional Protocol, the State party undertake all measures necessary for making its provisions widely known among the public, particularly among all professionals**

**working with or for children, including by appropriate media, educational and professional training campaigns.**

#### **Training**

18. While noting as positive the State party's training programmes in connection with its Action Plan against prostitution and human trafficking for sexual purposes, the Committee is concerned that knowledge on identifying and addressing risk factors related to the offenses covered by the Optional Protocol as well as on how and where to report and handle cases of such violations, including those involving foreign victims, remains low amongst professionals working with or for children.

**19. The Committee recommends that the State party systematically provide training programmes on the Optional Protocol for all professionals working with or for children, including specifically on identifying the risk factors relevant to the Optional Protocol and relevant follow-up procedures for addressing such violations and on instances where there is the suspicion of such offences occurring. The Committee also recommends that such training programmes include content on socio-cultural sensitivity to allow relevant professionals to effectively address cases involving foreign victims.**

#### **Child rights and the business sector**

20. The Committee notes with interest that the Ethical Council of the four State Pension Funds examines environmental and ethical considerations by foreign companies where the Funds invest, regarding international conventions on environment and human rights. The Committee recommends that State corporations, including the State Pension Funds, who invest abroad or operate through subsidiaries or associates in foreign countries comply with due diligence requirements to prevent and protect children in those countries from offenses under the Convention and the Optional Protocol and in accordance with their principles. The Committee further recommends that the State party appropriately regulates investments and activities of all Swedish companies abroad, in this same respect.

### **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**

21. The Committee is concerned that the measures to prevent offences under the Protocol are inadequate, including with regard to:

(a) The care and rehabilitation services for offenders only being available to those who are incarcerated and the resulting lack of such preventive measures being applied to the majority of offenders who are only subject to non-custodial, economic penalties;

(b) The lack of mandatory training on internet safety in the school curriculum;

(c) Convicted sex offenders not being consistently prohibited from working with children;

(d) The lack of protection for vulnerable unaccompanied asylum-seeking minors and children of irregular immigrants or undocumented children;

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

- (a) Ensure the provision of rehabilitation and counselling for all perpetrators of Protocol offences, including those who have not been subject to a prison sentence;
- (b) Include mandatory training on safe internet usage inside the school curriculum;
- (c) Undertake measures to prohibit all convicted sex offenders from working with children;
- (d) Ensure the provision of adequate protections measures for children in an unaccompanied asylum-seeking or migration situation, including by increasing control of the person(s) into whose care the child is put.

#### **Child Sex Tourism**

23. The Committee takes note of improvements in the State party's efforts to combat child sex tourism. However, the Committee is concerned that the sign up rate of the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism remains low amongst enterprises in the State party. The Committee is further concerned at the low level of public awareness of child sex tourism and the above mentioned Code of Conduct and the World Tourism Organisation (UNWTO) Global Code of Ethics for Tourism.

**24. 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**

25. While welcoming the criminalization of many aspects of child pornography such as viewing of such material, and the inclusion of a broader definition of a child in the penal provision of child pornography, the Committee remains concerned that the criminal code of the State party does not cover all the offences included in the Optional Protocol. In particular, it is deeply concerned that:

- (a) Texts and sounds depicting sexual abuse of a child are not prohibited;
- (b) Portrayal, dissemination, purchase, transfer etc. of child pornography will not be incriminated, if the pubertal development of the child is complete, or if his or her minority was not apparent from the picture and its attendant circumstances;
- (c) Crimes relating child pornography are considered "public order" offences under chapter 16 of the Swedish Penal Code rather than sexual offences under its chapter 6;

(d) Despite the prohibition of pornographic pictures of all kinds' exceptions are permitted for craft-scale production and subsequent possession of drawings; for personal viewing;

(e) There is no explicit legislative prohibition on the import and export of pornographic drawings of children'

(f) Penalties are not proportional to the seriousness of the crimes, frequently providing for mere financial penalties and short terms of imprisonment'

(g) The age intent of the perpetrator not being a consistent factor taken into account by courts for cases concerning child victims of sex offences'

**26. The Committee recommends that the State party revise and bring its Penal Code into full compliance with articles 2 and 3 of the Optional Protocol, ensure that the law is enforced in practice and that perpetrators are brought to justice in order to prevent impunity. In particular, the State party should criminalize:**

(a) **Offering, obtaining, procuring or providing a child for prostitution;**

(b) **Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography;**

(c) **An attempt to commit any of these acts and complicity or participation in any of these acts;**

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

#### **Jurisdiction and extradition**

27. While welcoming the State party's legislation which allows for extraterritorial jurisdiction with respect to the offences stipulated therein, the Committee nevertheless regrets that the requirement of double criminality remains for the offences of the purchase of a sexual act of a minor and exploitation of children for sexual posing.

**28. 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 for all offences under the Optional Protocol.**

29. The Committee notes that an extradition agreement is not required for the extradition of offenders under the Protocol. However, the Committee is concerned at the limitations on such extradition, particularly, the requirement of double criminality for some offences under the Protocol. The Committee is further concerned that not all offences entailing a sentence of more than one year of imprisonment may lead to extradition and that, with few exceptions, nationals of the State party cannot be subject to extradition.

**30. The Committee recommends the State party to remove the limits on extradition for offences under the Protocol, in particular the requirement of double criminality and the requirement of a minimal penalty under its Penal Code. The Committee further recommends that, in accordance with article 5.5 of the Protocol, the State party take appropriate measures to submit the case to its competent authorities for the purpose of prosecution on instances where it denies a request for extradition.**

#### **Liability of legal persons**

31. The Committee notes with concern, that the State party has not taken further measures on establishing corporate liability for crimes under the Convention and its Protocols and that sanctions against corporate entities remain limited to pecuniary penalties'

32. The Committee recommends that the State party ensures that in addition to pecuniary penalties, there is legislation and commensurate criminal, civil or administrative sanctions for ensuring the undertaking of measures that effectively prevent the recurrence of such offenses. It further invites the State party to encourage corporations to:

- (a) Establish an ethical policy concerning the commercial sexual exploitation of children;
- (b) Insert respective clauses inside contracts with suppliers.

## **VI. Protection of the rights and interests 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 Optional Protocol**

33. While welcoming measures to protect child victims of sexual exploitation, the Committee is concerned about:

- (a) The low rates of active prosecution for the sexual exploitation of children, with 85-90% of the cases of the last ten years never having resulted in prosecution;
- (b) The crime victim portal not being adequately child-friendly;
- (c) The exacerbation of the vulnerability of victims of trafficking vulnerability resulting from them frequently being precluded from obtaining a residence permit;
- (d) The Non-compliance with the Palermo Protocol due to the absence of provisions prohibiting the of involuntary appearance of victims in court.

34. The Committee urges the State party to:

- (a) Establish mechanisms for the more systematic and effective prosecution of sex offenders;
- (b) Make available a child friendly and accessible version of the crime victim portal;
- (c) Facilitate the receipt of a residence permit for child trafficking victims, who have been trafficked into Sweden;
- (d) Ensure that its legislative and procedural provisions are in full compliance the Palermo Protocol.

### **Recovery and reintegration of victims**

35. The Committee welcomes the fact that the State party's County Administrative Board of Stockholm has been commissioned to develop rehabilitation programs for victims of trafficking for sexual purposes and prostitution. The Committee further welcomes that the County Administrative Board of Stockholm also runs a safe return project, funded and commissioned by the State party. However, the Committee is concerned that foreign children are not receiving assistance and protection service with the same quality standards as for children from the State party. The Committee is further concerned that both the rehabilitation programmes and the safe return project are limited to the Stockholm area.

36. The Committee recommends that the State party:

- (a) Take all necessary measures to ensure that child victims of the offences under the Optional Protocol, particularly children of foreign origin, are provided with

appropriate assistance, including for their full social reintegration and physical and psychological recovery, by, inter alia, expeditiously implementing its planned rehabilitation programs for victims of trafficking for sexual purposes and prostitution.;

(b) Guarantee that all child victims, including those who are not nationals or residents of the State party, 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;

(c) Undertake measures to ensure that its rehabilitation and safe return programmes are available throughout its territory.

#### **Helpline**

37. While noting the existence of a hotline for reporting child pornography, trafficking in children for sexual purposes as well as child sex tourism, the Committee is concerned that this hotline does not benefit from sufficient resource support from the State party and that the general public awareness, including among children, of this hotline is low. Furthermore, the Committee is concerned that the European Hotline Number for Missing Children “116 000” has yet to be implemented in the State party.

38. The Committee recommends that the State party provide the hotline with the necessary human, technical and financial resources to ensure its efficacy, continuity and visibility, including among children and for occurrences of offences under the Protocol committed by its nationals outside its territory. The Committee further recommends that the State party undertake the measures necessary for the expedient operationalization of the European Hotline Number for Missing Children “116 000” in its territory.

### **VII. International assistance and cooperation**

39. 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. Ratification of international and regional human rights instruments**

40. The Committee notes that numerous relevant international and regional human rights instruments that have been signed by the State party have yet to be ratified, including, inter alia, the Hague Convention No. 34 on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect to Parental Responsibility and Measures for the Protection of Children, 1996; the European Convention on the Exercise of Children's Rights, 2000; the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007; the Council of Europe Convention on Cybercrime, 2001; and, the

Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, 2003. The Committee urges the State party to expediently ratify all relevant international and regional human rights instruments that it is signatory to. The Committee also encourages the State party to consider ratifying the international human rights instruments to which it is not yet party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of all Persons from Enforced Disappearance and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

## **IX. 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 Parliament, relevant ministries and to local authorities, the judiciary, as well as to Child Protection Committees and Sub-Committees at governorate and district levels respectively, 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.

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