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STATE PARTY EXAMINATION OF BURKINA FASO'S INITIAL PERIODIC REPORT ON THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

62ND SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Burkina Faso ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 31 March 2006. On 21 January 2013, the Committee on the Rights of the Child (the Committee) examined the initial report of Burkina Faso.

Opening Comments

The delegation of Burkina Faso was led by Mr Dieudonné Marie Désire Manly, Technical Advisor for the Ministry for Social Action and National Solidarity of Burkina Faso. He was supported by a delegation from the Ministry of Social Action and National Solidarity, the National Council for the Survival, Protection and Development of the Child, the Permanent Mission of the Embassy of Burkina Faso in Geneva, Ministry of Human Rights and Civic Promotion, and the Permanent Mission of Burkina Faso to the United Nations in Geneva.

Mr Manly stated that the report had been prepared in line with the Committee's technical guidelines and had included cooperation with a wide range of civil society organisations and relevant professionals. Burkina Faso had taken several steps to address the prevention of the sale of children, child prostitution and child pornography. These included projects and a national action plan to combat child labour, as well as investments in large-scale awareness-raising campaigns on the sale and exploitation of children. Mr Manly stated that Burkina Faso had also drafted a bill which defined and prohibited the sale of children, child prostitution and child pornography in line with the OPSC. Emphasis had also been given to regional cooperation which had resulted in discussions with Côte d'Ivoire to sign an agreement on cross-border trafficking.

Mr Hatem Kotrane, the Country Rapporteur for Burkina Faso, welcomed the delegation and commended the State's punctuality in submitting its report and the inclusive processes involved in its preparation. Mr Kotrane asked what had been done to disseminate the OPSC

and what legislative reforms had been taken to criminalise the offences under the OPSC.

General Measures of Implementation

Legislation

The Committee observed that although the State had made legislative reforms, they appeared to be limited on a practical level and there had been no reform of the criminal code. Although it did not cover OPSC-related offences, the Committee recognised that a new bill for the punishment of the perpetrators of trafficking had been passed and stated that it would have to wait to assess its success in achieving the intended results. The Committee observed that the OPSC had not been directly incorporated into domestic law and highlighted the need for the State to criminalise the specific acts. It requested information regarding the draft General Code for the Protection of Children and asked whether the provisions of the OPSC had been incorporated. Furthermore, the Committee noted that offences were only punishable where they had occurred in the State and did not include any offences committed outside the State.

The delegation stated that the provisions of the OPSC had been incorporated into various texts which prohibited the sale of children, child pornography and child prostitution. It highlighted the State's draft General Protection Code for Children in 2010 which had been abandoned after being informed that it was incompliant with the provisions of the Convention on the Rights of the Child (CRC). Consequently, the Code had been modified to address children in conflict with the law. Furthermore, an inter-ministerial Committee had been created to overhaul the Criminal Code and ensure its full compliance with the State's ratified international instruments.

Coordination

The Committee requested information about the coordinating body that would oversee the implementation of the OPSC. It also asked about the National Human Rights Commission's nature of operation and how complaints were received and followed up on.

The delegation explained that the National Council for the Survival and Development of Children was an inter-ministerial unit which was composed of all the ministries related to the preservation of children's rights and held the National Children's Forum every three years. The Council had been responsible for coordinating the implementation of the CRC, OPSC and the Optional Protocol on Children Involved in Armed Conflict (OPAC), as well as the African Charter on the Rights and Welfare of the Child.

The National Human Rights Commission could receive complaints from children or their representatives and clarified that as of 2010 it had been fully independent in terms of its financial and human resources, thus being compliant with the Paris Principles. It consisted of members from civil societies and had been authorised to make decisions and hold consultations. Furthermore, it had taken an oath to monitor the rights of children and investigate their complaints. A Chamber for the Rights of Children had been created as the responsible body for following up on reports of children's rights violations.

Budget allocation

The Committee asked what allocations had been made by the State for child victims of offences under the OPSC. It noted that the Poverty Reduction Strategy had made specific allocations and asked what resources would be devoted to future strategies on the largely unexplored area of internal migration, which led to many girls becoming subjected to

domestic servitude. The delegation stated that no specific budget lines had been allocated to combating violence against children but highlighted that the Ministry for Children had made provisions in its budget for financial and technical resources available for children.

Awareness-raising and dissemination

The Committee expressed concerns that the knowledge of the OPSC among the general public was very low and inquired about the measures that had been taken to raise awareness about its provisions. It noted a low level of education, particularly among girls, who constituted 60 per cent of the victims subjected to crimes relating to the sale of children, child prostitution and child pornography. The Committee noted that no specific efforts had been made by the State to build knowledge or disseminate information on the OPSC and asked about the concrete measures that had been taken to address these issues. The Committee highlighted that limited research had been conducted on these areas which could contribute to ineffective implementation. The Committee inquired about the efforts that had been made to educate children in schools about the OPSC. It expressed concern that a large proportion of the population was illiterate and that only approximately half of school-age children were actually attending school.

The delegation explained that civil society organisations played a crucial role in disseminating information about child the rights, including the OPSC. Civil society organisations assisted the police in their investigations and trained commissioners. The National Council for the Survival and Development of Children had a permanent secretariat which was responsible for disseminating the provisions of the OPSC.

Prevention

Birth registration

The Committee commended the State's commitment to birth registration but highlighted that rates of unregistered births remained high and inquired why this was the case. It asked what measures had been taken to address this issue.

The delegation stated that there were still high levels of unawareness amongst the general population regarding the needs and importance of birth registration. Current efforts had included trying to ensure that women would give birth in health centres and issuing birth certificates there. At least 11,000 birth certificates had been issued, with 1,000 being issued for new-borns. From 2009 to 2010, the State had provided birth certificate replacements to older citizens, for example to guarantee voting rights. Although efforts had been made to improve birth registration, the documentation system needed to be modernised and investments were needed to improve internet coverage throughout the country to allow for further improvements to the system.

Harmful practices

The Committee highlighted some practices seemed discriminatory in nature against women and girls, subjecting them to harmful practices such as polygamy, neglect, exploitation and deprivation of land ownership. It inquired about the measures that had been taken to eradicate such practices both in terms of amending the legislation and changing cultural norms. It asked what had been done to raise awareness and disseminate information to change the cultural norms and customs that negatively impacted the enjoyment of the rights of girls. The delegation noted that female genital mutilation had been criminalised and that crimes in this

regard carried heavy sanctions under domestic law; however this had led to many cases of girls going abroad to have the procedure.

Early marriage

The Committee observed that early marriage was prohibited by law but asked what had been done in practice to enforce this. Many girls failed to complete education and reflected higher drop-out rates as a result of domestic servitude or early marriage. The Committee acknowledged that the State had taken a number of measures to combat the issue of early marriage; however it was concerned that the marriage age remained low and asked whether it planned to raise this or whether this would remain set at 17. The Committee inquired about the efforts that had been made to sensitise such religious leaders to the negative impact of early marriage on the rights of girls.

The delegation confirmed that the Family Code had established the legal age for marriage as being 17 for boys and girls. The Ministry for the Promotion of Women had been working on a draft to raise this to 18 for both girls and boys. The delegation hoped that the revision of the Family Code would lead to many changes regarding marriage for both sexes. In cases of early marriage, sanctions were imposed on perpetrators; however the delegation highlighted that in order for a marriage to be valid, it had to be celebrated in a civil registrar with the consent of both parties. Where there had been coercion and the legal age had not been attained, the marriage could be stopped.

The delegation stated that it was particularly focusing on the Sahel region where practices such as early marriage, as well as female genital mutilation, were common. Efforts had been made by the Ministry of Social Action to reduce the number of cases and sensitise the leaders to ensure that female children were able to complete their education. The delegation explained that the State wanted to abolish polygamy however had faced public resistance on the matter. Polygamy was a practice inherently linked to the State's cultural norms, however the delegation reiterated that it was an area that it would continue to work on and noted that this process would require further time to achieve the intended results.

Helpline

The Committee requested further information about the helpline created to receive reports of cases of abuse and what resources had been given to it, management and the number of calls it received. The delegation stated that a hotline had been created for children to report such instances and police and prosecutors were immediately involved in such cases. A duty was placed on those working with children to report any claims of violence. Civil society organisations played a significant role in dealing with such issues. With regards to the "116" helpline, the delegation stated that it operated twenty-four hours a day and complaints were made by the person receiving the call who then had to contact the intervention team directly.

Prohibition and Related Matters

Liability of legal entities

The Committee observed that no information had been provided in the State report on the criminal liability of legal persons for committing offences under the OPSC. The Committee asked what happened in situations where children had been involved in committing an offence under the OPSC. The Committee noted the low conviction rates for offences committed under the OPSC and stated that although the acts were recognised as crimes in

law, there had been no convictions to date.

The delegation stated that legal entities would be criminally liable for offences under the OPSC and highlighted that the State had made efforts to sensitise both legal and physical persons about the OPSC provisions. Where an adult and a child were involved in the perpetration of an offence, the child would be subject to a lesser penalty as well as different treatment to that of the adult. The delegation stated that under the Criminal Code, children under the age of 13 could not be held criminally liable. Those aged 13 to 15 were given special consideration depending on their circumstances; and those between 15 and 18 were allowed an element of discretion. Those aged 13 to 15 were provided with legal assistance and were assigned to a social worker. Children, who had perpetrated such offences, were held in temporary custody in separate cells from adults.

Extraterritorial jurisdiction

The Committee inquired about how extraterritorial jurisdiction was exercised by the State and asked whether there were any plans to amend current legislation. The delegation acknowledged this was a complex area and explained that where an OPSC-related offence had been committed in a country that did not criminalise the offence or had not ratified the OPSC, it had been difficult to prosecute.

Extradition

The delegation explained that the State adhered to international legal obligations and allowed extraditions for offences under the OPSC. The Criminal Code did not require the element of dual criminality; however, although the State had the power to impose sanctions on returning nationals who had committed crimes abroad, the problem remained in establishing the facts of the crime and identifying the perpetrator.

Child pornography

The Committee asked whether the Criminal Code explicitly prohibited and punished child pornography. It commended the State's efforts made to address the issue of child pornography since 2010 which included alerting cinema and cyber café managers about child pornography. It inquired about whether the law punished or merely arrested those involved in the distribution of child pornographic material. With regards to child pornography, the Committee asked the delegation to provide further information about the measures taken against companies and corporations in the private sector that were found to be manufacturing and distributing child pornographic materials. The Committee asked if there had been any studies conducted to examine the root causes and the extent of child pornography and trafficking in the State. The delegation stated that child pornography had been prohibited and provisions had been spread out in various legal texts condemning the use of children in pornography. The delegation also confirmed that offenders providing minors with access to pornographic material would be punished and national provisions stipulated that pornographic material would be confiscated. The delegation explained it was hard to quantify the actual penalties as this varied greatly in nature.

Child prostitution

The Committee asked about the measures that had been implemented to tackle some of the root causes of child prostitution and asked how children were identified as victims of prostitution. The Committee reiterated the importance of the law punishing perpetrators and not the victims who had been forced into solicitation. It stated it was crucial that children

under 18 were always treated as victims and that these children were afforded the necessary protection and support. It inquired about whether any literacy campaigns had been initiated. The Committee asked whether the relevant professionals involved, such as doctors, teachers and social workers, had a duty to report violations committed under the OPSC.

The delegation stated that school attendance rates had increased and that many partners had collaborated to achieve 100 per cent attendance of school-age children by 2020. The delegation noted that the education of girls was crucial for the elimination of domestic servitude and acknowledged the low levels of school attendance rates for girls who tended to drop out, which largely stemmed from these issues. To combat this, the State had made additional resources available through collaboration with other partners and had created a centre specifically for girls to assist in their schooling. Proper training had been given to the staff to address children's complaints of violations in an appropriate manner. Those working with children were obligated to report cases to ensure that awareness of the issue existed.

Child Labour

The Committee observed that although child labour was punishable by law, it was not considered a form of sale. The Committee asked about the measures that had been taken to address the issue of child labour in relation to the crimes under the OPSC and requested further information about the implementation of the national action plan to combat the worst forms of child labour. The delegation stated that child labour was widespread throughout the country and highlighted that associations had been created to protect children from exploitative labour. The delegation also explained that many forms of exploitative labour had been prohibited by law and the State had increased its efforts to protect children from the worst forms of labour. It acknowledged that there were cases where parents had sent their children to Côte d'Ivoire for the purpose of labour; however the delegation highlighted that this was considered illegal and constituted a form of sale of children and trafficking in children. The delegation recognised the need to make distinctions between domestic child labour as well as child labour abroad, as these were considered differently under the law.

Begging

The Committee requested further details about how the State handled children found begging and whether this had been addressed through sanctioning or punishment for the responsible adult offenders. The Committee asked whether there had been any prosecutions for this particular situation. The delegation stated that the law on trafficking outlawed begging and that awareness campaigns had been formulated to eradicate this practice. The delegation explained that children the practice of children being forced to beg was common. Children were also often used to as agricultural labour. There were cases where complaints from parents had resulted in the offenders exploiting children being prosecuted.

Garibo children remained a problematic group to address as they were guided by the Quran, and often religious influence did not permit action to be taken to protect children in these situations. The State planned to focus heavily on raising awareness, training parents, and dissuading religious leaders from encouraging such practices. The State had made provisions for the Taléb children to ensure that these children often found working and living on the streets, could access outreach services and were sufficiently protected. A number of forums had been held on these issues and the delegation stated that this remained an issue that required time for cultural perceptions to change. All children received an education and were required to take classes in religion.

Adoption

The Committee observed that the State had ratified the Hague Convention but noted that in 2010, international adoptions had been suspended. It inquired whether adoptions had been resumed and requested further information about the adoption process. The Committee asked the delegation what guarantees had been provided to ensure that there were no cases of children being sold for adoption. It also inquired about how intermediate persons receiving payment for adoption were punished by law and asked about the specific provisions made by law to criminalise offences under the OPSC.

The delegation stated that the State had not put a moratorium on adoption and had instituted measures to prevent the sale of children. The authority for adoption rested between the State, civil society organisations and financial partners. No specific procedure had been established apart from what had been set out in legal texts. Where cases of international adoption were concerned the court was authorised to punish illegal adoptions. The delegation clarified that individual procedures for international adoption did not exist and that the adoption had to be completed by making the application through the central authority of the State with the approval of the other country. Furthermore, the delegation stated that there was a directorate for the protection of children who were adopted, which would ensure that all provisions were in compliance with The Hague Convention as well as domestic guidelines on adoption. It had also tried to raise awareness about adoption to ensure participation by other African countries.

The delegation recognised the need for more disaggregated data on adoption and highlighted that the State had provided support for alternative care settings for children to the best of its ability given its limited resources. Foster parents had been provided with financial support to provide for children in their care. The Criminal Code stated that intermediaries could be prosecuted in cases of deviation of minors.

Informal foster care

The delegation stated that traditionally, informal fostering by maternal or paternal uncles had been a common practice. In recent years, informal fostering was less prevalent and most children remained under parental care. Greater efforts had been made to educate about these issues in schools. Cross-border agreements with Mali and Côte d'Ivoire had been strengthened; and the State had drafted an agreement with Côte d'Ivoire to combat trafficking between the two states which it expected would come into force soon.

Protection of the Rights of Victims

Victim support

The Committee noted that support for child victims of sale, child prostitution and child pornography seemed limited. It inquired about the rehabilitative and reintegration services available to the child and whether financial compensation was offered. The delegation highlighted that trafficking had been clearly defined in the law and the State had collaborated with its partners for the operation of a helpline for victims of trafficking. The Ministry for Social Action coordinated child protection activities such as providing care for Taléb children living in street situations. It had also created a technical committee to facilitate their protection. For victims of sexual violence, a mechanism of care had been created which included transit centres where trafficked victims could receive services such as medical counselling and healthy meals. Following the child's return to the family environment, the family was given the option to place the child into a rehabilitative programme to help the

child to reintegrate into mainstream society and pursue an academic education. Local law enforcement was also responsible for ensuring that victims of violence were cared for. With regards to the services available for children who were involved in armed conflict, a free helpline had been established which operated 24 hours a day.

Access to legal services & right to privacy

The Committee inquired about the legal status of the child and asked whether child victims were entitled to legal aid and representation. It also asked about the mechanisms to prevent children from having to face their perpetrators and limit the extent of re-victimisation, for example recording children's testimonies. The Committee asked whether it was possible for children to have private rather than public hearings.

The delegation stated that when a child was recovered from a situation of sale, prostitution or pornography, the child was able to see his or her parents and would be taken into a care centre where food and psychological support was provided. Where the case was overseen by a judge, the child was required to have a lawyer present. The legal aid fund had been established to allow for legal representation. The child could give testimony using a microphone in a separate room to avoid facing the perpetrator. The delegation stated that although procedures could be public, where it was deemed against the welfare of the child, the child's identity would not be revealed.

Protection of children in the media

The Committee asked what measures were in place to ensure that the names of child victims were not revealed in the media. The delegation stated that the legislation in the State had established penalties which had recently been applied to a daily newspaper that was suspended as it had published images of children living in street situations, in violation of their privacy rights. The State had issued a warning to the newspaper, reaffirming the State's commitment to the prohibition of images that compromised children's privacy rights. The delegation explained that the State had extended its provisions to include the prohibition of publishing any images or videos of children involving children in conflict with the law

Concluding Remarks

Mr Kotrane noted Burkina Faso's considerable efforts to align its legislation with the CRC and the OPSC but highlighted that reforms had been limited in terms of the penal and criminal codes. He stated that the offences under the OPSC had to be stipulated in domestic legislation and that Burkina Faso had to place its focus on preventative measures in the areas of tourism, children living and working in the street, international adoption and alternative care. Mr Kotrane highlighted that further efforts had to be made to sensitise and raise awareness about children's rights and the provisions of the OPSC within the State.

Mr Manly expressed satisfaction with the dialogue with the Committee and reiterated the State's intention to remain open to the recommendations of the Committee to ensure that children's rights were improved for all children in Burkina Faso without discrimination.