



ngo group for the crc

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

48TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
19 MAY - 6 JUNE 2008

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The USA ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 23 December 2002. On 22 May 2008 the Committee on the Rights of the Child (the Committee) considered the USA's initial report.

Opening Comments

Mr. Mark P. Lagon, Director of the Department of State's Office to Monitor and Combat Trafficking in Persons and Chair of the Senior Policy Operating Group on Trafficking in Persons, mentioned strengthened laws which guaranteed assistance to victims of commercial sexual exploitation. He emphasised attempts to counter demand by penalising brothel owners and customers as well as increased sentences for sex traffickers and sex tourism. Nationwide campaigns and partnerships with health care staff, teachers and tourism agencies had raised awareness. An annual report on trafficking worldwide was published and helped to raise global awareness as well as encourage the provision of additional funds to NGOs and UN agencies. There were still areas for improvement, for example, in 2008 the annual report to Congress on trafficking highlighted the identification and provision of assistance to citizen victims as a concern.

Ms. Sigal Mandelkar, Deputy Assistant Attorney General, mentioned the extensive laws against offences covered by the OPSC. She described the work of taskforces on exploitation of children on the Internet, domestic prostitution and trafficking. She also recognised the contribution of NGOs particularly in identifying and assisting victims. The USA was engaged in bi-lateral and multi-lateral efforts to deter and prevent the increasing global traffic and exploitation of children.

Mr. Gary King, Attorney General for the State of New Mexico, described successful collaboration with the Mexican state of Chihuahua in developing compatible strategies and joint training for law enforcement personnel on trafficking and sexual exploitation. A new law defining trafficking as a felony had aligned New Mexico with the surrounding states in treating this as a serious crime. This anti-trafficking law also provided victims with state services until they could qualify for those provided by the federal Trafficking Victims Protection Act.

Ms. Lee, the country rapporteur, noted that this was an historic moment for the Committee and looked forward to a constructive dialogue. She welcomed the ratification of ILO Conventions 138 and 182 and the Hague Convention on Inter-country Adoption as well as the domestic laws and initiatives which demonstrated the state's commitment to combating sexual exploitation of children. She observed the inconsistencies between provisions in different states and stressed the need to harmonise federal and state laws and provisions. The State Party report did not follow the Committee's guidelines; although there were no major gaps it was legalistic in tone and lacked data and information on rehabilitation and recovery systems. The Committee would have liked more critical self-analysis including of difficulties in implementing the OPSC. She asked whether the report covered all areas where the state exercised sovereignty. She requested clarification of the statement that, with the exception of article 5, the provisions of the OPSC were not self-executing, which was particularly concerning since all the offences listed in article 3 were not penalised. She asked about the possibility of requesting extradition for an offence not criminalised in the state where it was committed or if there was no extradition treaty with the state where it was committed. She suggested that the possibility of arresting a child for prostitution, even as a measure of last resort, was inconsistent with a victim centred approach and implied a perception of the child as an offender. She accepted that it was still too soon to ask about developments to comply with the Hague Convention, but asked about the plans to revise the reservation on article 3 as the grounds for this reservation (that the USA was not a party to the Hague Convention) had been removed.

General measures of implementation

The Committee hoped that the ratification of the two optional protocols might be a step towards the ratification of the Convention on the Rights of the Child (CRC). It asked what weight was given to the ratification of the OPSC, since the state declared that it assumed no obligations under the CRC as a result of this ratification. The delegation clarified that this declaration meant no new obligations with respect to the CRC. The Vienna Agreement, of course, bound them not to act against the object and purpose of the optional protocols.

The Committee requested confirmation that the report covered all areas where the state exercised sovereignty and asked about the reservation on jurisdiction over ships and aircraft registered in the US. The delegation replied that both the obligations and the report extended throughout US territories. The reservation was due to a small technical gap in the domestic laws on criminal prohibitions and ownership. No prosecutions had been prevented by this limitation.

The Committee requested clarification of the statement that the provisions of the OPSC were not self-executing. It stressed that all the rights guaranteed by the OPSC should be directly applicable. It noted that no new laws had been introduced to comply with the provisions of the OPSC and expressed doubts about the full conformity of existing laws. It also asked about measures to ensure universal application of the OPSC since implementation was largely under the control of the states rather than the federal government. In this context it

asked about the involvement of the states in the ratification of international treaties. The delegation explained that it was difficult for the federal government to control the states particularly in the area of criminal law. The federal government could attach conditions to the funding it provided, but the state could always refuse the funding. Where there were no relevant state laws, perpetrators could be charged under federal laws. Before international treaties were ratified the Legal Advisers at the State Department assessed whether the country as a whole could implement the provisions and if not they considered entering reservations. The Senate then had to agree to ratification. This meant that at least two thirds of the states had voted to ratify the treaty. The state's obligation was to ensure that it fulfilled its obligations and as this had been done by domestic laws the fact that the OPSC was not self executing was not a problem. The delegation did not comment on the possibility of the federal government encouraging states to decriminalise prostitution.

The Committee asked about opportunities for improvement in implementation, particularly enhanced funding and greater cooperation. It also suggested the collection and analysis of more disaggregated data would be beneficial. The delegation replied that there was a dedicated inter-ministerial committee on data on trafficking and referred the Committee to their written replies for further information on research and data collection.

Legislation and definitions

The Committee noted that the OPSC was not about trafficking, although they welcomed the state's efforts in that area. It expressed concern at the ambiguities caused by the inclusions of all economic and sexual exploitation of children under trafficking and asked for clarification of the precise definitions. It asked whether the same definitions were applied in domestic law. For example, it enquired whether the children rescued from the polygamous sect in Texas were considered victims of trafficking. The delegation explained that according to their terminology, trafficking did not imply movement, instead control or gross exploitation were the defining features. They could not discuss the Texan sect as this was an ongoing criminal matter, but in general the standards within the USA should be the same as those used internationally. It confirmed that the sale of children was a criminal offence distinct from trafficking.

The Committee was deeply concerned about the definition of sale of organs which excluded "lawful payments of reasonable amounts", highlighting the fact that the payments under discussion would have greatly varying value depending on the circumstances of the family and the child. The delegation repeated the state's position that the OPSC did not prohibit donation of organs provided there was sufficient lawful consent and that these payments did not constitute profit.

The Committee asked whether cartoon style pornographic images were prohibited. The delegation confirmed that cartoons were covered by their definition and that there had been prosecutions for such images. Law enforcement on child pornography was becoming increasingly strict, including prosecutions for written depictions of sexual exploitation.

The Committee asked about the criminalisation of attempts to commit offences under the OPSC. The delegation replied that the majority of laws on sexual exploitation provided the same penalties for attempt as for the offence. Particular efforts were made to apprehend sexual tourists before they departed. The Committee asked about prosecutions for sex tourism in countries where it was not illegal. The delegation replied that the Protect Act allowed the prosecution of US citizens who committed sexual crimes abroad. The delegation did not provide information on the criminal responsibility of legal persons.

Jurisdiction and extradition

The Committee conceded that the OPSC did not require states to have universal jurisdiction over the crimes listed in article 3, but its practice was to encourage states to extend their jurisdiction. The delegation replied that the OPSC did not require them to establish jurisdiction where there was no extradition relationship.

The Committee asked whether someone who was not a US citizen and who committed a crime abroad could be prosecuted in the USA. The delegation replied that it would depend on the circumstances.

The Committee asked about extradition for offences not criminalised in the country where they were committed, or when there was no existing extradition treaty. It asked about differences in the extradition requirements for citizens and non-citizens. The delegation replied that the extradition rules were the same for everyone. It was also possible to remove someone under immigration rather than extradition laws.

Coordination and monitoring

The delegation did not answer questions on the feasibility of establishing a federal Ombudsman, independent mechanisms for monitoring and promoting the OPSC, or the development of a national plan of action and national strategies to ensure the coordination of bodies and agencies.

Dissemination and training

The Committee noted that prevention was the most effective and desirable answer to the offences under the OPSC and asked about achievements and policies in this area. It asked about the use of research into root causes of violations in the development of prevention and rehabilitation programmes. The delegation mentioned that in revising the Trafficking Act, Congress had added a requirement to address demand side. A model programme in San Francisco providing sensitivity training to clients had reduced recidivism and was being replicated both domestically and internationally. Civil society, social services, communities and faith groups were also involved in prevention and rehabilitation projects. One programme required the state to reallocate 60% of the funds it received to local agencies for victim identification, social services and prevention activities.

The Committee asked about measures to address the vulnerability of certain groups of children. The delegation described the Street Outreach Programme which aimed to get children off the streets and provide them with shelter and assistance and so prevent them falling victim to exploitation.

The Committee urged the state to increase dissemination and training, ensuring this covered the whole country and targeted and empowered the most vulnerable groups.

Criminal procedures

The Committee noted that the 6th Amendment to the Constitution obliged victims and witnesses to make statements in the presence of the accused, although the State Party report asserted that a child did not have to confront the perpetrator. However, each state had different rules of procedure. New Mexico, for example, only provided this protection to children under sixteen. It asked about guarantees that child victims and witnesses were protected in every state. The delegation replied that the prosecutor could always petition the judge to use protective procedures for victims. The Attorney General of New Mexico

assured the Committee that he would consider the possibility of revising these laws in his state.

The delegation reiterated their commitment to a victim centred system. The targets were those who enticed and used children, not the children themselves. Juveniles were rarely prosecuted for such offences and never for engaging in prostitution. There were onerous procedures to ensure prosecutions were not undertaken without good cause. The federal government tried to export this attitude to state and local authorities, including through taskforces dedicated to rescuing children and prosecuting the individuals exploiting them in prostitution. In rare circumstances children involved in prostitution might be arrested either because of a mistake in judging age or because this was the only way to protect them from imminent danger.

The Committee asked for some information on mandatory restitution and civil remedies. The delegation replied that the policy was to seek the forfeiture of profits from criminal activities. There were good and effective laws on restitution and the policy was to apply these in full to the benefit of the victims.

Services for victims

The Committee suggested that the state should enhance the provision of comprehensive assistance and services to all victims. It noted that there were not enough safe shelters or facilities for psychosocial support and rehabilitation. The delegation did not respond.

The Committee asked about the services available to victims of trafficking granted a T-visa. The delegation explained this was granted if there was proof that the applicant was a victim of trafficking. The pass allowed residency for four years and access to the same benefits and services as refugees. It was also possible to petition for family members to be granted the same visa and to extend it, although at present holders of T-visas could not become permanent residents.

The delegation did not provide information on measures to ensure that the country and family situations to which a child was returned were safe.

Adoption

The Committee welcomed the ratification of the Hague Convention and asked whether this would enable the removal of the reservation on article 3. The delegation agreed that this reservation was no longer relevant. The Committee asked whether organisations accredited to provide adoption services were allowed to make a profit from these services and monitoring of these organisations. It asked about the penalisation of unaccredited organisations and of unlawful adoptions. It asked how pre-natal payments and grants complied with the prohibition on sale of children. It noted that the USA was both a country of origin and a receiving country for international adoptions and asked about measures to increase internal adoption and to ensure the safety of the children adopted abroad. The delegation replied that they were not prepared to discuss the implementation of the Hague Convention in detail, but would provide the Committee with written information.

Concluding Remarks

Ms. Lee thanked the delegation for the fruitful dialogue and reminded them that they could provide further information in writing. She reiterated the importance of a victim centred approach and the need to ensure that victims were identified and treated as victims not

offenders. She expressed appreciation of the efforts made on addressing demand and prevention, but highlighted the need for further research on root causes.

Mr. Warren Tichenor thanked the Committee, his delegation and the interpreters. He assured the Committee of the state's appreciation of their work, hoping at the same time that the Committee appreciated the state's efforts. He acknowledged that, despite a strong record in these areas, there was still room for improvement, especially awareness raising on the offences covered by the OPSC.