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Committee on the Rights of the Child**Concluding observations on the report submitted by South Africa under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography***

1. The Committee considered the initial report of South Africa (CRC/C/OPSC/ZAF/1) at its 2143rd meeting (see CRC/C/SR.2143), held on 20 September 2016, and adopted the following concluding observations at its 2160th meeting (see CRC/C/SR.2160), held on 30 September 2016.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/ZAF/Q/1/Add.1). The Committee appreciates the constructive dialogue held with the high level and multisectoral State party delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's second periodic report under the Convention on the Rights of the Child (CRC/C/ZAF/CO/2), adopted on 30 September 2016.

II. General observations**Positive aspects**

4. The Committee notes with appreciation the State party's ratification of the:
- (a) United Nations Convention against Transnational Organized Crime, in 2004;
 - (b) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2004;

* Adopted by the Committee at its seventy-third session (13 – 30 September 2016).

(c) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2004;

(d) The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption, in 2003;

(e) International Labour Organisation's Convention on the Elimination of the Worst Forms of Child Labour, in 2000.

5. The Committee further welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

(a) The Prevention and Combatting of Trafficking in Persons Act No 7 of 2013;

(b) The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

III. Data

Data collection

6. The Committee is concerned at the lack of reliable data covering the offences under the Optional Protocol, including sale of children, child prostitution, child pornography and child trafficking, as well as data on adoption. Likewise, it is concerned about the lack of data on the general situation of children who are at high risk of exposure to such offences, such as girls who are victims of domestic violence, children in street situations, migrant, refugee and asylum-seeking children, children living in institutions and children adopted through informal customary adoption.

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

(a) **Develop and implement a comprehensive, coordinated and effective system of data collection and its analysis on all areas covered by the Optional Protocol, including data concerning the number of prosecutions and convictions for such offences;**

(b) **Disaggregate the data, inter alia, by sex, age, nationality and ethnic origin, region and socioeconomic status, with particular attention to children who are at risk of becoming victims of offences under the Optional Protocol;**

(c) **Actively utilize the information collected for policy decisions, impact assessments, and the monitoring of progress in the implementation of the Optional Protocol.**

IV. General measures of implementation

Legislation

8. The Committee notes that national legislation covers child prostitution, child pornography and trafficking of children. However, the Committee is concerned that the current Criminal Law does not effectively address all acts and activities relating to the sale of children as defined in articles 2 and 3 of the Optional Protocol, whether such offences are committed domestically or transnationally or on an individual or organized basis, like for example the transfer of organs of the child for profit, the engagement of the child in

forced labour or improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption.

9. **The Committee recommends that the State party ensure that all acts and activities referred to in the Optional Protocol are fully covered under its criminal law, including all forms of sale of children.**

Comprehensive policy and strategy

10. The Committee notes that a number of laws and policies relevant to the implementation of the Optional Protocol require the development of adequate policy frameworks for the coordination of multi-sectoral interventions. However, the Committee is concerned at the lack of such overarching policy framework coordinating the various relevant policies.

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

(a) **Include all issues covered under the Optional Protocol in a comprehensive policy and strategy for children's rights, paying particular attention to the implementation of all provisions of the Optional Protocol and taking into account the outcome documents adopted at the World Congresses against Commercial Sexual Exploitation of Children;**

(b) **Ensure active and meaningful participation of children, communities and civil society organizations in the policy formulation.**

Coordination and evaluation

12. The Committee notes that several governmental departments are responsible for the implementation of laws and policies relevant to the implementation of the Optional Protocol. The Committee is however concerned at the lack of a coordination mechanism that enables effective cross-sectoral coordination necessary for the implementation of the Optional Protocol.

13. **With reference to paragraphs 9 and 10 of its concluding observations under the Convention, the Committee recommends that the State party ensure that the National Children's Rights Intersectoral Coordination Committee is given a clear mandate and sufficient authority to coordinate all activities related to the implementation of the Convention and the Optional Protocols at cross-sectoral, national, regional and local levels and is provided with the necessary human, technical and financial resources for its operation. The Committee also recommends that the State party strengthen coordination of its work with community-based organizations and informal community structures.**

Training

14. The Committee welcomes the development of operational guidelines and the intensified training for various stakeholders, including law enforcement personnel, prosecutors, judges, social workers and professionals working in media and publications, on the policies, laws and programmes giving effect to the Optional Protocol. However, the Committee is concerned that capacities and expertise of key stakeholders, such as the police and courts, have not been sufficiently built for the effective implementation of the Optional Protocol.

15. **The Committee recommends that the State party continue its efforts to:**
- (a) **Provide further training on the Optional Protocol to professionals and institutions working on the offences covered by the Optional Protocol and for child victims of such offences, including the Family Violence, Child Protection and Sexual Offences Units, the Human Trafficking Desk and the Cyber Crime Unit of the police, the Sexual Offences Courts and the Children's Courts;**
 - (b) **Equip them with operational tools, such as guidelines and protocols, for the effective implementation of laws, policies and programmes relevant to the implementation of the Optional Protocol.**

Allocation of resources

16. The Committee is concerned that many service provisions necessary for the full implementation of the Optional Protocol, including child protection and support services and police and court services specialized for children, are still under-resourced.

17. **The Committee recommends that the State party allocate sufficient technical, human and financial resources to the full implementation of the Optional Protocol, in order to ensure:**

- (a) **The implementation of the Children's Act and the Prevention and Combatting of Trafficking in Persons Act;**
- (b) **The effective functioning of the Children's Courts, the Sexual Offences Courts, and the Film and Publication Board;**
- (c) **The effective functioning and the expansion of Thuthuzela Care Centres and one-stop centres which provide multidisciplinary services for victims of sexual assault.**

Civil society

18. The Committee notes that civil society organizations are heavily involved in statutory service delivery for child protection and welfare, including those relevant to the child victims of offences covered by the Optional Protocol. However, the Committee is concerned that Governmental funding to such civil society organizations fall short of the cost for quality service delivery.

19. **Noting that the State has primary responsibility to provide child protection and welfare services necessary for the protection of children from offences covered by the Optional Protocol, the Committee recommends that the State party:**

- (a) **Review the adequacy of allocation of budget to the service delivery by the Government and funding for the service delivery by civil society organizations;**
- (b) **Improve transparency in the decision-making on subsidies, including the selection criteria for recipients;**
- (c) **Ensure active and meaningful consultation and participation of civil society organizations in the development of budgets for service delivery for children, as well as in the monitoring of their implementation.**

V. 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

20. The Committee notes the establishment of the National Child Protection Register and the National Sex Offenders Register with an aim to prevent exposure of children to offenders of child abuse. It also notes that the State party introduced strong border control measures in order to prevent the trafficking and abduction of children. However, it is concerned at the duplication of the function of the two registers which may undermine their effectiveness. The Committee is also concerned about the effectiveness and proportionality of the border control measures introduced.

21. **The Committee recommends that the State party review the effectiveness of the National Child Protection Register and the National Sex Offenders Register, and the border control measures for the prevention of child trafficking and abduction. In doing so, the State party should consult with all stakeholders, including children and civil society organizations working with and for children, and actively utilize objective data and information to identify effective and proportionate measures to achieve the objectives.**

Adoption

22. The Committee notes that informal care arrangements, including those done through customary adoption, are common in the State party. While such informal arrangements may have a potential as options for alternative care within the extended family and community, the Committee is concerned that such customary adoptions are not subject to regulation and official monitoring with a risk of sale of children for the purpose of adoption.

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

(a) **Collect disaggregated data and conduct research on the situation of informal care arrangements, including customary adoptions, as a basis for the development of policy responses;**

(b) **Develop a regulatory framework and a system for monitoring of customary adoption with active and meaningful participation of children, families, communities and civil society organizations working on children.**

Child sex tourism

24. The Committee notes that efforts have been made to address child sex tourism, including the criminalization of the promotion of child sex tours under the Criminal Law (Sexual Offences) Amendment Act (2007). Nevertheless, it is concerned that the State party is reportedly a major hub for child sex tourism in Africa.

25. **The Committee urges the State party to:**

(a) **Enhance the implementation of the regulatory framework and take all necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism;**

(b) **Take all necessary measures to ensure that cases of child sex tourism are investigated and that alleged perpetrators are prosecuted and duly sanctioned;**

(c) Enhance its advocacy with the tourism industry on the harmful effects of child sex tourism; widely disseminate the World Tourism Organization global code of ethics for tourism, and the provisions of the Optional Protocol, including information on legal sanctions, among travel agencies and tour operators;

(d) Continue encouraging business enterprises in the tourism industry to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism;

(e) Ensure that disaggregated data on sex tourism is systematically collected;

(f) Pay due attention to children at heightened risk of being victims of child sex tourism, in particular children in street situations.

Measures to prevent and tackle online child sexual exploitation and abuse

26. The Committee is concerned about the reported increase of online cases of child sexual exploitation and abuse.

27. With reference to the Human Rights Council resolution on the Rights of the Child: information and communications technologies and child sexual exploitation (A/HRC/31/L.9/Rev.1 adopted on 23 March 2016) and the outcomes of the 2014 London and 2015 Abu Dhabi We Protect Summits, the Committee recommends that the State party adopt a national response for preventing and addressing online child sexual exploitation and abuse (CSEA), in close collaboration with relevant industry and organizations, consisting at a minimum of:

(a) A national policy to prevent and respond to online CSEA through an appropriate legal framework; dedicated coordination and oversight entity; and specific analysis, research and monitoring capabilities;

(b) A dedicated, proactive, responsive and victim-focused criminal justice system with trained police, prosecution and judiciary; management of offenders to prevent re-offending, nationally and internationally; and a national database, linked to the Interpol database;

(c) Appropriate support services for children including integrated services during investigation, prosecution and after-care; trained professionals working with and for children; and accessible procedures for complaints, compensation and remedies;

(d) A strategy for preventing online CSEA including a public education programme to raise awareness, mandatory school education on online behaviour and safety, knowledge and reporting of online CSEA offences; child participation in the development of policies and practices; industry engagement to block and remove online CSEA content, report incidents to law enforcement and develop innovative solutions; close cooperation with organisations working to end child sexual exploitation online; ethical and informed media reporting.

VI. 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 regulation

28. The Committee is concerned that the criminal law in the State party does not define and criminalize all forms of offences covered by the Optional Protocol.

29. **The Committee recommends that the State party define and criminalize the sale of children, in conformity with articles 2 and 3 of the Optional Protocol, and not limit the definition to cases of trafficking of children. In particular, the State party should in particular explicitly define and criminalize:**

- (a) The sale of children through illegal adoption;**
- (b) The transfer of organs of the child for profit;**
- (c) The engagement of the child in forced labour.**

30. The Committee is concerned that the Films and Publication Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act do not differentiate between adult and child offenders, and that children consensually sharing their own pictures may be found guilty of manufacturing, possessing and distributing child pornography. The Committee is further concerned that the current criminal legislation lacks an overarching definition of pornography that would also cover the disposal of pornographic materials.

31. **The Committee recommends that the State party review its criminal law to:**

- (a) Decriminalize consensual sharing of self-generated images by children;**
- (b) Differentiate between adult and child offenders of child pornography and ensure that the child offenders are treated in a manner consistent with the promotion of the child's sense of dignity and in full conformity with the provisions of the Convention on the Rights of the Child and the Optional Protocol;**
- (c) Review the existing definition of pornography with a view to amending it to also cover the disposal of pornographic materials;**
- (d) Develop and strengthen awareness-raising programmes for children on risks related to the use of self-generated content through digital media and information communication technologies.**

Impunity

32. The Committee notes that the services provided at the Thuthuzela Care Centres improved the processes for reporting sexual offences, leading to an increase in conviction rates of sexual offenders. However, the Committee is deeply concerned that the rate of prosecution and conviction of perpetrators of offences under the Optional Protocol remains very low.

33. **The Committee urges the State party to take all measures necessary to ensure that all cases of sale of children, child prostitution and child pornography are investigated effectively and that perpetrators are prosecuted and punished with appropriate sanctions commensurate with the gravity of their crimes.**

Extraterritorial jurisdiction

34. The Committee notes the information contained in the report of the State party (Para. 124-126, Page 34), that Section 291 of the Children's Act extends the State's jurisdiction to prosecute cases of child trafficking committed by South African national natural or juristic persons outside the borders of the Republic of South Africa and that section 61 of the Sexual Offences Act provides for the extended jurisdiction of the State in respect of any crime committed by a natural or juristic citizen or ordinary resident of South Africa outside the country's borders, including where such offence is committed in South Africa's territorial waters or aboard a ship or aircraft registered, or required to be registered, within the Republic of South Africa. However, the Committee is concerned that such provisions do not allow the State Party to establish its jurisdiction over all the offences referred to in article 3, paragraph 1 of the Optional Protocol and in a manner consistent with the provisions of Article 4 (2) of the Optional Protocol.

35. The Committee recommends that the State party take appropriate measures to explicitly establish its jurisdiction over the offences referred to in article 3, paragraph 1, of the Optional Protocol and in all the cases defined in article 4, paragraph 2, of the Optional Protocol, namely when the alleged offender is a national of that State or a person who has his habitual residence in its territory and when the victim is a national of that State.

Extradition

36. The Committee notes the information contained in the report of the State party (para. 186-187), that South Africa enacted the Extradition Act No. 67 of 1962 and that, since its ratification of the Optional Protocol, it has ratified, signed and negotiated several bilateral and multilateral mutual legal assistance agreements. The Committee also notes that the State Party makes extradition conditional on the existence of an extradition treaty.

37. The Committee encourages the State party to withdraw the condition allowing extradition on the existence of an extradition treaty, and to consider using the Optional Protocol as a legal basis for extradition in respect of all offences against children as defined therein.

VII. 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 Optional Protocol

38. The Committee is concerned that child victims of prostitution are criminalized, and that victims and witnesses of sexual exploitation and abuse face re-victimization in the criminal justice and health systems.

39. The Committee recommends that the State party:

(a) Establish mechanisms and procedures to protect the rights of child victims of offences covered by the Optional Protocol, including establishing a clear obligation of non-prosecution in the criminal justice system, and ensure that they are treated as victims rather than criminals by the law enforcement and judicial authorities;

(b) Ensure that child victims or witnesses of offences under the Optional Protocol are not re-victimized and that evidence, such as video recordings of testimonies, are always accepted in judicial procedures.

Criminal justice system protection measures

40. The Committee is concerned that child offenders may be registered in the National Sex Offenders Register.

41. **The Committee recommends that the State party reconsider the placement of child sex offenders in the National Sex Offenders Register and ensure that the procedures for child sex offenders fully respect the right of the child to have his or her best interests taken into account as a primary consideration.**

Recovery and reintegration of victims

42. The Committee welcomes the establishment of the Thuthuzela Care Centres which provide medical, psychological, and other services for victims of sexual assault. However, the Committee is concerned that availability, accessibility and quality of services for recovery and reintegration of child victims of offences under the Optional Protocol remain limited.

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

(a) **Increase the number of the Thuthuzela Care Centres and one-stop centres to cover all parts of the country;**

(b) **Increase the number of social workers and build their capacity to meet the needs of child victims of offences covered by the Optional Protocol;**

(c) **Develop an operational mechanism or tool, such as a standard operating procedures, for assisting child victims of offences covered by the Optional Protocol, including for their identification and referral to the police as well as to necessary support services;**

(d) **Increase the number of shelters and safe houses.**

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

44. **In the light of article 10, paragraph 1, of the Optional Protocol, 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 for 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.**

IX. Follow-up and dissemination

Follow-up

45. 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 the relevant Government ministries, the Parliament, and to national and local authorities, for appropriate consideration and further action.

Dissemination of concluding observations

46. The Committee recommends that the report and written replies submitted by the State party and related recommendations in the concluding observations adopted be made widely available, including but not exclusively through the Internet, to the Government, the Parliament, the courts, the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

47. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Protocol in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.
