

INFORMATION NOTE

2nd periodic report of *the United States of America* during the 62nd session of the United Nations Committee on the Rights of the Child

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Summary of juvenile justice related issues

Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-SC) by the United States: December 23rd, 2002

Previous report presented in: May/2007 (48th session of the CRC).

1.1 JUVENILE JUSTICE - KEY ISSUES

I) Legislation:

At the moment, 29 states in the country have an Ombudsman or an office for reporting child abuse.

The Committee inquired into the reauthorization of the Trafficking Victims Protection Act (TVPA), the latest version of which is no longer in force as of 2011. The Trafficking Victims Protection Reauthorization Act of 2011 has been introduced and its renewal is still pending. The US delegation affirms that it will constitute a conceptual legal shift.

While the offences covered by the OPSC fall under the TVPA law, the Committee notes that it is still unclear whether the sale of children constitutes a crime per se or only for the purposes of child exploitation and prostitution. This issue was already raised at the last review of the United States in 2008. It creates a risk that perpetrators avail themselves from this ambiguity in law.

The Committee also inquired into what is done to ensure that the child is not re-victimized, noting a tendency for people working with child victims to hold the child responsible for his/her own situation, thus making no difference between adult and child victims. There is a risk of re-victimizing the child by focusing on criminalization. Any form of re-victimization could be more severe than the initial victimization of the child. The Committee emphasised the importance of setting procedures to avoid such risk, notably by passing safe harbor laws. The Committee recommended that the US Government provide incentives to the states to promote this issue. So far, ten states have passed safe harbor laws, protecting children from being penalized for their own abuse and exploitation.

In response to another of the Committee's concerns, the US delegation specified that the mere possession of pornographic images was prohibited, and that both trafficking and possession of child pornography were illegal at state and federal levels. The authorities will look at the severity of the case in order to determine which from the state or federal mechanism is more appropriate. With regard to child pornography, trafficking or possession of visual images is also criminalized when sound is combined with the visual depiction. When there is sound alone, it can be prosecuted for obscenity under the federal obscenity laws.

Federal laws also address the use of online technologies and have increased the penalty from 5 to 10 years of imprisonment for enticement of sexual conduct through the web.

With regard to definition issues, the delegation explained that evidence of movement was not required to show human trafficking offences.

II) Minimum age of criminal responsibility:

Not mentioned

III) Number of children and length of detention:

a) Access to data:

- No
 Yes : *(specify)*

IV) Trial conditions:

The issue of the status of children in criminal procedures was raised, as child victims often have to appear and testify in court, thus facing the authors of the crimes. Criminal procedures can be traumatizing for the child and the Committee deplored that videos and audio technologies were not systematically used when children were involved with the law and that they are only used on the strict condition that there is an evident risk for the victim.

With regard to how child victims are protected in proceedings, the delegation mentioned the right of the child to be attended by an adult when interrogated. However, the protections granted to children are not always applied nationwide due to the US federal system and the states' prerogatives on the matter.

V) Detention conditions

Each unaccompanied children is screened for human trafficking. This is also the case if a child is in "Home Land Security" detention.

a) In general (access to health, education, etc.):

Not mentioned

b) Pre-trial detention:

Not mentioned

c) Separation from adults:

Not mentioned

VI) Preventive measures:

Not mentioned

VII) Alternative measures:

Not mentioned

VIII) Re-adaptation / reinsertion of children:

Although the Committee did not address the situation of detained juveniles specifically, it expressed its concern regarding the very low number of facilities for the recovery and reintegration of child victims. In response to the Committee's concern, the delegation stated that there are now 1500 beds for victims in the country.

IX) Training of professionals:

The Committee expressed its concern regarding the lack of training of professionals who deal with such sensitive situations and interrogate child victims. The delegation asserted that officials are trained to better recognize the crimes and that the Department of Justice provided training for its officials. It also stated that reinforcement was made on how to interrogate a child victim properly. The Committee also underlined the need to train children and teachers as well as immigration officers.

X) Role of the media:

Not mentioned

XI) Child participation and sensibilization:

Not mentioned

XII) Post-detention conditions

Not mentioned

XIII) Other relevant areas:

The Committee noticed the emphasis on girls in the United States' reports, however boys are also vulnerable targets. The delegation recognized such emphasis on girls.

The Committee also noted that little was said about the 'normal' users, those having recourse to children for the purpose of pornography, prostitution, etc. Pimps and traffickers are prosecuted but nothing was said about the prosecution of other users. It is also a common assumption that these users are men, but the recent collection of data on prostitution arrests should provide more information on that matter as well as on who is soliciting.

Regarding the issue of coordination, the delegation said that the Department of Justice coordinated with investigators at the federal and state levels, thus allowing state officials to work with federal agents for more comprehensive efforts. On the issue of the sale of children, the delegation referred to coordinated nationwide programs based on the four 'Ps': Partnership, Prevention and awareness, Prohibition and prosecution, and Protection (particularly of migrants).

Finally, the Committee deplored not having the opportunity to discuss the role of education in prevention, as well as the important role that educational institutions play in terms of research and awareness-raising.

1.2. GENERAL OBSTACLES:

One obstacle noted by the Committee is the difficulty of identifying children as victims before their arrest and deportation. Children are often detained by authorities with the intention to protect, but they should be identified as victims prior to their arrest. There is also a lack of

identification and arrest of buyers of sex, the so called 'normal' users. The Committee recommended that clients be criminalized and that legal actions be pursued against them. The Committee strongly encourages the analysis of data as a key element in identifying victims and perpetrators. The delegation stated that photo and DNA softwares were used to identify child victims on videos and images.

1.3. INTERAGENCY PANEL ON JUVENILE JUSTICE: Did the Committee ask any questions in relation to technical advice and assistance in juvenile justice or if they mention the Panel in any way?

No

Yes : *(specify)*

2. MAIN CONCLUSIONS AND RECOMMANDATIONS BY THE COMMITTEE:

(please use bullet points or give title to paragraphs in order to facilitate the reading)

- There must be constant mutual efforts on the part of both the United States and the Committee to improve the legal definitions relating to the instruments examined;
- Data information and analysis of the information collected is important to have a better view of the reality. The United States should not only develop its statistics, but also support the world of academia and the NGOs to further investigate and carry research on the underlying causes of the situation of child victims;
- Turn the general national strategy into an operational instrument and at the same time turn federal legislation into states and programs, and that these be mutually supportive/reinforcing;
- Education has an essential role to play in preventing and eradicating these offences;
- The victims themselves should become active members of civil society. The US government should ensure that they become full members of the society;
- The issue of coordination is another challenge, especially considering the federal nature of the country;
- Finally, the Committee expressed its hope that the Convention will be ratified by the next review

3. (Only if the country has a DCI-section): DCI perspective/response

- info on what DCI sections do on these issues
- recommendations by DCI sections

(to get this information, send the report to the National section and ask them if they have any information for this part).

Sources:

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of *country name*.
- United Nations Committee on the Rights of the Child. Initial report and 2nd/3rd periodic reports of *country name* (State reports).
- *country name* NGOs' Working Group 'on Protection of Children Rights', (Alternative report)

4. ANNEX:

5.1. CRC members present

- Ms. Agnes Akosua Aidoo
- Ms. Hadeel Al-Asmar
- Mr. Aseil Al-Shehail
- Mr. Jorge Cardona Llorens
- Mr. Bernard Gastaud
- Mr. Peter Guràn
- Ms. Maria Herczog
- Mr. Sanphasit Koompraphant
- Mr. Hatem Kotrane
- Ms. Yanghee Lee
- Mr. Gehad Madi
- Ms. Marta Mauras Perez
- Ms. Pilar Nores
- Mr. Awich Pollar
- Ms. Kirsten Sandberg
- Ms. Kamla Devi Varmah
- Ms. Hiranthi Wijemanne
- Mr. Jean Zermatten

5.2. Composition of country delegation

- Mr. Harold Hongju Koh, Legal Adviser, Department of State, Head of delegation
- Ambassador Betty King, Permanent Representative of the United States of America to the United Nations and Other International Organizations in Geneva
- Mr. Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Department of State
- Mr. Christopher Arendt, Deputy Director, Accession Policy, Department of Defense
- Mrs. Evelyn Aswad, Assistant Legal Adviser for Human Rights and Refugees, Office of the Legal Adviser, Department of State
- Mr. Daniel Baer, Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State
- Mrs. Theresa Bridgeman, Attorney-Adviser, Office of the Legal Adviser, Department of State
- Mrs. Sally Cummins, Contract Attorney, Office of the Legal Adviser, Department of State, Washington, District of Columbia
- Mrs Anne Gannon, National Strategy Coordinator for Child Exploitation Prevention and Interdiction, Department of Justice
- Mrs Alice Hill, Senior Counselor, Department of Homeland Security
- Mrs Tara Jones, Director, Rule of Law and Detainee Policy, Office of the Undersecretary of Defense for Policy, Department of Defense
- Mr. Gary King, Attorney General, State of New Mexico

- Mrs. Catherine Cortez Masto, Attorney General, State of Nevada
- Mr. Kevin Washburn, Assistant Secretary for Indian Affairs at the Department of the Interior