

NGO Group for the Convention on the Rights of the Child
Grupo de las ONGs para la Convención sobre los derechos del niño
Groupe des ONG pour la Convention relative aux droits de l'enfant

GUIDE FOR NGOs
reporting
to the UN Committee on the Rights of
the Child
on the implementation of the
the Optional Protocol on the
SALE OF CHILDREN,
CHILD PROSTITUTION AND
CHILD PORNOGRAPHY

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1. *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*
2. *Guidelines regarding initial reports to be submitted by States Parties*

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1. Introduction

Sexual abuse and sexual exploitation are unbearable violations of children's rights. They are an insult to humanity and one of the worst things that can happen to any individual child. Sexual abuse remains common and hidden. It opens the door to systematic abuses and exploitation, which generate huge revenues - and huge sufferings. At one end of the chain, a child has to be protected. At the other, an adult or a youth has to be prevented from abusing this child. In between them, chains of intermediaries are acting illegally to make a profit. Facing them, States have international obligations to intervene. Civil society, as well as other States, must ensure their accountability.

This guide aims at supporting reporting and monitoring processes under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (hereafter "OPSC"¹) to the Convention on the Rights of the Child (hereafter "CRC"). Since several mechanisms and benchmarks already exist in this area², it is essential that the OPSC be used as strategically and efficiently as possible to complement other global efforts in the fight against sexual exploitation of children.

It is hoped that the guide will be useful both for very specialised NGOs and for human rights organisations with no previous experience in reporting to the Committee on the Rights of the Child (hereafter "the Committee"). Contents are based on some information and tips already available as part of general manuals on the CRC, namely the Implementation Handbook for the Convention on the Rights of the Child, published by UNICEF in 1998 and fully revised in 2002, and the Guide for NGO Reporting to the Committee on the Rights of the Child published and currently revised by the NGO Group for the Rights of the Child. In addition, it provides background information on the drafting of the protocol, a commentary on some of the first State parties' reports, and information on the initial reporting processes observed during the 39th and 40th sessions of the Committee. Annexes contain the full text of the OPSC, as well as the official guidelines for State party reporting adopted by the Committee at its twenty-ninth session on 1st February 2002.

All official UN documents related to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as the agenda of future sessions are available on the website of the Office of the High Commissioner for Human Rights of the United Nations: <http://www.ohchr.org/english/bodies/crc/>

¹ The initial UN reference for classification of OPSC related documents was OPSA. This was subsequently changed to OPSC but the very first documents issued by the Office of the High Commissioner for Human Rights have kept their initial reference. For example, the reference of the State Party report of Kazakhstan submitted before this change is [CRC/C/OPSA/KAZ/1](#), but the reference of the concluding observations issued after the change is: [CRC/C/OPSC/KAZ/CO/1](#).

² See *International Mechanisms To Combat Child Sexual Exploitation And Abuse – A Guide for National NGOs*, NGO Group for the CRC, Subgroup on Sexual Exploitation of Children, revised and updated edition, Geneva 2003.

2. Background

➤ *Fighting against sexual exploitation of children*

The fight against sexual exploitation starts where children are being abused. Committed individuals notice, intervene and denounce practices that have certainly existed for a long time, but which are becoming widespread and unacceptable as children's rights standards have been increasing. In the eighties, some accounts came to the attention of the UN system. The Working Group against Contemporary Forms of Slavery addressed the issue and the mandate of **Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography** was created by the UN Commission on Human Rights Resolution 1990/68. It was required to investigate around the world, to submit reports to the Commission on Human Rights, and to make recommendations for the protection of children³. Sexual tourism and campaigns in countries of origin forced Western States to start addressing the issue. Yet, NGO reports and media scandals also recalled that both victims and offenders are everywhere, not confined to the tourism industry.

Consequently, the **First World Congress** against the Commercial Sexual Exploitation of Children was held in Stockholm in 1996. It adopted the Stockholm Declaration. Some of its components include calling on governments to:

- Give high priority to combating the problem and allocate adequate resources;
- Promote stronger cooperation among all sectors and strengthen the role of families in protecting children;
- Criminalize all forms of sexual exploitation of children and penalize offenders;
- Develop methods to prevent, protect, recover and reintegrate children vulnerable to exploitation;
- Try to involve more children in the fight against their sexual exploitation.

The conference also generated the Agenda for Action, which provides comprehensive guidelines to combat the sexual exploitation of children and calls upon governments to develop their own national plans of action. It also identifies the Committee on the Rights of the Child as a catalyst, with a key role to combat child sexual exploitation and abuse. The **Second World Congress**, held in Yokohama in 2001, reaffirmed the Stockholm Agenda for Action. The participants also shared what worked and did not work in combating the sexual exploitation of children. Its final report includes regional recommendations and commitments to make the fight against sexual exploitation more effective. Although the recommendations adopted by both Congresses are not legally binding, they represent strong government commitments⁴.

Prior and following the congresses, regional consultations held throughout the world enabled countries to develop specific inputs, in-depth reviews, regional legal instruments, commitments and priorities. In some countries, national plans of action were adopted to implement the Agenda for Action⁵.

In the field, these global developments brought about new partnerships, different models of intervention and funding. National NGOs were able to share lessons learnt from their work and to report on the performance of their government to fulfil promises, to involve them in national plans of action, to finance priority programmes or to change and implement the law. However, international and regional processes

³ Past mandate-holders include Ms. Ofelia Calcetas-Santos (1994-2001) and Mr. Vitit Muntarbhorn (1991-1994) who was instrumental in organizing the Second World Congress against Commercial Sexual Exploitation of Children. The mandate is now held by **Mr. Juan Miguel Petit** (Uruguay), who was appointed in July 2001. He has since delivered reports on child pornography on the Internet and on the prevention of child sexual exploitation. Other Special Rapporteurs whose work also involves the sexual exploitation, abuse and violence of children around the world include **Dr. Yakin Ertürk** (Turkey) Special Rapporteur on violence against women and **Ms. Sigma Huda** (Bangladesh) Special Rapporteur on trafficking of persons, especially women and children.

⁴ All documents are available on the official congresses' website: <http://www.csecworldcongress.org>

⁵ ECPAT International publishes annual reports on the implementation of the Agenda for Action and it has developed a searchable Online Database of country profiles, including information on national plans of action. See: http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/monitoring.asp

proved to have a stronger potential for political and technical exchange, than for strict monitoring. Their non-binding nature left some issues un-addressed and allowed for sometimes low-level governmental representation at these important meetings.

Hence, in terms of using international mechanisms to fight the sexual exploitation of children, binding mechanisms such as the CRC and its OPSC appear to complement ideally collective consultation and monitoring systems in place.

➤ *Using the Convention on the Rights of the Child*

The Convention on the Rights of the Child (CRC) is the international human rights treaty that best establishes the human rights of children and the standards to which all governments must aspire at realizing these rights. The Convention is the most universally accepted human rights instrument in history- it has been ratified by every country in the world, except the United States and Somalia, which have signalled their intention to ratify by formally signing the Convention. By ratifying this instrument, national governments have committed themselves to protecting and ensuring children's rights, and they have agreed to hold themselves accountable for this commitment. There are four basic principles that guide the Convention on the Rights of the Child: non-discrimination; best interests of the child; right to survival and development; and views of the child.

In terms of the sexual exploitation of children, Articles 34 and 35 of the Convention cover all forms of sexual exploitation and abuse and are very clear with regard to the obligations of states. Article 19 deals with violence, injury or abuse of children while in the care of parents or guardians, including sexual abuse.

Article 34. *State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall, in particular take all appropriate national, bilateral and unilateral measures to prevent.*

- a) *The inducement or coercion of a child to engage in any unlawful sexual activity*
- b) *The exploitative use of children in prostitution or other unlawful sexual practices.*
- c) *The exploitative use of children in pornographic performances and materials.*

The Optional Protocol on the sale of children, child prostitution and child pornography should not be considered in isolation from the Convention on the Rights of the Child. The Convention is indivisible and its articles are interdependent.

Particular regard should be paid to:

The general principles of the Convention

Article 2: all rights to be recognized for each child in jurisdiction without discrimination on any ground

Article 3(1): the best interests of the child to be a primary consideration in all actions concerning children

Article 6: right to life and maximum possible survival and development

Article 12: respect for the child's views in all matters affecting the child; opportunity to be heard in any judicial or administrative proceedings affecting the child

Closely related articles in the Convention

Articles whose implementation is related to that of the Optional Protocol include:

Article 8: preservation of child's identity

Article 11: protection from illicit transfer and non-return

Article 16: protection from arbitrary interference in privacy, family and home

Article 20: children without families

Article 21: adoption

Article 32: child labour

Article 33: drug abuse and trafficking

Article 34: sexual exploitation

Article 35: prevention of abduction, sale and trafficking

Article 36: other forms of exploitation

Article 39: rehabilitative care

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Implementation Handbook for the Convention on the Rights of the Child UNICEF 2002

Article 35. *State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of the sale of or traffic in children for any purpose or in any form.*

Article 19. *State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s) or any other person who has the care of the child.*

The next chapter goes into details of the Protocol itself, but having a comprehensive rights-based approach to this tool is the best way to maximise its impact, in the best interests of the child and in line with international human rights law as a whole.

3. *The Protocol*⁶

➤ *Provisions and interpretation*

Article 1 indicates that **the sale of children, child prostitution and child pornography broadly defined in Article 2 must be prohibited**. By using all encompassing expressions such as “*any act or transaction... for remuneration or any other consideration... sexual activities for remuneration or any other form of consideration... representation, by whatever means... real or simulated...*” these two articles convey the strong will of State parties to eradicate the phenomenon.

However, Article 3 only binds State parties to **criminalise certain acts**. The list of acts is comprehensive but it basically restricts their scope and it excludes non-profit transfer of organs and consent to adoption. The text argues that the latter shall be addressed through compliance with other relevant international instruments (i.e. the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption). It specifies that all the acts listed shall be criminalised whether committed within a country or across borders, including attempt, complicity or participation, by individuals, groups or legal persons (eg. internet providers, film companies, etc.).

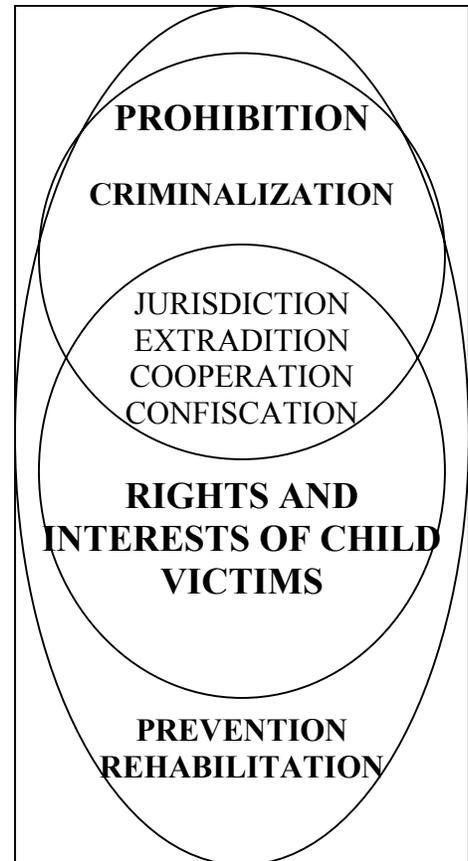
As a reaction to this, some State parties have made declarations to ensure a better protection of children through maximum coverage of the issues. For example, Argentina declared that it “*believes that the sale of children should be criminalized in all cases and not only in those enumerated in article 3, paragraph 1 (a). (...) it has not signed international instruments on the international adoption of minors, has entered a reservation in respect of subparagraphs (b), (c), (d) and (e) of article 21 of the Convention on the Rights of the Child dealing with international adoption, and does not permit international adoption of children domiciled or resident in its jurisdiction.*”. On the contrary, other countries made reservations to avoid having to criminalise the possession of certain types of pornographic material by persons above the age of sexual consent. Like Sweden, Denmark declared that “*she interprets the words “any representation” in article 2 (c), of the Protocol to mean “any visual representation” and she added that in Denmark “the possession of pornographic visual representation of a person, who has completed his or her fifteenth year and who has consented to the said possession, shall not be considered covered by the binding provisions of the Protocol.*”. The United States of America also made a series of reservations as to the exact definition of the acts listed in article 3, notably in relation to the legal payment of certain costs for the transfer of organs or adoption of a child in line with their domestic law.

⁶ The full text of the Protocol is available in the Annex

A State could be challenged for not prohibiting activities, which fall under the definitions of article 2, even if they are not listed as specific acts which should, as a minimum, be criminalised under article 3. **Prohibition does not necessarily entail criminalisation** of all related acts but could be a legal basis for a governmental campaign of sensitisation, for the establishment of services, etc.

Article 4 and 5 ensure that perpetrators of the crimes listed in article 3 can be prosecuted in all cases. **States must criminalize these acts within their own territory** and must prosecute foreign perpetrators if they do not extradite them. **States can criminalize these acts when committed abroad** by or upon their citizens and use extradition in these cases. Therefore, in case they may want to do so, these crimes must be included in all extradition treaties or States may use the Protocol as the legal basis for making an extradition. Article 6 requires the maximum degree of cooperation with other States in the prosecution of offenders.

These provisions have a very strong potential, but as criminalisation of acts committed abroad is an option rather than an obligation, its implementation still relies on the good will of states. Several State parties made reservations to article 5 and, for example, El Salvador felt necessary to declare that "(...) *The accused will be extradited if the offence was committed in the territory of the requesting country, unless the offence is international in scope, and in no case for political offences, even though common criminal offences may have occurred as a result.*"



Article 7 requires that **goods and proceeds be seized or confiscated and that any premises relating to the commission of these offences be closed**. This is particularly relevant in relation to production and possession of child pornography and to organised prostitution. Yet the term 'confiscation' appears to be an issue for some Spanish speaking countries (Argentina and Colombia) interpreting it only as the seizure of goods and proceeds as part of a sentence or penalty (*confiscación* or *decomisar*).

Article 8 does not impose the de-criminalization of child victims, but it does bind States Parties to adopt appropriate measures to protect the **rights and interests of child victims or witnesses**, in light of their vulnerability, special needs, and right to information and participation. They must be supported and protected throughout the process. The privacy, identity and safety of the child and his/her family must be preserved. State parties must avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting **compensation to child victims**. As a way to support this, Article 8 also requires that professional training for all professionals working on such criminal investigations be provided, and that persons and organisations involved in prevention, protection and rehabilitation of victims be themselves protected.

Article 9 provides details of the **obligation to develop prevention and rehabilitation mechanisms**, while article 10 encourages **international cooperation**.

Article 11 states that **national or international legislation more conducive to children's rights than the OPSC must prevail**. This may be open to interpretation. A **general reservation** was made by Qatar regarding "*any provisions in the protocol that are in conflict with the Islamic Shariah*". However, the question of the validity of such declaration may be raised in the light of the general principle of international law according to which a reservation to an international convention must be limited in its scope and purpose (See 1969 Vienna Convention on the Law of Treaties). In Qatar's case, such

reservation may dramatically affect the way criminal investigation and sentencing in case of OPSC related crimes will be addressed.

Other OPSC articles relate to reporting, ratification, implementation and amendments.

➤ *Words of caution*

While states and the Committee itself had diverging positions, the NGO Group for the CRC and some of its members clearly positioned themselves against the OPSC at the time of its drafting. In line with the analysis of the OPSC provisions made above, the main arguments were the following:

In international law, there already exists clear consensus on the right of a child (up to the age of 18 years) to be protected from all forms of sexual exploitation, as well as all forms of sale and trafficking whatever the purpose, with concomitant obligations on the part of States.(...) An optional protocol on this specific problem would divert concern and energy away from other aspects of the phenomena of sale and sexual exploitation.⁷ The framework for renewed international cooperation in this field exists. What is lacking is political will to put existing mechanisms into operation. The best interests of the child demand that we move speedily to implementation of existing standards.⁸

The success of the Stockholm Congress (...) and its Agenda for Action adopted unanimously by all congress participants – including the States represented in the open-ended working group – would offer a proper framework for the implementation of the relevant articles of the Convention. This Agenda for Action was endorsed by two successive UN General Assembly resolutions.⁹

Sale of children poses the most problematic issues (...). While the definition contained in OPSC Art. 2 is in accordance with Art. 35 of the CRC in that it covers any act or transaction whereby a child is transferred by any person or group of persons for remuneration or any consideration, it is negated in the provisions of Art. 3, which provides for compulsory criminalization only of certain acts or transaction. (...) Article 3 1. a) ii) limits the criminal liability with respect to adoption only to those acting as intermediary, quite glaringly forgetting that the principal actors in a contract of sale would be the sellers and the buyers.¹⁰ There are discrepancies between the definition of child prostitution under Art.2 and the criminalization thereof under Art.3, para. 1 b) [where] the user or the client does not seem to have any criminal liability, which only attaches to those offering, obtaining, procuring or providing a child for child prostitution.¹¹

The text could be seen as more of a “crime prevention” than a “child rights” instrument, as the criminalization of offenders appears to receive more sustained attention than the protection of the rights of victims.¹²

Unfortunately, all these remarks are still valid today. The concerns highlighted during the OPSC drafting process can be measured today against State parties reports submitted to the Committee. However, the position adopted by the Committee showed that it shared concerns for the limitations of the text, and that it would ensure its monitoring in a holistic way, taking into account all the principles and articles of the CRC¹³.

⁷ DCI/ICCB, *Position paper submitted to the open-ended working group considering the proposal to draft the OP*, 15 August 1994.

⁸ ICCB, *Oral intervention at the Commission on Human Rights, item 24*, March 1995.

⁹ Focal Point on Sexual Exploitation of Children, NGO Group for the CRC, *Oral intervention at the Commission on Human Rights, item 20*, March 1998.

¹⁰ Joint NGO Group for the CRC/UNICEF discussion paper on the draft OPSC adopted “ad referendum” by the working group of the CHR on 4th Feb. 2000

¹¹ Ibid.

¹² Ibid.

¹³ Jaap E. Doek letter answering concerns expressed by the NGO Group for the CRC, 13 March 2000

In 1994, the Committee on the Rights of the Child noted the adoption by the Commission on Human Rights of a resolution on the need to adopt effective international measures for the prevention and eradication of the sale of children, child prostitution and child pornography (resolution 1994/90, 9 March 1994), and the decision of the Commission to establish an open-ended working group to prepare guidelines for a possible draft optional protocol to the Convention on the sale of children, child prostitution and child pornography, as well as basic measures needed for their prevention and eradication. During its sixth session (April 1994) the Committee adopted a formal statement on “Cooperation with United Nations bodies – Sale of children, child prostitution and child pornography”, in which it stressed the important framework established by the Convention to deal with such situations, and *“that the child affected by situations of sale, prostitution and pornography should be considered mainly as a victim and that all measures adopted should ensure full respect for his or her human dignity, as well as special protection and support within the family and society”*. (Report on the sixth session, April 1994, CRC/C/29, p. 4. See also Report on the tenth session, October/November 1995, CRC/C/46, paras. 220 and 226) In a 1996 statement to the working group, the Committee pointed out that the Convention not only provides specific provisions on sexual exploitation, but that it also *“sets up a holistic approach for the consideration of the human rights of children. In the light of such an approach, all rights are recognized as inherent to the human dignity of the child, and the implementation of one right will only be effective when taking into consideration the implementation of, and respect for, all the other rights of the child. In a word, the Convention reaffirms the indivisibility and interdependence of human rights. “The protection of the child from all forms of exploitation, including from sale, prostitution or pornography, should therefore not be seen simply in isolation but in the broader context of the realization of children’s rights and taking in due consideration the international obligations arising from the Convention.”* The Committee also noted that other important legal instruments had been adopted relevant to the protection of the child against exploitation, mentioning the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, and the ILO Forced Labour Convention, 1930 (No.29), *“which are in reality used by the Committee on the Rights of the Child within the framework of its monitoring functions”*. (Report on the eleventh session, January 1996, CRC/C/50, p. 46)

At its twentieth session (January 1999) the Committee made a statement to the fifth session of the open-ended working group on the draft optional protocol, urging reconsideration of the best way of proceeding: *“...it seems to the Committee that it might be helpful for the working group to take stock of recent developments and to reassess its approach in light of these changing circumstances, with a view to providing a very valuable opportunity for the international community to ensure that the overall approach which is emerging is optimal. There are a lot of calls for coherence and coordination but it is difficult to achieve these objectives when many initiatives are developing simultaneously; it is essential to avoid duplication and overlapping initiatives, as well as the risk of inconsistency and incompatibility... It is, indeed, the belief of the Committee that the holistic approach to the rights of the child enshrined in the Convention requires a careful effort, and closer collaboration among all the relevant actors, to ensure the harmonization of outcomes.”* (Report on the twentieth session, January 1999, CRC/C/84, para. 217)

Despite the Committee’s emphasis (and that of various concerned non-governmental organizations) that it would be more productive to strengthen existing instruments, the open-ended working group continued to meet and develop successive drafts of the optional protocol. On 25 May 2000 the United Nations General Assembly adopted the Optional Protocol. By February 2002 it had been ratified by 16 States Parties.

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4. Monitoring and reporting

An analysis of the first reports submitted to the Committee under the OPSC in end 2004-early2005¹⁴ provides an initial insight into State parties priorities, available information and interpretation of the OPSC. These reports, ranging from 25 to about 100 pages long, were quite thorough and all acknowledged child sexual exploitation as being a very serious human rights issue, presenting huge challenges and requiring interdisciplinary cooperation within states and societies. Not all State parties recognised that this issue was a reality in their country. All of them demonstrated however some level of commitment to address it and to invest further efforts in tackling it. The following observations and tips are based on the analysis of these first reports. They may not be valid in all cases and are just an indication of potential issues to anticipate for NGOs either participating in the drafting at national level or developing an alternative or shadow report.

For official indications on the required contents of States parties reports, see in annex 2 the *Guidelines regarding initial reports to be submitted by States Parties 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*.

➤ *Legal reform and implementation*

As expected, States parties' reports usually have a strong focus on legislation, especially since legislative amendments or entire new legal provisions in the area of the sale of children, child prostitution and child pornography have flourished over the past years, notably in the wake of the two World Congresses Against the Commercial Sexual Exploitation of Children. Several governments have passed new laws which complement their penal code, while others have directly incorporated the OPSC into their legislation with precedence over domestic law.

While all reports provide detailed information on such legislation, reporting on dissemination and implementation of these legal instruments is rather poor. In the best cases, reporting on implementation shows a low rate of identification and prosecution of cases which contradicts with high estimates on the prevalence of the phenomenon. In addition to prosecutions, it is important that data be provided on the number of judiciary measures taken in favour of victims, such as special protection measures or compensation.

One complex aspect is the qualification of crimes. Some reports contain extensive information on reporting and prosecution of cases, but most figures relate to sexual assaults, including sexual abuse in the family. The number of official records of victims of sexual exploitation is much lower. State parties should therefore disaggregate data so as to show whether some crimes related to sexual exploitation are included in broader figures. If so, they should explain differences in the qualifications and classification of the various crimes.

Similarly, the number of indicted persons subjected to restrictive measures in relation to child pornography is quite low. Figures on the number of website monitored and suspects investigated should also be presented to the Committee to show whether the low numbers are related to governmental inaction, or rather to the complexity of the task.

In all cases, disaggregated data on the age, gender, status, and nationality of victims and offenders (clients and intermediaries) will help the Committee to understand the situation and the government's effort to address it.

¹⁴ Andorra, Iceland, Italy, Kazakhstan, Norway, and Morocco.

Finally, there is some disparity in the legal approach taken by State parties on the issue of possession of child pornography. Some countries have a clear legislation repressing possession, though to varying degrees of severity. Others do not clearly prohibit possession since their legislation omits any reference to it. At the same time, these same countries make a point of noting that they protect children from exposure to any kind of pornography. So there appears to be some confusion between protecting children from being used in pornography and protecting them from being exposed to pornography.

Child pornography and sexual exploitation through new technologies is also an issue. Internet is well addressed by some and recognised by others as being a challenge. It thus seems that users of child pornography through Internet are more likely to be targeted than users of “traditional” child pornography (through printed media). The role of mobile phones should also be acknowledged in the law since they are increasingly being used to promote child pornography and exploitation.



State parties should submit detailed information on past and present criminal investigations and prosecutions under OPSC related provisions. For all countries reporting no or few cases, the Committee should enquire about the government’s hypothesis and documentation on reasons for such a low level of prosecution (low level of incidence, difficulties in identifying perpetrators and/or victims or witnesses, challenges in targeting criminal networks, mentalities, etc.).

State parties must be sensitive to the very many facets of child pornography in order to ensure that the issue is fully covered both in their legislation and in its implementation. They should separate in their report the information they provide on protecting children from being used in pornography and protecting them from being exposed to pornography.

NGOs can call upon the government to fulfil gaps during the drafting process if they are consulted at national level, or bring them to the attention of the Committee in their own report.

➤ *Policies and programmes*

All reports provide some information on policies and programmes related to the OPSC but most of them focus on prevention, rather than intervention/rehabilitation. It must be noted that the meaning of “prevention” varies greatly from one country to another. On the one hand, it can be interpreted as preventing adults from sexually exploiting children. This can be done through broad-based prevention (child rights promotion, information campaigns on prohibition, etc.), or rather through identification and sensitisation of potential abusers and targeted prevention of recidivism with identified perpetrators. On the other hand, it can be interpreted as preventing children from becoming at risk of being sexually exploited through sensitisation of children and their communities to the issues and existing risks (eg. in schools, medical centres, etc) or even to the behaviours to avoid (eg. safe use of the Internet). In some State reports, the notion of prevention mainly amounts to what could be interpreted as preventing contacts between vulnerable children and potential abusers without targeting risk factors on either side. Such prevention policies are short termed and generally lead to violations of children’s rights.

As for intervention/rehabilitation policies and programmes, they are generally the array of mainstream services available to all children in difficulty in the country – which does not say much about specific support offered to victims of sexual exploitation. A few notable exceptions are specific programmes such as training programmes for professionals, intervention and cooperation programmes on unaccompanied or trafficked minors and Internet-related programmes.

Overall, the reports often lack precision on the way programmes are implemented, by which agencies, with which resources, for how long, for what number of beneficiaries, etc. There is also a general lack of impact assessment of these initiatives.



State parties should report on specific policies and programmes on prevention, intervention and rehabilitation for both potential victims and perpetrators of OPSC related crimes. They can mention NGO initiatives but they must be clear about what the state itself has done in this context. They must provide data on the funding, evaluation and sustainability of all programmes under their responsibility, be it through central or local authorities.

NGOs involved in direct work with victims or perpetrators can complement this information with testimonials of beneficiaries, comments on the impact of these programmes and on observed deficiencies which should be addressed.

➤ *Protection of all children*

For the purposes of the CRC “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”¹⁵. This definition of the child also applies to the OPSC. The age of sexual consent varies from one country to another. Under this limit, children are legally protected from any sexual interference. Over this limit, reports show that children are legally protected against forced or remunerated sexual activities, but to a far lesser degree than their younger peers. Penal sentences are reportedly much lighter for sexual exploitation of children over the age of sexual consent.

While it is understandable that various degrees of gravity may be established according to the age of the victim in light of their evolving capacities, States should report adequately on these differences and avoid disproportionate discrepancies. Penalties for OPSC related crimes against a child over the age of sexual consent should be reported as clearly and in as many details as others. Precisions should be given as to their effective implementation.

In addition, in cases of non-forced or non-organised prostitution or pornography of a child over the age of sexual consent, it remains unclear whether the client would be prosecuted at all in most countries. It must be recalled that governments have the obligation to protect all children from exploitation and pornography. A child’s consent to be exploited is irrelevant here as the obligation of protection prevails. Although it is a challenge to protect a child against his/her will, in all cases the abusers should be held responsible for their acts.

Some discriminatory age limits are also set in terms of services and protection of child victims or witnesses during investigations or trials. In many cases, the presence of a social worker or psychologist during the trial is only mandatory for cases involving children up to a certain age (be it as victim or as offender). Similarly, in some countries, the hearing of a child in the context of an “interlocutory witness exam” shall not be repeated in trial as psychologically prejudicial to the child but only up to a certain age. Older children (usually over 16) appear to be completely left out from child protection in these contexts. This can in no way be justified by the age of sexual consent.

Another risk of falling through the net of legal protection is through child marriage. None of the reports examined mentioned this issue. While some countries may allow marriage before 18 under certain

¹⁵ CRC art.1

conditions, State parties should make clear that this does not equate to reaching penal majority, be it as victim or as offender in cases of sexual exploitation.

Finally, governments should develop specific protection mechanisms for children known to be most vulnerable. These may include girls, children from ethnic minorities, children with disabilities, children in armed conflict, refugee and displaced children, children in or coming out of correctional and residential institutions.



Specific legislation and procedures on sexual exploitation of children must fully protect all children. When governments fail to protect children over the age of sexual consent, they tend to omit information about them in their reports. NGOs should make sure that this issue is properly addressed and ensure that State parties do not send wrong messages about the notion of sexual consent to potential victims and perpetrators of sexual exploitation.

Children most vulnerable to sale, prostitution and pornography should receive specific attention. Governments should report how prevention and close monitoring of OPSC related issues are mainstreamed into special care and policies in favour of vulnerable children.

➤ *Status and treatment of victims*

Although most legislation do not appear to criminalize them, children at risk or already victims of prostitution are commonly placed in closed institutions or put on probation in the framework of so-called preventive or protection measures. While the need to establish a protective environment for vulnerable children is essential, depriving these children of liberty may be a violation of article 37 par. b) of the CRC which states that “No child shall be deprived of his or her liberty unlawfully or arbitrarily”. In some cases, this is done legally on the grounds of offences committed by these children while they were also being victims of sexual exploitation. For instance, drug abuse can be a reason for arresting these children. Still, this goes against the general principle of “best interests of the child”, in a situation where according to the national legislation he/she is both a victim and an offender.

Such measures also create confusion as to the status of child victims of sexual exploitation in the mind of children, of potential abusers, of law enforcement personnel, of childcare professionals, and of society at large. Finally, as State violence against children in conflict with the law is a problem in many countries, it is all the more worrying that child victims of sexual exploitation be perceived and treated as offenders.

Hence, governments must totally separate in their report information about the status and treatment of victims, from that of juvenile offenders. Information on the latter will only be pertinent as regards juvenile sex offenders or minors involved in other OPSC related crimes. If some measures for the protection of victims imply some restrictions of their liberty, the State party shall explain in details what are the legal and psycho-social grounds for these measures and how beneficial they are for victims.



State parties should address the notion of best interests of the child in contexts of prevention and rehabilitation programmes for victims of sexual exploitation, especially in cases of forced interventions, care/treatment in closed institutions and repatriation. Abusive practices should be denounced by NGOs.

➤ *Status and treatment of perpetrators*

Even when mainstream legislation on sexual assault is implemented extensively in a country, it remains unclear to which extent such legislation is applied to clients of sexual exploitation. In practice, legal provisions that are specific to crimes of sexual exploitation appear to be applied mainly to intermediaries/organisers and to be poorly implemented in comparison to the level of incidence of violations reported by governments themselves.

As mentioned earlier, reports lack precision on the legal status of “end users” in the chain of events leading to the sale of children, child prostitution and child pornography. Depending on the type of offence, on the country, and on the age of the victim, clients may be prosecuted as any other agent in the exploitative process (eg. for sale), or as a specific agent (eg. for sexual assault, rather than for the exploitative aspect of the offence, or for both) or not prosecuted at all (eg. as “mere” recipient of child pornography or prostitution procured by an intermediary).

When clients are prosecuted, it is also unclear what State parties have to offer beyond fines or prison sentences. This is very worrying in terms of rehabilitation and prevention of recidivism. Similarly, there is no mention of primary prevention of sexual exploitation of children towards potential perpetrators (e.g. sensitising adolescents/young men to responsible sexual behaviour through school programmes, identifying psycho-medical support needs through military service or health services, etc.). Finally, while illegal procurement of children for adoption purposes is in principle punishable, the illegal buyers/clients/adoptive parents of children are nowhere seen to be sanctioned.

In terms of extradition, the OPSC is very strong since it can be directly used by a state to request extradition of a perpetrator of crimes falling under article 3. Yet, the first reports revealed a total vacuum in the use of this provision and a quasi vacuum in the use of existing extradition treaties between states in case of sale of children, child prostitution and child pornography. NGOs should inquiry about the reasons for such a lack of proactive action in comparison to the use of extradition made by their government in, say, cases of terrorism. Is it the lack of political will, limitations in intergovernmental cooperation, or the absence of relevant cases ?



Governments must systematically address the status and treatments of the various kinds of “clients” in their reports, in order to guarantee more diverse and proactive policies in the direction of all potential abusers – at home or abroad.

➤ *Contributing factors*

Beyond acknowledging the important role of poverty, trafficking and substance abuse, reports often lack analysis of precise factors on the “supply side” of the sale of children, child prostitution and child pornography. In particular, it would be important to address linkages between sexual abuse and further sexual exploitation, between sexual orientation, stigmatisation and exploitation, between consuming needs/habits/trends and exploitation. There is also a total absence of analysis of factors on the demand side. Who are the clients of child prostitution; of child pornography; of sale of children? Do mentalities or traditions contribute to a certain level of acceptance of violations of children’s physical integrity? What is society’s approach to sexuality and pornography?



State parties should not overlook par.7-8 of the OPSC which states that “the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing contributing factors, including (...) irresponsible adult sexual behaviour (...)” “efforts to raise public awareness are needed to reduce consumer demand”¹⁶.

5. Preparing an NGO report

Under Article 45(a) of the Convention, the Committee on the Rights of the Child may invite specialized agencies, UNICEF, and "other competent bodies" to provide expert advice on the implementation of the Convention. The term "other competent bodies" includes non-governmental organizations (NGOs). This Convention is the only international human rights treaty that expressly gives NGOs a role in monitoring its implementation. The Committee has systematically encouraged NGOs to submit reports, documentation or other information in order to provide it with a comprehensive picture as to how the Convention is being implemented in a particular country. The Committee welcomes written information from international, regional, national and local organizations. Information may be submitted by individual NGOs or coalitions. The OPSC does not contain any equivalent to Article 45 of the Convention, but the practice of the Committee since its 40th session appears to indicate that it will systematically receive information from NGOs for OPSC monitoring also.

Unlike State parties who have the obligation to report under all aspects of the OPSC, NGOs can choose to focus only on their area of expertise (example, on child pornography only). As suggested in the previous chapter, they should be able to comment on the governmental report and be proactive in supplementing new data, or denouncing gaps, misinformation, etc. This can be done in direct collaboration with the government during the drafting of its report (as suggested by the Committee itself¹⁷) and/or through the preparation of an alternative or “shadow” report.

The NGO Group has been promoting the creation and development of national coalitions of NGOs working for children. A national coalition often allows for more effective monitoring at national level due to the specialist knowledge of coalition members and the variety of points of view that may be represented. A national coalition that is broad based and representative allows NGOs working for children to cooperate and coordinate their work. Ideally, members should represent diverse jurisdictional and geographic as well as ethnic and cultural differences that may exist in a country. It is equally important that the views of children, victims or not, be taken into consideration. In the case of reporting under the OPSC, it might be difficult to establish a large coalition, but a few specialised NGOs may join forces. An already established national coalition on the rights of the child may also mandate a few of its members with expertise in this area to prepare the report and present it on behalf of the coalition. It is much more difficult for a government to discredit a report prepared by a group of NGOs. In addition, a single comprehensive report allows Committee members who are under intense time pressure to familiarize themselves with the relevant issues, to study only one NGO document from, for example, twenty organizations, rather than twenty reports from twenty organizations.

¹⁶ OPSC on the sale of children, child prostitution and child pornography PP7-8

¹⁷ In its general CRC rules, the Committee has recommended that the preparation of the report be an opportunity to "encourage and facilitate popular participation and public scrutiny of government policies" (CRC/C/57). This line of thinking is pursued on a regular basis by the Committee which systematically asks in its list of issues and during its plenary session about NGO cooperation with the State party.

The Committee seeks specific, reliable and objective information from NGOs in order to obtain a serious and independent assessment of the progress and difficulties encountered in the implementation of the Convention.

The consideration of NGO information is an essential element in the monitoring process, which must not run the risk of being discredited. It is indispensable to cite sources, in order to clearly distinguish the NGOs' own position and information, from media reports or public opinion referred to in the report. NGOs can also quote official data that are not available in the government report if relevant, but they must in no case use such information as their own. When NGOs have no access to information or are not able to comment on some points, they can simply admit to it and encourage the Committee to inquire further itself in its dialogue with the State party. The Committee appreciates such transparency. It is as important to suggest questions, as it is to give answers. It is extremely important for NGOs to make recommendations as to what can be done to improve the situation be it from a legislative, political or awareness raising perspective.

The previous chapters highlighted potential issues in State Party reports to be addressed also in an alternative NGO report. In addition to that, the following "Implementation Checklist" should help NGOs to be as comprehensive as possible in providing the Committee with the information they have.

General measures of implementation

Have appropriate general measures of implementation been taken in relation to the Optional Protocol on the sale of children, child prostitution and child pornography, including:

- identification and coordination of the responsible departments and agencies at all levels of government (the Optional Protocol is relevant to departments of justice, foreign affairs, home affairs, labour, education, social welfare and health)?
- identification of relevant non-governmental organizations/civil society partners?
- a comprehensive review to ensure that all legislation, policy and practice is compatible with the article, for all children in all parts of the jurisdiction?
- adoption of a strategy to secure full implementation:
 - _ which includes where necessary the identification of goals and indicators of progress?
 - _ which does not affect any provisions which are more conducive to the rights of the child?
 - _ which recognizes other relevant international standards?
 - _ which involves where necessary international cooperation?(Such measures may be part of an overall governmental strategy for implementing the Convention as a whole.)
- budgetary analysis and allocation of necessary resources?
- development of mechanisms for monitoring and evaluation?
- making the implications of the Optional Protocol widely known to adults and children?
- development of appropriate training and awareness-raising (in relation to the Optional Protocol likely to include the training of police, border staff, court officers, social workers, adoption agencies' staff and health personnel)?

Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2002

Specific issues in implementing the Optional Protocol

- Are all forms of selling children – transactions whereby a child is transferred by any person or group of person to another for remuneration – criminal offences under domestic law? Is it a criminal offence to offer, deliver or accept a child for the purpose of:
 - _ sexually exploiting the child?
 - _ transferring the child's organs for profit?
 - _ engaging the child in forced labour?
- Is it a criminal offence to improperly induce consent as an intermediary for the adoption of a child?
- Is it a criminal offence to offer, obtain, procure or provide a child for child prostitution (using the child in sexual activities for any form of gain)?
- Is it a criminal offence to produce, distribute, disseminate, import, export, offer, sell or possess for any of these purposes, child pornography (any representation of the child engaged in any sexual activity or any representation of the sexual parts of children for a sexual purpose)?
- Do these criminal offences have appropriate penalties, reflecting their grave nature?
- Are there provisions for the seizure or confiscation of any goods relating to or proceeds derived from these offences?
- Are measures available to close premises used to commit these offences?
- Are all forms of advertising or promoting these offences prohibited?
- Are legal entities (for example companies) liable for these offences?
- Does domestic criminal law in relation to these offences apply to all foreign nationals who commit them within the jurisdiction?
- Are these offences included as extraditable offences in all treaties and agreements between the State and other countries?
- Does the State provide the greatest measures of assistance to all other countries in the investigation, prosecution or seizure of property relating to the commission of these offences?
- Are child victims kept fully informed about their rights and about the details of any criminal cases relating to their exploitation?
- Do all stages of the criminal justice procedures recognize vulnerability of child victims and give primary consideration to their best interests?
- Is special training, particularly legal and psychological, provided for those who work with child victims?
- Are criminal justice procedures adapted to accommodate children's special needs as witnesses?
- Are child victims supported throughout legal processes?
- Are the views, needs and concerns of child victims ascertained and considered in any proceeding affecting their personal interests?
- Is the privacy of child victims fully protected within the criminal justice system?
- Does the law prohibit any form of identification of child victims?
- Is appropriate provision made available where necessary to protect child victims and their families or witnesses on their behalf from intimidation or retaliation?
- Are appropriate measures available where necessary to protect the safety and integrity of those who are involved in helping child victims?
- Is unnecessary delay avoided in all cases involving child victims and in the delivery of compensation?
- Does the State disseminate information to children and the general public, through education, training and publicity, about the harmful effects of sale of children and child sexual exploitation and how to prevent these activities?
- Are children involved in the preparation of this information?
- Are adequate measures taken for the full social reintegration and recovery of child victims?
- Do child victims have access to procedures to seek compensation from those legally responsible?
- Does the State give full cooperation and support to agencies, both within the jurisdiction and internationally, which aim to prevent, detect and punish those committing these offences?
- Does the State give full cooperation and support to agencies, within the jurisdiction and internationally, which assist child victims?

Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2002

6. Sessions and pre-sessions of the Committee

The recent division of the Committee into two chambers has provided an opportunity for a full discussion of reports under the Optional Protocols. At its 39th session, the Committee established its methods of work for the consideration of reports under the two optional protocols: If an OPSC report is submitted by a State Party at the same time as its CRC periodic report, they will be considered during the same session with some additional time. If a State only submits its report under the OPSC, the Committee will conduct an oral examination at a regular session. If a State also submits its report under the Optional Protocol on Children in Armed Conflicts, both reports may be examined during the same session.

During the 40th session, for the examination of an initial OPSC report, a three-hour time slot was reserved in addition to the periodic CRC examination. However, in the end only twenty minutes were actually spent on questions and thirty minutes spent on responses. This was due to the fact that so many questions from the earlier discussion of the periodic CRC report had not yet been answered. The Committee tried to avoid this, but the fact is that a single session for OPSC reporting would ensure a stricter and more comprehensive examination.



In order to guarantee maximum exposure and to avoid delays, NGOs should encourage their governments to submit their OP reports as soon as possible and separately from their CRC periodic reports.

The Committee has set a strong precedent by reserving three hours for each preliminary examination of OPSC reports in pre-session with NGOs. These pre-sessions take place three months before the State party comes under examination (i.e. at the end of the previous session of the Committee). The pre-session working group meets in private. This means that no governmental representatives, media, or outside observers may attend. It should be noted, however, that representatives from relevant inter-governmental organizations (e.g. UNICEF, ILO, UNHCR, WHO, UNESCO) are invited to participate. Only NGOs who have submitted written information in advance, considered relevant by the Committee, may be invited. Interested NGOs should state clearly in the cover letter accompanying their report that they wish to participate in the working group meeting.

Unfortunately, the Committee is unable to provide funding for travel expenses or assist in making travel arrangements. The NGO Group, however, may be able to provide limited financing for travel and subsistence expenses in some instances for one representative of national NGOs or coalitions who have been invited by the Committee to participate in the pre-session working group.

There is no fixed procedure or approach set out for the Committee's consideration of a State party report during the working group session. This will depend largely on the adequacy or insufficiency of each report and how much information it has been possible to secure. The Chairperson usually starts the meeting by asking participants to make an introductory statement (of 10 to 15 minutes for national NGOs). This is followed by a long series of questions by Committee members. Participants answer these questions, usually after having consulted among themselves during a break on how best to share the questions. Interpretation is available in English and French and, Spanish, and, upon request, Arabic, Russian, and Chinese. However, when no NGO or UN representatives are present, the pre-session meetings are cancelled.



It is essential that NGOs present information in advance and attend the pre-session if they are invited. If NGOs are not able to participate, they should liaise with international NGOs or country offices of UN agencies active on the issue (ex. UNICEF, UNHCR, ILO) to ensure a presence and therefore avoid the cancellation of the preliminary examination.

The Committee has decided not to develop “list of issues” for the OP reports but rather “questions” are prepared. The questions are to act as a guide to the oral examination and are not to be responded to in writing by the State Party. Yet, political and technical requirements on the part of all parties involved are as high for the examination of the OP reports as for the CRC monitoring process.

ANNEXES

- 1. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*
- 2. Guidelines regarding initial reports to be submitted by States Parties*

***Optional Protocol to the Convention on the Rights of the Child
on the sale of children, child prostitution
and child pornography***

*Adopted and opened for signature, ratification and accession by General Assembly resolution
A/RES/54/263
of 25 May 2000*

entered into force on 18 January 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on

Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present

Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

*Guidelines regarding initial reports to be submitted by States Parties 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:
04/04/2002.
CRC/OP/SA/1. (Basic Reference Document)*

Adopted by the Committee at its 777th meeting
(twenty-ninth session) on 1 February 2002

I. Introduction

1. Pursuant to article 12, paragraph 1, of the Optional Protocol, each State party shall, within two years following the entry into force of the Optional Protocol for that State party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Optional Protocol. Thereafter, pursuant to article 12, paragraph 2, of the Optional Protocol, States parties shall include in the reports they submit to the Committee on the Rights of the Child in accordance with article 44, paragraph 1 (b), of the Convention any further information with respect to the implementation of the Optional Protocol. States parties to the Optional Protocol that are not parties to the Convention shall submit a report every five years.

2. The Committee may, in the light of article 12, paragraph 3, of the Optional Protocol, request from States parties further information relevant to the implementation of the Optional Protocol.

3. Reports should provide information on:

(a) The legal status of the Optional Protocol in domestic law and its applicability in domestic jurisdictions;

(b) When relevant, the intention of the State party to withdraw existing reservations made to the Optional Protocol;

(c) The governmental departments or bodies competent for the implementation of the Optional Protocol and their coordination with regional and local authorities as well as the civil society, the business sector, the media, etc.;

(d) The dissemination to the public at large, including children and parents, of information, through all appropriate means, education and training, about the provisions of the Optional Protocol;

(e) The dissemination of the Optional Protocol and the appropriate training offered to all professional groups working with and for children and all other relevant groups (immigration and law enforcement officers, social workers, etc.);

(f) The mechanisms and procedures used for the periodic evaluation of the implementation of the Optional Protocol and the main challenges encountered so far.

4. In reporting to the Committee, States parties should indicate how the implementation of the Optional Protocol is in line with the general principles of the Convention on the rights of the Child, namely non-discrimination, best interests of the child, right to life, survival and development, and respect for the views of the child. The States parties also should elaborate on how and to what extent the implementation of the Optional Protocol contributes to the implementation of the provisions of the Convention on the Rights of

the Child, in particular articles 1, 11, 21, 32, 33, 34, 35 and 36 (see preamble of the Optional Protocol). Moreover, the process of preparation of the report should be described to the Committee, including the involvement of governmental and non-governmental organizations/bodies in its drafting and dissemination.

5. Moreover, *for all areas raised in these guidelines*, the Committee invites States parties to provide it with:

- (a) Information on the progress made in the enjoyment of the rights set forth in the Optional Protocol;
- (b) An analysis of the factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the Optional Protocol;
- (c) Information on the budget allocated to the various activities of the State party related to the Optional Protocol;
- (d) Detailed disaggregated data;
- (e) Copies of the principal legislative, administrative and other relevant texts and judicial decisions and relevant research.

II. Prohibition of the Sale of Children, Child pornography and child prostitution

6. Please provide information on existing criminal or penal laws and regulations covering and defining the acts and activities enumerated in article 3, paragraph 1, of the Optional Protocol. In this respect, please provide information on:

- (a) The age limit used for defining a child in the definition of each of these offences;
- (b) The penalties which apply to each of these offences and what the aggravating or attenuating circumstances applicable to them are;
- (c) The Statute of Limitation for each of these offences;
- (d) Any other acts or activities which are criminalized under the penal or criminal laws of the State party and which are not covered by article 3, paragraph 1, of the Optional Protocol;
- (e) The liability of legal persons for the acts and activities enumerated in article 3, paragraph 1, of the Optional Protocol, indicating the definition of a legal person in the State party; and
- (f) The status, under the criminal or penal law of the State party, of attempts to commit and complicity or participation in any of the offences referred to previously.

7. With regard to adoption (art. 3, para. 1 (a) (ii)), please indicate the bilateral and multilateral agreements which are applicable to the State party and how the State party ensures that all persons involved in the adoption of the child act in conformity with these international agreements.

III. Penal/criminal procedure

Jurisdiction

8. Please indicate the measures adopted, including of a legislative, judicial and administrative nature, to establish the State party's jurisdiction over the offences referred to in article 3, paragraph 1, of the Optional Protocol when:

- (a) These offences are committed in its territory or on board a ship or aircraft registered in the State party;
- (b) The alleged offender is a national of the State party or a person who has his/her habitual residence in its territory;
- (c) The victim is a national of the State party;
- (d) The alleged offender is present in its territory and it does not extradite her/him to another State party on the ground that the offence has been committed by one of its nationals. In that case, please indicate if an extradition request is required prior to the State party establishing its jurisdiction.

9. Please indicate any other measures at the national level, including of a legislative, judicial and administrative nature, which establish other rules concerning criminal jurisdiction by the State party.

Extradition

10. Please provide information on the State party's extradition policy related to the offences referred to in article 3, paragraph 1, of the Optional Protocol with specific attention to the various situations enumerated in article 5 of the Optional Protocol. For each situation relevant to the State party, in light of the disaggregated data requested under paragraph 5 (d) of these guidelines, please indicate the number of extradition requests received from or sent to the States concerned, and provide disaggregated data about the offenders and the victims (age, sex, nationality, etc.). Please also provide information on the length of the procedure, and on cases of extradition requests which have been sent or received and which did not succeed.

Seizure and confiscation of goods and proceeds, and closure of premises

11. Please provide information on the measures adopted, including of a legislative, judicial and administrative nature, related to:

- (a) The seizure and confiscation of goods and proceeds referred to in article 7 (a) of the Optional Protocol;
- (b) The closing, on a temporary or definitive basis, of premises used to commit offences as provided for in article 3, paragraph 1, of the Optional Protocol.

IV. Protection of the rights of child victims

12. In light of articles 8, 9 paragraphs 3 and 4, of the Optional Protocol, please provide information on the measures, including of a legislative, judicial and administrative nature, that have been adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol at all stages of the criminal justice process while ensuring the rights of the accused to a fair and impartial trial. Please indicate the measures adopted:

- (a) To ensure that the best interests of the child is a primary consideration in the relevant domestic legislation and regulations governing the treatment of child victims by the criminal justice system;
- (b) To ensure that criminal investigations are initiated even in cases where the actual age of the victim cannot be established and indicate the means used for this determination;
- (c) To adapt the procedures so they are child sensitive, with special regard to the dignity and worth of the child and her/his cultural background, including the procedures used for investigation, interrogation, trial and cross-examination of child victims and witnesses; the right of a parent or guardian to be present; the right to be represented by a legal adviser or to apply for free legal aid. In that respect, please indicate what the legal consequences are for a child who has committed an offence under the law applicable to her/him

as a direct result of the practices prohibited under the Optional Protocol;

(d) To inform the child during the whole of the legal process and indicate the persons responsible for this task;

(e) To allow the child to express her/his views, needs and concerns;

(f) To provide appropriate support services to child victims, including psychosocial, psychological and linguistic support at every step of legal proceedings;

(g) To protect, as appropriate, the privacy and identity of child victims;

(h) To provide, in appropriate cases, for the safety of child victims, as well as of their families, witnesses on their behalf, and individuals/organizations dealing with the prevention and/or protection and rehabilitation of child victims from intimidation and retaliation;

(i) To ensure that all child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible and to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation; and

(j) To ensure that child victims receive all appropriate assistance, including for their full social reintegration and full physical and psychological recovery.

V. Prevention of the sale of children, child prostitution and child pornography

13. In light of article 9, paragraphs 1, 2, 5 and 10, and paragraph 1 of the Optional Protocol, please provide information on:

(a) The measures, including of a legislative, judicial and administrative nature, and the policies and programmes adopted to prevent the offences referred to in the Optional Protocol. Reports should also give information on children concerned by these preventive measures and on the measures used to particularly target children who are especially vulnerable to such practices;

(b) The means used to raise awareness within the population at large about the offences prohibited under the Optional Protocol. Please provide disaggregated information, including on:

(i) The various types of awareness, educational and training activities;

(ii) The public concerned;

(iii) The involvement of governmental bodies and non-governmental organizations, the business sector, media professionals, etc.;

(iv) The participation of children/child victims and/or communities;

(v) The scope of these activities (local, regional, national and/or international);

(c) The measures adopted, including of a legislative, judicial and administrative nature, to effectively prohibit the production and dissemination of material advertising the offences described in the Optional Protocol, as well as the mechanisms established to monitor the situation.

VI. International assistance and cooperation

Prevention

14. In light of article 10, paragraph 3, of the Optional Protocol, please provide information on the activities of the State party to promote international cooperation to address the root causes, particularly poverty and underdevelopment, which contribute to the vulnerability of children to the sale of children, child prostitution, child pornography, and child sex tourism.

Protection of victims

15. In light of article 10, paragraph 2, of the Optional Protocol, please provide information on international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

Law enforcement

16. In light of articles 6 and 10 of the Optional Protocol, please provide information on the assistance and cooperation provided by the State party at all steps/parts of the penal or criminal procedure with regard to the offences as provided in article 3, paragraph 1, of the Optional Protocol (detection, investigation, prosecution, punishment and extradition proceedings). In light of article 7 (b) of the Optional Protocol, please provide information on requests received from another State party for seizure or confiscation of goods or proceeds referred to in article 7 (a) of the Optional Protocol.

17. Please indicate the relevant bilateral, regional and/or multilateral agreements, treaties or other arrangements which the State party concerned is party to, and/or any relevant domestic legislation in that respect. Finally, please indicate what cooperation/coordination has been set up between the State party's authorities, national and international non-governmental organizations, and international organizations.

Financial and other assistance

18. With reference to international cooperation, mentioned above, (paras. 14-17), please provide information on the financial, technical or other assistance provided and/or received through existing multilateral, bilateral or other programmes that have been undertaken to that end.

VII. Other legal provisions

19. Please indicate any relevant provisions of domestic legislation and international law in force in the State concerned which are more conducive to the realization of the rights of the child. Reports should also provide information on the status of ratification by the State concerned of the main international instruments concerning sale of children, child prostitution, child pornography and child sex tourism and on other commitments undertaken by that State concerning this issue, and on their implementation and challenges encountered.