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## Convention on the Rights of the Child

### COMMITTEE ON THE RIGHTS OF THE CHILD

#### Forty-sixth session

#### CONSIDERATION OF REPORTS 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

#### Concluding observations: Spain

1.The Committee considered the initial report of Spain (CRC/C/OPSC/ESP/1) at its 1277th meeting (see CRC/C/SR.1277), held on 1 October 2007, and adopted§ at its 1284th meeting, held on 5 October 2007, the following concluding observations.

#### Introduction

2.The Committee welcomes the submission of the State party's initial report but regrets the delay in its submission. The Committee appreciates the constructive dialogue with a high-level, multisectoral delegation.

3.The Committee reminds the State party that the present concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 4 June 2002 (CRC/C/15/Add.185) and with the concluding observations adopted on the initial report under the Optional Protocol on the Involvement of Children in Armed Conflict (CRC/C/OPAC/ESP/CO/1) on 5 October 2007.

#### I. General guidelines

##### A. Positive aspects

GE.07-445764. The Committee notes with appreciation:

The fact that international human rights treaties form part of domestic legislation and can be enforced by national courts;

The amendments to the Criminal Code in 2004, which included provisions on the prohibition of child pornography;

The adoption of a National Plan of Action against the Commercial Sexual Exploitation of Children 2001-2005 and the decision to extend it by adopting a second National Plan of Action for 2006-2009.

#### 5.The Committee further commends the State party's accession to or ratification of international instruments related to the Optional Protocol, including:

ILO Convention on the Worst Forms of Child Labour, 1999 (No. 182), on 2 April 2001;

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 1 March 2002;

*The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict on 8 March 2002.*

#### B. General principles on the Convention on the Rights of the Child

(arts. 2, 3, 6 and 12)

6. The Committee is concerned that the general principles of the Convention on the Rights of the Child have not sufficiently been taken into account in the design and implementation of the measures adopted by the State party under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and child Pornography. The Committee is particularly concerned that non-discrimination against foreign unaccompanied children who have been victims of trafficking is not given due consideration.

7. The Committee recommends that the general principles of the Convention of the Rights of the Child, in particular the child's right to non-discrimination, be included in all the measures of the State party to implement provisions of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, including judicial or administrative proceedings.

## **II. Data**

8. The Committee notes the intention of the State party to establish a central database for documenting violations covered by the Optional Protocol. However, it is concerned about the current lack of data, disaggregated by age, sex, minority group and origin on the prevalence of the sale and trafficking of children, child prostitution and child pornography.

9. The Committee recommends that the State party establish a central database for registering violations and ensure that data relating to areas covered by the Optional Protocol, disaggregated inter alia by age, sex, minority group and origin, are systematically collected and analysed, as they provide essential tools for measuring policy implementation.

## **III. General measures of implementation**

### **Coordination and evaluation of the implementation of the Optional Protocol**

10. The Committee welcomes the establishment of a cross-sectoral Child Rights Observatory, consisting of both national and regional authorities and NGOs, for policy coordination. The Committee notes however that cooperation between the central administration and the autonomous communities remains insufficient.

11. The Committee encourages the State party to continue and strengthen the work of the Child Rights Observatory and improve cooperation between the central administration and the autonomous communities in order to ensure that all autonomous regions comply fully with the Optional Protocol.

### **National Plan of Action**

12. The Committee welcomes the elaboration and evaluation of the first National Plan of Action against the Commercial Sexual Exploitation as well as the adoption of a second National Plan of Action for 2006 to 2009. However, it is concerned that the Plan does not cover all areas of the Optional Protocol, lacks adequate resources for implementation, and is inadequately disseminated among relevant stakeholders such as local authorities in autonomous regions and professionals who work with and for children.

13. The Committee recommends that the State party strengthen implementation of the second National Plan of Action against the Commercial Sexual Exploitation of Children by addressing all areas of the Optional Protocol and by ensuring adequate resources and a high degree of participation of civil society and children in the activities of the Plan as well as in its evaluation. The Committee further recommends that the State party improve and expand efforts to disseminate the Plan among relevant stakeholders, in particular among local authorities in autonomous regions and professionals who work with and for children .

### **Dissemination and training**

14. The Committee notes with appreciation that the State party has undertaken training and awareness-raising activities and initiatives in collaboration with NGOs relating to the provisions in the Optional Protocol, but is concerned that the rising incidence of commercial sexual exploitation of children indicates the need for further awareness-raising for prevention purposes and adequate training of professionals.

**15. The Committee recommends that the State party continue and strengthen systematic gender-sensitive education and training on the provisions of the Optional Protocol for all professional groups working with child victims of the abuses covered by the Optional Protocol.**

**16. The Committee further recommends that the State party:**

**(a) Make the provisions of the Optional Protocol widely known, particularly to children, their families and communities, through, inter alia, school curricula and long-term awareness-raising campaigns;**

**(b) Promote, in line with article 9(2) of the Optional Protocol, 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 Optional Protocol, including by encouraging the community and, in particular, children and child victims, to participate in such information, education and training programmes;**

**(c) Continue cooperating with NGOs, civil society organizations and the media supporting them in their awareness-raising and training activities on issues related to the Optional Protocol.**

#### **Allocation of resources**

**17. The Committee is concerned that insufficient resources have been allocated to the implementation of the National Plan of Action against the Commercial Sexual Exploitation of Children and for legal assistance and physical and psychological recovery measures for victims.**

**18. The Committee encourages the State party to intensify its efforts to provide adequate budget allocations for coordination, prevention, promotion, protection, care, investigation and suppression of acts covered by the Optional Protocol, including by earmarking human and financial resources for the implementation of programmes relating to its provisions, in particular for the National Plan of Action against the Commercial Sexual Exploitation of Children.**

**Furthermore, the Committee recommends that the State party allocate adequate resources for legal assistance and physical and psychological recovery of victims to relevant authorities and through NGOs and civil society organizations.**

#### **IV. Prevention of the sale of children, child prostitution and child pornography (art. 9, paras. 1 and 2)**

##### **Measures adopted to prevent offences referred to in the Optional Protocol**

**19. The Committee welcomes initiatives for preventive action, such as the introduction of measures to report child pornography on the Internet, but regrets that documentation and research are lacking on the root causes, nature and extent of sexual exploitation of children, including prostitution and pornography.**

**20. The Committee recommends that the State party allocate earmarked budget resources for preventive measures to be carried out in collaboration with UNICEF, ILO/IPEC, NGOs and civil society organizations. Furthermore, the Committee encourages the State party to compile additional documentation and conduct more gender-sensitive research on the nature and extent of the commercial sexual exploitation of children, including prostitution and pornography, in order to identify the root causes, the extent of the problems and prevention measures.**

**21. The Committee welcomes the considerable initiatives taken by the State party to prevent sex tourism, including the official recognition of the Code of Conduct drawn up by the World Tourism Organization on the protection of children from sexual exploitation in travel and tourism. The Committee notes however that greater awareness of this problem is needed within the tourism industry as well as among the general public.**

**22. The Committee recommends that the State party take further steps to prevent sex tourism, in particular by earmarking additional funds for the national tourism authority for this purpose. The State party should also, through relevant authorities, strengthen cooperation with the tourism industry, NGOs and civil society organizations in order to promote responsible tourism by the dissemination of the Code of Conduct among employees within the tourism industry as well as awareness-raising campaigns specifically directed at tourists.**

**23. The Committee is concerned that the relatively low age of sexual consent at 13 years may make children more vulnerable to sexual exploitation.**

**24. The Committee recommends that the State party consider raising the age of sexual consent to provide greater protection against the offences covered by the Optional Protocol.**

**V. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)**

**Existing criminal or penal laws and regulations**

**25. The Committee welcomes the amendments to the Criminal Code in 2004, which included provisions on the prohibition of child pornography, including possession of such material. The Committee regrets that certain provisions of article 3 of the Protocol have yet to be comprehensively incorporated into the Criminal Code, in particular in relation to the trafficking and sale of children as well as a definition of child pornography. The Committee has taken note of the information provided by the delegation that a comprehensive legal reform bill is pending in Parliament.**

**26. The Committee recommends that the State Party expedite the legal reform bill and bring its Criminal Code in full compliance with articles 2 and 3 of the Optional Protocol, including the provisions on remuneration and improperly induced consent (articles 2(a) and 3.1 (a)(ii) ). Furthermore, the Committee recommends that the State party take the necessary steps to adequately define and criminalize trafficking in persons in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime. Finally, the Committee recommends that the State party consider ratifying or acceding to the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the Convention on Cybercrime (2001).**

**Prosecution**

**27. The Committee notes efforts to investigate cases and prosecute offenders of child pornography crimes in the State party, but is concerned that insufficient resources are dedicated to the investigation of child prostitution and the sale of children.**

**28. The Committee, in view of the high incidence of child pornography in Spain, recommends that the State party step up its efforts to investigate and prosecute such crimes and allocate more resources to detecting and investigating crimes of child prostitution and the sale of children.**

**Jurisdiction**

**29. The Committee welcomes the State party's affirmation that offences covered by the Optional Protocol are subject to extraterritorial jurisdiction and the principle of universal justice and in particular that prosecution is not conditional on the perpetrator being Spanish, resident in Spain or whether the act is classified as a crime in the State in which it was committed. The Committee however regrets the lack of information relating to cases over which the State party has established jurisdiction.**

**30. The Committee recommends that the State party take all necessary practical measures to effectively establish jurisdiction over offences, in accordance with article 4 of the Optional Protocol.**

**Extradition**

**31. The Committee regrets that extradition requires acts to be defined in both countries' laws as offences.**

**32. The Committee recommends that the State party ensure that national legislation does not require double criminality for extradition and/ or prosecution of offences committed abroad.**

**VI. Protection of the rights of child victims (arts. 8 and 9, paras. 3 and 4)**

**Measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol**

The Committee is concerned that crimes under the Optional Protocol remain undetected and victims unidentified. The Committee further regrets that interdisciplinary social reintegration and physical and psychosocial recovery measures for child victims are inadequate.

**The Committee recommends that the State party;**

**(a) Take all necessary measures to ensure that child victims and witnesses of any of the crimes under the Optional**

Protocol are protected at all stages of the criminal justice process in accordance with article 8 of the Optional Protocol;

- (b) Allocate adequate financial and human resources to the competent authorities in order to improve legal representation for child victims;
- (c) Provide support for a free telephone help line accessible to children;
- (d) Guarantee that all child victims of the offences covered under the Optional Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4 of the Optional Protocol;
- (e) Ensure that resources are earmarked in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3 of the Optional Protocol, in particular by providing interdisciplinary assistance for child victims;
- (f) Presume young victims of sexual exploitation to be children, and not adults, if in doubt;
- (g) Ensure that the best interests of the child are a primary consideration and are also taken into account in the case of a decision to repatriate a child.

The Committee welcomes efforts by the State party to protect the rights of child witnesses in judicial proceedings.

The Committee encourages the State party to be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20), and urges it in particular;

To allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;

To apply child-sensitive procedures to protect children from hardship during the justice process, inter alia by using special interview rooms designed for children, child-sensitive methods of questioning; and by reducing the number of interviews, statements and hearings.

Finally, the Committee urges the State party to take into account the recommendations issued by the Committee in its Concluding Observations in 2002 (CRC/C/15/Add.185, para. 46), the Committee's General Comment No. 6 (2005), in particular paras. 50-53, on the treatment of unaccompanied and separated children outside their country of origin, as well as the recommendations of the Committee on the elimination of discrimination against women in 2004 (A/59/38, para. 337).

## **VII. International assistance and cooperation**

### **International assistance**

The Committee welcomes the State party's support for international cooperation projects relating to implementation of the Optional Protocol in a number of countries, and urges the State party to step up its efforts in this regard.

### **Law enforcement**

The Committee notes that insufficient information has been supplied with respect to the assistance and cooperation provided by the State party at all steps of the penal or criminal procedure with regard to the offences as stipulated in article 3, paragraph 1, of the Optional Protocol, i.e. in the detection, investigation, prosecution, punishment and extradition proceedings.

The Committee encourages the State party to provide more detailed information in this respect in its next report.

## **VIII. Follow-up and dissemination**

### **Follow-up**

The Committee recommends the State party to take all appropriate measures to ensure full implementation of the present recommendations, inter alia by transmitting them to relevant government ministries, Congress and departmental as well as local authorities in autonomous regions, for appropriate consideration and further action.

### **Dissemination**

The Committee recommends that the report and written replies submitted by the State party and the related recommendations (Concluding Observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, the media, youth associations and professional groups in order to generate debate and awareness of the Convention, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through inter alia school curricula and human rights education.

## **IX. Next report**

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

accordance with article 44 of the Convention .

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