



Convention on the Rights of the Child

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Committee on the Rights of the Child Fifty-fifth session

Summary record of the 1550th (Chamber A) meeting

Held at the Palais Wilson, Geneva, on Wednesday, 15 September 2010, at 3 p.m.

Chairperson: Ms. Lee

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The meeting was called to order at 3.05 p.m.

Consideration of reports of States parties (continued)

Third and fourth periodic reports of Spain (continued) (CRC/C/ESP/3-4; CRC/C/ESP/Q/3-4 and Add.1; HRI/CORE/1/Add.2/Rev.2)

1. *At the invitation of the Chairperson, the members of the delegation of Spain took places at the Committee table.*
2. **Ms. Aidoo** requested additional information on methods used to monitor the number of unwanted pregnancies and voluntary terminations among adolescent girls. She asked to what extent appropriate sexual and reproductive health education and services were available to all young people.
3. She wished to know whether the new National Strategic Plan for Children and Adolescents included a focus on reducing child poverty, which appeared to be a significant concern in the State party. It would be useful to learn whether the State party systematically collected and analysed data on child poverty and what measures were taken to address the various aspects of the problem.
4. **Mr. Fernández Cid** (Spain) said that, in 2007, Spain had returned some 27 unaccompanied foreign minors to their countries of origin. In 2008, 10 minors had been returned; in 2009, another 10; from 1 January to 15 September 2010, however, only 1 unaccompanied foreign minor had been repatriated. Those data gave a good indication of the importance the Government placed on guaranteeing the best interests of the child while implementing its security policy.
5. **Mr. de la Rosa Cortina** (Spain) said that several steps had been taken to bring domestic legislation into line with the Optional Protocols to the Convention, including the adoption of Organic Law No. 5/2010, which would enter into force in December 2010. The measures included strengthening the legal protection of children involved in armed conflict and human trafficking, criminalizing grooming on the Internet, increasing the punishment for sexual abuse of children and the introduction of two measures to protect children from sex offenders: probation and deprivation of parental authority when the perpetrators were the child's parents. In addition, punishment for crimes involving child pornography had been increased, and possession of child pornography and so-called "pseudo-child pornography" had been criminalized. The punishment for crimes involving child prostitution had also increased, and contracting the services of a child prostitute had been formally criminalized, although the offence had frequently been punished by the courts in the past.
6. In general, the age of sexual consent was 13 under the Criminal Code. However, where a crime of sexual abuse involved deception, minors up to the age of 16 were protected by the law. Minors up to the age of 18 were protected in the case of crimes involving prostitution. Under article 189 of the Criminal Code, child pornography covered any pornographic representation of all minors up to the age of 18.
7. Although it was particularly relevant in matrimonial proceedings, the right of the child to be heard was protected in all administrative proceedings, including within the family, under article 9 of Organic Law No. 1/1996 on the legal protection of minors, which was applicable throughout the country. The child's right to be heard was also protected in legislation on adoption, health care and repatriation.
8. Interference in the right to honour, personal privacy and a person's image was considered a criminal offence in certain cases as in acts involving the use of technical listening or recording devices. If the victim of such acts was a minor, it was considered an aggravated form of the offence. Lesser interference in a child's right to honour, personal

privacy and personal image, while not sufficiently serious to be considered an offence, was covered by Organic Law No. 1/1996 on the legal protection of minors. It was incumbent on the Ministry of the State Prosecutor to intervene in such cases, even against the will of the child's parents. Ministry staff had been issued detailed guidelines on how to deal with civil cases of that kind, and every effort was made to ensure that children were given the highest possible level of protection in resolving them. Cases involving the Spanish media that occurred outside Spanish territory fell under Spain's jurisdiction if the perpetrator was a Spanish citizen, if the victim or the Ministry of the State Prosecutor brought the complaint in Spain or if the case had not already been tried in the country where it had taken place.

9. The deletion, in accordance with the Committee's previous concluding observations, of article 154 of the Civil Code, which had stated that parents could "administer punishment to their children reasonably and in moderation", had removed any doubt that the clause might have contained a justification for ill-treatment on the part of parents towards their children. Any such violence was regarded as a crime or an offence, depending on its seriousness. Awareness-raising campaigns were being run in an attempt to combat any remaining belief that violence was an appropriate means of education. It was worth noting that article 221 of the Criminal Code criminalized illegal adoption.

10. **Ms. Ortiz** asked whether domestic legislation made any reference to improper involvement in the adoption process aimed at securing consent for adoption.

11. **Mr. de la Rosa Cortina** (Spain) said that article 221 of the Criminal Code provided for penalties for the surrender of a child to another person in contravention of the legal procedures for adoption and with financial compensation in order to establish a relationship analogous to filiation. Penalties were also prescribed for intermediaries and the persons receiving the child, even when the surrender took place in a foreign country. If such an act was carried out in a childcare centre, a school or a similar environment, that constituted an aggravating factor.

12. **Mr. Mato** (Spain) said that each autonomous community had a parliament that monitored the activities of the region's government. All the recent research had demonstrated that Spain's territorial structure had helped to reduce regional inequalities. As a result of the framework for cooperation between central government and the autonomous authorities, minimum standards had been implemented, even in areas where the State lacked normative capacity, such as social services. The process of decentralization had led to significant innovations in many areas, resulting in opportunities for the sharing of best practice between autonomous regions.

13. **Mr. Citarella** (Country Rapporteur) asked to what degree the State party considered central government to be responsible for an autonomous community that failed to implement a provision of the Convention.

14. **Mr. Salama Salama** (Spain) said that the provisions of the Convention had been incorporated in the basic domestic legislation that applied throughout Spanish territory. The state commission which met regularly to review all legislation introduced by regional governments would propose an action of unconstitutionality against any law that contradicted that basic legislation. The action could be brought before the Constitutional Court by the President or the Ombudsman. If for some reason no such action was brought, judges who found themselves in the position of having to invoke the legislation in question could themselves propose an action of unconstitutionality before the Constitutional Court. Regulations that did not have legislative status could also be challenged before the Constitutional Court, or an application for administrative remedy could be brought before the ordinary courts. If the rights of a child, as enshrined in the Convention, were violated by an autonomous community, the Ministry of the State Prosecutor could act in the child's

defence by bringing an application for *amparo* before the ordinary courts or the Constitutional Court.

15. **Ms. García Blanco** (Spain) added that the Government could request the immediate suspension of any autonomous community law that was considered unconstitutional when challenged before the Constitutional Court.

16. **Mr. Kotrane** asked whether children had the right to bring complaints before the courts regarding domestic legislation that violated a provision of the Convention. He also wished to know whether judges could invoke the Convention directly if it was contradicted by a piece of federal or autonomous legislation.

17. **Mr. Salama Salama** (Spain) said that children could bring complaints about violations of the Convention before the ordinary courts through either their representatives or the Ministry of the State Prosecutor. The courts were obliged to apply the Convention as domestic legislation, since it acquired that status the moment it was published in the Official Gazette. If the violation resulted from a piece of autonomous community legislation, the judge was obliged to bring the issue before the Constitutional Court.

18. **Mr. Mato** (Spain) said that the Convention on the Rights of the Child was better known than any national legislation. The authorities and non-governmental organizations (NGOs) had ensured that information about the Convention was well disseminated in schools and other relevant environments.

19. The State Ombudsman held frequent coordination meetings with the Community Ombudsmen in the regions. One of the deputy ombudsmen had responsibility for children's rights. The evaluation of the Plan of Action for Children had not yet been completed by all the ministries and autonomous communities, but a report on it would soon be distributed to NGOs and other stakeholders. It was expected that the next Plan would be approved at the end of the year.

20. In Spain, a standardized European survey was carried out on 15,000 households, which provided information on child poverty. Child poverty was measured in terms of relative poverty and inequality, on the basis of the European Union (EU) indicator of living on less than 60 per cent of the mean national income. Work was currently being undertaken, in conjunction with Eurostat, to refine survey questions in order to focus more on inequalities and, in particular, material poverty. Over the last three years, child poverty in monetary terms, i.e. children living in households comprising two adults and two children with an income of less than 16,000 euros, had fallen by 1 percentage point.

21. The situation of the Roma in Europe had been a priority for the Spanish Presidency of the EU. The European Parliament and the European Commission had developed a road map for the development of inclusion and non-discrimination policies with regard to the Roma. Spain had created a State Council of the Gypsy People, which comprised 20 representatives from Roma organizations and representatives from various public bodies. The Council had produced an action plan containing measures for children aimed at reducing inequalities and promoting non-discrimination, in particular with regard to health and education.

22. A report from the Ombudsman had shown that some care centres for children had not been in full compliance with some aspects of the law. To remedy that, the Prosecutor General had ordered a review of the centres, with inspections and closures, as necessary. A basic protocol had been developed on care for adolescents with behavioural problems in such centres. The protocol, which was agreed upon by ministries and the autonomous communities, established, among others, the minimum legal criteria for admission into the centres. It also established regulations governing the use of physical restraints and medication, which were allowed only in exceptional circumstances. Adolescents could be

prescribed medication only following a diagnosis by a medical professional, and had to be closely monitored while taking it.

23. **Mr. Kotrane** asked whether any written legal text ensured that the decision to place a child in a care centre for children with behavioural problems had a sound legal basis and was taken by a judge and not for example, by the family.

24. **Ms. Ortíz** asked for further information on the behavioural disorders that could lead to children being placed in care centres and on the age of the children involved. She asked about the reasons for placing children in such centres and wondered whether it was solely on legal grounds. She also asked why some regions, such as Andalusia, had many more children in the centres than other regions and who was responsible for monitoring the centres. She added that six months seemed too long between reviews of a child's situation in the centres and suggested that they could be carried out more frequently.

25. **Ms. Aidoo** asked for information on social policies for families, in particular families living in poverty.

26. **Mr. Mato** (Spain) said that adolescents displaying disruptive or similar behaviour were not categorized as having behavioural disorders that could lead to them being placed in care centres. The behavioural disorders of children admitted to them were diagnosed according to psychiatric and psychological classifications.

27. **The Chairperson** asked which classification system was used.

28. **Mr. Mato** (Spain) replied that the DSM-IV classification system was used. The centres provided intensive treatment on a residential basis for adolescents with extreme cases of diagnosed behavioural disorders and serious mental health problems where mental health services in the community were unable to help. Judicial authorization was required for admittance to the centres.

29. **Mr. de la Rosa Cortina** (Spain) said that a protocol had been drawn up that proposed inspections every three months instead of six. As well as external inspections by the Ministry of the State Prosecutor, the centres underwent internal inspections by decentralized bodies under the auspices of the autonomous communities. The Prosecutor General was intending to propose legislative reform to clearly establish the functions of the centres and prohibit any infringement of the fundamental human rights of the children residing there. The centres did not exist to protect society, but the best interests of the child.

30. **Mr. Citarella** (Country Rapporteur) wanted to know who would ask a judge to admit a child to a centre if the child displayed antisocial behaviour.

31. **Mr. Kotrane** questioned the legality of institutionalizing a child who had not committed an offence even when such institutionalization was authorized by a judge.

32. **The Chairperson** asked how old the children placed in the centres were. She said that truancy was a conduct classified under DSM-IV and asked whether children could be admitted to a centre on that ground.

33. **Mr. Mato** (Spain) said that the centres treated adolescents who displayed extreme and specifically identified behaviour, such as aggression towards their parents. He emphasized that they were not intended for adolescents who behaved badly and that in no way did they treat the adolescents in their care as criminals.

34. **Mr. de la Rosa Cortina** (Spain) said that a decision to admit children to centres was intended solely for the protection of the children and their families and was unrelated to juvenile justice.

35. **Mr. Pūras** said that Spain was attempting to solve the serious systemic problem of cases situated somewhere between juvenile justice and mental health care. A child's social

development should not be impeded by medical treatment; such cases came under social protection and a new system of rights had to be created for them, as those affected were neither criminals nor patients. In meeting those challenges, States parties had to consider the length of the treatment provided and whether the child's consent should be obtained. The response to the disorders in question should focus on social and therapeutic rather than psychiatric methods. The intention of the centres was good but, while helping with children's social development, it was important not to violate their rights.

36. **Mr. Mato** (Spain) said that a system of guarantees for monitoring residential regimes to ensure that the fundamental rights of children were not violated was crucial. Although prevention of serious violence within the family was also a key priority, children could not be admitted to a care centre simply at the request of their family. The large majority of requests for admission of a child into a centre were not accepted. Residential care was not a permanent solution; it was a short-term response to an emergency situation and the aim was always eventually to return the children to their families. In situations where that was not possible, independent living programmes were available to enable minors aged 14 and over to live in apartments under the supervision of carers.

37. **The Chairperson** said that when revising protocols, cognitive as well as pharmacological approaches to treatment should be used for both parents and children, since parents would need to reconnect with their children.

38. **Ms. Mateu** (Spain) said that a specific programme for adolescent health had been approved by each of the autonomous regions. Programmes for healthy living and for the reduction of drug, alcohol and tobacco consumption were also in place. The programme for the reduction of drug consumption had been more effective than that for the reduction of alcohol consumption. Awareness-raising measures were being conducted among pre-adolescents to warn them of the dangers of tobacco use.

39. Challenges had arisen in respect of the implementation of the national mental health strategy owing to infrastructure changes. Adolescent psychiatry had become a recognized specialization. All primary health-care programmes had components targeted specifically at adolescents. High rates of teenage pregnancy had been a major problem, which the Government had not managed to address until a decision had been taken to facilitate access to contraception in 2009. That decision, along with a renewed emphasis on sex education in schools, had resulted in a drop in the number of teenage pregnancies over the past year.

40. Turning to the questions concerning medication for attention-deficit hyperactivity disorder, she said that the two drugs on the market in Spain were European Union approved. Those drugs were not administered as part of the public health policy, and were not publically financed. Under no circumstances were drugs prescribed to healthy children under the national health-care system.

41. Regarding breastfeeding, she said that a renewable programme for exclusive breastfeeding for the first six months had first been adopted in 1990, and would soon be due for revision and renewal. Spain had the highest rate of exclusive breastfeeding in Europe, and modelled its legislation in that regard on the recommendations of the World Health Organization (WHO). Spain's legislation on equality for working mothers included provisions on breastfeeding.

42. **Mr. Blázquez Martín** (Spain) said that Spain's legislation on sexual and reproductive health had been based on recommendations made by the United Nations Committee on the Elimination of Discrimination against Women and other international bodies. The implementation of a strategy on sexual and reproductive health across the country had resulted in a reduction in the number of abortions and the number of cases of teenage pregnancy since 2009.

43. **Mr. Marina** (Spain) said that all adoption agencies in Spain were accredited and their activities monitored. Their licences could be revoked in the event that their activities were not approved by the public authorities. Intercountry adoptions were arranged with countries that were party to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. Countries of origin were responsible for establishing whether children were eligible for adoption. The number of intercountry adoptions had decreased since 2004, while the number of national adoptions had risen. Legislation on childcare had been amended to overcome the problem of children who remained in care institutions for extended periods, by making them eligible for adoption in the event that their biological families were unable to care for them after a period of two years. That legislative change was one of a number of measures being taken to promote national adoptions, and to ensure that children who were placed in care institutions could ultimately be provided with a legally and materially stable family environment.

44. On the question of adoptions from Ethiopia, she said that while the Government preferred to promote adoptions from States party to the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, it could not prevent families that wished to do so from adopting children from other countries. A committee had been established pursuant to legislation on intercountry adoptions to analyse the situation of countries of origin, in order to establish whether their procedures were compatible with Spanish standards. Ethiopia was currently being considered under that procedure. Consideration was being given to the possibility of visiting Ethiopia to further investigate adoption procedures.

45. **Mr. Kotrane** said that although there had been an increase in the number of juvenile justice judges and in training in children's rights for judicial police, there remained a tendency in the State party to imprison juvenile offenders, despite provisions in criminal procedural law for alternative sentences. He asked why that was the case, and whether the State party was considering revising its approach to the sentencing of juvenile offenders.

46. **Mr. Citarella** (Country Rapporteur) asked why sentences for minors in conflict with the law had been increased and whether the overall number of minors in conflict with the law had risen.

47. **The Chairperson** said that, although measures had been taken to increase enrolment in schools, she wished to know what was being done to reduce dropout rates and ensure that children completed their education. She asked whether there were enough professionals dealing with special needs in mainstream schools.

48. **Ms. Al-Asmar** asked whether the number of schoolteachers was sufficient, considering that enrolment had increased. She wished to know whether efforts were being made to encourage cultural and artistic activities and recreation, rather than computer, television and video-based activities.

The meeting was suspended at 5 p.m. and resumed at 5.10 p.m.

49. **The Chairperson** asked what measures were being taken to monitor and improve the situation in the four children's centres in the Canary Islands, which had been reported to be substandard. She also asked what measures were being taken to strengthen safeguards for the best interests of children in the repatriation process, in line with the guidelines issued by the Office of the United Nations High Commissioner for Refugees (UNHCR).

50. **Mr. Marina** (Spain) said that the maximum sentence of detention for minor offenders had been increased from 8 to 9 years for the most serious crimes only. While the effects of that change had been minimal, legislators deemed it necessary to increase the maximum sentence in very serious cases.

51. **Mr. de la Rosa Cortina** (Spain) said that Spain's criminal procedural law for minors was in line with articles 37 and 40 of the Convention on the Rights of the Child, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). Minors were imprisoned only when no alternative punishment was available or appropriate. Alternative punishments included supervised freedom, community service, semi-open detention and weekend detention. There had been an overall decrease in the number of sentences of detention in closed facilities.

52. In line with the Beijing Rules and the Convention on the Rights of the Child, the Spanish juvenile justice system was based on the principle of specialization. Special training in dealing with minors was provided to juvenile judges, prosecutors, police and lawyers.

53. **Mr. Citarella** (Country Rapporteur) wished to know the number and location of specialized courts dealing with children's rights throughout Spain.

54. **Mr. Kotrane**, referring to paragraph 759 of Spain's periodic report, wished to know why it was not possible to have a count of the number of institutions for juvenile offenders, although data were available on resources, facilities and equipment. He asked which "supporting organizations" took part in operating juvenile custodial facilities and sought information on their role in that context.

55. **Ms. Ortiz** wished to know what control or supervisory mechanisms, including private-sector bodies, existed to ensure respect for the rights of children and adolescents under State care and whether there were reliable means of protecting their physical and psychological integrity, such as the possibility of lodging complaints and taking part in evaluations of programmes designed for them.

56. **Mr. Marina** (Spain) said that under the law on the criminal liability of minors, the administration of those facilities had been granted to public bodies under the supervision of the judiciary and the Ministry of the State Prosecutor. Child protection authorities and the relevant public bodies authorized supporting organizations such as NGOs to run those centres under cooperation agreements. He assured the Committee on the Rights of the Child that the figures requested regarding the number of institutions for juvenile offenders would be provided upon the delegation's return to Spain.

57. **Mr. Kotrane** wished to receive confirmation that children or adolescents with behavioural problems were not housed with juvenile offenders in private detention centres.

58. **Mr. Marina** (Spain) and **Mr. de la Rosa Cortina** (Spain) said that there were separate detention facilities for those two categories.

59. **Mr. de la Rosa Cortina** (Spain) said that juvenile judges were in charge of supervising the institutions for juvenile offenders, as well as taking necessary action to deal with disciplinary incidents; public bodies were in charge of routine operations. Officials from the Ministry of the State Prosecutor were available to discuss any complaints lodged by juvenile offenders.

60. **Mr. García Cabrerizo** (Spain), responding to a query on disabilities, said that Spain had been the first European country to ratify the Convention on the Rights of Persons with Disabilities in 2007, as many of the principles contained in article 24 of the Convention, in particular fairness in education and the development of the skills of persons with disabilities or those with special needs, were similar to those of the Spanish Education Organization Law of 2006.

61. The Minister of Education, in partnership with representatives of major organizations dealing with disabilities, relevant ministries and representatives of the

Autonomous Communities, would soon hold a forum on inclusive education and disabilities focusing on non-university education to produce detailed studies on disabilities and education. Conclusions stemming from an international conference on disabilities held in Spain in March 2010, which had been presented to the Council of Ministers, showed that by 2020, 15 per cent of job seekers without credentials would be able to find work. The Spanish Government attached great importance to providing work for youths with special needs, which would require specially qualified teachers and extra funding. The education authorities intended to achieve full integration of children with disabilities and special needs in regular schools by tackling problems as soon as they were detected. Foreign children who did not know Spanish had the opportunity to attend special classes until they were ready to join regular classes. Associations promoting the rights of persons with disabilities such as *Fundación 11*, acted as effective pressure groups.

62. The new influx of students, estimated to be about 140,000 in 2010 was a concern, as it would be necessary to increase the number of infrastructures and teachers to meet their needs. That would translate into a student-teacher ratio of between 15 and 20:1. There were some 26,472 schools ready for the 2010 academic year, 300 more than in 2009, 18,000 of which were public and 8,000 private or subsidized. Accordingly, educational funds had increased 46 per cent since 2004.

63. The high dropout rate in Spain, estimated at 31 per cent, was a major concern of the Ministry of Education. Whatever the reasons behind that trend, economic, social or otherwise, the Education Organization Act aimed to help dropouts resume their normal course of study by providing flexible programmes, thereby reducing the dropout rate. Another concern was to provide assistance to those with special study difficulties, including lack of motivation. To address that problem, a programme aimed at strengthening skills and providing career counselling and support was being jointly financed by the Ministry of Education and the Autonomous Communities. Those services were especially important for third- and fourth-year students, who were the most likely to drop out of school and who through that programme could call on teachers outside the public school system for help.

64. **Mr. Kotrane** said that the Committee was deeply concerned about the trend towards the management of educational services by the private sector, which did not necessarily apply the same policies as the public sector. Some private bodies discriminated against Roma and immigrant children. He wished to know whether any educational programmes were planned for those children.

65. **Mr. García Cabrerizo** (Spain) said that most immigrant children attended State schools. The focus was on subsidizing education; educational authorities were working to modify standards and regulations of subsidized schools and to provide cost incentives for schools that admitted immigrant children. Specific educational programmes did indeed exist for Roma children. Police agents were required to report any Roma street children so as to enrol them in school but local authorities found it a challenge to convince parents and children alike of the value of receiving a basic education.

66. **Mr. Marina** (Spain), responding to queries about the immigration centres in the Canary Islands, said that large migratory flows entered through the Canary Islands and Andalusia. Though not overwhelmed by the number of immigrants, the Canary Islands had requested help from the Spanish Government, the General Administration of the State and the Autonomous Communities, which had led to a cooperation agreement in 2006, financed by the General Administration of the State, allowing the transfer of minors in the Canary Islands to other Autonomous Communities.

67. **The Chairperson** recalled that the Committee was concerned about the standards and conditions applying in those centres in the Canary Islands.

68. **Mr. Marina** (Spain) said that the same laws concerning children were applied throughout Spain, including in the Autonomous Communities, and hence in the Canary Islands. He stressed that the Canary Islands were coping effectively with the arrival of minors and that was not currently a problem.

69. **Mr. Citarella** (Country Rapporteur), thanking the Spanish delegation for a fruitful dialogue, said that the Committee on the Rights of the Child appreciated the positive developments that had taken place and the Government's efforts to comply with the Committee's previous recommendations. Indeed, Spain was one of the most advanced countries in the field of children's rights. However, coordination with the Autonomous Communities, the issue of unaccompanied minors and some forms of discrimination were areas that would require government action. Other problems that had not been discussed because of time constraints might be taken into account in the concluding observations on the basis of the periodic report under review.

70. **Mr. Garrigues** (Spain) said that the constructive interactive dialogue and committee recommendations would contribute to Spain's further compliance with the Convention on the Rights of the Child.

71. **The Chairperson** said that the delegation could count on the Committee's continued assistance and that the multitude of questions it had posed reflected a genuine interest in the situation of children in Spain.

The meeting rose at 6 p.m.