



Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the second periodic report of Andorra, adopted by the Committee at its sixty-first session (17 September – 5 October 2012)

1. The Committee considered the second periodic report of Andorra (CRC/C/AND/2) at its 1734th and 1735th meetings (see CRC/C/SR.1734 and 1735) held on 21 September 2012, and adopted, at its 1754th meeting held on 5 October 2012, the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party (CRC/C/AND/2) and the written replies to its list of issues (CRC/C/AND/Q/2), which allowed for a better understanding of the situation in the State party. The Committee expresses appreciation for the constructive dialogue held with the delegation of the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations adopted on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/AND/CO/1) and under the Optional Protocol on sale of children, child prostitution and child pornography (CRC/C/OPSC/AND/CO/1).

II. Follow-up measures undertaken and progress achieved by the State party

4. The Committee welcomes as positive the adoption of the following legislative and institutional measures:

- (a) The amendment of the Law on the establishment and operation of Ciutadà Raonador (Law 79/2010), on 25 October 2010;
- (b) The establishment of the National Commission for Equality (NCIP), in 2010;
- (c) Qualified Act 9/2005 of 21 February 2005 on the Criminal Code;
- (d) Qualified Act 10/2005 of 21 February 2005 amending the Code of Criminal Procedure;
- (e) Act 14/2004 of 3 November 2004 amending the Qualified Act on Marriage;

- (f) Act of 17 October 2002 Guaranteeing the Rights of Persons with Disabilities.
5. The Committee also welcomes the ratification or accession by the State party to:
- (a) The Covenant on Civil and Political Rights and its Optional Protocol, in 2006;
- (b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2006;
- (c) The Convention on the Elimination of All Forms of Racial Discrimination, in 2006;
- (d) Optional Protocol to the Convention on the Elimination of Discrimination against Women, in 2002;
- (e) The Rome Statute of the International Criminal Court, in 2001;
- (f) Council of Europe Convention on Action against Trafficking in Human Beings in 2011;
- (g) Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning non-discrimination in 2008.
6. The Committee also welcomes the withdrawal of the State party's declaration on articles 7 and 8 of the Convention on the Rights of the Child made upon ratification.

III. Main areas of concern and recommendation

A. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)

The Committee's previous recommendations

7. The Committee, while welcoming the State party's efforts to implement the Committee's concluding observations of 2002 on the State party's initial report (CRC/C/61/Add.3), notes with regret that some of the recommendations contained therein have not been fully addressed.

8. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations on the initial report under the Convention that have not been implemented or sufficiently implemented, particularly those related to a national plan of action, coordination, data collection, definition of the child and violence against children, including corporal punishment.

Legislation

9. The Committee notes with concern the absence of specific legislation dedicated to child protection covering basic provisions of the Convention.

10. The Committee recommends that the State party adopt a law on child protection, which provides guidance or directives regarding the roles and responsibilities of government agencies and personnel and the available local safeguards.

Comprehensive policy and strategy

11. The Committee notes with concern the lack of a national policy and strategy on children to ensure the full implementation of the Convention in the State party and the

information provided in its written replies that it has decided not to develop a national plan of action for children despite the initiation of the process in 2006.

12. The Committee recommends that the State party urgently develop and adopt a national policy on children detailing a clear vision with strategies, objectives and specific benchmarks and indicators to address children's interest and concerns and to ensure adequate investment on children for the realization of their rights. It further recommends that such policy be developed based on systematic information on children and consultation with children themselves, NGOs, international organizations, and professionals working with children, including teachers and social workers.

Coordination

13. The Committee notes that the Ministry of Health and Welfare is responsible for coordinating the implementation of the Convention. However, the Committee is concerned about the lack of clarity among other government agencies and stakeholders regarding the scope of the Ministry's mandate and its coordinating responsibilities. The Committee is also concerned about the insufficient coordination between various national and local government agencies working on children's rights in the State party. Furthermore, the Committee notes with concern that multiple ministries and other government bodies, both at the national and local level, are working in various areas of children's rights without a common plan of action on children.

14. The Committee emphasizes that coordination and collaboration among different government entities are essential for the development and implementation of joint policies, standards and tools related to protection and promotion of children's rights, including data collection and monitoring the impact of interventions. It reiterates its previous recommendations (CRC/C/15/Add.176, para. 13) that the State party strengthen its strategic partnerships between various ministries and technical bodies by developing a comprehensive policy and strategy on children and clearly defining the coordinating role of the Ministry of Health and Welfare.

Allocation of resources

15. The Committee notes the economic grants provided by the State party during the economic crisis through different ministries to families in vulnerable situations; however, the Committee is concerned about:

(a) The lack of specific budget allocated for the implementation of the Convention and the absence of a single mechanism to track the allocation of resources for children from different ministries;

(b) The lack of strategic budgetary lines for children in disadvantaged or vulnerable situations, such as children living in poverty;

(c) The information that the State party has decreased its voluntary contributions to international organizations and grants to local NGOs.

16. Taking into account the recommendations made during its day of general discussion of 21 September 2007 on "Resources for the rights of the child - responsibility of States," the Committee recommends that the State party:

(a) **Introduce a child right's budget system with specific budget lines and indicators that allow tracking, monitoring and evaluating budget allocations for children;**

(b) Define strategic budgetary lines for children in disadvantaged or vulnerable situations that may require affirmative social protection measures, especially children in situations of poverty, from ethnic and minority groups, children in street situations, children affected by HIV/AIDS, children with disabilities, orphans, and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies;

(c) Maintain its voluntary contributions to international organizations and grants to local NGOs;

(d) Ensure transparent and participatory budgeting through public dialogue, especially with children and the civil society.

Data collection

17. The Committee notes the signing of a cooperation agreement with the Andorra Foundation to develop an independent study on the situation of childhood and adolescence, as well as the proposed "shared social history" in order to create a joint national database. However, the Committee reiterates its previous concern (CRC/C/15/Add.176, para. 18) at the lack of data on children and the absence of a centralized and comprehensive data collection system in the State party to analyse the situation of children, including the impact of the economic crisis on children and their families. The Committee recalls that the absence of data on children severely restricts effective and systematic monitoring of children's rights as well as the designing and planning of policies and programmes on children.

18. **The Committee reiterates its previous recommendation (CRC/C/15/Add.176, para. 19) that the State party set up a comprehensive data collection system with the support of its partners for the effective monitoring and evaluation of progress achieved in the realization of child rights as well as for the development of policies and programmes to implement the Convention. The data collected should be disaggregated by, inter alia, age, sex, ethnicity, geographic location and socio-economic background to facilitate analysis of the situation of all children. The State party should ensure that information collected contains up-to-date data on a wide range of children in vulnerable situations, including migrant children, children with disabilities and those living in poverty.**

Independent monitoring

19. **Given the absence of children's complaints at the Raonador del Ciutadà, the Committee recommends that the State party review the operation and activities of the Raonador del Ciutadà to ensure comprehensive and systematic monitoring of children's rights, including by expanding the presence of the institution in the State party, and consider how to strengthen children's access to this institution. Drawing attention to its general comment No. 2 (2002), the Committee also calls upon the State party to ensure that this national mechanism is provided with the necessary human, technical and financial resources to ensure its independence and efficacy.**

Dissemination and awareness-raising

20. The Committee welcomes the State party's efforts to disseminate the Convention among the general public, professionals and children and adolescents. The Committee is however concerned that those awareness-raising activities are not effectively coordinated and that knowledge of the Convention, especially among government officials and professionals working with and for children, the media, parents and children themselves, still remains limited.

21. The Committee recommends that the State party further strengthen its efforts to systematically disseminate and promote the Convention among the public at large, and in particular among professionals working with and for children, the media, parents, teachers and children themselves. In the light of the diverse educational system in Andorra, the Committee recommends that the State party ensure that the Convention is translated and disseminated in all languages used in Andorran education systems (Catalan, Spanish, French and Portuguese) and made publicly and easily available for children and that the principles and provisions of the Convention are progressively incorporated into school curricula at all levels in all schools.

B. Definition of the child (art. 1 of the Convention)

22. The Committee notes with regret that despite its previous concern (CRC/C/15/Add.176, para. 24) about the low minimum age of marriage of 16 years of age, and 14 years of age with the permission of a judge, the State party has not increased the minimum age of marriage.

23. The Committee reiterates its previous recommendation (CRC/C/15/Add.176, para. 25) that the State party amend its legislation and increase the minimum age of marriage to 18 years.

C. General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

24. The Committee welcomes the establishment of the National Equality Commission in 2010 to address anti-discrimination issues and the initiative to develop a National Action Plan for Equality. However, the Committee is concerned that the State party has not prioritized the work of the Commission since its establishment in 2010 and that little progress has been made, including on the development of the National Action Plan for Equality. The Committee is also concerned about the existing patriarchal attitudes, practices and stereotypes that discriminate against girls and children with disabilities in the State party.

25. The Committee recommends that the State party:

(a) Strengthen the National Equality Commission by providing sufficient human, technical and financial resources;

(b) Ensure that all discriminatory practices against girls and children with disabilities are removed and adequate protection from discrimination is provided;

(c) Formulate a comprehensive strategy, including a clear definition of targets, and the establishment of a monitoring mechanism, to modify and eliminate negative attitudes and practices, and deep-rooted stereotypes that discriminate against both girls and women and children with disabilities;

(d) Undertake such efforts in coordination with a wide range of stakeholders and involving all sectors of society so as to facilitate social and cultural change and the creation of an enabling environment that is supportive of equality among children;

(e) Monitor such efforts and regularly assess progress made towards the achievement of established goals, and include specific information in its next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party in follow-up to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial

Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

Best interests of the child

26. While noting that different governmental bodies, such as the Technical Commission for Children and Young People take into account the best interest of the child in all of its decisions and proposed measures for children, the Committee is concerned that the principle of the best interest of the child is not systematically or sufficiently integrated in legislation, policies, programmes and decision-making processes. Further, the Committee is concerned that the principle is not adequately considered with respect to decisions concerning children deprived of a family environment, children in need of protection from abuse and children of seasonal or temporary workers.

27. **The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance for determining the best interests of the child in every area, and to disseminate them to public or private social welfare institutions, courts of law, administrative authorities and legislative bodies. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.**

D. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)

Protection of privacy

28. The Committee is concerned about the lack of effective regulation on media to protect children from harmful content and ensure their right to privacy. In addition, the Committee notes with concern that there is no independent body responsible for receiving complaints against the media with regard to infringement of children's right to privacy.

29. **The Committee recommends that the State party take all necessary measures to safeguard children's right to privacy in the media and ensure that children are not exposed to harmful media content. In this regard, the Committee recommends that the Andorran Broadcasting Board strengthen its role and effort to ensure that programmes aired on television and radio are respectful of children's rights and that children's access to different kinds of potentially harmful content are effectively restricted.**

E. Violence against children

Corporal punishment

30. The Committee notes that the State party accepted the recommendation to prohibit all corporal punishment of children during the universal periodic review in 2010, and the amendment of the Criminal Code by Law 91/2010 to include a specific provision regarding maltreatment at home. However, the Committee is concerned that the amended provision does not specifically refer to corporal punishment or explicitly prohibit such forms of punishment in all settings, such as private or public educational or alternative care institutions or the penal system.

31. In light of its general comment No. 8 (2007), the Committee recalls its previous recommendation (CRC/C/15/Add.176, para. 40), and urges the State party to:

(a) Enact legislation that explicitly prohibits all forms of corporal punishment in the family, schools and alternative care settings and penal institutions;

(b) Ensure that laws prohibiting corporal punishment are effectively implemented and that legal proceedings are systematically initiated against those responsible for violence against children;

(c) Introduce sustained public education, awareness-raising and social mobilization programmes, involving children and families, on the harmful effects, both physical and psychological, of corporal punishment, with a view to changing the attitude towards this practice, and to promote positive, non-violent and participatory forms of child-rearing and discipline;

(d) Ensure the involvement and participation of the whole society, including children, in the design and implementation of preventive strategies against violence and other forms of abuse.

Abuse and neglect

32. The Committee notes with concern the information provided by the State party that the impact of the economic crisis on families, particularly the rise in unemployment, has put pressure on families and led to a significant increase in incidents of domestic violence against children and women. In particular, the Committee is concerned by the State party's findings that the number of cases of children at risk of abuse and negligence has increased in recent years. The Committee is further concerned that the child protection system is still insufficient to provide proper prevention, identification, reporting, referral, investigation, treatment, rehabilitation and follow-up on all cases of child abuse and neglect.

33. The Committee recommends that the State party:

(a) Take all necessary measures to ensure that prompt and adequate recovery and social reintegration services are provided to children and their families, and that they have easy access to information about where to get effective assistance;

(b) Undertake a comprehensive study on the root causes, nature and extent of domestic violence, including abuse and neglect, and develop specific indicators to gather disaggregated data;

(c) Provide regular and comprehensive training on prevention, identification and response to all forms of violence against children for all government employees working for and with children, such as Ministry officials, police, immigration officers, health-care professionals, lawyers, teachers, caregivers working in institutions, public information and media specialists;

(d) Integrate child protection measures into all existing social protection policies and programmes to ensure they include all children living in poverty and vulnerable families;

(e) Provide information concerning the implementation of the recommendations by the State party in its next periodic report.

Sexual exploitation and abuse

34. While the Committee notes as positive that the State party is revising its Criminal Code to strengthen the legislation on child pornography, it notes with concern that the State party has not taken any measures to abolish the requirement of double criminality in cases

of extradition and prosecutions of offences committed abroad, including sexual abuse and exploitation.

35. The Committee reiterates its previous recommendation (CRC/C/OPSC/AND/CO/1, para. 15) that the State party amend its legislation to abolish the requirement of double criminality for extradition and/or prosecution of offences committed abroad, and to use, where necessary, the Optional Protocol as a legal basis for extradition, in conformity with article 5 of the Optional Protocol. The Committee further recommends that the State party ensure that programmes and policies for the prevention, recovery and reintegration of child victims are in accordance with the outcome documents adopted at the 1996, 2001 and 2008 World Congress against Commercial Sexual Exploitation of Children held in Stockholm, Yokohama and Rio de Janeiro.

Freedom of the child from all forms of violence

36. Recalling the recommendations of the United Nations Study on Violence against Children (A/61/299), the Committee recommends that the State party prioritize the elimination of all forms of violence against children. The Committee further recommends that the State party take into account general comment No. 13 (2011), and in particular:

- (a) Develop a comprehensive national strategy to prevent and address all forms of violence against children;
- (b) Adopt a national coordinating framework to address all forms of violence against children;
- (c) Pay particular attention to the gender dimension of violence;
- (d) Cooperate with the Special Representative of the Secretary-General on violence against children and other relevant United Nations institutions.

F. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Adoption

37. The Committee notes the increase in the number of intercountry adoptions in the State party. The Committee is concerned that the law does not provide for a specific body to monitor adoptions.

38. The Committee recommends that the State party entrust the responsibility of monitoring and collecting data on domestic and intercountry adoption, including post-adoption monitoring, to a specific body, and ensure that the principle of the best interests of the child is always taken into consideration.

G. Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26 and 27 (paras. 1-3) of the Convention)

Children with disabilities

39. The Committee notes with appreciation the significant legislative, institutional and policy measures taken to ensure that children with disabilities enjoy the same protection and rights as other children in the State party. However, it is concerned that children with disabilities continue to experience social discrimination.

40. Taking into account its general comment No. 9 (2006), the Committee recommends that the State party:

(a) Reinforce efforts to raise awareness and sensitize the public about rights and special needs of children with disabilities, including children with mental health concerns to help remove cultural and social barriers;

(b) Increase budget allocations to provide children with disabilities with equal access to adequate social and health services, including psychological support, counselling services, parental guidance for families of children with disabilities, and tailored services for children with learning difficulties and behavioural disorders, and raise awareness about all services available.

Adolescent health

41. The Committee is concerned about the punitive abortion law that could lead adolescents to seek other alternative solutions in the neighbouring countries. The Committee also regrets the lack of information on the adolescent health, including on the reproductive and sexual health of adolescents in the State party's report.

42. The Committee recommends that the State party review the provisions of the Penal Code concerning abortion to decriminalize abortion under certain circumstances, such as pregnancies as a result of rape, with a view to guaranteeing the best interests of pregnant teenagers. Referring to its general comment No. 4 (2003), the Committee further urges the State party to increase the availability of confidential and youth-friendly health services throughout the country, to enhance the availability of contraceptive services, including in all educational institutions and to promote sex education targeted at adolescent girls and boys, with special attention to the prevention of early pregnancies and sexually transmitted diseases.

H. Other special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d) and 32-36 of the Convention)

Asylum-seeking and refugee children

43. The Committee expresses concern at the lack of domestic legislation on asylum seekers and refugees, and in particular at the absence of measures to protect unaccompanied and refugee children.

44. The Committee recommends that the State party enact legislation on asylum seekers and refugees in conformity with the international standards, including by taking into account its general comment No. 6 (2005). The Committee recommends that the State party accede to the 1954 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Children in situations of migration

45. The Committee notes with concern that the State party, during the universal periodic review in 2010, rejected the recommendation to take necessary steps to guarantee access to fundamental social human rights, such as health care and education, for foreign residents, including their children, regardless of their migratory status. The Committee is also concerned that the Qualified Act on Immigration of 14 May 2002 and its 2007 amendment do not entitle seasonal workers to family reunification, and does not take into account the best interests of the child, and therefore it is incompatible with the principles and provisions of the Convention, including those of its articles, 2, 3, 9 and 10.

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

(a) **Ensure that the National Equality Commission examines the condition of the rights of migrant children and children of seasonal workers and coordinate its efforts to promote and protect their rights, including by carrying out public awareness campaigns to change stereotypes and discriminatory attitudes against such groups of children;**

(b) **Revise and amend the Qualified Act on Immigration of 14 May 2002 to permit family reunification for holders of temporary immigration permits and ensure children's right to family life. The Committee further recommends that the State party ensure that the family reunification procedure is dealt within a positive, humane and expeditious manner, taking into account the best interests of the child;**

(c) **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to further strengthen the fulfilment of children's rights.**

Economic exploitation, including child labour

47. The Committee welcomes the enactment of the Act of 12 June 2003 on Employment Contracts and the Regulation of 28 January 2004 governing employment contracts for trainees, which establishes additional restrictions and supervision with regard to employment of children under the age of 18. However, the Committee is concerned that the Act does not comprehensively address the situation of children employed in the family context, in particular to ensure that such employment or working hours do not interfere with the children's right to education. Furthermore, the Committee is concerned that the Act does not provide a clear definition of 'light work' although it authorizes the employment of children aged between 14 and 15 during half of the school holidays, and as long as the time limitations do not exceed six hours per day and 30 hours per week maximum.

48. The Committee notes with concern that the State party has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol).

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

(a) **Take all measures to ensure that the involvement of children in all contexts is in full compliance with the international child labour standards, in terms of their age, working hours, their working conditions, their education and health. In this regard, the Committee recommends that the State party establish the definition of 'light work', in conformity with rules set out in ILO convention no. 182 (1999) concerning prohibition and immediate action for the elimination of the worst forms of child labour, and that it explicitly prohibit employment of children between 14 and 18 years of age in work likely to harm health, safety and morals. This definition should be disseminated to all employers, government agencies and the general public, especially children in order to raise awareness of international standards relating to child labour;**

(b) **Impose applicable sanctions against persons violating the existing legislation on child labour**

(c) **Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol).**

Administration of juvenile justice

50. The Committee notes with appreciation that the age of criminal responsibility is 18 years in the State party. The Committee also notes as positive the information provided by the State party that the child detainee, who was the only one deprived of liberty in 2012, was fully separated from adults.

51. Noting that a very few number of children are incarcerated in detention centres, the Committee recommends that the State party ensure that children are accompanied and cared by professionals, and that they are always held entirely separate from the adult detainees, including when they are permitted to use common areas of the detention facility.

I. Ratification of international human rights instruments

52. The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, ratify the following treaties: The Optional Protocol to the Convention on the Rights of the Child on Communication Procedures, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on the Rights of Persons with Disabilities and its Optional Protocol.

J. Cooperation with regional and international bodies

53. The Committee recommends that the State party cooperate with the Council of Europe towards the implementation of the Convention and other human rights instruments, both in the State party and in other Council of Europe member States.

K. Follow-up and dissemination

54. The Committee recommends that the State party take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Head of State, Parliament, relevant ministries, the Supreme Court, and to local authorities for appropriate consideration and further action.

55. The Committee further recommends that the second periodic report and the written replies of the State party and the present recommendations (concluding observations) be made widely available in the languages of the country, including (but not exclusively) through the Internet, to the public at large, civil society organizations, media, youth groups, professional groups and children, in order to generate debate and awareness of the Convention and its Optional Protocols and of their implementation and monitoring.

L. Next report

56. The Committee invites the State party to submit its consolidated third to fifth periodic report by 31 January 2018 and to include in it information on the implementation of the present concluding observations. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2 and Corr. 1) and reminds the State party that future reports

should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the guidelines. In the event a report exceeding the page limitations is submitted, the State party will be asked to review and resubmit the report in accordance with the abovementioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, then translation of the report for purposes of examination of the treaty body cannot be guaranteed.

57. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved at by the fifth Inter-Committee Meeting of the human rights treaty bodies in June 2006 (HRI/GEN/2/Rev.6, chap. I).
