



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-sixth session

Summary record of the 1604th meeting

Held at the Palais Wilson, Geneva, on Monday, 31 January 2011, at 10 a.m.

Chairperson: Ms. Lee

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The meeting was called to order at 10.15 a.m.

Consideration of reports of States parties (*continued*)

Initial report of Mexico under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC/C/OPSC/MEX/1; CRC/C/OPSC/MEX/Q/1 and Add.1)

Initial report of Mexico under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC/C/OPAC/MEX/1; CRC/C/OPAC/MEX/Q/1 and Add.1)

1. At the invitation of the Chairperson, the delegation of Mexico took places at the Committee table.

Initial report of Mexico under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

2. **Ms. Landerreche** (Mexico) said that in 2004, a reform had been launched to give constitutional status to the rights and best interests of the child. The Protection of the Rights of Children Act had been adopted with a view to ensuring the protection and respect of the fundamental rights embodied in the Constitution for all children. The Federal Criminal Code expressly punished the corruption of minors, child pornography and the sale, distribution and supply of books, recordings and other materials of a pornographic nature to persons under 18 years of age.

3. In 2007, Mexico had adopted a Federal Act to prevent and punish trafficking in persons which provided for aggravating circumstances when the victims were children. Since 2008, legal entities (restaurants, bars, etc.) which hired persons under 18 years of age and in so doing caused harm to their physical or mental health were liable to criminal sanctions which could include the closing of the establishment. In 2010, the offences of paedophilia (art. 209 bis) and trafficking in minors for the purpose of sale (art. 366 ter) had been incorporated into the Federal Criminal Code.

4. In 2008, Mexico's criminal justice system had been transformed with the introduction of the adversarial procedure in order to provide better protection for the rights of victims and ensure compensation for damages. An integrated system of justice had been instituted for minors between 12 and 18 years of age to guarantee not only the fundamental rights of all persons as recognized by the Constitution but also the specific rights of minors.

5. Set up in 2006 by the Office of the Attorney General, a citizens' support centre provided aid to children who were victims of sexual exploitation, and the Secretariat of Public Security had created a comprehensive system of assistance for victims.

6. The National Human Rights Programme 2008–2012 defined the main areas of action for preventing, punishing and eradicating prostitution, pornography and sexual exploitation of children. An intersectoral commission had been mandated to coordinate efforts by all federal bodies aimed at combating trafficking in persons and to establish a national system for receiving and following up on complaints and reports.

7. A number of bodies had been set up to investigate offences under the Optional Protocol, including the Office for the Investigation of Organized Crime, the Special Unit for the Investigation of Trafficking in Children and the Office of the Special Prosecutor for Combating Trafficking in Persons, which operated a programme for unaccompanied children. The Government had also put into place a system to collect data on users of child pornography websites.

8. Mexico was giving close attention to strategies for the prevention of violations of children's rights and had been one of the first countries, in 2010, to join the Blue Heart Campaign of the United Nations Office on Drugs and Crime, which aimed to mobilize public opinion against trafficking in persons. In 2007, the National Human Rights Commission, which was empowered to consider complaints from children, had launched a public information programme on trafficking in persons. Workshops and information campaigns had also been organized by the Ministry of Education, the Ministry of Health, the National System for the Comprehensive Development of the Family and the National Institute for Women.

9. Mexico took direct action on behalf of groups that were in a vulnerable situation because of economic, social or cultural factors. An intersectoral commission had formulated a strategy for assisting unaccompanied migrant minors. The National System for the Comprehensive Development of the Family and the National Institute for Migration, in conjunction with the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Population Fund (UNFPA), had concluded a cooperation agreement on training child protection specialists. A network of reception centres to assist migrant children had been established in the north and the south of the country. The National Institute for Migration had defined a procedure to help detect victims of trafficking more easily and ensure their statistical follow-up.

10. **Ms. Ortiz** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography), noting that the National System for the Comprehensive Development of the Family focused on assistance, asked whether the State party planned to set up a coordinating body specializing in children's rights to make sure that those rights were taken into account in policies and by State institutions and Mexican society and that children were recognized as subjects of law.

11. Mexico could provide more effective responses to the problems targeted in the Optional Protocol by introducing a well-defined system with a focus on rights and new policies and institutions as well as clear regulations for the activities of the authorities and civil servants and effective follow-up, monitoring and punitive mechanisms throughout the country to prevent offences committed against children from going unpunished. The numerous initiatives conducted in cooperation with the International Organization for Migration (IOM), the International Labour Organization (ILO), UNICEF and organizations of civil society, which often gave priority to training and the distribution of handbooks, would be more successful if they were supported by a comprehensive rights promotion and protection system.

12. National legislation and a number of norms applied at state and municipal level were not always in conformity with the Convention and the Optional Protocol. There was no national council on children's rights composed of representatives of all levels of Government, open to organizations of civil society and mandated to determine policies for giving effect to the Optional Protocol, define concepts or take action.

13. The institutions responsible for providing replacement protection in the framework of the National System for the Comprehensive Development of the Family as well as mechanisms for monitoring the situation of children in other institutions did not contain sufficient guarantees, as shown by the disappearance of 25 children in the care of the Restored Church and 7 children from the Casitas del Sur home, as well as the murder of 9 children who had been institutionalized or had been undergoing social rehabilitation or the death of 49 children in the fire of the ABC childcare facility in Sonora, whose parents were still seeking justice. She asked the delegation to explain what measures had been taken to avoid similar tragedies in the future, punish the perpetrators and award damages to the victims and their families.

14. **Mr. Filali** enquired whether the Optional Protocol had been fully incorporated into domestic law and whether it was used as a source of law in the courts.

15. The definition of the sale of children in article 366 of the Mexican Criminal Code, which referred to minors under 16 years of age and concerned acts relating to the deprivation of liberty and the national or transboundary transfer of persons, was not in conformity with the definition in the Optional Protocol, which covered minors up to the age of 18 years and defined the sale of children as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".

16. It would be useful for the delegation to indicate whether foreigners who sought to adopt a Mexican child were subject to a six-month trial period, as in the case of national adoptions, before obtaining the authorization of the authorities. He would also like to know whether the State party could prosecute a foreigner who had committed offences under the Optional Protocol and was on board a vessel registered under a flag of convenience.

17. **Mr. Guran** sought clarification on the status and role of the National Human Rights Commission as well as the complaints mechanisms, and in particular the number of complaints filed by children or on their behalf. It would also be interesting to learn what professional training persons working in those bodies received and whether the confidentiality of cases was respected.

18. **Ms. El-Ashmawy** wondered whether social reintegration, psychological rehabilitation and protection programmes existed for children who were victims of offences under the Optional Protocol, and she also requested more information on systems for identifying victims and the relevant guidelines.

19. **Mr. Koompraphant** asked whether a special investigation unit had been set up to elucidate the 9,758 cases of migrants abducted in Mexico from September 2008 to February 2009, how many of those persons had been children and whether the State party had introduced protection programmes for witnesses of those acts and for potential victims.

20.**Mr. Puras** enquired whether the pilot centre launched in the State of Jalisco in 2004 for assisting children who were victims of sexual exploitation for commercial purposes as well as for their families had been emulated in the rest of the country, whether the State cooperated with non-governmental organizations in that area, whether it funded such activities and how staff at such a centre was trained.

21. It would be useful to learn what preventive measures specifically targeted migrants, unaccompanied children and street children and what protection measures had been adopted for the 3 million children not attending school and for institutionalized children, who were more exposed to the offences under the Optional Protocol.

22.**Mr. Zermatten** wondered whether monetary payment was really prohibited and whether the consent of the child was really free in national adoptions. He asked whether the offences under the Optional Protocol constituted acts which could result in the dissolution of a legal entity pursuant to article 116 of the Criminal Code, whether those offences were a ground for extradition under agreements concluded with other countries and whether, in the absence of such an agreement, Mexico considered article 5 of the Optional Protocol to be a sufficient legal basis for extradition. The delegation should also indicate whether the judicial authorities limited the number of hearings which child victims or witnesses must attend, whether a confrontation with the perpetrators was avoided, for example through the use of audio-visual recordings, and whether a compensation fund had been set up to deal with cases of indigent perpetrators.

23.**Ms. Aidoo** said that training and public awareness efforts apparently focused on sexual exploitation of children for commercial purposes, whereas information was lacking on action to combat the sale of children within the meaning of articles 2 and 3 of the Optional Protocol. Given the risk of sale for adoption, she requested more information on steps taken to disseminate the details of the Optional Protocol throughout the country among all children, in particular the 3 million children not attending school, and including in isolated areas inhabited by indigenous groups, as well as among institutional professionals.

24.**Mr. Citarella**, observing that the Optional Protocol specified that the sale of children, a different concept from trafficking, was a crime, enquired how the sale and purchase of children was punished in Mexico.

25.**Ms. Maurás Pérez** noted that little progress had been made in the area of coordination since the consideration, in 2006, of the State party's third periodic report on the implementation of the Convention, when the Committee had stressed that point in its concluding observations. The intersectoral commission for elaborating and implementing a national programme to combat trafficking did not seem to have the means needed for its activities. The relations between the various bodies working to combat trafficking in human beings needed to be defined, as well as the manner in which the national development plan adopted in 2006 interacted with other programmes. The question of coordination also arose for preventive action in a country with large numbers of school dropouts, street children, migrant children and poor children.

26. She asked what was being done to protect human rights activists, who could make an important contribution to independent monitoring but who were persecuted in the State party, sometimes paying for their commitment with their lives.

27.**The Chairperson** would like to know whether dual criminality, which was set out in the Federal Criminal Code, applied to offences under the Optional Protocol and whether child prostitution was expressly prohibited in all the states of Mexico. Given the many tourists in Mexico, it was essential to adopt a code of conduct for use in enterprises in the tourism sector, including hotels. The victims of trafficking must be considered as such and not as criminals.

The meeting was suspended at 11.45 a.m. and resumed at 12.10 p.m.

28.**Mr. Zamora** (Mexico) said that the Constitution was the supreme norm and took precedence over all other sources of law, but a bill which would soon be adopted stipulated that international conventions which had been ratified would be directly applicable in the courts.

29.**Ms. Herrera** (Mexico) said that the Federal Criminal Code criminalized acts prohibited by the Optional Protocol. Articles 202 and 202 bis covered the creation, dissemination, distribution and storage of pornographic material depicting children and the whole range of pornographic acts depicting children; article 203 covered sex tourism, and article 204, child prostitution. Although not the subject of a separate offence, the sale of children was covered in article 166 ter, on trafficking in minors, but the offence only concerned victims under 16 years of age, whereas the age of majority was 18; cases involving minors between 16 and 18 years of age came under the provision on trafficking in persons. State-level provisions on sexual exploitation of children for commercial purposes had been brought into line with federal law. Child prostitution thus constituted an offence in all the states of Mexico, although it was not necessarily referred to as such.

30. Since the revision of the Criminal Code in August 2010, the limitation period for prosecution of offences under the Optional Protocol did not begin until the victim reached the age of majority.

31.**Ms. Ruiz** (Mexico) said that the list of rights of victims introduced in 2008 provided for the possibility of avoiding a confrontation between victims and perpetrators. Audio-visual means were available in some courts and were left to the discretion of the judges, who usually asked for their use for all offences under the Federal Criminal Code in which minors were involved.

32. The sale of children was punished, and the involvement of a parent was an aggravating circumstance. The text on trafficking would be revised shortly in order to bring it fully into line with the provisions of the Optional Protocol.

33.**Ms. Herrera** (Mexico) said that the principle of dual criminality was inscribed in the Extradition Act.

34.**Mr. Kotrane**, noting that the storage of pornographic material was a punishable offence under article 202 of the Criminal Code, asked whether the same was true for its possession and whether the penalty for forced child labour was the same as for the sale of children. The principle of dual criminality which Mexico applied to offences committed abroad was contrary to the provisions of the

Optional Protocol, and he therefore enquired what measures were envisaged to make the Optional Protocol a sufficient basis for requesting extradition in the absence of a bilateral extradition agreement with the country concerned.

35.**Ms. Herrera** (Mexico) said that paragraph 4 of article 202 and article 202 bis of the Criminal Code prohibited the possession of pornographic material. Articles 5 and 6 of the Prevention and Punishment of Trafficking in Persons Act of 2007 prohibited forced child labour.

36.**Ms. Ruiz** (Mexico) said that a legal entity could be required to compensate a minor who was the victim of a criminal offence committed by an employee by paying a specific sum to the victim or by defraying the cost of psychological treatment.

37.**Mr. Zermatten** enquired whether legal entities could be made criminally responsible and whether a compensation fund existed for cases in which an individual or a legal entity was unable to pay compensation.

38.**Mr. Zamora** (Mexico) said that, at the current time, only individuals could be criminally responsible, but a reform under consideration by the Congress of the Union would introduce criminal responsibility for legal entities.

39.**Mr. Negrín** (Mexico) said that to date, the State had never rejected an extradition request and had never been refused an extradition request. Since 2002, there had been 15 extraditions to Mexico and 6 extraditions from Mexico for offences under the Optional Protocol.

40.**Ms. Ruiz** (Mexico) said that the Refugees and Subsidiary Protection Act, which had entered into force on 28 January 2011, incorporated the provisions of the 1951 Convention relating to the Status of Refugees. Article 20 of the Act guaranteed assistance throughout the procedure to the most vulnerable persons, including minors, as well as to victims of trafficking, violence or sexual abuse. It stipulated that persons who had been denied refugee status were entitled to subsidiary protection to prevent their being returned to a country in which their safety was not ensured or in which they were at risk of being tortured or subjected to other cruel, inhuman or degrading punishment or treatment.

Initial report of Mexico under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

41.**Mr. Zamora** (Mexico) said that his country was not experiencing internal conflict and was not involved in any international armed conflict, and thus Mexican children were not at risk of being enrolled in the armed forces to take part in hostilities. Mexico had ratified most international instruments relating to international humanitarian law, as well as the Rome Statute of the International Criminal Court, pursuant to which the recruitment of children and their participation in armed conflicts constituted a war crime.

42. The regional office which the International Committee of the Red Cross had opened in Mexico in 2002 was working to promote the inclusion of international humanitarian law in the training programmes of the armed forces and the police. In 2007, the Secretariat of Public Security had concluded an agreement with the regional office on the training of police officers in the legitimate use of force and on the incorporation of international human rights norms into police guidelines and instructions.

43. As a non-permanent member of the Security Council for the period 2009–2010, Mexico had chaired its Working Group on Children and Armed Conflict and had contributed to the adoption of Resolution No. 1882 (2009), in which the Council had strengthened protection for children in situations of armed conflict by condemning their recruitment and use by parties to armed conflict as well as other types of violations, including sexual violence, killing and maiming.

44. Military service was compulsory for all men over 18 years of age. Youths over 16 years of age who performed military service in advance on a strictly voluntary basis and with the authorization of their parents or guardians could not be deployed as active combatants in the armed forces or take part in hostilities in the event of an armed conflict. The minimum age for voluntary enlistment was 18. The Military Service Act made provision for the enlistment of minors between 16 and 18 years of age with the authorization of their parents or guardians, but only for technical training in the framework of a contract which could be terminated.

45. Mexico had made the declaration under article 3, paragraph 2, of the Optional Protocol and complied with its provisions as well as with those of article 3, paragraph 3. Procedures for the enlistment of minors, such as students, in military academies and those applicable to early military service were thus fully consistent with the provisions of the Protocol.

46. In July 2010, the intersectoral commission on international humanitarian law had mandated a working group to elaborate a preliminary draft bill to reform Mexican criminal law in order to criminalize the recruitment and enlistment of minors and their use in hostilities.

47. On 6 December 2010, the Chamber of Deputies had passed the bill, which conferred constitutional status on international human rights instruments to which Mexico was a party. If it was passed by the Senate, the bill would make it possible to invoke the norms of international instruments to interpret the fundamental rights embodied in the Constitution, in accordance with the principle of consistent interpretation. On 26 January 2011, the Congress had passed an act on refugees and subsidiary protection, article 5 of which made the best interests of the child a criterion for application, and no fewer than four other articles referred to asylum-seeking minors.

48.**Mr. Pollar** (Country Rapporteur for the Optional Protocol on the involvement of children in armed conflict) asked how the initial report had been drafted, whether civil society had been involved in its elaboration and dissemination, whether obstacles were impeding its application, whether the texts of laws, court decisions and administrative and other relevant instructions had been distributed to the police and what action had been taken on the concluding observations formulated by the Committee at the end of consideration of the third periodic report of Mexico on the implementation of the Convention on the Rights of the Child, in particular the observations concerning the Optional Protocol.

49. He sought clarification on Mexico's interpretative declaration concerning article 4 of the Optional Protocol, which verged on a reservation, and would like to know how Mexico defined direct participation. He also enquired whether non-State forces were operating in Mexico, requested information on armed security forces and asked what measures had been taken to prevent attacks on civilians.

50. It would be useful to learn whether Mexico had established extraterritorial jurisdiction for offences under the Optional Protocol, to what extent it was working with the Special Representative of the Secretary-General for Children and Armed Conflict, whether it was one of the countries targeted by the monitoring mechanism set up under Security Council Resolution No. 1612 (2005) and whether it envisaged ratifying other international instruments in order to improve implementation of the Optional Protocol.

51. **Mr. Koompraphant** asked whether the Federal Criminal Code prohibited the recruitment of children by armed groups and during hostilities, whether child volunteers could be recruited in the fight against drug trafficking, how many children had been recruited into the armed forces and how many of them were from poor or underprivileged families.

52. **Mr. Zermatten**, noting that the Committee had reports on the presence of armed non-State actors, in particular in Chiapas, enquired whether Mexico planned to react to, prevent and perhaps punish the recruitment of children by those groups and requested information on the working group on the criminalization of the recruitment and use in hostilities of children under 18 years of age, which had been set up in 2010.

53. He also asked about linkage between extraterritorial jurisdiction and the obligations emanating from the ratification of the Statute of the International Criminal Court, and he would like to know what had been done to prevent the export of weapons, in particular light weapons and cluster bombs, to countries or regions where they could be used against children.

54. **Mr. Filali** enquired whether children under 18 years of age were mobilized in emergency situations.

55. **The Chairperson** wondered whether child lookouts participated directly in hostilities, whether they were armed and whether the fact that one third of children were living below the poverty line did not encourage some of them to enlist in the armed forces, with the authorization of their parents, in order to have access to health care and other social benefits.

56. **Ms. Ortiz** (Country Rapporteur for the Optional Protocol on the sale of children, child prostitution and child pornography) would like to know whether children who had committed offences as members of armed groups or cartels were treated as victims or perpetrators.

57. **Ms. Aidoo** asked whether the Optional Protocol was disseminated in the armed forces and civil society, whether the members of the armed forces took training courses in human and children's rights and whether peace and tolerance were taught in civilian and military schools.

The meeting rose at 1 p.m.