



Convention on the Rights of the Child

Distr. General
30 March 2010
English
Original: French

Committee on the Rights of the Child Forty-sixth session

Summary Record of the 1276th MEETING

Held at the Palais Wilson, Geneva, on 1 October 2007

Chairperson: Ms. Lee

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The meeting was called to order at 10.05 a.m.

Consideration of reports of States parties (item 4 of the agenda) (continued)

Initial report of Spain on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict [(CRC/C/OPAC/ESP/1); list of issues to be taken up (CRC/C/OPAC/ESP/Q/1)]

Initial report of Spain on the implementation of 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/ESP/1); list of issues to be taken up (CRC/C/OPSC/ESP/Q/1)]

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

2. **Ms. Marzal Martínez** (Spain) said that the Spanish authorities were making efforts to raise public awareness of the provisions of the Protocols and to foster international cooperation against the criminal activities described in them. Spain was also one of the countries which, following ratification of the Convention on the Rights of the Child, had taken the view that the protection provided for in the Convention in relation to the involvement of children in armed conflict was inadequate and had raised the minimum age of recruitment to 18 years.

3. Through the United Nations Children's Fund (UNICEF) Regional Office for Latin America and the Caribbean, Spain had co-financed the translation into Spanish of the Study on Violence against Children conducted by the Independent Expert Mr. Paulo Sérgio Pinheiro and at the request of Mr. Juan Miguel Petit, Special Rapporteur on the sale of children, child prostitution and child pornography, had forwarded documentation for a report to be submitted to the Human Rights Council on aid and rehabilitation programmes and mechanisms for child victims of commercial sexual exploitation.

4. The public protection agency for minors in each autonomous region of Spain was responsible for intervening in the event of a violation of the rights of the child. The agencies had teams of professionals whose task was to assess the family circumstances of the child concerned and to identify the assistance and treatment necessary to ensure the child's full physical and psychological recovery.

5. The Ministry of Labour and Social Affairs encouraged ongoing coordination between all the Autonomous Communities in matters related to children and the family; the coordination was provided by the Sectoral Conference of Social Affairs, Commissions of Directors-General of Children's Matters and the Observatory for Children's and Adolescents' Rights.

6. In accordance with one of the recommendations made by the Committee following consideration of the second periodic report of Spain on the implementation of the Convention, the Government had formulated its first National Strategic Plan for Children and Adolescents for the period 2006-2009; the plan was approved by the Observatory for Children's and Adolescents' Rights. The aim of the plan was to improve the protection and welfare of minors, especially vulnerable children who were at risk, excluded or who were victims of exploitation or violence.

7. Following on from the first Action Plan against Commercial Sexual Exploitation of Children and Adolescents and an evaluation of that plan by a team from the University of Valencia, a second plan was approved for the period 2006-2009; this plan would be

evaluated and monitored by the Observatory for Children's and Adolescents' Rights. The first National Strategic Plan for Children and the second Action Plan against Commercial Sexual Exploitation of Children could be viewed on the Observatory's website in all the languages of the Spanish State and English. The site showed the mechanisms or bodies by which each measure was to be implemented. The most striking examples of progress made were outlined in the additional information supplied by Spain.

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

8. **Mr. Krappmann** asked whether individuals under 18 years of age could be enlisted in the event of a crisis or a threat to State security, what the authorities responsible for recruitment did when there was uncertainty about the age of an applicant and whether there were military secondary education establishments in Spain.

9. The Armed Forces Personnel (Regulations) Act, Act No. 17/1999, prohibited but did not criminalize the recruitment of minors and it would therefore be useful to know whether the State party intended to make it a criminal offence to recruit persons under 18 years of age into the armed forces and into armed groups, if there were any, and whether it intended to establish extraterritorial jurisdiction for Spain in respect of those offences.

10. It would be useful to know what Spain intended to do to tackle particular groups which were in possession of arms and explosives and which had no hesitation in using children to carry out terrorist acts to bring pressure to bear on the Government – the use of children being an essential element of an additional offence.

11. Many children traumatized by an armed conflict ravaging their country sought asylum in Spain and it would therefore be useful to know how many children in Spain had been involved in armed conflict or affected by war. It would also be useful to know whether the acts of absconding from conscription or desertion were grounds upon which refugee status might be granted, as was the case for the destruction of the home or the threat of being killed, raped or enslaved. The delegation might clarify whether the staff responsible for determining the grounds upon which a child asylum-seeker had fled were well trained in children's matters, the problems children encountered and cultural differences. It would be useful to know which services supplied psychological care to traumatized children and provided for their reintegration into society and whether the competent bodies ensured, where necessary, that such children were returned to a safe country to be cared for by specialist services there.

12. The Committee also enquired whether peace education was included in Spanish school curricula.

13. **Mr. Puras** asked whether non-governmental organizations (NGOs) and other members of civil society were involved in formulating the report and what measures the State party had taken or intended to take to disseminate information on the Protocol and provide training in its provisions.

14. **Mr. Parfitt** enquired whether Spain had adopted texts prohibiting the export of light or other arms to countries which recruited child soldiers and whether it had signed the European Union Code of Conduct on Arms Exports.

15. The delegation might indicate whether special measures were taken to protect and rehabilitate unaccompanied minors seeking asylum in Spain who had been involved in armed conflict in view of the fact that the report by the Spanish Ombudsman said that the

services made available to these children were inadequate. It would also be useful to know whether the activities of the Ombudsman's offices were coordinated nationally and regionally.

16. **Mr. Filali** asked whether it was possible for the children of armed forces personnel or war orphans to obtain a derogation and be admitted into a military training centre before attaining the age of 18 years; he enquired what techniques the Spanish authorities used to verify the age of alien applicants who had no papers and asked the delegation to state whether their application was rejected outright if there was any doubt.

17. It would be interesting to know how the State party defined the expression "armed groups" and to know which texts were intended to prohibit their activity on Spanish territory.

18. **The Chairperson** wondered what would happen if an alien who came of age before the age of 18 under the law of his or her own country wanted to enlist in the Spanish armed forces.

19. Further information would be welcome with regard to unaccompanied asylum-seeking children without papers who had been child soldiers, some of whom claimed to be adults so that they were able to work; it would be useful to know in particular whether such children were returned to the country from which they had come rather than their country of origin.

The meeting was suspended at 10.45 a.m. and resumed at 11.05 a.m.

20. **Mr. Solana Cortés** (Spain) said that pursuant to the Armed Forces Personnel (Regulations) Act, Act No. 17/1999, it was impossible for individuals under 18 years of age to be recruited in Spain. The same Act had abolished compulsory military service as of 31 December 2001, thus making the armed forces purely professional. Applicants had to have attained the age of 18 years in order to be admitted to a military training centre. Although in the past a career in the military had been open to Spanish citizens only, since 2002 aliens had been able to enlist in the Spanish armed forces provided that they had attained the age of 18 years and were also regarded as of age pursuant to the law of their country of origin, provided that the age of majority was at least 18 years.

21. That provision applied to the nationals of 19 States (countries in Latin America and Equatorial Guinea) which had preferential historic, cultural and linguistic ties to Spain, provided that their State authorized them to enlist in the Spanish armed forces. As they were not Spanish, they were given only a fixed-term contract following detailed consideration of their casenote, original identity documents (or copies certified as certified true copies by the diplomatic services of their country) and their residence and work permits. Before being admitted to a military training centre, applicants appeared before a standing selection board which verified all the information again, including their age. Anyone who had not attained the age of 18 years would therefore be prohibited from entering the system.

22. As of the entry into force of Act No. 17/1999, polytechnic schools or social action schools to support military families had been abolished. Apart from facilities for young children up to the age of 3 years, the only establishments operated by the Ministry of Defence were military training centres.

23. **Mr. Parfitt**, noting that the children of military personnel sometimes had difficult lives particularly because of the frequent house moves they had to make, and that it was necessary to have facilities appropriate to the particular circumstances they faced, asked whether social services had any involvement with these children.

24. **Mr. Solana Cortés** (Spain) replied that there were student residences which gave priority to the children of military staff who were posted abroad to prevent them from being uprooted. The kindergarten programme for young children was part of a more general action plan set up by the Spanish Government to give effect inter alia to United Nations Security Council resolution 1325 (2000) calling for an increase in the participation of women at decision making levels in conflict resolution and peace processes.

25. Time was given to the topic of peace in the vast majority of courses delivered by the military training and development centres. The reference documents held by all members of the military included a file on the law on armed conflict and it addressed the possibility of children being present in conflicts.

26. Spain had signed the European Union Code of Conduct on Arms Exports and since 1992 had had an Organization Act criminalizing the smuggling of military equipment and any dual use equipment.

27. **Ms. Marzal Martínez** (Spain) noted that there was no armed conflict in Spain although some illegal groups did indeed possess arms and explosives.

28. **Mr. Alcalá Pérez-Flores** (Spain) said that the Penal Code 2003, which had been revised inter alia because of the Optional Protocol on the involvement of children in armed conflict, provided for a sentence of between three and seven years' imprisonment for anyone who, during an armed conflict, violated provisions concerning the special protection conferred on women and children under the international instruments to which Spain was Party. It was that provision that made it a criminal offence for anyone to try to recruit, in Spain, a person under the age of 18; however, in order to close the current loophole the intention was to adopt a legislative provision explicitly prohibiting the recruitment or active use in hostilities of an individual under 18 years of age.

29. **Ms. Smith** asked whether under Spanish law it was possible to prosecute aliens who were alleged to have recruited individuals in Spanish territory under 18 years of age for the purpose of involving them in armed conflict.

30. **Mr. Alcalá Pérez-Flores** (Spain) said that the Judiciary Organization Act 1985 enshrined the principle of universal jurisdiction and that there was therefore nothing to prevent a Spanish court from prosecuting an alien who was alleged to have recruited individuals under 18 years of age in Spanish territory for the purpose of involving them in armed conflict abroad. Nevertheless, pursuant to the Spain and International Criminal Court Cooperation Act 2003, in the event of a complaint relating to acts committed in another country by aliens, the International Criminal Court had original jurisdiction.

31. The Penal Code did not explicitly define the concept of "armed group" but strictly prohibited the recruitment of individuals under 18 years of age by armed groups for the purpose of disturbing public policy. It should be noted in that regard that minors between the ages of 14 and 18 years of age who were members of illegal armed groups were criminally responsible, subject to due respect for all safeguards relating to the protection of minors as set forth in international instruments being duly respected.

32. The possession, trafficking and storage of unlawful weapons was prohibited under article 563 of the Penal Code and punishable by a period of imprisonment of between one and three years.

33. **Ms. Marzal Martínez** (Spain) said that each Autonomous Community had one Ombudsman and one Children's Ombudsman. Each year the two Ombudsmen produced a

report on their activities to the Assembly in whose area they operated and had an annual meeting with their counterparts to coordinate the action in child protection taken by them at national and Autonomous Community level.

34. **Mr. Parfitt** asked whether military matters fell within the Ombudsmen's sphere of competence.

35. **Ms. Marzal Martínez** (Spain) said that all matters fell within the sphere of competence of the Ombudsmen in the autonomous regions.

36. **Mr. Vázquez López** (Spain) explained that an unaccompanied child with identity papers who presented at the border and requested asylum would be questioned by the police to verify his or her age, identity and the reasons for the request before being delivered to the social services who would appoint a legal guardian for the child. In the case of an individual with no papers, the police tried to ascertain whether he or she was a minor; where there was any doubt the decision was always that the individual was a minor. Police interviews took place in the presence of psychologists and social workers.

37. **Ms. Vuckovic-Sahovic** observed that according to some sources, migrant children without papers were treated for the most part like illegal adults and received no special protection whatever; she asked whether the Children's Ombudsmen or NGOs had already intervened in cases where illegal children were involved.

38. **Mr. Krappmann**, supported by Ms. Smith, called on Spain to collate disaggregated data on migrant children, whether illegal or otherwise, who presented at the border: it was crucial to know where the children came from and what they had been doing previously in order to be able to help them.

39. **Mr. Vázquez López** (Spain) said that some data on countries of origin of migrant children were available but that it was difficult to know whether the children concerned had been involved in armed conflict. Regardless of whether they came from a country at war, the children all had the right to the same protection from the Spanish State.

40. **Ms. Sanchís** (Spain) said that the health services conducted a medical examination of all child asylum seekers who presented at the border to determine *inter alia* whether they had experienced physical or psychological trauma. The health services compiled annual statistics on the causes of trauma, including involvement in armed conflict.

41. **Mr. Marina Hernando** (Spain) added that all unaccompanied minors received immediate help and absolute protection in the form of personalized assistance from psychologists and social workers. The Spanish authorities made great efforts to identify the reasons which had prompted them to flee their countries.

42. **Ms. Marzal Martínez** (Spain) said that national and international NGOs were very active in Spain in the field of protecting and promoting children's rights. In 2006, Amnesty International and Save the Children had worked with a private television channel and had launched a huge national information and awareness campaign on child soldiers.

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

43. **Mr. Citarella** noted that the report of Spain gave no explanation at all as to how legislation prohibiting the sale of children, child prostitution and child pornography was implemented. The report was also lacking in statistics on trafficking in children and was silent on child disappearances.

44. According to some sources, the Spanish system of assistance to victims of trafficking did not draw a clear enough distinction between children and adults. Moreover, testimony from child victims was apparently rarely taken and courts tended to favour face-to-face confrontations between children and traffickers. One was forced to speculate on why the safeguards provided for in law were not implemented in practice and whether that state of affairs could be attributed to a lack of financial resources or a dearth of psychologists and social workers.

45. Indeed, one might well wonder whether child prostitution was encouraged by the fact that the age of sexual consent was set at only 13 years

46. **Mr. Siddiqui** asked what the state of play was with the centralized database project, which body was likely to establish it within which Ministry, to update it and maintain it, by what means it would coordinate with the various bodies compiling data and statistics in the fields described in the Optional Protocol and whether the database would encompass all the fields covered by the Convention and the two Optional Protocols thereto. It would also be useful to know whether there were plans to make in-depth studies of the fields described in the Optional Protocol on the sale of children, child prostitution and child pornography.

47. The delegation might indicate what plans there were to remedy the shortfall in the resources allocated to implement the Action Plan against Commercial Sexual Exploitation of Children and Adolescents, and to establish a system of legal assistance, psychological support and physical rehabilitation for victims.

48. **Ms. Vuckovic-Sahovic** observed that in Spanish law the prohibition on the sale of children applied only to matters of private law, for example cases where a child was kidnapped by a family member, but not to the situations described in the Optional Protocol. While on that subject, in October 2007 Spain would be hosting the 28th Conference of European Ministers of Justice for the signature of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; this was most welcome.

49. The sale of children, which involved the sale or organs and adoption, differed from trafficking in that it did not have to be organized.

50. The requirement set out in both Optional Protocols to provide care for unaccompanied child asylum-seekers was not yet being met satisfactorily, and this matter had already been pointed out in previous concluding observations. It would be useful to know whether rulings had already been made in matters concerning the violation of either of the Optional Protocols.

51. **Mr. Puras** asked whether child victims of sexual abuse or exploitation received adequate psychological support and social assistance, whether professionals received adequate training and whether the courts had procedures for care placements and psychological support.

52. **Ms. Aidoo** enquired whether the State party intended to raise the age of sexual consent further - it had risen from age 12 to age 13 under the review of the Penal Code in 1999, but was still the lowest in Europe.

53. Spain had involved all interested parties in assessing the first Action Plan against Commercial Sexual Exploitation of Children and Adolescents and in formulating the second such plan; this involvement was most welcome but the delegation might note whether the plan was widely disseminated among the tourist industry and the public in general, whether it was applied in practice and whether the Observatory for Children's and Adolescents'

Rights had the human and financial resources necessary to monitor its implementation, undertake research to identify priority fields of action, collate general data at national and regional level and whether it planned to work with the central database that was being established.

54. It would also be useful to know whether NGOs had been involved in drafting the report.

55. **Mr. Parfitt** asked whether provisions criminalizing child pornography covered virtual pornography, for example child pornography in cartoon form.

56. It was surprising that despite the increase in the severity of penalties for offences against sexual autonomy, people working with children in, education for example, were able to go back to their jobs six years after serving a sentence for acts of paedophilia.

57. The delegation might indicate whether child victims of sexual exploitation of between 14 and 18 years of age received protection and provide fuller information on the work of the body dealing with children and adolescents, which should comprise representatives from public agencies as well as NGOs.

58. **Ms. Ortiz** asked whether the very high number of intercountry adoptions, which accounted for 77 per cent of newborns, was due to the fact that consent was easier to obtain than for in-country adoption and whether, in the light of article 21, subparagraphs (a) to (d) of the Convention, those adoptions might in certain cases fall within the scope of sale of children. The delegation might also indicate whether the State party intended to criminalize schemes of this kind in the new adoption bill in such a way as to make it possible to prosecute the perpetrators pursuant to extraterritorial jurisdiction.

59. **Ms. Khattab**, recalling that in its concluding observations of 2002 the Committee had recommended that the autonomous cities of Ceuta and Melilla should be provided with the necessary financial and human resources for the care of unaccompanied foreign minors, asked what amounts had been allocated to that effect and whether sufficient numbers of qualified staff had been deployed.

60. She enquired whether the authorities made use of the data collected through the free telephone emergency help line to formulate methods of intervention in respect of the fields described in the Optional Protocol.

61. The report noted that most victims of sex tourism were foreign but it would be useful to identify how many children were involved, how vulnerable children were made aware of this type of danger and whether there were rehabilitation programmes for offenders.

62. The delegation might outline the measures, whether taken or planned to give effect to the recommendations made in the United Nations Secretary-General's Study on Violence Against Children and indicate whether Spain had participated in formulating the study.

63. **Ms. Smith** asked whether the State party intended to review its Penal Code with a view to criminalizing the offences described in article 3 of the Optional Protocol more effectively and whether article 3, paragraph 4, had been incorporated into its legislation.

64. The delegation might also provide details on penalties for child prostitution, indicate both whether the extraterritorial jurisdiction of Spain covered all offences described in the Optional Protocol and whether the State intended to abolish the double criminality criterion for the extradition of the perpetrators of those offences.

65. **Mr. Filali** asked whether unaccompanied child asylum-seekers who were victims of sale, prostitution or pornography were in danger of being returned under bilateral

agreements and whether Spain took the measures necessary to ensure that once such children had returned to their countries, they were reintegrated into society without incurring criminal proceedings.

66. Further information would be useful with regard to the transit camps established abroad pursuant to bilateral arrangements with countries of North Africa because asylum applications might be processed there with no guarantees that Spanish or European law would be applied.

67. **The Chairperson** asked for clarification on reports that police officers and judges did not give sufficient consideration to what child victims of sale, prostitution or pornography had to say.

68. It would be interesting to know whether sentences had been handed down in prostitution cases which occurred outside the national territory and whether Spain intended to ratify the Council of Europe Convention on Cybercrime.

The meeting rose at 1 p.m.
