



ngo group for the crc

## 52<sup>ND</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

14 SEPTEMBER – 2 OCTOBER 2009

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*From 14 September to 2 October 2009, the Committee on the Rights of the Child (the Committee) held its 52<sup>nd</sup> session. Under the Convention on the Rights of the Child (CRC) the Committee examined<sup>1</sup> the combined 3rd and 4th consolidated periodic reports of Pakistan and the Philippines, the 2nd periodic report of Qatar, the 4th periodic report of Bolivia and the 2nd periodic report of Mozambique. Under the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) the Committee examined the initial report of Poland and Yemen, and the initial reports of Poland and Turkey under the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC).*

### Opening and Adoption of the Agenda

On 14 September 2009, the Committee opened its 52<sup>nd</sup> session with the adoption of the agenda and the programme of work. In her opening remarks, Ms. Yanghee Lee, the Chairperson of the Committee, highlighted the impact of the financial crisis and A/H1N1 flu on children.

Mr. Ibrahim Salama, Chief of the Human Rights Treaties Branch of the OHCHR, talked about developments that had taken place since the last session. During the 11<sup>th</sup> session of the HRC, two resolutions of particular relevance to the Committee were adopted: resolution 11/1 for the establishment of an Open-ended Working Group (WG) on an OP to the CRC on communications procedure and resolution 11/7 on the Guidelines for the Alternative Care of Children which will be submitted to the GA for consideration. Mr. Salama also noted that the celebration of the 20<sup>th</sup> anniversary event of the Convention had already attracted a lot of interest from States parties and civil society organizations.

In relation to the harmonisation of treaty body working methods, Mr. Salama mentioned that the 9<sup>th</sup> Inter-Committee Meeting (ICM) took place in June 2009 to discuss the issue of streamlining and strengthening the treaty bodies system. The 10<sup>th</sup> ICM would take place in November 2009 and would be devoted to the follow-up to concluding observations and communications procedures, including existing best practices amongst the treaty bodies. Finally, he remarked that the Committee had a busy agenda during the session: apart from the

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<sup>1</sup> All documents concerning the consideration of States parties' reports are available at: <http://www2.ohchr.org/english/bodies/crc/crcs52.htm>

examination of the State party reports of eight countries, the Committee had meetings with the UN entities and NGOs and will have to prepare the agenda for the next year when it will meet in two chambers.

Ms. Maja Andrijasevic-Boko, the Secretary of the Committee, said that since its last session the Committee had received 17 reports under the Convention including from Algeria, Greece, Seychelles, Australia, Turkey, Andorra, Myanmar, Liberia, Cyprus; two under OPAC (Australia and Belarus) and two under OPSC (Australia and Belgium).

## **Examination of State party reports under the Convention<sup>2</sup>**

All 18 members of the Committee attended the session. Most States parties sent high-level and large delegations. The 52<sup>nd</sup> session was attended by the NGO representatives from Turkey, Philippines, Mozambique, Bolivia, Poland, Yemen and Pakistan. The NGO Group provided financial support to NGO representatives from Pakistan (1), Turkey (1), Mozambique (1), Poland (1), the Philippines (1), Yemen (1) and Bolivia (1). The breakdown of national NGOs is the following:

**NGO attendance during the session**

Country	NGO representatives
Turkey	1
Philippines	1
Mozambique	1
Bolivia	3
Poland	1
Pakistan	1
Qatar	0
Yemen	4 <sup>3</sup>

### ***Philippines***

The delegation was led by the Minister of the Department of Social Welfare and Development. She was supported by a relatively large delegation consisting of mid-ranking officials.

The head of the delegation was an influential political figure who highlighted her commitment to take issues forward at national level. The Philippines was expecting to have presidential elections in May 2010, and it remained to be seen whether the represented members of the delegation would make up the next elected presidential cabinet. Despite the level of competence, the delegation lacked some practical knowledge on the real impact of the implementation of child right policies in the country. This was believed to be the main gap in most of the responses provided and could have been due to the decentralisation of the governance and services as well as geographical disparities in the country. The head of the delegation gave a comprehensive update on legislative developments taken place in the country since the last examination of the State party report in 2005. She highlighted that it

<sup>2</sup>All country reports prepared by the NGO Group on the individual sessions can be found at: <http://www.crin.org/resources/infoDetail.asp?ID=7599&flag=report>.

<sup>3</sup> The delegation from Yemen included 1 NGO and 3 youth representatives.

was the first country in East Asia to adopt a Strategic Framework and Plan of Action to End Violence Against Children.

The country rapporteur, Mr. Citarella, welcomed the developments and actions and noted that the periodic report was self-critical. Despite the progress achieved, a wide range of issues worried him, including the poverty threshold, the low level of school enrolment, the lack of resources and the “poor”<sup>4</sup> definition of the child in the legislation.

### **Overview of the dialogue**

The Committee raised issues about the lack of legislative provisions on the prohibition of corporal punishment; the prohibition of torture; the status of children born out of wedlock; the reported cases of extrajudicial killings of children<sup>5</sup> allegedly committed by the Armed Forces; the estimated 2.6 million unregistered children; the high number of women and children trafficked for purposes of sexual exploitation and labour. The lack of human and financial resources allocated to the regional and local bodies mandated to monitor and enforce children's rights, was another issue of concern. The issues that were not covered in-depth throughout the discussion were about systematic collection of data, poverty and child labour, the absence of law on corporal punishment, the delay in passing the bill on foster care, the pending bill on minimum age of sexual consent. Other questions that were overlooked by the delegation were about the overall policy of the government on the foreign debt vis à vis the efficiency of the government's macro policy to address the underlying problems of children's rights. There was no systematic way of identifying and overseeing the budget allocations for children in the Philippines as they were usually lumped under other activities including those for personnel and administrative services. NGOs believed that it would have been easier if the Social Welfare Department could segregate different programs and budget allocations for different groups of population such as elderly and children.

The questions were well attributed among the delegation members. Some of the responses were general formulation of written policies rather than formulation of policies translated into action. Some questions were given direct answers, without going into too much details. Most of the answers provided were to some extent open and self-critical, although some of the delegation members were trying to avoid the most sensitive issues. Certain questions remained unanswered, including the ones on the role and cooperation with the civil society, whether religion was taught in school, the use of the term “illegitimate” for children born out of wedlock, other aspects of civil rights and freedoms, the question of widespread corruption and foreign debt, the lack of universal education, child labour, the pattern of extrajudicial killing of children which the delegation member from the Philippine's National Police labelled as “collateral victims”. While the relationship between NGOs and the government appeared to be constructive and collaborative, a member of the delegation noted that the “NGO reports should not be taken as ‘gospel truth’ because they were not validated”.

### **Concluding Observations (COs) of the Committee and other UN mechanisms**

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<sup>4</sup> The Committee expected the Philippines to take further action with regard to the definition of the child, to improve protection of children in armed conflicts, and to protect children against trafficking and sexual exploitation.

<sup>5</sup> A delegation member questioned the reference to the information on summary killings mentioned in the report of the Special Rapporteur (SR) on extrajudicial, summary or arbitrary executions, Philip Alston. “There might be no explicit or an extensive mention of executive summaries of children in the Philippines in the SR's report, but the report does refer to the pattern of summary executions in the Philippines”, NGOs observed.

The Committee, *inter alia*, urged the Philippines to thoroughly investigate all alleged cases of killings and bring the perpetrators to justice and that it provide the Commission on Human Rights with adequate financial resources to carry out its mandate. It asked the State party to expeditiously enact the Anti-Torture Bill in order to prohibit acts of torture and other inhuman treatment or punishment of children in all settings. The Committee asked the Philippines to submit its combined 5th and 6th periodic report by 19 September 2017.

In its COs of August 2009, CERD urged the State party to protect children affected by armed conflict. Recalling July 2008 recommendation of the OPAC, it recommended to ensure that indigenous children and children from other ethnic groups were not recruited by armed forces. In its COs of May 2009<sup>6</sup>, the CMW asked the State party to launch a study on the situation of children of migrant families, with the aim of ensuring the protection of their rights. Likewise, the CESCR<sup>7</sup> recommended the Philippines to intensify its efforts to combat trafficking in women and children, to combat child labour and protect children from all forms of sexual and economic exploitation.

During the examination of the State party report of the Philippines under the UPR in April 2008, States recommended the Philippines to fully comply with the 2005 recommendations of the CRC. In its mission report to the Philippines, the SR on extrajudicial, summary or arbitrary executions said that the Commission of Human Rights lacked the necessary resources to monitor the human rights situation amidst the armed conflict. It further noted that the Government had not responded positively to the proposed joint fact-finding missions of extrajudicial killings, disappearances and violations of the rights of children. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> periodic reports of the Philippines<sup>8</sup> are overdue for CAT, HRC and CERD.

### **Mozambique**

The delegation of Mozambique was headed by the Minister of Justice. While the delegation included representatives from different ministries, there were no representatives from the Ministries of Health or Education. This was unfortunate as there were a lot of questions on serious health and education issues. The run up to the October 2009 elections might have effected the representatives sent to session as well the implementation of the concluding observations.

### **Overview of the dialogue**

The opening statement of the Minister of Justice was frank and open. She noted the challenge of implementing the Convention in a country where half the population was under 18, often lived in rural areas and was poor. Since it last reported, the State had taken legislative and administrative measures to improve child rights. They included various national plans, laws to protect child rights, to prevent and combat trafficking, extend birth registration to 120 days, address domestic violence as well as provide training to the judiciary and the police on child rights. There were also initiatives to combat poverty, reduce child morbidity and mortality, address the consequences of HIV/AIDS pandemic, and facilitate the access to education. However, serious issues like the AIDS pandemic made it hard for Mozambique to fulfil all its obligations. The delegation hoped to receive suggestions from the Committee to “achieve a better life for children”.

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<sup>6</sup>CMW/C/PHL/CO/1, 22 May 2009.

<sup>7</sup>E/C.12/PHL/CO/4, 24 November 2008.

<sup>8</sup> The reporting status of the Philippines before UN treaty bodies can be found at: <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=137#137>.

The country rapporteurs remarked that “Mozambique had shown great resilience”. Although it was poor, it was one of Africa’s most successful examples of peace and reconstruction, had a 7.9% economic growth and was on course to achieve MDGs number 1, 4 and 5. They highlighted some of the key concerns of the Committee, including the inequalities and disparities between different regions and rural and urban areas; the disparities in budgetary allocations; the use of the CRC in court or administrative procedures; the low level of birth registration; the effects of HIV/AIDS; the lack of disaggregated data and the children’s parliament. Other Committee members asked about campaigns on traffic accidents and anti-personnel mines; the prevalence between international or domestic law; harmful cultural practices; care for orphaned and vulnerable children; internal and external migration violence against children and the education system. One member noted that “10.000 teachers might die in coming years due to AIDS. The school system would probably collapse if all children went to school for seven years”. Another issue related to education was that teachers sexually abused their pupils, so parents did not want to send them to school.

The dialogue between the delegation and the Committee was open and frank about the existing challenges. The delegation showed a strong sense of commitment to child rights, but accepted that the national context was particularly challenging to implement child rights. The delegation was able to answer questions about legislation and existing plans and programmes in detail, whereas little information was available on two of the biggest areas of concern: health and education. There were many plans and laws that had not entered into force and initiatives which showed good will, including campaigns about road accidents and landmines, new developments in the area of alternative care and adoption as well as in the areas of juvenile justice.

In her concluding remarks, Ms. Mauras noted that the next report would need to focus on the implementation of the laws and plans and include disaggregated data. They recommended to ratify the Hague Convention on adoption and noted that the issues of health, nutrition, breastfeeding and violence were pending. The issue of children being sexually abused by their teachers was a particular concern to the Committee. Finally, it encouraged the State to disseminate and discuss the concluding observations with the children’s parliaments.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee urged Mozambique to adopt a comprehensive programme to prevent and combat the exploitation of child labour; to collect reliable disaggregated data on working children; to adopt law on explicit prohibition of corporal punishment in all settings; to develop strategies to prevent sexual violence in schools by organizing nationwide communications programmes and by strengthening the recruitment of female teachers; and to establish clear reporting systems of cases of violence in schools.

The Committee invited the State party to submit its combined 3rd and 4th periodic report by 25 May 2016. The 4<sup>th</sup> and 5<sup>th</sup> combined periodic report of Mozambique<sup>9</sup> to CEDAW, as well as the 13th and 14th periodic reports before CERD are due in 2010. Mozambique has in total 7 periodic reports overdue before CAT, HRC, CERD, CRC-OPAC and CRC-OPSC. The State party report of Mozambique<sup>10</sup> will be considered during the 10th session of the UPR.

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<sup>9</sup> The reporting status of Mozambique can be found at:

<http://www.unhcr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=118#118>.

<sup>10</sup> The reports on country visits by Special Rapporteurs can be found at:

<http://www2.ohchr.org/english/bodies/chr/special/countryvisitsf-m.htm#mozambique>.

## **Qatar**

The head of delegation was the Minister's Assistant of the Ministry of Foreign Affairs who was supported by a large delegation comprised of representatives from different ministries.

### **Overview of the dialogue**

In his introductory statement, the Minister's Assistant declared that following the previous review, there had been many awareness-raising initiatives about the Convention. They had strengthened the voluntary foundations working on childhood issues and carried out legislative reform. As the nucleus of society, children were prioritised in development planning. Key areas of focus included children's survival, safety, development and protection from violence. In order to implement the provisions of the CRC, large-scale legislative amendments were introduced, there was a strategic structure in policies and programmes and there had been important developments in the provision of healthcare, improved standards of living, a reduction in infant mortality and an increase in school enrolment. Many new foundations had been developed to provide services to orphans and to combat human trafficking. The Minister's Assistant also highlighted some of the challenges, such as the need to receive training in human rights. Finally he reiterated Qatar's intention to implement all the provisions of the CRC and its Optional Protocols.

The country rapporteur, Mr. Filali, commended the State for establishing a new UN human rights documentation and training centre for the region. He requested information on the children's bill, which was still not finalised as well as the implementation of all the new laws. Other questions focused on the National Human Rights Committee, access to services for non-Qatari children. The co-rapporteur, Ms. Varmah enquired about the age of marriage and employment; corporal punishment in the home and alternative care settings and the use of corporal punishment as a sentence for a crime (e.g. flogging and stoning) and the transfer of nationality from mothers to their children. Other experts enquired about the prevalence of the CRC over domestic law; the legal status of the foundations (and their link to the government); budgetary allocations for children's rights; cooperation with civil society; the lack of legislation on refugee children; the low age of criminal responsibility; adolescent reproductive health and the alternative care system.

The delegation provided quite detailed and structured responses to the questions. The dialogue was quite open and factual. This included further information on the draft strategies and laws; the different ages for marriage, employment and custody for boys and girls. For issues such as the transfer of nationality and the lower ages for girls for marriage and so on, the responses explained the current situation, but did not provide an intention to change legislation on these issues. The delegation just highlighted the difficulties in making these changes in the cultural context of Qatari society. While there were quite a few new measures, they had a "welfare approach" rather than a rights-based approach to children.

In her closing remarks, Ms. Varmah noted the progress and acknowledged the challenges in Qatar. She highlighted a few areas that would require follow-up, such as the reservations to the CRC, the need to finalise and implement new legislations, violence against children; the rights of migrant workers and their children; children with special needs and the alternative care system.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee urged Qatar to strengthen its mechanisms for disaggregated data collection; that it provide professional groups with training on the Convention; that Qatar take specific

measures to raise awareness on the Convention; and to eliminate discrimination on any grounds and against all children, paying particular attention to girls, children with disabilities, children born out of wedlock and children of migrant workers. The Committee invited the State party to submit its combined 3rd and 4th periodic report by 2 May 2013. This report should include information on the implementation of the OPAC and OPSC.

The initial report of Qatar<sup>11</sup> before CEDAW, CRPD is due in 2010. Qatar has in total 5 reports overdue before CAT, CERD and CRC-OPAC. The State party report of Qatar is considered to be reviewed under the UPR during its 7<sup>th</sup> session on 8 February 2010.

## **Bolivia**

The head of delegation was the Minister of Justice. She was supported by a small delegation which included representatives from the Permanent Mission of Bolivia in Geneva, the General Directorate for Childhood, Youth and the Elderly and the General Director for Judicial Affairs.

### **Overview of the dialogue**

In her introductory statement, the Minister of Justice declared that the struggle of the indigenous people had led to a process of democratic change. In 2008, Bolivia had set up a Constitutional Assembly to draft a new text for the Constitution. The latter prescribed human rights in over 120 articles, including specific references to children. The provisions of conventions, such as the CRC, were embodied in national legal standards. Speaking from a position of authority, she highlighted Bolivia's commitment to children's rights by listing relevant plans, laws and decrees. However, she noted that some politicians in Bolivia did not want the new policies to be implemented. The statement did not provide any information on the follow-up to previous concluding observations.

While recognising the focus on human and children's rights in the new Constitution, the country rapporteurs enquired if these measures were the embodiment of a vision or if they were being implemented. They noted the difficulties of being examined during a constitutional transition phase, but emphasised that new laws were needed to bring the legal system in line with the new Constitution. Issues that needed to be addressed included the focus on child rights within the government, cooperation with civil society; the office of the Ombudsman; the training of the judiciary; education; health; and child participation. Other experts raised a series of questions about the coexistence between the indigenous and positive law systems; the autonomy of the Unit for Children and Adolescents; the participation of civil society and children in the drafting of the State party report; whether there was a comprehensive child policy in addition to the targeted programmes; the absence of a specific reference to the 'child' in the Constitution; birth registration; the increase in reported HIV/AIDS cases; the increase in the child trafficking as well as how child labour was addressed in Bolivia.

The dialogue highlighted the fact that everything was changing in Bolivia: there was a new government, new Constitution, new plan and new programmes, but it was unclear what was actually being implemented. There was strong political will, but the responses often sounded like political declarations. Despite their efforts to respond to the questions, the answers were often quite general, rarely supported by data and often illustrated by personal experiences.

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<sup>11</sup> The recent reports on country visits by Special Rapporteurs can be found at: <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#qatar>.

The Minister showed great enthusiasm for the future, while acknowledging the current challenges in reaching their vision for a plurinational state.

In his concluding remarks, Mr. Zermatten acknowledged the challenges of answering the questions given the ongoing transition process. Given that children made up 47% of the population, he highlighted the need to invest on children, including by increasing the number of state officials working on children's rights and issues such as having specific Ombudsmen; ensuring better coordination between ministries, the Parliament and municipalities; and training professionals working on children's issues.

The Minister of Justice thanked the Committee for the discussion and apologised for the lack of experience and for not always providing clear information. However, she noted that the Committee's recommendations would be used to help the plurinational state to develop standards. She called upon international cooperation to help implement state policies (without conditions). She noted that improving children's conditions should not be the result of pressure from NGOs, as it was everybody's responsibility. Finally she highlighted that President's best intentions were not just on paper, but they were to work for the welfare of Bolivia's children.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee recommended legislative reforms to ensure the prohibition of corporal punishment and clear standards for alternative care institutions. It requested that Bolivia increase the minimum age for marriage, introduce the institution of specialized judges, and improve monitoring mechanisms to enforce existing labour laws. The Committee encouraged the State party to ensure a high level of authority for the Office for Childhood and Adolescence and to set up Municipal Child Defence Offices and a Children's Ombudsman. It asked Bolivia to use a transparent budget process to increase funding for health care (especially for HIV/AIDS), ensure free education, and continue its efforts to register all children. The Committee asked Bolivia to elaborate a NPA for the prevention of child trafficking, the social reintegration of victims, and the prosecution of the perpetrators. The Committee invited Bolivia to submit its 5<sup>th</sup> and 6<sup>th</sup> periodic reports by 1 September 2015. The Committee encouraged the State Party to submit its initial reports under the two OPs to the CRC which were due in July 2005 and January 2007.

The 3<sup>rd</sup> and 4<sup>th</sup> periodic reports of Bolivia<sup>12</sup> for CESCR are due in 2010. Bolivia has in total 8 reports overdue before CAT, CCPR, CERD, CMW, CRC-OPAC and CRC-OPSC. The examination of the State party report under the UPR is scheduled in February 2010.

### **Pakistan**

The high-level male dominated delegation of Pakistan was headed by the Secretary of the Ministry of Social Welfare and Special Education of Pakistan, followed by the representatives from different ministries. Unfortunately, there was no official representing the Ministry of the Social Welfare who was best placed to respond to some of the questions. Given the geographical coverage of the country, there should have been representatives from different provinces of the country, however the delegation was represented only by central governmental officials. The head of the delegation noted that the report had been prepared by a high-level multisectorial National Steering Committee comprising of relevant ministries, NGOs and the UN agencies. Since its last report, Pakistan "had crossed a number of

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<sup>12</sup> The reporting status of Bolivia to other treaty bodies is available at: <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=21#21>.



milestones” to bring its laws and policies in conformity with the Convention. The presentation further focused on the issues of education, health, protection and war on terror.

### **Overview of the dialogue**

The Committee remained concerned about delays in the adoption of laws that were instrumental to the implementation of the Convention and, in particular, that the Charter of Child Rights Bill had not yet been adopted. It remained extremely concerned at the evidence of serious discrimination against women and girls in Pakistan, as attested by the acute gender differentials in infant mortality rates, school enrolment rates, and the continuous existence of early marriages and exchange of girls for debt settlement, domestic violence affecting women and girls, and situations including bonded labour and economic exploitation of girls. The Committee was deeply concerned about the violations of children’s right to life, survival and development as a result of the prevailing internal armed conflict, population displacements, poor health and sanitation facilities, severe malnutrition and related illnesses. It was concerned about torture and ill-treatment of children by police officers in detention facilities, as well as at the high percentage of women and girls in jails awaiting trials for adultery-related offences.

The Committee raised a concern about the corporal punishment which was lawful under the Penal Code and extensively used as a disciplinary measure in school and family settings. It raised concern about recruitment of children in the armed conflict and terrorist activities, alleged forced under-age recruitments and trainings of children by non-State actors, including for suicide attacks and the lack of physical and psychological recovery for children affected by armed conflict.

The main issues concerning children were poverty, lack of access to education, lack of universal education, child labour, lack of interest in child rights, lack of implementation of child rights policies. There was no institutional mechanism to implement child rights policies. The questions on child labour, access to health and education were not discussed in as much details as the issue of domestic implementation of the CRC; perhaps more follow up questions would have made the government engage in a real dialogue with the Committee.

The delegation was interacting with the Committee in an open and constructive manner, however the answers were sometime misleading or lacking clarity.

### **Concluding Observations of the Committee and other UN mechanisms**

As a matter of urgency the Committee recommended Pakistan to prevent and prohibit the recruitment of children and their use in terrorist activities; to provide recovery for all children affected by armed conflict; explicitly prohibit all forms of corporal punishment in all settings; to set up an effective monitoring system; and to introduce public education, awareness-raising and social mobilization campaigns on harmful effects of corporal punishment. The Committee further recommended that concrete measures be taken to address the serious gender disparities and discrimination against women and girls, and that it overcome deeply rooted traditions which prioritised boys’ education and support.

The Committee asked the State party to submit its 5<sup>th</sup> periodic report by 11 December 2012. The COs of CERD was issued on 4 March 2009; the first periodic report before the CESCR is due in June 2010. The 4<sup>th</sup> periodic report of Pakistan<sup>13</sup> for the CEDAW is overdue as of April

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<sup>13</sup> The reports of Special Rapporteurs' country visits are available at: <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#pakistan>.

2009. During the examination of the State party report of Pakistan under the UPR in May 2008, the States recommended Pakistan to more effectively address the issues of child abuse, child trafficking, sexual exploitation and involuntary servitude. Pakistan was asked to adopt the pending Child Protection Bill in Parliament and the Child protection policy and was urged to rapidly implement the draft law on the protection of children and speed up the implementation of the 2000 edict for justice for minors.

## **Examination of State party reports under the OPSC**

### ***Poland***

The Polish delegation was headed by the Ambassador and Permanent Representative of the Republic of Poland to the UN Office at Geneva who was accompanied by the experts from different ministries. The Head of the delegation stressed the importance Poland attached to the protection of the rights of the child: “2009 marked the 20th anniversary of the CRC, a project for which Poland was the initiator. It remained one of the most important Polish initiatives in the realm of human rights”.<sup>14</sup>

It was felt that there should have been a representative from the Ministry of Labour and Social Policy, as it was responsible for many activities. It was not clear who from the Ministry of Education was responsible for the coordination of all main activities relevant to the OPs and in which capacity NGOs would have to collaborate with the experts representing the Ministry of Education and the Ministry of Interior. There was no influential capacity of the delegation to take a lead for the COs of the Committee.

### **Overview of the dialogue**

The main issues of concern were about the lack of a data collection mechanism on sex tourism, the absence of a plan of action covering the areas of the OPSC, the absence of a coordinating and evaluating mechanisms for the implementation of the OPSC as well as for coordination between ministries and between the national and local authorities. The Committee noted with concern that the numbers of properly equipped child friendly interview rooms for child-victims were not available throughout Poland, and were not always used even where they did exist. Judicial proceedings relating to trafficking cases were unduly long, lasting two years on average. Further, it noted with regret the lack of recovery and reintegration programmes for child victims of sexual exploitation and the absence of a systematic approach to address the problem. The discussion did not focus much on the issues of refugee and unaccompanied children, which, however, was highlighted in the NGOs report. While the police headquarters mentioned that they did not have any statistics on prostitution in the western border with Germany, NGOs had provided such statistics in their reports. Although there was a mention about the grant competition for NGOs, there had been no specific grant competition designed for the OPs. The Committee did not address the criteria of the identification of victims of trafficking.

The NGO representatives were concerned about the low level of knowledge on the issues of trafficking, sexual exploitation and pornography among professionals, including nurses, social workers and school guardians, probation officers and judges. They observed that this question was repeatedly raised during the discussion on the OPAC but not for the OPSC. According to the information submitted by national NGOs, there was no intervention in

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<sup>14</sup> The statement is available at:

[http://www2.ohchr.org/english/bodies/crc/docs/statements/PolandStatementOPAC\\_52.pdf](http://www2.ohchr.org/english/bodies/crc/docs/statements/PolandStatementOPAC_52.pdf).

bordering with Germany cities: when it came to combating trafficking, the so called algorithm of conduct of law enforcement was implemented in big cities only.

The delegation was very cooperative and open, however, the responses were very general and lacked details. The delegation avoided sensitive issues, such as the issue of budget allocations, sex education and issues on Roma children. The delegation took the dialogue seriously, but lacked information on its plans and vision for follow up action and implementation. Despite some of the issues that were predominant in the country, such as the Roma issues, there were no adequate responses to them. The dialogue was fruitful but did not provide any information as far as the implementation of the OPSC and the budget allocations were concerned.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee asked the State party to provide the Ombudsman for children with sufficient resources to exercise its mandate, to undertake research on the outcome of preventive measures against the exploitation of children, including prostitution and pornography. It asked the State party to provide a definition of “child prostitution” and “sale of children” in the Polish penal legislation, to include the provisions of criminal liability of legal persons in the Penal Code and to ensure that the definition of improperly inducing consent in cases of adoption was incorporated into the penal legislation. It further asked the State party to reduce the trauma suffered by victims, including by shortening the length of judicial proceedings, while focusing on the full recovery and reintegration of child victims. The Committee asked the State party to include further information on the implementation of the OP in its combined 3rd and 4th periodic report under the CRC.

In its recent COs of 28 August 2009 CERD<sup>15</sup> asked the State party to take necessary measures to address the low attendance levels of Roma children, develop and implement strategies to improve access to mainstream education for Roma children. The CAT asked to include in its Penal Code a definition of human trafficking in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, also recommended by CEDAW.<sup>16</sup> The 3<sup>rd</sup> and 4<sup>th</sup> periodic reports of Poland<sup>17</sup> for the CRC are overdue in 2008.

During the examination of the State party report under the UPR in April 2008, Poland<sup>18</sup> was recommended to endorse the recommendations made by the CRC and the HRC; to take measures to ensure the sufficient legal protection of the freedom of children from physical or mental violence and to bring the national legislation in compliance with the CRC with regard to juvenile justice.

### **Yemen**

The Yemeni delegation was led by the Secretary General of the Supreme Council for Motherhood and Childhood. She was supported by a delegation of representatives from

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<sup>15</sup> CERD/C/POL/CO/19, 14 September 2009.

<sup>16</sup> *ibid*

<sup>17</sup> The reporting status of Poland before other treaty bodies can be found at:

<http://www.unhcr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=138#138>.

<sup>18</sup> Responses of the State party Poland to recommendations can be found at:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/A\\_HRC\\_8\\_30\\_Add1\\_Poland\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/PL/A_HRC_8_30_Add1_Poland_E.pdf).

different ministries.<sup>19</sup> There were no influential figures among the delegation members except for the only high-rank official, the Secretary General of Childhood and Motherhood, who, however, did not have any authority regarding further actions of the government.

### **Overview of the dialogue**

The main issues of concern were on the sale of children from impoverished communities with the consent of parents and lack of preventive measures to address practices of sexual exploitation of children known as “temporary marriages” that were not criminalised under the Penal Code as well as issues of child forced labour. The Committee raised its concern about the offences of illegal adoption, sexual exploitation, transfer of organs, the engagement of the child in forced labour, child pornography. There was no definition of victim and no specific legislation on child victim protection. One of the most sensitive issues was the issue of contracted early marriages not being documented in the court. The complicated situation followed when young women had to divorce. There was no legislation or statistics to document these cases, neither there was monitoring in the border with Saudi Arabia. No agreement had been reached with the government of Saudi Arabia regarding controlling the borders.

The dialogue was a difficult examination for the government. Some of the responses were reasonable, while others were misleading, such as keeping children separate from adults, the absence of torture and ill-treatment of children in detention centers, lack of guarantees for tourist marriages such as compensation. While the delegation argued that the cases of death of mothers as young as 12 years old were exceptional, there were many registered cases. Some of the responses provided were self-critical but lacked transparency. The delegation avoided responding to sensitive issues, such as tourism marriages as a form of prostitution.

NGOs noted that the lack of statistics and the absence of database for information was one of the challenges they were facing. Although NGOs were involved in the process of drafting the report, they were not informed when the report was finalized. The government did not seem to have considered the NGO information in the State party report. As for the rehabilitation centers, NGOs observed, they were run by the funds provided by Unicef, and once the budget for the project was over, the centers stopped operating. Likewise, the government stopped running the juvenile courts once the money donated for the programme was over. Many believed that the government had to do fundraising to ensure the continuation and sustainability of these programmes. Although the media was closely monitoring the cases of child trafficking and so called tourist marriages, the government did not necessarily follow up and investigate these cases.

The questions on juvenile justice, independence of the Committee on Human Rights, rehabilitation and care centers for child victims, as well as independent monitoring of centers for child victims of trafficking and the absence of qualified staff and professional in those centers were not well addressed.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee asked the government to undertake research on the extent and trends of the commercial sexual exploitation of children under 18 years; to identify and reach out to children at special risk; to develop a NPA targeting the issues covered by the OP. It further asked the State party to continue providing systematic training on the provisions of the OPSC

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<sup>19</sup>More information about the composition of the delegation can be found at: <http://www2.ohchr.org/english/bodies/crc/crcs52.htm>.

for all professional groups; to address as a matter of priority the problem of sexual exploitation, including so-called “temporary marriages” by criminalising such practices. It urged the government to bring the definitions of offences in consistent with those contained in the OPSC and that the upper age for protection for child victims of any of the offences under the OPSC was set at 18 years. The Committee requested the State party to include further information on the implementation of the OPSC in its next periodic report under the CRC.

In its COs CEDAW called upon the State party to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as grant full access to UNHCR to detention centres for refugees, and to ensure refugees their right to security, especially for women and children due to their exposure to violence, including sexual violence.

Yemen's periodic reports are overdue before CAT, HRC, CERD and the CRC. The 12<sup>th</sup> periodic report of Yemen<sup>20</sup> is scheduled to be examined by the CESCR in the pre-sessional working group in May 2010. During the UPR examination of the State party report of Yemen in May 2008, the State party was recommended to bring down the child mortality rate; ensure compliance with the CRC; not to impose capital punishment for offences committed by persons below 18 years of age; prohibit any practice of forced early marriage of young girls, including “tourist” or temporary marriages, female genital mutilation, and parent-supported trafficking of children. Other recommendations<sup>21</sup> were on addressing the problems of trafficking of children to the neighboring countries; continuing efforts to prevent the smuggling of Yemeni children outside the country; taking measures to rehabilitate offending juveniles and street children; taking measures to increase access to education and health for children in rural and remote areas.

## **Examination of State party reports under the OPAC**

### ***Turkey***

The delegation of Turkey was led by the Ambassador, the Director General at the Ministry of Foreign Affairs in Ankara. He was accompanied by a large delegation of 20 representatives of the cabinet. The head of the delegation said that Turkey's initial report on the OPAC and the written responses were compiled with the help of different governmental institutions and contained detailed information on the national legislation and practices. He noted that the reservations<sup>22</sup> Turkey had made to the Convention stemmed from Turkish Constitution and the Lausanne Treaty.

### **Overview of the dialogue**

The Committee asked about the training for the armed forces, police and the members of administration justice professionals on the provisions of the OPAC; non-explicit

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<sup>20</sup> The reporting status of Yemen before other treaty bodies is available at:

<http://www.unhcr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=193#193>. The most recent visits of the SRs to Yemen are available at

<http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#yemen>.

<sup>21</sup> The responses of Yemen to the UPR recommendations are available at:

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/YE/A\\_HRC\\_12\\_13\\_Add1\\_YEM\\_A.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/YE/A_HRC_12_13_Add1_YEM_A.pdf).

<sup>22</sup> *Turkey reserved the right to interpret and apply the provisions of articles 17, 29 and 30 of the CRC according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923.*

criminalisation of violations stemmed from the provisions of the OPAC regarding the recruitment and involvement of children in hostilities; the lack of definition of direct participation in hostilities; absence of extraterritorial jurisdiction for crimes. The Committee urged Turkey to abrogate the National Defence Law according to which children above 15 might be mobilized in the states of emergency. It was concerned about the Anti-Terrorist Act of 2006 which allowed the prosecution of children above 15 as adults. It was informed that the legislation was applied towards large number of children.

The issues that were not fully addressed during the discussion included the discrimination against children involved in demonstrations and in the administration of justice; elimination of provisions in anti-terror law foreseeing the trial of children before the adult designed courts; establishment of rehabilitation mechanisms for those child victims previously involved in hostilities; the provision of necessary measures in the legislation making the involvement of children in armed conflict a crime; adoption of a general provision in the legislation on village guards. The questions that were thoroughly discussed pertained to those related to the issues of judicial process against children aged between 15 and 18; the domestic implementation of the OPAC, the issue of prohibition and rehabilitation mechanisms. There seemed to be no efficient and constructive dialogue held with NGOs.

Although high level, the Turkish delegation was not efficient: the dialogue was dominated by the head of the delegation and the deputy head: the representatives from the Ministry of Justice and from the National Committee did not contribute to the discussion. There was no politically influential figure in the delegation.

While the questions were critical, the responses were weak. The issues related to the definition of terror were overlooked. The delegation was not well prepared and did not seem to have been aware of the core provisions and essence of the OPAC. The main problem seemed to be around the lack of understanding of international conventions among the governmental officials as there did not seem to be any policy on their implementation. Some of the replies were misleading, such as the ones on the supremacy of international conventions over the national legislation. The delegation appeared to be defensive and argumentative: the way they referred to the NGO reports had a bit of hostility. The assurance of the Ambassador that “every country has its own human rights issues, and we will do our we best”, was a bit old-fashioned, which implied no commitment. The responses did not go beyond the ones provided in the list of issues apart from some additional statistics provided.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee reiterated its previous recommendation on withdrawing its reservation to the OPAC. It took a note that internal legislation should give more specific coverage to the offences mentioned in the OPAC. Otherwise, the country rapporteur concluded, “Turkey was working along the lines of the CRC and the OPAC”. In its concluding recommendations the Committee asked Turkey to amend its Anti-Terrorist Act to exclude children being tried as adults; to establish measures to identify refugee and asylum-seeking children who might have been recruited or used in hostilities; provide legal, physical and psychological recovery and reintegration services to those affected by hostilities. The Committee asked Turkey to include further information on the implementation of the OPAC in its next periodic report under the CRC. Turkey<sup>23</sup> submitted its 3<sup>rd</sup> periodic report to the CAT and 2<sup>nd</sup> periodic report to the CRC

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<sup>23</sup> The reporting status of Turkey before other treaty bodies is available at: <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAIISPRByCountry?OpenView&Start=1&Count=250&Expand=179#1>

in 2009. Turkey's initial reports are overdue before the HRC and CMW. The 2<sup>nd</sup> periodic report for the CESCR is due in June 2010. The State party report of Turkey will be considered under the UPR during the 8<sup>th</sup> UPR session in 2010.

## **Poland**

Mr. Awich Pollar, the country rapporteur said that the Committee was aware of the important role Poland had played in the drafting of the CRC and of its two OPs. The main issues discussed included the enrolment of under 18-years old in military schools; the measures for the identification of refugee children involved in armed conflicts; the prevention of arms export to countries where children were involved in hostilities; the status of the OPAC in the domestic legislation.

### **Overview of the dialogue**

The Committee noted that the State party report did not follow the Committee's reporting guidelines for States parties. The country rapporteur, Mr. Awich Pollar, said that Poland was in line with the provisions of the Convention as far as international protection of victims, the training of peacekeepers, and the export of arms were concerned. It remained concerned that there was no explicit legal prohibition of child recruitment and of the involvement of children in hostilities, as well as at the paucity of information on measures to identify children who might have been involved in armed conflict abroad.

Although the issues of human rights education for children and for professionals working with children were raised, however, the level of its implementation and follow-up plans were not adequately addressed. Legal issues such as domestic implementation of the OPAC were well discussed and were in the forefront of the discussion, however, the implementation of the amendments, for example, in the penal code was of much concern than amending the penal code itself. Much time was dedicated to the discussion on the legal implementation of the OP and less to the actual implementation. The issues of the age of voluntary recruitment, dissemination of the OP, voluntary army were well presented in the opening statement, however, the Committee dedicated time to clarify some of these issues which prolonged the dialogue.

### **Concluding Observations of the Committee and other UN mechanisms**

The Committee welcomed pending laws designed to address relevant gaps in the Polish legislation and to bring it in line with the provisions of the OPAC. The Committee was concerned, however, that awareness of the OP among the general public remained low. It recommended that the Polish government, in collaboration with civil society organizations, develop and implement training programmes and campaigns to promote the OP. The Committee recommended that Poland establish an identification mechanism for asylum-seeking and refugee children, who might have been involved in armed conflict abroad and that measures be taken to provide those children with appropriate assistance for their physical and psychological recovery and their social reintegration. It asked Poland to increase the minimum age of voluntary recruitment thus ensuring that persons under the age of 18 do not serve in the Armed Forces. The Committee asked the State party to include further information on the implementation of the OPAC in its next periodic report under the Convention.

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79. Most recent reports of the SRs are available at:  
<http://www2.ohchr.org/english/bodies/chr/special/countryvisitsn-z.htm#turkey>.

## **Working Methods of the Committee**

During its 52<sup>nd</sup> session the Committee discussed its working methods in relation to the consideration of the large number of reports received. It also discussed in general terms, initiatives for two general comments, one on article 3, on the best interests of the child; and one on article 19, on violence against children. On 14 September, the Committee members met for the first time with the [Special Representative of the Secretary-General on children and armed conflict \(SRSG\)](#) to reflect on how both mandates could further complement each other. The Committee decided that it would not hold a day of general discussion in 2010 due to the increasing backlog of reports. The NGO Group had organized a meeting between the Committee and children who had previously taken part in the reporting process. Children presented findings from an international survey conducted by the NGO Group on the role of children in the reporting process. The Committee reiterated the importance of children's involvement in their work and looked forward to continuing developing their growing role in monitoring and implementation.

### ***The 20<sup>th</sup> anniversary of the Convention***

From 8 to 9 October 2009, instead of its annual day of general discussion, the Committee held a two-day celebration of the 20<sup>th</sup> anniversary of the adoption of the CRC.<sup>24</sup> The event focused on the themes [Dignity, Development and Dialogue](#). It was attended by representatives of States parties, UN agencies and other intergovernmental organizations, national human rights institutions, international and national NGOs, children's and youth groups.

Ms. Yanghee Lee, the Chairperson of the Committee opened the plenary session by emphasizing that despite the universal ratification and "unprecedented support of State Parties for the Convention", there were a number of challenges impeding its implementation. These included, the lack of political will, the many reservations to the Convention, and the recent economic downturn.

In her address, Ms. Navanethem Pillay, the UN High Commissioner for Human Rights, mentioned that the 20<sup>th</sup> anniversary of the CRC was an opportunity to take stock of progress and gaps in implementing the Convention, as well as draw an effective roadmap to bridge the existing gaps. By adopting the Convention, the international community had unanimously recognized for the first time that children were not simply the property of their parents, but individual rights-holders. Despite the near universal ratification, severe violations of children's rights, including violence, sexual abuse and exploitation, child trafficking and forced labour continued to persist. As a former judge of the International Criminal Court (ICC), she talked about the importance of the current initiative to elaborate an [Optional Protocol to the Convention on communications procedure for violations of the rights of the child where the domestic remedies have failed or do not exist](#).

The High Commissioner emphasised that this mechanism could significantly strengthen the monitoring of the Convention and contribute to the effective implementation of children's rights. She stated: "This is an issue that we will be following closely by supporting the activities of the [Open-ended Working Group on an OP](#) scheduled to meet from 14 to 18 December 2009".<sup>25</sup>

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<sup>24</sup> Find more about the NGO submissions relevant to the topics of six working groups; draft recommendations as submitted by the thematic working groups; the worldwide events on celebration of the 20th anniversary of the Convention.

<sup>25</sup> See the address speech of Ms. Navanethem Pillay, UN High Commissioner for Human Rights at the 20<sup>th</sup>



Thomas Hammarberg, the Commissioner for Human Rights at the Council of Europe, talked about three main challenges to the implementation of the Convention: the respect of children's opinion and participation in decisions affecting their lives; prohibition of corporal punishment; and equal rights for all children.

Peter Newell, the vice-president of the NGO Group, said that although the concluding observations of the Committee are believed to be long and repetitive but the details are essential for NGOs' advocacy work. He believed that the repetitiveness of concluding observations was an indication of "the sustained refusal of so many States to accept and act on the inconvenient obligations they took on with ratification".<sup>26</sup>

Youth delegates and journalists from across the world actively participated<sup>27</sup> in the event to share their thoughts and concerns.

In her concluding speech, the Deputy High Commissioner for Human Rights outlined some of the most pressing challenges to the implementation of the Convention. Under the theme of Dignity, these issues included the global epidemic of sexual exploitation and abuse of children, and the prevalence of all forms of discrimination against children, in particular against children with disabilities. Under the theme of Development, primary challenges included the de-prioritization of children's rights in light of the current economic crisis, and finding ways to give practical effect to the principle of the evolving capacities of the child. Under the theme of Dialogue, the ability of children to fully enjoy their rights in accordance with the Convention was frequently challenged by their exclusion from full and active participation in decisions related to their lives. The Deputy High Commissioner concluded by saying that the impressive output of 26 actionable recommendations could be adapted and applied to help guide the implementation of the Convention.

## **Closing Remarks of the 52<sup>nd</sup> Session**

On 2 October 2009, the Committee concluded its 52<sup>nd</sup> session by adopting the concluding observations on the Philippines, Mozambique, Pakistan, Bolivia and Qatar on the CRC, Poland and Turkey on the OPAC and Yemen, Poland on the OPSC. In her closing remarks, the Chairperson mentioned that the Committee had held its first meeting with the SRSB on CAC. In addition, a lot of time had been devoted to preparations for the 20th anniversary celebration. Mr. Krappmann, the Committee Rapporteur, noted that States parties, UN bodies, NGOs and child rights activists would take part in the events marking the 20th anniversary of the Convention. The Committee's next session will take place from 11 to 29 January 2010, when it will meet in parallel chambers to consider the periodic reports of Burkina Faso, Cameroon, Ecuador, El Salvador, Norway, Mongolia, Paraguay and Tajikistan under the Convention; the initial reports of Ecuador, El Salvador, Estonia, Mongolia and Sierra Leone under the OPSC; and the initial reports of Ecuador, Israel, Liechtenstein, Mongolia and Sierra Leone under the OPAC.

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anniversary celebration of the CRC, 8 October 2009.

<sup>26</sup> Peter Newell's speech can be found at: <http://www.crin.org/resources/infoDetail.asp?ID=21033&flag=report>

<sup>27</sup> More information on youth participation is available at: <http://plan-international.org/about-plan/resources/news/youths-speak-out-at-child-rights-anniversary-event>.