



ngo group for the crc

STATE PARTY EXAMINATION OF ECUADOR'S INITIAL PERIODIC REPORT ON THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

53RD SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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Ecuador ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) on 25th May 2000. On Tuesday the 19th January 2010 the Committee on the Rights of the Child (the Committee) considered Ecuador's initial report under the OPSC.

Opening Comments

The country rapporteur, Ms Maria Herczog, welcomed the recent amendments to the criminal code, the national plan to combat human trafficking, the national tourism plan, as well as other plans related to the implementation of the OPSC. She observed that the regional action policies to combat child trafficking were impressive. However, Ecuador remained a country of source, transit and destination for the trafficking of children for commercial sexual exploitation, begging, servitude and domestic labour. Children were trafficked to Colombia, Venezuela, Chile, the Dominican Republic as well as to Europe. Despite the anti-trafficking campaigns, this was still an issue. Actions against child trafficking were part of the 2006 National Plan to combat human trafficking in persons, illegal trafficking of migrants, sexual exploitation, labour exploitation and prosecution of women, children and adolescents, child pornography and corruption of minors. She welcomed the witness and victim protection system and the fact that 56 victims had received assistance, of which 12 had benefited from the protection system. However, she noted that it was a low number and asked for the proportion of child victims. Finally, despite the different national plans of action, the country rapporteur asked if there had been any consultations with civil society and children. She noted that according to the report, there were plans to train professionals working with children such as law enforcement officers, social workers and teachers. She asked if this

training would include learning about risk factors or just cover cases once they had occurred.

General Measures of Implementation

Legislation

Although sexual exploitation was criminalised in the penal code, the Committee noted that there appeared to be no definition related to articles 2 and 3 of the OPSC. It asked if there were plans to include these definitions in the criminal code. Due to the absence of definitions, there could be no cases of sale and as a result no data on the issue. However, there were cases of forced child labour, as it was covered by the legislation.

The Committee asked if there was an implementing law for the OPSC, as it did not understand how the treaty could be applied if there was no law laying down the sanctions. The delegation responded that the Constitution was used as the basis for the legal reforms in the civil and penal codes. According to article 417 of the Constitution on international treaties and instruments, the latter were directly applicable. However, the Committee stressed the need to establish legislation to have sanctions. It also wanted to know about the liability of legal persons (e.g. a business) and whether they could be prosecuted. Based on the report, the Committee felt that everything fell under sexual exploitation, but it did not understand how a person who was guilty of a crime of sale would be prosecuted. It emphasised that definitions of articles 1 and 2 should appear in domestic law, as the OPSC did not stipulate sanctions. The delegation responded that in relation to child pornography, anyone who produced or marketed pornography of children of 14 to 18 would be sanctioned. Meanwhile, for pornography of children under 14, there were other sanctions that also covered the distribution of pictures, facilitating access to shows and so on. The highest sanction was a sentence of 25 years. The Committee asked what happened if the author was a business with limited responsibility. It wanted to know if it was possible to prosecute the business and not just a person. The delegation responded that it had to be a person, but the representative of the company could be prosecuted and other people working for the company could also be prosecuted as accomplices.

Monitoring and reporting

The Committee noted the efforts to set up a national statistics system and asked if it would include data on exploitation and trafficking, as the current data on child trafficking and pornography was limited. It asked for disaggregated data concerning the known cases. It wanted to know how data would be collected and how the reporting system would be improved. The Committee wanted information on the measures taken to help victims come out and provide proper information to the authorities even if it was not officially reporting a crime.

Jurisdiction and Extradition

The Committee enquired about the extradition procedure in relation to crimes under the OPSC. It also wanted to know if universal jurisdiction was applicable in relation to pornography and the transfer of organs. More precisely, it asked if there was a law to sanction crimes that were committed outside the national territory. The delegation explained that there was an article in the Constitution about extradition. Sanctions were carried out in the place where the crime was committed. If the crime was committed on Ecuadorian soil, it would fall under Ecuadorian law and the person could not be extradited. The Committee therefore asked what would happen if crimes under articles 2 or 3 were committed abroad and either the perpetrator or victim were Ecuadorian. It especially wanted to know if sale and prostitution

had an extraditorial basis. The delegation responded that if the crime was committed in Ecuador or under Ecuadorian law, there were sanctions in place. In the case of an offence committed by a foreigner on Ecuadorian soil, the offender would be sentenced in Ecuador and could be extradited (depending on existing extradition agreements with the other country). If an Ecuadorian committed a crime abroad, the latter would fall under the jurisdiction of the other country. The Committee followed up by asking if the courts had jurisdiction over offences provided in the OPSC, for instance if someone committed a crime abroad but was living in Ecuador. The Committee noted that an Ecuadorian court should be able to judge a crime committed abroad for sale, prostitution and so on according to the principle of universal jurisdiction. The delegation responded that people who committed a crime abroad could be sent to the country where the crime was committed. Thus, foreigners had to return to the country where they committed the crime. It was only if a crime was on-going that it could be sanctioned in Ecuador.

Criminal Procedures

The Committee asked how children accessed the witness protection system. The delegation replied that the public prosecutor office had set up a programme for victims of child trafficking or pornography. The judicial procedure required that a child be heard (they could be accompanied by a person of trust). The principle of confidentiality was respected. In cases of rape, there was a medical examination. Social and psychological care was provided to the victim and the case was reported to the police.

The Committee asked why so few cases were reported, given the witness protection system. It was concerned about the low number of prosecutions given the witness protection and the existence of facilitators to support victims. It therefore asked about the measures to improve the reporting system and recommended social workers, teachers and law enforcement officials be trained to use the system. The delegation explained that judges, police officers, teachers and doctors were starting to specialise in this area. According to a survey conducted by the Ministry of Justice, there were 6'200 cases of sexual exploitation and the average age of victims was 15 to 16 years old. Among these cases, 36% were victims of sexual violence. 1250 police officers were trained to address these violations.

The Committee asked for a breakdown of the 6'200 cases between prostitution, trafficking or other abuse. The delegation explained that there was no, but there would be a breakdown of pornography, trafficking and so on in the new information system. However, from a legal point of view, the Children and Youth Code covered sexual abuse, sexual exploitation and trafficking, while the penal code had definitions for child pornography and prostitution. There were harsher sanctions for these crimes and aggravating circumstances if they were committed by a person in a position of authority (e.g. teacher or relative). In addition, consent was not applicable in cases of pornography or prostitution. The Committee also enquired about the criminalisation of the sale of organs and the measures taken to combat the transfer of organs.

Child Trafficking

The delegation explained that article 66 on the right to freedom covered the trafficking of human beings. There was a national plan that provided a holistic approach to children and adolescents. Other tools to combat child trafficking included the National Plan to combat human trafficking, illegal trafficking of migrants, sexual exploitation, labour exploitation and prosecution of women, children and adolescents, child pornography and corruption of minors; the Action Plan for Prevention and Eradication of Commercial Sexual Exploitation of

Children and Adolescents associated with Travel and Tourism Plan; the National Plan for the Eradication of Sexual Offences in the Educational Setting and the National 10-year Plan of Comprehensive Protection for Children and Adolescents. Crimes of trafficking involved a number of different types of exploitation. Sexual exploitation was the most widely known, but there was also commercial sexual exploitation. In the penal code, the trafficking of organs (without consent) was also criminalised. The delegation highlighted the problem of well-organised networks of international crime. It also explained that the National Council for Childhood and Adolescents had developed a national anti-trafficking plan in 2006. The State was responsible for protecting people from violations of their rights, investigating alleged violation and providing compensation to victims. The plan had three levels: prevention, research and investigation, assistance to victims and restitution of their rights. The government had undertaken many human rights initiatives, including the creation of inter-institutional activities between the fourteen institutions with particular attention on children. These initiatives included the provision of assistance to victims of trafficking. Prevention measures undertaken by different ministries included the training officials to identify victims of these offences.

A meeting was held in Argentina to discuss a protocol for consular assistance in relation to people trafficked abroad. It would be implemented through online training courses to all consuls and public officials. Since 2005, they had intensified their efforts in relation to child trafficking by training officials to identify victims. As a result, 722 persons were trained and they were now planning other training courses for the Ministry of Foreign Affairs' personnel. In addition, there were many other initiatives underway to combat child trafficking.

Sex Tourism

The Committee was concerned about the high rate of sexual exploitation of children in the tourism sector and asked about the measures taken by the Ministry of Tourism to train the professionals working in this sector. The delegation replied that the Ministry of Tourism had launched a campaign to combat sex tourism, and had been working with children and adolescents to enable them to identify the situation, to avoid becoming victims of sexual exploitation and to know where to report cases. Preventive measures included information campaigns for school children, leaflets, identification of vulnerable children and the training of experts. The sanctions were applicable to those offering the services as well as owners or managers of hotels and casinos. There were agreements with the chamber of tourism, so that people who came to Ecuador were not free from prosecution if they were involved in sex tourism.

In response to a question about awareness raising programmes, the delegation responded that the Ministry of Tourism had a campaign to promote tourism free of sex tourism. There also were incentives to move away from sex tourism. The delegation explained that there was a network in five towns which were visited by many tourists. For instance, 149 victims had been removed from dangerous circumstances and 700 were taken away from high-risk families. This prevention strategy was carried out in conjunction with NGOs. There was a helpline that could be called (101) to report a case. NGOs and the police were cooperating and the strategy was funded by the National Institute for Children and the Family (INNFA). The delegation noted that organised crime sometimes included police officers. By 2011, they hoped to expand this strategy to eight towns to provide more comprehensive coverage.

Child Prostitution and Pornography

In response to questions on prostitution and pornography, the delegation noted that special

training was provided to deal with victims of trafficking for these purposes. It focused on how to detect cases of trafficking and the measures that could be taken. If a child had a number of rights violated, for instance forced labour, sexual exploitation and so on, there was a need to train the relevant professionals so that they knew where to send the cases. This had been conducted with the help of the International Organization for Migration's counter-trafficking programme.

The National Council for Children and Adolescents, NGOs, the office of the public prosecutor and other bodies working on children rights restitution had joined forces to dismantle child pornography networks. This was a new issue, so they were in the process of building capacity to deal with these situations. Comprehensive care was provided to victims of mistreatment. However, despite these efforts, greater means were needed to eradicate this scourge.

Rehabilitation and Reintegration

The Committee asked about the existence of reintegration programmes for victims of prostitution and pornography and the type of care these programmes provided. It also asked about the services for the parents involved in the sale of children, prostitution and pornography. More specifically, it wanted to know about the approach used if the perpetrator was a member of the family. The delegation explained that they focused on providing systemic care. There were 23 "Centros Ternura", which were rehabilitation centres composed of lawyers and other experts in the capital of each region. They aimed to have a total of 54 such centres that would be coordinated under one main body. These centres were in urban areas as well as semi-rural areas, and provided care to victims. There were also other protection centres and community ombudsmen centres. The ombudsmen were often the initial contact point. The Committee asked if these centres were open so that children were able to leave freely. It wanted to know about the measures taken in cases of sexual abuse by parents. The delegation responded that these centres, which dealt with 1'500 cases a year, had a comprehensive approach to care. They included specialised personnel such as social workers, legal specialists and psychologists. A health professional was bound to report the teacher, relative, or health care professional and he/she could lodge a complaint on behalf of the victim. These centres worked closely with juvenile judges and could register complaints on behalf of children.

Following the doctrine of the holistic protection, the child was taken away from home as a last resort. A social worker was first sent to try to restore the family links, then if this could not be achieved the child was placed in the care of a relative or host family and as a last resort in an institution. In principle, it was the aggressor that should be removed and an order could be issued to prevent the aggressor from approaching the victim. If the aggressor was a parent, the child was removed from the family. The Committee asked what happened to these 1'500 complaints and whether there was an estimate of the proportion of complaints that were not received. Given the lack of data, it was hard for the Committee to see how many ended up in foster families or institutions.

The Committee asked about the measures to change the behaviour of parents from being abusive to supportive. The delegation responded that the CRC had caused a paradigm shift. There was an initiative called 'growing with our children' for parents. There was a lot of focus on involving parents and they were trying to develop a participatory sphere. They were aiming to have citizen governance, so that parents were actively involved in planning school and changing their behaviours. The perpetrator was bound by law to follow a therapy, and a follow-up procedure had to be ensured. A special family programme organised by "SOS

children's villages" that worked with parents to enable them to look after their children. This programme included follow-up procedure. The Committee noted that therapy did not work very well for cases of sexual abuse, and recommended the use of cognitive training.

Concluding Remarks

Ms Maria Herczog thanked the delegation for the constructive dialogue which clarified many issues and helped to understand better the context of the protection of children's rights in Ecuador. The dialogue had been very helpful and the Committee would do its best to provide recommendations to improve the situation in certain areas, such as the measures to combat child trafficking and pornography. The question of disaggregated data remained an important issue. The general impression was that progress had been made, but more needed to be done with regard to the strengthening of the witness protection system and the rehabilitation policies for victims.