

STATE PARTY EXAMINATION OF NICARAGUA'S INITIAL PERIODIC REPORT ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

55TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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Nicaragua ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (OPSC) on 2 December 2004. On 24 September 2010, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Nicaragua.

Opening Comments

The delegation of Nicaragua was led by Dr Ana Isabel Morales Mazún, Minister of Governance. She was supported by a delegation consisting of representatives from the Ministry of External Affairs, the UN Mission in Nicaragua, Multilateral Affairs and Human Rights and the Advisor on Children's Issues.

She thanked the Committee and provided an update on the status of the OPSC in Nicaragua. She reported that the Code on Children and Adolescents included provisions set out in the OPSC and that the new Criminal Code of 2007 criminalised child pornography, sex tourism and trafficking of individuals. She said the Ministry of Education and the Ministry of Family disseminated information to children and adults about these issues and about how to request assistance and make complaints. She highlighted Nicaragua's permanent hotline for reporting violations and seeking advice and information and mentioned the work of the Director of Migration and Foreign Affairs and the Institute of Tourism to promote training on human trafficking issues, particularly for border agents. She emphasised Nicaragua's plan to strengthen institutions to ensure proper training and prevention of offences. She highlighted the work of the National Coalition against Trafficking in Persons (the National Coalition), a coalition made up of 95 partners from government institutions, NGOs, community and volunteer organisations. The National Coalition was part of Nicaragua's human development program and worked to optimise existing institutions and civil society in order to provide

quality treatment and reintegration for survivors and victims of violence and abuse. The Minister also noted the penal provisions and the regional agreements that function to protect children's rights. She concluded by recalling that Nicaragua was new at implementing the OPAC and that it was still a learning process. She welcomed the Committee's opinions and said they were important to help Nicaragua improve its practice.

Mr Zermatten, the Country Rapporteur, thanked the head of delegation and said her opening statement illustrated Nicaragua's desire to implement the OPSC. He noted Nicaragua's various strategies and action plans and asked about the link between the National Plan of Action, the National Coalition, the programme on social welfare, the Amor programme and the National Council for the Comprehensive Care and Protection of Children and Adolescents (CONAPINA). He noted that while all these programmes and bodies were mentioned as key players in the protection of children against sexual exploitation, prostitution and pornography, the coordination amongst them remained unclear. He welcomed the revision of the Criminal Code and the criminalisation of the sale of children, but he was concerned that the language did not clearly criminalise pornography. He recognised that Nicaragua strengthened its adoption system, but asked whether adoption was used to mask trafficking or the sale of children. He also raised concerns about court procedures and asked whether the State had provisions to limit the number of hearings to protect children from revictimisation.

General Measures of Implementation

Legislation

The Committee asked for a concrete answer of whether there was a new Criminal Code. The delegation stated that it had provided the Committee with a CD containing all its provisions.

The Committee noted that the wording in the State report cast doubt about the application of the OPSC under Nicaraguan law. The delegation stated that it had sanctioned any form of commercial exploitation against children and asserted there was no possibility of impunity because Nicaraguan legislation punished and criminalised all acts that violated the integrity of the child. The delegation highlighted the relevant articles of the Criminal Code of 2008, in particular the criminalisation of the sale of children, child pornography, sexual tourism, adoption for the purpose of exploitation, and slavery. Though the delegation said it would provide more details about the application of the OPSC, as requested by the Committee, it did not return to this question.

The Committee also noted that the Criminal Code was not fully aligned with the OPSC because it did not criminalise all of the offences related to pornography, in particular with regard to the possession of pornographic material. The Committee also noted that the State report addressed the issue of seizure and said that police would take measures. It asked whether these measures were a discretionary act of the police or whether there was a specific provision on this. The delegation replied that the Criminal Code was fully in line with the OPSC as it punished anyone who produced, disseminated, or possessed images or audio material of a person below 18 years in real or simulated images and film and also covered the seizing of material. The delegation further explained that perpetrators (e.g., pornography producers) and accomplices (e.g., pornography viewers), direct and indirect participants, were punished under the law and clarified that the term "pornography" was not used as to avoid the revictimisation of the child. The Committee asked why Article 175 of the Criminal Code limited absolute protection only to those up to 16 years old. The delegation said it would come back to this point but did not in the end.

The Committee noted that the prohibition of sale did not explicitly state whether it only prohibited sale for sexual exploitation or whether it also prohibited the sale of organs and labour. The delegation said that the use of organs was also covered under the Nicaraguan law and cited the corresponding provision ('anyone who changes the vital structure or genome of a person for reasons other than therapy shall be sentenced to prison'). The Committee admitted this covered one issue but reiterated the question on organ trafficking.

The Committee was concerned that criminal cases could be archived too easily and asked whether a perpetrator was exonerated from the criminal act if the victim withdrew his/her complaint. The delegation reported that even when the victim dropped the case or pardoned the perpetrator, Nicaraguan law required the criminal process to continue and that no mediation or pardoning of the perpetrator was possible until the perpetrator was punished.

National jurisprudence

The Committee asked whether any precedent in court cases had tested the operation of Nicaragua's legal provisions. The delegation reported there had only been a few cases put on trial and a few reports from the police because the Criminal Law was only implemented in 2008 and the social culture still did not recognise many of these activities as crimes. The delegation projected that in the future the number of cases would increase and there would be some sentences.

Children's ombudsman

The Committee highlighted that, given the specificity of the OPSC's provisions; a specific mandate to monitor their implementation was needed and asked whether the ombudsmen responsible for monitoring the CRC had such an explicit mandate. It also stressed that for the OPSC to be effective, financial and human resources had to be allocated to its implementation and asked whether there was a budget for the ombudsmen. The delegation noted that a child could make complaints through the Office of the Ombudsmen without the help of a parent.

Dissemination

The Committee noted that relevant professionals were not sufficiently aware of the OPSC and asked how the State intended to make the OPSC known by the general public. The delegation highlighted that the National Coalition coordinated training and prevention campaigns at the regional level. These campaigns were conducted through mass media, border posts, and airports. Furthermore, the delegation noted that UNICEF and ILO had helped Nicaragua prepare informational videos on topics such as child trafficking and sexual exploitation. The delegation also drew attention to Nicaragua's campaign on sex exploitation and trafficking in Nicaragua and the Central American region.

Training

The Committee asked about the training programs for prosecution lawyers, court officials, judges, teachers, social workers and other people working with child victims. The delegation reported that the State had ongoing training for its border officials, public defenders, judges, and prison workers on issues related to the OPSC. It noted that the Ministry of Tourism, along with a range of other institutions and universities, was promoting post-graduate courses aimed to teach professionals how they could protect child victims. The delegation stated that it wanted to train hotel staff about children's rights and the OPSC so they were informed about sexual exploitation of children. The delegation also reported that it was training

journalists and informing newspaper editors about children's rights issues.

Implementation and coordination

The Committee asked which departments were responsible for implementing the OPSC and coordinating with local authorities and civil society. The delegation explained that the human development plan provided a conceptual basis for all of Nicaragua's strategies. The social welfare plan established policies that informed the implementation of specific plans and programmes, such as the Amor programme. This structure ensured joint participation of different actors at the departmental, municipal and regional level since it involved government ministries, the national police force, the Women's Institute, mayors, local authorities and civil society.

Cooperation with civil society

The Committee asked for information about the State's cooperation with civil society. The delegation mentioned the collaboration between the government and civil society throughout the dialogue without further details. With regard to sexual abuse or violence cases, it explained that government institutions often called on NGOs, such as Casa Alianza, to provide psychological and sexual help to identified victims.

Prevention

Hotline

The Committee noted that the hotline appeared to be difficult to access outside of the capital and asked whether it was accessible in the entire country. It also asked what was being done to raise awareness about the hotline. The delegation explained that the hotline worked at the national level and was accessible inside and outside the capital. People could call to register complaints or ask questions about their rights. In addition to the hotline, child victims could report offences through the Ministry of Family, the police or any NGO who was a member of the National Coalition. All of these institutions were interrelated and they worked quickly to provide immediate protection.

Vulnerable children

The Committee asked what measures had been taken to protect the most vulnerable children—migrant, undocumented and street children—from sexual exploitation and abuse. The Committee also wanted to know who was responsible for ensuring the physical and psychological well-being of the child.

Data collection

The Committee asked whether the State was systematically collecting and analyzing data on violations of the OPSC and rehabilitation of the child. It also asked whether the government was attempting to quantify unreported cases and offences. The delegation explained that it gave the Committee a CD that contained the number of criminal sanctions, the number of cases the public prosecutor had presented, and other related data. It admitted that there were not many cases or reports because the social culture did not yet recognise these issues as crimes.

Prohibition and Related Matters

Sex tourism

The Committee recognised that the State attempted to criminalise sex tourism but noted there were still cases where a child was sold for sex tourism and prostitution. The Committee wanted to know what measures were being taken to guarantee that children were not forced into tourism, pornography, and prostitution. The delegation stated that there was punishment for companies that promoted sex tourism. Regarding the Committee's question about preventative measures, the delegation reported that the Ministry of Tourism, as part of the Amor programme, was promoting clean tourism in Nicaragua. It had brought hotels together to draw up a code of conduct to address sexual exploitation of children. The delegation also noted that the Nicaraguan Institute of Tourism met with tourist transport companies to talk to them about preventing sexual exploitation of children and adolescents. The delegation said it also wanted to start training hotel staff about the CRC and optional protocols (as mentioned in the training section of this report).

Extraterritorial jurisdiction

The Committee asked whether a foreign perpetrator who left Nicaragua would come under the jurisdiction of Nicaraguan criminal courts. The delegation reported that Nicaraguan law was applicable to Nicaraguans and foreigners who had committed certain crimes outside of territory, including international trafficking of people, slavery and sexual crimes that were damaging to children and adolescents.

Extradition

The Committee asked whether the Nicaraguan courts would be competent to prosecute a Nicaraguan who committed a crime abroad. It also asked whether the OPSC alone was enough to extradite someone or whether bilateral agreements were necessary. The Committee also wanted to know whether there was a framework for penalties or if extradition measures were taken at the discretion of the police. The delegation stated that under the Bustamante Code nationals were not subjected to extradition and there was a special procedure for foreigners.

Protection of the Rights of Victims

Revictimisation

The Committee wanted to know what protection measures were in place to protect child victims' privacy and anonymity. Specifically, it asked what provisions protected children from the possibility of revictimisation. The delegation declared its goal was to ensure that children were not revictimised during the criminal process, but it acknowledged there was still work to be done to change the culture of revictimisation that existed in the media, the family and society. The delegation explained that when a Nicaragua newspaper reported on an event it often portrayed the victim as the criminal and the perpetrator as the hero. The delegation said that consequently, it was difficult to receive a satisfactory level of change in journalists' behaviours because the press sought captivating headlines, which often violated the rights of the child.

Compensation

The Committee asked whether child victims had access to compensation. The delegation listed the articles in the Criminal Code that addressed damages and compensation, and explained that compensation was decided through a civil process after the court proceedings.

International Assistance and Cooperation

The Committee noted that the offences covered in the OPSC were multi-dimensional issues. It wanted to know what measures were being taken to enhance international cooperation for issues of the OPSC. It wanted to know whether there was an exchange of best practices, technical support and training to address these issues in collaboration. The delegation noted that Nicaragua had participated in regional conferences to discuss these issues. It also highlighted that it had received assistance from Spain's police, particularly with regard to child pornography. It had also received support in restorative justice from Sweden and Switzerland.

Concluding Remarks

The Country Rapporteur, Mr Zermatten, commended the delegation for providing updates on Nicaragua. He said the delegation's outline of the conceptual framework showed Nicaragua's progress, but noted that efforts still needed to be made when investigating crimes and caring for victims. He thanked the head of delegation for providing information so that the Committee could make further recommendations.

The head of delegation said the delegation would take the Committee's comments and recommendations into account as it preceded and mentioned that time had been a limiting factor in this discussion. The delegation concluded by thanking the Committee for its forbearance and tolerance and for reading the State report and listening to the delegation's comments. It stated that the Nicaraguan government wanted to implement the recommendations and use its external resources more effectively to implement the OPSC provisions and principles.