



ngo group for the crc

**STATE PARTY EXAMINATION OF SPAIN'S INITIAL REPORT
ON THE OPTIONAL PROTOCOL ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND
CHILD PORNOGRAPHY**

**46TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE
CHILD**

17 September - 5 October 2007

Contents

Opening Comments	1
Legislation	2
Criminal Procedures	3
Monitoring and Dissemination	3
General Measures of Implementation	3
Adoption	4
Refugees and Asylum Seekers	4
Concluding Remarks	5

Spain ratified the OPSC on 5 December 2001. On 1 October 2007, the Committee on the Rights of the Child (the Committee) examined Spain's initial Report on the implementation of the OPSC.

Opening Comments

Ms. Amparo Marzal Martínez, Director-General of Families and Childhood in the Ministry of Labour and Social Affairs, presented the report. She pointed out that Spain saw the OPSC as part of the CRC and so had implemented it in accordance with the general principles of the CRC. She pointed out that the administrative bodies in each autonomous region were responsible for addressing violations and providing recovery and reintegration programmes. However, she stressed that the National Plan on Childhood and Adolescence for 2006-2009 was produced in collaboration with all stakeholders through the children's observatory (the Observatory). She also mentioned the Observatory's role in evaluating the plan on sexual exploitation which ended in 2005. Finally, she stressed the state's commitment to implementing the OPSC, commenting that it was accountable not only to the Committee, but also to its children for any failure to do so.

Mr. Citarella, the country rapporteur, mentioned that both the report and the written replies had been submitted late. This had meant that the written replies were not translated and so could not be read by the majority of the Committee. He commented that the report, although it covered the legislation in great detail, did not provide much information on implementation and practical problems. Another problem was the lack of statistical data. He praised the provisions for directly invoking international treaties in courts, but pointed out that the OPSC also required states to pass domestic legislation criminalising violations. He noted that there was no prohibition on the sale of children

and asked about the procedure for cases of illegal adoption or sale. He noted that the low age of sexual consent might encourage child prostitution including of trafficked children. He therefore asked about the identification of illegal immigrants and tracing of disappearances. He commended the legislation on the protection of child witnesses, but noted that NGO reports suggested there were problems with the implementation. He asked about the financial and human resources available for implementing these measures.

Legislation

The Committee expressed concern about the absence of an absolute prohibition on the sale of children. They pointed out that this was not fully covered by provisions on sexual exploitation and trafficking. The delegation admitted that there was no specific prohibition, but explained that there were measures covering aspects of the problem spread through the criminal code. They mentioned provisions on trafficking, with heavier penalties for the involvement of minors, and a section on 'harmful actions against children', which included the sale of organs.

The Committee noted with concern that the age of sexual consent was 13, one of the lowest in the world, and asked about the possibility of raising it. The delegation was unable to explain why 13 was the age of sexual consent, but pointed out that 14 was the minimum age for both criminal liability and marriage. They suggested that raising the age would require an examination of a whole range of age limits.

The Committee asked for confirmation that the definition of child pornography included virtual and cartoon pornography. The delegation pointed out that there was no standard international definition of pornography and that too rigid a definition might fail to cover all the possibilities. The definition in domestic law prohibited the use of a child or any part of a child, including the voice, in the production of pornography. They stated that cartoon pornography was also covered, but did not quote the relevant law.

The Committee asked about the measures protecting children over the age of consent from sexual abuse and for confirmation of the criminalisation of prostitution of these children. The delegation replied that all behaviour leading to or encouraging the prostitution of a minor was criminalised. A new reform of the criminal code had specifically included the client. At the Committee's request they confirmed that this amendment had been passed into law. They pointed out that the penalties were more severe if the child was under 13. The delegation stressed that free consent could only apply if there was no remuneration, coercion or violation of a relationship of trust in the sexual activity.

The Committee commended the heavier penalties for abuses committed by an adult in a situation of trust, but expressed concern over the fact that they could only be excluded from their jobs for between two and six years. They suggested that anyone working with children ought to be barred for life. The delegation did not comment on this.

The Committee asked about the liability of legal persons. The delegation replied that new amendments currently under consideration by the parliament dealt with the criminal responsibility of legal persons.

The Committee asked about extra-territorial jurisdiction for offences covered by the OPSC and the possibility of removing the protection against double jeopardy. The delegation replied that the state had universal jurisdiction over all crimes covered by its criminal code. The only restriction was that no one could be tried twice for the same crime. The Committee asked whether the state could ask for extradition for offences that were criminalised in Spain but not in the extraditing country. The delegation replied that the state could request extradition for any offence under its own law, but that it was more often granted for crimes criminalised by both states. The delegation did not provide examples of case law on either of these issues.

Criminal Procedures

The Committee noted with concern that reports suggested judges were often unsympathetic to child victims and inclined to dismiss their cases. It asked about the practical implementation of the legislation on the protection of witnesses and victims. The delegation admitted that there had been incidents where the witnesses were forced to confront the perpetrator. However, the law had now been amended to prevent this. The child could receive assistance from legal, psychological and medical experts and testimony could even be given remotely and projected.

The Committee asked about programmes for sexual offenders. The delegation replied that detention centres were required to provide rehabilitation programmes for sexual offenders, but that there were still some problems with the system.

Monitoring and Dissemination

The Committee asked about the role of the Observatory in monitoring implementation of the OPSC, collecting data and research. It asked whether the Observatory had sufficient resources to carry out its functions. The delegation replied that the Observatory was under the Ministry of Social Affairs, which guaranteed the provision of adequate resources. They explained that it was a collegiate body made up of representatives from the autonomous communities, municipal administrations and other bodies working on child protection. It provided a forum for discussion, the development of initiatives and coordination.

The delegation did not answer questions on the proposed central database on children, the use of data from the helpline in the formulation of policy or the role of the organisation 'Children's and Adolescent's Watch'. The Committee asked how easy it was for children to access the services for their protection. The delegation replied that any child in the state's territory could use the free hotline or make a complaint to the Ombudsman or children's Ombudsman in the regions which had one. They pointed out that there were also a large number of NGOs which were in direct contact with children.

The Committee asked about the dissemination of the second plan on sexual exploitation, especially to the tourist industry. The delegation replied that the first plan on sexual exploitation had involved a campaign to disseminate information on the OPSC and the ECPAT Code of Conduct to the tourist sector and the contacts formed by this campaign had been maintained.

The delegation did not provide information on the involvement of NGOs in the preparation of the report or the state's participation in the UN Study on Violence against Children.

General Measures of Implementation

The Committee noted the National Plan on Commercial Sexual Exploitation had no funding for implementation. They asked the reason for this. The delegation explained that the plan had been drawn up and agreed by the Secretariat for Children, which was formed of various organisations and institutions working on child protection. These bodies each ran and funded their own programmes to implement the plan.

The Committee asked about the provision of comprehensive care, including psychological assistance and rehabilitation by the state or autonomous regions. They noted that there was often a shortage of trained professionals and of spaces in centres, resulting in low quality assistance. The delegation did not answer.

The Committee asked about methods of policing the internet. They expressed particular concern about the lack of protection for children in cyber cafes, which did not require identification. The delegation admitted that internet crime, and especially the use of the internet to access child pornography, were major problems with continually evolving challenges. They pointed out that Wi-Fi was the latest problem and undermined any attempt to identify users by requiring identification in cyber cafes. They commented that a new information act would hopefully oblige service providers

to keep records for a minimum length of time, which should help matters. The Committee asked whether adequate resources were devoted to investigating internet crime. The delegation pointed out that more resources could always be used, but that the state had well trained and equipped investigation teams. They emphasised that close cooperation between countries was needed and mentioned their own links with both European and Latin American countries.

Adoption

The Committee asked about the safeguards for adoption and why there were many more international rather than national adoptions. The delegation pointed out that it was often hard to find adopters for disabled children, large numbers of siblings or children above a certain age. The low number of internal adoptions was also due to attempts to reunite families if at all possible. They emphasised that the state made every effort to ensure that the host family was suitable, including social and psychological screening. For international adoptions they required guarantees for the national authorities, but pointed out that they could not compel other states to comply with their legislation. The state encouraged adopters to work through Spanish agencies and there were certain countries which could not provide sufficient guarantees and from which adoption was prohibited. The Committee agreed that international adoption required cooperation and encouraged the state to provide assistance to others in developing the necessary guarantees.

The delegation did not provide information about the criminalisation of illegal adoption or inappropriate consent to adoption.

Refugees and Asylum Seekers

The Committee observed that reports by NGOs suggested that asylum seekers were not always treated with due care. They asked about the process for identifying and caring for minors. The delegation replied that all unaccompanied minors were treated as vulnerable children and provided with protection, health care and other rehabilitation services. The Committee asked where this care took place. The delegation replied that it was in the institutions of the autonomous communities. The Committee asked about the guarantees required for repatriation. The delegation pointed out that the state had an obligation not to expel minors and that if there was a doubt about the age the person was assumed to be a minor. The Committee asked about a recent incident involving the deportation of five young people in a boat in which they had crossed from Morocco. The delegation replied that it could not comment on specific cases, but was providing general information on the provisions for all unaccompanied minors. Every effort was made to identify the minors through collaboration with the country of origin, and if possible the children were reunited with their families. The delegation asserted that minors were not returned to the country of origin unless there were guarantees that they would be cared for either by their family or by the state and that neither the child nor its family would suffer. The delegation explained that they had set up camps in Morocco in collaboration with the Moroccan government to help the reintegration of the children repatriated. The Committee asked whether the staff of these camps were Moroccan or Spanish and whether it was possible to apply for asylum in Spain through the camps. The delegation explained that the details of this new initiative were still uncertain, but that they thought the camps would be run by Morocco with technical support from Spain. The Committee asked whether children of other nationalities who used Morocco as a transit point to reach Spain would also be sent to these camps. The delegation was uncertain, but repeated that the camps were intended primarily to assist the reintegration of Moroccan children.

The Committee asked about the provision of resources for the care of unaccompanied minors to Ceuta and Melilla. The delegation was unable to provide exact figures but assured the Committee that their previous recommendations on strengthening the budget support for these enclaves had been followed.

Concluding Remarks

Mr. Citarella thanked the delegation for the information they had provided and their willingness to engage in a dialogue. He highlighted some concerns the Committee still had with the legal definitions and criminalisation. He also stressed the need for more professionals to be trained to work with victims, especially in the justice system. Finally, he mentioned the importance of collecting and analysing data. He hoped the State party would find the Committee's concluding observations useful in identifying gaps in the existing provisions and developing the next national plan.

Ms. Amparo Marzal Martínez thanked the Committee and particularly the country rapporteurs for their questions and, in advance, for their recommendations on improving the implementation of the Optional Protocols.