



ngo group for the crc

STATE PARTY EXAMINATION OF COLOMBIA'S INITIAL REPORT ON THE OPSC

54TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

25 MAY – 11 JUNE 2010

Topics covered in this report: *General Measures of Implementation, Prevention, Prohibition and Related Matters, Protection of the Rights of Victims, International Assistance and Cooperation, and Other Legal Provisions*

Colombia ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 25 May 2005. On 4 June 2010 the Committee on the Rights of the Child (the Committee) considered Colombia's initial report under the OPSC.

Opening Comments

Mrs. Elvira Forero, the Director of the Family Welfare Institute, expressed her gratitude for the discussion on the OPSC and acknowledged that some children had their rights violated. She assured the Committee that when violations took place, the government would follow-up. She informed the Committee that the Institute for Family Welfare was responsible for coordinating implementation by improving the quality of services and state presence in rural areas, but that in some cases the military was needed to protect social workers. The government was focusing its investment on early childhood, children of African descent, displaced children, indigenous children and children living in rural or border areas. There were over 1,000 family defenders working to ensure children's rights. The Institute was governed by a council of entrepreneurs, government officials, and others who were operated in accordance with a code of good governance. There were also police officers who could inspect cases of suspected violations of children's rights through complaints filed with the Attorney General's office. The Procurator's Office and Ombudsman's Office acted as supervisory bodies.

Progress had been made in the implementation of the OPSC, as there were three criminal acts prohibited in the penal code: trafficking in children, trafficking in persons and irregular adoption. Eleven cases of trafficking had been investigated and more investigations were underway. The state had created a National Strategy to Combat Trafficking in Persons, the standards of which were set by a Committee led by the Ministry of Justice. It included the Ministry of the Interior, the International Organisation for Migration, some foreign embassies and universities and the Foundation Esperanza. There was a manual on the treatment of victims of trafficking and prevention campaigns to raise awareness of a hotline. The hotline was in fact used by children to denounce violations of the OPSC. Mrs. Forero explained that three new measures had helped Colombia to implement the OPSC: one that allowed for harsher penalties for constraint into prostitution, one establishing the procurement and use of children as participants in criminal activities as a crime, and the third that made any hotel where children could be sexually exploited illegal. There was also a fund against commercial exploitation,

such as sexual or labour exploitation, financed through a departure tax on all foreign tourists to help ensure that children's rights would be protected.

Mrs. Villaran thanked the delegation for their participation in the dialogue on the implementation of the OPSC and emphasized that the OPSC defined many different actions such as sale. The protocol extended far beyond prohibiting the act of trafficking (which was the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime); although trafficking was also prohibited under the OPSC as it covered sale, prostitution and pornography. She said that it was not just a legal distinction, but that it also affected the implementation of the provisions in the OPSC. In order to address the problems of sale, she suggested that Colombia examine the root causes and social contexts in which sale occurs. She pointed out that impunity for perpetrators would result in chronic recurrence of the crimes and said that Colombia needed to develop effective sanctions.

General Measures of Implementation

The Committee asked for more information about the mandate of the family defenders and how many complaints they had filed. The delegation said that family defenders were empowered to initiate compensation proceedings for victims of child pornography or prostitution. The Committee asked if the Institute for Family Welfare had adequate resources and capacity in terms of technology and staff. The delegation explained that the Institute had recently changed structure from one unified body to separate bodies responsible for restoring rights, criminal responsibility, prevention, protection and follow up, as well as a supervisory body. The Institute was governed by a 1968 law that defined competencies and funding as well as more recent norms that outlined more strategic guidelines and enabled the Institute to reach out to remote areas. The Institute was funded by a 3% income tax. The Committee asked for more details on the specific programmes to prevent OPSC violations and protect victims. It also wanted to know which departments were responsible for these programmes. The delegation replied that there was a committee chaired by the Social Protection Ministry that focused on trafficking which handled much of the implementation. There were 32 regional offices and one in the capital with the capacity to address claims of rights violations, including those linked to the OPSC. There were lawyers and social workers who specifically focused on the protocol. The budget was around USD 4 million per year. The rehabilitation and reintegration programmes aimed to give children the skills to find work and become productive members of society.

In response to a question about the involvement of NGOs, the delegation responded that NGOs were an important part of the alliance and child protection depended on them. The Committee asked if NGOs were partners in formulating strategies and policies. The delegation replied that there may be room for improvement, but NGOs educated the government as they had technical experience in implementing norms.

The Committee asked for more data on the implementation of the OPSC, especially since the data provided mostly dealt with trafficking and sexual exploitation. The delegation reported that there had been a cooperative alliance for diagnosis and treatment in 7 main cities. In cooperation with the European Union, a study was carried out on 3,500 children who had received assistance from the Family Welfare Institute. The delegation declared that if the Committee wished to read the report, it could send them the report. The study included explanations of the reasons that children had become involved in labour.

The Committee asked if there was an independent monitoring mechanism and complaints mechanism, and if children had the capacity to lodge complaints without repercussions in the

community. The delegation replied that there were two or three independent places where a child or an adult could denounce alleged violations of the OPSC.

Prevention

The Committee asked how Colombia was targeting preventive measures towards marginalized groups who were particularly susceptible to human rights violations, such as communities of African descent, indigenous peoples or displaced persons. The delegation said that in general the media helped raise awareness about dangers of trafficking and sale.

The Committee asked about the measures to increase the rate of birth registration, as 20% of the population was not registered at birth. The delegation said that civil registry was free of charge, and the government worked with UNHCR and local authorities to facilitate registration in remote areas. There was a nutritional programme linked to registration as well as the possibility of having mobile teams. A total of 97% of children were registered.

The Committee enquired about the measures in place to combat sex tourism. The delegation explained that the government had entered into agreements with the tourist sector, and developed a good practice certification process to encourage hotels to crack down on sex tourism. The delegation told the Committee that the Ministry of Tourism would launch a strategy for reporting violations and lodging complaints both in Colombia and abroad. This would change the way Colombia dealt with the commercial sexual exploitation of children. In addition, the delegation described the cooperation with other Latin American countries to combat trafficking of children, especially for sexual exploitation as well as agreements signed with private business, industries, local authorities and the tourism sector. There was a special focus on the border with Venezuela and the coffee growing areas. In order to raise awareness, the government was training the police to take necessary measures to stop trafficking. However, while there had been some dissemination of the benefits of the protocol, it was not enough to effectively stop the criminal activity. Adoption

The Committee asked whether intermediaries in irregular adoptions were punished in the criminal code. It was concerned about the high number of international adoptions that did not go through the central adoption authority and about the private homes that took in pregnant mothers who later handed in their children for adoption. The Committee asked who was responsible for determining a child's eligibility for adoption and if the process was monitored. The delegation said that adoption was free of charge and the government had suggested that adoption agencies publish costs on a web page so that families could access relevant information. The delegation clarified that 76% of adoption cases went through central agencies and only about 25% came from private homes. It had been determined that the sub-department on adoption in the Institute for Family Welfare should carry out random follow-up visits to monitor the situation. There were two registries with international accreditation bodies.

In cases of children that were difficult to adopt because of age, disabilities or race, the child would not be quickly adopted in Colombia, and faced indefinite institutionalisation. Thus, the government concluded that the best way to restore their rights was to allow international adoption. Colombia had been named the most transparent Latin American country by the Hague Convention in terms of international adoption. If a child was abused or neglected, then the police or family defenders could intervene and withdraw the child from the home environment. A judge would decide if the child was eligible for adoption in accordance with a 1998 law on adoption. Efforts were made to keep the child within the biological family when possible, and children were removed from their biological family in 5% of cases.

Prohibition and Related Matters

The Committee stressed the importance of clearly defining sale, since trafficking required transfer, and did not cover all the offences in the OPSC. The delegation replied that sale was very rare, and when cases of sale occurred, they were tried as under laws that prohibited trafficking. However, the delegation acknowledged that it did not cover all cases of sale, so it promised to try and close any gaps and tailor legislation to include a comprehensive definition of sale.

The Committee pointed out that there seemed to be many cases of forced labour, which counted as sale, and urged the State party to define sale as it was set out in the OPSC. The delegation said that much remained to be done and that the Committee's point was understood, but that subsidies to ensure that children could go to school rather than work had reduced child labour, making criminal sanctions less urgent. The Prosecutor's office had investigated and pursued cases of trafficking, labour, sexual exploitation and pornography, even though sale was not specifically criminalized.

The Committee asked if military officials who had committed sexual violence were held accountable. The delegation replied that there had been 10 convictions of such cases. The Committee asked for clarification on the new law on child pornography. The delegation responded that the law increased the sentence for the production, dissemination, recording, possession, storage, and transmission of pornography.

Protection of the Rights of Victims

The Committee noted that there seemed to be a need for more adequate recovery and reintegration facilities so that children could be protected from stigma and further violations. It asked if children had a chance to participate in forming the policies and programmes for reintegration and recovery. The delegation replied that the Attorney General's office had 27 victim centres and would have ten more by the end of 2010. In addition, child victims were asked about the type and quality of services to improve the reintegration process. There was an inventory drawn up of common profiles of children requiring psychosocial treatment to help to treat them effectively so that one day they could live independently. To avoid discrimination, reintegration did not take place in an isolated environment. Since the programme was relatively old, the views of previous participants had been taken into account from a survey on the quality of services, and corresponding changes had been made. There was also a system of monitoring and protection so that children could grow to trust the facilities.

The Committee enquired about reports that children without proper documentation were denied medical care. The delegation replied that civil registry was no longer a barrier to health care for children, as there was legislation that specified that children must receive care even without any identity card. They were working with the health sector to ensure that it happened in practice.

The Committee asked if children were aware of the possibility of receiving compensation from perpetrators if their rights were violated, especially since many children lived in difficult circumstances and might not have the knowledge and capacity to seek damages. The delegation clarified that the government did not provide economic compensation for OPSC violations but that child victims received help in developing a new life project. However, indemnities could be obtained in court from the person responsible for the crime.

International Assistance and Cooperation

The Committee asked about extraterritorial jurisdiction, and whether Colombia could prosecute Colombian citizens or residents who had committed a crime abroad. It was pleased to hear that

the OPSC had sufficient grounds for extradition in a case of a foreigner involved in child pornography. The delegation confirmed that foreigners could be investigated for crimes and said that a person of Greek nationality had recently been extradited for an investigation related to the distribution of child pornography. The government sought the appropriate mechanisms to bring persons to trial if they had committed a crime related to the OPSC.

Other Legal Provisions

The Committee noted that the legislation did not seem to acknowledge corporate criminal responsibility. The delegation explained that if corporate bodies were involved in OPSC violations, the company registry could be cancelled. Individuals who were involved in the OPSC violations as members of corporate bodies could be held accountable.

The Committee asked if child victims of prostitution could be prosecuted. The delegation responded that it was not possible, as the legislation identified children as victims in the process.

Concluding Remarks

Mrs. Villaran thanked the delegation for the open and fruitful dialogue and for providing the Committee with information. She said that Colombia needed to fully harmonise its legislation with the OPSC, strengthen institutions to protect child rights and improve coordination to maximize efficiency. She wished for peace in Colombia and thanked the delegation once more.

Mr. Pearl invited the Committee to visit Colombia, saying that it was wonderful country although it was in transition. He reaffirmed Colombia's commitment to confronting its challenges and thanked the Committee for its support and constructive opinions.