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

65TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD
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Portugal ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 16 May 2003. On 23 January 2014, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Portugal.

Opening Comments

The delegation of Portugal was led by Mr. Pedro Nuno Bartolo, the Permanent Representative of Portugal to the United Nations Office and other international organizations in Geneva. He was supported by a delegation consisting of representatives of the Public Prosecutor Office, the National Commission for the Protection of Children and Young People at Risk, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of National Defence etc. and the Permanent Mission in Geneva.

Mr. Pedro Nuno Bartolo reiterated the State Party's commitment to the rights of the child and noted that national legislation had been harmonized in line with the CRC and the OPSC. As a matter of example, he highlighted that the government signed on the 25 October of 2007 the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). Mr. Pedro Nuno Bartolo stated, that the State Party

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undertook several awareness raising campaigns, including on prevention of child pornography and the safe use of the internet.

Ms. Amal Salman Aldoseri, the Country Rapporteur for the OPSC, welcomed the delegation and thanked for the initial State report on the OPSC, which she noted was comprehensive and provided realistic analysis of the legal achievements and challenges to date.

Ms. Aldoseri welcomed the amendments to the Criminal Code by law number 59/2007 (Articles 160 and 169), which extended the crime of trafficking in persons for the purposes of sexual exploitation to also include forced labour, trafficking in organs and other forms of trafficking. She further congratulated the State Party for the amendment of Article 160 of the Criminal Code by law number 60/2013 of 23 August 2013, which explicitly included begging, slavery and the exploitation of other criminal activities among the purposes of trafficking in human beings.

General Measures of Implementation

Legislation

The Committee commended the State Party for adopting the milestone law number 59/2007 of 4 September 2007 which amended the Criminal Code in order to comply with the OPSC. Articles 160 (trafficking in human beings), 175 (child sexual exploitation) and 176 (child pornography) had been amended and protection of children in relation to the OPSC had been strengthened and harmonized with international standards.

Dissemination and training

The Committee commended the State Party for the translation of the OPSC and General Comment number 12 into Portuguese. It asked the delegation to provide additional information on dissemination of the OPSC. Regarding vulnerable children, including Roma and street children, the Committee enquired more specifically whether they were aware of the OPSC and whether the State Party undertook specific measures to disseminate the OPSC among these groups of children.

The delegation replied that a General Policy on Dissemination had been prepared. Soon after ratification, the OPSC had been published on the Prosecutor General's website, both in Portuguese and English. Moreover, the Ministry of Solidarity, Employment and Social Security had prepared a child friendly version for dissemination in schools and educational institutions.

The delegation stated that the State Party's National Human Rights Institution (CNDH) organized awareness raising campaigns in order to publicize the OPSC and make it widely known and accessible. In this regard, the CNDH had cooperated directly with civil society organisations and prepared friendly versions of the document for dissemination in all State Party's departments. The delegation concluded by noting that the Office of the Prosecutor General had carried out consultations with children on human rights, the CRC and its Optional Protocols.

Coordination

The Committee asked whether the CNDH, which was mandated to monitor the implementation of the CRC, overviewed the implementation of the OPSC as well. The delegation answered that the CNDH was made responsible for the implementation and dissemination of the OPSC as well. Moreover, the Observatory on Trafficking in Human

Beings, which had been established in 2008, had the mandate to monitor and disseminate information and knowledge on the phenomenon of trafficking in human beings

Data collection

The Committee recalled that the first step in implementing the OPSC was ensuring the availability and accessibility of a comprehensive database. It specified that one of the main concerns was the lack of comprehensive data produced in relation to the criminal offences under the OPSC. It noted that neither the State report nor the Written Replies to the List of Issues mentioned any specific mechanism mandated to collect data. Bearing this in mind, the Committee asked how the State Party intended to establish a comprehensive and disaggregated database related to criminal offences under the OPSC.

The delegation replied that disaggregated data related to criminal offences under the OPSC had been collected. The Observatory on Trafficking in Human Beings was the body responsible for monitoring and collecting data. The delegation highlighted that the Observatory had also been monitoring cases of trafficking of children for the purpose of sexual exploitation.

Prevention

Safe use of Internet

The Committee asked what measures had been taken by the State Party to ensure the safe use of the internet and to prevent exploitation of children online, including sexual exploitation and child pornography. The delegation stated that various awareness raising campaigns had been introduced in order to promote an enlightened, critical and safe use of the internet for children and their families. The delegation emphasized the Segura Net Programme, targeting particularly young children between the ages of 6 and 10. The school context had been used to promote the protection of children, through distribution of Safety Net brochures and instruments raising awareness about the safe use of internet. A hotline and a web page for young children had been created in order to explain risks and report online child abuses.

The delegation further explained that the National Commission for the Protection of Children (CPCJ), in partnership with the Ministry of Education, organized a Forum on Promotion of the European Day for Safer Internet. The CPCJ had also been monitoring and collecting comprehensive data on children victims following the unsafe internet usage.

The delegation concluded by noting that, through these preventive efforts, minors had been alerted to the risks and encouraged to report crimes of sexual nature directly to competent authorities or through the emergency hotline. The Office of the Prosecutor General had established a Plan of Action on online crimes against children. Within this framework, a brochure had been prepared, explaining in child friendly language how to report abuses.

Child-sex tourism

The Committee was concerned about the dramatic increase in rates of child-sex tourism, due to the financial crisis and austerity measures. The Committee noted that financial cuts had denied the right to social benefits to half a million children and had had negative consequences on the fulfilment their rights. In view of these developments, the Committee asked whether the State Party envisaged measures to address the social root causes of this phenomenon, such as poverty. It expressed concern about the rejection by Parliament of a Bill establishing an extraordinary programme to eradicate child poverty had been rejected in February 2013.

Protection of the Rights of Victims

The Casa Pia case

The Committee enquired whether children involved in the Casa Pia Case had been rehabilitated and whether offenders had been brought to justice. The delegation explained that children were involved in criminal proceedings as witnesses. It explained that for trafficking crimes committed against minors, judges had the obligation to hear their opinion and had to use a special dedicated room for this purpose in order to avoid contact between the minor victim and the offender.

Further on, the delegation provided information on rehabilitation of the concerned children. After having made the DNA test to all victims, some children were not proven to be biological children of the traffickers. 2 concerned children were returned to their biological parents, and 31 children had been taken care off by social security care. They had been assisted by psychologists and social workers. The delegation concluded by noting that perpetrators had been convicted and incarcerated.

Child prostitution and child pornography

The Committee asked the delegation whether a victim-centred approach had been adopted in relation to criminal offences, such as child prostitution. It particularly enquired whether children had been always considered as victims or whether they could be considered as perpetrators. The Committee asked for more information regarding measures taken to protect the rights and interests of child victims and witnesses of crimes under the OPSC in criminal proceedings.

The delegation explained that child prostitution and child pornography had been included in a broader category of sexual abuse, used by the CPCJ. It further highlighted that in 2012, 1525 cases had been referred to the CPCJ, based on reasonable suspicions of sexual abuse; nevertheless only 187 sexual abuse cases had been registered. The delegation stated that it seemed that there had been a decrease of child abuses reported to the local commissions. Regarding child prostitution, the delegation explained that in accordance with the general law, an individual between the ages of 16 and 18 could be potentially considered a perpetrator. Nevertheless in practice, this could not be the case, because sexual acts between adults and children were prohibited and the jurisprudence had always taken into account the age of the children to protect their rights. With this regards, even children between the ages of 16 and 18 were entitled to witness protection and could be even considered as particularly vulnerable witness. According to the criminal procedure code, they may be entitled to psychological assistance.

The delegation also explained that children victims of sexual abuse were systematically interviewed by experts, including forensic specialists. During investigations, children had always been accompanied by a technical official and a specially trained psychologist. The delegation concluded that children were interviewed only once in order to eliminate the phenomenon of re-victimization.

International Assistance and Cooperation

International cooperation on trafficking

The Committee commended the State Party for having ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The delegation commented that it had been preparing the first report for examination by the

Council of Europe and that various governmental bodies were involved in the drafting process. The delegation noted that within this context, a 2014-2017 National Action Plan to Prevent Trafficking in Human Beings had been adopted and numerous awareness raising campaigns were organized. As a matter of example, the delegation highlighted that in November 2007, the Borders and Foreigners Service (SEF) put into action a Council of Europe's campaign against trafficking in human beings called Não estás à venda (—You're not for sale).

Extraterritorial jurisdiction

The Committee asked the delegation to specify, whether courts could prosecute individuals suspected of committing sexual exploitation crimes, or crimes related to the sale of children and child pornography outside the State Party. It also enquired whether courts could hear cases of crimes committed by non-nationals residing in the State Party. The delegation explained that, concerning the criminal jurisdiction over the offences under Article 3 of the OPSC, the Criminal Code stipulated in its Article 4 that the State Party's criminal law was applicable to any offence committed within its territory, regardless of the nationality of the perpetrator, or on board of Portuguese vessels or aircrafts. The delegation further explained that Article 5 of the Criminal Code established extraterritorial competence in relation to the criminal offences under the OPSC.

Other Legal Provisions

The definition of the sale of children

The Committee clarified that the OPSC contained the legal definition of sale of children, which was similar to but not identical to trafficking in persons, since it included cases such as children sold for the purposes of labour but not crossing any border. It highlighted that, in accordance with the OPSC, States should ensure consistent application of all the obligations under the OPSC. In this sense, the Committee asked whether the State Party envisaged broadening the scope of the crime of sale of children in order to strengthen their protection. The delegation stated that, regardless the legal definition, all acts under the CRC and the OPSC, including sale of children, had been criminalized in domestic law. It explained that the scope of Article 160 of the Criminal code was extended so as to include trafficking and sale of children under 18. Moreover the delegation stated that the jurisprudence developed by criminal courts had supported the criminalisation of the sale of children as an autonomous crime.

Concluding Remarks

Ms. Aldoseri thanked the delegation for the constructive initial dialogue on the OPSC. She mentioned that considerable efforts had been made by the government in order to strengthen rights of the child. Ms. Aldoseri also noted that progress could be made only if comprehensive data would be coupled by a national comprehensive strategy to address all urgent issues related to children. Ms. Aldoseri particularly highlighted the immediate need to fight poverty in the context of financial crisis in order to prevent criminal offences under the Article 3 of the OPSC.

Mr. Pedro Nuno Bartolo indicated that recommendations by the Committee would be carefully examined and would assist the State in its efforts to improve child rights implementation.

