

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

64TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

16 SEPTEMBER – 4 OCTOBER 2013

Contents

Opening Comments.....	1
General Measures of Implementation.....	2
Prevention.....	3
Prohibition and related matters.....	4
Protection of the rights of victims.....	7
Concluding Remarks.....	8

Paraguay ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 18 August 2003. On 25 September 2013, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Paraguay.

Opening Comments

The delegation of Paraguay was led by Carlos Zarate Fleitas, Minister and Executive Secretary of the National Secretariat for Children and Adolescents. He was supported by a high-level delegation consisting of representatives of the Ministry and National Secretariat for Childhood and Adolescence, the Ministry of External Relations, the Supreme Court, the Ministry of Justice and Labour, and the Permanent Mission of Paraguay to the Office of the United Nations at Geneva.

Mr. Fleitas highlighted that the protection of human rights in the State Party had been prioritised in regard to the governmental policies, as demonstrated by the constant interaction with United Nations and the Inter-American Commission on Human Rights (IACHR), the frequent visits conducted by Special Rapporteur and the establishment of the Office of the High Commissioner in the State. Furthermore, the State recognised the prevalence of international law on domestic legislation, the principle of self determination of all people, the legal equality among states and the importance of international solidarity. The State had ratified the Rome Statute of the International Criminal Court and was preparing a draft law to ensure its effective implementation. Furthermore, human rights' indicators were put in place in the fields of education and health.

Mr Fleitas declared that the President of the Republic had made childhood and adolescence a priority and that the State had implemented all the recommendations received in the past sessions, especially focusing on the need to make the best interest of the child the underlying principle of all the national policies. He also highlighted the importance of making the recommendations more visible in order to facilitate their implementation, and thanked the

civil society organisations for their precious collaboration in this regard. However, he recognised that many challenges had still to be met by the State Party, especially in terms of amending the current legislation and strengthening the policies.

Concerning the OPSC, Mr Fleitas explained that the President of the Republic had made 20 commitments concerning several sectors, such as the amendment of the Adoption Law (No. 1169/97) and its effective enforcement; the protection of women and children from violence and abuses which had led to the creation of special divisions in the police stations; the development of a tighter collaboration with the judicial system and the Children's Ombudsman Office to tackle the issue of sale of children. Furthermore, programmes to guarantee the psychological, social and legal assistance to child victims had been created as well as other programmes to protect witnesses during judicial proceedings. The prevention of the child labour had been the subject of one of the commitment made by the President of the Republic who had highlighted the need to combat child labour in all its forms and had promoted the National Campaign for the Eradication of Child Labour.

Mr Wanderlino Nogueira Neto, the Country Rapporteur for the OPSC, recognised the significant progress made by the State in terms of reaching democratic standards and congratulated the State on the measures taken to ensure that its legislation was in line the prescriptions made by the United Nations and the Inter-American Commission on Human Rights (IACHR). Furthermore, he highlighted the importance of using a critical mind in the preparation or the State Report in order to guarantee its full transparency. Several topics had been touched by Mr Neto, such as the issue of the dissemination and implementation of the OPSC, the need of ensuring effective complaint mechanisms to denounce the violation of the OPSC and the importance of the role played by the awareness-raising campaigns and training session addressed to people working in contact with children.

Mr Jorge Cardona Llorens, the Country Co-Rapporteur for the OPSC, appreciated the frankness and clarity of the State Report and welcomed both the introduction of new legislative provisions, including the Law No. 3440/08 criminalising child trafficking, and the implementation of several specific programmes, such as the National Plan for the Eradication of Sexual Exploitation of Children and the National Plan on the Child Labour.

General Measures of Implementation

Coordination and Monitoring

The Committee congratulated the State Party on the high number of national plans and strategies adopted but highlighted that it could be difficult to effectively coordinate so many different plans on several sectors. The delegation answered that the distribution of the competences among the relevant governmental bodies had been defined by the strategic National Plan, established by the National Secretariat for Childhood and Adolescence for the period from 2003 to 2013. The Ministry for Childhood and Adolescence was responsible for coordinating and monitoring this decentralised system in order to effectively guarantee the implementation of plans and strategies at all levels.

Data collection

The Committee was concerned by the absence of a comprehensive data collection system which had prevented the State from having reliable and complete information on the number of complaints received and on the number of children which had benefited from rehabilitation programmes or financial compensation.

The delegation explained that the State had implemented a national strategy to improve the coordination among the different local authorities responsible for data collection. Several

workshops had taken place aimed at strengthening the data collection system. Furthermore, the delegation highlighted the importance of having disaggregated data in order to make the governmental policies more effective in all settings. In this regard, specific health, education and human rights indicators had been put in place and each State body was required to have a human rights department for the promotion and protection of human rights. The importance of having specific indicators was confirmed by the recent declaration of the Supreme Court of the State Party concerning the creation of specific indicators affecting trials, including data on the number of defenders for specific infringements. Furthermore, the delegation highlighted that greater professionalism and transparency had to be promoted in order to obtain reliable data.

Budget allocation

The Committee asked how financial resources were allocated and how many of the several national plans and strategies were effectively operational, including the departmental commissions and the National Council for Childhood and Adolescence.

The delegation declared that increasing the national budget allocated in promotion and defence of the rights of the child was a priority in the State's agenda, as demonstrated by the ten-fold increase of the budget allocated to the Ministry of Childhood and Adolescence. Furthermore, the President of the Republic, together with civil society organisations and the UN agencies, had made the commitment of progressively increase the budget for the promotion of the child rights up to 7 per cent of the national GDP. The delegation recognised that the lack of financial resource had prevented some governmental bodies from being properly implemented and operational, including the National Council for Childhood and Adolescence which had no longer met.

Role of civil society

The Committee congratulated the State Party on the clarity and transparency of the State Report but asked whether the Children's Ombudsman Office and the civil society organisations had been consulted in preparing the Report, since this process represented a unique opportunity for having a constructive dialogue with all the major stakeholders. The delegation explained that a productive collaboration with civil society organisations had been already applied in occasion of UPR session and that this approach would be extended to the preparation of the Report of the next session of the Committee on the Rights of the Child. Furthermore, the delegation thanked the civil society organisations for their help in implementing human rights, including child rights, at the local level.

Prevention

Awareness programmes

The Committee welcomed the efforts made by the State in conducting awareness-raising campaigns to promote the Convention on the Rights of the Child (CRC), and asked whether similar campaigns had been put in place in regard to the OPSC. The delegation recognised the centrality of the role played by the awareness programmes in changing the mentality of the population and explained that several initiatives had been taken place, such as the National Campaign for the Eradication of Child Labour, training programmes addressed to people responsible for taking care of children as teacher, street demonstrations, workshops and seminars.

Socio-cultural stereotypes

The Committee expressed concern for social-cultural stereotypes related to a deeply-rooted macho mentality characterising the society of the State Party, according to which girls

involved in prostitution and pornography were deemed to enjoy the situation rather than to be victims. The Committee highlighted that the press played an important role in perpetuating such mentality, through the wide circulation of teenage erotic photos, and asked the delegation what preventive measures had been taken, including awareness-raising campaigns and partnerships with the mass media.

The delegation answered that changing mentality was the priority in order to address many issues related to violations of the OPSC, and declared that, although circulation of teenage erotic photos was not prohibited yet, the State would take seriously into account to work in partnership with the mass media.

Vulnerable groups

The Committee highlighted that poverty as well as social-cultural stereotypes made children more vulnerable to become victims of violation of the OPSC and that this issue was particular serious since about 20 per cent of the population lived in conditions of extreme poverty. The delegation stated that currently about 9 per cent of the population was under the line of extreme poverty and that the State had taken actions in order to prevent children from becoming victims, through some programmes such as "Creating Opportunity" mainly funded by the Inter-American Development Bank. The Ministry of Education and Culture, the Ministry of Health and the Ministry for Childhood and Adolescence defined children until 8 years old as target for their prevention programmes.

Child sex tourism

The Committee was concerned about the fact that the State had a triple border which could facilitate sexual trafficking of boys and girls, especially given the expected increase of flows of people in Brazil in occasion of the Olympic Games in 2016. The Committee asked the delegation what measures had been taken to prevent children from being involved in sex tourism business, especially in the zones close to borders. The delegation admitted that there were no legislative provisions regulating the issue of sex tourism, but assured the Committee that some guidelines to tackle this problem had been created in collaboration with the neighbour countries.

The Committee asked whether a code of conduct for travel tour industry had been developed, since the collaboration with hotels and other touristic structures was the first step in the prevention of child sex tourism. The delegation answered that the national Ministry of Tourism was responsible for controlling the hotels and other touristic structures and that it collaborated with other national ministries to collect reliable data on this topic, which would have helped the State to take effective actions.

Helpline

The Committee asked the delegation whether the helpline AIUDA was actually operational and about the financial and human resources allocated to this service. The delegation explained that the helpline AIUDA was created by civil society organisations and then it had been transferred to the State. The service was free and available 24 hours a day and both child victims and people working with children could use this service to make complaints, which then would be addressed to the appropriate governmental bodies. However, the delegation acknowledged that the limited financial resources had seriously affected the effective functioning of this service.

Prohibition and related matters

Adoption

The Committee recognised the good quality of that the Adoption Law, but was concerned by the fact that only 5 per cent of the adoption process were in compliance with the law, while the large majority of cases followed alternative routes. Recently, only 39 out of 540 children had been adopted whereas the others had been placed in foster care and this reality had sensitively increased the risk for children to be sold and trafficked.

The delegation declared that the purpose of the Adoption Law was to give priority to maintain family ties, through avoiding as long as possible the separation of children from their core or extended family. In particular, the Adoption Law stated that parents who wanted to give their child in adoption had a period of 45 extendable days for reconsideration, during which time the authorities conducted investigations both on the actual reasons behind parent's decision and on the potential future parents. The Adoption Law did not allowed children to be placed in pre-adoption guardianship since the child could only be put in an environment which had been previously fully analysed through appropriate investigations. The delegation explained that the consequence of such rigorousness had been to lengthen the time of the procedure up to 2 years and that the potential adoptive families were not willing to wait such a long time. This situation had lead to the widespread of the pre-adoptive guardianships nevertheless they were allowed by law.

The Committee asked whether the intermediaries involved in illegal adoption were punished according to the Criminal Code (Law No. 160/97) since this aspect affected more deeply the implementation of the OPSC than the procedural aspect of adoption process. The delegation stated that the Criminal Code criminalised child trafficking and the violation of the Adoption Law.

The Committee expressed concern about the 2-years period of the adoption process which seemed to be too long especially from a child's point of view, and declared that the safeguard of the family ties had always to be prioritised. The delegation confirmed that although the Adoption Law was well-structured, its strictness had caused some negative consequences such as the long duration of the adoption procedure, and that two propositions of amendments were ready to be discussed. Concerning the family ties, the delegation declared that this was a priority for the State and highlighted the important role played by civil society organisations in this regard.

The Committee was concerned by the general attitude taken by the judicial system to favour the alternative route for adoption which should represent only an exceptional case, and asked whether there was a system of monitoring put in place by the Supreme Court to avoid cases of judicial bribery. The delegation declared that the State had no knowledge of cases of judges bribed and involved in child trafficking.

Concerning the inter-country adoption, the Committee congratulated the State Party on the ratification of the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption, but asked whether the State had adopted specific monitoring measures to prevent international adoptions from becoming a channel for child trafficking and sexual exploitation, such as an international phone line or the "placement control" consisting in tracing the child after the adoption. The delegation explained that the decrease up to zero in the number of international adoptions was the consequence of a long term policy aimed at favouring the intra country adoption and contrasting the business existing in this sector. The Adoption Centre, which had replaced the adoption agencies in managing international adoptions, collaborated with the centre of adoption of the foreign country in order to bilaterally establish the rules and regulations for the adoption procedure.

Child pornography

The Committee asked for clarification about the amendment approved in 2011 of Law No. 2861/06 which had reduced the maximum sentence for trade and commercial distribution of pornographic materials using images of children from 15 to 10 years of imprisonment. Furthermore, the Committee asked to define the "aggravating circumstances" which would have determined a sentence up to 10 years of imprisonment.

The delegation answered that Article 140 of the Criminal Code criminalised the production, distribution, import, marketing and reproduction of pornographic material, as well as pornographic shows involving children under 18, with a sentence of up to 10 years of imprisonment without possibility of conditional release. Regarding the aggravating factors, the delegation explained that the sentence would have been up to 10 years in case of involvement of under 14 years old children, or whether the offenders exercised parental or education authority on the child, or whether there had been acts of violence, force, threat, deception or remuneration. The years of imprisonment would have been up to five in case of the age of the victim were between 14 and 18 years old.

The Committee asked whether the punishment for producing and distributing pornographic materials with children under 18 was the same of producing and distributing pornography involving persons over 18 years old. The delegation clarified that there was a difference since the production and distribution of pornographic material involving adults was not a criminal offence punishable by the Criminal Code.

The Committee inquired the delegation whether there was a criminal responsibility for legal person involved in child pornography, since this issue was very sensitive due to the introduction of new technology in pornographic industry. The delegation affirmed that the criminal responsibilities of legal entities were not included in the Criminal Code.

Child prostitution

The Committee asked the delegation for more details about the gap in legislation covering the child prostitution offence as referred by the State in the paragraphs 17, 55 and 59 of its Report, and whether inducting a child into prostitution was a crime contained in the Criminal Code. The delegation explained that Article 139 of the Criminal Code concerning child prostitution provided for prison sentence of up to eight years when the child involved was under 14 years old. However, the lack of disaggregated data prevented the State from demonstrating the actual application of such provision.

The Committee asked whether a child prostitute aged between 14 and 18 years was considered as a victim or persecuted as criminal. The delegation explained that each person under 18 years old was treated as a victim and never prosecuted.

Sale of children

The Committee highlighted the importance of introducing in the Criminal Code a specific provision punishing the sale of children since this offence was itself not currently defined to be a crime punishable by law. Furthermore, the law against child trafficking covered only international trafficking and not trafficking of children within the State Party. The delegation explained that the sale of children for the purpose of extraction of organs as well as for child labour exploitation was criminalised by the Criminal Code. The Committee highlighted that the expression contained in the law "extraction of organs without the consent" did not protect the child in case in which the parents had given the consent.

Child domestic labour "Criadazgo"

The Committee declared that the issue of child domestic labour known as "criadazgo" was closely related to the issue of sale of children, and inquired whether the perpetrators of this crime were punishable by law.

The delegation highlighted that combating the phenomenon of child labour had always been a priority for the State Party, as demonstrated by the ratification of all the principal international instruments in this regard, including the ILO Convention No. 182 on the Worst Forms of Child Labour, and by several programmes and strategies implemented by the State, such as the National Campaign for the Eradication of Child Labour.

Furthermore, the delegation declared that the principal root causes of child labour were poverty and cultural mentality. In regard to poverty, the national programme "Abrazo", launched in 2008 and addressed to children living in street situation, had successfully decreased the level of poverty among these children, through providing financial support to their families, vouchers and food baskets. Concerning the cultural mindset, the delegation declared that the work was often deemed to be beneficial for the development of the child, whereas the State was extremely aware of the negative consequences of child labour, especially in terms of school dropouts which particularly affected children from rural areas and girls. The Ministry of Education and Culture had conducted several awareness-raising and training programmes aimed at explaining to teachers the importance of reporting cases of "criadazgo".

The Committee highlighted that a criminal responsibility had to be inserted in the Criminal Code on this subject. The delegation answered that although the "criadazgo" was itself not a stand-alone crime, this practice generally involved violation of other laws of the State.

Extraterritorial jurisdiction

The Committee asked clarification on the issue of extraterritorial jurisdiction and particularly whether it covered violations of the OPSC. The delegation answered that Article 8 of the Criminal Code regulated the criminal acts committed abroad affecting citizens of the State Party or their properties.

Early marriages

The Committee asked for more details about the practice of early marriage which involved 18 per cent of children in the State Party, especially among indigenous children, and inquired whether this practice was linked to the issue of sale of children. The delegation explained that there was no information that early marriage covered child sale or child prostitution, and that cultural practices could be admitted until they did not violate the rights of the child, as stated in the ILO Convention No. 169 on Indigenous and Tribal Peoples.

Protection of the rights of victims

Rehabilitation programmes and financial compensation

Concerning programmes of rehabilitation and social reintegration, the Committee asked whether the State had implemented some programmes to assist child victims after the trial. The delegation answered that several programmes were put in place: during the judicial proceeding, institutional guidelines about the special treatment of cases involving children, adolescents and women had been distributed; within the police, both in urban than in rural areas, specific divisions for women and children rights' violation had been set up; personnel working in police had been trained, especially regarding cases of domestic violence.

Furthermore, the Children's Ombudsman Office provided support and assistance to child victims during the judicial proceeding through several actions: representing children without

a guardian in a trial; reporting infringements to the Supreme Court of Justice; suggesting the appropriate measures for children; helping in respecting deadlines; requesting information from private sector bodies; providing technical support in writing reports and making recommendation for the implementation of the measures. Its specialised staff composed of teachers, sociologists, medical personnel and social workers provided child victims of abuses or sexual exploitation with adequate assistance in order to ensure their reintegration in the society.

The Committee congratulated the State on the numerous programmes providing assistance to child victims during the trial, but asked whether such programmes continued even after the conclusion of the trial, in order to completely reintegrate the victim in society and avoid social stigmatisation. The delegation admitted that the lack of financial resources had prevented the State from creating a comprehensive post-trial system of rehabilitation and reintegration, but assured the Committee that more efforts would be made to reallocate the national budget to fill this gap.

In regard to the compensation mechanism, the Committee highlighted that Article 9 of the OPSC asked the States to provide financial compensation to child victims, and inquired the delegation whether the State Party fulfilled this obligation. The delegation declared that in spite of the fact that the Criminal Code provided for compensation, often the judicial authorities did not asked for it during the proceeding.

Complaint mechanism

The Committee asked the delegation for clarification about the complaint mechanism and particularly whether the State had taken some measures to tackle the issue of police bribery and to ensure protection to witnesses.

The delegation stated that in police stations there were teams of six people available 24hours a day in charge of receiving and recording complaints. Furthermore, other two mechanisms were in place: the helpline AIUDA and the Children's Ombudsman Office responsible for receiving complaints and providing the needed assistance. Concerning the issue of police bribery, the Ministry of Home and Affairs guaranteed confidentiality to people who wanted report a complaint against police, and in addition, the State had launched a national anticorruption strategy aimed at tacking this crucial issue and its serious repercussions on the society. In regard to the witness protection, the delegation declared that a specific witness protection programme had been put in place.

The Committee inquired the delegation about the number of complaints against police received through the helpline AIUDA, and the delegation answered that the State had no disaggregate data on this point but assured the Committee that the State would have provided this information.

Re-victimisation

The Committee asked whether the State provided for training programmes addressed to staff working with child victims of sexual abuses or exploitation to prevent the victims from being re-victimised during the judicial proceeding. The Committee highlighted the importance of having a specialised medical staff trained on the adequate techniques to asked the child for information without worsening his/her condition.

Concluding Remarks

Mr Neto congratulated the State on the demonstrated efforts made to improve the situation in several sectors and declared his trust that the conclusive observations would be taken into account by the State Party.

Ms Llorens thanked the delegation for the constructive dialogue and for the sincere and transparent Report. He recognised the challenges faced by the State in implementing the OPSC and highlighted the importance of taking the recommendations of the Committee into account. Furthermore, he encouraged the State to ratify the Third Optional Protocol of the CRC on a Communications Procedure which only needed two more ratifications to enter into force

Mr Fleitas thanked the members of the Committee for their collaboration and declared the full willingness to implement their recommendations. Concerning the ratification of the Third Protocol, he declared that the State had made the first step in this direction through the signature of the Third Optional Protocol.