



ngo group for the crc

STATE PARTY EXAMINATION OF ARGENTINA'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*

Argentina ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 10 September 2002. On 3 June 2010 the Committee on the Rights of the Child (the Committee) considered Argentina's initial report under the OPSC.

Opening Comments

Mrs. Vessevessian thanked the Committee for the chance to discuss the OPSC. She first pointed out that there had been a leap forward when Argentina recognised trafficking as a federal crime, which had contributed to a significant improvement in implementing the protocol. She indicated that crimes were prosecuted and victims received support and care before being returned to their provinces or countries of origin. Argentina had worked with other countries in the region, in particular bordering countries, to facilitate this. Although it had only been a short time since the law was enacted, there had been five sentences handed down. There was already a provision in the Constitution which prohibited the sale of persons and a measure in the Penal Code which severely sanctioned such crimes, but she reported that there were still attempts at legal reform on sale to punish intermediaries, as well as efforts to prevent fraudulent adoption. While there was a new law on internet crime and pornography, not many sentences had been handed down. However, Argentina had begun collecting data on the justice system using UN parameters and planned to use a new monitoring system and secure database to detect child pornography online and protect children.

Mr. Zermatten, the Country Rapporteur, thanked her for the information related to the OPSC. He noted that Law 26061 on the Comprehensive Protection of the Rights of Children and Adolescents had an article that prevented the sexual exploitation of children, whereas previously there was very little information given on the exploitation and sale of children. He stressed the importance of examining the root causes of prostitution and sale, such as poverty, neglect and unemployment. He said that while the Committee had received a lot of information, there had been problems of comprehension. He highlighted new laws concerning prevention and sanctions for human trafficking as well as internet crime and pornography, which led to more services and support for victims. There was a special office created for comprehensive assistance for victims and special police units, a group tasked with eliminating child labour and interventions from the Secretariat of Tourism to address the problem of sex tourism. In addition, trafficking of children was considered a federal offence. However, he noted the ongoing gaps in implementation.

General Measures of Implementation

The Committee asked how the implementation of the OPSC was coordinated, given that Argentina was under a federal system and many actors were stakeholders, such as the National Secretariat for Children, the police and the judiciary. The delegation acknowledged that coordination across many agencies was difficult, but said that it had been fairly successful. There would be a specific body set up to support victims, which would provide psychological, medical, and legal assistance, and return victims to their places of origin if they wanted to return. Furthermore, some corridors of trafficking had been identified and efforts were underway to build the capacity of legal and security officials. Since many children were involved in transnational trafficking, the delegation described the many agreements with relevant ministries in other Latin American countries. The government was focusing on provinces with particular problems with trafficking and making sure that they had the facilities and resources to aid victims. In addition, Argentina was part of an initiative called Children from the South, which was aimed at raising awareness of sexual exploitation.

The Committee asked if the National Plan of Action included specific provisions on sale. The delegation said that the government was trying to focus on a comprehensive plan rather than thematic plans to facilitate management and coordination. The government was setting out protocols to deal with issues of sale, including cases of labour where children were accompanied by their families.

The Committee observed that there seemed to be confusion between the definition of sale and trafficking, and that the implementation of the OSPC required the State to specifically criminalise sale as defined in the OPSC. The Committee asked if Argentina had considered harmonising its legal definitions with those in the protocol to clearly cover all aspects of sale, rather than just trafficking. The delegation explained that trafficking involved three steps: capture (potentially through abuse or trickery), transfer and exploitation at the final site, but that it did not cover all aspects of sale, because transfer did not occur in all cases of sale. Article 15 of the Constitution prohibited slavery, which including the buying and selling of persons so that no person could become the object of a transaction, whether it involved payment or not. However, this article was more focused on an old definition of slavery and did not account for all new forms of slavery. There had been some case law indicating that Article 40 of the Penal Code could be interpreted to prohibit sale and applied to the crime of sale, but judges had not yet applied it in that way, possibly because Argentinean society did not necessarily perceive all aspects of sale as crimes. The Committee recommended that intermediaries involved in sale be punished.

Prevention

The Committee acknowledged the code of conduct for tourism companies to prevent sex tourism, but asked if the government engaged in awareness raising activities. The delegation replied that there was a clear plan by the tourism officials in Argentina, which was committed to developing a campaign for the rights of children and train staff. In addition, sex tourism would be portrayed as a sex crime during tourism. However, there were powerful economic incentives and covert networks, so at times it was difficult to successfully address these issues.

The Committee asked how Argentina was addressing the problems posed by new technologies, such as children being exposed to pornography. The delegation replied that they did not have sufficient resources or technology to detect these new networks, but they were striving to do so. The delegation reported that there were parental control filters that could be installed, and that a plan was underway to control all internet servers.

The Committee asked if there were any mechanisms in place to identify and monitor children at risk. The government was working on revising the system for data collection to include crimes against children. The Ministry of Justice had made it possible to collect data from the police and the judicial branch, and questionnaires would be improved in a meeting with the United Nations following UNODC guidelines.

The Committee asked about the role of the media in raising awareness about the OPSC. The delegation said that Argentina had broadly disseminated posters and videos in three languages (Spanish, Portuguese and an indigenous language) and had launched a significant advertising campaign. In addition, it had agreed to cooperate with UNICEF on radio and television campaign that urged people to report OPSC violations and gave a telephone number to do so. Moreover, in order to combat trafficking, the Union of Transporters was raising awareness on children's rights and the exploitation of children.

The Committee asked for clarification on the telephone line, as there seemed to be two phone numbers. The delegation confirmed that there were two phone numbers, as four provinces did not yet have the main phone number. The main phone number was specifically for crimes committed against children, whereas the secondary number was a sexual and reproductive health hotline. The Committee asked if operators were trained to respond to these calls. The delegation said that they were very well trained, but that response capability had to do with provincial resources. As the crime was federal, if a crime was reported in a province without services, the child would be transferred to Buenos Aires. Around 1,000 and 1,100 calls were answered every day concerning violations of children's rights.

Prohibition and Related Matters

The Committee asked how cases of sale were prosecuted. In relation to cases of child prostitution, the Committee asked who was held criminally responsible, the child victim or the organiser and/or manager of the child prostitution operation. The delegation said that not all intermediaries or purchasers could be sanctioned, and hoped to remedy this through coordination with the Ministry of Justice, the Ministry of Human Rights, and the National Secretariat for Children and the Supreme Court. The Committee also asked for more details on the five sentences that had been handed down under the new law on trafficking. The delegation explained that some convictions had been for violations of the law on information technology crimes, and one had been an intermediary who trafficked persons from Paraguay to Argentina. There were 66 cases being processed in courts for the facilitation of prostitution.

The Committee asked for clarification on whether the trafficking of adults was criminalized, as children who grew up in a system of trafficking and sale could not give real consent as adults could to remain in the system. The delegation clarified that every action from capturing a child onwards was criminalized, and that trafficking of both adults and children was a federal crime.

The Committee asked how Argentina addressed the problem of fraudulent adoption. The delegation explained that a significant effort was being made by a working group for three years to reform the Civil Code and put an end to the sale of children through fraudulent adoptions. The Committee informed the delegation that while the debate on the Civil Code was a positive step, fraudulent adoption needed to be criminalized in the Penal Code to effectively address the problem. In the meantime, the Supreme Court and the National Secretariat for Children sent out a letter urging professional organisations to stop assisting in cases of fraudulent adoption and sale. The Committee asked if Argentina would consider withdrawing its reservation if such a reform took place. The delegation noted that fraudulent adoptions were fuelled by high demand for Argentinean babies, so the Committee encouraged the State to find a way to satisfy demand

while promoting children's rights. In response to the request to criminalize fraudulent adoption in the Penal Code, the delegation reiterated their commitment to legal reform on this issue.

Protection of the Rights of Victims

The Committee asked if there were any limitations on the number of potential hearings for child victims of sale who were giving testimony, in order to avoid secondary victimization. The Committee also asked if victims were bound to confront the accused, or if video technology was accepted so that the victim could testify in a separate room. The delegation reported that child victims of trafficking or other crimes were protected in court and that efforts were made to avoid secondary victimization. According to a federal provision on criminal proceedings, video feeds were accepted in courts, so that the children could avoid repeating the testimony.

The Committee asked if police officers and judges received training on the OPSC and if the Ombudsman could give information to a judge. The Committee further enquired about the support provided to victims when they were rescued and whether the Ombudsman was independent and had the means to undertake an investigation to obtain comprehensive information on the victims. The delegation was not quite clear on the exact legal provisions, but said that judges systematically prioritised the best interest of the child and judges and police did receive training.

International Assistance and Cooperation

The Committee asked about the extraterritorial competence of Argentina, and whether the State could prosecute an Argentinean offender who had committed a crime abroad, or a foreigner who committed a crime in Argentina. The Committee requested clarification on the distinction between passive and active extradition, whether dual criminality was required, and about double jeopardy. The delegation explained that Argentina cooperated internationally to combat organised crime, and that extradition was regulated by bilateral or multilateral treaties. Argentina accepted both passive and active extradition.

Other Legal Provisions

The Committee asked whether the government was considering ratifying the Council of Europe Convention on Action Against Trafficking, and whether Argentina had a specific law against organised crime, both national and trans-national. The Committee also asked if there were any cases where the government had seized child pornography, and if possession alone for individual use was considered a crime.

Concluding Remarks

Mrs. Mauras thanked the delegation for the dialogue and for acknowledging the challenges in implementation. She commended Argentina for the new legislation on children's rights, but noted that there were significant disparities between provinces in terms of implementation and resources. She suggested full legal harmonisation and the inclusion of marginalized children.

Mrs. Vessevessian thanked the Committee and said that Argentina was focusing on strengthening local institutions and families to uphold children's rights, and that the government was trying to implement a holistic plan that would be more effective than several small thematic plans. She reaffirmed Argentina's commitment to improving the lives of children.