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

56<sup>TH</sup> SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD  
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*Belarus ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) on 23 January 2002. On 26 January 2011, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Belarus.*

### Opening Comments

The delegation of Belarus was led by Mr. Viktor Yakzhik, Deputy Minister of Education. He was supported by a delegation of representatives from the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Labour and Social Protection and the Permanent Mission in Geneva.

Mr. Yakzhik provided comments on the OPSC during his opening comments for the session on the CRC. He provided an overview of the existing legislation that pertained to the OPSC, noting legislation to combat trafficking as well as six offences related to trafficking that were criminalised under the Criminal Code. He explained that the maximum penalty for perpetrators of these offences was 15 years and included the confiscation of property. Among the efforts that Belarus had taken to combat violence against children, Mr. Yakzhik noted the State's work to align national legislation with the Council of Europe's Convention on Action against Trafficking and to establish a hotline for the public. Mr. Yakzhik reported that the number of cases of child prostitution and sale of children were low; only 11 cases had been identified in 2010. Multiple government sectors, NGOs, the media and public associations were working to combat trafficking, violence and limiting access to pornographic material. Mr. Yakzhik said these efforts received positive evaluation from the Special Rapporteur on trafficking in persons, especially with regards to protection for women and children. Mr. Yakzhik acknowledged that Belarus was an origin, destination and transit country for

trafficking and said that the State was working with international organisations and the UN General Assembly to combat this problem. Mr. Yakzhik noted that the State's commitment to this issue was evident in the fact that the government of Belarus was one of the first to make a voluntary contribution to the United Nations trust fund for victims of trafficking in persons. To conclude, Mr. Yakzhik expressed hope that the interactive dialogue would help perfect pending aspects of the legislation and programming for children in Belarus.

Ms. El Ashmawy, the Country Rapporteur, noted the State's obligations to child exploitation and the government's efforts to punish perpetrators of violence. Nevertheless, the Committee was concerned that the legislation did not satisfy the provisions of the OPSC. Ms. El Ashmawy provided a general overview of the situation related to OPSC issues in Belarus. She noted that there was no clear definition of child prostitution and wanted to know whether there were attempts to align legislation. She noted the Ministry of Internal Affairs' collaboration with INTERPOL to set sanctions on an organised group that maintained pornography websites and was glad that Belarus signed the European Convention on Cybercrime. Nevertheless, Ms. El Ashmawy said that Belarus still lacked regulations, which posed a huge risk for children. Although Belarusian law contained some provisions with regard to exploitation, it was not fully in line with the OPSC. Ms. El Ashmawy noted that Belarus had attempted to create child-friendly provisions, but these did not sufficiently cover child pornography or punish the possession of child pornography. To conclude, Ms. Ashmawy drew attention to the National Action Plan for 2004-2010 and its chapter on violence, trafficking, and exploitation, but said Belarus had provided no information about the implementation of this plan in the State Report.

## **General Measures of Implementation**

### ***Legislation***

The Committee noted that only specific offences were covered in the provisions and wanted to know whether legislation covered every aspect of pornographic material, in reference to children. The delegation explained that the State programme to combat human trafficking for 2011-2012 would seek to address child prostitution and pornography. The number of child victims of trafficking, prostitution and pornography had decreased over the last three years.

The delegation assured the Committee on several occasions that the provisions of the OPSC were reflected in the Criminal Code and in Belarusian legislation. Although there were no provisions that specifically criminalised the sale of children, the structure of the Code ensured criminal liability. The Criminal Code did not define or explicitly state "child prostitution" or "child pornography", but rather provided for criminal liability by including a general list of crimes and qualifying definitions. With a definition of "child" "prostitution" and "pornography", there was no need to define "child prostitution" or "child pornography". The delegation also noted that criminal liability was increased for the sale of children. A person would receive seven years for the sale of an adult, 12 years for the sale of a minor and 15 years for the sale of a minor by a criminal organisation.

The delegation explained that Article 173 of the Criminal Code criminalised the use of minors in delinquency (e.g. consumption of alcohol), but prostitution had been taken out of this article and enshrined as a separate crime.

The Committee asked whether the State made it clear that the involvement of an intermediary in the sale of children was a criminal offence. The delegation explained that in 2006, the State criminalised "acting as an intermediary". The delegation assured that it paid close attention to

the recommendations of the Committee and knew that the Criminal Code and other legislation needed to be reformed. In 2011, the State intended to revise legislation to make sure it was fully in line with international conventions. The buying and selling of children would be included in the review of articles. The delegation thought its definition of the child (distinguishing young person and minor) in the Criminal Code was important, and was in line with the provisions of the OPSC, but said it would look at the legislation again. The delegation reiterated that the sale and prostitution of children was a major offence.

### ***Budget***

The Committee wanted to know whether Belarus had a budget for the implementation of the OPSC. The Committee supposed that in the new budget for 2011-2013 there would be more information about the amount allocated for the implementation of the OPSC.

### ***Dissemination and training***

The Committee noted the positive efforts to address trafficking, but stated that the OPSC did not deal with trafficking; it dealt with the sale of children, prostitution and pornography. The Committee hoped that this dialogue would help Belarus to clarify this difference.

The Committee asked whether measures had been taken to simplify the OPSC so as to raise awareness in schools. The Committee noted a lack of specific information on the OPSC and asked how this information was raised in families and how professionals were trained on the specific offences in the protocol.

### ***Monitoring***

The Committee wanted to know which ministry was tasked with the monitoring and implementation of the OPSC.

### ***The Role of Non-Governmental Organisations***

The Committee asked about the level of cooperation between State institutions and NGOs. The Committee emphasised that the State should take ownership and fund these services, rather than leave it to international funding.

## **Prevention**

### ***National Action Plan***

The delegation explained that the national strategy, namely “Combating Human Trafficking: Republic of Belarus”, was a globalised action plan that encompassed the commercial exploitation of children. The delegation noted that in 2010 Belarus adopted a new plan that would be implemented in 2011-2013. The delegation assured that the new plan would not duplicate the efforts of previous initiatives to combat trafficking, but rather that it had been developed to address new manifestations of the issue and to tackle problems that had not been adequately resolved in the past.

### ***Hotline***

The Committee noted that there might be children who were victims of OPSC-related offences, but who were not officially recognised as victims. The Committee asked whether the hotline would help children access the assistance services that the delegation had outlined.

The delegation said there was only one hotline, but if crimes involving children were reported or a child victim called, then it would be brought directly to the attention of appropriate bodies of child protection (e.g. the police or the procurator's office). The delegation explained that Belarus hoped to develop this service so that there were multiple, specialised, help lines and emergency services accessible via the internet.

### ***Role of the media***

The Committee asked about the role of the media in raising awareness about the sale of children, child prostitution and child pornography.

### ***Internet and cyber space***

The delegation noted that minors actively used the internet in Belarus, but said that, to its knowledge, there was no information on the widespread exploitation of minors for sexual ends in cyber space. There had been a few cases, but they were isolated cases.

The delegation stated that in light of the Committee's recommendations for greater internet protection, Belarus had issued a Presidential Decree and this was fully reflected in legislation. Belarus also planned to study the international experience to progress further on this issue.

### ***Data collection***

The Committee noted excellent statistics on trafficking of children, but asked for more information on disaggregated data for sale, prostitution and pornography. The delegation stated that statistics on victims of human trafficking were centralised and regulated by legislation and legal acts.

## **Prohibition and Related Matters**

### ***Criminal code***

The Committee noted that Article 181 of the Criminal Code talked about "persons" but did not explicitly mention "children", therefore children were only considered as an aggravating circumstance. The Committee stated that this article did not directly protect children and noted that the OPSC asked for a specific provision on the sale of children, not persons. In doing this, legislation could provide direct protection for children and aggravating circumstances attached to this provision could give additional protection, for example by listing instances where the child had been transported and/or kidnapped. With regards to the benefits awarded to the vendor in instances of the sale of children, the Committee also noted that the wording "any other form of advantage" – that is, for benefits other than economic remuneration – was missing from the legislation on these offences.

The delegation affirmed that this wording was missing and stated that it had not blindly copied the text of the OPSC or any other Protocol into its Criminal Code. The Criminal Code did not include any mention of children, but it still covered the sale of any person or child. There were mentions of "young persons", up to the age of 14 years, or "minors", between the ages of 14 and 18 years, but no explicit mention of child or children. The Committee noted that the terminology was general and preferred specific terminology that dealt with the preoccupations of the OPSC. The point was not whether the State used the term "children" or "minor", but rather that the State had the obligation to introduce a specific provision on the criminal offence of sale of *children* and not just sale of persons in general. The delegation reiterated that criminal liability was increased for the sale of children in particular, such that a

person would receive seven years imprisonment for the sale of an adult, 12 years for the sale of a minor and 15 years for the sale of a minor by a criminal organisation.

### ***Child pornography***

The delegation explained that child pornography was not specifically defined in the Criminal Code but that jurisprudence demonstrated that the definitions of “child” and “pornography” were successfully applied together by the courts in relevant cases. For crimes related to child pornography, a perpetrator could be imprisoned for 13 years and have their property confiscated. Belarus considered distribution of child pornography via the internet, other networks or through the media to be a serious offence. Even if the pornography were distributed among a network of a select number of houses, it would incur the same level of criminal liability.

### ***Sex tourism***

The Committee asked whether there was a problem with sex tourism in Belarus. The delegation said there had been no situations where Belarusian citizens had been involved. Although this was not a problem in Belarus, the State would work to introduce the standard into its legislation.

### ***Sale of organs***

The Committee asked how Belarus honoured the transfer of organs in its legislation. The delegation affirmed that using parts of a person, organs or their skin, was included in the Criminal Code. In 2010, there were three adult men who were victimised by this, but there had been no cases against children. The maximum punishment was 15 years.

### ***Organised crime***

With regard to the Committee’s questions on organised crime, the delegation stated that crimes committed by organised criminal groups received the highest criminal punishment.

### ***Extradition***

The Committee asked whether legislation allowed the OPSC to be used as a valid basis for extradition, since there were no bilateral extradition treaties between Belarus and other countries. The Committee noted that often the OPSC would not be an offence in another country, and the person would not be prosecuted. The Committee also wanted to know whether Belarus required double criminalisation, meaning that the incident had to be a crime in Belarus and in the country where it was committed. The delegation explained that if there was a criminal offence in another country, the punishment for the crime could not exceed the terms of criminal liability in the country that it was committed. If the crime was committed in Belarus, the criminal would receive punishment in Belarus. The Committee summarised the delegation’s comments, saying that in other words, Belarus did not apply double criminality to OPSC crimes.

The delegation stated that if there was no bilateral treaty, then the perpetrator could be tried if there was a mutual understanding between the States involved. If a bilateral treaty existed then Belarus would allow extradition. The Committee clarified that the OPSC stipulated that even if there was no bilateral treaty of extradition; if the other country had ratified OPSC, then the OPSC would serve as a basis for extradition.

### ***Extraterritorial Jurisdiction***

The Committee wanted to know whether Belarus had jurisdiction to prosecute crimes committed by Belarus citizens outside the State borders and by perpetrators who did not have citizenship but were in the State territory. The delegation said human trafficking was not in the State's interest and any person who committed such a crime would be brought to criminal justice. The principle of extraterritorial jurisdiction extended to trafficking of children.

## **Protection of the Rights of Victims**

### ***Victim support***

The Committee noted that children of all ages needed protection and wanted to know whether there were any victim support programmes. The delegation assured that children were informed of their right to protection, defence and rehabilitation services. Police who were involved in an investigation had to inform children of these rights and State programmes ensured these rights were fully implemented.

The delegation said that according to Presidential Decree 352, Belarus had free legal aid for child victims of human trafficking. A law was being drafted based on the Decree's provisions.

### ***Rehabilitation***

The Committee noted that Belarus was developing social support services and had 140 rehabilitation units, but wanted to know whether there were specialised services for child victims of sale, prostitution and pornography. The Committee asked about the quality and competence of the professionals involved, ensuring that the services were child-friendly and that the children were not re-victimised.

### ***Hearings and investigations***

The Committee inquired about the prosecution of perpetrators and wanted to know whether it limited the number of hearings for a child victim and whether audio or video recordings were permitted to avoid re-victimisation. The Committee also wanted to know whether the victim or witness could obtain free legal aid and whether there was a programme for victim protection to avoid reprisals. The Committee wanted to know whether there was a specialised unit for detection of cases.

The delegation agreed that the preventative measures needed to be dealt with separately and explained that this was taken care of through a special unit through the Ministry of Internal Affairs that worked directly with child victims of trafficking.

### ***Child testimonies***

The delegation explained that a child could not be questioned or requested to give testimony without the presence of a lawyer and a psychologist. The delegation assured that safety measures were taken to ensure that there was no physical contact between the child victim and the perpetrator (e.g. video conferences). The delegation noted that with the help of NGOs, the State was working on a programme to create a special room with the latest technology, to use for children's testimonies. The delegation reiterated that full protection of children's rights and safety was ensured during this process.

## **Concluding Remarks**

Ms. El Ashmawy, the Country Rapporteur, thanked the delegation for its replies.

Mr. Yakzhik, the head of delegation, stated that important issues had been discussed and the dialogue had been useful. The delegation was grateful to the Committee for recognising what Belarus had achieved and for making recommendations about how the State could improve its work to ensure that children's interests were observed and protected. The delegation took note of the Committee's recommendations with regard to the child prostitution and trafficking.