



ngo group for the crc

# STATE PARTY EXAMINATION OF MEXICO'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  
17 JANUARY – 4 FEBRUARY 2011

## Contents

Opening Comments.....	1
General Measures of Implementation.....	2
Prevention.....	4
Prohibition and Related Matters.....	4
Protection of the Rights of Victims.....	6
Concluding Remarks.....	7

*Mexico ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 15 March 2002. On 31 January, 2011, the Committee on the Rights of the Child (the Committee) examined the initial periodic report of Mexico.*

## Opening Comments

The members of the delegation of Mexico responsible for addressing issues covered by the OPSC, were led by Ms. Cecilia Landerreche, Officer in Charge of the National System for the Comprehensive Development of the Family. She was supported by representatives from the Foreign Affairs Ministry, the Health Ministry, the Ministry of Tourism, the Ministry of National Defense, the Ministry of the Mexican Naval Army, the National System for the Comprehensive Development of the Family, the Government's Secretariat, the Federal Council of Magistrates, the General Attorney's Office, and the Permanent Mission in Geneva.

Ms. Landerreche stated that the National System for Comprehensive Development of the Family was a public body responsible for implementing and coordinating policies regarding the vulnerability of children. She added that there were cross-cutting policies directed at children which involved various government entities. Mexico welcomed the reports from civil society and agreed on the need for systematic statistics on the sale of children, child prostitution and child pornography. Ms. Landerreche noted that the Written Replies, which covered the period from 2007 through to 2009, reflected updated information.

Mexico recognised the different approaches and treatments available to counter child sexual exploitation and the need to harmonise national law with the requirements of OPSC. Ms. Landerreche added that different regions were obliged to issue laws and establish administrative measures in order to guarantee the protection of the rights of children, as well

as the best interest of the child. She noted the establishment of penalties for sexual conducts such as the trade or distribution of child pornography as well as the employment of minors in bars or places that could cause them harm. Mexico guaranteed that victims of harm would receive reparations as well as the necessary treatments needed.

Ms. Landerreche added that Mexico had established a comprehensive justice system for children and adolescents between the ages of 12 and 17 and had made considerable efforts to implement specialised bodies to investigate and prosecute according to the provisions in OPSC. Ms. Landerreche said Mexico worked to provide targeted care for street children and migrant children as it recognised their vulnerability. She added that the Inter-Ministerial Commission on Trafficking in Persons coordinated the activities of the federal government bodies and the technical secretariat responsible for developing a national database on trafficked persons. Ms. Landerreche reiterated the willingness of Mexico to prevent and protect children from violence through education and awareness-raising among children and families. To conclude, Ms. Landerreche assured the Committee that Mexico would continue to consolidate its efforts across its government to address issues related to the OPSC, always bearing in mind the best interest of the child in its work.

The Rapporteur, Ms. Ortíz, noted the concern of the state regarding the sale of children, child exploitation, child pornography and the illegal recruitment of children by armed groups. The State intended to develop more concrete instruments to guarantee and anchor the rights of children through legal mechanisms and stated that a system of promoting and protecting the rights of the child had not been entirely established. Ms. Ortíz commented that the work by the National System for the Comprehensive Development of the Family (SNDIF) did not ensure that the OPSC was recognised at the state level. Ms. Ortíz recognised the initiatives and numerous developments in areas of international cooperation by the State on issues related to the OPSC. She urged the State to address impunity for crimes against children. Ms. Ortíz noted that institutional mechanisms that required a managed budget, needed to be implemented. Ms. Ortíz voiced concern over the lack of harmonisation between the national law and the OPSC. She noted the lack of inter-ministerial coordination to ensure that the rights of children were protected. Finally, Ms. Ortíz She asked if there had been any reparations for victims and emphasized the support victims needed.

## **General Measures of Implementation**

### ***Legislation***

The Committee noted that article 133 of the Constitution cited international treaties as the primary source of law in the State, but added that this was in contradiction to the change initiated by the Supreme Court to render all treaties and conventions as above the Constitution but not as the law of the land. The Committee asked if the OPSC had been fully incorporated into national law and whether it was referred to in judicial matters. It noted that double criminality was a precondition for offenses laid out in the OPSC.

The Committee asked about article 356 of the Federal Criminal Code, which referred to minors under the age of 16, and thus excluded children between the ages of 16 and 18 from federal protection. It also stated that article 16 of the Federal Criminal Code allowed for the possibility of moral dissolution for serious offenses. The Committee asked whether the crimes of the sale of children, child prostitution and child pornography were included in the list of crimes in which invoking moral dissolution was possible. It asked whether child prostitution was prohibited in all states.

The delegation responded that the Congress was working to ensure that norms laid down in international treaties could be considered and applied by national judges as law. The State

distinguished between children under the age of 18 and persons over 18.

### ***Dissemination***

The Committee appreciated the efforts to raise awareness and train individuals about OPSC but noted that the focus was on sexual exploitation and trafficking. It asked how the State ensured that the society was fully aware of the OPSC and that those working in relevant professions received training on how to deal with victims and perpetrators of the sale of children or the use of children in pornography or prostitution. The Committee noted that there were three million children between the ages of 5 and 17 who were not attending school and asked to what extent these children, as well as their parents and communities, particularly in remote areas, were aware of OPSC.

The delegation said dissemination informed children and made them capacity builders within their communities. It added that children participated in dissemination through radio programmes. Civil servants and child protection officers also received information regarding the protection of children.

### ***Data Collection***

The Committee asked for a comment on the management of data related to the sanctioning of crimes and whether there was any data missing from some cases. It wanted to know about any cases discussed in the State Report that involved sentencing.

The delegation acknowledged that there had been problems in data collection and stated that the data was provided by the National Institute of Statistics, Geography and Information Technology. The delegation added that the cases in the State Report (Annex 7) were sentenced at the State and Federal levels in 2007 and 2008.

### ***Coordination***

The Committee inquired about a coordinating action plan, with a comprehensive approach, that implemented the CRC and guaranteed the rights of all children. The Committee expressed that it was unclear how the National System for Comprehensive Development of the Family coordinated with other ministries to prevent the trafficking of persons. It stated that the Inter-Ministerial Committee on Trafficking of Persons did not have specific powers for implementing goals and targets. The Committee noted that the State report did not discuss whether it used the 'Oportunidades' ('Opportunities') Programme, a common model used in various countries in Latin America for the implementation of OPSC that takes a preventive approach. The Committee stated that a multi-sectoral approach was needed to deal with prevention of human trafficking.

### ***Monitoring and complaints***

The Committee asked the delegation to specify the role and status of the National Human Rights Commission (CNDH). It asked whether there was a complaints mechanism for children and asked for statistics regarding the number of complaints received either directly from children or on their behalf. The Committee also inquired about follow-up procedures for complaints and wanted to know whether confidentiality was maintained. The committee asked whether independent monitoring mechanisms had the capacity to carry out evaluations.

The delegation responded that there was a complaints mechanism for children that provided for the anonymity of complainants. It added that the CNDH was an independent body, with jurisdiction throughout the State, that investigated complaints by children and assisted minors to introduce complaints. The CNDH also received complaints from civil society organisations that defended the rights of the child.

### ***The Role of Civil Society and Non-Governmental Organisations***

The Committee asked whether the State collaborated with NGOs and allowed them to participate in the protection of children. The Committee inquired whether the State cooperated and offered protection to those working for civil society organisations because of the high risk of violence emanating from their work.

The delegation said the State recognised the participation of civil society organisations and received proposals concerning implementation of programmes and policies for the protection of children. The State worked with civil society on a national agreement on security and justice so that civil society could continue their work safely. The State also offered reparations for psychological and physical damages incurred as a result of violence inflicted on human rights defenders and civil society organisation workers because of the work they were involved in.

## **Prevention**

### ***Child labour***

The Committee noted that many children working as domestic servants, in 2006, were victims of abuse and asked if the legislation of the State specifically punished forced child labour. It also asked whether there were cases of individuals arrested or punished for forced labour. The Committee noted that the State had not ratified ILO Convention 138.

The delegation responded that forced labour of minors was covered by the Federal Criminal Code. The State did not have adequate information to deal with child labour.

### ***Identification of vulnerable children***

The Committee expressed that vulnerable groups should be targeted by services that worked to prevent the sale of children. It acknowledged the State's measures regarding migrant children, unaccompanied children and street children. The Committee asked the State to comment more on the status of invisible children and the measures implemented to protect all vulnerable children. The Committee also asked about children in residential institutions and inquired how these children were monitored. The Committee noted that a third of the population lived below the poverty threshold and that poor families tended to have many children. It said that there was a need for coordination among the different ministries that worked to protect children to maximise the budget allocated by the State towards child protection. The Committee felt there was no uniform protection of children in all the regions.

The delegation responded that there was social assistance, which differentiated the needs of each population, to aid vulnerable populations. It added that regional groups worked with children to discuss the varied needs across the country to address the protection of children. The delegation said there was a special commission for children, which worked to achieve consensus among the different stakeholders and enabled change.

## **Prohibition and Related Matters**

### ***Adoption***

The Committee noted the State's six-month trial period for national adoptions and asked whether international adoptions also required a trial period. The Committee noted that domestic adoptions required approval from judges and the consent of the parents; however children adopted internationally may not go through the judicial system. The Committee asked for an explanation regarding the low rate of national adoptions in comparison to the high rate of international adoptions. It asked whether intermediary persons involved in the adoption process were punished.

The delegation responded that the adoption process was localised and there were principles

established which ensured the best interest of the child. It added that adoptions went through the courts to ensure there was no exchange of money. The State followed the Hague Adoption Convention to ensure that a period of cohabitation was allowed to ensure that the adoption was successful. The delegation noted that adoption by the extended family of the child was preferred over regional, national and international adoption. It added that children under five could not be adopted internationally. The delegation said it was not an offense to be an intermediary in adoptions. The State monitored the adoption process as well as national and international adoptions and did not permit adoptions with countries that had not signed the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

### ***Trafficking of organs***

The Committee noted the lack of reference in the State report to the transfer of organs, stating that trafficking of organs involved body parts, or the impersonation of an individual, to traffic blood and organs, as well as illegal transplants.

The delegation responded that the State had laws relating to the movement of human beings beyond the national Mexican territory.

### ***Abduction***

The Committee asked whether the State had been able to identify kidnapped persons and whether there were children involved. The Committee asked whether kidnapping was considered an isolated crime or categorised with broader crimes such as trafficking. The Committee noted the approximation that 7,958 migrants were kidnapped between September 2008 and February 2009. It inquired about how many of the kidnapped victims were children and what services were rendered to child victims of kidnapping. The Committee asked whether there were programmes to protect children or collect their testimonies.

The delegation responded that the federal and state police had the responsibility of investigating the cases of kidnapped children as it was considered a community crime. The delegation noted that a great number of migrants were kidnapped for trafficking and were considered victims under OPSC. It added that the penalties for kidnapping had been greatly increased.

### ***Sale of children***

The Committee asked for a definition on sale of children. It noted that paragraph 42 of the State report confused the definition of trafficking with that of the sale of children according to articles 2 and 3 of the OPSC. The Committee stated that the State's definition of trafficking did not encompass children between the ages of 16 and 18 and it focused particularly on the deprivation of liberty. The Committee noted that there was an obligation to introduce internal criminal legislation regarding the sale of children as defined by article 2 of the OPSC. The Committee asked if there were any consequences for perpetrators specifically of the sale or purchase of children.

The delegation replied that the sale of children was incorporated into criminal legislation. It added that the reform to the Federal Criminal Code of 2010 included paedophilia, child pornography and the sale of children as crimes that prohibited the free development of children.

### ***Child Pornography***

The Committee asked whether the stockpiling and possession of pornographic material were specifically outlawed under the Federal Criminal Code.

The delegation replied that articles 202 and 202*bis* of the Constitution, which referred to child prostitution, made specific mention on conducts such as the creation, distribution and stockpiling of child pornography. The delegation added that the possession, stocking, purchase and sale of child pornography were all criminal offenses.

### ***Sexual Tourism***

The Committee asked whether there were specific programmes or projects targeting areas with high rates of sexual tourism. It also asked whether there was cooperation from the private sector and civil society to combat sexual tourism. The Committee emphasised that the OPSC did not consider children to prostitute themselves, but were forced into prostitution. Finally on this topic, the Committee noted that the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography had commented in 2008 on the need for Mexico to elaborate a code of conduct for businesses operating in the tourism sector and asked whether the State was pushing for this to be realized.

The delegation said the State was working on designing and assessing campaigns aimed at sexual tourism. The State sought to train people working in the relevant sectors of the tourism industry on the use of children in sexual tourism. The State incorporated sexual tourism as a crime in the Federal Criminal Code. The delegation said the State had agreements with tourist media and hotels to identify and eradicate sexual tourism. The delegation noted that prostitution was defined as the activity of performing sexual favours, while sexual tourism was the act of forcing another individual to perform sexual favours.

### ***Extraterritorial jurisdiction***

The Committee asked whether the State had ‘flags of convenience’ that were used on national vessels. It also asked whether the State authorised the use of flags of convenience by vessels registered in Mexico but whose crew were not from Mexico and whose work took place outside of Mexican territory. The Committee inquired whether the State had jurisdiction over those who committed crimes on vessels.

### ***Extradition***

The Committee asked whether the sale of children was mentioned in the extradition treaties and whether the State was willing to consider OPSC, particularly article 5, as a basis for extradition beyond any bilateral or multilateral treaties. The Committee asked whether it was possible to hold a trial in the absence of a perpetrator.

The delegation responded that the Mexican Criminal Code requires double criminality, in that the crimes under the OPSC must be considered an offense both in Mexico and in the country where the crime was committed. Furthermore, the crime must have been properly recorded as an offense under the law in the host country in order for the extradition to occur. It added that the State had not refused any extradition request for offenses listed under article 3 and neither had the State been denied any requests. It noted that from 2002 to date there had been 15 cases of international extradition by Mexico and the State had received 6 requests for extradition.

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

### ***Rehabilitation and reintegration***

The Committee asked for information reflecting that child victims were rehabilitated and reintegrated to ensure that they were not re-victimised. It asked for an elaboration on the victim identification and guidelines for asylum seekers. The Committee noted the centres for victims of sexual exploitation and asked if these centres were still operating. It asked what the results of the centres were and whether they had been developed nationally. The committee

inquired about the training of the staff that worked with rehabilitation and reintegration.

The delegation responded that the State worked with child victims of sexual crimes to promote their rehabilitation and reintegration and provide support. The State had established manuals and professional protocols for use by professionals that work with child victims.

### ***Victim compensation***

The Committee asked whether there was a fund that provided State compensation and whether persons unable to provide reparations were held criminally liable.

The delegation said that a child victim involved in any offense under the OPSC would receive reparations from the employer or corporation concerned. Reparations also included psychological treatment to enable children to overcome the emotional harm caused. The delegation responded that only individuals were criminally liable and Congress was discussing the possibility of holding corporations liable. The State had a fund for reparations, incorporated into the criminal procedure, which was considered by judges for victims of crimes such as trafficking and kidnapping.

### ***Asylum Seekers***

The delegation stated that there were legal provisions that offered supplementary protection to refugees. The State extended the grounds for refugee status to incorporate the Cartagena Declaration and provide assistance to vulnerable asylum seekers, particularly victims of abuse or trafficked persons. The delegation noted that refugees who were denied asylum, received protection and unaccompanied children received comprehensive care.

### ***Child testimonies***

The delegation said that there were prevention measures that provided guarantees for child victims during trials. Judges were able to determine the evidence provided by the child through video-conferencing. The delegation added that the legal system did not view children as criminal persons. It emphasised that the criminal justice system work with adolescents to ensure restorative justice.

## **Concluding Remarks**

The Rapporteur, Ms. Ortíz, thanked the delegation for the discussion and information shared and urged the State to continue adapting its legislation in accordance with OPSC. She encouraged the State to continue establishing a comprehensive system of protection of children's rights.

Ms. Cecilia Landerreche, the head of delegation, thanked the Committee for recognising the work of the state in ensuring the rights of children. She noted that the State still had a lot to cover and would analyse carefully the recommendations of the Committee. She thanked Ms. Ortíz for her contribution to the Committee and wished her the best in future activities.