



Rights of the Child  
in Spain

**OMCT**  
OPERATING THE **SOS-TORTURE** NETWORK





# Rights of the Child in Spain



## The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.


The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child who use them to analyse how well a country is fulfilling its international commitments with regards to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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COMMITTEE ON THE RIGHTS OF THE CHILD  
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Report on the implementation of the  
Convention on the Rights of the Child  
by Spain

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# I. Preliminary observations

Spain submitted its periodic report to the Committee on the Rights of the Child in accordance with the provisions of article 44 Para 1 (b) of the Convention on the Rights of the Child. OMCT appreciates this action and take notes that since its first report (CRC/C/8/Add 6) in 1993, Spain has demonstrated an openness and willingness to adhere to the changes recommended by the Committee concerning the protection of the child<sup>1</sup>.

Spain ratified the Convention on the Rights of the Child on November 30, 1990. It also ratified, as recommended by the Committee, the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, which came into force on 1st November 1995.

It also ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on October 10, 1987 and is also party to the European Convention for the Prevention of Torture since 1989.

According to article 96.1<sup>2</sup> of the Spanish Constitution, articles from ratified international conventions and treaties are automatically incorporated into the domestic legal system. This means that the rights set out in the Convention on the Rights of the Child may be invoked by private individuals directly before Spanish judges and courts of law. Article 39.4<sup>3</sup> of the Constitution reinforces this disposition by allowing children to benefit from the rights which the treaties recognise are due to them. OMCT however notes that this disposition is not really accorded in actual practice. The Convention is in fact not yet sufficiently well known and is often interpreted as a simple declaration of intent rather than a legal instrument having full force of law.

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- 1 - Concluding Observations of the Committee on the Rights of the Child : Spain 24/10/94 CRC/C/15/Add.28
  - 2 - Art. 96.1 Constitución “Los tratados internacionales válidamente celebrados, una vez publicados oficialmente en España, formarán parte del ordenamiento interno. Sus disposiciones sólo podrán ser derogadas, modificadas o suspendidas en la forma prevista en los propios o de acuerdo con las normas generales del Derecho internacional”.
  - 3 - Art. 39.4 Constitución “Los niños gozarán de la protección prevista en los acuerdos internacionales que velan por sus derechos”.

OMCT appreciate that several articles of the Constitution are in accordance with the principles of the Convention on the Rights of the Child, for example; the right to life (art. 15), the right to security and freedom (art. 17), the right of the child to participation and to freedom of expression (art. 20).

Articles from the Convention which foresee the child's right not to be tortured, mistreated, physically or psychologically abused or exploited, are covered by article 15 of the Constitution which forbids torture and inhuman and degrading treatment, the right to a fair trial (competent legal guardian, appropriate assistance, presumption of innocence...) is covered by articles 24 and 25.

OMCT welcomes the adoption of national laws with respect to the child of which, amongst others is, the 1996<sup>4</sup> law concerning the legal protection of the child (here, finally, the child is perceived to be an active participant in the decisions which affect its well being), the law reforming both the right to judge and the judicial proceedings within the law concerning minors<sup>5</sup> and also the law

concerning the penal responsibility of minors<sup>6</sup> (which raises the age of penal majority from 16 to 18 years).

The new law pertaining to the legal protection of the child, also brings important changes concerning inter country adoptions and will thus become a very important means of fighting against irregularities in adoptions, a common occurrence in Spain until this law came into force.

At present, the penal code makes child trafficking an offence whether it be intra or inter-country and punishes both the biological and the adoptive parents as well as the intermediate parties to any pecuniary transactions involving children. The Spanish government has published a very useful description of certain illegal practices used to facilitate adoption procedures. According to this report certain irregularities in the case of inter-country adoption have been discovered in situations where, for example, children coming from the Russian Federation or Central Europe, are placed in orphanages through intermediary organisations, to which the future parents have donated large sums of money in order to take care of the adoption formalities.

4 - Ley Organica 1/1996 de 15 de enero, de protección jurídica del menor.

5 - Ley Organica 4/1992 de 5 junio, sobre la reforma de la Ley Reguladora de la competencia y el Procedimiento de los Juzgados de Menores.

6 - Ley organica 5/2000 de 12 de enero, reguladora de la responsabilidad penal de los menores.

In its concluding observations, the Committee on the Rights of the Child highlighted the importance of modifying the language of the law, notably article 154 of the Civil Code<sup>7</sup> according to the terms of which, the parents “may punish their children within reasonable limits and with moderation” in order for this article to fully comply with article 29 of the Convention. OMCT notes, however, that the language has not been changed and is most concerned that corporal punishment is still considered by many Spaniards to be an effective educational tool.

In Spain, the Constitution concedes a legislative power to the autonomous Communities thereby allowing interaction amongst the different levels of intervention through a well defined framework of the responsibilities and competences of each public administration.

OMCT appreciates the legal dispositions put in place by the different autonomous Communities concerning the protection of the child. The Community of Madrid for example has created the post of “Defensor del Minor”<sup>8</sup> who is to work in close contact with children in order to prevent violation of their rights.

OMCT is especially concerned by the difficult situation with which the children of immigrants are often confronted, especially those of Moroccan and Algerian origin in the cities of Ceuta and Melilla. On several occasions, OMCT has publicised the case of children deported by the Spanish police which gave as the official reason for its action the necessity to reunite families. The circumstances surrounding the deportations, however, have led to doubts concerning the credibility of such reunifications.

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7 - Art. 154 Código Civil “(...) Los padres podrán en el ejercicio de su potestad recabar el auxilio de la autoridad. Podrán también corregir razonable y moderadamente a los hijos”.

8 - Ley de Garantías de los Derechos de la Infancia y Adolescencia, Comunidad de Madrid, Ley 5/1996.

## II. General Observations

### 2.1 Discrimination

The Convention is applicable to any child who falls within the jurisdiction of a State whether the child be a national of that State or a foreigner<sup>9</sup>. The latter category includes visitors, refugees or any other child who happens to live within the borders of such State, even in a clandestine situation.

OMCT believes that discrimination is one of the causes of torture and approves the fact that the Spanish Constitution provides for the principle of non discrimination in article 14<sup>10</sup> and that this same principle is restated in several other laws. This is the case, especially in the law of 1/1996 concerning the legal protection of the child which, in article 3<sup>11</sup>, provides that each child has the

right not to be subject to any discrimination by reason of origin, nationality, race, sex, religion, language or culture, opinion or any other personal, family or social circumstances.

Increasingly, in Spain, we are witness to protest demonstrations against the integration of immigrants or gypsies, organised by the residents of certain districts. These demonstrations can easily degenerate into acts of racist violence which also affect children. In November 2000, for example, in a school in Ceuta, 65% of the parents refused to send their children to school to protest against the schooling of 30 Moroccan children.

Although the Committee, in its final recommendations, did underline the importance of widespread dissemination of the Convention in order to fight against discriminatory practices and attitudes towards vulnerable children, OMCT raises its concern that the situation has not fundamentally improved, especially in the case of children of immigrants and gypsies.

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9 - Art. 2 of the Convention on the Rights of the Child.

10 - Art. 14 de la Constitución española "Los españoles son iguales ante la ley, sin que pueda prevalecer discriminación alguna por razón de nacimiento, raza, sexo, religión, opinión o cualquier otra condición o circunstancia personal o social".

11 - Art. 3 de la ley de Protección Jurídica del Menor "los menores gozaran de los derechos que les reconocen la Constitución y los Tratados Internacionales de los que España sea parte, especialmente la Convención y los demás sus derechos garantizados en el ordenamiento jurídico sin discriminación alguna por razón de nacimiento, nacionalidad, raza, sexo, deficiencia o enfermedad, religion, lengua, cultura, opinion o cualquier otra circunstancia personal, familiar o social...".

The Committee for the elimination of racial discrimination, in its concluding observations of the 2000 session, expressed its concern that “a noticeably small number of cases brought before the national courts have been judged to be cases of racial discrimination, despite a flagrant general overall increase in violent acts committed by young people, particularly in aggressive behaviour towards foreigners by extremist groups, neo-nazis movements and gangs” (OMCT translation).

In taking note of the positive measures taken by Spain, to ensure that gypsies are not exposed to discrimination, the Committee for the elimination of racial discrimination nevertheless expressed its concern about the high rate of school suspension and absenteeism from primary school on the part of gypsy children as well as the fact that only a very small number of gypsies go on to complete their higher education. Although the Spanish constitution proclaims equality for all citizens living on Spanish soil, reality shows a marginalisation and deterioration of this right with respect to the gypsy people.

OMCT notes with concern, that gypsy children are not completely integrated into Spanish society, and that they are the most

affected by the situation of marginalisation in which their community lives. There exists a notable gap between the rate of school attendance by Spanish children compared to that of gypsies, especially at secondary school level. According to gypsy associations, for a total of 180,000 young gypsies in 2000, only 34% attended school. A report by the Council of Europe produced in 1997, criticised the intolerable situation in which gypsy families found themselves. The NGO Médecins du Monde compares the situation of certain regions in Spain, where gypsies live, with certain third world countries (especially in the Valdemingomez ghetto, south of Madrid).

OMCT urges the Spanish government to increase its efforts to promote a policy of integration and welcome, by a stricter application of the Gypsy Development Programme, which it launched in 1989, and by giving particular attention to the situation of gypsy children.

### III. Definition of the Child

Article 315 of the Civil Code in conformity with article 12 of the Constitution and article 1 of the Convention, considers to be a child every human being below the age of 18 years. Similarly, the Organic Law 1/1996 of 15 January 1996 on the legal protection of minors provides for its application to all minors under 18 years of age living on Spanish soil (art. 1)<sup>12</sup>.

Certain ordinary laws of the autonomous Communities (Cataluña, Galicia and Madrid) make a distinction between children (0-12 years) and adolescents (12-18 years).

In the Spanish system, children must be legally represented and protected either by their parents or by their legal guardian but they have also their own private sphere which is limited in the children's own self interest. All acts considered as private or personal must be carried out directly by the child without any voluntary or legal representative.

The personal intervention of the child is also foreseen for all acts which, directly or in-

directly, might affect his or her civil status, for example in the case of emancipation. According to the Civil Code, a minor must give his consent to such emancipation which can occur only in specific circumstances such as marriage, the assent of his or her legal guardian, or by legal dispensation at the age of 16 years (articles 317, 320 et 321 of the Civil Code).

The personal capacity to act of a child is variable and flexible according to his or her degree of personal development. For example, at 16 years old, a non emancipated child is able to carry out all ordinary administrative acts concerning any wealth or property acquired through his or her own work or skills.

The minimum age for marriage in Spanish law is fixed at 18 years unless a dispensation ("dispensa de edad") is obtained from a lower court judge after hearing both the parents and the child. Nevertheless in the more traditional - and often more marginalized gypsy communities – the age for marriage can vary between 14-18 years.

12 - Art. 315 Código Civil "La mayor edad empieza a los 18 años cumplidos. Para el cómputo de los años de la mayoría de edad se incluirá completo el día del nacimiento".

# IV. Protection Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## 4.1 The Legal Framework in Spain

Article 15<sup>13</sup> of the Spanish Constitution provides that “everyone has a right to life and to physical and moral integrity and in no case can be subject to either torture or to other inhuman or degrading treatment. The death penalty abolished except for provisions in the Military Penal Code governing time of war” (OMCT translation). Moreover, art 174<sup>14</sup> of the Penal Code gives the following definition of torture : “Any legal authority or any public servant, who by the abuse of his or her position, and with the aim of obtaining a confession or information from any person, or to punish a person for any act which he or she has committed or is suspected of having committed, submits that person to conditions or procedures which by their nature duration or other circumstance, inflict physical or mental suffering, suppression or alteration of judgement or mental faculties or assault on her/his moral integrity, commits an act of torture. The perpetrator of an act of torture will be punished by a period of imprisonment of two to six

years if the act is considered to be serious and of one to three years if not considered to be serious. A penalty covering the loss of civil and political rights of up to eight to twelve years will also be incurred. The same penalties will apply to the authorities or the agent of the penitentiary, or centre for juvenile protection or correction, who perpetrate the acts described above, against the inmates” (OMCT translation).

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13 - Art. 15 de la Constitución “Todos tienen derecho a la vida y a la integridad física y moral, sin que, en ningún caso, puedan ser sometidos a tortura ni a penas o tratos inhumanos o degradantes. Queda abolida la pena de muerte, salvo lo que puedan disponer las leyes penales militares para tiempos de guerra”.

14 - Art. 174 Código penal “1. Comete tortura la autoridad o funcionario público que, abusando de su cargo, y con el fin de obtener una confesión o información de cualquier persona o de castigarla por cualquier hecho que haya cometido o se sospeche que ha cometido, la sometiére a condiciones o procedimientos que por su naturaleza, duración u otras circunstancias, le supongan sufrimientos físicos o mentales, la supresión o disminución de sus facultades de conocimiento, discernimiento o decisión, o que de cualquier otro modo atenten contra su integridad moral. El culpable de tortura será castigado con la pena de prisión de dos a seis años si el atentado fuera grave, y de prisión de uno a tres años si no lo es. Además de las penas señaladas se impondrá, en todo caso, la pena de inhabilitación absoluta de ocho a doce años. 2. En las mismas penas incurrirán, respectivamente, la autoridad o funcionario de instituciones penitenciarias o de centros de protección o corrección de menores que cometiere, respecto de detenidos, internos o presos, los actos a que se refiere el apartado anterior.”.

These articles correspond to the obligations specified in articles 37 and 41<sup>5</sup> of the Convention. Nevertheless OMCT is concerned that article 174 of the Penal Code, does not provide for a heavier penalty to be inflicted on the torturer where the victim is a child. Life imprisonment is forbidden by the Penal Code which limits to thirty years of imprisonment, the maximum penalty which can be imposed on adults. For children less than 16 years old, no prison sentence can be longer than two years.

## **4.2 Street Children and Illegal Expulsions**

The cities of Ceuta and Melilla, because of their geographic situation, become for foreigners (mainly Moroccans) entry gates into Europe by this indirect Spanish route. OMCT has condemned several times the arrests and irregular expulsions of children of Moroccan origin in both these cities<sup>16</sup>. According to information received, children

in Ceuta are arrested in the centre of the city and taken into custody in police vans. They are often harassed during detention and some of them have been ill treated. Deportations are often carried out without the child having been heard, since they have access neither to the help of an interpreter nor to legal assistance.

The law 4/2000 concerning the rights and freedoms of foreigners in Spain<sup>17</sup> provides that foreign children found without official documents on Spanish territory, will be taken in by the autonomous Communities, which have the obligation to put them under legal guardianship if their families cannot be identified. These children can be deported only in the case of family reunification, or, if the authorities of the country of origin accept to come to their aid and provide legal guardianship. Nevertheless, OMCT has established that deportation of children to Morocco occurs without the least guarantee of family reunification or of assistance from the Moroccan social services.

In Melilla, there was the case of two children both 16 years old, who had been arrested and deported by the national police several times, the last being on 31 October 2001. As soon as they arrived at the border, both

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15 - Art. 4 of the Convention on the Rights of the Child, "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention".

16 - OMCT urgent appeal, Child concern, Case ESP 061101. CC.

17 - LO 4/2000 sobre derechos y libertades de los extranjeros en España y su integración social, modificada por LO 8/2000.



children were handed over directly to the Moroccan police without the presence of their families or the social services. They were subsequently subjected to ill treatment by the Moroccan police, and this has been certified by a Spanish doctor<sup>18</sup>. According to information received, both of these children had been living in Melilla for 6 years, held residence permits, attended school and were under the legal guardianship of the local authorities in Melilla. It is difficult to believe that their deportation to Morocco was intended to be for family reunification purposes.

In Morocco, emigrants who have been repatriated (*refoulés*) are subjected to ill treatment, adults and children alike. Consequently any deportation back to Morocco can be considered as contrary to article 37 of the Convention and to article 3 of the European Convention on Human Rights, which forbid torture and other cruel, inhuman or degrading treatment.

In 1998 three officers of the Ceuta local police, made official reports condemning certain irregularities concerning the deportation of children but these reports were simply filed with no real enquiry being opened up. The three whistle blowers were

treated as “enemies of the city of Ceuta” and were punished with a period of 6 months suspension from their jobs without pay<sup>19</sup>.

OMCT is deeply concerned by the situation described above, especially with respect to the physical and psychological integrity of the street children and recommends to the Spanish government that they be protected in the same way as Spanish children, that is without any discrimination with regard to national origin, race or social status.

### **4.3 Female Genital Mutilation**

The practice of Female Genital Mutilation (FGM) is a problem which exists in Spain today as a result of immigration from sub-Saharan countries. Any injury inflicted which impairs the physical or mental well

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18 - Appel OMCT, Exactions enfants, Cas ESP 061101.EE.

19 - “*Carta al Ministro. Caso tortura en Ceuta*”, PRODENI España, 30 de Noviembre de 1998.

being of a person, is considered an offence under the Spanish Penal Code<sup>20</sup> and to get around this law, FGM's are performed while the girl children (between the ages of 3 months and 8 years) are being taken on a visit to their respective country of origin. This is often referred to as "the holiday trip". This practice has the most direct consequences for the health of the young girls both at the time of the intervention and for the rest of their lives.

Nevertheless, several paediatricians have noted during the course of their rounds, that some mutilations were so recent, that they must have been carried out on Spanish territory, but they have never been able to assemble sufficient evidence to bring a case

against those responsible. The situation is worrisome, especially in those regions of Spain (Cataluna, Madrid, Ceuta and Melilla) where immigration is highest.

OMCT applauds the commitment of those associations which come to the help of the girls concerned. It requests that the Spanish government carry out an enquiry to determine if FGM is indeed practised on Spanish territory, and it also encourages the organisation of information campaigns and awareness programmes on this subject.

#### 4.4 Violence Within the Family

In its conclusions from the days of General discussions on this subject, on 28 September 2001, the Committee on the Rights of the Child recommended to the States Parties, that they introduce or modify, without delay their domestic legislation in order to prohibit all acts of violence within the family or at school, as a form of discipline, in conformity with articles 19, 28 and 37a of the Convention<sup>21</sup>.

In its Concluding Observations on the first periodic report presented by Spain<sup>22</sup>, the

20 - Código Penal Art. 147 "El que, por cualquier medio o procedimiento, causare a otro una lesión que menoscabe su integridad corporal o su salud física o mental, será castigado como reo del delito de lesiones con la pena de prisión de seis meses a tres años, siempre que la lesión requiera objetivamente para su sanidad, además de una primera asistencia facultativa, tratamiento médico o quirúrgico. La simple vigilancia o seguimiento facultativo del curso de la lesión no se considerará tratamiento médico". Art. 149 "El que causare a otro, por cualquier medio o procedimiento, la pérdida o la inutilidad de un órgano o miembro principal, o de un sentido, la impotencia, la esterilidad, una grave deformidad, una grave enfermedad somática o psíquica, será castigado con la pena de prisión de seis a doce años".

21 - Committee on the Rights of the Child, 28th session (CRC/C/111) Discussion on "Violence Against Children, Within the Family and in Schools", Friday, 28 September 2001: "The Committee urges States parties to enact or repeal, as a matter of urgency, their legislation in order to prohibit all forms of violence, however light, within the family and in schools, including as a form of discipline, as required by the provisions of the Convention and in particular articles 19, 28 and 37a".

22 - CRC/C/15/add.28.

Committee on the Rights of the Child, observed that article 154<sup>23</sup> of the Civil Code, which authorizes parents to “chastise their children reasonably and with moderation”, could be interpreted as authorizing acts contrary to article 19 of the Convention on the Rights of the Child<sup>24</sup>. This article is, today, still in force under Spanish law, and a survey has demonstrated that corporal punishment is still practised and remains socially acceptable in Spain.

OMCT therefore considers the Spanish government to be directly responsible for this practice, since it has still not yet outlawed corporal punishment.

According to a 1997 survey by UNICEF, Save the Children, CEAPA (Confederación española de asociaciones de padres y madres de alumnos) et CONCAPA (Confederación católica nacional de padres de alumnos), 47% of adults esteem that corporal punishment is necessary for the proper education of the child. Following these results, an awareness campaign was organised, but it remains very difficult to change a practice which has such overall acceptability. A new survey conducted in 2001 by the Spanish section of DNI (Defensa del niño internacional, España)

showed that the situation had even worsened.

Experts working on the problem of child violence, condemn the fact that this phenomenon is so widespread in Spain, and that public administrations and social services do not pay enough attention when coming to the help of the victims. Each year there are around 147.580<sup>25</sup> children who suffer as a result of domestic violence and 90 children die as a result of ill treatment. 81% of offences are committed by the parents and in the case of sexual abuse, 32.5% are also committed by the parents or by someone close to the family. Experts state that the cases reported and known represent only a very limited percentage of the true situation.

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23 - Art. 154 Código civil “... Los padres podrán en el ejercicio de su potestad recabar el auxilio de la autoridad. Podrán también corregir razonable y moderadamente a los hijos”.

24 - Art. 19 of the Convention on the Rights of the Child “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement”.

25 - Calculation taken from a recent study in October 2001 by “Centro de Estudios Jurídico de la Generalitat de Cataluña” estimate that in the Community of Cataluña, 20.825 children suffer from violence.

OMCT is exceedingly concerned about this situation and asks the Spanish government to proclaim a total ban on corporal punishment and to continue with awareness campaigns on the subject of discipline without the need for corporal punishment.

#### 4.5 Family Court

There exists in Spain in the upper Courts of Justice, a sub-division pertaining to the protection of the family (The Family Court) which affords protection to children who are not in conflict with the law. According to Spanish Law, when a child is a victim of violence, he or she can take a complaint to the Family Court. The Family Court does not exist in all of the autonomous Communities, which makes it difficult to deal with all the cases reported and slows the judicial procedures. A child may have to wait up to five years before his or her case is resolved.

Judges accede to the Family Court by seniority, and are not necessarily specialised in family law and the rights of the child.

As a result, there is no consistency in the criterion which are applied and the judgments handed down are often in conflict with each other. One other difficulty which stands in the way of efficient protection of the child in the Family Courts, is the absence of trained child professionals in the technical groups which work in coordination with the judges and lawyers.

OMCT would recommend that the Spanish government take all necessary measures to change this situation, notably by making widely available, professional training programmes on children's rights for those working in the area concerned.

#### 4.6 Institutional Violence

According to the articles 18 and 21<sup>26</sup> of law 1/1996, in line with articles 172 and following of the Civil Code, a child who has been abandoned, must be placed in a child care centre for as short a stay as possible in the interest of the child itself.

Lately these centres, which are responsible for the assistance given to abandoned children without identity papers have been

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26 - Art. 18 LO 1/1996 "Cuando la entidad pública competente considere que el menor se encuentra en situación de desamparo, actuará en la forma prevista en el artículo 172 y siguientes del Código Civil, asumiendo la tutela de aquél, adoptando las oportunas medidas de protección y poniéndolo en conocimiento del Ministerio Fiscal".

subject to serious criticism on the part of social services, by the press<sup>27</sup> and even by members of the public administration. The following situations have been condemned: in some cases children are forced to wear strait jackets, in others they are obliged to take off their clothes in front of an instructor to show that they are not introducing drugs into the centre, yet again they may be placed in solitary confinement for several days on end with no external communication, or they may be expelled arbitrarily from the centre to return, without any help or shelter, back to the streets.

In 1999, the spokesman of the autonomous Community of Melilla, following a visit to one of those centres, took note of and condemned the overpopulation of these centres as well as the poor condition of the establishment. In addition, and above all, he was able to verify for himself the inefficiency of a system which does not fulfil its role of educating and reintegrating the children placed under its temporary care.

One study, concerning the child care centre “La Monontañeta” in the Canary Islands, prepared by the Spanish section of DNI “Defensa del niño internacional” in 1997<sup>28</sup> described the situation in this centre which

looks after children between the ages of 14-18 years. According to this report, the

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Art. 21 "1. Cuando la entidad pública acuerde la acogida residencial de un menor, teniendo en cuenta que es necesario que tenga una experiencia de vida familiar, principalmente en la primera infancia, procurará que el menor permanezca internado durante el menor tiempo posible, salvo que convenga al interés del menor. 2. Todos los servicios, hogares funcionales o centros dirigidos a menores, deberán estar autorizados y acreditados por la entidad pública. La entidad pública regulará de manera diferenciada el régimen de funcionamiento de los servicios especializados y los inscribirá en el registro correspondiente a las entidades y servicios de acuerdo con sus disposiciones, prestando especial atención a la seguridad, sanidad, número y cualificación profesional de su personal, proyecto educativo, participación de los menores en su funcionamiento interno, y demás condiciones que contribuyan a asegurar sus derechos. 3. A los efectos de asegurar la protección de los derechos de los menores, la entidad pública competente en materia de protección de menores deberá realizar la inspección y supervisión de los centros y servicios semestralmente y siempre que así lo exijan las circunstancias. 4. Asimismo, el Ministerio Fiscal deberá ejercer su vigilancia sobre todos los centros que acogen menores ".

Art. 172 Código Civil "La entidad pública a la que, en el respectivo territorio, esté encomendada la protección de los menores, cuando constate que un menor se encuentra en situación de desamparo tiene por ministerio de la Ley la tutela del mismo y deberá adoptar las medidas de protección necesarias para su guarda, poniéndolo en conocimiento del Ministerio Fiscal, y notificando en legal forma a los padres, tutores o guardadores, en un plazo de cuarenta y ocho horas. Siempre que sea posible, en el momento de la notificación se les informará de forma presencial y de modo claro y comprensible de las causas que dieron lugar a la intervención de la Administración y de los efectos de la decisión adoptada. Se considera como situación de desamparo la que se produce de hecho a causa del incumplimiento, o del imposible o inadecuado ejercicio de los deberes de protección establecidos por las leyes para la guarda de los menores, cuando éstos queden privados de la necesaria asistencia moral o material".

27 - El Mundo, Domingo 25 de marzo 2001 “Denuncian tratos vejatorios a los internos en los centros de menores”.

28 - DNI (Defensa del Niño Internacional) España Informe “Programa participando se aprende a participar, conoce tus derechos”, Las Palmas y Arucas, 1997.

atmosphere which predominates in the centre is not conducive to the participation of the children in any activities. A state of tension exists between instructors and children, corporal punishment is commonly applied to resolve conflicts and the children gradually become more aggressive and pessimistic about their future.

In concluding, DNI asserts that the children in this care centre do not feel that they are protected by the instructors. On the contrary they fear them and can only envisage a future in which two types of activity are pos-

sible: theft or the sale of drugs. Confronted with their difficulties, they either react violently or simply give up hope.

OMCT therefore encourages the Spanish government to take all necessary measures to improve the situation in the child care centres, and to ensure that the children are treated humanely, with the respect and dignity due to a human being and in a manner which takes into account the specific needs of persons of their age in conformity with the Convention on the Rights of the Child.

## V. Protection Against All Forms of Violence

Article 19 of the Convention on the Rights of the Child demands that “The States Parties take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence injury or abuse, while in the care of parent(s) legal guardian(s) or any other person who has responsibility for the care of the child”.

In October 2000, the Department of Justice of the Community of Cataluña, presented a report on violence against children in which

it estimated there were 20.825 physically abused children in the territory of the Community. The report further specified that the phenomenon was similarly widespread throughout all of Spain thereby underlining the seriousness of the situation.

### 5.1 Sexual Violence

Spanish legislation protects minors against sexual abuse. The Penal Code of

1995 provides for sentences of up to 15 years of imprisonment where a victim of sexual abuse is less than 18 years of age. The age of sexual consent has been raised to 13 years. Any sexual relations with a child less than 13 years<sup>29</sup> old, is therefore considered to be without consent and falls under the category of sexual abuse. Whereas the age of sexual consent has been raised, OMCT considers that it still remains too low.

The Penal Code, does not condemn sexual relations between a child aged more than 13 years and a minor under 18 years in cases where there is no violence, no exploitation, demonstration of superiority, intimidation, abuse or incitement to prostitution (money, gifts, promises etc.). The consent of a child less than 15 years of age to sexual relations with an adult, is considered to be invalid.

According to the Special Rapporteur of the United Nations on violence against women, the age below which a victim is considered to be minor, should be set at 18 years in order that children be protected from abuses<sup>30</sup>. However, the Special Rapporteur admits that, given the increase in sexual activity among teenagers in some countries, this may cause some difficulties.

According to a report presented in 1996 by Professor Lopez of the University of Salamanca, 22,7% of girls and 15,2% of boys are victims of sexual abuse before reaching the age of 17 years. These abuses range from forms of aggression without physical contact such as exhibitionism, up to the most intimate sexual acts. Of these victims 69% are under 13 years old, 30% of rapes reported in Madrid were even committed against children of 6-7 years old.

Unfortunately, there is a strong reticence on the part of a victim of sexual abuse to make an official accusation and lodge a complaint. The accusation procedure obliges the young victim of sexual abuse to explain the facts over and over again and to be interrogated by several people thus leading to a situation which often dissuades the child from lodging an official complaint.

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29 - Art. 180 Código penal. "... Las anteriores conductas serán castigadas con las penas de prisión de cuatro a diez años para las agresiones del artículo 178, y de doce a quince años para las del artículo 179, cuando concorra alguna de las siguientes circunstancias: (...)

3ª Cuando la víctima sea especialmente vulnerable, por razón de su edad, enfermedad o situación, y, en todo caso, cuando sea menor de trece años.

4ª Cuando, para la ejecución del delito, el responsable se haya prevalido de una relación de superioridad o parentesco, por ser ascendiente, descendiente o hermano, por naturaleza o adopción, o afines, con la víctima.

2. Si concurrieren dos o más de las anteriores circunstancias, las penas previstas en este artículo se impondrán en su mitad superior".

30 - UN Doc. E/CN.4/1997/47, para 37.

Spain is very much behind with regard to legislation aimed at combating child pornography, a situation which contributes to an increase in this phenomenon. Whereas the Swedish Presidency of the European Union, in the first half of 2001, asked Member State to promote legislative reforms which would state that possession of child pornography material be considered a crime, so far Spain, has taken no action in this respect. Since 1997, PRODENI (Asociación pro derechos del niño y de la niña) has denounced the diffusion of child pornography over the internet and has requested, without any concrete results, stricter legislation on this subject.

Moreover, OMCT noted with consternation that in a sentence handed down on 12 January 1998 the Spanish Supreme Court agreed to impunity for a person who pays a child in return for sexual favours if it is the child her/himself who asks for money and sets the price. This decision is most alarming because it condones the development of child prostitution. According to the figures published by the Ministry of Social Affairs, each year over 5000 children prostitute themselves, mainly in the suburbs of the large cities such as Madrid, Barcelona, Valencia and in the Canary and Balearic

Islands. These are the children who are most vulnerable, living on the fringes of society, who are drawn into the networks of prostitution and paedophilia.

OMCT therefore encourages the Spanish government :

- to organize campaigns for protection against sexual abuse, prostitution and child pornography,
- to guarantee that children who are victims of sexual abuse, gain immediate and easy access to legal and social assistance,
- to take adequate legislative measures aimed at a more efficient repression of persons profiting from child prostitution.

## 5.2 Violence in School

A report on violence in schools by CON-CAPA (Confederación católica nacional de padres de alumnos)<sup>31</sup>, stated that 40% of children were subject to aggression at least once in school, 80% were subject to insults and 35% admitted to having



aggressively attacked another child. The report's conclusions demonstrate that this kind of violence is on the increase in Spain, and that it concerns all social classes without distinction, rooted in family background where there is a lack of affection, corporal punishment and parental discord.

This form of violence starts during the very early years of school and is on the increase in certain regions (for example in the autonomous Community of Madrid). It is a factor in absenteeism from school and therefore

affects the overall development of its victims.

OMCT welcomes the efforts undertaken by the Spanish government through the new law on educational counselling, to facilitate the integration of foreign children in order "to learn how to live together in harmony", but also encourages the government to focus its attention on the prevention of violence with training programmes for teachers, instructors and other personnel working in schools, and also by assigning to the children greater participation and responsibility.

## VI. Children in Conflict With the Law

In the new Penal Code which came into force in 1995, Spain showed itself to be particularly attentive to the cause of children. Amongst the most important changes, OMCT would like to highlight the raising of the age of penal majority from 16 to 18 years.

In the explanatory statements of the new law 5/2000<sup>32</sup>, the penal responsibility of the child is presented as having an educational character, taking precedence over all other legal considerations. In this sense, the law

gives the possibility to the prosecuting magistrate not to take legal action and also to abandon the pursuit of legal procedures in cases where the child has reached an agreement with the victim, or has taken a commitment with the victim's agreement, to make good the damage caused. Deprivation of liberty is therefore to be considered as an exceptional measure, to be taken only in the most serious cases and for as short a time as possible.

The coming into force of the new law, how-

ever, has not been backed up with a sufficient increase in the necessary human and financial resources, thereby creating logistical problems (lack of arrangements to take care of children between 16-18 years of age

newly released from prison), and human resources problems (shortage of lawyers and judges for juvenile courts, with a view to ensuring an adequate follow-up of children released from prison).

A new law on terrorism, law 7/2000<sup>33</sup>, which came into force at the same time as law 5/2000, is in contradiction with the latter as well as with the principles governing the Convention on the Rights of the Child, since it provides for a major increase in the length of prison term for children accused of terrorism<sup>34</sup>.

Article 2 of the new law 7/2000 provides for a prison term of four years, and in exceptional cases up to five, for children of 16 years, if repeated crimes have been committed, and in the case of children between 16-18 years, for a term of eight years with prolongation up to ten years in the most serious cases<sup>35</sup>.

OMCT is especially concerned by this article which allows for prolongation of detention, in contradiction to the principle of social reintegration, which is the basis of article 37b of the Convention on the Rights of the Child and of the juvenile justice system.

33 - Ley Orgánica 7/2000, de 22 de diciembre 2000, de modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, y de la Ley Orgánica 5/2000, de 12 de enero, reguladora de la Responsabilidad Penal de los Menores, en relación con los delitos de terrorismo.

34 - Art. 571 Código Penal “Los que perteneciendo, actuando al servicio o colaborando con bandas armadas, organizaciones o grupos cuya finalidad sea la de subvertir el orden constitucional o alterar gravemente la paz pública, cometan los delitos de estragos o de incendios tipificados en los artículos 346 y 351, respectivamente, serán castigados con la pena de prisión de quince a veinte años, sin perjuicio de la pena que les corresponda si se produjera lesión para la vida, integridad física o salud de las personas”.

35 - LO 7/2000 Art. 2 “...c) Cuando alguno de los hechos cometidos sea de los previstos en esta disposición adicional y el responsable del delito fuera mayor de dieciséis años, el Juez impondrá una medida de internamiento en régimen cerrado de uno a ocho años, complementada, en su caso, por otra medida de libertad vigilada, hasta un máximo de cinco años, con el cumplimiento de los requisitos establecidos en el párrafo segundo de la regla 5.a del artículo 9 de esta Ley Orgánica. En este supuesto sólo podrá hacerse uso de las facultades de modificación, suspensión o sustitución de la medida impuesta a las que se refieren los artículos 14, 40 y 51.1 de esta Ley Orgánica, cuando haya transcurrido, al menos, la mitad de la duración de la medida de internamiento impuesta.

Si los responsables de estos delitos son menores de dieciséis años, el Juez impondrá una medida de internamiento en régimen cerrado de uno a cuatro años, complementada, en su caso, por otra medida de libertad vigilada, hasta un máximo de tres años, con el cumplimiento de los requisitos establecidos en el párrafo segundo de la regla 5.a del artículo 9 de esta Ley Orgánica.

No obstante lo previsto en los dos párrafos anteriores, la medida de internamiento en régimen cerrado podrá alcanzar una duración máxima de diez años para los mayores de dieciséis años y de cinco años para los menores de esa edad, cuando fueren responsables de más de un delito, alguno de los cuales esté calificado como grave y sancionado con pena de prisión igual o superior a quince años de los delitos de terrorismo comprendidos entre los artículos 571 a 580 del Código Penal.”.

## 6.1 The Age of Penal Responsibility

The age of penal responsibility coincides with the age of civil majority, 18 years. Article 1 of the law 5/2000 relative to the penal responsibility of the child<sup>36</sup> provides for the application of the same law to all children over 14 years and under 18 years of age. The Spanish penal system provides that there is absolutely no responsibility on the part of a child under 14 years old.

## 6.2 Police Custody

It is during the period of police custody, that accused children are most likely to be subjected to torture and other forms of cruel, inhuman or degrading treatment. It is also at this time that detainees are particularly vulnerable and children are no exception.

According to article 37 of the Convention on the Rights of the Child, all children must be allowed to remain in contact with their families during detention.

Spanish law governing penal procedures guarantees that prisoners be held under po-

lice custody only in cases where it is absolutely necessary to clarify the facts and this for a maximum period of 24 hours.

Law 5/2000 which provides for a whole series of rights concerning the child in detention<sup>37</sup> (assistance of a lawyer, immediate notification of the detention to the parents or legal guardian, etc) reaffirms the maximum period of 24 hours in police custody, after which period the child must appear before a magistrate who will decide, within 48 hours, whether to proceed with the criminal inquiry thereby instigating trial proceedings, or release the child.

OMCT is pleased that this law is in conformity with the Convention on the Rights of the Child, but remains highly concerned by the practical use of police custody as a response to the phenomenon of street children. Street children, for the most part of Morocco origin, are often victims of police round-ups and are deported to their country of origin under conditions which are incompatible with international law. Cases of physical

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36 - Art. 1 LO 5/2000 “Esta Ley se aplicará para exigir la responsabilidad de las personas mayores de catorce años y menores de dieciocho por la comisión de hechos tipificados como delitos o faltas en el Código penal o las leyes especiales”.

37 - Art. 17 LO 5/2000 “... (3) Mientras dure la detención, los menores deberán hallarse custodiados en dependencias adecuadas y separadas de las que se utilicen para los mayores de edad, y recibirán los cuidados, protección y asistencia social, psicológica, médica y física que requieren, habida cuenta de sus edad, sexo y característica individuales.”.

abuse inflicted by the Spanish police on child immigrants before being deported, have been condemned by OMCT<sup>38</sup>.

Different criteria are provided in the case of police custody for children accused of terrorism. In this case, the applicable legislation is the same as for adults, with a period of police custody of 72 hours, renewable up to a further 48 hours.

OMCT considers that the period of detention foreseen by this latter disposition is excessive, and consequently calls up on the Spanish government to align its law on terrorism with article 37<sup>39</sup> of the Convention on the Rights of the Child which states that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”.

### 6.3 Pre-Trial Detention

Under article 13 of the Beijing Rules, “Detention pending trial shall be used only as a measure of last resort and for the shortest possible time.

Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational environment or home. Minors in detention pending trial shall be entitled to all rights and guaranties of the standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations. Juveniles in detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

While in custody, juveniles shall receive care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality”.

The Spanish Constitutional court has decreed on the question of pre-trial detention for children, by specifying that it must be

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38 - Appel OMCT, Child concern, Cas Esp 021100.1 CC

39 - Art. 37 of the Convention on the Rights of the Child “States Parties shall ensure that: b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”.

considered as an exceptional measure of a secondary and provisional nature and also be proportionate to the legal necessity.

The youth judge must provide for a detention period in a centre specifically designed for children<sup>40</sup>, for a period commensurate with the seriousness of the crime committed, and as a function of the social repercussions and the personal and social circumstances of the child concerned. The maximum period of detention will be for three months, renewable only once on the request of the prosecuting attorney<sup>41</sup>.

According to article 54 of law 5/2000, a decision related to any form of deprivation of liberty, detention or preventative measures must hang ultimately with the competent legal authorities for minors, in accordance with the principles which inspire juvenile justice system.

In the case of foreign children who are put in pre-trial detention, the law provides for immediate notification to the Consulate of the country concerned. According to information received by OMCT, this latter clause is not strictly applied in practice, especially in the case of illegal child immigrants.

## 6.4 Procedure

According to article 14.2 of the Beijing Rules<sup>42</sup> “The proceedings shall be conducive to the best interest of the young and shall be conducted in an atmosphere of understanding allowing the offenders to participate and to express herself or himself freely”. The proceedings under which a child is judged should be based on fundamental guarantees such as the assumption of innocence, the presentation and examination of witnesses common legal means of defence, the right to remain silent, the right to have the last word in a hearing, the right to appeal. The trial of minors in Spain retains the formal structure of the adult penal process, with the separation between the function of prosecutor and that of judge.

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40 - Art. 54 LO 5/2000 “Las medidas privativas de libertad, la detención y las medidas cautelares de internamiento que se impongan de conformidad con esta ley se ejecutarán en centros específicos para menores infractores, diferentes de los previsto en la legislación penitenciaria para la ejecución de las condenas penales y medidas cautelares privativas de libertad impuestas a los mayores de edad penal.”.

41 - Art.23.2 LO 5/2000 “Para la adopción de la medida cautelar de internamiento se atenderá a la gravedad de los hechos, su repercusión y alarma social producida, valorando siempre las circunstancias personales y sociales del menor. El Juez de Menores resolverá sobre la propuesta del Ministerio Fiscal en una comparecencia a la que asistirá también el letrado del menor y el representante del equipo técnico.... El tiempo máximo de duración de la medida cautelar de internamiento será de tres meses, y podrá prorrogarse, a instancia del Ministerio Fiscal y mediante auto motivado, por otros tres meses como máximo”.

42 - United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“ the Beijing Rules”). Adopted by General Assembly resolution 40/33 of 29 November 1985.

### *Efficiency of complaints*

In general, OMCT considers that limitations in the matter of proceedings which deprive children of certain rights are conducive to torture. Consequently, it attaches much importance to the legal provisions which permit the child to complain. Article 52<sup>43</sup> of law 5/2000 gives the child the right to

complaint before a judge against any new resolution adopted during the period of original sentence imposed upon the child. The law 6/1984<sup>44</sup> on the “Habeas Corpus” proceedings allows any person who considers that his or her detention is illegal, to appear before the prosecuting magistrate of the detention centre, who must pass judgement on the question within the subsequent 24 hours. In the case of a child without official identification, the proceedings on “Habeas Corpus” must be presented by the autonomous Community of his legal guardianship, but most often, the latter does not react or institutes the procedure with such a delay that it is prejudicial to the interests of the child itself.

OMCT encourages the Spanish government to guarantee all children the right to a fair trial in conformity with article 37<sup>d45</sup> of the Convention on the Rights of the Child.

### *Access to a lawyer*

Every child deprived of his or her liberty shall have the right to prompt access to legal assistance and other appropriate assistance, as set out in article 37d of the Convention on the Rights of the Child, law

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43 - Art. 52 LO 5/2000 “Cuando el menor pretenda interponer ante el Juez del Menor recurso contra cualquier resolución adoptada durante la ejecución de las medidas que le hayan sido impuestas, lo presentará de forma escrita ante el Juez o director del centro de internamiento, quien lo pondrá en conocimiento de aquél dentro del siguiente día hábil . El menor también podrá presentar un recurso ante el Juez de forma verbal, o manifestar de forma verbal su intención de recurrir al Director del centro, quien dará traslado de esta manifestación al Juez de Menores en el plazo indicado. En este último caso, el Juez del Menor adoptará las medidas que resulten procedentes a fin de oír la alegación del menor”.

44 - Art.3 Ley 6/1984 “Podrán instar el procedimiento de Habeas Corpus que esta Ley establece: a) El privado de libertad, su cónyuge o persona unida por análoga relación de afectividad; descendientes, ascendientes, hermanos y, en su caso, respecto a los menores y personas incapacitadas, sus representantes legales. b) El Ministerio Fiscal. c) El Defensor del Pueblo. Asimismo, lo podrá iniciar, de oficio, el Juez competente a que se refiere el artículo anterior.”.

45 - Art. 37d of the Convention on the Rights of the Child “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action”.

5/2000 and article 520 of the law on legal proceedings<sup>46</sup>. Under Spanish law, legal assistance is one of the basic guarantees of a fair and just trial. The child has the right to a lawyer from his very first contact with the legal system, i.e. from the time of his arrest by the police. If the child is a foreigner he or she has the right to an interpreter to be able to understand and contribute to the proceedings.

Unfortunately these guarantees are not always assured, especially in the case of street children. Before such a child, who has been arrested, is able to speak to a lawyer or a social worker, a great deal of time may have passed, thereby increasing the risk of violation of his or her rights.

OMCT recommends that the Committee on the Rights of the Child requests further information from the Spanish government on this situation.

### *Juvenile courts*

The entry into force of law 4/1992<sup>47</sup> on the competence of juvenile judges has greatly changed the penal trial process for juvenile, by introducing several guarantees, such as

the principles of legality, typicity and proportionality. Among the changes provided for by this law, there is the separation between the preliminary investigation function, attributed to the examining magistrate and the ruling function which falls under the authority of the youth judge.

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46 - Art. 520 Ley de enjuiciamiento criminal “ Toda persona detenida o presa será informada, de modo que le sea comprensible, y de forma inmediata, de los hechos que se le imputan y las razones motivadoras de su privación de libertad, así como de los derechos que le asisten y especialmente de los siguientes:

a. Derecho a guardar silencio no declarando si no quiere, a no contestar alguna o algunas de las preguntas que le formulen, o a manifestar que sólo declarará ante el Juez.

b. Derecho a no declarar contra sí mismo y a no confesarse culpable.

c. Derecho a designar Abogado y a solicitar su presencia para que asista a las diligencias policiales y judiciales de declaración e intervenga en todo reconocimiento de identidad de que sea objeto. Si el detenido o preso no designara Abogado, se procederá a la designación de oficio.

d. Derecho a que se ponga en conocimiento del familiar o persona que desee, el hecho de la detención y el lugar de custodia en que se halle en cada momento. Los extranjeros tendrán derecho a que las circunstancias anteriores se comuniquen a la Oficina Consular de su país.

e. Derecho a ser asistido gratuitamente por un intérprete, cuando se; trate de extranjero que no comprenda o no hable el castellano.

f. Derecho a ser reconocido por el Médico forense o su sustituto legal y, en su defecto, por el de la Institución en que se encuentre, o por cualquier otro dependiente del Estado o de otras Administraciones Públicas.

3. Si se tratare de un menor de edad o incapacitado, la autoridad baja cuya custodia se encuentre el detenido o preso notificará las circunstancias del apartado 2.d) a quienes ejerzan la patria potestad, la tutela o la guarda de hecho del mismo y, si no fueran halladas, se dará cuenta inmediatamente al Ministerio Fiscal. Si el detenido menor o incapacitado fuera extranjero, el hecho de la detención se notificará de oficio al Cónsul de su país.”.

47 - LO 4/1992 de 5 de junio, sobre refora de la Ley Reguladora de la Competencia y el Procedimiento de los Juzgados de Menores.

Since January 2001, the penal procedure concerning children has had to be changed again, to adapt to the new provisions provided for in law 5/2000. According to a statement<sup>48</sup> issued on 5 January 2001, by the chief examining magistrate of the Madrid High Court “the application of the law on the penal responsibility of the child, is going to be chaotic. With only eight days to go before the entry into force of this new law, the lack of prosecuting magistrates, judges and detention centres for juveniles between 16-18 years who are currently in prisons, will render this law inapplicable”.

OMCT recommends that the Committee on the Rights of the Child ask the Spanish government for information on the current situation, following the coming into force of law 5/2000, and on the manner in which

the professional training of judges and magistrates in charge of trials concerning minors, is guaranteed.

A new law 9/2000<sup>49</sup> has eliminated the Juvenile Courts section of the High Courts of Justice. The lower court therefore no longer guarantees the presence of magistrates specialised in juvenile justice.

With the law on terrorism, a new Tribunal for minors has been established in the National Audience (Audiencia Nacional). It has the right to judge all crimes committed by minors, between 14-18 years, accused of terrorism and street violence (*violencia callejera*)<sup>50</sup>.

This law does not provide for the function of a magistrate specialised in children’s rights within the main Tribunal. As a result, and for the cases cited above, the competent magistrate will be the same as for adults.

OMCT believes strongly in the necessity to have separate courts for children. These courts, must take into account the child’s age, circumstances and needs during all stages of the trial. Consequently, OMCT requests the Spanish government to take adequate measures to ensure that judgments

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48 - Article appeared on “El País”, 5th January 2001.

49 - LO 9/2000 de 22 de diciembre 2000, sobre medidas urgentes para la agilización de la Administración de justicia, por la que se modifica la ley Organica 6/1985 del poder judicial.

50 - Definition de violencia callejera selon le Parlement Europeen : séquestre illicite ou grave endommagement d’installations de l’Etat ou gouvernementales, moyens de transport public, infrastructures publiques, réseaux d’information ou de communication et de la propriété publique ou privée, mettant en grave danger la sécurité publique. (“secuestro ilícito o daño grave a instalaciones estatales o gubernamentales, medios de transporte público, infraestructuras públicas, redes de información o de comunicaciones y a la propiedad pública o privada, poniendo en grave peligro a la seguridad pública”), *El Mundo*, 31 Noviembre 2001.



handed down are commensurate with the rights of the child, during all stages of the proceedings.

*Professional training for those responsible for respect of the law, judges and other legal administrators*

OMCT believes that professional training programmes for personnel responsible for the juvenile justice administration is a very important instrument in the prevention of the violation of children's rights.

In the training programme for Spanish police a section is devoted to human rights and international humanitarian law, and since 2001, there exist a team of policemen knowledgeable on all questions related to the protection of the child. Despite this, children too often continue to suffer violations of their rights especially during arrest and pre-trial detention (physical abuse, illegal deportation, lack of access to legal assistance)<sup>51</sup>.

With the new law on penal responsibility, all children between 16-18 years who were in prison, have now been transferred to institutions for minors. This re-structuration

of the penal system was not accompanied by sufficient preparation on the part of the technical teams who work with the child prisoners, with the result that today, we are party to highly tense situations inside these institutions.

OMCT, would like to recommend to the Spanish government that it puts in place training programmes on the rights on the child, for all those involved in the administration of justice for children, in order to prevent discrimination and prejudice especially with regard to foreign children, who are often victims of the most serious violations.

## 6.5 Alternative Measures to Legal Proceedings

Article 11 of the Beijing rules recommends the use of alternative extra judicial measures which avoid the negative consequences of the usual procedures in the administration of juvenile justice. Recourse to extra judicial measures can occur at any stage of the proceedings (by the police, the prosecution or other institutions such as the courts, tribunals boards or councils)<sup>52</sup>.

With law 5/2000<sup>53</sup>, Spain recognized the need to “de-penalise” petty crimes, and to minimize the stigma of conviction and sentence on a child, by giving allowance to the prosecution to discontinue or abandon

proceedings when the minor has been reconciled with the victim or has agreed to make amends for the damage caused.

OMCT appreciates the efforts undertaken to establish a judicial system commensurate with the interests of the child but, based on information received from DNI (Defensa del Niño Internacional) recognizes that these alternative measures remain very limited, due to the surcharge of work of the technical teams which have to both propose alternative measures and then put them into application. This double role of proposing and executing solutions, without having the requisite number of trained personnel does not encourage the proposing of solutions.

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52 - Art. 11 of Beijing Rules “Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without restoring to formal trial by the competent authority, referred to in rule 14.1 below. The police, the prosecution or the other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules”.

53 - Art. 19 LO 5/2000 “También podrá el Ministerio Fiscal desistir de la continuación del expediente, atendiendo a la gravedad y circunstancias de los hechos y del menor, de modo particular a la falta de violencia o intimidación graves en la comisión de los hechos, y a la circunstancia de que además el menor se haya conciliado con el víctima o haya asumido el compromiso de reparar al daño causado a la víctima o al perjudicado por el delito, o se haya comprendido a cumplir la actividad educativa propuesta por el equipo técnico en su informe”.

## VII. Conclusions and Recommendations

The International Secretariat of OMCT expresses its concern over the difficult situation in which the street children and the illegal immigrant children in the autonomous Communities of Ceuta and Melilla are living. It recommends that the Spanish Government guarantee the physical and psychological integrity of street children, by protecting them from all forms of abuse.

Regarding discrimination, OMCT regrets that gypsy children are still living on the fringes of Spanish society, despite texts in law which provide for their integration. OMCT recommends that the Spanish Government guarantees and protects the rights of gypsy children and their families.

OMCT invites the Spanish Government to undertake a study to determine if FGM is indeed practised on its national territory, and to organise assistance programmes for the girls concerned.

With respect to torture, and other cruel, inhuman or degrading treatment, OMCT is concerned by the practice, apparently com-

mon in Spanish homes, of correcting children by means of corporal punishment. It requests that the Spanish Government make changes to article 154 of the Civil Code which gives parents the right to “chastise their children reasonably and moderately”, as well as to put in place awareness programmes on the subject of discipline without corporal punishment.

Concerning illegal deportation of street children, OMCT recommends to the Spanish Government that they be treated as any other Spanish child, without any discrimination as to their national origin, in all of the procedures to be applied.

OMCT is deeply concerned by the number of children who are victims of sexual abuse and wishes to call upon the Spanish Government to :

- raise the age of sexual consent, in conformity with the recommendation of the Special Rapporteur on violence against women and to set this age as high as possible ;

- facilitate access to legal and social assistance so that children who are victims of sexual abuse are better protected and can lodge complaints without restraint ;
- reinforce legislation against child pornography in order to put a stop to the propagation of the phenomenon of paedophilia.

OMCT is preoccupied by the increase in the number of accusations of physical abuse in care centres for children who are abandoned and without identification papers. OMCT recommends that the Spanish Government ensures that all children in these care centres have the right to respect and dignity in addition to the right to protection and special state assistance, as worded in article 20 of the Convention on the Rights of the Child.

Concerning the new law on terrorism, OMCT recommends that the Spanish Government amends article 2, which establishes the possibility of condemning children between 16-18 years to up to 10 years of imprisonment, and aligns the period of police custody for children accused of terrorism with the provisions provided for in the law 5/2000 on penal responsibility.

OMCT is of the opinion that much remains to be done to guarantee adequate legal assistance to immigrant children who are in conflict with the law. OMCT therefore requests that the Spanish Government establishes a legal aid service to immigrant children, and provides adequate professional training to the teams employed to help them.

The juvenile justice system in Spain recently underwent an important restructuring accompanied by practical difficulties due to the lack of human and financial resources. OMCT requests the Spanish Government to improve the current situation by :

- obligatory training programmes for those responsible for administering juvenile justice ;
- guaranteeing the presence of judges and lawyers specialised in the rights of the child, during all stages of the penal proceedings
- encouraging in practice, the use of alternative measures to the usual penal proceedings, such as reconciliation with the victim or to make good the damage caused.



COMMITTEE ON THE RIGHTS OF THE CHILD  
30<sup>th</sup> Session - Geneva, 20 May - 7 June 2002

Concluding observations  
of the Committee  
on the Rights of the Child:  
Spain



# CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the second periodic report of Spain (CRC/C/70/Add.9), submitted on 12 October 1998, at its 798th and 799th meetings (see CRC/C/SR.798 and 799), held on 4 June 2002, and adopted<sup>1</sup> the following concluding observations.

## A. INTRODUCTION

2. The Committee welcomes the submission of the State party's second periodic report, which follows the guidelines for reporting, but regrets the late submission of the written replies to its list of issues (CRC/C/Q/SPA/2). Furthermore, it welcomes the large high-ranking delegation representing different departments and sectors sent by the State party and the frank dialogue and positive reactions to the suggestions and recommendations made during the discussion.

## B. POSITIVE ASPECTS

3. The Committee welcomes the great progress and achievements made by the State party since the examination of the initial report to the Committee in 1994. It notes with appreciation that it has made the protection and promotion of the rights of the child a general rule in the society.

4. The Committee welcomes the new laws adopted at the national and the Autonomous Community levels to ensure better compliance of the domestic legislation with the provisions of the Convention, in line with its previous recommendation (CRC/C/15/Add.28 of 24 October 1994, para.18). In particular, it notes the Organizational Act 1/1996 of 15 January on the legal protection of minors, the partial amendment of the Civil Code and the Civil Proceedings Act (the Protection of Minors Act), the Organizational Act 5/2000 of 12 January on penal responsibility for minors, and the amendments to the Criminal Code with reference to offences against sexual integrity (Act 11/1999) and protection of victims of ill-treatment (Act 14/1999).

5. The Committee notes with satisfaction that, in line with its previous recommendation on coordination mechanisms (*ibid.*, para.12), the State party established the Observatory for Children in 1999. It further notes that some Autonomous Communities created institutions or services specifically responsible for children, among others the Council of Children's Affairs of Andalusia, the Office for the Defence of the Rights of the Child of the Balearic Islands, the provincial coordination committees for the care of children in Castilla-La Mancha, and the Institute for Children and the Family of Madrid, and that a network of Municipalities for children's rights was established in 1996.

6. The Committee notes the various social programmes and policies for children at the national and Autonomous Community levels, those for the provision of social services and for poverty eradication, programmes for the support of families in special situations and, in line with its previous recommendation (*ibid.*, para. 21), the National Plan of Action for Social Inclusion of 2001 and the Comprehensive Plan for Support to the Family (2001-2004).

7. The Committee welcomes the establish-

ment of the post of assistant to the Defensor del Pueblo (Ombudsman) in charge of issues related to children, who can also receive complaints. It further notes the establishment of various independent organs dealing with violations of children's rights at the Autonomous Community level.

8. In line with its previous recommendation (*ibid.*, para. 20), the Committee welcomes the improvement of safeguards in the cases of intercountry adoption contained in Act 1/1996, and the ratification of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption of 1993.

9. The Committee notes with satisfaction that, in line with its previous recommendation (*ibid.* para.15), the State party has increased its assistance to developing countries in the field of children and notes in particular that Spain was the third donor country to the International Programme for the Elimination of Child Labour (IPEC) programme for the period 2000-2001.

10. The Committee notes with appreciation that Spain was the first European country to ratify both Optional Protocols to the Convention on the Rights of the Child. It



further notes its ratification of the Worst Forms of Child Labour Convention, 1999 (No. 182).

## C. PRINCIPAL AREAS OF CONCERN AND RECOMMENDATION

### 1. General measures of implementation

#### *Committee's previous recommendations*

11. The Committee regrets that some of the concerns and recommendations it made upon consideration of the State party's initial report (CRC/C/8/Add.6) have been insufficiently addressed, particularly those contained in paragraphs 12 (coordination), 13 (data collection), 14 (resources for children), 16 (non-discrimination), 18 (legislation), 22 (child asylum-seekers and unaccompanied children) and 23 (ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families). Those concerns and recommendations are reiterated in the present document.

12. The Committee urges the State party to make every effort to address its recommen-

dations contained in the concluding observations on the initial report that have not yet been implemented and to address the list of concerns contained in the present concluding observations on the second periodic report.

#### *Legislation*

13. The Committee shares the concern expressed by the State party (CRC/C/70/Add.9, para.103) that future progress in the field of child legislation will have to lie in the area of real guarantees of the exercise of the rights enunciated in the legal instruments, including more explicit recognition of the Convention as a part of positive law and more widespread citation of the Convention in legal procedures.

14. The Committee encourages the State party to fully implement the legislation using a rights-based approach and in conformity with the Convention.

#### *Coordination and comprehensive strategy*

15. The Committee, while recognizing the efforts made by the State party to improve

coordination, including through the work of the Observatory for Children, shares the concerns raised by the State party (*ibid.*, paras. 128-129) about the need for intersectoral policies for children and to improve coordination in order to secure integrated action both at national and at Autonomous Community levels. It further notes with concern the absence of a comprehensive policy for children.

16. The Committee recommends that the State party:

- a) Strengthen effective coordination within and between government agencies at national, regional and local levels in the implementation of policies for the promotion and protection of the child, as it previously recommended (CRC/C/15/Add. 28, para. 12);
- b) Formulate a comprehensive strategy for children on the basis of the principles and provisions of the Convention; and
- c) Develop and enforce intersectoral policies for children.

### *Resources for children*

17. The Committee notes with concern that there is not yet a balanced redistribution of resources at the central, regional and local levels and that not all the Autonomous Communities provide the same level of social policies and services for the most marginalized groups in society, in particular, poor families, single-parent families, Roma children and children of migrant families. It notes with particular concern the budgetary problems affecting the autonomous cities of Ceuta and Melilla with reference to care of unaccompanied migrant children.

18. In light of article 4 of the Convention and in line with its previous recommendation (*ibid.*, para. 14), the Committee encourages the State party:

- a) To consider ways through which all children can be guaranteed equal access to the same standard of services, irrespective of where they live for example, by establishing nationwide minimum standards for, and allocation of resources to, the implementation of the Convention's provisions, in particular in the areas of health, education and other social welfare services;

- b) To identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated to the maximum extent of available resources for the full implementation of the economic, social and cultural rights of children, in particular for children belonging to the most vulnerable groups in society; and
- c) To identify the amount and proportion of the budget spent on children at the national, regional and local levels in order to evaluate the impact and effect of the expenditures on children.

#### *Data collection*

- 19. The Committee, while welcoming the creation of Basic Statistics on Child Protection and of a database on children and the efforts of the Observatory for Children to harmonize the system with the Autonomous Communities, remains concerned at the fragmentation of information, which is also due to the various systems and indicators used in each Autonomous Community.
- 20. In line with its previous recommenda-

tion (*ibid.*, para. 13), the Committee reiterates its recommendation that the State party:

- a) Strengthen its mechanism for collecting and analysing systematically disaggregated data on all persons under 18 for all areas covered by the Convention, with special emphasis on the most vulnerable groups, including Roma children, children belonging to migrant families, unaccompanied migrant children and children of economically and socially disadvantaged households;
- b) Use these indicators and data effectively for the formulation and evaluation of policies and programmes for the implementation and monitoring of the Convention. Dissemination

- 21. While noting with appreciation efforts to disseminate the Convention among NGOs and the media, the Committee considers that education for children and the public at large and training activities for professional groups on children's rights need ongoing attention, in particular to provide a better understanding of the legal obligations of the Convention.

22. In line with its previous recommendation (ibid., para. 16), the Committee reiterates its recommendation that the State party:

- a) Continue and strengthen its efforts to disseminate the Convention both to children and to the broader public, including appropriate material specifically for children translated in the different languages spoken in Spain, including languages of migrant children;
- b) Undertake systematic education and training programmes on the principles and provisions of the Convention for all professional groups working for and with children, such as judges, lawyers, law enforcement officials, civil servants, teachers, health personnel and social workers.

## 2. Definition of the child

23. The Committee expresses its concern at the low age of marriage, which can be 14 years of age with the judge's permission, and at the wide variety of minimum ages in civil matters in the various Autonomous Communities.

24. The Committee recommends that the State party review its legislation with a view to increasing the minimum age of marriage and harmonizing minimum ages for civil matters in the various Autonomous Communities.

## 3. General principles

### *General principles*

25. The Committee is concerned that the principles of non-discrimination, best interests of the child, right to life, survival and development of the child and respect for the views of the child are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at both national and local levels.

26. The Committee reiterates its previous recommendation (ibid., para. 11) that the State party:

- a) Appropriately integrate the general principles of the Convention, namely articles 2, 3, 6 and 12, in all relevant legislation concerning children;

- b) Apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children; and
- c) Apply these principles in planning and policy-making at every level, as well as in actions taken by social and health welfare and educational institutions, courts of law and administrative authorities.

#### *Non-discrimination*

27. The Committee is concerned that the principle of non-discrimination is not fully implemented for children of Roma origin, children of migrant workers, particularly when they are not legal, and unaccompanied foreign children, especially with regard to their access to adequate health care and educational facilities.

28. The Committee recommends that the State party:

- a) Monitor the situation of children, in particular those belonging to the above-mentioned vulnerable groups, who are exposed to discrimination; and
- b) Develop, on the basis of the results of this

monitoring, comprehensive strategies containing specific and well-targeted actions aimed at eliminating all forms of discrimination.

29. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and taking account of general comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).

## **4. Civil rights and freedoms**

### *Corporal punishment*

30. In light of its previous recommendation (ibid., para. 18), the Committee deeply regrets that article 154 of the Civil Code, stating that parents “may administer punishment to their children reasonably and in moderation”, has not yet been revised. It acknowledges the information provided in the

State party's replies to the list of issues that a draft law for the revision of article 154 is under development.

31. The Committee reiterates its previous recommendation to amend article 154 in order to delete the reference to reasonable chastisement. It further recommends that the State party:

- a) Prohibit all forms of violence, including corporal punishment, in the upbringing of children, in conformity with article 19 of the Convention;
- b) Conduct awareness campaigns and promote alternative forms of discipline in families.

## **5. Family environment and alternative care Children deprived of family environment**

32. The Committee notes with concern that there are different procedures for child's protection in the 17 Autonomous Communities and that they are not always compatible with the best interest of the child, especially with regard to children

placed in foster families. It further notes that there is an insufficient number of family courts dealing with the protection of children not in conflict with the law and that they take a long time to deal with the judicial procedures.

33. The Committee recommends that the State party:

- a) Ensure that protection procedures for children have a minimum common standard and are compatible with the best interest of the child;
- b) Provide more human and financial resources to family courts so they can deal with their work more expeditiously.

### *Family reunification*

34. The Committee expresses its concern at delays in the procedure for family reunification of recognized refugees, in particular for the issuance of the necessary visa and travel documents by the Ministry for Foreign Affairs.

35. In light of article 10 of the Convention and in line with its previous recommenda-

tion (ibid., para. 22), the Committee reiterates its recommendation that applications for asylum made for the purpose of family reunification be dealt with in a positive, humane and expeditious manner.

### *Abuse and neglect*

36. The Committee, while acknowledging the important role of the System of Social Care for Children in Social Difficulties, remains concerned about the extent of domestic violence, the lack of standardized procedures for the identification and reporting of cases of neglect, ill-treatment and abuse, and the limited services for the support of victims.

37. In light of article 19 of the Convention, the Committee recommends that the State party:

a) Undertake studies on domestic violence, violence against children, ill-treatment and abuse, including sexual abuse, and implement the statistical system created to keep a record of incidents of physical and mental violence and neglect against children, in order to assess the extent and nature of these practices;

b) Adopt and implement effectively adequate measures and policies, including public campaigns, and encourage changing attitudes;

c) Investigate effectively cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy;

d) Take measures to provide support services to children in legal proceedings and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention;

e) Take into account the Committee's recommendations adopted at its days of general discussion on "Violence against children within the family and in schools" (see CRC/C/111) and on "State violence against children" (see CRC/C/100).

## 6. Basic health and welfare

### *Adolescent health*

38. The Committee notes with concern the number of children and adolescents addicted to drugs, in particular synthetic drugs, alcohol and smoking, and the fact that consumption of alcohol and tobacco is socially accepted and not perceived as a risk. It further expresses its concern at the increase in the number of teenage pregnancies.

39. The Committee recommends that the State party:

- a) Enforce existing programmes, such as the National Drug Plan for 2002-2008 and those at Autonomous Community level, with a focus on preventive action and awareness raising on the danger of synthetic drugs, alcohol and tobacco;
- b) Take steps to address adolescent health concerns, including teenage pregnancy and sexually transmitted diseases, through, inter alia, sex education, including birth control measures such as the use of condoms;

- c) Strengthen its mental health and counselling services, ensuring that these are accessible and sensitive to adolescents.

### *Harmful traditional practices*

40. The Committee expresses its concern at reports that female genital mutilation is practised in Spain on girls of sub-Saharan origin.

41. The Committee recommends that the State party:

- a) Undertake a study on the extent and nature of female genital mutilation practised in Spain or abroad on girls who live in Spain;
- b) Organize an information and awareness campaign, taking into account the result of the study, to prevent this practice; and
- c) Take the necessary steps to prohibit it.



## 7. Education, leisure and cultural activities

### *Education*

42. The Committee notes with concern:

- a) The high rate of truancy and school drop-out and the difficult school integration of Roma children, children belonging to migrant families or children living in socio-economically deprived areas;
- b) That some children belonging to migrant families, particularly girls, do not complete their compulsory education or have great difficulties in attending school;
- c) The rather widespread bullying in schools;
- d) The negative impact of terrorism on children's development.

43. The Committee further notes that a Quality Education Act is under development.

44. In light of articles 28 and 29 of the Convention, the Committee recommends that the State party:

- a) Ensure regular attendance at schools and the reduction of truancy and drop-out rates, especially with regard to Roma children and children belonging to migrant families;
- b) Take measures to prevent bullying and other forms of violence in schools, in light of the Committee's recommendations adopted at its day of general discussion on "Violence against children within the family and in schools";
- c) Ensure that the educational process will promote the culture of peace and tolerance, as well as address the negative impact of terrorism on the physical and psychological well-being of children;
- d) Take into consideration the Committee's general comment No. 1 on the aims of education in the development of the Quality Education Act.

## 8. Special protection measures

### *Unaccompanied foreign children*

45. The Committee is deeply alarmed about

the conditions of unaccompanied foreign children, mostly Moroccans, especially in the autonomous cities of Ceuta and Melilla. In particular, it expresses its concern at reports of:

- a) Ill-treatment of children by police during forced expulsion to the country of origin where, in some cases, they were deported without access to legal assistance and interpretation;
- b) Failure to provide for these children the temporary legal residency status to which they are entitled under the law because the Department of Social Welfare, as their legal guardian, did not apply for it;
- c) Overcrowding and bad conditions of residential centres and cases of ill-treatment by residential centre staff and other children;
- d) Denial of access to health care and education, although guaranteed by law;
- e) Summary expulsions of children without ensuring that they are effectively returned to family or social welfare agencies in their country of origin.

46. The Committee recommends that the State party urgently take the necessary measures in order to:

- a) Ensure the implementation of Organizational Act 4/2000 and other laws by providing to unaccompanied foreign children access to residential care, education, emergency services and other health care, and temporary residency documents;
- b) Provide the autonomous cities of Ceuta and Melilla with the necessary financial and human resources for the care of these children;
- c) Coordinate with the Government of Morocco to ensure that when children are repatriated from Spain to Morocco, they are returned to family members willing to care for them or to an appropriate social service agency;
- d) Take all measures to prevent irregular procedures in the expulsion of unaccompanied foreign children;
- e) Investigate in an effective way reported cases of ill-treatment of these children;

- f) Provide unaccompanied foreign children with information about their rights under Spanish and international law, including the right to apply for asylum;
- g) Take all necessary measures to improve the conditions and safety of residential centres and adequately train residential centre staff;
- h) Establish effective mechanisms to receive and address complaints from children in care, monitor standards of care and, in light of article 25 of the Convention, establish regular periodic review of placements;
- i) Consider signing and ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as previously recommended (ibid., para. 23).

#### *Economic exploitation*

47. The Committee expresses its concern at reports of child labour, especially in family business and the agricultural sector, and at the lack of information on this issue.

48. The Committee recommends that the State party:

- a) Undertake studies, such as the one conducted by the Ministry of Social Labour and Social Affairs and the Spanish Committee for UNICEF on “Diagnosis concerning various types of exploitation of juveniles in Spain”, to assess the nature and extent of child labour in Spain, in particular in family businesses and in the agricultural sector;
- b) Develop, on the basis of the results of these studies, comprehensive strategies containing specific and well-targeted actions aimed at preventing and eliminating child labour;
- c) Continue to implement programmes aimed at preventing and eliminating child labour through awareness-raising activities and detection of causative factors.

#### *Sexual exploitation*

49. The Committee expresses its concern at reports of child prostitution in the suburbs of large cities and in holiday resorts,

involving vulnerable children living on the fringes of society.

50. The Committee recommends that the State party:

- a) Protect all persons under 18 from all forms of sexual exploitation, even when children have consented, under pressure of money, threats or, allegedly, “freely”, to such acts;
- b) Organize campaigns for protection against sexual abuse, prostitution and child pornography;
- c) Implement the National Plan of Action against Commercial Sexual Exploitation of Children 2002-2003.

#### *Children belonging to minority groups*

51. While noting the State party’s policies targeting the specific needs of the Roma, such as the projects for the Comprehensive Social Intervention for the Care, Prevention of Exclusion and Integration of the Gypsy people and the Gypsy Development Plan, the Committee remains concerned about the difficult

social situation of Roma children and their insufficient access to the education system.

52. The Committee strongly urges the State party:

- a) To take measures to improve and implement more effectively existing legislation and policies with regard to assuring protection of the rights of all children from minority groups, giving particular attention to the situation of Roma children;
- b) Continue to ensure the participation of persons from minorities, including children, in the drafting and implementation of these policies.

#### *Administration of juvenile justice*

53. The Committee welcomes the adoption of the Organizational Act 5/2000 of 12 January on penal responsibility for minors and its educational character, but notes that it would need additional human and financial resource to be implemented effectively. It further notes with concern that the Organizational Act 7/2000 on terrorism increases the period of police custody and the

length of prison terms for children accused of terrorism (to up to 10 years). It expresses its concern also at the fact that deprivation of liberty is not used as last resort and that in some cases detention centres are overcrowded.

54. In light of articles 37 to 40 and other relevant international standards, the Committee recommends that the State party:

- a) Allocate adequate human and financial resources in order to ensure the full implementation of the Organizational Act 5/2000;
- b) Align the period of police custody for children accused of terrorism with the provisions of the Act and review the length of prison terms for children accused of terrorism;
- c) Provide training on the new juvenile system to those responsible for administering juvenile justice;
- d) Encourage the use of alternative measures to the deprivation of liberty.

## **9. Dissemination of documentation**

55. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the second periodic report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the parliament and the general public, including concerned non-governmental organizations.

## **10. Periodicity for submission of reports**

56. In light of the recommendation on reporting periodicity adopted by the Committee and described in the report on its twenty-ninth session (CRC/C/114), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States

parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting

obligations in full compliance with the Convention, the Committee invites the State party to submit its third and fourth reports in one consolidated report by 4 January 2008, the due date for the submission of the fourth report. The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.



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