



# Convention on the Rights of the Child

Distr.: General  
24 September 2010

Original: English

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## Committee on the Rights of the Child Fifty-fifth session

### Summary record of the 1548th (Chamber A) meeting

Held at the Palais Wilson, Geneva, on Wednesday, 15 September 2010, at 10.00 a.m.

*Chairperson:* Ms. Lee

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*Third and fourth periodic reports of Spain*

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*The meeting was called to order at 10.00 a.m.*

**Consideration of reports of States parties** (continued)

*Third and fourth periodic reports of Spain (CRC/C/ESP/3-4; CRC/C/ESP/Q/4 and Add.1; HRI/CORE/1/Add.2/Rev.2)*

1. *At the invitation of the Chairperson, the members of the delegation of Spain took places at the Committee table.*

2. **Mr. Garrigues** (Spain) said that it was an honour for Spain to participate in an interactive dialogue with the Committee in relation to an instrument as important as the Convention on the Rights of the Child, whose twentieth anniversary States parties had recently celebrated.

3. As a democracy, Spain adhered to the fundamental principle that the realization of human rights was part of the universal and inalienable heritage of all human beings. Both the Spanish Constitution of 1978 and the ongoing process of signature and ratification of international human rights treaties by Spain had contributed to the effective development of human rights in the country. Their promotion and protection were considered overarching priorities by the Spanish Government, and on the occasion of the thirtieth anniversary of its Constitution in 2008, Spain had adopted a National Plan for Human Rights. In recent years, Spain had significantly enhanced the promotion and protection of human rights through the promulgation of new laws and the introduction of mechanisms such as the citizenship and human rights education programme.

4. Spain was fully committed to the international human rights system. It cooperated with the United Nations treaty bodies and other international organizations charged with monitoring respect for human rights and participated actively in the work of the Human Rights Council. Spain was one of the chief donors to the Office of the United Nations High Commissioner for Human Rights (OHCHR). As a reflection of its dedication to the protection of children's rights, Spain had the privilege of presenting for membership in the Committee a candidate of high moral standing and recognized competence in the field of human rights.

5. He had every confidence that the Committee's observations and recommendations would be of great usefulness to his country in its ongoing commitment to improving its human rights mechanisms.

6. **Ms. García Blanco** (Spain), introducing her country's third and fourth periodic reports, said that one of the most important achievements of the closing decades of the twentieth century had been the emergence of a broad consensus concerning the need to strengthen the protection of children. The social and cultural transformation that had occurred since that time had included a change in the social status of the child, primarily resulting in the recognition of the child as the subject of rights and an increased capacity for children to exercise their rights.

7. The ratification of the Convention by Spain in 1990 had led to the incorporation of its provisions in domestic law, representing a turning point in the legal treatment of children that opened the door to the full integration of children's rights in the human rights system. The role of the child in Spanish society took on a new dimension, and children became the recipients of special attention and recognition as subjects of rights. The Convention had become the framework regulatory instrument for all policies aimed at children and young people, and as a result, children's issues figured prominently in the development of both legislation and public policy.

8. In an effort to implement the recommendations issued by the Committee in 2002, the Government had worked intensively to improve public information and awareness of

the Convention, including through the training of professionals and the introduction of a citizenship and human rights module in primary and secondary school curricula. Statistical knowledge had also been improved through studies analysing the situation of the most vulnerable categories of children. Moreover, cooperation with the Spanish Committee for the United Nations Children's Fund (UNICEF) had been established with a view to developing a child welfare indicator system.

9. In response to the Committee's concerns about coordination between the various authorities responsible for children's issues, she noted that, far from detracting from the protection of children, Spain's highly decentralized administration served as an effective tool to protect their rights further. It made sense for regional and municipal authorities, which were closest to the realities experienced by children, to have policymaking and executive power to ensure greater protection for children. Moreover, useful initiatives taken in one autonomous region tended to be replicated immediately in others, thus preventing interregional inequality in standards of child protection.

10. Equal recognition of children's rights and coordination between administrations was ensured, from the regulatory perspective, by means of common State legislation covering all children's rights and core components of child protection policy, both of which applied in the whole of the national territory. From the executive perspective, there were a number of important bodies that ensured coordination of child policy. The first was the Juvenile Prosecutor's Office, which specialized in the protection of children's rights and operated on the basis of uniform criteria throughout the country to achieve equal protection, regardless of a child's place of residence. The second was the Directorate-General for Social Policy, Families and Children, which coordinated programmes in the area of child protection and promoted forums for collaboration between public authorities. The third was the Children's Monitoring Centre, a State-level advisory body in which all national children's institutions were represented.

11. The Children's Monitoring Centre had developed a centralized and shared information system containing data on the child population and on the development, implementation and effects of the public policies affecting children. In 2006, the Monitoring Centre had approved the National Strategic Plan for Children and Adolescents, which defined, on the basis of consensus among all relevant authorities, the broad strategic components of Spain's policies on children and adolescents, taking into account the Committee's recommendations issued in 2002. The basic principles of the plan thus reflected those governing the Convention.

12. The actions to be taken under the National Strategic Plan for Children and Adolescents were based on the detection and prevention of problems and new challenges in the following areas: information sharing, mutual assistance and collaboration, the adoption of common performance criteria and the development of a culture of cooperation between the public and private institutions committed to protecting children's rights. The evaluation of the plan's implementation had been very positive, and the Government intended to incorporate the Committee's observations, following its consideration of the third and fourth periodic report, into the final draft of the second National Strategic Plan for Children and Adolescents, which was in the process of being formulated.

13. In December 2007, the Children's Monitoring Centre had formulated a joint and comprehensive protocol of action to ensure coordination in the prevention of child abuse and care for the victims of such abuse. The protocol set minimum standards for the care of victims, which provided a linkage between competent institutions in the education, health, police, social and judicial sectors.

14. It should be noted that in recent years the Autonomous Communities had been working to set up their own Children's Monitoring Centres, which had helped advance the

formulation of an overall strategy for children, the creation of a comprehensive data-collection system and significant improvements in the situation of children in Spain.

15. Turning to the issue of the child's right to be heard, she noted that the Act on the Legal Protection of Minors had expanded the scope of that right in any administrative or court proceedings affecting their personal, family or social environment. Since its adoption, Spanish legislators had continually endeavoured to ensure that children's views were heard and taken into account as a means of arriving at the most appropriate judicial decision. Children's participation in court proceedings was conditioned by their situation and level of maturity and by respect for their privacy. It was noteworthy that the Constitutional Court, in its established jurisprudence, emphasized the relationship between the child's right to be heard and his or her right to an effective legal remedy. Any failure to give a child a proper hearing thus amounted to a direct violation of the Spanish Constitution.

16. Likewise, the technical means to safeguard children's rights in court proceedings had been strengthened. The latest amendment to the Criminal Procedure Act, in addition to promoting the use of videoconferencing and partition screens, was intended to avoid the repetition of minors' statements, the duplication of medical or psychological examinations and court delays. Moreover, steps had been taken to ensure the presence of a representative of the Public Prosecutor's Office when receiving children's statements, in recognition of the role of the Office as the protector of children's basic rights.

17. With regard to education, it should be noted that, in the current school year, the Spanish education system would register the highest rate of enrolment in its history. Nearly all of Spain's child population between the ages of 3 and 6 attended school free of charge, and a programme was being carried out to promote the creation of new places for children between the ages of 0 and 3. In addition, plans for the enhancement of educational performance targeted pupils from disadvantaged sociocultural backgrounds with the aim of securing their integration in the school system, particularly in the case of foreign pupils. Lastly, steps to create a more harmonious environment in schools included an action plan for the promotion and improvement of coexistence in schools, the establishment of the State Monitoring Centre for School Coexistence and Conflict Prevention and the development, in conjunction with local bodies, of the Master Plan for Coexistence and Improvement of School Safety, which was intended to address bullying, drugs, alcohol abuse, youth gangs, xenophobia, Internet risks and gender violence. A further aim was to increase children's confidence in the State law enforcement agencies, which had held thousands of meetings and training sessions in schools in the period 2007–2009.

18. A number of noteworthy legislative developments in Spain had strengthened child protection in keeping with the Committee's recommendations. In 2007, an amendment had been made to the Civil Code stipulating that parental authority was always to be exercised in keeping with the best interests of the child and with respect for their physical and psychological integrity. In June 2010, a number of amendments had been made to the Criminal Code, including: increased penalties for child sexual abuse and the introduction of measures to enhance the effectiveness of protection for children; criminalization of acts related to the cyber-sexual harassment of children; criminalization of the conduct of child prostitution customers; enlargement of the scope of the offence of child pornography; introduction of probationary measures for sex offenders considered to represent a danger, even after serving out their sentences; and increased penalties for child trafficking.

19. The Criminal Code also dealt with crimes against the international community in a new way, particularly with regard to the protection of children in armed conflicts. It specifically punished persons recruiting, enlisting or using as direct participants in an armed conflict anyone under the age of 18, thereby bringing Spain's legislation into line with the Optional Protocol to the Convention on the Rights of the Child on the involvement of

children in armed conflict and exceeding the requirements of the Rome Statute in that regard.

20. Spain had adopted several other new pieces of legislation expressly addressing particular aspects of the protection of children's rights. The Asylum Act (2009) provided that differential treatment should be given to children in recognition of their inherent vulnerability. The Foreigners' Rights and Freedoms Act (2009) ensured protection for the rights of unaccompanied minors, including the right to be heard. In addition, the Audiovisual Communication Act (2010) addressed the risks to children posed by television programming and contained an extensive list of their rights from that perspective. It classified programming content according to age, set restrictions on broadcast times, required broadcasters to provide parents with a digital coding system for blocking reception and provided for the promotion of an advertisers' code of conduct in order to encourage healthy dietary practices in children.

21. During its recent presidency of the Council of the European Union, Spain had promoted preparatory work for the adoption of European directives on sexual abuse, sexual exploitation of children, child pornography and child trafficking. In addition, it was working to promote the adoption of a recommendation for the promotion of the human rights of minors in the context of the penal process at the forthcoming Conference of Ministers of Justice of the Ibero-American Countries to be held in Mexico in October 2010. Lastly, in March 2009, Spain had signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse, which had been approved by the Spanish Council of Ministers for ratification in March 2010.

22. **The Chairperson** said she wished to draw attention to the fact that the translation sections of the United Nations Office at Geneva had regrettably been unable to translate Spain's written replies to the list of issues (CRC/C/ESP/Q/3-4/Add.1) in time for them to be distributed at the current meeting. Given that not all Committee members were fluent in Spanish, some of their questions might, without their knowledge, have been answered in the State party's written replies. Delays in translation were a problem that plagued the other treaty bodies as well and undermined their work. As Spain was one of the largest donors to OHCHR, perhaps it might see fit to take up the matter through the appropriate channels.

23. **Mr. Citarella** (Country Rapporteur), elaborating on the Chairperson's comments, recalled that the State party's report, which had been submitted in 2008, referred to documentation and analysis of the State party's legislation and practice for the period 2002–2006. As the written replies had been intended to provide follow-up information concerning the intervening period 2006–2010, the gap in some Committee members' knowledge for that period had therefore not been bridged.

24. The very informative third and fourth periodic reports demonstrated Spain's determination to bring its legislation and practices concerning children's rights into line with the Convention, and it had made much progress in doing so. However, there were still areas in which it had not yet fully implemented the Committee's recommendations. One such area concerned the minimum age for marriage, which was currently set at 14, and which, according to the Committee's jurisprudence and practice, was far too low.

25. Secondly, the highly decentralized structure of Spain, with its many autonomous provinces and authorities, meant that there was a risk of children being treated differently in different parts of the country. The problem was exacerbated by the fact that there was no proper coordinating mechanism on children's rights. The Committee would therefore request further information on whether the legislation of the autonomous authorities was in line with that of the central Government.

26. The State party had said that the report had been drafted in cooperation with all the relevant ministries and civil society. He wondered, however, how participating civil society representatives had been selected

27. Another problem was that, as the report admitted, there could be de facto discrimination against particular categories of children, such as migrant children, Roma children and unaccompanied children.

28. He noted that Spanish legislation did not guarantee children the right to express their point of view and to have it taken into account in matters concerning them. Legislation should be amended to provide that guarantee. Lastly, he requested further information on the recent changes to the legislation on asylum.

29. **Mr. Kotrane** said that Spain's very success in improving its legislation and policies on children inevitably had the effect of making the Committee even more demanding. Some problems remained. For example, the Country Rapporteur had mentioned the issue of unaccompanied minors. Spain had ratified all the international protection instruments, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was also relevant to children's rights, and he wondered whether that convention would be ratified in due course. Another question related to the Committee's recommendations following its consideration of Spain's first report on the Optional Protocols in October 2007. The State party had told the Committee that comprehensive legislative reforms were before Parliament with a view to harmonizing the country's criminal legislation with the provisions of the Protocols and defining the acts referred to in articles 2 and 3 of the Protocol on the sale of children, child prostitution and child pornography, such as forced labour of children or adoption. He wondered whether those reforms had taken place.

30. A further issue was the definition of a child. Spanish law permitted children to marry at the age of 14 and — of even greater concern — the age of sexual consent was 13. Similarly, as was stated in paragraph 205 of the report, the Criminal Code had been amended to punish with imprisonment the use of children under 13 in pornography. In both cases, the age limit should be higher.

31. With regard to the participation of children in decisions affecting them, he welcomed a ruling of the Constitutional Court explicitly referring to article 12 of the Convention relating to the best interests of the child. In his view, however, the country's legislation should be changed so that article 12 was always taken into account, particularly given that a judge had to state the grounds on which a decision had been reached.

32. **Ms. Aidoo**, after commending the training given to education professionals and to children, said that she hoped such training could be extended to lawyers, judges and university students. She wondered whether the Convention was well known by the general public, including families, children and adolescents. She asked whether the rights-based approach of the Convention really informed and influenced the policies of sectors working with children and whether efforts to disseminate information on children's rights had been evaluated. Spain had made great progress in other areas, such as gender equality, and the next priority should be children's rights. NGOs should be fully supported in their work, since, although the State had ultimate responsibility, implementation of the Convention required partnership with NGOs and civil society.

33. **Mr. Gurán** said that he was concerned that, notwithstanding the wide geographical range of independent ombudsmen's offices, not all children had equal access to their services. The same was true of the monitoring centres mentioned in annex I of the report. The Madrid Monitoring Centre, for example, was a State institution and he wondered whether the monitoring centres in such places as the Canary Islands had the same status. Since Spain would be drawing up a new action plan for children, it should ensure equal

access by all children to their rights and thereby provide a model for the rest of Europe. As for the question of unaccompanied children, he requested further details of the agreements on that topic with Morocco and Senegal.

34. **Ms. Ortiz** requested information on the effects of self-regulation by the media as it affected the welfare of children. She asked what other measures had been taken to ensure that television and Internet companies respected children's rights, given that children were a captive audience for such companies.

35. She asked whether it was considered a crime when the reputation or honour of a child was put at risk, whether within the country or by Spanish producers elsewhere. She knew of cases in which the rights of children in El Salvador, Colombia and her own country, Paraguay, had been violated by Spanish media companies and she wondered how such children could be protected and what sanctions existed. She added that her comments should be seen against the background of the great progress made by Spain in the area of children's rights, particularly when compared with other countries, in Latin America and elsewhere.

36. **Mr. Puras** said that Spain constituted a good example of progress over a relatively short period — one generation — from dictatorship and the systematic abuse of children to the current enlightened situation. The bar had been raised and the world might well look to Spain as a model. Some problems remained, however. The Committee was concerned in particular about vulnerable children deprived of various freedoms. In that connection, he requested further information about the centres that had been set up by various authorities for children with behavioural problems. Such centres were not part of the juvenile justice system, so he wondered who decided on the level of restriction to be imposed, how the process was monitored and how far civil society was involved.

37. He noted that Spain had both regulatory and self-regulatory mechanisms for the media and he wondered how the two mechanisms coexisted. The introductory statement had mentioned restrictions on the content of television programmes and he asked how decisions were made on the morality of the content of television programmes.

38. The Committee commended the progress made on eliminating corporal punishment and the provision that parents must respect the physical and psychological integrity of children. He asked whether the problem had thus been solved or whether the Committee could usefully make further recommendations on the full legislative prohibition of corporal punishment. It was, again, a question of the delicate balance to be maintained in deciding how far the State should interfere in such matters.

39. He noted that Spain seemed to have established a consensus on issues affecting children, despite the existence of different ideologies and a strong Roman Catholic Church. Since the country seemed to have the secret of success, he requested the delegation's views on, for example, confidential services for adolescents and whether the authority of the family was thereby undermined, as critics of the Committee had claimed. Generally speaking, he wondered whether children's rights were still a subject of impassioned debate in Spain.

40. **Ms. Al-Asmar** wished to know how the State party ensured the rights of unaccompanied minors, including the right to life of those unaccompanied minors who were returned to the border police at the Moroccan border, whether their views were listened to and who ensured that action was taken in their best interests.

41. There were many asylum-seekers with different religious backgrounds in the school system in Spain; she wished to learn what action was taken to ensure that the new pupils were accepted in the schools. Regarding access to appropriate information, she asked how the rights of those children who could not yet speak Spanish were catered for. Concerning

corporal punishment, she asked how the State party could guarantee that it no longer existed inside family homes.

42. **The Chairperson**, noting that a new plan of action for children and adolescents was being formulated, asked whether the previous action plan had been evaluated and the resulting information shared with the appropriate stakeholders, including the autonomous communities and Government ministries. On allocation of resources, it was difficult to ascertain from the reports submitted how much was spent on children's issues; she asked whether the impact of the children's budget had been measured. Spain's expenditure on social policies for children appeared to be low when compared with the European average and its investment in education for children had remained at the same comparatively low level for some years. Child poverty had not been adequately addressed in the report and although poverty in general was decreasing in Spain, the level of child poverty remained higher than in the adult population. She wished to know whether the objective to reduce child poverty had been included in the former plan of action and whether it would be included in the next plan of action for children and adolescents. In future, the Committee would like to see more information on implementation of the two Optional Protocols in the State party's reports.

*The meeting was suspended at 11.25 a.m. and resumed at 11.55 a.m.*

43. **Mr. Fernández Cid** (Spain), responding to questions raised, said that some of the information requested could be found in the State party's third and fourth periodic reports (CRC/C/ESP/3-4) and in the replies to the list of issues (CRC/C/ESP/Q/3-4/Add.1), although unfortunately the latter had not been translated in time for the meeting.

44. In response to the concern raised by Mr. Citarella, he said that unaccompanied foreign minors were not the subject of discrimination: all unaccompanied minors were referred to the respective local authorities or Autonomous Communities as soon as it had been established that they required protection.

45. In response to the question by Mr. Gurán concerning the situation in other European countries, he said that most unaccompanied minors in Spain were migrants and comparatively few were asylum-seekers. A European "Action Plan on Unaccompanied Minors (2010–2014)" was being implemented by Spain. The purpose of the Plan was threefold: to take preventive action in the countries of origin in order to discourage minors from leaving and so reduce their vulnerability; to take action to integrate minors in the country of destination once they had arrived; and to help them to return to their country of origin. The best interests of the child were paramount in any measures taken in Spain and therefore a child would only be returned to his or her country of origin if it was deemed to be in their best interests and if the country of origin gave a guarantee that the child would be integrated into the country. Agreements in respect of the assisted return of minors had been signed with Senegal in 2006 and with Morocco in 2007; the agreement with Morocco was awaiting ratification by the Parliament of Morocco. The Central Government in Spain gave financial support to the Autonomous Communities to assist in the protection of unaccompanied minors.

46. **Ms. Ortiz** requested further information concerning the register of unaccompanied foreign minors mentioned in the State party's report.

47. **Mr. Fernández Cid** (Spain) said that the Ministry of the Interior kept a register of all unaccompanied foreign minors living on Spanish soil which was administered by the national and border police services. All unaccompanied minors were referred in the first place to the police who would immediately inform the Public Prosecutor's Office. The minor would then be placed in contact with a diplomatic representative from their country of origin and, where possible, their family would be informed. If a minor lacked identity papers or there was any doubt as to their age, the Public Prosecutor would arrange for them



to be taken to a health facility to undergo a biometric test. All minors identified in that way would be taken immediately to a child protection centre.

48. The identity of minors was established according to the information they supplied and they were allowed to travel throughout Spain using that identity once it had been established. Social services maintained close contact with unaccompanied minors who would usually request help in establishing contact with family members in their country of origin, thus providing the authorities with a helpful route to confirming their identity.

49. **Mr. Citarella** asked what procedure was applied in cases where unaccompanied children were sent back to their country of origin. He asked whether unaccompanied children could be sent back by the police to the border police in their country of origin rather than to social services or other, more child-friendly, authorities.

50. **Mr. Kotrane**, noting that the first question posed to unaccompanied minors was to determine their age, reiterated the Committee's concern that age assessment procedures, which were frequently carried out by the Autonomous Communities, were not conducted in a uniform manner throughout the country. He recalled the Committee's general comment No. 6 (2005), entitled "Treatment of unaccompanied and separated children outside their country of origin", paragraph 31 of which stipulated that age assessment and identification measures should be conducted "with due respect to human dignity" and that, in the event of remaining uncertainty, the individual should be accorded the benefit of the doubt. He wished to know what the Government of Spain would do to avoid the use of the wrist bone assessment to determine the age of an unaccompanied minor. Further, in situations where a judge had decided that the child's interests would be best served by return to the country of origin, he sought confirmation that they would be returned in the first instance to social services and not to the customs authorities.

51. **Mr. de la Rosa Cortina** (Spain) said that the decentralization of the Spanish Administration in no way affected the procedures to determine the age of unaccompanied minors since, in accordance with Spanish law, the wrist bone assessment was carried out at the behest of an independent judicial body. Further, if the wrist bone assessment showed an upper limit above and a lower limit below the age of 18, the individual concerned would be accorded the benefit of the doubt and treated as a minor.

52. **The Chairperson**, while acknowledging that a judicial process was followed, said that the team assessing the age and status of the child should include social workers and child psychologists in order to ensure that the assessment was child-friendly. She agreed that in cases where the wrist bone assessment proved inconclusive, the individual should be given the benefit of the doubt.

53. **Mr. de la Rosa Cortina** (Spain) said that, since speed was of the essence in determining whether an individual was to be sent to a protection centre or returned to their country of origin, an X-ray of the left wrist was organized immediately by the prosecutor's office. It was thus possible to avoid the unnecessary expulsion of minors and to prevent adults being sent to the protection centre for children. Where the wrist bone assessment proved inconclusive, the individual would always be given the benefit of the doubt.

54. **Mr. Fernández Cid** (Spain), responding to Ms. Al-Asmar's concerns about the rights of unaccompanied minors, said that the return of a child to his/her country of origin was always treated as assisted repatriation and not deportation. Unaccompanied minors would only be repatriated if the country of origin gave a guarantee that the child would be returned to his/her family or to a child protection centre in the country. They were always escorted by two Spanish police officials, male or female depending on the gender of the minor concerned, who handed them over to the national authorities of the country of origin.

55. In response to Mr. Citarella's request for further information on the recent changes to asylum legislation, he said that article 48 of the new Asylum Act set forth the procedure for unaccompanied minors seeking asylum, which involved transferring the minor to the child protection services, informing the Public Prosecutor's Office and appointing a representative. Rights such as access to free health care and legal assistance, the services of an interpreter and social protection would also apply to unaccompanied minors. Article 17 specified that the particular circumstances of asylum-seekers should be taken into account in the application procedure, ensuring that the specific needs of unaccompanied minors would be met. Article 36 regulated access to education and health care and the right to family reunion. Article 39 also dealt with the right to family reunion, guaranteeing the right of an unaccompanied minor to bring his/her immediate family to Spain. He said that 12 requests for asylum from unaccompanied minors had been filed in 2008 (9 boys and 3 girls) and 19 in 2009 (17 boys and 2 girls).

56. Concerning Mr. Kotrane's question on whether the State party intended to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), he replied that Spain was not considering ratifying the convention, as the rights enshrined therein were already covered in its domestic legislation.

57. **Mr. Blázquez Martín** (Spain), responding to Ms. Aidoo's comments, said that the Spanish Government accorded the same priority to gender equality and children's rights, which were interlinked. Royal Decree 1393/2007 stipulated that university education must include respect for and promotion of human rights, specifically the promotion of equality between the sexes, the recognition and special protection of the rights of persons with disabilities and the culture of peace, and especially training on the content of human rights conventions.

58. In response to Mr. Puras' comments on the balance between the State, the family and individual interests with respect to gender equality and children's rights, he said that Spain's position was that human rights, especially for vulnerable groups such as children, could never be a matter of individual or private interest. On the contrary, they were always of general interest and every effort was made to guarantee the fundamental rights of women and children in private as well as public settings.

59. Turning to Mr. Citarella's concern about de facto discrimination, he said that Spain had experienced significant demographic changes over the past 10 years and the Ministry of Equality was developing a comprehensive response to embrace the country's broad social diversity, which was considered an asset. Measures included setting up a general directorate to combat discrimination and establishing an independent body to guarantee rights, combat all forms of discrimination and provide support for victims, which was chaired by a representative of civil society. In addition, the Spanish Institute for Youth had carried out a study in 2010 into all forms of discrimination affecting children and adolescents, the Government was drafting a bill on guaranteeing the right to equal treatment and combating all forms of discrimination, and the Ministry of Equality had supported a national campaign to eliminate discrimination and abuses against adolescents of the lesbian, gay, bisexual and transgender (LGBT) community.

60. **Mr. García Cabrerizo** (Spain), in response to the Chairperson's comments about investment in education, reiterated that Spain had recorded its highest ever rate of school enrolment in 2010, including a sharp increase in foreign pupils, from 107,000 in the 1999/2000 academic year to 762,000 in 2009/10. Investment in education was expected to reach 5.11 per cent of gross domestic product (GDP) in 2010, against 4 to 5 per cent between 2006 and 2009, which was a positive trend and in line with European targets. The Ministry of Education's plan of action for 2010/11 would include targets to improve intercultural integration, embrace diversity, make better provision for children with special educational needs and raise academic achievement for all, especially foreign pupils.

61. **Mr. de la Rosa Cortina** (Spain), responding to concerns raised by Mr. Citarella and Mr. Kotrane, said that the general minimum age for marriage was set at 18 but that article 48 of the Civil Code stipulated that a judicial waiver could be given to authorize persons to marry from the age of 14, provided there were good grounds for doing so. There was a strict authorization procedure involving a judge and the Public Prosecutor's Office. The child concerned and his/her parents had a right to be heard and a waiver could be given only when the judge and the Public Prosecutor were satisfied that there were good grounds under article 48 of the Civil Code and that the child was mature enough to understand the full implications of the act of marriage.

62. **Mr. Citarella** (Country Rapporteur) said that the Committee was not concerned about the authorization procedure but that 14 years of age was too young and was not in line with European and international law. Did the Spanish Government envisage raising the minimum age for marriage from 14 to 18, in accordance with the Committee's recommendations?

63. **Ms. Aidoo** asked how the minimum age of 14 for marriage affected the education of a child. Did the provision for a judicial waiver apply to both girls and boys?

64. **Mr. Kotrane** said that a lacuna in the law meant that children could still marry at age 14, as noted in paragraph 197 of the State party's report (CRC/C/ESP/3-4). The Committee would like Spain to amend its legislation to set the minimum age for marriage definitively at 18 for both girls and boys.

65. **Mr. de la Rosa Cortina** (Spain) reiterated that the general minimum age for marriage was 18 but that article 48 authorized marriage from the age of 14 in exceptional circumstances, provided there were good grounds for doing so. The provision for a judicial waiver applied to both girls and boys and, in practice, only 39 marriages between persons under the age of 18 had taken place throughout Spain in 2010. Care was taken to ensure that there was no significant age difference between the marriage partners to avoid inference of wrongful grounds. Most persons requesting a judicial waiver belonged to ethnic or national groups with a tradition of common law marriage between couples at a younger age than in the average population. There were currently no plans to amend article 48.

66. **Ms. Ortiz** asked whether Spain had a comprehensive breastfeeding policy and a system to monitor the marketing of breast-milk substitutes. She wished to know why Spain had not ratified the ILO Convention concerning the revision of the Maternity Protection Convention (Revised) (No. 183), which would help to guarantee mothers' rights.

67. She welcomed the recent amendments to the Criminal Code concerning child pornography offences and new types of illegal conduct and asked whether unduly influencing consent to adoption was included, as had been recommended by the Committee in relation to Spain's implementation of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography.

68. While the Intercountry Adoption Act of 2007 had brought improvements to the system of monitoring the adoption process, she expressed concern that the involvement of Spanish adoption agencies in development and aid programmes for children in orphanages or poor families might constitute a conflict of interest and unduly influence adoption decisions. She also expressed concern that the scheme allowing foster families in Spain to look after children from abroad might cause family ties to be loosened and hasten the adoption process, promoting a kind of forced adoption. Moreover, foster families were not subject to the same rigorous procedure as families wishing to adopt. She asked why more efforts were not being made to increase the currently low rate of national adoptions. Lastly, she asked for clarification on why adoptions from Ethiopia were so high — now exceeding those from Guatemala — given that Ethiopia had not ratified the Hague Convention on

Protection of Children and Cooperation in Respect of Intercountry Adoption, even though Spain had said in its replies to the list of issues that priority was given to countries that had ratified the Convention.

69. **Mr. Puras** requested clarification on current trends in the education of children with disabilities, including those with severe and complex mental disorders such as autism. While the Committee supported moves towards inclusive education, children and parents had the right to choose an educational setting, including good special schools.

70. With regard to health, he welcomed the information in the State party's report (CRC/C/ESP/3-4) on measures to combat adolescent drug and alcohol abuse but asked for more details on teenage pregnancies and mental health issues. The prevalence of child and adolescent mental health problems in Spain had been reported elsewhere and he welcomed the approval of a new child and adolescent specialist psychiatry service. That momentum should be used to develop a national comprehensive child and adolescent mental health policy, with the backing of interest groups such as pharmaceutical companies. In that context, he asked for clarification on reports of the unnecessary medicalization and prescribing of medication to children, for example in cases of ADHD.

71. He asked for more information on how mental health and emotional well-being issues were being promoted in schools. In addition to the positive measures on school safety and coexistence introduced by Spain, the Committee would like to see more investment in promoting good emotional health and a good emotional climate in schools.

72. He also asked for further information on the centres for children with behavioural disorders and social problems and the measures taken to guarantee the right to play, which was vital to the health and development of children.

*The meeting rose at 1 p.m.*