



**Convention on the
Rights of the Child**

Distr.
GENERAL

CRC/C/OPAC/ESP/1
16 October 2006

ENGLISH
Original: SPANISH

COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 8 OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON
THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN
ARMED CONFLICT**

Initial reports of States parties due in 2004

SPAIN*

[5 October 2006]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Introduction

1. This document is the first report that Spain has submitted to the Committee on the Rights of the Child under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (hereinafter referred to as the Optional Protocol). The report was produced by the Ministry of Foreign Affairs and Cooperation in Spain with the involvement of relevant ministries and departments. These bodies will circulate the report prepared under the Optional Protocol together with the recommendations to be made by the Committee on the Rights of the Child.

2. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was ratified by Spain on 8 March 2002 and is part of Spanish legislation under article 96, paragraph 1, of the Spanish Constitution (1978):

“Validly concluded treaties, once officially published in Spain, shall form part of its domestic law. Their provisions may only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law.”

3. In addition, article 10, paragraph 2, of the same text states that: “The principles relating to the fundamental rights and liberties recognized by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain.”

4. Ratifying this Optional Protocol in Spain has not necessitated the adoption of any legislative measures to comply with its provisions, since, prior to its ratification, the enlistment of minors in the armed forces was already not permitted.

Article 1

5. The minimum age of entry into the Spanish armed forces is 18 years, as attested by information contained in the national identity document for Spanish citizens or the equivalent document issued by the Spanish authorities to foreign citizens.

6. As stipulated in the preamble to the Armed Forces Personnel (Regulations) Act, Act No. 17/1999, compulsory military service is being abolished and a new system introduced in which all military personnel will be professional members of the armed forces.

7. Article 1, paragraph 1, of the same Act sets out its aim and scope, stipulating:

“The aim of the present Act is to establish regulations for professional military personnel, to determine the command staff and maximum troop levels and to set out the military training system and the procedures for enrolment. It also aims to regulate the enlistment of additional personnel to the Armed Forces when required by the exigencies of the defence of Spain and its interests, on a voluntary basis or in accordance with article 30 of the Constitution. This is to ensure that the Armed Forces are in a position to perform their mission as defined in article 8 of the Constitution.”

8. Article 63, paragraph 2, of this legal instrument states that **the minimum age of admission to military training institutions is 18 years:**

“In order to apply for entry, candidates must hold Spanish nationality, not be deprived of civil rights, demonstrate good civil conduct as established in the Civil Conduct (Issuance of Certificates and Reports) Act, Act No. 68/1980 (1 December), have no previous criminal convictions, not have been discharged for disciplinary reasons from any public office or disqualified permanently from exercising public functions, not have been accorded the status of conscientious objector or be in the process of applying for such status and **be 18 years of age**, and must also comply with the regulations setting upper age limits, possess the required qualifications or be able to obtain them within the application period and not exceed the maximum number of application attempts.”

9. Royal Decree No. 1735/2000 (20 October), adopting the General Regulations on Enlistment and Promotion in the Armed Forces, gave effect to the provisions of Act No. 17/1999. Article 15, paragraph 1 (b), of this Royal Decree sets out the condition that all candidates must “**be at least 18 years old** on enrolment at the military training centre, and not exceed the age limits established for each case in the present General Regulations”.

10. Attention is also drawn to the stipulations in article 68 bis, paragraph 3, of Act No. 17/1999, subsequently introduced by Act No. 32/2002 (5 July), concerning the enlistment of foreign nationals to professional military service, which states that candidates must fulfil the following requirements:

- They must have legal residence in Spain;
- They must not be liable to be refused entry to the territory of countries with which Spain has signed an agreement to that effect;
- **They must have reached majority age as defined in their national legislation;** and
- They must have no previous criminal convictions in Spain or in former countries of residence for offences under Spanish law.

11. The requirements for enlistment in the armed forces are comprehensively defined in Spanish legislation; they include a complete ban on the enlistment of any persons under 18 years of age, which in the case of foreign nationals is doubly enforced since, in addition to being required to be at least 18 years old, they must also be legally of age under their own national legislation.

12. The involvement of persons aged under 18 in hostilities is therefore prohibited: given that compulsory military service in Spain has been abolished, the purpose of the Spanish armed forces, as stated in the Constitution (art. 8), “is to safeguard the sovereignty and independence of Spain and to defend its territorial integrity and constitutional order”.

Article 2

13. Article 30 of the Spanish Constitution (1978) states that “citizens have the right and the duty to defend Spain” and empowers the legislature to enact regulations on the enlistment of additional personnel to the armed forces in situations of crisis or serious risk to national security, that would provide for the involvement of all citizens when necessary for defence and ensuring that, in all events, as few obligations as possible are imposed.

14. In order to do this, article 163 of the Armed Forces Personnel (Regulations) Act, Act No. 17/1999 (18 May), gives a detailed definition of the term “reservist”, which covers Spanish citizens who can be called to enlist in the armed forces to meet the needs of national defence when these cannot be met by professional military staff. The following three types of reservists are defined.

15. *Temporary reservists*: these are reserve soldiers and professional army and navy servicemen who serve on a temporary basis in performance of their duty, and career soldiers and professional army and navy servicemen who serve on a permanent basis and who have resigned their military status in accordance with article 147 of the same Act.

16. *Volunteer reservists*: these are Spanish citizens who have been selected for this status after applying for advertised posts. Article 170, paragraph 4, lays down the following general conditions for applying for entry:

- (a) Candidates must hold Spanish nationality;
- (b) Candidates must **be at least 18 years old** and not exceed the maximum age of 35 for army and navy personnel and 38 for officers and non-commissioned officers;
- (c) Candidates must show proof that they have the skills required for the post.

17. *Compulsory reservists*: these are Spanish citizens designated as such by the Government. This status may be extended, under article 178, paragraph 1, to all Spanish citizens **who will be between 18 and 25 years old that year**.

18. The Government will be able to adopt the necessary measures to enlist reservists in the armed forces. In all cases of reservist enlistment, the Government will inform the Congress of Deputies of the measures taken and will authorize the extra funds that may be necessary to finance operations. The enlistment of compulsory reservists will require the prior authorization of the Congress of Deputies.

19. Proof of age in Spain is provided by the national identity document, as defined by Royal Decree No. 1553/2005 (23 December) regulating the issuance of national identity documents and the certification of electronic signatures. Article 1, paragraph 2, states: “This document alone is sufficient proof of the identity and particulars of the holder as stated therein and of their Spanish nationality”.

20. Lastly, it should be noted that Spain was one of the group of countries which considered that the protection given in the Convention on the Rights of the Child was insufficient in this area and supported a stronger stand against the military recruitment of minors. To that end, it made the following declaration: “Spain, wishing to make common cause with those States and humanitarian organizations which have manifested their disagreement with the contents of article 28, paragraphs 2 and 3, of the Convention, also wishes to express its disagreement with the age limit fixed therein and to declare that the said limit appears insufficient, by permitting the recruitment and involvement in armed conflict of children having attained the age of 15 years.”

Article 3

21. As has been made clear above, the minimum age in Spain for enlistment in the armed forces is 18 years. Since the armed forces are purely professional and compulsory military service has been abolished, recruitment is always voluntary and only involves persons who have reached this age. There is therefore no need for the right to special protection stipulated in article 3, paragraph 1, of the Optional Protocol.

22. In accordance with paragraph 2 of that article, at the time of ratification Spain made the following declaration: “For the purposes of the provisions of article 3 of the Protocol, Spain declares that the minimum age for voluntary recruitment into its armed forces is 18 years.”

Article 4

23. Not applicable in Spain.

Article 5

24. The Spanish Constitution and, in particular, its Part I, chapter 3, stands at the apex of the legal system for the protection of children’s rights in Spain. Article 39, paragraph 1, of the Constitution stipulates the obligation of public authorities to ensure the social, economic and legal protection of the family. Paragraph 4 of that article links this obligation directly to international human rights law, stating that: “Children shall enjoy the protection provided for in the international agreements which safeguard their rights.”

25. This constitutional provision concerning the protection of the rights and interests of children is given effect primarily through the Legal Protection of Minors Organization Act, which partially amends the Civil Code and the Criminal Procedure Act. Recently, in order to give effect to the Optional Protocol, the Education and Culture of Peace (Promotion) Act, Act No. 27/2005 (30 November) came into force, which was adopted in response to section A, paragraph 2, of the Programme of Action on a Culture of Peace, adopted by the General Assembly in 1999. Article 4, paragraph 2, of this Act states that the Government must “promote action necessary to contribute to the demobilization and reintegration into society of minors involved in conflicts”.

26. At the international level, Spain is party to the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 1977. It is party to the Convention on the Rights of the Child and has ratified its two optional protocols. It has also ratified the International Labour Organization (ILO) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182 of 17 June 1999), by

an enactment of 14 March 2001, which entered into force on 2 April 2002. Through this ratification, Spain committed itself to taking immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency (art. 1), including “the forced or compulsory recruitment of children for use in armed conflict” (art. 3).

27. Within the United Nations, Spain actively participated in drawing up Security Council resolution 1539, which was adopted with Spain’s vote in April 2004, giving new impetus to the campaign conducted within the Organization against the use of children in armed conflict. Among other measures, this resolution:

- Requests the Secretary-General to devise an action plan for a systematic and comprehensive reporting mechanism, the first outline of which was contained in his report of 9 February 2005;
- Calls on parties that, according to the Secretary-General’s report, recruit and use children in armed conflict to prepare action plans to halt these practices, and does not rule out the possibility of imposing measures against parties that fail to develop such plans;
- Decides to continue deploying child protection advisors in United Nations peacekeeping operations.

28. Spain also supports the work of the Special Representative of the Secretary-General for Children and Armed Conflict, whose mandate was renewed by the General Assembly in 2002.

29. Where efforts to oppose impunity are concerned, Spain unreservedly supports the work of the International Criminal Court, the statute of which classes as a war crime conscripting or enlisting children under the age of 15 years, as well as using them to participate in hostilities, whether international or internal (art. 8, paras. 2 (b) (xxvi) and 2 (e) (viii)). Spain ratified the Rome Statute on 24 October 2000 and set in motion the necessary legal arrangements for its implementation through the Cooperation with the International Criminal Court Organization Act, Act No. 18/2000 (10 December).

Article 6

30. Paragraph 1: The Spanish legal system has adopted a system for the automatic incorporation of international treaties, whereby they are integrated directly into the legal system upon their official publication. This is stated in article 96, paragraph 1, of the Spanish Constitution: “Validly concluded treaties, once officially published in Spain, shall form part of its domestic law.” Once they have become part of Spanish law, like all other laws and regulations they are enforced by the courts, which, in accordance with article 117 of the Spanish Constitution, monitor its effective implementation in the performance of their judicial functions.

31. Attention is also drawn here to the content of article 39, paragraph 4, of the Spanish Constitution, which expressly places children under the protection of international human rights treaties, stating: “Children shall enjoy the protection provided for in the international agreements which safeguard their rights.”

32. Paragraph 2: Publication in the Official Gazette is considered sufficient, as provided for by article 96, paragraph 1, of the Constitution, article 1, paragraph 5, of the Civil Code and articles 29 onwards of Royal Decree No. 801/1972 (24 March) on the planning of the State administration's work relating to international treaties. The Official Gazette - the *Boletín Oficial del Estado*, compiled by a government agency under the Office of the Minister of the Presidency, is widely circulated in Spain and can be consulted free of charge on the Internet.

33. As well as ensuring the exposure provided by publication in the Official Gazette, Spain supports activities that help disseminate the content of the Protocol. For example, the seminar "Broken Wings: Children in Armed Conflict", organized in February 2005 by Save the Children as part of the project to protect the rights of the child in risk situations, in particular, unaccompanied alien minors and children affected by armed conflict, received public funding from Madrid city council.

34. Paragraph 3: Not applicable in Spain.

Article 7

35. Children are a priority in Spanish international cooperation. Thus the Master Plan for Spanish Cooperation for 2005-2008 accords particular attention to activities for children in its various strategies and sectorial priorities (education, health, etc.). The Master Plan also expressly includes the protection of children in armed conflict among its cross-cutting priority activities to defend human rights.

36. Pursuant to the provisions of the Optional Protocol, the Spanish Agency for International Cooperation carries out a range of activities all over the world relating to care for child victims of armed conflict. For example:

- In Angola, Spain allocated over €600,000 to funding an international cooperation strategy aimed at improving the social conditions of child victims of the Angolan conflict, carried out by the Spanish Red Cross between 2001 and 2003;
- In the Democratic Republic of the Congo, Spain subsidized a United Nations Children's Fund (UNICEF) project in 2004 to the value of €600,000, aimed at reintegrating child soldiers released by armed forces and groups, focusing on ensuring access to quality basic education;
- In Timor-Leste, Spain is supporting several projects aimed at mitigating the effects of the conflict on children in the country. These projects, launched in 2005, include improving human and material resources in a number of vocational training colleges and secondary and primary schools, and are implemented by non-governmental organizations;
- In Cambodia, Spain has allocated over €700,000 to training minors with disabilities caused by anti-personnel mines;

- In Colombia, the Fourth Joint Commission on Cooperation between Spain and Colombia agreed to pay particular attention to the sectors of the Colombian population most affected by the internal conflict, including children. Accordingly, in 2005 Spain granted €380,000 for projects and activities that would directly improve the living conditions of children affected by the Colombian conflict, such as care for displaced populations and for particularly vulnerable young people and those in high-risk communities.

37. Apart from these particular projects which are specifically aimed at improving the living conditions of child victims of armed conflicts, the Spanish Agency for International Cooperation is engaged in a wide range of activities in different fields (for example, education, health, poverty mitigation and conflict prevention) that indirectly contribute to improving the situation of these minors.

38. In addition to these programmes, which are implemented in the context of international cooperation, Spanish legislation on aliens make provision for the conduct of programmes for the temporary relocation of alien minors to Spain. These programmes are promoted and funded by government authorities, non-profit organizations or foundations or other outside bodies or persons who do not exercise parental authority or guardianship over the minors concerned, for temporary visits for the purposes of education, medical treatment or holidays. This instrument has been used to mitigate the consequences for children of involvement in armed conflicts; more specifically, programmes are currently under way to bring children affected by the armed conflict in the former Yugoslavia to Spain on visits.

39. At the European Union level, Spain was actively involved in drawing up the Guidelines on Children and Armed Conflict, which were adopted by the Union's Council of Ministers in December 2003 and updated in December 2005.

40. The aim of these guidelines is "to influence third countries and non-State actors to implement international human rights norms and standards and humanitarian law, as well as regional international human rights law instruments ... and to take effective measures to protect children from the effects of armed conflict, to end the use of children in armies and armed groups, and to end impunity". The guidelines outline many ways of achieving this aim, including political dialogue with third countries, official démarches and public statements, multilateral cooperation, crisis management operations and training.

41. Spain has contributed to the successive campaigns for implementing the guidelines which, over recent years, have been set in motion by the revolving European Union presidencies and which have included such measures as approaches to the authorities of third countries where the situation of minors in armed conflicts is particularly serious, the preparation of reports and the conduct of workshop and other specific events. Spain reaffirms its willingness to implement all the provisions of the present Optional Protocol. It also reiterates its willingness to adopt all legal, administrative or other measures to ensure that the rights of children are fully upheld, in particular those relating to the involvement of children in armed conflict.
