

COMMITTEE ON THE RIGHTS OF THE CHILD

Forty fifth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 12(1) OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON
THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD
PROSTITUTION AND CHILD PORNOGRAPHY**

Concluding observations: GUATEMALA

1. The Committee considered the initial report of Guatemala (CRC/C/OPSC/GTM/1) at its 1245th meeting (see CRC/C/SR.1245) held on 1 June 2007, and adopted at its 1255th meeting, held on 8th of June, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, although regrets the delay in its submission. The Committee furthermore regrets that civil society was not adequately consulted in the drafting process of the report. The Committee however appreciates the constructive dialogue with a high-level and inter-sectoral delegation.
3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 8 June 2001, contained in CRC/C/15/Add.154.

B. Positive aspects

4. The Committee notes with appreciation:
 - a) The adoption of the Integral Law for the Protection of Children and Adolescents in 2003;
 - b) The adoption of a National Plan of Action to Combat Commercial Sexual Exploitation of Children in 2001.
5. The Committee further commends the State party's accession to or ratification of:
 - a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime on 1 Apr 2004;
 - b) The Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption on 1 March 2003;
 - c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 9 May 2002;
 - d) The ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour on 11 October 2001.

C. Principal areas of concern and recommendations

C.1. General measures of implementation

Coordination and evaluation of the implementation of the Protocol

6. The Committee takes note of the information provided on the role of the Secretaría de Bienestar Social and the various ministries and governmental bodies involved in implementing the Protocol, but remains concerned about the insufficient coordination among these bodies so as to ensure comprehensive, intersectoral policies at both central and local levels to protect the rights covered by the Protocol. The Committee also regrets the lack of mechanisms for the periodic evaluation of the implementation of the Protocol.
7. **The Committee recommends that the State party strengthen and consolidate coordination in the areas covered by the Protocol and ensure that it is incorporated in the National Plan of Action for Children adopted in 2004. The Committee urges the State party to ensure that adequate financial and human resources are dedicated for the above mentioned purposes and that**

the role of the Secretaría de Bienestar Social be strengthened. Furthermore, the Committee recommends that mechanisms for periodic evaluation of the implementation of the Protocol be established, and that these ensure the participation of children.

Dissemination and training

8. The Committee notes with appreciation the awareness-raising and training activities targeting actors such as judges, local authorities and the police about the provisions in the Protocol, yet is concerned that the rising incidence of commercial sexual exploitation of children and the high number of victims, as recognised in the State party report, indicates an urgent need to undertake further and sustainable measures in this respect. The Committee notes that several relevant professional categories require further training, including the police, staff of the Procuraduría General de la Nación and of the migration authorities due to their direct contact with victims and reported omission to prevent the sale of children, irregular adoption and trafficking.
9. **The Committee recommends that the State party continues and strengthen systematic gender-sensitive education and training on the provisions of the Protocol for all professional groups working with child victims of the abuses covered by the Optional Protocol, including police officers, public prosecutors, judges, border authorities and medical staff, with particular attention to staff of the Procuraduría General de la Nación and migration authorities.**
10. The Committee is concerned over the general lack of awareness raising and prevention campaigns in Guatemala on the provisions and offences covered in the Protocol and notes with concern that the practices of purchasing sexual services from children and selling of child pornography materials continue to be common and socially tolerated.
11. **The Committee recommends that the State party:**
 - a) **Make the provisions of the Optional Protocol widely known, particularly to children, their families and communities, through, *inter alia*, school curricula and long-term awareness-raising campaigns;**
 - b) **Promote, in line with article 9(2) of the Protocol, awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the Protocol, including by encouraging the participation of the community and, in particular, children and child victims, in such information and education and training programmes;**

- c) **Continue cooperating with civil society organisations and the media supporting them in their awareness-raising and training activities on issues related to the Protocol;**
- d) **Seek technical assistance of UN agencies and programs, including UNICEF and ILO/IPEC.**

Data collection

- 12. The Committee notes with great concern the high numbers of children affected by commercial sexual exploitation, estimated by the State party at 15'000 victims in Guatemala, and regrets the lack of documentation and reliable data, disaggregated by age, sex, geographic region, indigenous and minority group and research on the prevalence of sale, trafficking, child prostitution and child pornography.
- 13. **The Committee recommends that the State party undertake relevant situation analyses and ensure that data relating to areas covered by the Protocol, disaggregated *inter alia* by age, sex, geographic region, minority and indigenous group, are systematically collected and analysed as they provide essential tools for measuring policy implementation.**

Budget allocations

- 14. The Committee is concerned at the severe shortage of the resources needed for the implementation of the Optional Protocol.
- 15. **The Committee encourages the State party to intensify its efforts to provide adequate budget allocations for coordination, prevention, promotion, protection, care, investigation and suppression of acts covered by the Protocol including by earmarking funds for the implementation of programmes relating to its provisions, in particular for the National Plan of Action to Combat Commercial Sexual Exploitation. Furthermore, the Committee recommends that the State party allocate adequate resources for legal assistance and physical and psychological recovery of victims to relevant authorities and through civil society organisations.**

C.2. Prohibition of the sale of children, child pornography and child prostitution

Existing criminal or penal laws and regulations

- 16. The Committee notes with great concern that Guatemala has failed to criminalise a number of the offences as required by article 3 of the Protocol. Although the Committee understands there are ongoing efforts to reform the Guatemalan Penal Code, the Committee is seriously concerned that the sale of children, adoption practices, organ transfer for profit, sexual and economic exploitation of children

and the production and distribution of pornography have not been adequately addressed in the national legislation. The Committee is particularly concerned that the lack of incorporation of provisions of the Protocol into the Penal Code has resulted in extensive impunity for the crimes covered by the Protocol.

17. **The Committee recommends that the State Party urgently complete the reform of the Penal Code in order to bring it in full compliance with articles 2 and 3 of the Protocol. The Committee urges the State party to pay particular attention to the criminalisation of irregular adoptions and the sale of children and the need to ensure that adoption practices are in accordance with article 21 of the Convention on the Rights of the Child and its relevant Protocol, also taking due account of the fact that Guatemala is a party to the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption since 1 March 2003. Furthermore, the Committee recommends that the State party take the necessary steps to adequately define and criminalise trafficking in persons in the criminal legislation in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime.**

C.3. Penal and Criminal Procedure

Jurisdiction

18. The Committee notes that the Guatemalan Penal Code allows for the establishment of extra-territorial jurisdiction, yet is concerned that the lack of criminalisation of numerous offences covered in article 3 of the Protocol constitutes a serious impediment for the establishment and practical implementation of such jurisdiction.
19. **The Committee recommends that the State party ensure within its efforts to reform the Penal Code that all provisions of the Protocol be included and that all practical measures necessary be undertaken in order to be able to effectively establish jurisdiction over offences in accordance with article 4 of the Protocol. Furthermore, the Committee recommends that the State party ensure that national legislation does not require double criminality for extradition and/or prosecution of offences committed abroad.**

Extradition

20. The Committee repeats its concern over the lack of criminalisation of offences covered in article 3 of the Protocol and over the State party's interpretation of article 27 of the Constitution place serious limitations on extraditions, contrary to article 5 of the Protocol.

21. **The Committee recommends the State party, in line with article 5 of the Protocol, recognise the Protocol as an international treaty regulating extradition as foreseen by article 27 of the Guatemalan Constitution.**

C.4. Protection of the rights of child victims

Measures adopted to protect the rights and interests of child victims of offences prohibited under the Protocol

22. The Committee is deeply concerned over the lack of investigations and prosecutions for offences covered by the Protocol. The Committee is particularly concerned that the State party has failed to undertake effective measures to protect child victims. The Committee notes reports that child victims are penalised and institutionalised during prolonged periods awaiting decisions in their cases and is concerned over the lack of legal advisory services and compensation for victims. Furthermore, the Committee notes that resources for interdisciplinary social reintegration and physical and psychosocial recovery measures for child victims are insufficient. Finally, the Committee is concerned that during operations to rescue child victims of sexual exploitation the control of the age of the victims is inadequate.
23. **The Committee recommends that the State party take all necessary measures, including legislative amendments to ensure that child victims and witnesses of any of the crimes under the Protocol are protected at all stages of the criminal justice process in accordance with article 8 of the Protocol. Furthermore, the Committee recommends that adequate financial and human resources be provided to the competent authorities in order to improve the legal representation for child victims and ensure that all child victims of the offences described in the Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9(4) of the Optional Protocol. The State party should also ensure that resources be earmarked in order to strengthen social reintegration and physical and psychosocial recovery measures, in accordance with article 9 (3) of the Protocol, in particular by providing interdisciplinary assistance for child victims. Finally, the Committee urges the State party to presume young victims of sexual exploitation who have been rescued to be children if in doubt and encourages that the participation of the Procuraduría de Derechos Humanos and civil society organisation in such raids be resumed.**
24. **The State party should be guided by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20) and should in particular;**

- a) **Allow the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;**
- b) **Use child-sensitive procedures to protect children from hardship during the justice process, including by the use of special interview rooms designed for children, child-sensitive methods of questioning; and by reducing the number of interviews, statements and hearings.**

Adoption

25. The Committee welcomes the accession to the Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption in 2003, and despite the considerable delay in recognising its application at the national level, the Committee acknowledges the efforts of the State party in this regard. The Committee, however, continues to have a number of serious concerns with regard to intercountry adoption and reiterates the concerns which prompted its recommendation to the State party in the concluding observations of 2001 to suspend adoptions. The Committee deeply regrets the lack of progress made in this area despite numerous recommendations from international human rights bodies. The major concerns of the Committee include the following;
- a) The national legislation regulating adoption practices remains inadequate;
 - b) The continued existence of irregular practices driven by lucrative commercial interests in the administration of child adoption in Guatemala, especially in relation to the rising number of inter-country adoptions conducted by notaries;
 - c) The widespread impunity in Guatemala for crimes relating to the sale of children for the purpose of adoption, especially as it implies considerable complicity by State authorities. Finally, the Committee is concerned over the social tolerance of these acts.
26. **The Committee reiterates its recommendation that the State party suspend all adoptions and urgently undertake measures to comply with the Protocol, article 21 of the Convention on the Rights of the Child and the provisions of the Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Inter-country Adoption. The Committee urges the State party to investigate and prosecute individuals responsible for the sale of children for the purpose of adoption.**
27. **The Committee recommends that the State party adopt national legislation regulating adoption which ;**
- a) **Ensure that the principle of the best interests of the child is always taken into account;**

- b) **Provide sufficient autonomy for the Central Authority in charge of regulating intercountry adoption, in order for it to effectively carry out its control and supervisory functions. The work of the Central Authority should furthermore be subject to transparency control;**
 - c) **Establishes strict criteria for and limit the number of national agencies accredited in the context of intercountry adoptions.**
28. **The Committee suggests that the State party seek urgent technical assistance from the Hague Conference on Private International Law on the development of national legislation as well as its practical application. In addition, the Committee urges the State party to implement the recommendations of the 1999 Mission Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2000/73/Add. 2) since the majority of the recommendations have not yet been acted upon.**

Trafficking

29. The Committee, while recognising the existence of relevant memorandums of understanding with neighbouring countries, concerned that undocumented foreign children, including trafficking victims, are subject to deportation and must leave the country within 72 hours.
30. **The Committee recommends that the State party review its legislation and improve its practice in relation to deportation of foreign children who have been victims of cross-border trafficking and suspend the implementation of such measures pending investigations. Furthermore, the Committee urges the State party to always presume young victims of trafficking to be children if in doubt, guarantee that the best interest of the child is taken into account and ensure that they receive adequate physical and psychological assistance and care. In this regard, the Committee urges the State party to take into account the Committee's General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.**

C.5. Prevention of the sale of children, child prostitution and child pornography

Measures adopted to prevent offences referred to in the Optional Protocol

31. The Committee welcomes the National Plan to Combat the Commercial Sexual Exploitation of Children adopted in 2001, however is concerned that it has not been provided with adequate resources to ensure its implementation, in particular in view of the increasing incidence of sexual exploitation in Guatemala.

Furthermore, the Committee notes that documentation and research are lacking on the root causes, nature and extent of commercial sexual exploitation of children, including prostitution and pornography.

32. **The Committee recommends that the State party provide adequate resources for the implementation of the National Plan against the Commercial Sexual Exploitation of Children, including at the local level, and that the Plan be carried out in collaboration with ILO/IPEC, NGOs and civil society organisations. The Committee encourages the State party to carry out further documentation and gender-sensitive research on the nature and extent of commercial sexual exploitation of children, including prostitution and pornography, in order to identify the root causes, the extent of the problems and prevention measures.**
33. The Committee, while acknowledging certain initiatives, regrets that insufficient preventive measures have been taken in the tourism sector in order to combat the rising incidence of child pornography and sexual exploitation of children.
34. **The Committee recommends that the State party undertake additional measures to prevent sex tourism, in particular by earmarking funds for the national tourism authority (INGUAT) for this purpose and by promoting responsible tourism by awareness campaigns specifically directed at tourists. The State party should, through relevant authorities, cooperate closely in conjunction with travel operators, NGOs and civil society organisations in order to better meet the Code of Conduct set up by the World Tourist Organization on the protection of children from sexual commercial exploitation in travel and tourism. Furthermore, the Committee encourages the State party to consider adopting specific legislation on the obligations of internet service providers in relation to child pornography on the Internet.**

C.6. International assistance and cooperation

Technical assistance

35. **The Committee encourages the State party to seek further international technical assistance and continue its cooperation with the United Nations, including OHCHR as well as other relevant agencies, in order to further the practical implementation of the provisions of the Optional Protocol. The Committee furthermore urges the State party to take its responsibility to ensure the sustainability of such technical assistance.**

Law enforcement

36. **The Committee encourages the State party to further its efforts to strengthen its international judicial and police cooperation activities for the prevention, detection, investigation, prosecution and punishment of those responsible for**

acts involving the sale of children, child prostitution, child pornography and child sex tourism.

C.7. Follow-up and dissemination

Follow-up

37. **The Committee recommends the State party to take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to relevant Government Ministries, the Congress and departmental as well as local authorities, for appropriate consideration and further action.**

Dissemination

38. **The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups, professional groups in order to generate debate and awareness of the Convention, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children and their parents through, *inter alia*, school curricula and human rights education.**

C.8. Next report

39. **In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its combined third and fourth periodic report under the Convention on the Rights of the Child.**