



Convention on the Rights of the Child

Distr. General
30 March 2010
English
Original: French

Committee on the Rights of the Child Forty-fifth session

Summary Record of the 1246th Meeting

Held at the Palais Wilson, Geneva, on Friday, 1st June 2007, at 3 p.m.

Chairperson: Ms. Lee

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GE.07-42288 (EXT)

The meeting was called to order at 3.10 p.m.

Consideration of reports of States parties (item 6 of the agenda) (continued)

Initial report of Guatemala on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography [(CRC/C/OPSC/GTM/1); list of issues to be taken up (CRC/C/OPSC/GTM/Q/1); written replies by the State party concerning the list of issues (CRC/C/OPSC/GTM/Q/1/Add.1)] (continued)

1. At the invitation of the Chairperson, the members of the delegation of Guatemala resumed places at the Committee table.
2. **Mr. Tecú** (Guatemala) explained that after many difficulties, the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption had finally been adopted. In 2006, the Constitutional Court had held that the executive had competence to withdraw the reservations to articles 11 and 12 of the Vienna Convention on the Law of Treaties. The President of the Republic had therefore issued a Decree under which those reservations had been withdrawn, thereby enabling the adoption by the Congress of the Hague Convention.
3. At the same time, measures had been taken with regard to the staff of bodies involved in adoption to inform them about the reforms being made to bring adoption rules into line with the provisions of the Convention. The bodies concerned had undertaken to amend their databases by incorporating various indicators to enable them to make a better assessment of the situation of children and to approve adoption procedures in full knowledge of the facts.
4. Consideration was being given to naming a body to exercise central control. The decision that would ultimately be made in that regard was essential because the body selected would be responsible for monitoring the implementation of the Convention.
5. In 2006, 4,656 children had been adopted, of whom 4,575 had been adopted abroad, principally in the United States. A total of 80 complaints about unlawful adoptions had been lodged. A number of reforms were being drawn up, including provisions to make the sale of children a criminal offence. Nonetheless, the complaints lodged about unlawful adoption were not usually linked to the sale of children but to kidnapping. The complaints had been lodged by mothers seeking the return of their children, most of whom had already been adopted.
6. **Mr. Arce Gordillo** (Guatemala) explained that minors were able to approach the Office of the Procurator for Human Rights who accompanied them in their court proceedings. They were also able to approach the ombudsman. Indeed anyone, whether Guatemalan or alien, a minor or an adult, was able to lodge a complaint about a violation of his or her fundamental rights with one of the ombudsman's offices in the capital and each of the 22 departments in the country. There was also a mobile office in the remote regions. The ombudsman was under an obligation to record evidence given by minors.
7. **Mr. Parfitt** asked whether the State party intended to review its decision to stop the ombudsman from attending police operations in which children were involved.
8. **Mr. Ramiro Martínez** (Guatemala) explained that a multisectoral body was already involved in some operations, including operations related to prostitution of young people.

An official from the Office of the Presidential Commission on Human Rights also accompanied the police to prevent any abuse by officers.

9. **Ms. De León Berrada** (Guatemala) confirmed that despite the obstacles that had appeared along the way, police officers who had been the subject of complaints of rape involving minor girls had been prosecuted and sentenced thanks to cooperation from civil society organizations. As far as complaints about corruption and abuse of authority were concerned, the 400 or 500 police officers implicated had been dismissed from duty and replaced.

10. A study conducted in cooperation with the International Labour Organization (ILO) had shown that the children involved in manufacturing fireworks were, like all the other members of their families, working in the family business. Given that the households in question were extremely poor, the Ministry of Labour and Social Protection had provided them with financial and social support. It had tried to raise their awareness of their obligation to enrol their children in school and planned to establish a cooperative in which only adults would be able to work. At the ombudsman's initiative, an action had been taken in 2006 to prohibit the sale of the fireworks in question, some of which were extremely dangerous.

11. In order for an individual to be able to be extradited, the acts of which he or she was accused had to be defined as crimes in Guatemalan law. Extradition procedures were conducted by the Supreme Court and the Ministry of Foreign Affairs.

12. **Ms. Arellano** (Guatemala) stated that Guatemala was working on producing a manual of good practices in adoption to coordinate the actions of the institutions involved in activities implementing the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. One of the good practices in question was that the Office of the Procurator-General of the Nation had to be the sole body empowered to apply for a passport for a child who had been put up for intercountry adoption.

13. **Ms. Lorenzana** (Guatemala) indicated that the National Tourism Authority was part of the group formulating the National Plan against the Commercial Sexual Exploitation of Children. In 2006, the group had participated in a conference of experts from Costa Rica and Brazil to learn about strategies that had been implemented to combat this scourge.

14. The Government was aware that in order to implement all the measures necessary in the fields of the family and the child, it would require greater means. That was why it wanted the Social Welfare Secretariat to become a Ministry.

Initial report of Guatemala on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict [(CRC/C/OPAC/GTM/1; list of issues to be taken up (CRC/C/OPAC/GTM/Q/1); written replies by the State party concerning the list of issues (CRC/C/OPAC/GTM/Q/1/Add.1)] (continued)

15. **Ms. Ortiz** asked what measures the State party had taken to combat the enlistment of children into the armed forces.

16. **Mr. Zermatten** requested clarification of the exact ranking of the Protocol in the domestic legal order of Guatemala and when the country was intending to ratify the Rome Statute of the International Criminal Court. Ratification of the Rome Statute would give greater authority to the commitment of Guatemala to the Protocol as the Statute classified the conscription of children under age 15 as a war crime.

17. He also asked which body was responsible for enforcing and coordinating measures of implementation in respect of the Protocol and in particular what the roles of the Social Welfare Secretariat and the National Youth Council were in that regard. Was the Protocol referred to in the National Plan of Action for Children 2004-2015? Was a special budget allocated to implement it?

18. The military budget of Guatemala appeared to have been rising since 2005. The speaker therefore asked the delegation to state the measures taken by the Government to control its military expenditure and thereby free up resources for the social sphere.

19. Furthermore, he asked about who the intended participants in the human rights training days were and whether reference was made on those days to the provisions of the Protocol and humanitarian law.

20. He asked whether the reform of the Penal Code under way provided for making the recruitment of children under age 18 a criminal offence; doing so would give a completely different emphasis to Guatemalan legislation, which merely prohibited the forced recruitment of minors and set the age of military or civic service at age 18.

21. The speaker asked for details of the measures taken to tackle the problem of armed gangs which included children under age 18.

22. He was of the view that more than 10 years on from the signature of the peace agreements, it was high time for the national mechanism to search for persons who disappeared during the armed conflict, which had still not received the approval of the Office of the President of the Republic, to be put into operation.

23. The speaker stressed that the compensation provided for under the National Reconciliation Act related most especially to widows, and asked whether children who had been involved in armed conflict had been compensated and whether they benefited under rehabilitation and reintegration measures.

24. Finally, he asked for details on the nature and role of the Adolfo V. Hall schools; the schools had 1,669 pupils and admitted children from age 11 for a five-year period of study. He asked for clarification whether the children who left these schools at age 16 after receiving military training were conscripted into the army. He also asked whether they experienced corporal punishment in the schools, whether they had the opportunity to complain and, if so, to whom.

25. **Mr. Filali** asked whether the State party had established mechanisms enabling the Geneva Conventions on humanitarian law to be implemented, whether the age of the young people enrolling in the army was duly verified and whether measures had been taken to prevent young people who had been involved in armed conflict from drifting into crime.

26. It would also be useful to know whether the schools delivering military instruction to minors were military zones, whether the instructors were military personnel or civilians and whether the curriculum included instruction in handling arms. The speaker asked whether a child who left the school was regarded as a deserter.

27. **Mr. Citarella** was surprised that the courts of the State party had not had to hear any crimes committed by aliens within Guatemala or by Guatemalan nationals abroad given that the conflict had spread beyond the country's frontiers.

28. **The Chairperson** said that there was a contradiction between the information supplied in the written replies by the State party, which said that all students at the Polytechnic School, the only military school in Guatemala, were over age 18, and the information in paragraph 102 of the report, which said that admission was possible from age 17. She also asked for clarification on the age at which it was possible to enter the Military Aviation Technical School and on the measures taken to verify the age of the young people entering these schools, in view of the problems with birth registration in Guatemala.

The meeting was suspended at 4.15 p.m. and resumed at 4.40 p.m.

29. **Mr. Morales** (Guatemala) said that the Rome Treaty was currently undergoing its second reading and would have to go through a third reading before it could be adopted. He also indicated that the current Government had striven to restrict the army budget and he hoped that it would continue in that vein so that priority could be given to the social sector.

30. **Mr. Zermatten** asked whether the limit on the army budget of 0.76 per cent of GNP could be maintained.

31. **Mr. Morales** (Guatemala) said that the slight increase in the army budget was due to the fact that under the international treaties it had ratified, Guatemala had to contribute to United Nations peacekeeping forces but that the peace agreements now had force of law and everything would be done to ensure they were observed.

32. **Ms. Corzo Cifuentes** (Guatemala) said that training courses in international humanitarian law and human rights had been held for officers and ranks in the armed forces and in civilian and military training centres.

33. **The Chairperson** said that training in the Optional Protocol for Guatemalan military personnel participating in United Nations peacekeeping operations in other countries appeared to be inadequate and asked whether such personnel underwent training courses in the Convention on the Rights of the Child.

34. **Ms. Corzo Cifuentes** (Guatemala) said that the personnel in question were indeed trained in the Optional Protocol and in the Convention on the Rights of the Child, other, human rights instruments and international humanitarian law.

35. She confirmed that the only solely military school in Guatemala was the Polytechnic School and candidates seeking admission had to hold a certificate of secondary education and to have attained age 18. Students left the school with the rank of sub-lieutenant. A pupil who left one of the Adolfo V. Hall civilian and military training schools who had not attained the age of 18 could not therefore enter the Polytechnic School. She noted that not all pupils who had studied in the Adolfo V. Hall schools entered the Polytechnic School as a number of them chose to attend the State universities.

36. Since 1999 Guatemala had had a national commission for the application of international humanitarian law in which several representatives from the executive, the judiciary and the Congress of the Republic participated. Three working groups had been formed under that commission. One of those working groups was responsible for reviewing national law in the light of all instruments on humanitarian international law to which Guatemala was party. It had drawn up a proposal to make forced conscription of children with a view to participation in armed conflict a criminal offence. The second working group was responsible for following up the recommendations made by the International Committee of the Red Cross to Guatemala in respect of tracing individuals who had disappeared.

37. The speed of application of the National Compensation Programme was fairly slow but greater efforts had been made to identify the victims of the domestic armed conflict and to update the records. A technical commission had been established in January 2007 with a view to giving the programme a boost and a bill on reparations would shortly be presented to the Congress of the Republic.

38. In conclusion, Guatemala did not forcibly recruit children into the army although it did have to deal with minors being used in armed gangs or “maras” which were manipulated by transnational criminal organizations. More specifically, for several years the Government had been working to establish an international commission to investigate these illegal groups. That initiative, which was supported by the United Nations, was being scrutinized by the Congress.

39. **Mr. Zermatten** asked whether in view of the extremely violent background against which these gangs of youths emerged, the State party had taken legislative measures to restrict minors’ access to arms.

40. **Mr. Ramiro Martínez** (Guatemala) said that the Ministry of the Interior and the Ministry of Defence were working on a regulation to restrict the use, carriage and acquisition of arms. Minors were not authorized in any circumstance to bear arms but children did make their own weapons by hand or acquired them on the black market. A major awareness campaign had been conducted on that issue. Arms had been confiscated and destroyed in public in the presence of the media.

41. **Ms. Ortiz** said that the fruitful dialogue with the delegation had provided a better understanding of the efforts being made by Guatemala to ensure better implementation of the rights of the child, especially with regard to the two optional protocols to the Convention. She thanked the delegation for its frank and detailed replies.

42. The Committee noted the many lessons, seminars and training courses held to disseminate the provisions of the Convention and its protocols but nonetheless encouraged the State party to establish on-going training and dissemination systems. It welcomed the ratification of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

43. By contrast, data collection was a problem. It should be noted that it was important to have adequate statistical indicators so as to better assess and monitor the implementation of the two protocols. The process of report-writing was also an opportunity to bring the relevant governmental bodies and non-governmental organizations together to discuss the progress made in implementing the Convention.

44. The Committee welcomed the adoption of new laws by the State party but recalled that they should be accompanied by measures of implementation and that adequate budgets should be allocated to implement them. It also asked the State party to accelerate the process of criminalizing a number of violations and offences which still did not appear in the Guatemalan Penal Code. Indeed, the two protocols could not be properly implemented until national law punished the offences described in them.

45. The Committee supported the forthcoming adoption of the bill on adoption currently undergoing scrutiny. The best interest of the child had to prevail and intercountry adoption had to remain a solution of last resort.

46. **Mr. Filali** was of the view that the dialogue with the delegation had been constructive, frank and direct and particularly welcomed the fact that the State party had reformed its Penal Code and amended some of the definitions it contained.

47. **Mr. Zermatten** welcomed the efforts made to ratify the Rome Statute of the International Criminal Court but was of the view that the recruitment of children into the armed forces should be clearly defined as an autonomous crime in the Penal Code. The initiative taken by the State party to find a transnational solution in conjunction with neighbouring countries to the issue of armed gangs which recruited children was to be welcomed. It was also important for the Optional Protocol on the involvement of children in armed conflict to be extensively disseminated not only among military personnel but among young people as well.

48. Guatemala had to bring past events fully into the open and owed it to the child victims, who were now adults, to provide rehabilitation, reintegration and compensation as provided for in the law adopted under the peace agreements. Similarly, every effort had to be made to trace those responsible and combat impunity.

49. **Mr. Ramiro Martínez** (Guatemala) said that Guatemala was fully aware of the long road ahead but had set itself the target of establishing a new legal institutional framework appropriate for the workings of a genuine democratic State.

50. The new Government which would take office in January would therefore have to observe the commitments incumbent on Guatemala under the many conventions to which it was party. One positive point was that civil society now had a good structure and was working with the Government in many fields.

51. The Committee's preliminary recommendations on matters such as training, the dissemination of the provisions of the protocols, statistics, changes to the law, were as many challenges as Guatemala could face. Despite the budgetary, institutional and legal constraints, the authorities were making every effort to improve the population's living conditions and to honour the country's international commitments.

52. **The Chairperson** asked the delegation to report back on its dialogue with the Committee upon its return to Guatemala and to disseminate the Committee's concluding observations among all relevant sectors, including Parliament.

The meeting rose at 5.25 p.m.

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