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COMMITTEE ON THE RIGHTS OF THE CHILD

Forty-fifth session

SUMMARY RECORD OF THE 1245th MEETING*

Held at the Palais Wilson, Geneva,

on Friday, 1 June 2007, at 10 a.m.

Chairperson: Ms. LEE

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Initial report of Guatemala under the Optional Protocol on the sale of children, child prostitution and child pornography

Initial report of Guatemala under the Optional Protocol on the involvement of children in armed conflict

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 6) (continued)

Initial report of Guatemala under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/GTM/1; CRC/C/OPSC/GTM/Q/1 and Add.1; HRI/CORE/1/Add.47)

Initial report of Guatemala under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/GTM/1; CRC/C/OPAC/GTM/Q/1 and Add.1; HRI/CORE/1/Add.47)

At the invitation of the Chairperson, the members of the delegation of Guatemala took places at the Committee table.

Mr. MARTÍNEZ (Guatemala), introducing the initial reports of Guatemala under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/GTM/1) and the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/GTM/1), said that Guatemala faced not only the challenge of combating poverty, international organized crime, drug trafficking and trafficking in persons, but also migration problems. The Government had taken many initiatives within the national and international legal and administrative frameworks to address those issues.

The Government and civil society had jointly coordinated measures to facilitate the implementation of the Convention on the Rights of the Child and its two Optional Protocols. In particular, the Act concerning the Comprehensive Protection of Children and Adolescents had been adopted in 2003. The Act made the best interests of the child the primary consideration in the protection of children's rights. Ratification of the Optional Protocols had led to the adoption of various policies and instruments, including the policy on combating trafficking in persons and the Plan of Action against the Traffic in Persons, which civil society had helped to draft. Guatemala had been the first country in Central America to develop a policy and plan of action on the care of child victims of trafficking and illegal migration. A national protocol on the care of girl victims of commercial sexual exploitation would be implemented once it was approved by the Government. Another initiative awaiting government approval was the establishment of a multisectoral State body for combating the commercial sexual exploitation and sale and trafficking of children and adolescents, and for prosecuting persons who promoted such activities.

On 23 May 2007, the national Parliament had approved the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. Guatemala was taking steps to implement that Convention and was preparing a set of best practices for national and international adoption.

The Government had already taken a number of measures to ensure that Guatemalan children were no longer involved in armed conflict; it had adopted new legislation on military service and had ratified the Optional Protocol on the involvement of children in armed conflict. The signature of the peace agreements in December 1996 had put an end to 36 years of internal armed conflict in which children, women and the elderly, especially those belonging to indigenous peoples, had suffered most. No Guatemalan children were currently involved in any armed conflict or exercising military functions.

Since 1996, Guatemala had restored its social fabric and created conditions to prevent any action that might endanger the lives of children. In order to protect and promote children's rights, Guatemala still needed to enact a law on adoption, criminalize trafficking in persons and implement policies and plans of action already adopted.

The CHAIRPERSON invited the Committee to put questions to the delegation regarding the State party's initial report under the Optional Protocol on the sale of children, child prostitution and child pornography (CRC/C/OPSC/GTM/1).

Ms. ORTIZ (Country Rapporteur) noted that the State party's initial report had been submitted two years late. In Guatemala, many children, particularly indigenous children, did not complete secondary education and many suffered from chronic malnutrition. Thousands of children lived in the street and joined gangs as their only means of social protection.

Guatemala was a country of origin, destination and transit for migrants. Many Guatemalan children were sold for the purpose of sexual or commercial exploitation in Guatemala or in neighbouring countries. The services of such children were openly advertised in the press, and she had received reports that immigration and police officers were involved in trading and trafficking in minors. With regard to adoption, she had received information that women were paid to become pregnant, that children's documents were substituted or falsified, and that illegal establishments sold newborn children. State officials apparently tolerated international criminal organizations that were involved in such activities.

She commended the State party on the measures it had taken at the national and international levels to address the situation, including its adoption of the Act concerning the Comprehensive Protection of Children and Adolescents and the Plan of Action against the Traffic in Persons. Guatemala had signed memorandums of understanding with neighbouring countries, approved the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and ratified International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

The State party's initial report and written replies were unclear, inconsistent and incomplete. They provided the Committee with very little information on the implementation of the Optional Protocol on the sale of children, child prostitution and child pornography. The overall impression was that Guatemala was failing to implement the provisions of the Optional Protocol.

She asked whether the State party's initial report had been prepared with the involvement of civil society, particularly children's associations. She wondered whether the Government had used the reporting process as an opportunity to take stock of the situation relating to the sale of children, child prostitution and child pornography in Guatemala.

If the National Commission on Children and Adolescents still existed, she wished to know what its role and resources were. In particular, she wished to know whether it was responsible for coordinating implementation of the Convention on the Rights of the Child and its two Optional Protocols. If it no longer existed, she wished to know which body was responsible for coordinating implementation of the Convention and its two Optional Protocols, and whether that body sought the participation of all government institutions and civil society. She asked whether the Social Welfare Secretariat of the Office of the President or another government body was responsible for implementing the National Plan to Combat the Commercial Sexual Exploitation of Children.

Mr. FILALI (Alternate Country Rapporteur) agreed that the State party's initial report was unclear and inconsistent. He wished to know when the amended Penal Code would be adopted and when the reform of the justice system would be completed. He asked for examples of mechanisms established with a view to ensuring that the general principles of the Convention on the Rights of the Child were applied.

While the initial report stated that the Optional Protocol had become part of domestic law in 2002, it appeared that not all of the acts and activities set forth in article 3 of the Optional Protocol were fully covered under Guatemala's criminal or penal law; the delegation should explain that shortcoming. He wished to know whether Guatemalan courts could directly invoke the Optional Protocol in their decisions.

He wished to know whether Guatemala's problems involving the implementation of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption had been resolved.

Under the existing Penal Code, the acts and activities set forth in article 3 of the Optional Protocol were not punishable by appropriate penalties that took into account their grave nature. Moreover, the Committee had received credible reports from various international organizations that persons accused of such acts and activities were often tried for less serious offences that carried lighter sentences. He asked for an explanation of the discrepancy between the spirit of the provisions of the Optional Protocol, on the one hand, and Guatemalan legislation and legal practice, on the other.

He recalled that the State party was required to ensure that the offences set forth in article 3 of the Optional Protocol were fully covered under its criminal or penal law, whether they were committed on an individual or organized basis. The recent reform of the Penal Code concerning the offence of trafficking in persons made no specific mention of legal entities. He wondered whether legal entities had been excluded and whether the Government intended to include them in future reforms of the Penal Code.

The delegation should explain why the Penal Code stipulated that persons accused of an offence were tried under Guatemalan law even if they had already been tried abroad for the same offence. That provision violated the principle of double jeopardy, according

to which a defendant could not be tried a second time for the same offence.

Mr. PARFITT wished to know what government body was responsible for coordinating the policy and programmes for implementing the two Optional Protocols and what were its specific functions. The delegation should explain the role of the Committee on Minors and Families in giving effect to the Optional Protocols. He enquired how many staff members of the Office of the Procurator for Human Rights were involved in protecting children's rights and in the implementation of the Optional Protocols. He asked whether children who wished to lodge a complaint under the Optional Protocols could apply directly to the Office of the Procurator for Human Rights. He requested information on the extent to which the Presidential Commission for Coordination of the Policy of the Executive in the Area of Human Rights worked to protect children's rights, particularly those guaranteed under the Optional Protocols.

Ms. KHATTAB wished to know how many cases involving offences covered by the Optional Protocols had been investigated, how many perpetrators of such offences had been prosecuted and whether a data collection mechanism had been established to record information on such offences. She asked how many professionals dealt with child victims of offences covered by the Optional Protocols and what kind of training those professionals received. She suggested that the Government should consult the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, which specifically dealt with the crimes covered by the Optional Protocols.

She requested detailed information on the type of treatment afforded to foreign children who were arrested during police raids of brothels and later deported. The delegation should explain why child victims of offences under the Optional Protocols were held in detention centres with children in conflict with the law, since child victims were frequently subjected to sexual exploitation. She asked whether there was an effective witness protection programme in Guatemala for child victims of the offences covered by the Optional Protocols. She asked whether any child victims of such offences had been awarded compensation in Guatemala. The delegation should provide information on the Government's measures to protect street children.

Ms. AIDOO welcomed Guatemala's adoption of the National Plan to Combat Commercial Sexual Exploitation. She asked whether budget allocations for the Plan had been made and whether the proposal to establish a national commission for the elimination of commercial sexual exploitation had been approved. She requested information on measures to provide psychosocial and material assistance to child victims of commercial sexual exploitation. In particular, she wished to know how many children had received assistance and how many had been successfully reintegrated into society.

She enquired whether the Mi Hogar residence for girls, which accommodated only 62 girls, was sufficient to care for girl victims of sexual exploitation. She asked what kind of care the girls received and how long they remained in the residence. She wished to know what progress had been made in setting up a protection and training centre near the Mexican border. The delegation should indicate whether, during police raids of brothels, girls who lied about their age and claimed to be 18 were released without any verification of their ages. She wished to know what measures were being taken to ensure that child victims of sexual exploitation who were rescued by the State did not return to their exploiters. The delegation should provide a full account of the treatment and care given to foreign child victims of sexual exploitation. She would be grateful for data, disaggregated by age, sex, socio-economic background and education levels, on the estimated 15,000 child and adolescent victims of commercial sexual exploitation. She would appreciate additional information on child pornography and the sale of children. She asked whether the Government would consider undertaking gender-sensitive research into the root causes of offences under the Optional Protocols in order to determine the best way to help child victims and to strengthen awareness-raising campaigns, prevention programmes and support programmes.

Mr. CITARELLA requested the delegation to explain why most of the offences covered by the Optional Protocols were not defined as crimes in Guatemala's Penal Code. He wished to know what penalties applied to offenders prosecuted and punished in Guatemala for offences committed abroad that were criminalized under the Optional Protocols but were not criminalized by the Penal Code. He urged Guatemala to bring its legislation into line with the Optional Protocols in order for extraterritorial jurisdiction and extradition to be effective in preventing and punishing the offences covered by the Optional Protocols.

Mr. SIDDIQUI wished to know the main obstacles that the Government had encountered in collecting disaggregated data on the sale of children, child prostitution and child pornography. He enquired whether Guatemala had considered requesting assistance from the United Nations Children's Fund (UNICEF) in collecting such data. He wished to know how much foreign assistance the Government received for the implementation of the Optional Protocols. The delegation should explain why there were serious shortages of resources for preventing, investigating and suppressing the offences covered by the Optional Protocols, and how the Government intended to overcome those shortages. He asked what proportion of the general budget was devoted to children, as compared with budget allocations for military expenditure.

Mr. PURAS requested further information on the physical and psychological rehabilitation of child victims of sexual exploitation. He enquired whether rehabilitation facilities for such children were separate from adult facilities. He asked what professionals worked in children's rehabilitation facilities and what kind of training they received.

The CHAIRPERSON asked whether Guatemala had taken any steps to reform the procedure for intercountry adoptions. It was important for Guatemala to have a good system of birth registration in order for the police to be able to verify girls' ages during raids of brothels. She asked how successful the Government had been in identifying boys and girls involved in sex offences.

The meeting was suspended at 11.05 a.m. and resumed at 11.30 a.m.

Ms. LORENZANA (Guatemala) said that the Social Welfare Secretariat of the Office of the President was primarily responsible for implementing and coordinating public policy on children in Guatemala. Efforts were currently under way to incorporate the Secretariat into a new ministry for the family. A whole range of professional staff members, including teachers, social workers and psychologists, worked at the Mi Hogar residence to care for girls who were victims of sexual exploitation. A number of programmes provided the girls with job skills that would help them to lead productive lives when they left the home. The amount of time the girls stayed at the

home varied, depending on each girl's needs. Some 60 girls had been rehabilitated and were ready to be reintegrated into society.

The National Commission on Children and Adolescents was responsible for implementing and monitoring public policies for children and adolescents. The Social Welfare Secretariat was represented on the Commission.

Mr. FILALI asked whether Guatemala had carried out any evaluation of the impact of awareness-raising campaigns concerning the sexual exploitation of children.

Ms. LORENZANA said that no evaluation had yet been carried out, since the coordinating group for the National Plan to Combat the Commercial Sexual Exploitation of Children in Guatemala did not have the resources to conduct such an evaluation. Nevertheless, the Government believed that the campaigns had had an impact and that the population was gradually becoming aware of the problem. Guatemalans were also beginning to recognize that children involved in commercial sexual exploitation were victims, not criminals.

Ms. CORZO (Guatemala) said that the Presidential Commission for Coordination of the Policy of the Executive on Human Rights (COPREDEH) reported to the President on all human rights issues and drafted reports on human rights agreements. In 1997, a standing interinstitutional forum on human rights had been established; the forum held regular meetings with representatives of the relevant government ministries and departments and social funds. Through those meetings and working groups on thematic issues, the Presidential Commission on Human Rights collected all the information it required for reporting to the United Nations and regional human rights bodies and procedures. There was also a special system for following up on recommendations issued by treaty bodies and other special procedures.

In 2006, a high-level commission, comprising representatives of the Office of the Human Rights Procurator and the Government, had been established. The main function of the Commission was to promote national policies in line with the recommendations made by human rights bodies.

Representatives of the relevant government departments and ministries (social affairs, health, labour, migration) were involved in drafting of reports for human rights bodies, and special meetings were held for that purpose. Such meetings provided an opportunity to discuss programmes and policies and to assess whether they took account of Guatemala's obligations to implement recommendations made by human rights bodies.

She acknowledged that the report contained little statistical data. The Presidential Commission on Human Rights was trying to overcome the problem by encouraging State bodies to compile disaggregated statistical data.

Mr. FILALI asked how the standing inter-institutional forum on human rights ensured the broad participation of different sectors of society in consultations relating to the drafting of reports. He asked what happened in cases where the participation of one State body was opposed by another body at a higher level.

Ms. CORZO (Guatemala) said she was not aware of any cases where a body had not been allowed to participate in the forum. While efforts were made to ensure the broadest possible participation, the forum was essentially a government body. Consultations were also held with NGOs and young people to hear their views. UNICEF had assisted Guatemala in finding ways to broaden civil society's participation in implementing human rights treaties.

Ms. ORTIZ asked what opportunity NGOs had had to contribute to the drafting of the report and the written replies.

Ms. CORZO (Guatemala) said that, while NGOs always had the opportunity to contribute to the drafting process, they usually preferred to draft an alternative report. As for the written replies, several meetings had been held to consult the various bodies concerned.

The CHAIRPERSON said that, although in theory NGOs had the opportunity to participate in the drafting of reports, it was not clear whether they had done so for the report in question.

Ms. CORZO (Guatemala) said that the Presidential Commission on Human Rights had been responsible for drafting the final version of the report to the Committee. As part of the drafting process, it had held meetings with representatives of civil society. However, the data provided by civil society was not official.

Ms. ARELLANO (Guatemala) said that, while the Social Welfare Secretariat of the Office of the President was responsible for State policy on children's affairs, various interinstitutional groups had been established to deal with specific areas of that policy. One group under the supervision of the Ministry of Foreign Affairs addressed problems relating to trafficking and illegal immigration. Its tasks included contacting foreign embassies and diplomatic missions in cases of illegal immigration and raising awareness of issues relating to trafficking and illegal immigration in government and non-governmental circles. Another group addressed exploitation issues. Its activities included weekly surveillance of brothels, nightclubs and other public places in order to ensure that women and girls were not victims of forced labour or sexual exploitation.

Pursuant to the Act concerning the Comprehensive Protection of Children and Adolescents, the Office of the Procurator-General of the Nation, through the Office of the Procurator for Children and Adolescents, was obliged to represent and assist children in all legal proceedings and to act in their best interests. Care was taken to ensure that victims of sexual exploitation or trafficking were not treated as offenders or subjected to further victimization. It was important to establish the age of the victims; if they were not in possession of valid identity documents, they were treated as minors and immediately transferred to a State shelter where they were provided with the necessary protection and support from a team of lawyers, social workers and psychologists.

Appropriate arrangements were made with the relevant consulates or missions to ensure that foreign children were transferred to the judicial custody of their country of origin. In criminal cases, the Office of the Procurator-General of the Nation was obliged to

intervene in proceedings and defend the interests of the victim. In such situations, legal assistance was sometimes also provided by NGOs, such as Casa Alianza.

In view of its obligation to provide assistance to all children in juvenile courts, the Office of the Procurator-General of the Nation had a multidisciplinary team that operated nationwide. The team comprised legal experts, social workers and psychologists, and its activities were supported by such international organizations as UNICEF and ILO.

Ms. ORTIZ asked how many shelters the State provided for victims and requested information on the number of social workers and psychologists employed in such shelters.

Ms. LORENZANA (Guatemala) said that there were a total of three State-run shelters in different cities, which provided special care for child victims of sexual exploitation.

Mr. FILALI asked whether the shelters also provided protection for foreign children. He requested information on the procedures for hearing testimony from child victims.

Ms. ARELLANO (Guatemala) said that foreign children were cared for in State-run shelters until their legal status had been determined by a judge, their nationality had been established, and arrangements had been made for their repatriation.

When representing children involved in criminal cases, the Office of the Procurator-General of the Nation ensured that their views were heard and their best interests were upheld. When children gave testimony in court, they were hidden behind a protective screen. After giving testimony they were escorted out of the courtroom and were not required to be present during the rest of the proceedings. They were always accompanied by a psychologist who attended to their psychological needs, and by a lawyer who ensured that there was no infringement of their rights during questioning.

Ms. LEÓN (Guatemala) said that Guatemalan criminal law was based on the principle of *nulla crimen sine lege, nulla poena sine lege*, and certain provisions of the Optional Protocol could not be applied in its courts. The Government was drafting legislation to amend the Penal Code; such legislation would not only include offences covered by the Optional Protocol, but also prescribe harsher punishment for some of the acts already classified as offences. The draft legislation should enter into force shortly.

Guatemala's juvenile justice system included courts that dealt with juveniles at risk and other courts for juveniles in conflict with the law. Juvenile judges had received special training in the relevant international treaties and national laws relating, and 23 seminars had been organized with the support of UNICEF for that purpose. Training had been provided for other judicial personnel in order to ensure that they performed their duties in accordance with regulations.

Interpretation was provided in indigenous languages where possible. Approximately 650 bilingual staff members, including court interpreters, judges and other personnel, worked in the juvenile justice system.

In March 2006, a new 24-hour juvenile court service had been introduced in Guatemala City. Its aim was to deal promptly with cases involving minors in order to ensure that they were not abused while in custody. Since the introduction of the service, complaints of abuse and corruption by the police had decreased. In March 2007, a similar service had been introduced in Villa Nueva, a town with a large young population and problems of violence. There were plans to establish two more services in other parts of the country in the coming months.

She acknowledged that the statistics relating to the Optional Protocol did not provide enough information on victims. In its next report, Guatemala would endeavour to provide more accurate and disaggregated statistics on offenders and victims.

Mr. CITARELLA asked how soon the proposed amendments to the Penal Code would enter into force.

Mr. FILALI said that, although some of the acts covered by the Optional Protocol had not yet been classified as offences under Guatemalan law, he understood that the Optional Protocol could be invoked in the courts, since it had been incorporated into domestic law. The delegation should provide clarification in that connection.

He asked whether the Supreme Court had ever dealt with cases relating to the status of the Optional Protocol in Guatemalan law. He wished to know whether judges and other persons involved in criminal proceedings involving offences under the Optional Protocol were afforded adequate protection.

Ms. LEÓN (Guatemala) said that, while the provisions of the Optional Protocol were applied under domestic legislation, offenders could not be punished for acts that were not classified as criminal acts in Guatemalan criminal law. Although the Constitutional Court had ruled that, in certain cases, domestic law should take precedence over international instruments, there was still a need for definitive jurisprudence on the hierarchy of legislative instruments.

Mr. MORALES (Guatemala) said that it was incumbent on the Committee on Minors and Families and the Constitutional Court to ensure that criminal organizations did not prevent the draft amendments to the Penal Code from becoming law. He hoped that Congress would adopt the amendments in a timely manner and also approve the initiative concerning the Act on adoptions.

While the Government recognized the importance of prioritizing children's rights in its budget allocations, tax revenues were low, and Congress had to exercise caution when allocating resources. International donors therefore had an important role to play. For example, the establishment of a children's parliament with the support of UNICEF, had helped to bridge the gap between civil society and Congress.

Ms. ORTIZ (Country Rapporteur) welcomed Guatemala's approval of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. She wondered whether the Government intended to establish an independent body

with the financial and human resources required to fulfil its mandate. She wished to know whether the Government intended to create a mechanism to prevent corruption, which had a strong impact on adoption. The delegation should indicate how many domestic and intercountry adoptions had taken place in 2006 and 2007, and how many relatives had filed claims for the return of illegally adopted children. She would be interested in knowing how many intermediaries were involved in inducing mothers to give up their children for adoption, and how likely it was that such children would be returned to their families. Given the high number of adopted children who returned to Guatemala to look for their roots, she wondered whether the Government intended to amend its legislation to incorporate the right of children to know who their biological parents were. She asked how the new law on the civil register was being applied, and whether it would help to prevent document fraud.

Mr. FILALI (Alternate Country Rapporteur) said that it was unclear whether or not the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption had been implemented. The Committee had received information that Guatemala would need to withdraw its reservation to articles 11 and 12 of the Vienna Convention on the Law of Treaties before the Hague Convention could enter into force.

Ms. AIDOO expressed concern at the limited resources allocated to the Social Welfare Secretariat, and asked whether the Government intended to upgrade the Secretariat to a ministry in order to enable it to have the capacity to implement policies for the protection of children.

Mr. MORALES said that the Government was currently considering three models for the establishment of a central authority on adoption. One possibility was to set up a national commission, with its own budget, to represent civil society and the various State bodies involved in matters relating to adoption. The second model was a national council for adoption funded by the Procurator-General of the Nation. The third possibility was that the Social Welfare Secretariat could fulfil the function of a central authority.

The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption formed the basis for Guatemala's adoption procedure. The objective of the new law on adoption was to consolidate the legal conditions for that procedure. Moreover, there were measures to prevent trafficking and smuggling during the adoption procedure, and Guatemala was complying with the Hague Convention. Since an adequate legal framework had been established, it would be unwise to delay the many pending adoption cases until a decision was taken on the establishment of a central authority.

Mr. ARCE said that civil register offices would soon be issuing protected identity documents that could be used to establish the identity of minors being trafficked or exploited.

Ms. ORTIZ (Country Rapporteur) asked how civil servants who committed offences against children were punished. The delegation should provide information on the measures the Government was taking to ensure the safety of children in workplaces where their lives were at risk. She wondered what was being done to stop the promotion of Guatemala as a destination for sex tourism.

The meeting rose at 1 p.m.