



Convention on the Rights of the Child

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Consideration of reports submitted by States parties under article 44 of the Convention

Fourth periodic reports of States parties due in 2006

Guatemala^{*,**}

[25 April 2008]

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** The annexes may be consulted in the secretariat files.

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I. Introduction

1. This report has been drafted in accordance with States' obligations under article 44, paragraph 1, of the Convention on the Rights of the Child, whereby they undertake to report to the Committee, through the Secretary-General, on their implementation of the Convention within two years of the entry into force of the Convention and every five years thereafter.

2. In preparing this report, account has been taken of the comments and recommendations made to the State of Guatemala by the Committee on the Rights of the Child during its consideration of Guatemala's second periodic report (CRC/C/15/Add.154) and also of those made during its consideration of the reports submitted by the State of Guatemala on its 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/CO/1) and 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/CO/1).

3. The State of Guatemala wishes to emphasize that all measures taken to apply and enforce the principles contained in the Convention and its optional protocols, to which it is also a party, are underpinned by the policy that its laws, regulations and actions should observe the basic rule of international law, *pacta sunt servanda*, which is itself a provision of treaty law insofar as it is enshrined in the Vienna Convention on the Law of Treaties.

4. In line with its international commitments, therefore, Guatemala, as a sovereign State and a member of the community of civilized nations members of the United Nations system, has incorporated this principle in two constitutional provisions of the highest rank.

5. Firstly, article 149 of the Constitution, which governs the State's foreign relations, recognizes the validity of the international principles, rules and practices that guide nations towards a life of peace and the observance of other basic values of coexistence. Secondly, in pursuit of its democratic aspirations, having experienced the pain of a fratricidal war lasting more than 36 years, Guatemala has incorporated the principle of the pre-eminence of international law over domestic law in respect of human rights into article 46 of the Constitution, which establishes "the general principle that, in human rights matters, the treaties and conventions accepted and ratified by Guatemala shall prevail over domestic law".

6. This is confirmed by Government Order No. 64-2007, *Official Gazette* 6 March 2007, withdrawing all reservations entered by the Republic of Guatemala to articles 11 and 12 of the Vienna Convention on the Law of Treaties. This decision removed the main obstacle preventing the Government's accession to international treaties and restored confidence in respect of a large number of international human rights instruments accepted or acceded to by Guatemala.

A. Methodology used in drawing up the report

7. In preparing this report, account was taken of the fact that Guatemala submitted its second report (CRC/C/65/Add.10) in October 1998 and that the Committee's recommendations were approved in May 2001. Guatemala subsequently submitted a third report, and that forms the basis of this one, as, exceptionally, the Committee requested Guatemala to submit a fresh report combining the third and fourth periodic reports. It therefore includes information from 2004 onwards.

8. The first step was to analyse information gathered from government agencies belonging to the Permanent Forum to Monitor Human Rights, a body in which the various State institutions concerned discuss the issues, actions and challenges they face in respect of children. This reflects a firm conviction that children's issues are issues that necessarily involve all sectors of society.

9. The Presidential Commission for Coordinating Executive Public Policy in the field of Human Rights (COPREDEH) is the body designated by the State to draw up reports under the conventions to the United Nations committees, and accordingly, with the support of the United Nations Children's Fund (UNICEF), it organized individual meetings with such agencies as the Social Welfare Secretariat of the Office of the President and the Social Work Secretariat of the Office of the First Lady, in order to evaluate the action taken by each of them and follow up on pending issues.

10. Each agency reported on action taken on the recommendations and commitments, both in this area and in others awaiting development.

11. After gathering information from State agencies, civil society organizations were consulted to set up cooperation activities to protect children's and adolescents' rights, beginning with the dissemination of this report. A joint advisory forum, coordinated by COPREDEH, is to be created with civil society bodies that work with children's and adolescents' human rights, to discuss their proposals and those of the State.

12. Due to the short interval between the Committee's consideration of Guatemala's implementation of the optional protocols and the submission of this report, this report basically covers progress in implementing the Convention and some progress on the protocols.

B. Socio-political context

13. On 14 January 2008, after constitutional elections, a new Government took office, one whose social democratic ideology attaches great importance to addressing children's and adolescents' issues.

14. The Government has decided to step up its engagement with human rights by merging COPREDEH and the Peace Secretariat into a Human Rights and Peace Secretariat, a move that will take place during this first year.

15. The Government has created a social affairs unit known as the Council for Social Cohesion, to develop and implement the public policies needed to help Guatemala's neediest groups, which include a large number of children at risk.

16. The Government has also created the Council for Social Development to address productive rural development by improving the standard of living of Guatemala's peasant families, most of whom make their children do farm work to boost the family income.

II. General measures of implementation

A. Measures taken to harmonize national law and policy with the provisions of the Convention

17. A recommendation made by the Committee in respect of Guatemala's second report states: "The Committee is deeply concerned that the entry into force of the Children and Adolescent Code of 1996 was postponed several times and, on 24 February 2000, was suspended indefinitely by Congressional Decree No. 4-2000. Concern is also expressed that

some of the provisions of a new draft Children's Code introduced in Congress in October 2000 are not in conformity with the Guatemalan Constitution and the Convention, as the Government itself noted in its written response to the list of issues. The Committee is encouraged that according to information provided during the dialogue with the State party delegation the Congress and civil society are engaged in negotiations and discussions about the drafting of a Children's Code which is in conformity with the Constitution and the Convention."

18. The State of Guatemala has adopted the Act on the Comprehensive Protection of Children and Adolescents, on the basis of consensus reached with civil society, to fill the legal void created by the existence of two contradictory laws at the same time, namely the Convention and the Children's Code.¹ The Inter-American Court of Human Rights had also looked into the question of new legislation on children and adolescents (see annex 1).²

19. The Act was based on the doctrine established by COPREDEH. It constitutes a legal instrument for family integration and social advancement for the purpose of promoting and adopting measures, drawing up policies and allocating resources in order to provide legal and social protection for the family, and so ensure the effective exercise of the rights of children and adolescents.

B. Provisions of domestic legislation that are more conducive to the realization of the rights of the child, in accordance with article 41

20. Guatemala has brought its domestic legislation into line with the doctrine and principles of the Convention.

C. Remedies available in cases of violation of the rights recognized by the Convention

21. The Office of the Human Rights Procurator has a mandate from Congress to defend the human rights enshrined in the Constitution, the Universal Declaration of Human Rights and the international treaties and conventions accepted and ratified by Guatemala. This Office also has a Children's Ombudsman, which, in the event of violation of children's rights, is one of the instances available to receive and investigate complaints of violations of human rights.

22. The Office of the Procurator-General has an Office of the Children's Procurator, which deals with children and adolescents at risk. Where an offence is detected the Children's Procurator notifies the Public Prosecutor's Office and hands over any information obtained in the course of its intervention in each case.

23. Lastly, within the justice system the Public Prosecutor's Office is responsible for investigations and prosecutions, while the judiciary is responsible for the administration of justice.

¹ Which no longer met the legal needs of children and adolescents.

² The Act on the Comprehensive Protection of Children and Adolescents came into force on 19 July 2003.

D. Measures taken to adopt an overall national strategy for children in the framework of the Convention

24. Following the passage of the Comprehensive Protection Act, the State developed a comprehensive protection policy and a plan of action for children and adolescents, which includes strategic actions to be taken or promoted by the State to provide legal and social protection to the family and assure parents and guardians that the State will fulfil its obligations with regard to life, liberty, security, peace, inviolability of the person, health, nutrition, education, culture, sports, leisure and family and community life for all children and adolescents.

25. The following policies, programmes and general or sectoral services have been developed in implementation of the Convention. These will be explained later in this report (see annex 2):

- (a) Policy and Plan of Action on Children and Adolescents;
- (b) National Plan of Action to Combat Commercial Sexual Exploitation of Children and Adolescents;
- (c) National Plan for the Elimination of Child Labour and Protection of Working Adolescents;
- (d) National Youth Policy 2005–2015;
- (e) National Policy on Human Rights Education;
- (f) State Policy on Trafficking in Persons and Comprehensive Protection for Victims;
- (g) State Policy for a Culture of Peace 2006–2015;
- (h) National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities Plan 2001–2006;
- (i) National Policy for the Prevention of Youth Violence;
- (j) Rural Development Policy.

26. The Plan of Action for Children and Adolescents comprises strategic actions that link into other State policies on children, including the National Policy for the Advancement and Development of Guatemalan Women and Equal Opportunities Plan 2001–2006; the Poverty Reduction Strategy 2001; the Policy on Social Development and Population 2002; the National Plan for the Elimination of Child Labour and Protection of Adolescent Workers; the National Plan of Action to Combat Commercial Sexual Exploitation of Children and Adolescents; and the National Plan for the Protection of Street Children.

27. The National Commission on Children and Adolescents (CNNA) was established as lead agency responsible for coordinating public policy on children and adolescents. CNNA comprises 10 representatives of the State and the same number of representatives of NGOs involved in action and programme development for children and adolescents,³ and

³ One representative each from the areas of education, health, labour and social insurance, internal affairs, culture, welfare and finance; and from the Planning and Programming Secretariat in the Office of the President, or from the executive department responsible for planning; one representative from Congress and one from the judiciary. As to children's and adolescents' NGOs, 11 representatives from children's human rights organizations and from religious, indigenous, youth, educational and health associations.

supervises the implementation of policies on the comprehensive protection of children and adolescents. Its first meeting was held on 2 July 2004 and the members were sworn in by the Congressional Committee on Minors and Families.

28. The functions of CNNA include the establishment of a national system of indicators for monitoring the State's comprehensive policy and the national plan of action, allowing it to regularly assess progress towards the goals and objectives proposed for realizing the rights of children and adolescents under the Comprehensive Protection Act. All State institutions involved should have indicators for the goals to be met, measurable through a monitoring plan. All Guatemalan citizens and children and adolescents have a right and a duty to help monitor the implementation of State policies on comprehensive protection and of the national plan of action. Civil society has an important part to play in monitoring as well.

29. The development councils and commissions on children at the national level are required to examine the implementation and updating of assessments carried out at the community, municipal and departmental levels in order to measure progress and setbacks in the situation and standard of living of children and adolescents.

30. In 2007, in coordination with the Social Movement for the Rights of Children, Adolescents and Young Persons in Guatemala, the Office of the Human Rights Procurator and the Human Rights Office of the Archdiocese, CNNA organized a seminar on "Comprehensive Protection of Children and Young Persons in Guatemala", with the aim of evaluating the implementation of the Comprehensive Protection Act, the Government's comprehensive protection policy and the National Plan of Action for Children and Adolescents, and promoting exchanges, dialogue and the search for consensus, partnerships, commitments and proposals from civil society and the various State institutions.

E. State budget for children's and adolescents' rights in Guatemala

31. In terms of State investment in children and adolescents, the budget allocation as a proportion of gross domestic product (GDP) was 1.3 per cent in 2004, 1.9 per cent in 2005, 1.98 per cent in 2006 and 2.8 per cent in 2007.⁴

F. Existing or planned mechanisms at the national, regional and local levels for ensuring the implementation of the Convention, coordinating policies relating to children and monitoring progress

32. As the coordinating body for State policy on human rights, COPREDEH has suggested creating a human rights policy monitoring and follow-up unit in the new Human Rights and Peace Secretariat.

33. As to joint action with civil society to assess progress, as mentioned in the introduction, discussions have been held with civil society organizations on the creation of an advisory forum to discuss proposals on child policy from the State and NGOs and generate sustained dialogue between civil society and State institutions.

34. One of the measures taken to ensure the implementation of the Convention is the Policy on Comprehensive Protection of Children and Adolescents in Guatemala and the Plan of Action 2004–2015, which set objectives and goals and for which budget estimates

⁴ Ministry of Finance, "The education budget".

have been prepared for each year of the plan. Everything is being done, including the required representations to Congress, to ensure that the budget allocation requested for the operation of the policy and the action plan is commensurate with the needs and goals stated.

G. Measures to publicize the Convention in accordance with article 42

35. The State has taken various steps to promote and publicize the Government's actions on behalf of Guatemalan children, including the dissemination of the Social Development Act. These measures were initiated by the Media Secretariat of the Office of the President, whose task is to publicize the Government's work and keep the Guatemalan people informed.

36. The Media Secretariat aims to create a legal framework for the implementation of legal procedures, and to draw up public policies for the programming, planning, coordination, execution, monitoring and evaluation of action by the Government and the State to develop the human person in social, family, human and environmental terms, with emphasis on groups with special needs such as children and adolescents in risk situations (see annex 3).

37. In addition, the COPREDEH Project on Social Dialogue on Human Rights and Reconciliation included several workshops to promote a gender-sensitive, multicultural vision for regional directors, members of the urban and rural development councils and community leaders, such as:

- (a) Workshops on gender sensitivity, multiculturalism and human rights with teams from the regional and departmental offices of COPREDEH;
- (b) Monthly workshops on gender sensitivity, multiculturalism and human rights with State officials and representatives of local civil society;
- (c) Meetings with departmental governors on the involvement of the project team in the urban and rural development councils in order to facilitate social dialogue;
- (d) Publicity campaign (TV, press and radio) during September and from 1 to 9 October 2005;
- (e) One-hour radio programme on human rights: "Your right to know your rights", broadcast every Saturday from September 2005 to December 2007;
- (f) Publicity in non-traditional spaces (marketplaces, *pilas* (communal laundry sinks), corn mills, shops and local grocery stores). The regional coordinators of COPREDEH have organized human rights festivals and a Human Rights Fair, held between 1 December 2004 and 30 November 2006 in such places as Chiché (Quiché) San Lorenzo (San Marcos) and Chicacao (Suchitepéquez).

38. These efforts were deemed a success because they reached a significant proportion of the schoolchildren in each of the municipalities: with the workshops on children's rights, 64 per cent in the Schools Human Rights Art Festival in Chiché, where there are 25 primary schools – the municipality's sole youth education institute was also involved; 57 per cent in San Lorenzo (San Marcos), where there are 13 primary schools and 5 youth education institutes; and 59 per cent in Chicacao (Suchitepéquez), where there are 27 primary schools and 4 youth education institutes.

39. Moreover, 95 per cent of schools attended the Festifera in Chiché and San Lorenzo, for the project funds made it possible to take the children into the town centre, and in Chicacao 7,500 children from all 27 schools attended the Festifera at the teachers' own initiative.

40. As a teaching aid in these activities, the booklet “The Human Rights of Children” was reprinted in a fourth edition. It was used in the school festivals during this period in the municipalities of Chiché (Quiché), San Lorenzo (San Marcos), Chicacao (Suchitupéquez), San Luis Jilotepeque (Jalapa), Puerto Barrios (Izabal), San Mateo Ixtatán (Huehuetenango), San José Xacayá (Sololá) and San José (Petén).

III. Definition of the child (article 1 of the Convention)

41. In article 2 of the Act on the Comprehensive Protection of Children and Adolescents, the State of Guatemala adopts the following definition: “Definition of child and adolescent. For the purposes of this Act, any person from conception to the age of 13 is considered a child and any person from the age of 13 to the age of 18 is considered an adolescent.” The State considers this consistent with the definition in article 1 of the Convention: “For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”

42. Article 51 of the Constitution provides that “the State shall protect the physical, mental and moral health of minors Their right to food, health, education and social security and insurance shall be guaranteed”.

43. As regards the exercise of their rights, article 174 of the Constitution states that “Guatemalans over the age of 18 are citizens. Citizens shall suffer no limitations beyond those laid down by the Constitution and the law.” Thus, children and adolescents should be supported by their parents or guardians in any action of a legal, administrative or penal nature.

44. Rights have been established to protect Guatemalan children, such as the right not to work during childhood – although in exceptional cases it is permitted by law from 14 years of age, provided the employment is specially protected and regulated.

45. With regard to adolescent marriage, the State is aware of the recommendations made by the Committee. However, the practice still has a firm hold among Guatemala’s Mayan population, so the law states that boys aged 16 and girls aged 14 wishing to marry must obtain their parents’ consent (Civil Code, art. 81).

46. Children have the right to seek legal and medical advice in the event of abuse, which supports their right of complaint and petition. For medical treatment, the Comprehensive Protection Act states that, for their own safety, children must have permission from parents, guardians or carers before they can be hospitalized or given the necessary treatment. “If, for cultural or religious reasons, parents, guardians or carers refuse to consent to their child’s hospitalization under this Act, the attending physician is authorized to take immediate action to protect their life or physical safety.”⁵

47. The consumption of alcohol and other controlled substances is permitted only by persons aged over 18. Recruitment into the Armed Forces is voluntary and from the age of 18 (see annex 4). Article 18 of the Military and Social Service Act establishes the following procedure: “As soon as a citizen reports for service, (a) their identity, age and other requirements of Civic Service shall be verified from the appropriate documents; (b) they shall be informed that they have a choice of military service or some form of social service; (c) they shall be informed in detail of the rights and duties arising from the performance of Civic Service; (d) if they choose military service they shall be informed that they may

⁵ Act on the Comprehensive Protection of Children and Adolescents, art. 32.

choose to serve in the regular forces or in the military reserves and that such service shall be governed exclusively by military law and regulations; and (e) they shall receive an official document stating the civilian or military unit to which they must report for duty and the reporting date.” Article 14 provides that “the Civic Service shall conscript citizens aged between 18 and 24”.

48. With regard to criminal liability, the reason for the distinction between a child and an adolescent under the Comprehensive Protection Act is that criminal liability applies only to adolescent offenders; children under 13 are not subject to police or judicial measures or deprivation of liberty.

49. Adolescents in conflict with the criminal law are divided into two age groups: 13 to 15 and 15 to 18, in order to ensure that the penalties imposed by the competent court safeguard the best interests of the child, in accordance with their age and development. For example, pretrial detention for the first age group is an exceptional measure and may be applied only when other coercive measures have been exhausted. Criminal liability applies without gender distinction, as it does when applied to any other citizen.

50. The State recognizes that, as has been indicated by the Committee, there is a contradiction and a gap in the law with regard to the maximum age of basic education (14) and the minimum working age (13).

51. However, the Ministry of Education has other means of guaranteeing adult education. There are intensive mature student programmes for persons aged over 18, which are held in the evenings or at weekends.

IV. General principles

A. Non-discrimination

52. This principle is regulated by article 4 of the Constitution, on freedom and equality, which states: “In Guatemala all human beings are free and equal in dignity and in rights. Both men and women, whatever their civil status, have equal rights and responsibilities. No one may be subjected to servitude or any other condition that impairs their dignity. Human beings must act in a fraternal manner towards each other.”

53. The State recognizes in the Agreement on Identity and Rights of Indigenous People that “indigenous peoples have been particularly subject to de facto levels of discrimination, exploitation and injustice, on account of their origin, culture and language and that, like many other sectors of the national community, they have to endure unequal and unjust treatment and conditions on account of their economic and social status This historical reality has affected and continues to affect these peoples, denying them the full exercise of their rights and political participation and hampering the configuration of a national unity, which should adequately reflect the rich and diversified physiognomy of Guatemala”. On the basis of this recognition, the State has committed to undertake all measures to eliminate discrimination on any grounds or basis.

54. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) was set up under Governmental Order No. 390-2002 in October 2002. Its objective is to respond to and address, at executive level, the latent discrimination that persists in Guatemala.

55. Congress approved Congressional Decree No. 57-2002, amending the Criminal Code (Congressional Decree No. 17-73) to make it an offence to act or behave in a racist or discriminatory way.

56. In addition, article 10 of the Act on the Comprehensive Protection of Children and Adolescents states: “Equality. The rights enshrined in this Act shall apply to every child and adolescent without discrimination of any kind based on race, colour, sex, language, religion, national, ethnic or social origin, economic situation, physical, mental or sensory impairment, birth or any other condition relating to themselves, their parents, relatives, guardians or the persons responsible for them. Children and adolescents from ethnic groups or of indigenous origin have the right to live and develop within social structures that reflect their historical and cultural traditions, provided these are not contrary to public policy or due respect for human dignity. The State guarantees the right of children and adolescents, whatever their parentage, to have their own cultural life and educational system, to profess and practise their own spirituality and customs, to use their own language and to enjoy their inherent rights and guarantees, in accordance with their world views.”

57. Decree No. 19-2003, in accordance with article 2 of the Mayan Language Act, granted official status to Mayan languages and recognized the Mayan, Garifuna and Xinka languages as essential components of Guatemala’s national identity. Their recognition, observance, development and use in public and private spheres seek to bring about national unity through diversity and to promote and reinforce multiculturalism in Guatemalan society (see Annex 5).

B. Best interests of the child

58. Article 5 of the Comprehensive Protection Act states the following: “The best interests of the child are a guarantee which shall apply in every decision taken with regard to children and adolescents and ensure the exercise and enjoyment of their rights, respecting their bonds deriving from family, ethnic origin, religion, culture and language, and always taking account of their views in accordance with their age and degree of maturity. In no case shall its application diminish, distort or restrict the rights and guarantees recognized in the Political Constitution, in human rights treaties and conventions accepted and ratified by Guatemala, or in this Act.”

59. What importance do courts of law, administrative authorities and legislative bodies, and public and private social welfare agencies attach to this principle?⁶

60. The role of juvenile courts is to protect and defend children’s and adolescents’ enjoyment of any rights that may have been or are in danger of being violated, by applying legislation based on the principle of the best interests of the child. They also safeguard young offenders’ constitutional rights and guarantees through speedy, straightforward, impartial, oral juvenile criminal proceedings that impose rehabilitation measures in proportion to the degree of criminal responsibility, and ensure that treatment is such as to provide a general level of education.

61. The juvenile court infrastructure is based on the model designed as part of the project set up by the United Nations Development Programme (UNDP) to render non-criminal judicial procedures more flexible (UNDP document GUA/98/041). This model meets the procedural principles of immediacy and adversarial trials, promptness and confidentiality, as well as basic administrative principles, such as case management and control, front desk services, centralized custodial procedures and management of central archives.

⁶ See organization chart of the Social Welfare Secretariat, annexed.

62. In the case of special courts such as juvenile courts, specialist support units have been set up such as psychological and social work units.

63. In the exercise of their function, judges resolve social conflicts, that is to say conflicts of interest between individuals or between individuals and the State. However, when the conflict involves the rights of the child, a new interest arises that takes precedence over others, namely the child's interest. National legislation requires that, in all judicial and administrative decisions in cases affecting a child, the child's interests must prevail. The sole source of that interest is the child, that is to say, whatever it means to the child and not what it means to the adult.

64. The Supreme Court established nine juvenile courts within Guatemala, with judges who try only juvenile cases, in accordance with the constitutional requirement to provide specialized justice, which should make for better implementation of the rights of the child.

65. The juvenile unit of the Public Prosecutor's Office deals exclusively with young persons in conflict with the criminal law (young offenders between the ages of 13 and 18) within Guatemala. There are also regional prosecutor's offices in Escuintla, Quetzaltenango, Jutiapa, Zacapa, Chimaltenango and Petén.

66. The work of the juvenile prosecutor's office includes initial proceedings, investigations, forms of early conclusion, hearings, appeals, coercive measures and socio-economic studies, and the office applies the principle of best interests of the child in its everyday work. In order to reinforce the application of this principle, training has been given to prosecutors from the children's and youth unit on the use and application of the international instruments concerning the rights of the child to which Guatemala is party.

Measures taken to guarantee children such protection and care as is necessary for their well-being

67. The protection that the Guatemalan State must afford to children in order to safeguard their right to life and provide an environment conducive to their development is specified in the Act on the Comprehensive Protection of Children and Adolescents.

68. At the municipal level, responsibility for establishing these policies rests with the municipal commissions on children and adolescents.

69. Since 1995, 10 per cent of the general national budget has been allocated to the municipalities, as stipulated in article 257 of the Constitution. The same article requires that 95 per cent of that sum should be used to finance education, preventive health care, infrastructure and public service projects to improve the quality of life of the inhabitants.

70. Municipalities benefit from additional revenue from the transfer of taxes, such as the tax on oil and oil products, road tax, value added tax and property tax. In addition, there are all the allocations from social funds and municipal projects undertaken directly by the executive.

71. Following the Conference on Early Childhood held in Guatemala on 18–20 April 2007, various government, civil society, municipal, church, university, private and international cooperation bodies reached an important consensus on reinforcing the centralized measures for children aged from 0 to 6. According to the latest (2002) census by the National Statistical Institute, the total population aged under 6 was 2.3 million or 20 per cent of the population of Guatemala.

72. This agreement resulted in the signature of a declaration on early childhood, which, in its substantive paragraphs, calls for the immediate development of an action plan on early childhood for 2007–2015, an increase in resources to finance child policies, the reinforcement of institutions, programmes and projects, improved inter-agency

coordination, and inclusion of the resolutions of the declaration in the governmental programmes of all the political parties (see annex 8).

73. This effort could have an extremely positive effect on Guatemala by helping to break the vicious circles of poverty, malnutrition and violence, as well as contributing to achieving the Millennium Development Goals more effectively, quickly and sustainably, because a good start in childhood will set a good course through adult life. A follow-up meeting on the agreements outlined in the declaration on early childhood will be held on 9–10 April 2008 in Guatemala City.

74. The Procurator for Children and Adolescents ensures the best interests of children and adolescents in Guatemala, on behalf of the Procurator-General, and must be a qualified lawyer or notary. The Procurator for Children and Adolescents is responsible for the various units dealing with children, so must be a specialist. The Procurator also coordinates, selects and implements all measures necessary to comply with the principles of the Constitution, child protection legislation and relevant international treaties ratified by Guatemala.

75. The Child Rescue Unit, too, is part of the Office of the Procurator-General. Its role is to assess the risk situations children could find themselves in. The team is authorized to take minors to the nearest juvenile court and request the necessary protection measures.

76. The Unit determines whether the minor could be returned to another family member where they would have no contact with their aggressor, or whether they should remain temporarily in a specified children's home. However, the Procurator-General's Office is not responsible for the prosecution of the aggressor but must inform the Public Prosecutor's Office.

77. A court order is needed to rescue a child. This can be requested by any institution that supports the rescue of the minor. They must supply reports to the juvenile court, containing data on the rescue and placement, and on the situation where the minor was found, in order to provide the necessary protection measures.

C. Right to life, survival and development

78. Article 3 of the Constitution stipulates that “[t]he State guarantees and protects human life from the time of conception, as well as the integrity and security of the person”. Under article 1, “[t]he State of Guatemala is constituted to protect the individual and the family; its supreme aim is the achievement of the common good”.

79. The Act on the Comprehensive Protection of Children and Adolescents stipulates in article 9 that “children and adolescents have a fundamental right to life. It is incumbent upon the State to guarantee their survival, safety and all-round development. Children and adolescents have a right to the protection, care and assistance needed for them to achieve adequate physical, mental, social and spiritual development”.

Measures to guarantee the child's right to life, survival and development

80. The Social Welfare Secretariat is the central authority and lead agency on public policy for the comprehensive protection of children and adolescents. It manages, operates and supervises social welfare programme centres at the national level for children, adolescents, families and vulnerable groups.

81. There are three components to the Secretariat's work with children and adolescents: prevention, which is dealt with by the Undersecretariat for Family and Community Support, protection, which is dealt with by the Undersecretariat for Protection and Shelter and Family Rehabilitation and Reintegration; and social rehabilitation, which is supervised by

the Undersecretariat for the Reintegration and Social Rehabilitation of Adolescents in Conflict with the Law.

82. In order to safeguard children's best interests, ensure their adequate development and give them a decent life, the Social Welfare Secretariat has implemented programmes for various groups, as follows:

(a) *Children at risk.* A programme to combat commercial sexual exploitation, provide support for street children (i.e., both children living in the street and children working there, as well as those who are likely to end up on the street) and the safe and orderly return of unaccompanied migrant children;

(b) *Support for children and adolescents with disabilities.* The Alida España Special Education Centre and the Vocational Training Centre;

(c) *Support for adolescents in conflict with the law.*⁷ Provisional detention centres where the individual is held while their legal status is being established, and detention centres for reintegration and social rehabilitation of adolescents who have committed serious crimes.

83. More detailed information on these protection and support programmes is provided in the next sections of the report.

84. The Social Welfare Secretariat has nine centres: (a) the Mi Hogar residence for girls in Antigua Guatemala, (b) the San Gabriel residence for boys in San José Pinula, (c) temporary protection shelters, (d) the Psychiatric and Neurological Residential Centre, (e) Casa Alegría, (f) the Quetzaltenango residence, (g) the Zacapa residence, (h) the Elisa Martínez residence in San José Pinula and (i) the Mi Hogar residence in Antigua Guatemala.

85. In another area, the Secretariat issued a new internal regulation on the basis of the provisions of the Comprehensive Protection Act and contained in Government Order No. 18-2006, "with the primary objective of developing processes to formulate, coordinate and supervise public policies for the comprehensive protection of children and adolescents, and implementing programmes to help women, families and the community, in order to help the sector function in a coordinated, rational and efficient way, promoting team work, citizen participation and development for families and vulnerable groups".⁸

86. The Undersecretariat for Family and Community Support, attached to the Social Welfare Secretariat, is responsible for developing programmes to assist Guatemalan families and communities and provide them with opportunities to improve their living conditions, through support, counselling, self-management, education, training, instruction and social assistance.

87. The main role of the Undersecretariat for the Reintegration and Social Rehabilitation of Adolescents in Conflict with the Law is to take all measures necessary to implement the punishments imposed on adolescents who have broken the law. It also carries out tasks deriving from domestic legislation on adolescents' criminal responsibility.

88. With regard to information on measures taken to ensure the registration of the deaths of children, the causes of death and, where appropriate, investigation and reporting on such deaths, as well as on the measures adopted to prevent child suicide and monitor its incidence and to ensure the survival of children at all ages, the State is considering

⁷ The State has received complaints of ill-treatment in some of these centres, so rota courts have been set up within the judicial system, with staff available round the clock.

⁸ Third report of the President of the Republic to Congress, January 2007 (see annex 9).

universal measures, applicable to all citizens and covering the whole process from notification of the authorities to investigation and criminal trial. There are no special measures that apply in cases concerning minors.

D. Respect for the views of the child

1. Incorporation in legislation of the right of the child to express views freely: Measures taken to guarantee this right in the child's development environment

89. Guatemalan legislation does not restrict children's freedom to express their views in any way. Consequently, in any legal procedure or trial, judges must allow the opinion of the child to be heard and ensure that the decisions concerning them have been taken by their parents, teachers or relatives, or by the local, municipal, community or State authorities.⁹

2. Opportunities provided within judicial and administrative proceedings to ensure that children are heard

90. The Comprehensive Protection Act sets out the following guarantees in section III, which provides fundamental rights and guarantees during a legal or administrative procedure concerning children or adolescents whose rights have been threatened or violated:

“(a) To be heard in their own language at all stages of the procedure; their views and accounts to be taken into consideration in the decision handed down by the court. If necessary an interpreter must be present.

“(b) Not to be placed in a public or private institution, unless expressly requested by the competent authority, until all other placement options have been exhausted. Furthermore, under no circumstances should the child be admitted to institutions for adolescents in conflict with the law. Officials who fail to observe this provision will be held liable.

“(c) To attend scheduled judicial hearings accompanied by a social worker, psychologist or a person of a similar profession.

“(d) To receive clear and precise information in their mother tongue on the significance of each of the steps in the proceedings which take place in their presence and the content of and reasons for each decision taken.”

91. The judiciary and the United Nations Children's Fund (UNICEF), in coordination with the School of Legal Studies, has set up a training programme for justices of the peace throughout Guatemala, as part of the Criminal Justice for Adolescents and Child Victims project, which promotes the application of the Convention on the Rights of the Child.

92. This project produced positive results with regard to the direct application of the principles of the Constitution and the provisions of the Convention. A training programme has been introduced to facilitate the implementation of the Comprehensive Protection Act for all the justices of the peace in Guatemala, but chiefly those who have a decisive role in the application of the Act.¹⁰

⁹ See United Nations Children's Fund (UNICEF) and the Guatemalan judiciary, “Una aproximación a sus principios, derechos y garantías”, p. 38.

¹⁰ Ibid., p. 18.

V. Civil rights and freedoms

A. Right to a name and nationality

Measures taken to ensure that every child is registered immediately after birth

Right to acquire a nationality

93. The civil registry is governed by the Civil Code, article 391 of which states that births that take place in the Republic of Guatemala must be declared and registered with the relevant registry office within 30 days. Article 392 states that “the birth of a child shall be registered by the father or mother or, in their absence, by persons who attended the birth. To meet this obligation, parents can register the birth by proxy, but the Registrar shall request them to attend within 70 days in order to confirm the registration”. The time limits for registration and confirmation are often not sufficient in rural areas, which are still very much cut off from administrative centres. It is therefore the responsibility of the community mayors to support the work of the Civil Registry in their municipalities, in accordance with the new Municipal Code.¹¹

94. Article 394 of the Civil Code states that in rural areas, the owners or managers of rural estates¹² and the auxiliary mayors of hamlets, villages and other places must also report births that occur within their district.

95. It also provides that when births occur in prisons, hospitals, maternity centres or other similar establishments, the administrators are responsible for registering the birth with the Civil Registry.

96. There is no legal provision that prevents the registration of births. Cultural issues, lack of access, poverty and educational disadvantages, which are particularly common in rural areas, are some of the obstacles to registering births or registering them correctly, which leads to administrative and legal proceedings later to rectify such situations.

97. Congress agreed to the setting up of the National Registry Office, as part of the reform of identification rules and as a means of resolving many of the issues arising from duplication of residency card numbers and the burning down of town halls, and the consequent loss of identity documents, during the internal armed conflict. The Office will issue identity documents to adults and minors; until now their only proof of identity was their birth certificate.

¹¹ Municipal Code, art. 56. Community or auxiliary mayors’ offices. The Municipal Council, in accordance with the customs, rules and traditions of the communities, shall recognize the community or auxiliary mayors’ offices as representative of the community, particularly with regard to decision-making and as a link with municipal government. The appointment of community or auxiliary mayors shall be announced by the municipal mayor, based on the communities’ designation or election, in accordance with their principles, values, procedures and traditions.

¹² Land that has not been exploited for at least two years but that could be used for farming purposes. Estates that clearly do not correctly use means and resources available as a result of work carried out or provided by the State or other public bodies.

B. Preservation of identity

Measures adopted to preserve the child's identity and prevent any unlawful interference

98. Article 14, section IV, of the Comprehensive Protection Act, on the right to freedom, identity, respect, dignity and petition provides as follows: "Identity. Children and adolescents are entitled to an identity, including a nationality and a name, to know their parents and be cared for by them, and to use their own forms of cultural expression and their own language. It is the duty of the State to guarantee their identity and to punish anyone responsible for the substitution, alteration or deprivation thereof. Children and adolescents have the right not to be separated from their family, except under specific circumstances defined by law and with the sole purpose of restoring their rights. The State shall provide adequate assistance and protection in all cases where children or adolescents are illegally deprived of any component of their identity, in order to restore it."

99. In order for children and adolescents to be able to fully exercise their right to an identity, the regulations of each organ of government should make every necessary provision to ensure that the father and mother can register the birth regardless of the circumstances.

C. Freedom of expression

Measures adopted to ensure the child's right to freedom of expression, including to seek, receive and impart information and ideas regardless of frontiers

100. In Guatemala's legal framework, freedom of expression and its associated rights — freedom of thought, opinion and information — are guaranteed by national and international standards. Within this framework, freedom of expression is explicitly protected by article 35 of the Constitution, with other provisions recognizing the right of freedom of opinion and access to information (arts. 5, 14, 30, 31 and 36). Furthermore, the Freedom of Expression Act, Decree No. 9 of the National Constituent Assembly, reaffirms the same principles as those contained in the Constitution.

101. Between 2004 and 2007, the Ministry of Education implemented the Building Citizenship programme. Although this is a programme that involves training on minors' freedom of expression for teaching staff, directors of education centres and parents, it has a direct impact on children and adolescents, as once adults recognize the value of children's right to express themselves, children can express themselves in a free and autonomous way. The programme sought to counteract the tendency in the culture to regard adults as the ones to speak and give opinions.

102. In 2007, the Ministry of Education also developed other activities to educate citizens in an environment that promoted civic and democratic values, such as Friendship Camps, which were attended by 885 boys and 515 girls, and a youth festival, which directly reached 4,000 children.

103. Children's and young people's awareness of and ability to exercise this right are limited only by their material and economic means of access, a fundamental question to be resolved by the State.

D. Freedom of thought, conscience and religion

Exercise of the child's right to freedom of thought, conscience and religion

104. Guatemala is defined as a secular State, and accordingly freedom of religion is provided for in article 36 of the Constitution: "Freedom of religion. There is freedom to practise any religion. Everyone has the right to practise their religion or belief in public and in private, through instruction, worship and observance, without limitation other than public order and due respect for the hierarchy and for members of other faiths."

105. Article 103 of the National Education Act, Congressional Decree No. 12-91, provides that: "[r]eligious education shall be optional in State establishments and may be given during regular hours without discrimination of any kind".

106. Article 12 of the Comprehensive Protection Act also states that: "Children and adolescents are entitled to the freedom accorded to them by the Constitution, by the conventions, covenants and other international instruments accepted and ratified by Guatemala, and by domestic law."

107. No cases or lawsuits have been brought by a child or adolescent because they wished to exercise their right to practise a religion that is different from that of their parents or because they were forced to practise one in school.

E. Freedom of association and of peaceful assembly

Measures adopted to ensure the child's right to freedom of association and peaceful assembly

108. Article 34 of the Constitution recognizes the right to freedom of association and also the right not to join associations such as the former Civil Self-Defence Patrols: "[n]o one shall be required to join or be a member of a group or association established for self-defence or a similar purpose".

109. The involvement of minors in businesses is regulated by commercial legislation and the Civil Code, which states that only persons aged over 18 years can represent a company. In the case of a minor, only their tutor or the person who exercises parental authority over them can undertake to do so on their behalf. The Elections and Political Parties Act contains other restrictions.

110. There are no legal restrictions on free association for cultural, educational or social purposes. Article 39 of the National Education Act recognizes the right of students to join student organizations without fear of reprisal. Furthermore, it guarantees students' right to participate in all activities of the education community. Student organizations in secondary schools are no longer persecuted by the State, as they were during the internal armed conflict. Nevertheless, their members are still subject to pressure, like other human rights advocates.

F. Protection of privacy

Measures adopted to prevent any arbitrary or unlawful interference with the child's privacy, family, home or correspondence, as well as any attack on their honour or reputation

111. All individual, economic, social, political and cultural rights recognized by the Comprehensive Protection Act are universal, indivisible, interrelated and applicable to all children and adolescents living in Guatemala.

112. Article 23 of the Constitution stipulates that the domicile is inviolable: “[n]o one may enter the home of another person without the permission of the person living there, except on the written order of a competent judge in which the grounds for the action are specified”.

113. Moreover, article 24 states that correspondence, documents and books are inviolable: “correspondence ... may be examined or seized only under an order issued by a competent judge and in the manner prescribed by law”. As to children and adolescents, according to national legislation, minors who have been justifiably detained cannot be portrayed or photographed.

G. Access to appropriate information

Measures adopted to ensure that children have access, through a diversity of sources, to information and material aimed at the promotion of the child’s well-being

114. In order to change attitudes and encourage a new way of looking at children and adolescents in Guatemala, it is imperative to sensitize and raise awareness among parents, teachers, community and religious leaders, government and municipal authorities, the media, politicians, business leaders and decision-makers, about the daily reality of children and adolescents living in Guatemala and their rights.

115. The National Commission on Children and Adolescents set up an ongoing media programme to publicize the Comprehensive Protection Act, State policy and the national action plan and provide information on children’s daily lives, their rights, State policies, social programmes and existing forums for involvement and dialogue. The Comprehensive Protection Act establishes the right to protection against information and material detrimental to the well-being of children and adolescents.

116. The education and awareness-raising campaigns run by these bodies have also provided an opportunity for the general public to learn about their rights and access information about them, which they naturally pass on in the social circles the child belongs to.

H. Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

117. Article 201 (bis) of the Criminal Code of Guatemala criminalizes torture and establishes mechanisms to prevent and punish it,¹³ although it has not yet been modified by Congress in accordance with the provisions of the Convention against Torture and Other

¹³ Article 201 (bis). Anyone who, by order of the State authorities, or with their authorization, help or acquiescence, intentionally inflicts on another person severe pain or suffering, whether physical or mental, for the purpose of obtaining from that person or a third party, information or a confession relating to an act they have committed or are suspected of having committed, or who persecutes another person for the purpose of intimidating them or, through that action, intimidating others, shall be guilty of torture. Likewise, the members of groups or gangs organized for the purposes of terrorism, insurgency, subversion, or any other criminal purpose shall be guilty of torture. The perpetrator(s) of the crime of torture shall also be tried for the crime of abduction. The consequences of acts carried out by a competent authority in the legitimate exercise of its duty and to protect public order shall not constitute torture. Those guilty of the crime of torture shall be liable to a prison term of between 25 and 30 years.

Cruel, Inhuman or Degrading Treatment or Punishment, to which Guatemala is a State party.

118. Furthermore, Government Order No. 539-2003 of 18 September 2003 contained a declaration under article 22 of the Convention against Torture, recognizing the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention (see annex 10).

119. Government Order No. 53-2007 ratified the Optional Protocol to the Convention against Torture, agreeing to the system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (see annex 11).

120. Government Order No. 112-2006 of 7 March 2006 ratified International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which relates to ill-treatment or cruel, inhuman or degrading punishment, the victims of which are often minors who are obliged to work due to their family's economic situation. This is also covered by the Regulation on Labour Protection for Working Children and Adolescents, which lays down a series of effective and immediate measures to prohibit and eliminate the worst forms of child labour as a matter of urgency (see annex 12).

VI. Family environment and alternative care

A. Parental guidance

Existing family structures: measures taken to ensure respect for parents' responsibilities, rights and duties

121. Article 47 of the Constitution stipulates the following: "Protection of the family. The State shall guarantee the social, economic and juridical protection of the family. It shall promote the organization of the family on the legal basis of matrimony, equal rights of spouses, responsible parenthood and the right of persons to freely decide the number and spacing of their children."

122. All children and adolescents have the right to be raised and educated within their family or, exceptionally, in a foster family.¹⁴ The family has principal responsibility for the care, protection and comprehensive development of the child or adolescent, and is the appropriate environment for meeting basic needs and ensuring emotional security and moral and spiritual development.

123. All the actions under the State policy focus on strengthening the family as the principal environment for exercising rights and the natural environment for educating and raising children and adolescents. Children and adolescents may live in single-parent families, extended families or nuclear families; regardless of who they live with, both the father and the mother have common obligations and shared responsibilities, as well as rights in terms of their children's upbringing, development and appropriate guidance.

¹⁴ State policy on comprehensive protection and the National Plan of Action on Children and Adolescents.

124. The State promotes family stability and welfare and must provide assistance as necessary to parents, families and legal guardians as they perform their duties in order to strengthen family relationships and promote economic and social welfare, thereby enabling them to exercise their rights as families.

B. Parental responsibilities

1. Importance of the right to parental responsibility

Recognition of joint obligations of parents

125. The Civil Code provides for certain rights such as the paternity of the mother's husband, recognition of parenthood by both parents, separate recognition by each parent, recognition by a father who is a minor and recognition by a mother who is over 14.

126. Children who are not voluntarily recognized by one of their parents — more often than not the father — can exercise their legal right to have their filiation declared, a right that never lapses and for which provision is made in articles 199, 214 to 218 and 220 to 222 of the Civil Code. Although the task of identifying parents has been facilitated by DNA testing, this resource is difficult to access as it is still not in use in Guatemala (although the National Forensic Science Institute is going to develop it) and the cost abroad is high.

127. Article 55 of the Constitution stipulates that refusal to provide maintenance in the manner prescribed by law is punishable, and this refers in particular to maintenance ordered by a competent judge. In addition, Guatemala is a signatory to the Inter-American Convention on Support Obligations and the Code of Private International Law, which also contain regulations in that respect.

2. Measures taken to provide adequate assistance to parents and guardians in fulfilling their responsibilities and to childcare institutions

128. With respect to measures taken by the Government to provide adequate assistance to parents and guardians in fulfilling their responsibilities, mention should be made of the work of the Undersecretariat for Family and Community Support, which is part of the Social Welfare Secretariat of the Office of the President. The Undersecretariat is responsible for developing programmes aimed at strengthening Guatemalan families and communities through support, self-management, education, training and social assistance, to provide them with the opportunity to improve their standard of living. The programmes it runs are listed below.

129. Programme for the Prevention and Eradication of Domestic Violence (PROPEVI). This programme offers comprehensive support and social, legal and psychological guidance to victims of domestic violence and undertakes prevention activities through awareness-raising training and workshops in the various aspects of domestic violence, encouraging those who witness acts of domestic violence to report them.

130. Support is also provided for victims of all types of domestic violence at three shelters in the departments of Huehuetenango and Quiché and in Cobán.

131. Efforts have also been made to raise awareness among men, including a meeting on the subject of new masculinity which was attended by approximately 350 persons including officers of the National Civil Police, members of the Guatemalan army, university legal and medical students and media representatives.

132. Comprehensive support programme for children up to the age of 12. This programme targets children aged between 8 months and 12 years of low-income working parents and single working mothers at 35 centres located as follows: 12 in the north-eastern

region, 12 in the south-western region and 11 in the metropolitan area. It offers a balanced diet, pre-primary education and a curricular support programme and includes measures for preventing children from 7 to 12 from ending up on the streets, a permanent recreation programme and a school for parents. Its successes include the involvement of a large number of parents in the teaching and learning process, promoting the rights of the child and campaigning against domestic violence in coordination with PROPEVI through the school for parents.

133. In addition, the Social Welfare Secretariat cooperates with urban and rural development councils, municipalities, churches, community leaders, parents, NGOs, international cooperation partners and voluntary civil society groups on the following programmes to support children at risk:

(a) *Inter-institutional programme for the protection of children and young people.* This programme is divided into various subprogrammes, in the following areas: (i) technical assistance at day-care centres; (ii) promotion of breastfeeding; (iii) support for street children and young people; (iv) improving nutrition; and (v) inter-institutional coordination;

(b) *Support programme for young people in conflict with the law.* Special detention centres offer an integrated programme that aims to provide comprehensive support for adolescents in conflict with the law who are serving a custodial sentence. Social, family and employment reintegration and rehabilitation is provided to residents through education plans, values training, psychological assistance and occupational training before and during employment;

(c) *Protection programme for children and young people at risk.* This programme supports vulnerable children and adolescents, with a view to securing their rehabilitation and reintegration into the family and society. It aims to progressively reduce the problem of vulnerable children through its units and centres by providing children with activities that help them to reintegrate into their family and society and offers awareness-raising workshops for the general public on related issues. The programme is divided into various subprogrammes as follows: foster homes, protection centres and shelters, care for children with mental disabilities, an occupational training centre and a psychiatric educational centre.

C. Separation from parents

Measures taken to ensure that children are not separated from their parents and, where separation is necessary, that it is strictly in the best interests of the child

134. Under Decree No. 43-97, family courts have exclusive jurisdiction over all cases relating to the family. These courts operate throughout the country and comprise courts of first instance and appeal courts which consider lower court rulings at second instance.

135. The jurisdiction of the family courts covers all types of cases and disputes related to maintenance, parentage and filiation, de facto unions, parental authority, guardianship, adoption, the protection of individuals, recognition of pregnancy and childbirth, divorce and separation, annulment of marriage, ending of de facto unions and family assets. Family courts have discretionary powers and must ensure that the most vulnerable party in family relations receives due protection by ordering any measures deemed necessary.

136. The family courts must investigate disputes brought before them and order any necessary inquiries, including direct examination of the parties about the disputed events, and will assess the value of the evidence in accordance with the rules of sound judgement. If the court deems that the rights of one party must be protected, before or during the

proceedings, it may, of its own motion or on application by the party, pass a range of precautionary measures without further proceedings and without the need to provide a guarantee.

137. Under the Code of Civil and Commercial Procedure,¹⁵ oral proceedings are also used for cases relating to pregnancy and childbirth, parentage and filiation, separation and divorce, annulment of marriage, declaration and ending of de facto unions and family assets.

138. Given the primacy of the best interests of the child, a judge may find that the conditions in which a minor is living with their family are unsuitable, and therefore order that the minor should be taken into the care and protection of the State. Action with respect to rescuing minors is coordinated with the Office of the Procurator-General and support is provided by the Social Welfare Secretariat through the programme described below.

D. Illicit transfer and non-return

Information on illicit transfer and non-return

139. Guatemalan legislation contains no specific provisions regarding the illicit transfer and non-return of children abroad. In the Criminal Code, the closest related provision is contained in article 209, which refers to abduction of minors: “Anyone who removes a minor under the age of 12 or a person without full legal capacity from the care of their parents, guardian or carer against the latter’s will shall be liable to one to three years in prison. The same sentence shall apply if the minor is over the age of 12 and does not give consent. The sentence shall be between six months and two years where a minor over the age of 12 gives consent.”

140. These issues are closely linked to the scope of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The State is working to ensure compliance with this international instrument and to ensure its application in support of the Convention on the Rights of the Child.

141. Guatemala has ratified the main instruments of international law relating to trafficking in persons, including the following:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which attaches particular importance to punishing serious violations of children’s rights, especially trafficking in children and adolescents, illegal adoption, commercial sexual activities involving minors and the use of children in pornography; a report was submitted to the Committee on the Rights of the Child in 2007;

(b) 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), which covers activities related to the economic exploitation of children and adolescents that are considered hazardous to their health and development;

(c) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which is the latest, most comprehensive and universal instrument and covers all aspects of trafficking.

¹⁵ Code of Civil and Commercial Procedure, arts. 426–437, 444.

142. These instruments of international law, along with the Recommended Principles and Guidelines on Human Rights and Human Trafficking adopted by the United Nations in 2002, have provided the conceptual basis for the National Protocol on the Repatriation of Child and Adolescent Victims of Trafficking, which aims to identify practical and accessible procedures to be followed by the various institutions in repatriating child and adolescent victims of trafficking, whether from other countries to Guatemala or from Guatemala to other countries, on the basis of respect for human rights and taking account of the best interests of the child.

143. Under the Protocol, public and private institutions that are in any way involved in the repatriation of children and adolescents must take account of various factors in their actions, including the following principles:

- (a) Comprehensive protection of the rights of children and adolescents;
- (b) Best interests of children and adolescents;
- (c) Right to non-discrimination;
- (d) Respect for children's and adolescents' views;
- (e) Right to information;
- (f) Right to confidentiality.

144. The Protocol further provides that public and private institutions, and any individual who is aware of a specific case of trafficking in minors must provide immediate temporary protection to the victim and notify the appropriate authorities, namely: the Office of the Procurator-General, the Social Welfare Secretariat of the Office of the President, a justice of the peace and the juvenile court. In cases abroad, officials of the Guatemalan foreign office are responsible for alerting the child protection agencies.¹⁶

145. Similarly, Guatemala requires that specific measures must be taken to authorize children to travel abroad. Accordingly, the minor must be issued with a passport, for which the following are required:

- (a) Recent birth certificate;
- (b) Presence of both parents, each with their residence card and a full photocopy of the original;
- (c) Parents' birth certificates;
- (d) The applicable passport fee;
- (e) If one of the parents is not in the country, power of attorney issued through diplomatic channels and authenticated by a lawyer, or authorization by the courts.

E. Recovery of maintenance for the child

146. Article 278 of the Civil Code stipulates that the term "maintenance" covers everything that is essential for the support, shelter, clothing, medical assistance, upbringing and instruction of the recipient while a minor. The scope of maintenance is therefore considered to be broad, with the aim of guaranteeing children's full development. The legal system includes a process that guarantees the provision of maintenance to minors by their

¹⁶ United Nations Children's Fund (UNICEF), International Organization for Migration (IOM), National Protocol on the Repatriation of Child and Adolescent Victims of Trafficking (Guatemala, 2006).

parents; if the parents are separated, the minor's father is responsible for providing maintenance.

147. Article 279 of the Civil Code stipulates that maintenance must be proportionate to the personal and financial circumstances of the payer and the recipient.

F. Adoption

Measures taken to ensure that the child's best interests are the main consideration in State-recognized adoption

148. The adoption of children and adolescents is provided for in article 22 of the Act on the Comprehensive Protection of Children and Adolescents, which expressly stipulates that their best interests must be the main concern, in accordance with the relevant treaties, conventions, covenants and other international instruments that Guatemala has signed and ratified.

149. After an internal consultation process, Guatemala adopted the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption by Decree No. 50-2002, but this was declared unconstitutional on 13 August 2003 by reason of the accession procedure followed. However, in order to guarantee that international commitments were met, consultations were resumed and it was established that the unconstitutionality arose from Guatemala's reservations to the Vienna Convention on the Law of Treaties. Pursuant to Government Order No. 64-2007 of 28 February 2007, published in the Official Gazette on 6 March 2007, the reservations were withdrawn (see annex 14), which made it possible to relaunch the entry into force of the Convention.

150. While this domestic legal dispute was being resolved, the Government prepared a manual of good practice for national and international adoptions in Guatemala, with the participation of State institutions working in the area of child protection, such as the Office of the Procurator-General, the Social Welfare Secretariat of the Office of the President, the Public Prosecutor's Office, the judiciary, the Social Work Secretariat of the Office of the First Lady, the Ministry of Foreign Affairs and the Directorate-General of Migration.

151. Congress adopted Legislative Decree No. 77-2007 containing the Adoption Act, which entered into force on 31 December 2007 and stipulated that the adoption process must be approved by a juvenile court judge after consideration of the social, psychological and medical aspects of the child's case and after having established that reuniting the child with their family would be impossible (see annex 15). The Act created the National Adoption Council, which comprises three permanent members appointed respectively by the Supreme Court, the Ministry of Foreign Affairs and the Social Welfare Secretariat.

152. The National Adoption Council is a parastatal organization with legal personality, its own assets and full capacity to acquire rights and assume obligations. It has the following functions:

- (a) Ensuring the protection of children and adolescents during adoption;
- (b) Promoting national adoption, with priority given to children in State residential care;
- (c) Assigning suitable families to all children in the adoption process in line with their best interests;
- (d) Confirming the suitability of candidates for international adoption in accordance with Guatemalan legislation and obtaining the consent of the biological parents following legal advice.

153. The members of the National Adoption Council hold their posts for four years. They are not accountable for their actions to the body that appoints them, since the Council is an autonomous organization with functional, administrative and financial independence. The bodies that appoint the members do not have the authority to remove them at will and the members cannot be otherwise removed with or without explanation.

G. Periodic review of placement

154. Judges must make use of the official institutions that exist within the State, which are coordinated by the Social Welfare Secretariat, when placing at-risk or abandoned children in care. The following centres are available for that purpose: (a) the Elisa Martínez children's home, in the capital; (b) a care centre for socially at-risk children and adolescents in San José Pinula; (c) the Mi Hogar residence for girls in Antigua Guatemala; (d) a shelter in Zacapa; and (e) a shelter in Quetzaltenango.

155. In addition, the Casa Alegría home was opened in 2005 to care for children up to the age of 5, running individual and group support programmes to provide health and education services.

156. Despite all this, Guatemala recognizes that it does not have enough adequate children's care homes, and therefore at times requests support from NGOs such as Casa Alianza.

H. Abuse and neglect, including physical and psychological recovery and social reintegration

Measures taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse

157. One of the institutions that receive reports of maltreatment, neglect or abuse is the Office of the Procurator-General. There is also the Office of the Children's Ombudsman, which is part of the Office of the Human Rights Procurator. The mandate of both institutions is to exhaustively investigate complaints submitted to them, and if an offence is identified they must notify the Public Prosecutor's Office or the judiciary as appropriate.

158. The Social Welfare Secretariat of the Office of the President coordinates foster and temporary homes for maltreated, abused and abandoned children. It is involved in implementation of the Action Plan for Street Children and Young People and has adopted as one of its policies the National Plan of Action to Combat Commercial Sexual Exploitation of Children and Adolescents.

159. The Office of the Executive Secretary of the Committee against Drug Addiction and Drug Trafficking (SECCATID), part of the Office of the Vice-President, is responsible for running programmes for the prevention of drug addiction, provision of care, dissemination and training aimed at pupils, teachers, parents and public officials.

160. The judiciary and the human rights monitoring system have also set up telephone hotlines for complaints and to provide guidance and advice to victims of violence, including minors. For example, the Public Prosecutor's Office hotline is 1570, the National Civil Police hotline is 1010 and the Human Rights Procurator's Office hotline is 1555.

VII. Basic health and welfare

A. Children with disabilities

161. The National Council for Persons with Disabilities has formulated a strategic plan for the extension of care and service coverage for persons with disabilities, taking a comprehensive approach. In addition, the Social Welfare Department runs three special schools for children and adolescents.

162. The Social Welfare Department's Ávida España centre offers day care for children and young people aged 0 to 14 with slight or moderate disabilities of various kinds. It includes an outpatient unit, which sees 190 youngsters a year on average. There is also a psychotherapy unit, which provides initial support to 21 children, through activities to develop the skills required for family and social integration, and intermediate support to help 30 children to move towards personal independence; at the advanced level, it works with 22 children to develop cognitive and physical skills for social integration.

163. The Centre also has an autism clinic, and provides Flenn Dorman neurological rehabilitation and speech therapy (250 children and young people) and rehabilitative physiotherapy (180 children and young people).

164. Pre-employment workshops are organized for 16 children to help them develop their skills and knowledge independently. There is also a workshop to introduce parents to techniques and methods of caring for children with disabilities. The occupational training centre has taken 79 youngsters with mental disabilities aged 14–18 (18 girls, 61 boys) who have some skills that will enable them to reintegrate into the labour market.

165. In addition, special leisure, cultural, information, religious and sporting activities are organized.

166. The psychiatric teaching centre has provided psychiatric help to 50 children and young people, who are orphaned or abandoned and with severe or profound mental disabilities. They receive training in skills development and reinforcement for individual development.

B. Health and health services

167. Under article 28 of the Comprehensive Protection Act, which deals with the health system, "medical care for children and adolescents shall be provided through the Guatemalan public health system, which guarantees universal, equal access to treatment and services for the promotion, protection and recovery of health. Children and adolescents with diagnosed conditions shall receive specialist care."

168. Measures to cut perinatal and infant mortality include medical and hygiene support, primary care, action to combat malnutrition, common diseases and environmental pollution, and health education and training. The objective of the health sector is to provide Guatemala's people with full physical, mental and social well-being and comprises a public and a private subsystem. The State subsystem consists basically of the Ministry of Health and Welfare, with the Guatemalan Social Security Institute accounting for 8.1 per cent of coverage. The private subsystem accounts for 8.2 per cent of coverage.

Table 1
Social security coverage, 2007

<i>Institution</i>	<i>Coverage (%)</i>
Ministry of Health	71
Guatemalan Social Security Institute	8.1
Private	8.2
Total	87.3

169. According to official figures, 13 per cent of the population has no access to coverage in these subsystems. The Ministry of Health and Welfare has 3,837 health centres in the country as a whole, providing several levels of care to around 4.11 million people thanks to outreach programmes involving NGO administrators and service providers.

170. Life expectancy at birth is 68 for men and 65 for women, i.e., 70.5 on average.¹⁷ The average number of live births among women aged 12 and over is 4.4. The latest available data show that the average infant mortality rate fell from 73 per thousand live births to 39 per thousand between 1987 and 2002, although the rate is higher among the rural and indigenous populations and poorly educated women. The maternal mortality rate has also fallen, from 219 per hundred thousand live births in 1989 to 153 in 2000 and 121 in 2005. Despite this reduction, Guatemala acknowledges that the rate is still high, indeed double the average for Latin America. The departments with the highest mortality rates are Alta Verapaz, Huehuetenango, Sololá and Izabal, which reflects the poverty level among the population in these regions of the country.

171. The following health initiatives for children have been taken in the past four years. Care was provided to 2.03 million children aged under 1 year. Four-year-olds were vaccinated against tuberculosis, diphtheria, tetanus, polio, measles, mumps, rubella, pneumonia, meningitis and hepatitis B, and 960,806 women of childbearing age were vaccinated with diphtheria toxoid (this campaign also covered the 41 municipalities). Vitamin A was given to 211,395 children aged under 1 and folic acid, vitamin A and iron to 84,686 children aged 6 to 59 months and 86,735 pregnant or 6-month postpartum women aged between 15 and 19. The Ministry of Health and Welfare monitored the growth of 138,688 children aged under 2. Antenatal checkups were carried out on 255,343 women; 57,639 births were assisted by qualified staff; 102,903 puerperal checkups; 162,033 cervical smear (Papanicolaou) tests; 464,411 follow-up consultations on access to family planning methods; and 22,686 HIV tests for pregnant women. As to tuberculosis, 1,823 cases of TB in any form, and 1,625 cases of smear-positive pulmonary TB, were detected and treated; 80 per cent of patients treated are cured. Impregnated mosquito nets have been distributed to prevent malaria; 7,669 homes were sprayed; 58,812 cases were treated in Alta Verapaz, Petén, Ixcán, Izabal, Escuintla, Retalhuleu and Suchitepéquez. Larvicide was applied in 196,544 dwellings, and 84,865 applications of adulticide against *Aedes aegypti*, a dengue-transmitting mosquito, were administered; 16,635 potential breeding areas were destroyed; and 1,925 cases of dengue were treated nationwide (excluding Totonicapán department). Rural dispensaries were set up, with subsidized sales of medicines through the Ministry of Health and Welfare Access to Medicines Programme.¹⁸

172. Human resources were reinforced, with training for 232 staff in various medical specialities.

¹⁷ National Statistical Institute, "Population projections 1950–2050".

¹⁸ Ministry of Health and Welfare, report 2007.

173. As to food and nutrition security, Guatemala's geographical location means it is particularly exposed to climatic events that have a direct impact on food security.

174. One of the most significant indicators of food and nutrition insecurity is chronic malnutrition, for which the figure in Guatemala, for children aged under 5, is one of the highest in Latin America. In 1998–1999 chronic malnutrition affected 46.4 per cent of this group, and in 2002 the figure was 49.3 per cent.¹⁹ These figures are averages, and they conceal a number of variations depending on factors such as geographic location, ethnicity, mother's education and children's order of birth. Due to economic and social conditions, prevalence is highest in rural areas, among the indigenous population, and among mothers with little or no education. The Programme to Reduce Chronic Malnutrition (see below) aims to cut malnutrition rates to 24 per cent by 2016.

175. Overall, 22.7 per cent of children aged 3 to 59 months now suffer from malnutrition. Rates are higher in rural and indigenous areas according to the Ministry of Health and Welfare (2002). The Millennium Development Goal is to cut malnutrition to 17 per cent by 2015. Acute malnutrition (weight/height deficit) affects 1.6 per cent of children aged 3 to 59 months nationwide.

176. Energy intake levels in Guatemala have been declining. From 2,351 kcal per person per day in 1990–1992, they fell to 2,213 kcal in 2001–2003.²⁰ The recommended energy intake for Guatemala is 2,200 kcal per person per day.

177. With a view to improving this situation, the Government has taken a series of measures that impact directly on the population, as follows:

(a) The establishment of the National Food and Nutrition Security System and a Food Security Secretariat, and the adoption of the Food and Nutrition Security Act (Decree No. 32-2005), which in turn establishes the National Food and Nutrition Security Council;

(b) In order to implement the food security policy, the Strategic Plan on Food and Nutrition Security 2007–2016 was adopted;

(c) The regulations to the National Food Security System Act were adopted by Government Order No. 75-2006, which implements Decree No. 32-2005;

(d) In order to break the cycle of chronic malnutrition, the Programme to Reduce Chronic Malnutrition was launched, with the objective of cutting malnutrition in the under-fives by 2016. Execution of the Programme cost 63 million quetzals in 2006 and in 2007 the Programme took action in 83 municipalities in 13 of Guatemala's 22 departments, reaching 89,749 children aged 6 to 35 months and 32,886 pregnant or breastfeeding women;

(e) Services provided include health, food and nutrition education, breastfeeding, food supplements and Vitacereal;

(f) The Programme also reached 448,888 schoolchildren in 3,528 schools, who received a glass of school milk, at an estimated cost of 112.3 million quetzals.

178. As a result of the impact of tropical storm Stan, and given that Guatemala is highly vulnerable to natural disasters, the judiciary, with the support of UNICEF and in coordination with other government bodies, designed and launched a manual on comprehensive protection for children and adolescents separated, unaccompanied or orphaned in a disaster.

¹⁹ Information from Congress (proposal to establish the Food Security Secretariat).

²⁰ Strategic Plan on Food and Nutrition Security.

Campaigns to eliminate discrimination against children infected with HIV/AIDS

179. In Guatemala, 0.9 per cent of the population, or 120,000 people, are infected with the AIDS virus and more than half of them do not know it, according to information from the Ministry of Health and Welfare. These 120,000 individuals infected with the HIV virus make Guatemala the country with the third-largest number of carriers in Central America, after Honduras and Belize. Around 800 people are infected with HIV every day in Central America, despite prevention campaigns.

180. The Programme for the Prevention, Care and Control of Sexually Transmitted Infections looked at the problems that could arise should a large-scale epidemic break out, and for World AIDS Day published a study indicating that the number of infected people could reach 1 per cent, which would amount to an epidemic.

181. HIV patients require urgent treatment. Only 6,000 have received care, out of all those infected, predominantly young people aged between 12 and 25.

182. Guatemala's National Programme on Sexually Transmitted Infections and HIV/AIDS, set up under the AIDS Act and run by the Ministry of Health and Welfare, is the lead standard-setting agency in HIV/AIDS prevention and control. Its tasks include comprehensive care and treatment with antiretrovirals, epidemiological monitoring and prevention of mother-to-child transmission. The Programme has stepped up the provision of antiretroviral treatment, and coverage has expanded, from 2.1 per cent in 1999 to around 50 per cent in 2004.²¹

183. The mother-to-child transmission prevention programme launched in December 2004 represented another major strategic, high-impact initiative. Its main features are an increase in in-service training for health workers and NGOs, coordination with other programmes (tuberculosis, laboratory, mother-and-child, etc.) and an improved system of epidemiological monitoring, one that will enable decisions to be taken and specific recommendations to be made, not only in the Ministry of Health and Welfare but in other institutions such as the Guatemalan Social Security Institute, the Military Health Service and NGOs.

184. It is not only the National AIDS Programme that contributes to the project available but also institutions such as the Guatemalan Social Security Institute, several NGOs and a number of bodies supported by private companies. These institutions focus on the departments hardest hit by HIV/AIDS (see map VI-3) and provide a range of services such as hospital and outpatient care, and antiretroviral treatment, medication, treatment for sexually transmitted infections, condoms, perinatal preventive care and blood banks.

185. They also provide care — though they are not the only ones to do so — to special groups, such as sex workers, men who have sex with other men, intravenous drug users, blood donors and pregnant, puerperal and parturient women. The majority of resources are directed to hospital care, medicines and antiretrovirals.

186. Special mention should be made of the technical and financial support received from international organizations, and notably that provided by the Global Fund to Fight AIDS, TB and Malaria for the National Epidemiological Monitoring Plan in the context of second-generation HIV, and from the Central American AIDS Prevention Project (PASCA) and, more recently, UNAIDS, for the launch of the National Statistics Plan 2005–2008.

²¹ Ministry of Health and Welfare, report 2004.

C. Social security and childcare services and facilities

Measures to recognize every child's right to social security, including social insurance

187. According to article 100 of the Constitution, on social security, "the State recognizes and guarantees the right to social security for the benefit of the inhabitants of the country". The Guatemalan Social Security Institute is an autonomous institution whose purpose is to administer a single compulsory national social security system, in accordance with the principle of minimum protection, for the benefit of all inhabitants of Guatemala who are economically active and members of the system.

188. The fundamental aim of social security is to provide minimum protection to the whole population of Guatemala based on contributions proportional to income, and benefits to each contributor and their dependents, following a scientific progression in calculating each person's ability to pay. The Institute now covers 19 of Guatemala's 22 departments, namely Guatemala, Sacatepéquez, Chimaltenango, Escuintla, Sololá, Totonicapán, Quetzaltenango, Suchitepéquez, Retalhuleu, San Marcos, Huehuetenango, Quiché, Baja Verapaz, Alta Verapaz, Izabal, Zacapa, Chiquimula, Jalapa and Jutiapa; coverage has yet to be extended to the departments of El Progreso, Petén and Santa Rosa. Coverage is provided by hospitals, consultation centres and clinics.

189. The metropolitan area has a gynaecological-obstetrics hospital and also the Dr. Juan José Arévalo Bermejo Hospital, and these administer the maternity programme and are referral hospitals for the entire country. They provide hospitalization, outpatient gynaecological consultation, outpatient obstetrics consultation, antenatal checkups, labour and delivery services and operating rooms; diagnostic services: obstetric ultrasound, foetal well-being tests, x-rays, laboratory; neonatal service: intensive care, up-to-date technology.

190. It should be noted however that, according to the United Nations Development Programme (UNDP), social security coverage has not kept pace with the expansion of the economically active population. The Guatemalan Social Security Institute holds 11 billion quetzals in earmarked reserves.

191. The Guatemalan Social Security Institute is the means whereby the majority of the population who cease to be economically active obtain a pension. From its budget of 5 billion quetzals, social security pays out 1.2 billion quetzals per year in benefits, and pensions account for 935 million quetzals of that. Children are covered by the Institute only if their parents are entitled to that benefit.

VIII. Education, leisure and cultural activities

A. Education, including vocational training and guidance

1. Measures taken to recognize and guarantee children's right to education

192. Article 71 of the Constitution establishes the right to education and undertakes to ensure the full enjoyment of that right without discrimination. In addition, the Act on Comprehensive Protection of Children and Adolescents covers comprehensive education (sect. II, art. 36).

2. Mechanisms developed to guarantee access to education for all children, including girls, children with special needs and children in particularly difficult circumstances

193. The mechanisms put in place to guarantee access to education to particular groups of children and adolescents include special grants for girls, grants for children from rural areas

(known as grants for peace), and others as shown in the table below, with the number of beneficiaries in 2007.

Table 2

Special programmes for schoolchildren and beneficiaries

Total beneficiaries

<i>Programme</i>	<i>Beneficiaries (schoolchildren)</i>
Grants for girls	96 666
Grants for peace	93 333
Scholarships	13 470
Food grants	1 790
Achievement awards	440
School supplies	2 321 674
School meals	2 321 674

Source: Prepared from Ministry of Education, report 2007.

3. Measures to improve the education system and notably to guarantee full primary education and curriculum reform

194. The Ministry of Education is the lead agency for education in Guatemala. It is responsible for State and private education, the difference being that, in the State sector, it is the provider and not simply the regulator as it is in the private sector. Its tasks include preparation of curricula, regulation of the various levels of education, teaching materials for each level, hiring of teachers, location of schools and enrolment.

195. Education is a pillar of Guatemala's socio-economic development. Guatemala has attained a net enrolment rate in primary education of 96.3 per cent.²² At this rate of progress, the target of 100 per cent coverage by 2015, set in the Millennium Development Goals, is thought to be achievable.

196. One of the main problems in primary education is that 39.1 per cent of children do not finish. In addition, coverage in lower and upper secondary education is 36.6 per cent and 20.4 per cent respectively (2007).²³

197. Drop-out and repetition rates remain high, particularly in the first years of each level of education. In order to strengthen the institutional capacity of the Ministry of Education and improve coverage, the education budget has been increased, from 3.2 billion quetzals in 2004 to 5.8 billion quetzals in 2007.

198. To improve the situation of education in the period 2004–2008, the Ministry of Education set six goals: (a) completion of primary education; (b) universalization of monolingual, bilingual and intercultural education with quality, equity and relevance at all levels; (c) education reform in the classroom, which means overhauling curricula and adopting new teaching and learning methods; (d) schools in the community: democratization and involvement of all in educational processes; (e) Education in a Competitive World, a programme intended to help children and young people acquire a solid academic grounding in the humanities and the sciences, ready for entry to the world of

²² Ministry of Education, report 2004–2007.

²³ Ibid.

production; and (f) Proud to be Guatemalan: civic education in an atmosphere that promotes civic and democratic values.

199. According to Ministry of Education data, primary education coverage in 2007 was 3.8 per cent up on 2004. Basic and secondary education coverage expanded by 5.25 per cent in the same period.

200. The new national base curriculum was introduced in 2005, with the aim of updating the content and concepts applied in the classroom environment. A cross-cutting theme is the promotion of children's and adolescents' rights. Another aim is to improve the quality of education in preprimary and primary schools and create conditions allowing all sectors to participate in the enhancement of teaching and learning processes, and the adaptation of education to reflect Guatemalan society as it is, within the framework of competencies, skills and knowledge appropriate to each grade.

201. The new curriculum has been introduced at preprimary and primary levels (for primary, in the first and second years, for preprimary, in all schools), and 17,425 national base curriculum documents have been sent to State and private sector teachers, along with 18,070 copies of the guidelines for curriculum development. Moreover, 14,635 teachers have been trained in implementation of the curriculum and have received modules and brochures for guidance in organizing the subjects in schools.

202. At primary level, the national base curriculum was implemented in first and second grades. To accomplish that, training was required for 93 technicians at the central level and 1,409 at the departmental level; these in turn replicated the workshop for 33,119 teachers (18,483 first-grade and 14,636 second-grade), in five workshops.

203. As part of the curriculum reform, an initial workshop on implementation of the national base curriculum for third and fourth grades in primary school was run for a team of 90 technicians at the central level, who then replicated it for supervisors in all 22 departments and these in turn took it out to third- and fourth-grade teachers nationwide in 2006.

4. Measures taken to address the exclusion of vulnerable groups from education

204. It is characteristic of vulnerable groups that their circumstances hamper the satisfaction of basic individual and collective needs. As a group requiring special care, children may be vulnerable for reasons, inter alia, of poverty, insecurity, family instability or lack of access to education, health, housing or leisure.

205. The profiles of adolescents in conflict with the criminal law show that the majority have suffered violence or abuse of some kind or at least witnessed it during their childhood.

206. Another factor that contributes to children's and adolescents' vulnerability is migration. Every day, Guatemalans of all ages attempt illegal crossings of the borders that will eventually take them to United States territory and, they hope, a better standard of living.

207. Children and adolescents are rendered even more financially, socially, culturally and physically vulnerable when they have a disability of some kind. According to the National Survey on Disabilities carried out in 2005, the majority of this group who have a disability were under the age of 15. It was also estimated that 50.3 per cent of persons with disabilities were illiterate, 37.6 per cent had some primary education, 8.5 per cent lower secondary education and just 1.9 per cent had a higher or postgraduate level of education.

208. In this regard, through various national and international agencies, the State has launched initiatives such as:

(a) Repairs to the infrastructure of several comprehensive care centres that provide support to children and adolescents with disabilities or who have no protection or shelter;

(b) Bringing the educational curriculum of the Álida España centre in Arana into line with the official Ministry of Education curricula;

(c) Start of construction work on Ciudad de los Niños (Children's City), a project that will take in more than 250 children and adolescents of various ages and will provide them with civic education on the importance of democratic values.

209. Education coverage expanded between 2004 and 2006 at all levels from preprimary to upper secondary school, as shown in table 3.

Table 3
Education coverage 2004–2006

Level	2004		2005		2006	
	Target population	Net enrolment rate	Target population	Net enrolment rate	Target population	Net enrolment rate
Preprimary	425 825	45.2	436 154	46.97	451 744	53.00
Primary	2 280 706	92.41	2 374 779	93.52	2 475 232	95.50
Basic secondary	474 585	31.33	507 633	33.23	543 213	34.90
Upper secondary	223 976	17.53	246 863	19.04	267 467	20.20

Source: Ministry of Education, National Statistical Institute.

B. Aims of education

210. According to the Constitution, “the primary purpose of education is the full development of the human person and the acquisition of knowledge of the nation and of the world and of their culture” (art. 72).

211. In order to improve, revitalize and modernize the education system, the State of Guatemala has launched an education reform. This also fulfils an undertaking made in the Peace Agreements. In 1997 a Joint Commission on Education Reform, comprising a delegation from the Government and another representing the indigenous peoples, was set up to produce a paper on the Design for Education Reform. In 1998, under Government Order No. 748-97, of 24 October 1997, the Advisory Commission on Education Reform was established to launch the process.

212. An Advisory Commission has been established in fulfilment of the undertakings made in the Peace Agreements (Agreement on Identity and Rights of Indigenous People, pt. III, Cultural Rights, sect. G, Education Reform), in order to conduct the reform of the education system in Guatemala. The Commission is part of the Ministry of Education and has a technical secretariat.

C. Leisure, recreation and cultural activities

Measures to recognize the right to leisure, recreation and cultural activities

213. According to article 45 of the Act on Comprehensive Protection of Children and Adolescents, on leisure, recreation and play, “the State, through the competent authorities, shall observe and promote the right of children and adolescents to leisure, relaxation, play,

recreational and sporting activities suited to their age, and the right to participate fully and without restriction in the cultural and artistic life of the community, and shall create conditions conducive to the enjoyment of this right in conditions of equal opportunities”.

214. The Ministry of Education is responsible for promoting cultural and sporting activities at all levels of education. The Directorate-General of Physical Education was established in 1947 and the Education Act underpins its work by recognizing physical education as a fundamental right of everyone, at all levels of education. Decree No. 76-97, the Act on Development of Physical Education and Sports, issued in 1997, gives the Ministry of Education responsibility for promoting these activities at the national level. Its work benefited 973,380 students in 2001, in 12,374 schools which were given materials for physical education classes. A number of events for children and young people were also held. Twenty physical education schools were established between 2001 and 2002, which operate at the departmental level. The significance of this is that for more than 60 years there used to be only two physical education schools, one in Guatemala, the other in Quetzaltenango.

215. The Ministry of Culture and Sports runs the Programme for Children, the aim of which is to promote the democratization of recreation, physical activities and sport, with the mass involvement of children in a range of activities offered on a continuous basis throughout the country. It also promotes physical exercise for health, as a means of preventing physical and mental injury and illness.

216. The Programme for Children is for children aged 0 to 12 who do not belong to sports clubs or school sports clubs, in all 22 departments of Guatemala, with the active involvement of the national network of sports and recreation associations and local volunteers. The Programme organizes sporting and recreational events and activities and implements other programmes in cooperation with bodies working to ensure youth participation:

(a) *Sports centres*. These are in operation in every municipality of Guatemala. Sports associations coordinate all activities, and children are invited to attend three days a week (Monday, Wednesday and Friday or Tuesday, Thursday and Saturday). Free of charge for all Guatemalans;

(b) *Recreation days*. Two-day outdoor activities in the countryside, close to nature, which encourage an acceptance of multiculturalism and the development of cultural interaction. Each town identifies an ecological location, with proper safety standards, and issues a general invitation once a month;

(c) *Bicycle outings*. Monthly bike rides through ecological areas or quieter streets, with the support of local authorities;

(d) *Rhythmic gymnastics and dance contests*. Groups of friends get together and present dance routines in competition on local stages to display their skills to the general public;

(e) *Traditional games*. Activities aimed at conserving the games and toys of Guatemala's peoples and communities;

(f) *Crawling contests*. Crawling contests encourage parents to see the importance of physical exercise for babies in stimulating the development of the neck, shoulder and upper body muscles;

(g) *Lip-sync contests*. Contests of physical expressiveness in which children mime to dances or pop songs, poems, plays, etc;

(h) *International Day of the Child*. Event to promote and reinforce children's rights. Clowns, sports, games, competitions, piñatas, etc;

(i) *Holiday club*. Takes place in November and December and offers children an improved standard of living and individual and collective well-being, which helps in productive work.

IX. Special protection measures

217. Under the Act on the Comprehensive Protection of Children and Adolescents, the National Commission on Children and Adolescents (NCCA) is responsible for monitoring and evaluating the content of public policy and the national action plan. The specific objectives of the special protection policies are as follows:

(a) To adopt prevention, special protection and family support measures that will ensure care and assistance for children and adolescents whose rights have been violated or who are at risk, and will contribute to the restitution of those rights and to their rehabilitation and social and family reintegration;

(b) To protect children from economic exploitation and protect adolescents from work that is either detrimental to their health and their physical, psychological and social development or impedes their education;

(c) To promote the rehabilitation or criminal prosecution, as appropriate, of persons responsible for violating the human rights of children and adolescents.

A. Children in situations of emergency

218. Under article 57 of the Comprehensive Protection Act, on international humanitarian law and the right to protection from armed conflict, “in the event of armed conflict, children and adolescents shall have the right not to be recruited and the State shall abide by and enforce the applicable norms of international humanitarian law. The State shall take measures to ensure that persons who have not yet attained the age of 18 years do not take a direct part in hostilities and are not recruited for military service at any time”.

219. Despite the continuing aftermath of the internal armed conflict, which lasted 36 years, the assistance available to affected communities across the country has improved, both as a result of the Civilian Service Act (Decree No. 1748 making military service non-compulsory and offering the option of community service) and through the introduction of psychological rehabilitation programmes for persons affected by the internal armed conflict. Specifically designed to benefit children and adolescents, these programmes are supported by both government and non-governmental organizations working to reintegrate those affected within society and to improve their mental health.

B. Children in conflict with the law

1. Administration of juvenile justice

220. The Comprehensive Protection Act establishes that both basic and special guarantees shall apply from the start of an investigation and throughout the legal process, and stipulates that adolescents shall benefit from the basic due process guarantees that apply in adult trials as well as from the special guarantees to which they are entitled as minors. The basic guarantees are those established in the Constitution, in the international instruments accepted and ratified by Guatemala, and in legislative texts related to the areas covered by the Act.

221. The Comprehensive Protection Act also stipulates that all stages in legal proceedings involving adolescents in conflict with the criminal law shall be free of charge and oral. A record of the hearing shall be taken down using shorthand or electronic means, depending on the facilities available and the disposition of the court, and a written summary drawn up. The judge or tribunal, as applicable, the prosecutor, the defence counsel, the adolescent accused and the other parties to the trial must be personally present at all times during all hearings that they are asked to attend.

222. To guarantee access to and the administration of justice for children and adolescents, Guatemala has created an Office of the Prosecutor for Minors and Adolescents in Conflict with the Criminal Law, which now intervenes in the trials of adolescents charged with offences under criminal law even though its involvement was not provided for in the repealed Minors Code.

223. Similarly, and as provided in the Constitution and the Convention, a specific section has been created within the Public Defender's Office for the defence of minors charged with offences under criminal law. The section operates on a regional basis.

224. A Juvenile Prosecutor's Office with regional offices across the country has also been established within the Public Prosecutor's Office.

225. The judiciary began establishing regional juvenile courts of first instance in 1998 and a total of seven such courts are now in operation, one for each of the regional offices opened by the judiciary. As established in the Comprehensive Protection Act, on 30 July 2006 the Supreme Court of Justice approved decision Nos. 29-2003, 30-2003 and 31-2003 by virtue of which all former juvenile courts of first instance throughout the country were converted into the new courts for children and adolescents in conflict with the criminal law, with material competence in such matters. The second and fourth juvenile courts of first instance in Guatemala City became the first and second courts, respectively, for children and adolescents, with sole material competence for protection, while the first and third juvenile courts of first instance are now the first and second courts, respectively, for adolescents in conflict with the criminal law, with sole competence to hear cases involving adolescents in conflict with the criminal law. The courts will have the territorial competence indicated in decisions Nos. 25-98, 30-98 and 21-2001, with the exception of the court for children and adolescents and the court for adolescents in conflict with the criminal law of the municipality of Mixco in the department of Guatemala, which will have jurisdiction both in Mixco municipality and in zones 11 and 19 of the capital.

226. A Court for the Supervision and Execution of Measures and a Chamber of the Court of Appeal for Children and Adolescents have also been established. Both sit in Guatemala City and have material jurisdiction as indicated in the Comprehensive Protection Act. The Act also stipulates that lawyers attached to the children's unit of the Office of the Procurator-General must be involved in all legal proceedings involving child victims and that lawyers attached to the Public Defender's Office and the Juvenile Prosecutor's Office must be involved in legal cases brought against adolescents charged with criminal offences.

227. Children held in pretrial detention should enjoy all the rights and guarantees that the presumption of innocence affords, given that the sole purpose of their detention is to ensure their presence in court. In addition, they must not be given treatment or therapy of any kind, except where necessary to perform biopsychosocial examinations. Article 12 of the Constitution establishes that "no one may be sentenced or deprived of their rights without having been charged, heard and convicted in a lawful trial before a competent and previously appointed court or tribunal". This guarantee means that, in cases involving minors, no socio-educational measures can be imposed without a trial.

228. Trials must take place before a previously appointed judge or tribunal and must be impartial and independent. Responsibility for carrying out any trial-related investigation

falls to the Public Prosecutor's Office, which has specialized prosecutors charged with ensuring compliance with the law. The prosecutor responsible for cases involving adolescents takes charge of pretrial procedures and, as soon as a charge is brought, must initiate investigations to verify whether or not an offence has been committed, whether the adolescent instigated or aided the offence, and the damage caused. The preliminary investigations that the prosecutor must perform include the following: (a) verifying the adolescent's age; (b) informing the adolescent's parents, legal representatives or guardians of the charge, and also the judge; and (c) carrying out any research required, using the Office's interdisciplinary team and any specialists who might assist them.

229. The right to a defence is guaranteed by article 12 of the Constitution, which stipulates that "the defence of the individual and their rights is inviolable". This provision is consistent with articles 37 and 40, paragraph 2, of the Convention, which establish that "every child deprived of his or her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action". The formal defence of the adolescent must be brought by a lawyer of their choosing or, if they lack the financial resources to pay for a private lawyer, by a lawyer appointed by the State.

230. The Social Welfare Secretariat has developed various programmes to address the issue of coercive measures and criminal law sanctions for adolescents, including an assisted release and a community service programme.

2. Children deprived of liberty, including all forms of detention, imprisonment and internment in a custodial institution

231. The Social Welfare Secretariat is also responsible for coordinating and implementing programmes for young persons in conflict with the criminal law. For this purpose, it has established the Gaviotas Centre, the Support Centre for Children and Adolescents in Situations of Social Risk, located in San José Pinula, the Etapa I and Etapa II centres, which cater specially for males, and the Gorriones Centre for girls aged over 12.

232. The Social Welfare Secretariat also runs the assisted release programme, which has had good results since its launch in 2006, yielding a near zero reoffending rate (2 per cent) – a significant achievement when compared against the high reoffending rate recorded among persons who have been detained in closed facilities. The programme is run by a multidisciplinary team attached to the Social Welfare Secretariat: on receipt of a judicial order, the team goes over the case with the adolescent and their family and proposes the support most appropriate to their specific personal circumstances; in most cases, the adolescent is placed in a work or training centre, such as a bakery, metal workshop or other type of business. At present, 166 young persons are completing work placements in private companies affiliated to the assisted release programme.²⁴

233. The most recent reform of the justice system introduced a sizeable number of new penalties that may be imposed. Thus, having established the adolescent's culpability, the judge may now hand down any of the following penalties:

(a) *Socio-educational sanctions*: reprimand and warning; assisted release; community service; reparation of damage caused to the victim; guidance and supervision orders; order for outpatient or custodial treatment of the adolescent in a public or private health centre for detoxification and elimination of addiction to drugs or other substances;

²⁴ *Free Press*, 6 October 2002, pp. 15a and 15b.

(b) *Sanctions involving deprivation of liberty*: confinement to the home; deprivation of liberty during free time; deprivation of liberty at weekends (from 8 a.m. on Saturdays until 6 p.m. on Sundays). Sanctions of this kind may be imposed for a period of no more than eight months, during which time the adolescent is required to participate in educational and cultural activities;

(c) *Deprivation of liberty in a specialized sentence enforcement centre*: which may be an open, semi-open or closed facility.

234. According to figures provided by the Juvenile Prosecutor's Office, long-term custodial sentences were handed down in only 176 of the 5,597 cases received by the Public Prosecutor's Office; 2,971 cases resulted in final decisions, 49 per cent of which handed down warnings, 32 per cent were resolved without the imposition of punitive measures, 10 per cent imposed fines, and 265 (9 per cent of the total) ordered supervised probation or conditional release.

235. The focus of the new law is to promote, implement and apply public policies on the assumption that the best way to combat juvenile delinquency is through prevention by means of social and educational policies aimed at mitigating the economic and social disparities in Guatemala that often lie at the root of crime, and through the adoption and application of a punitive system which places the emphasis on adolescents' social and family reintegration and encourages their development into responsible citizens by favouring punishments that foster positive values.

236. Custodial sentences are imposed as a last resort only, when it is not possible for the judge to apply another form of penalty. As provided in article 183 of the Comprehensive Protection Act, officials of the judiciary are expected to expedite cases where adolescents have been held in pretrial detention.

237. Judges must endeavour to ensure that the punitive measure applied is the option least detrimental to the child or adolescent, i.e., that the penalty imposed does not impede the free exercise of their rights. If faced with the choice of compromising either the rights of an adult or the rights of a child, a judge must always opt for the former, as the interests of the child must always take precedence. For this reason, judges must always ensure that the measures adopted take the needs of the affected child or adolescent into account and, wherever possible, strengthen ties with their family and community without compromising their personal and cultural identity.

3. Special measures to provide education, health care and social reintegration activities for children deprived of liberty

Education

238. A series of courses designed to foster cultural development and social reintegration has been developed as part of the support and education programme for minors in conflict with the criminal law. The specific courses offered are as follows:

(a) Human and Professional Development, a course run by Mariano Gálvez University for staff at the Etapa I Centre;

(b) Environmental education: theory and practice, a course run in conjunction with the Ministry of the Environment and Natural Resources;

(c) Day workshops on dental health for the Gorriónes juvenile detention centre for women, organized in conjunction with the San Juan Sacatepéquez Health Centre;

(d) Baking and gardening workshops were resumed at the Etapa I and Etapa II Centres, providing training for young detainees that helps them enter the private labour market.

Health

239. Each detention centre has its own medical unit. However, to ensure that the best interests of the child are served, the following initiatives have also been organized:

(a) Vaccination days at the Etapa I and II Centres, run in conjunction with the San José Pinula Health Centre;

(b) Sex education courses, run in conjunction with the Family Welfare Association, aimed at preventing contagious and infectious diseases and the spread of HIV/AIDS.

4. Sentencing of children, in particular, prohibition of the death penalty and life imprisonment

240. There is no provision in Guatemalan law for life imprisonment. Article 18 of the Constitution establishes that the death penalty may not be imposed in the following cases: (a) on the basis of presumption; (b) on women; (c) on persons over 60 years of age; (d) on persons accused of political crimes or related ordinary crimes; or (e) on accused persons whose extradition has been granted on this condition. All relevant legal remedies against the death sentence are admissible, including cassation. Cassation proceedings shall always be allowed. The sentence shall be carried out after all remedies have been exhausted.

241. Although it is not expressly stated that the death penalty shall not be imposed on minors, article 20 of the Constitution stipulates that “minors who contravene the law may not be charged with an offence. Their treatment must aim to give them a full education appropriate to their age”. Thus, in practice, the death penalty is not applied to minors.

C. Children in situations of exploitation, including physical and psychological recovery and social reintegration

242. Established in 2002 by Government Order No. 347-2002, the National Commission for the Prevention and Elimination of Child Labour and its executive secretariat are the bodies responsible for preventing and eliminating child labour. The Commission consists of representatives of the Ministries of Labour and Social Welfare, Education, Health and Welfare, Agriculture, Stock-rearing and Food, Culture and Sports, representatives of the Social Welfare Secretariat of the Office of the President and the Presidential Secretariat for Women, the President of the National Association of Municipalities, the President of the Executive Board of the Guatemalan Social Security Institute, and representatives of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations and the Trade Union Federation.

243. A subregional project to prevent and eliminate the worst forms of child domestic labour in Central America and the Dominican Republic was launched at the end of 2004 in the framework of the ILO International Programme on the Elimination of Child Labour (IPEC).

244. With the assistance of the Canadian Government, the Ministry of Labour and Social Welfare has developed and implemented a programme of action to strengthen the capacity of its Directorate-General of Social Welfare to monitor progress in preventing and eliminating domestic child labour. This programme led to the creation, by Ministerial Order No. 24-2005, of the Technical Monitoring Committee for the Prevention and Elimination of

Child Labour in Domestic Service performed by boys, girls or adolescents in private homes, which became operational on 17 February 2005. The Technical Committee²⁵ has held working meetings in accordance with paragraph (h) of the Ministerial Order, which requires it to draw up a workplan.

245. Another element of this work is combating trafficking in human beings. To this end, the Government drew up a public policy on trafficking in persons, comprehensive victim protection and a strategic action plan for 2007–2017, which was compiled with the assistance of a number of government agencies including the Ministry of Foreign Affairs, the Directorate-General of Migration, the Office of the Procurator-General, the National Civil Police, the Public Prosecutor's Office, the Social Welfare Secretariat, the judiciary, international NGOs such as the International Organization for Migration (IOM), UNICEF, and the Central American HIV/AIDS Prevention Programme (PASCA), and national NGOs including the Casa Alianza Association, the Casa Bernabé Orphanage Foundation and End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) Guatemala.

246. The National Protocol on the Repatriation of Child Victims of Trafficking was adopted in 2006. It contains basic standards and rules that can be easily understood and applied by all officials in direct contact with victims of trafficking, and especially with children and adolescents.

247. In the lead-up to the Regional Conference on Migration, draft regional guidelines on special protection in the return of child and adolescent victims of trafficking were prepared. After consideration by the various States members of the Conference, the draft was included in the document discussed at a meeting of the Regional Consultation Group on Migration that took place from 27 to 29 November 2006.

248. The Ministry of Foreign Affairs signed a memorandum of understanding with the United Nations Children's Fund (UNICEF) on cooperation to prevent and provide protection against trafficking in persons, in the form of financial and technical assistance from UNICEF in the organization of training workshops for central government officials on the trial of cases of human trafficking and smuggling, covering the conceptual framework and raising awareness of the issue in general. Two workshop-seminars on the implementation of the National Protocol on the Repatriation of Child Victims of Trafficking were organized in conjunction with UNICEF. On 3 August 2006, a workshop-seminar on procedures for preventing, identifying and providing assistance to child victims was held for consuls from Central America, Mexico, the Dominican Republic, Colombia and Ecuador accredited in Guatemala and for Guatemalan consuls accredited in Mexico, Belize, El Salvador, Honduras and Nicaragua.

249. In addition, a workshop-seminar to approve and create material to raise awareness of child trafficking in Central America was held on 12 and 13 July 2006.

250. Mutual cooperation mechanisms have been established, including a technical committee to monitor and assess coordination and cooperation activities under the memorandum of understanding on the protection of victims of trafficking in persons and the smuggling of migrants concluded between Guatemala and El Salvador.

²⁵ The Technical Committee comprises one member and one alternate from the following institutions: Ministry of Labour and Social Welfare, Ministry of Education, Ministry of Health and Welfare, Ministry of Culture and Sports, Guatemalan Social Security Institute, Presidential Human Rights Commission, Office for the Defence of Indigenous Women, Social Welfare Secretariat and Office of the Human Rights Procurator.

251. An annual programme of work to implement the memorandum of understanding on the protection of victims of trafficking in persons and the smuggling of migrants, concluded between Guatemala and El Salvador, has been drawn up and adopted.

252. The Protocol on the detection and comprehensive care of child and adolescent victims of commercial sexual exploitation has been submitted for approval. The Protocol is the responsibility of the Social Welfare Secretariat, and is the result of pooling the experiences of various institutions and coordinating the work of government bodies and NGOs. The ultimate aim is that it should become a guide to inter-agency intervention for the network of public institutions and, in particular, the centres and shelters run by the Social Welfare Secretariat of the Office of the President to protect, provide direct assistance to, and restore the rights of child victims of commercial sexual exploitation.

253. The Protocol also applies to public programmes offering direct assistance, such as the centres and shelters run by the Social Welfare Secretariat of the Office of the President, any future programmes developed by the State and programmes run by NGOs in their role as contributors to the comprehensive support process.

254. The Social Welfare Department has constructed a model for the comprehensive care of victims of the offences described in the Optional Protocol: these are described in more detail below. The model provides for support on five levels:

(a) *Level 1. Adjustment to the system and establishment of relations of trust:* this is one of the most important levels, as it comes in a period of change and one of transition from a disorganized lifestyle to one of rules and discipline. The consumption of alcohol and drugs and sexual activity are not permitted in this period, and this can lead to intellectual and emotional confusion;

(b) *Level 2. Understanding their personal history and starting the educational process:* (i) psychotherapy; (ii) links with school; (iii) facilitating learning; (iv) training for employment; and (v) leisure;

(c) *Level 3. Rehabilitation of emotions and acquisition of knowledge:* involves the young person accepting their responsibilities. Improves self-esteem, interpersonal relations, etc. Help is given with rebuilding emotional relationships, empowerment through re-education, occupational therapy and fulfilment through work;

(d) *Level 4. Consolidation of practical skills:* preparations for discharge and social and family reintegration. Reinforcing and strengthening personal development so that the young persons can reassert themselves as individuals, preparing them for the world outside by teaching them how to handle common real-life situations, so that they can interact with their community. Group therapy in dealing with vital human experiences – independence, family welfare and tolerance. Continued training for employment;

(e) *Level 5. Discharge and social reintegration of the adolescent:* a transitional stage, preparing them for discharge. Finally, discharge and follow-up to the extent possible.

255. Various measures have been adopted in this area, including the establishment of an inter-agency group to combat trafficking in persons, which is coordinated by the Guatemalan Ministry of Foreign Affairs. The National Plan of Action to Combat Commercial Sexual Exploitation of Children and Adolescents has also been adopted as official policy by the Social Welfare Secretariat. However, the failure to allocate an adequate budget as recommended by the Committee has prevented the Social Welfare Secretariat from properly implementing the Plan. This has meant that the only programmes the Secretariat is now running are programmes for the children of female sex workers in the area around the airport.

256. Aware of the urgent need to address the issue of the commercial sexual exploitation of children and adolescents, the State held the first meeting of the coordinating group in early 2008.

257. Some of the advances that have been achieved through international cooperation, specifically with ILO-IPEC and ECPAT, stem from a cooperation agreement signed with the Social Welfare Secretariat, effective from January 2004 to August 2005 and covering three areas: (a) institution-building; (b) awareness-raising and information; and (c) direct support. The agreement strengthened the Social Welfare Secretariat in various ways, in particular by providing direct assistance in the Mi Hogar children's home for approximately 65 girl victims of commercial sexual exploitation, of whom 39 were successfully returned to their homes.

D. Children belonging to a minority or an indigenous group

1. Measures to prevent the abduction, sale and trafficking of children for any purpose or in any form

258. Although Guatemala's population is predominately indigenous, the indigenous population does not enjoy the full benefits of citizenship, primarily because of the exclusive and racist foundations on which the State of Guatemala was built.

259. In order to improve protection for children, new regulations on the organization of the National Civil Police were introduced pursuant to Government Order No. 662-2005, establishing the Sub-Department for Crime Prevention, which consists of the Children's Division and the Children's and Adolescents' Division.

260. Article 96 of the Comprehensive Protection Act establishes that all members of the police force must receive training and advice in the rights and duties of children and adolescents, and this area is also covered in academic police training courses.

261. The Sub-Department for Crime Prevention has the following functions:

(a) To investigate crimes against minors and adolescents, through the Missing Children and Adolescents Section of the Criminal Investigation Division; the deaths of 271 children are currently under investigation;

(b) To combat organizations that arrange illegal adoptions and steal babies, on the basis of complaints filed with the family courts and the Office of the Procurator-General and other institutions involved;

(c) The Sub-Department for Crime Prevention has introduced institutional policies that guarantee the protection of children and adolescents whose human rights have been, or are in danger of being, violated, such as adolescents in conflict with the criminal law.

2. Measures to prevent children belonging to a minority group from being deprived of their rights as members of that group

262. In order to redress the severe deficiencies in the standard of living of Guatemalan children, in 2004 the State launched the Creciendo Bien ("Growing Well") programme. The programme aims to contribute to fulfilment of the Millennium Development Goals, specifically as part of the poverty reduction strategy coordinated by the Planning Secretariat that is designed to streamline the various public agencies' efforts to create conditions conducive to the development of communities identified as priorities.

263. The programme also serves as a mechanism for liaison between the Ministry of Health and Welfare, the Ministry of Agriculture and other public agencies in coordinating

joint efforts to increase institutional involvement at community level. Initially developed as an initiative of the Social Welfare Secretariat of the Office of the First Lady with a view to fostering and supporting health-care and education initiatives that would help produce a new generation of healthy Guatemalans with greater opportunities, by encouraging female involvement in strengthening family structures, the programme subsequently became part of the Guate Solidaria (“Guatemala solidarity”) initiative, which aims to generate socio-economic growth, solidarity and social inclusion by prioritizing investment in the country’s most vulnerable municipalities.

264. The Creciendo Bien programme is one of the State’s first social action initiatives in municipalities affected by food vulnerability and is designed to benefit women and children under the age of 5 in particular. Its aims are to help achieve food and nutrition security, to foster participation and leadership among women, to track and monitor children’s growth and to encourage the development of production projects that will improve nutrition and generate income.

265. The Creciendo Bien programme is based on a community self-management model that promotes food and nutrition security and recognizes that women of childbearing age have a role as agents for change and key community players who, with relevant training, can bring about improvements in the health and nutritional status of their children, especially those under the age of 5, and their entire family.
