



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Fifty-fifth session

13 September – 1 October 2010

## Consideration of reports submitted by States Parties under article 44 of the Convention

### Concluding observations: Guatemala

1. The Committee considered the combined third and fourth periodic report of Guatemala (CRC/C/GTM/3-4) at its 1544th and 1546th meetings, held on 14 September 2010, and adopted at its 1583rd meeting, held on 1 October 2010, the following concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the State party's combined third and fourth periodic report, although it regrets the delay in its submission. The Committee also welcomes the replies to its list of issues (CRC/C/GTM/Q/3-4) and Add.1), and appreciates the constructive dialogue with an intersectoral delegation of the State party.

3. The Committee reminds the State party that these concluding observations should be read in conjunction with its previous concluding observations adopted on the State party's second periodic report on 9 July 2001, contained in CRC/C/15/Add.154, as well as those adopted following the review of the State party's initial report to both the Optional Protocols to the Convention on 12 June 2007 (CRC/C/OPAC/GTM/CO/1 and CRC/C/OPSC/GTM/CO/1).

#### B. Follow-up measures undertaken and progress achieved by the State party

4. The Committee welcomes a number of positive developments in the reporting period, including the adoption of legislative and other measures taken with a view to implementing the Convention, such as:

- (a) The Adoption Act (2007) and the National Adoption Council established in 2008;

(b) The Act on Sexual Violence, Exploitation and Trafficking in Persons (2009), the Early Warning System Law (2010), and the creation of the Secretariat on Sexual Violence, Exploitation and Trafficking in Persons in 2010; the policy on trafficking in persons and comprehensive victim protection and the drafting of the National Strategic Action Plan 2007-2017;

(c) The Act on Universal and Equitable Access to Family Planning Services and their Integration in the Reproductive Health Programme (2005); and

(d) The “PINA” (Protección Integral de la Niñez y Adolescencia) Law for the protection of children and adolescents (2003).

5. The Committee notes with satisfaction that a number of policies, governmental agreements and administrative measures designed to promote and coordinate public policies relating to indigenous affairs have been adopted. It particularly welcomes initiatives including the policy on coexistence and the elimination of racism and racial discrimination, adopted in 2006, related to indigenous children.

6. The Committee welcomes the collaboration with the Office of the High Commissioner for Human Rights (OHCHR) since the establishment of an office in the State party in January 2005.

7. The Committee welcomes the fact that the State party has accepted a number of visits from special procedure mandate holders of the Human Rights Council.

8. The Committee notes with appreciation the establishment of the International Commission against Impunity in Guatemala (CICIG) on 12 December 2006.

9. The Committee also welcomes the ratification of the following international treaties:

(a) The Optional Protocol to the Convention against Torture (2008); and

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol (2009).

## **C. Factors and difficulties affecting the implementation of the Convention**

10. The Committee takes note of the negative impact of natural disasters faced by Guatemala, such as drought, tropical storm Agatha and the Pacaya volcano eruption, on the rights of children.

## **D. Main areas of concern and recommendations**

### **1. General measures of implementation (arts. 4, 42 and 44, para. 6, of the Convention)**

#### **The Committee’s previous recommendations**

11. The Committee notes that several concerns and recommendations made in its previous concluding observations (2001) (CRC/C/15/Add.154) on the State party’s second periodic report under the Convention and concluding observations on its initial reports under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/GTM/CO/1) and the Optional Protocol on the sale of children, child

prostitution and child pornography (CRC/C/OPSC/GTM/CO/1) have been addressed, but regrets that others have been insufficiently or only partly considered.

12. **The Committee urges the State party to take all necessary measures to address those recommendations from its previous concluding observations that have not yet been sufficiently implemented, including: (a) the weak implementation of the Comprehensive Protection System (*Sistema de Protección Integral*), its institutional structure, coordination, planning, data collection and budget; (b) the high levels of child malnutrition in the country; (c) the development of comprehensive strategies for eliminating all forms of discrimination, including in the health sector; (d) reduction of poverty among children and increase of expenditures on children, in particular those belonging to the most marginalized groups; (e) deinstitutionalization of children in alternative care; (f) reform of the law and practices regarding the juvenile justice system; (g) improvement of the birth registration system, particularly in rural areas.**

### Legislation

13. The Committee notes the State party's efforts to bring its legislation in line with the Convention and its two Optional Protocols, including the Act on Sexual Violence, Exploitation and Trafficking in Persons. However, it regrets the insufficient application of the laws that are in place.

14. **The Committee recommends that the State party take the necessary steps, including financial and structural, to effectively implement the PINA Law and recent laws approved in accordance with the Policy and Plan of Action on Children and Adolescents.**

15. The Committee notes with satisfaction the measures taken by the State party to fight against impunity, in particular the cooperation agreement with CICIG, which conducts investigations and has made recommendations on fighting impunity in relation to cases of violation of children's rights. However, the Committee regrets that the lack of criminal investigations is one of the main shortcomings of the justice system and that there are four bills on this matter before the Congress of the Republic, none of which has to date been adopted.

16. **The Committee recommends that the State party continue its commitment to the fight against impunity, adopt the necessary laws for its realization and ensure that children benefit from the measures preventing impunity for serious offences committed against them.**

### Coordination

17. The Committee notes with concern the lack of adequate implementation of the Comprehensive Protection System (*Sistema de Protección Integral*) established by the PINA Law. It regrets the lack of effective horizontal and vertical coordination among the State party's institutions. The Committee also notes that the Social Welfare Secretariat (*Secretaría de Bienestar Social*) appears to have taken up the coordination of the comprehensive protection system. However, it regrets the overlap of its primary function of implementation of child protection programmes with that of coordination.

18. **The Committee recommends that the State party consider creating a high-level authority as a secretariat for children and adolescents at the ministerial level to coordinate the implementation of the Convention and its two Protocols. The Committee brings to the State party's attention its general comment No. 5 on general measures of implementation, in which it reminds the States parties that "effective implementation of the Convention requires visible cross-**

sectoral coordination to recognize and realize children's rights across Government, between different levels of government and between Government and civil society – including in particular children and young people themselves.”

#### **National Plan of Action**

19. The Committee takes note of the adoption of the National Plan of Action for Children 2004-2015 and welcomes several initiatives based on sectoral plans of action aimed to address violation of children's rights. However, it regrets the insufficient implementation of these plans, including the lack of adequate evaluation due to institutional weakness and limited allocation of resources.

20. **The Committee recommends that the State party take all the necessary measures, including adequate financial resources, to implement the National Plan of Action including the sectoral plans of action at the local, regional and national levels, ensuring that they are in line with all of the Convention provisions and its two Optional Protocols. The Committee further recommends that the implementation of these plans be regularly monitored and evaluated with the participation of children and civil society.**

21. The Committee notes that the National Commission on Children and Adolescents, which is in charge of the development and evaluation of public policies for children, undertook an assessment of the public child protection policy in 2009. However, it regrets the lack of information on the follow-up given to this evaluation as well as the insufficient professional and financial resources allocated to the Commission to adequately carry out its functions and duties.

22. **The Committee recommends that the allocation of human, technical and financial resources to the National Commission on Children and Adolescents be increased in order to enable it to carry out its functions and duties adequately. The Committee further recommends introducing and promoting children's rights in State policies covering civil, political, economic, social and cultural rights and evaluating their implementation.**

#### **Independent monitoring**

23. The Committee is concerned at the insufficient resources allocated to the Office of the Ombudsman (*Procuraduría de los Derechos Humanos*), which impedes it from adequately fulfilling its functions. The Committee is further concerned at reports that the Office might be politically biased, which results in weak audits, that it pays insufficient attention to monitoring and preventive work, and that it does not sufficiently follow up violations detected.

24. **The Committee recommends that the State party allocate more resources to the Office for children and youth, which comes under the Office of the Ombudsman (*Procuraduría de los Derechos Humanos*), provide it with the necessary power to effectively perform its mandated monitoring functions, and take the necessary steps to correct its shortcomings, professionalize its work and ensure its independence in accordance with the Paris principles and the Committee's general comment no. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child. The Committee also recommends that the *Procuraduría de los Derechos Humanos* increase its accessibility, strengthen the local services provided through municipal defenders (“*Defensores Municipales*”) and create culturally adapted services in the indigenous communities, or establish community defenders (*Defensores Comunitarios*) working closely with the Ombudsman.**

### **Allocation of resources**

25. The Committee welcomes the efforts to enhance the allocation of resources for children, such as the conditional cash transfers in the areas of health and education, but is concerned that budget allocations for children need a longer-term perspective, which could only be provided by a comprehensive and time-bound national plan of action as part of the national development strategy. It is also concerned at the low social spending in the State party, and the difficulty of tracking investments on children across sectors, departments and municipalities in order to monitor and evaluate their efficient use. The Committee also notes with concern that the particularly low tax collection in the State party has a negative impact on the national revenue, and may limit resources for children.

**26. The Committee recommends that the State party, in line with Article 4 of the Convention:**

(a) **Adopt comprehensive and progressive tax reform, expanding the tax base specially to cover social sectors and children and improving collection in order to increase the availability of resources to social sectors and children;**

(b) **Allocate adequate resources for children at national, regional and municipal levels and ensure transparent and participatory budgeting through public dialogue and participation, including that of children;**

(c) **Use a child rights approach in the preparation of the State budget by implementing a tracking system for the allocation and use of resources for children throughout the budget, thus providing visibility of the investment in children. The Committee also urges the State Party to use this tracking system for impact assessments on how investments in any sector may serve "the best interests of the child", ensuring that the differential impact of such investment on children is measured;**

(d) **Establish adequate resource allocations for the departments of the State party that are progressively addressing the disparities reflected in the indicators related to children's rights implementation, and ensure proper accountability by local authorities in an open and transparent way;**

(e) **Define strategic budgetary lines for those situations that may require affirmative social measures (such as birth registration, chronic malnutrition, indigenous children, education, violence against children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disaster or other emergencies;**

(f) **When possible, follow United Nations recommendations to start budgeting-by-result to monitor and assess the effectiveness of resource allocation and, if necessary, seek international cooperation to this effect from the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP) and other stakeholders as is being provided to other States parties in the region;**

(g) **Take into account the Committee's recommendations following its 2007 day of general discussion on "Resources for the Rights of the Child - Responsibility of States."**

### **Data collection**

27. The Committee notes with concern that an adequate data collection system has not been established, which has resulted in incomplete and confused data. It regrets the lack of coordination and feedback among different institutions which results in contradictory data, and that existing statistics often refer only to the capital city and urban areas.

28. The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by sex, age, rural and urban areas, ethnicity, disabilities, victims of violence and phase of life (particularly early childhood and adolescence). This system should cover all children up to the age of 18, with specific emphasis on those who are particularly vulnerable. It also encourages the State party to use these indicators and data in the formulation of policies and programmes for the effective implementation of the Convention. The Committee further recommends that the data collection be regularly updated, and made easily available to the general public.

#### **Dissemination, and awareness-raising**

29. The Committee takes note of the State party's efforts in relation to the promotion of human rights among governmental agencies and non-governmental organizations. The Committee encourages the State party to further enhance awareness that children are subjects of rights. It reiterates its recommendation that the State party increase its efforts to disseminate more informative material and translate it into the main indigenous languages in a culturally sensitive manner, and that it develop more creative methods to promote the Convention, in particular at the local level.

#### **Training**

30. While the Committee notes with appreciation the training activities on the Convention and its Protocols, targeting actors such as judges, local authorities and the police, it remains concerned at the increasing incidence of sale of children and sexual exploitation of children as well as at the large number of victims, as recognized in the State party report, which indicates an urgent need to undertake further and sustainable training in this regard.

31. The Committee recommends adequate and systematic training and/or sensitization of professional groups working with and for children, such as judges, lawyers, law-enforcement personnel, teachers, school administrators and health personnel. The State party is encouraged to fully integrate the Convention and its two Optional Protocols into the curricula at all levels of the educational system and to seek technical assistance from, inter alia, UNICEF, UNESCO and OHCHR.

#### **Cooperation with civil society**

32. The Committee regrets that cooperation with non-governmental organizations and indigenous traditional leaders is insufficient.

33. The Committee recommends that the State party strengthen its cooperation with non-governmental organizations, including indigenous organizations, to better implement the Convention at the national and local levels and in urban, rural and indigenous areas.

#### **Child rights and the business sector**

34. The Committee notes with concern the potential negative impact of foreign and domestic business and industries, inter alia, in the mining sector, on the wellbeing and development of children.

35. The Committee recommends that the State party undertake efforts to establish the necessary regulation framework for business to ensure that business and

industries operate in a socially and environmentally responsible way to safeguard local communities and their children.

#### **International cooperation**

36. The Committee notes that various programmes and projects are being implemented in the framework of international cooperation, including technical assistance and cooperation of United Nations agencies and programmes.

37. **The Committee recommends that the State party continue to undertake measures to sustain and increase international cooperation, while at the same time seeking to strengthen its own resource base and institutional structure for the implementation of the Convention and its two Protocols.**

### **2. Definition of the child (art. 1 of the Convention)**

38. The Committee notes that the age of consent for marriage is the age of majority and that authorization of early marriage, which is 14 years of age for girls and 16 for boys, is granted on an exceptional basis and requires parental consent.

39. **The Committee reiterates its recommendation that the State party review its legislation with a view to amending the Civil Code and increase the minimum age of marriage for girls to 16 as for boys, and only in exceptional cases, under the control of the judiciary.**

### **3. General principles (arts. 2, 3, 6 and 12 of the Convention)**

#### **Non-discrimination**

40. The Committee reiterates its concern, shared by other treaty bodies, at the alarming level of discrimination suffered by Maya, Garifuna and Xinca children in the State party. The Committee notes that the measures taken by the State party so far are not sufficient to eliminate structural obstacles which prevent the full exercise of the rights of these children, who constitute over half the total population of the State party. The poverty and extreme poverty rates among the indigenous population are extremely high, as is the level of chronic malnutrition, which affects more than 80% of the indigenous population. The Committee is further concerned that indigenous and Garifuna adolescents are more likely to be victims of sexual and economic exploitation due to the lack of relevant information about their rights as well as to the absence of mechanisms guaranteeing these rights. The Committee is also concerned at discriminatory attitudes affecting some sections of the child population, in particular adolescents, children with disabilities, girls, children living in rural areas and children from marginalized families.

41. **The Committee recommends that the State party urgently address the situation of discrimination against Maya, Garifuna and Xinca children in its policies and plans for the elimination of racial discrimination, as well as in social development plans, ensuring the sustainability and cultural suitability of these programmes. In light of article 2 of the Convention, the Committee recommends that the State party ensure full implementation in practice of all legal provisions prohibiting discrimination, combat discrimination by, inter alia, ensuring equal access to education, health-care facilities and poverty reduction programmes, and take measures to address the inappropriate characterization and stigmatization of children and adolescents.**

42. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention undertaken by the State party to follow up on the Durban Declaration and Programme of Action, adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the 2009 Durban Review Conference, taking into account the Committee's general comment No. 1 (2001) on the aims of education (art. 29 (1) of the Convention).

#### **Best interests of the child**

43. The Committee notes that the principle of the best interests of the child has been incorporated in the State party's Constitution, the PINA Law, and in the comprehensive public policy for children and its plan of action adopted several years ago. However, this principle is still not sufficiently well known, understood or correctly applied in legislative, administrative, economic, social, cultural and judicial decisions of the State party, which has a negative impact on children. The Committee welcomes the fact that municipalities have incorporated this principle in municipal public policies, but is concerned that the best interests of the child are not taken into account in practice, in decision-making related to development plans or the budgets at national, regional and municipal level. The Committee regrets that it has not received information on the evaluation of the application of this principle.

**44. The Committee recommends that the State party undertake efforts to disseminate the principle of the best interests of the child in order to make it known to children, their parents and teachers, as well as the authorities, and establish specific training for and monitoring of its application.**

#### **Right to life and survival**

45. The Committee is concerned at the extremely high number of killings of children (510 out of 6,498 violent deaths in 2009), and at the lack of effective measures taken by the authorities in this regard. The Committee regrets that these crimes often remain unpunished.

**46. In light of article 6 of the Convention, the Committee recommends that the State party set up a comprehensive policy to prevent killings of children, carry out a thorough investigation of all cases, and prosecute and adequately punish those responsible.**

47. The Committee is concerned at the extremely high level of chronic and persistent malnutrition in the State party, which undermines the right to life and survival of children, particularly among the rural and indigenous population.

**48. The Committee recommends that the State party pay special attention to chronic malnutrition, especially in very young children; and continue and strengthen coordinated intersectoral policies and programmes, particularly among the rural and indigenous population.**

#### **Respect for the views of the child**

49. The Committee notes with interest that the right to be heard is incorporated in the legislation of the State party. However, it regrets the lack of information about the implementation of this principle. The Committee is concerned that the views of the child are not duly solicited or taken into account in all settings affecting the child, including in judicial proceedings, in matters concerning school administration, alternative care and classroom education, and in public debates. The Committee is also concerned that the majority of parents, authorities and institutions appear not to consider children as subjects



of rights, and that the participation of children is low in the decision-making process in family and community life and in the development and evaluation of policies and programmes targeted at children.

50. The Committee reiterates its recommendation that the State party take appropriate measures to promote, facilitate and implement in practice, within the family, in schools, at the community level and in residential care as well as in judicial and administrative procedures that concern children, the principle of respect for the views of children in all matters affecting them. The Committee further recommends that the State party assure the participation of children in schools and public events and other relevant activities. The State party should also take into account in this respect the recommendations adopted by the Committee in its general comment No. 12 (2009) on the right of the child to be heard.

#### **4. Civil rights and freedoms (arts. 7, 8, 13-17, 19 and 37 (a) of the Convention)**

##### **Birth registration**

51. While noting the State party's efforts to improve its birth registration system, the Committee remains concerned at the high rate of under-registration, especially in rural and remote areas, due to the financial cost of birth registration and to lack of awareness of the importance of birth registration. The Committee notes with regret that a cultural dimension aimed at encouraging registration of indigenous children has not been included in the birth registration procedure.

52. The Committee recommends that the State party increase its efforts to ensure access of all children to free birth registration, and that it take steps to identify all children who have not been registered or obtained an identity document. The Committee also encourages the State party to adopt flexible measures of birth registration, including mobile units to reach all children. The Committee further recommends that the State party implement a specific birth registration strategy for indigenous peoples based on respect for their culture and taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

##### **Torture or other cruel, inhuman or degrading treatment or punishment**

53. While noting that Article 53 of the PINA Law prohibits corporal punishment, the Committee remains concerned that corporal punishment continues to be practised in the home and in alternative care settings, and that there is no explicit prohibition of corporal punishment in schools. It is also concerned at the social acceptance of corporal punishment as a normal form of discipline.

54. The Committee recommends that the State party amend article 13 of the PINA Law and article 253 of the Civil Code, and specifically prohibit corporal punishment and other forms of cruel punishment of children in all settings. It further recommends that the State party develop and implement information and awareness-raising campaigns among the population, in order to change the notion of disciplining through violence and the practice of violence present in many families. It further recommends the creation of an effective abuse detection system in the educational, health and alternative care systems, with appropriate instruments and resources in order to provide assistance to children and training for the staff of the relevant institutions. The Committee brings to the State party's attention its general comment

**No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.**

**Follow-up to the United Nations Study on Violence against Children**

55. With reference to the United Nations Study on violence against children (A/61/299), the Committee recommends that the State party:

(a) Take all necessary measures for the implementation of the recommendations contained in the report of the independent expert for the United Nations study on violence against children while taking into account the outcome and recommendations of the regional consultation for Latin America held in Buenos Aires between 30 May and 1 June 2005. In particular, the Committee recommends that the State Party pay particular attention to the following recommendations:

- i. Prohibit by law all forms of violence against children in all settings, including all corporal punishment;
- ii. Prioritize prevention, by addressing the underlying causes and allocating adequate resources to address risk factors and prevent violence before it occurs;
- iii. Enhance the capacity of all who work with and for children, by investing in systematic education and training programmes; and
- iv. Provide accessible, child-sensitive and universal recovery and social reintegration services.

(b) Use these recommendations as a tool for action, in partnership with civil society and in particular with the involvement of children, to ensure that every child is protected from all forms of physical, sexual and psychological violence and to gain momentum for concrete and, where appropriate, time-bound actions to prevent and respond to such violence and abuse; and

(c) Seek technical cooperation in this respect from the Special Representative of the United Nations Secretary-General on violence against children, UNICEF and the World Health Organization (WHO) and other relevant agencies, as well as non-governmental organization (NGO) partners.

**5. Family environment and alternative care (arts. 5, 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)**

**Family environment**

56. The Committee welcomes the establishment of comprehensive care centres (CAI; Centros de Atención Integral) to help families with daily care for children from 0-7 years. However, it regrets that these services have limited geographical scope. While welcoming programmes to support families in need, such as “My Family Makes Progress” (*Mi familia progresa*), solidarity funds and open schools, the Committee is concerned at the insufficient clarity in planning and implementing these programmes, including the selection criteria for families, as well as its sustainability over time. The Committee regrets the scarcity of programmes to provide psychosocial and legal support to families at local and community level, including services adapted to the diversity of cultures.

57. **The Committee recommends the State party to:**

(a) **Ensure that programmes such as “My Family Makes Progress” (Mi familia progresa) and CAI centres strengthen family work from a child rights perspective, broaden their coverage, and promote programme sustainability and greater transparency. The Committee further recommends that those programmes also be provided with national budgets, adapted to the varying local needs and situations in the State party and facilitate the participation of parents and children in their evaluation, implementation and programming;**

(b) **Adopt technical criteria to ensure that priority will be given to families who need positive action measures, such as indigenous and Garifuna families, families living with HIV, single-parent families, families at risk of separation, migrant families and children whose parents have migrated.**

#### **Children deprived of a family environment**

58. The Committee is concerned at the large number of children in institutions, as well as at the insufficient implementation of minimum care standards and monitoring systems for these institutions. The Committee notes the State party’s intention to address the institutions’ problems, including the lack of trained staff. However, the Committee remains concerned at the placement of more than 1,000 children in a large institution (*Hogar Solidario*) in the capital.

59. **The Committee recommends that the State party:**

(a) **Seek to reintegrate children with their biological and extended families, to which priority should be given and ensure the right of the child to identity and the re-establishment of family ties;**

(b) **Strengthen community programmes and promote foster families; provide adequate service and specialized care in institutions, giving priority to younger children leaving centres, and use residential care in institutions as a last resort.**

(c) **Create and implement programmes for institutionalized children to facilitate their reintegration into their communities of origin.**

(d) **Take into account the Guidelines for the Alternative Care of Children contained in United Nations General Assembly Resolution A/RES/64/142 adopted on 20 November 2009.**

#### **Adoption**

60. The Committee is concerned about information that organized criminal networks that were active in the sale of children for international adoptions have not been dismantled, and the information given by the State party that there are 600 children ready for international adoption.

61. **The Committee recommends that the State party ensure strict transparency and follow-up controls and prosecute those involved in illegal adoptions and sale of children for adoption purposes. The Committee further recommends that the State party implement all the CICIG recommendations made in its recent report on actors involved in irregular adoptions in Guatemala, since the entry into force of the Adoption Act (decree 77-2007), and take adequate measures to eliminate corruption and impunity, and prosecute and punish the perpetrators.**

62. The Committee welcomes the 2007 Adoption Act which established judicial adoption proceedings, eliminated notary adoption proceedings, and incorporated the Hague Convention (1993) provisions in domestic law. However, the Committee remains concerned at the persistence of private adoptions, and at the fact that the National Adoption Council is only present in the capital city, which makes it difficult to provide an adequate response throughout the country.

**63. The Committee recommends that the State Party decentralize the services of the National Adoption Council, in order to make it accessible in all parts of the country, raise awareness among the population on the new adoption system in order to promote adoptions at national level, and continue suspension of international adoptions until child rights can be totally guaranteed in the adoption proceedings.**

64. While noting that Article 14 of the PINA Law establishes the right of children to identity, the Committee remains concerned at the lack of an adequate mechanism to search for the origin of children deprived of their identity, especially those who have been subject to international adoption and whose rights to preserve their identity have been violated.

**65. The Committee recommends that the State party establish an adequate mechanism to deal with identification of children deprived of their identity in order to protect them from illegal adoptions and other human rights violations.**

#### **Abuse and neglect**

66. The Committee is concerned at the high level of sexual abuse of children, in most cases committed at home. It is also concerned at the high level of underreporting of this offence.

**67. The Committee recommends that the State party carry out special investigations into sexual abuse and provide adequate victim care and programmes for the target population. These measures and programmes should be established throughout the country. The participating agencies should coordinate their efforts to prevent re-victimization. These should include entities such as public health or education offices.**

### **6. Basic health and welfare (arts. 6, 18, para. 3; 23; 24; 26; 27, paras. 1-3, of the Convention)**

#### **Children with disabilities**

68. The Committee is concerned at the limited access to education, health, community and cultural life and services for children with disabilities, as well as at the lack of sufficient measures undertaken by the State party in this regard.

**69. The Committee recommends that the State party guarantee the rights of all children with disabilities in order to prevent them from becoming victims of abuse, exclusion and discrimination and to give them the necessary support to enable them to exercise their rights as active members of their communities. The State party should take into account the Committee's general comment No. 9 (2006) on the rights of children with disabilities.**

#### **Health and health services**

70. The Committee is concerned about the fragmented and segmented health service delivery system in the State party, and at the lack of supplies of medicines, medical equipment and technical and medical staff in hospitals. It is also concerned that economic,

geographical and cultural barriers hinder access to primary care services, contributing to the persistently high levels of maternal and child mortality.

**71. The Committee recommends that the State party take all the necessary measures to increase allocation of resources and develop comprehensive services focused on primary care, in order to ensure access to high quality health services and medicines in a culturally sensitive manner, including in rural areas.**

#### **Breastfeeding**

72. The Committee is concerned that health professionals have insufficient understanding of the importance of exclusive breastfeeding, including in the case of children of HIV-positive mothers. The Committee is also concerned that the baby-friendly hospital initiative is integrated only in public hospitals, and that private hospitals violate the International Code of Marketing of Breast-milk Substitutes.

**73. The Committee recommends that the State party provide training on breastfeeding promotion and support by well qualified and sensitized personnel. It further recommends effective monitoring of implementation of the Code and that the State party draw up appropriate sanctions in case of breaches of the code.**

#### **Adolescent health**

74. The Committee is concerned at the lack of adolescent health programmes with a comprehensive approach allowing the State party to take preventive measures, in particular regarding HIV/AIDS and sexual health. While the Committee takes note of the National Reproductive Health Programme (2005), it is concerned at the high rate of teenage pregnancies in the State party, especially among the indigenous and rural populations. The Committee regrets that confidential HIV tests are not guaranteed to adolescents.

**75. The Committee recommends that the State party ensure the entry into force of the Act on Universal and Equitable Access to Family Planning Services and their integration in the national reproductive health programme, and strengthen family planning programmes to ensure that adolescents have access to contraceptives. The Committee further recommends that HIV tests be guaranteed to adolescents. It also brings to the State party's attention its general comment No. 4 on adolescent health (2003), as well as the recommendation made by the Committee on the Elimination of Discrimination against Women in 2009 (CEDAW/C/GUA/CO/7, para. 40).**

#### **Standard of living**

76. While taking note of the State party information on measures undertaken to promote the right to water for children, the Committee remains concerned at the inaccessibility of potable drinking water across the country, and at the high proportion of the rural population lacking access to an improved source of water and sanitation.

77. The Committee, while noting with satisfaction the adoption of the Act on the Food and Nutrition Security System (2005), remains deeply concerned at the negative impact of the "dry corridor" drought crisis on the right to food of children as well as at the lack of adequate and sufficient measures to address this situation. The Committee is also concerned that disputes over land ownership between indigenous peoples and owners often result in forced evictions of indigenous peoples.

**78. The Committee recommends that the State party take all necessary measures to ensure an adequate standard of living for all children, including adequate housing, food and water. The Committee also recommends that the State party take all**

necessary steps to ensure that any violation of the right to food be considered justiciable under the new Act on the Food and Nutrition Security System. The Committee recommends that the State party implement the recommendations of the Special Rapporteur on the right to food further to his mission to Guatemala in 2010.

## **7. Education, leisure and cultural activities (arts. 28, 29 and 31 of the Convention)**

### **Education, including vocational training and guidance**

79. The Committee welcomes Governmental agreement No. 22-2004, which establishes the comprehensive application of bilingual education and the compulsory use of national languages in instruction. Under this agreement, the teaching and practice of multiculturalism and interculturalism in the classroom in Mayan languages, Garifuna or Xinca and/or Spanish is compulsory.

80. The Committee also notes with satisfaction that Article 37 of the PINA Law provides for free and compulsory education up to the last grade of secondary education, as well as the free school programme launched in 2009. It is however concerned that the increased demand for education has not been met with adequate educational infrastructure, human and technical resources. The Committee is also concerned at the very low rate of school retention.

81. **The Committee recommends that the State party:**

- (a) **Provide free-of-charge education in practice as well as a sufficient number of schools, school materials and adequately trained teachers;**
- (b) **Take all the necessary measures to ensure that children complete primary and secondary school by taking specific action to address the reasons behind non-completion of schooling; and**
- (c) **Take into account the Committee's general comment No. 1 (2001) on the aims of education.**

## **8. Special protection measures (arts. 22, 30, 32-36, 37 (b)-(d) and 38-40 of the Convention)**

### **Children in migration situations**

82. The Committee is concerned about the extreme vulnerability of unaccompanied migrant children, who run the risk of becoming victims of crimes such as sale of and trafficking in persons.

83. **The Committee recommends that the State party enact a migration law that addresses the situation faced by migrant children and create tools to address the existing problems, especially with regard to unaccompanied migrant children. The Committee brings to the State party's attention its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.**

### **Children in armed conflict**

84. The Committee is concerned that the State party has not implemented the Committee's recommendation made in 2007 concerning the prohibition and criminalization of recruitment of children and their involvement in hostilities.

85. **The Committee reiterates its recommendation (CRC/C/OPAC/GTM/CO/1, para. 7) that the State party, inter alia:**

- (a) **Explicitly prohibit by law the recruitment of children under the age of 18 years into armed forces and armed groups and their direct participation in hostilities;**
- (b) **Explicitly criminalize, by reform of the Penal Code, violations of the provisions of the Optional Protocol on children in armed conflict regarding the recruitment and involvement of children in hostilities;**
- (c) **Establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State party.**

86. The Committee is concerned at the lack of adequate measures taken by the State party to fully comply with the reparations judgments of the Inter-American Court of Human Rights in cases relating to child victims, such as the Marco Antonio Molina-Theissen case of 3 July 2004 and the Villagrán Morales and others case of 26 May 2001.

87. **The Committee recommends that the State party fully comply with the above judgements. It further recommends that it implement the Early Warning System Law (2010) and that a DNA database be set up to facilitate research for forcibly disappeared children, in particular those who disappeared during the internal armed conflict.**

#### **Economic exploitation including child labour**

88. While taking note of the State party efforts to address the economic exploitation of children, the Committee remains concerned that the global financial crisis has had a negative impact on children in the State party, and families have sought new survival strategies such as the involvement of children in hazardous work and/or migration and trafficking for labour exploitation purposes. It also reiterates its concern about the disparity between the legal minimum age for admission to employment (14 years) and the age for the end of compulsory education (15 years).

89. **The Committee recommends that elimination of child labour should be a priority on the social and poverty eradication agenda and be addressed in the national budget due to the high incidence and seriousness of the problem in the State party. A comprehensive and holistic approach, with universal coverage in line with international standards should be adopted with a view to its progressive eradication. It further recommends that the State party redefine the minimum age for admission to employment so that it corresponds to the age at which compulsory education ends.**

#### **Children in street situations**

90. The Committee welcomes development of a national plan of action for children in street situations. It is however concerned at the large number of children in street situations, many of whom have left their families as a result of domestic violence, frequently combined with sexual abuse.

91. **The Committee recommends that the State party:**

- (a) **Increase its efforts to take preventive measures to prevent children from living and working in the street, with a strong emphasis on education, and on preventive strategies at local and community level;**

- (b) **Facilitate strengthening of family ties of children in street situations; and their reunification with their families, when appropriate and in the best interests of the child;**
- (c) **Extend the assistance measures to support children in order to facilitate their full reinsertion into school;**
- (d) **Pay greater attention to girls in street situations and their particular vulnerabilities;**
- (e) **Prioritize the data collection system on children in street situations and utilize this information to develop sustainable programmes and provision of basic services for these children, with their participation.**

#### **Youth gangs (“Maras”)**

92. The Committee is concerned that the climate of fear, insecurity, threat and violence linked to these gangs impedes children from enjoying their childhood and adolescence. The Committee also notes with concern that not enough attention is being paid by the State party to the root causes of this phenomenon, which has so far been tackled mostly as a criminal justice problem and with insufficient socio-economic measures.

93. **The Committee recommends that the State party develop a comprehensive public policy to deal with this problem, addressing the social factors and root causes of juvenile violence, such as social exclusion, lack of opportunities, culture of violence, migration flows, inter alia. The Committee also recommends that the State party invest in prevention activities, with an emphasis on the school, the family and social inclusion measures.**

#### **Sexual exploitation and trafficking**

94. While welcoming the 2009 Act on Sexual Violence, Exploitation and Trafficking in Persons, which reforms the Penal Code inter alia in relation to child prostitution, child pornography and trafficking, the Committee remains concerned that there have been no convictions for sexual exploitation since the adoption of the Law. The Committee is also concerned at the tolerance of trafficking, which has led to underreporting and impunity. The Committee is further concerned at the lack of specialized or appropriate care for victims by the competent authorities and government support to NGOs who work on these issues.

95. **The Committee recommends that the State party:**

- (a) **Properly implement the Act on Sexual Violence, Exploitation and Trafficking, inter alia by investigating, prosecuting and punishing the perpetrators;**
- (b) **Allocate the necessary budgetary resources to operationalize the public policy against trafficking in persons, including the creation of specialized shelters for victims of trafficking and care programmes; and**
- (c) **Publish and widely disseminate the report on the investigation carried out by the International Commission against Impunity in Guatemala (CICIG) regarding the impact of organized crime on children, encompassing trafficking, kidnapping and killing, including of girls, and implement all CICIG’s recommendations in this regard.**

#### **Helplines**

96. The Committee is concerned that the State party does not have a child helpline.



97. **The Committee recommends that the State party establish a 3-4 digit, toll-free, 24-hour national helpline for children. The State party should collaborate with NGOs willing to work towards establishing a helpline, ensure that all children are aware of and can access the helpline, and that it has an outreach component for the most marginalized children, and allocate funds to provide services in remote areas.**

#### **Administration of juvenile justice**

98. While welcoming the fact that the PINA Law establishes special courts for children in conflict with the law, the Committee is concerned at:

- (a) The insufficient number of specialized judges, as well as of judges charged with the control of execution of sanctions, and the existence of only one juvenile appellate court.
- (b) The lack of sufficient information on the availability of alternative measures to deprivation of liberty;
- (c) The large number of adolescents in detention centres and information received to the effect that offences against property are the main reason for detention;
- (d) The centralization of detention centres in the capital city and surrounding areas, making children's contact with their families and communities difficult;
- (e) The serious overcrowding and the lack of care and reintegration programmes in the detention centres;
- (f) The insufficient and undertrained staff in detention centres; and
- (g) The absence of internal and external controls on the detention centres.

99. **The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). In particular, the Committee urges the State party to take into account its general comment No. 10 (2007) on children's rights in juvenile justice (CRC/C/GC/10). It further recommends that the State party:**

- (a) **Take all necessary measures, including a preventive approach to addressing juvenile criminality, in particular paying adequate attention to social factors and strengthening various forms of restorative justice (probation, counselling, community service or suspended sentences) to ensure that children are held in detention only as a last resort and for the shortest period of time;**
- (b) **Take all necessary measures to ensure that all cases of detention are in compliance with the law and respect the rights of the child as set out under the Convention. The State party should ensure that children are held separately from adults both in pre-trial detention and after being sentenced;**
- (c) **Take all necessary measures to ensure that conditions in detention facilities are not detrimental to a child's development and meet international minimum standards, including regular contact with their families, eliminating overcrowding and providing sufficient well-trained staff in detention centres;**

(d) Establish a system of independent monitoring of all detention centres, as required by the Optional Protocol to the Convention against Torture, ratified by the State party on 9 June 2008;

(e) Take adequate steps to shorten criminal proceedings in order to reduce the time spent in pre-trial detention;

(f) Increase the number of specialized judges, judges for execution of sanctions and juvenile appellate courts, and ensure that those working with children in the juvenile justice system receive appropriate training; and

(g) Make use of the technical assistance tools developed by the United Nations Interagency Panel on Juvenile Justice and by its members, which include UNODC, UNICEF, OHCHR and NGOs, and seek technical advice and assistance in the area of juvenile justice from members of the Panel.

#### **Protection of witnesses and victims of crimes**

100. The Committee recommends that the State party ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes, for example victims of abuse, domestic violence, sexual and economic exploitation, or who are persecuted by the Maras, victims of abduction or trafficking and witnesses of such crimes, be provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in matters involving child victims and witnesses of crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005).

#### **Children belonging to minority or indigenous groups**

101. The Committee is concerned at the exclusion of Maya, Garifuna and Xinca children in relation to access to basic services necessary for their comprehensive development, such as registration in the civil registry, health services and education adapted to their culture, history and languages, the difficult access to land and the lack of respect for their traditional lands. The Committee is concerned that the Convention and its two Optional Protocols have not yet been translated into the indigenous languages, preventing these populations from taking action to demand the fulfilment of the rights of the child. The Committee shares the concern expressed by the Committee on the Elimination of Racial Discrimination (CERD/C/GTM/CO/12-13, para. 11) that the State party continues to allow indigenous peoples to be dispossessed of land that has historically belonged to them.

#### **102. The Committee recommends that:**

(a) The State party ensure that indigenous children are registered in the civil registry, and that they receive health services and education adapted to their culture, history and languages;

(b) In the exceptional cases in which the relocation of indigenous peoples is considered necessary, the State party monitor the protection of children;

(c) The State party provide relocation sites equipped with basic utilities, such as drinking water, electricity, and washing and hygiene facilities, and with appropriate services, including schools, health-care centres and means of transportation. In this regard, the Committee reiterates the recommendation expressed by the Committee on the Elimination of Racial Discrimination; and

(d) The State party take into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

## **9. Ratification of international human rights instruments**

103. The Committee recommends that the State party ratify the core United Nations human rights instruments to which it is not yet a party, namely the International Convention for the Protection of All Persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights (abolition of the death penalty), and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

## **10. Follow-up and dissemination**

### **Follow-up**

104. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, *inter alia*, by transmitting them to the Head of State, the Supreme Court, Parliament, relevant ministries and local authorities for appropriate consideration and further action.

### **Dissemination**

105. The Committee further recommends that the second periodic report and written replies submitted by the State party and the related recommendations (concluding observations) it adopted be made widely available in the languages of the country, including (but not exclusively) through the Internet to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Convention, its implementation and monitoring.

## **11. Next report**

106. The Committee invites the State party to submit its combined fifth and sixth periodic report by 1 October 2015. The Committee draws attention to its harmonized treaty-specific reporting guidelines adopted on 1 October 2010 (CRC/C/58/Rev.2) and reminds the State party that future reports should be in compliance with the guidelines and not exceed 60 pages. The Committee urges the State party to submit its report in accordance with the reporting guidelines. In the event that a report exceeding the page limitations is submitted, the State party will be asked to review and resubmit the report in accordance with the above mentioned guidelines. The Committee reminds the State party that if it is not in a position to review and resubmit the report, then translation of the report for purposes of examination by the treaty body cannot be guaranteed.

107. The Committee also invites the State party to submit an updated core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, approved by the fifth inter-committee meeting of the human rights treaty bodies in June 2006 (HRI/MC/2006/3). The treaty-specific report and the common core document together constitute the harmonized reporting obligation under the Convention on the Rights of the Child.