



Child Rights References in the Universal Periodic Review

Summary:

A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Guatemala - 2nd Session - 2008 6th May, 3pm to 6pm

National Report

Guatemala has integrated the Convention on the Rights of the Child into domestic law with the Law for the Integrated Protection of Childhood and Adolescence. Guatemala further introduced the National Law on Adoptions in 2007 in accordance with the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption.

Other internal reforms to the penal code have included the criminalising of trafficking in people, in accordance with United Nations Convention against Transnational Organised Crime; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and also the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

There have also been policies and plans of action, including: the policy for the prevention of youth violence; the public policy against human trafficking and integrated protection for victims; and a national policy in human rights education.

Amongst the priorities for Guatemala in terms of human rights are working to create a legal framework that affords better protection to vulnerable groups such as children.

Compilation of UN Information

UNICEF noted that issues of particular concern in respect of the protection of the rights of indigenous children include child abuse and trafficking, child labour, illegal adoptions as well as a gap in the access to education and health services. The Special Rapporteur on the situation of indigenous people recommended that Guatemala, inter alia, strengthen the educational system as a “national priority”.

CAT in 2006 also raised concerns about allegations of, inter alia, “social cleansing” and the killings of children as well as the “lynching of individuals”.

UNICEF quoted information from the 2006 report of the NHRI, according to which there were 461 homicides of girls, boys and adolescents in Guatemala, the highest number in Latin America.

CEDAW urged the State to increase efforts to determine the causes and extent of trafficking of women and girls from its perspective as a country of origin, transit and destination and the incidence of internal trafficking. In 2001 the HR Committee was concerned about the information received on the traffic in children separated from their parents. UNICEF in 2007 stated that it is well known that high demand for children for adoption by foreign families has given rise to an adoption related business and to situations such as kidnapping and trafficking in boys and girls. CRC in 2007 noted with great concern the high numbers of children affected by commercial sexual exploitation, estimated by the State at 15,000 victims. CRC recommended the State to take all necessary measures to ensure child victims and witnesses of any of the crimes under the CRC –OP- SC are protected at all stages of the criminal justice process.

UNICEF reported that nearly half of all children suffer chronic malnutrition, which is one of the worst records worldwide, and there are even more alarming figures within the indigenous population. It also reported that social and economic exclusion affects a large proportion of the national population: 51 per cent live in poverty and 15.7 per cent of these live in extreme poverty. The situation is dramatically worse among children in rural areas and indigenous children and adolescents (76 per cent and 80 per cent, respectively, live in poverty). CEDAW reported that the poverty conditions of women are reflected in their high illiteracy rates, low school enrolment and completion rates, poor access to health care, including sexual and reproductive health, leading to high rates of maternal mortality, and

lack of access to land and training opportunities.

CERD was concerned by the high illiteracy rate that exists within the indigenous population, especially in rural areas, where 65 per cent of indigenous women are illiterate. It was also concerned at the low primary school attendance among the indigenous population, especially indigenous young women and girls. The Committee urged Guatemala to take steps in the short and medium terms to implement measures to reduce illiteracy, especially in rural areas and among women and girls. It also recommended that the State consider increasing the number of bilingual schools, particularly in rural areas and that it pursue educational reform through culturally relevant curricula, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples.

Summary of Stakeholders' Information

The Centre for Economic and Social Rights and the Instituto Centroamericano de Estudios Fiscales (CESR & ICEFI) mentioned that over the last decade, successive Guatemalan governments have put in place a number of initiatives aimed at tackling malnutrition, child and infant mortality, maternal mortality and lack of access to primary education. These have been framed within the context of the implementation of the 1996 Peace Accords and have also been prompted by international efforts to achieve compliance with the Millennium Development Goals. Despite modest progress in some areas, the ineffectiveness of government policies to date can in large part be attributed to the woefully inadequate investment of resources to health, education and other areas of social spending (totalling less than 8 per cent of GDP).

AI mentioned that discriminatory statutes such as Article 180 of the Criminal Code, which stipulates that it is an offence to have sexual relations with a minor if the woman is “honest” (“una mujer honesta”) remain in force.

Joint Submission 2 (JS2) stated that 49.98 per cent of the population of Guatemala is classed as being a child and that these children are suffering, along with the rest of the population, systematic violations of their right to life and not to be subjected to torture or inhuman treatment. According to the Human Rights Ombudsman, in 2006 there were 395 cases of violent deaths of children, and 417 in 2007 (343 against boys and 74 against girls). ACAG (Asociacion Casa Alianza Guatemala) added that Guatemala has the highest rate of violent deaths among young people in Central America.

The way these killings are carried out suggests they are part of the so-called “social cleansing”. According to ACAG, the violence has sufficient elements to suggest that extrajudicial killings are being carried out against Guatemalan boys, girls and teenagers with the participation of the security forces. OMCT stated that executions are frequently perpetrated against maras members, including children. Moreover, executions are often accompanied by torture, intensifying the cruelty of the act. The authorities do nothing to stop those killings and do not investigate them but justify them as “revenge between gangs”. JS2 observed that young people, mostly male, are incorporated into the maras at an early age (from around age 11 or 12). Belonging to these groups give these young people access to firearms, and they end up involved in criminal activity such as extortion, trafficking, drug-use, assault and murder.

OMCT stated that an enormous number of young people and children live in the streets of Guatemala. OMCT added that the State has not been able to apply the Law for the Integral Protection of Childhood and Youth (decreto 27-2003) properly and completely because action plans to protect childhood have not been formulated yet, and there are insufficient funds.

ACAG observed that violence against children and adolescents generally takes the form of abuse, both in the home and outside, abandonment, sexual abuse and, ultimately, in violent death. ACAG estimates that in Guatemala, seven out of ten children or adolescents suffer abuse of some kind. Abandonment affects girls as much as boys, particularly those under the age of five, who form more than half of all abandoned children. This is perhaps the reason for the notorious adoptions which have become a lucrative trade which hopes to be stemmed by the new Law on Adoptions and the Ratification of the Hague Convention.

According to the Global Initiative to End All Corporal Punishment of Children (GIEACPC), corporal punishment is lawful in the home. There is no explicit prohibition of corporal punishment either in schools or in alternative care settings. In the penal system, corporal punishment is unlawful as a sentence for crime, but there is no explicit prohibition of its use as a disciplinary measure in penal institutions.

The Society for Threatened Peoples (STP) noted that the penal code does not recognise violence against women in the family, including marital rape, and sexual harassment as a criminal offence. HRW noted that the law prohibits domestic abuse but does not provide prison sentences for cases of domestic abuse. OMCT noted that intra-family violence remains considered a private matter and not a public concern and that a majority of victims do not report violence.

HRW mentioned that in 2007 Guatemalan legislators proposed a bill that would bar single parents as well as same-sex couples from the definition of “family,” and which threatens the legal status of children conceived through reproductive technologies. The “Integral Protection for Marriage and Family Act” would declare that the nearly 40 per cent of Guatemalan families that are not nuclear – consisting of father, mother, and children – are not families at all. A congressional vote on the bill remains pending.

Regarding the right to food, CESR & ICEFI stated that one in two children under five in Guatemala is chronically malnourished. At 49.3 per cent, Guatemala’s rate of child stunting (an indicator of chronic malnutrition measured in terms of low height for age) is the highest in Latin America. Chronic malnutrition is far higher among indigenous children, 70 per cent of whom are chronically malnourished. The gap between Guatemala and its Central America neighbours is now far wider than it was several decades ago.

Regarding the right to health, CESR & ICEFI mentioned that according to the latest available survey data, the infant mortality rate in Guatemala is 38 deaths per 1,000 live births. This is the highest rate of any country in Central America. Ethnic and urban/rural disparities are marked. The child mortality rate among indigenous children is more than 30 per cent higher than among the non-indigenous. The infant mortality rate is 37 per cent higher among the rural population than among the urban. CESR & ICEFI quoted

recent UNICEF data stating that Guatemala has, together with another country, the worst maternal mortality rate in all of Latin America at 290 deaths per 100,000 live births. Indigenous women face a grossly disproportionate risk of dying as a result of pregnancy or childbirth.

CESR & ICEFI mentioned that despite some success in extending immunisation and pre-natal services in rural areas, the human and material resources provided to the extension coverage program have been inadequate to overcome the formidable economic, geographical and cultural barriers which hinder access to necessary services and have fuelled persistently high levels of maternal and child mortality in Guatemala.

CESR & ICEFI stated that with a 94.6 per cent rate in 2004, Guatemala presents a poorer primary net enrolment rate than the regional average. In contrast to most other countries in the region, Guatemala the enrolment rate is 4 per cent higher for boys. Rates for primary completion are markedly lower than the regional average at 70 per cent. Around a third of 12-year-old children in Guatemala do not finish primary school.

Final Report

- The National Policy and Plan of Action on Disabilities was approved by decree, with the purpose of: preventing factors which could cause disabilities; providing rehabilitation services; facilitating access to education.

- As rising international gas and food prices have reduced the capacity of the most vulnerable groups to access daily staples, the Government has established a Solidarity Programme to face the Economic and Social Emergency, investing US\$195 million on, amongst other things: a funding programme to reduce school desertion, chronic malnutrition, and child labour.

- The Government highlighted programmes to build new community homes, prevent maternal and infant HIV/AIDS, ensure food security for children and expectant mothers, made possible by providing additional resources to the Social Wellbeing Secretariat (a 200 per cent budget increment).

- The Government also highlighted the celebration of the Encuentro Nacional por la Primera Infancia (a national initiative on infancy).

(ii) Interactive Dialogue with the State under Review

- Mexico noted the Government's commitment in the area of human rights and the prevention of juvenile violence.

- Luxembourg noted legislative reforms bringing the definition of trafficking in line with provisions of the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against Smuggling of Migrants by Land, Sea and Air. It noted commercial adoption and sexual exploitation for commercial purposes, in particular of indigenous and "rural" women and children, and comments made by CEDAW, UNICEF and the Committee on the Rights of the Child that Guatemala remains a country of origin, transit and destination. Luxemburg welcomed policies to protect those particularly vulnerable, and asked about additional efforts to determine the causes and scope of trafficking of women and girls, including internal trafficking. It asked the delegation to share a first assessment of the impact on the ground, of the national anti-trafficking policy and of the plan of action for 2007-2017.

- Brazil asked about the main steps taken in the fulfilment of the rights of the child.

- Austria asked if action plans existed to implement the Law for the Integral Protection of Childhood and Youth and for information on prohibition of corporal punishment and recommended that corporal punishment in the home and family be explicitly prohibited.

- The Russian Federation noted that every second child under five suffers from chronic malnutrition and requested information on steps taken to remedy this situation.

- El Salvador noted the high levels of violence and requested information on the social impacts of the project conducted by the Ministry of Education, in the framework of the Peace Agreements, to promote a culture of peace in Guatemalan society, especially among young people, and recommended that this project, which El Salvador considered a good practice, be continued and strengthened. It expressed concern about the situation of transit migrants, especially women and children, whose human rights are systematically violated as confirmed by the Special Rapporteur on the human rights of migrants, and asked what measures the authorities were taking to prevent such abuses.

- China appreciated the approval of national policies and plans, including the policy on the prevention of youth violence. It also asked what further measures were planned to address child labour, trafficking, illegal adoption and ill-treatment of indigenous children.

- Azerbaijan pointed out malnutrition among children and a high infant mortality rate as obstacles. Information was sought on measures to address low school attendance in rural regions and among indigenous communities.

- On the protection of children and corporal punishment, Guatemala noted that the national law for the integral protection of children and youth, which prohibits all mistreatment, is in accordance with the Convention on the Rights of the Child which Guatemala ratified in 2002. Guatemala has also developed a plan of action for the protection against commercial sexual exploitation, a special unit for the prevention of trafficking in persons, particularly children. The offence is criminalised and training for officials, an awareness campaign and a special prosecutor's office have been put in place. Corporal punishment in all areas is denounced, sanctioned and punished.

- Noting that the situation of indigenous peoples, and in particular women and children, remains a source of concern and asking about measures envisaged to improve it, Switzerland recommended that Guatemala commit itself to improving the situation of indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-

care services and that Guatemala take all necessary measures to reduce illiteracy rates, in particular among women.

- Japan commented on a report that street children, especially resulting from domestic violence, were being recruited by gangs and participating in activities such as stealing, prostitution, sale of drugs, and asked about prospects for addressing the issues through the eradication of poverty, education, the promotion of the rights of the child, and especially the improvement of the rights to education and to life.

- Italy asked what measures had been taken to combat youth gangs, the so-called “maras” and to support civil society initiatives to help young people emerge from “mara” culture. Italy recalled obstacles to the implementation of economic, social and cultural rights and expressed concern at the high level of social exclusion affecting children in rural areas and the high rate of illiteracy. Italy asked about the status and implementation of policies and plans to combat poverty and inequality.

- Referring to challenges the country faces, Uruguay wanted to know what policies and measures are currently being implemented to address malnutrition and the chronic malnutrition which particularly affects children.

- On the subject of children living and working on the street and their possible exploitation by “maras” or youth gangs, Guatemala has a plan to protect children at risk and prevent them from becoming street children. An institutional unit offers programmes for economic assistance for education and fellowships for young people. Likewise, a national policy on prevention of violence is carried out at the municipal level.

- Concerning illiteracy and access to education of indigenous peoples, there is a programme of literacy at the national, municipal and community levels, for bilingual education and fellowships for children from rural areas. The Ministry of Education, in coordination with the Presidential Commission for Human Rights, is trying to make human rights education a mandatory subject.

Conclusion and Recommendations

In the course of the discussion, the following recommendations were made to Guatemala:

- Commit to improving the situation of indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-care services (Switzerland).

- Prohibit explicitly corporal punishment in the home and family (Austria).

- Consider as a good practice, to be continued and strengthened, the project conducted by the Ministry of Education, in the framework of the Peace Agreements, to promote a culture of peace in Guatemalan society, especially among young people (El Salvador).