



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD
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**WRITTEN REPLIES BY THE GOVERNMENT OF GUATEMALA
CONCERNING THE LIST OF ISSUES (CRC/C/OPAC/GTM/Q/1)
RECEIVED BY THE COMMITTEE ON THE RIGHTS OF THE
CHILD RELATING TO THE CONSIDERATION OF THE INITIAL
REPORT OF GUATEMALA UNDER ARTICLE 8 (1) OF THE
OPTIONAL PROTOCOL TO THE CONVENTION ON THE
RIGHTS OF THE CHILD ON THE INVOLVEMENT OF
CHILDREN IN ARMED CONFLICT**

(CRC/C/OPAC/GTM/1)*

[Replies received on 20 April 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

OPTIONAL PROTOCOL ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

List of issues to be taken up in connection with the consideration of the initial report of Guatemala

1. *Please clarify to the Committee the status of the Optional Protocol in relation to domestic legislation, including the Constitution, and whether it can be directly invoked before the courts and applied by the national authorities.*

Pursuant to article 46 of the Constitution of Guatemala, international human rights treaties ratified by the State take precedence over domestic legislation. The Optional Protocol is therefore incorporated automatically into the legislation in force and can be invoked by any person without distinction before any of the relevant judicial bodies.

Below is an extract from the Advisory Opinion of the Constitutional Court of Guatemala concerning the application of article 46 of the Constitution.

“Pre-eminence of international law: this Court considers it appropriate to define its position on the matter. It departs from the hermeneutic principle that the Constitution must be interpreted as a harmonious whole, in the sense that each part must be established in a manner consistent with the others, no provision must be considered in isolation and the preference must be for a conclusion which harmonizes and does not conflict with the other clauses of the text. First and foremost, the fact that the Constitution has established that supremacy over domestic legislation must be understood as its recognition of the development of human rights.”

2. *Please inform the Committee of the intention of the State party to include in the Criminal Code a provision that expressly prohibits the recruitment of children under 18 years.*

To date no proposal has been drafted on the subject. At present the legal provisions adopted to criminalize the recruitment of children fall within the framework of the statutory offences set out in the Criminal Code, in article 209, “Abduction of minors”; article 418, “Abuse of power”; and article 423, “Decisions violating the Constitution”.

3. *Please inform the Committee of the status of the children attending military schools, in particular whether they can be enlisted in the armed forces in cases of emergency or armed conflict.*

In Guatemala there are no military schools attended by minors. The only military school is the Polytechnic School, in the municipality of San Juan Sacatèquez, where all students are over 18 years of age.

There are, however, such establishments as the national Adolfo V. Hall School, the Military Aviation Technical School, the Military Broadcasting School and the Military Music School, which come under the scope of the National Education Act and the regulations governing the National School of Agriculture, as appropriate. Under national law, children attending these schools are not members of the armed forces or reserve forces; furthermore, they may not become active members or be enlisted in cases of emergency or armed conflict.

4. *The Committee would like to receive information about impartial complaints and investigation mechanisms available for children attending military schools, and on how frequently such mechanisms are used.*

The complaints mechanisms available for children attending the national Adolfo V. Hall School, the Military Aviation Technical School, the Military Broadcasting School and the Military Music School are those established under the National Education Act and legislation governing the National School of Agriculture, as well as those established under the legal and administrative framework of the Office of the Human Rights Procurator and the Act on the Comprehensive Protection of Children and Young Persons. There are also rules of procedure and an administrative procedure to facilitate the submission of complaints to the relevant body. There is therefore no limit on or impediment of any kind to the submission of complaints by pupils and their family members.

To date no complaints along these lines have been received. It is important to note that the current philosophy of these civilian-military training centres is for an education based on discipline and moral principles and values. Emphasis is laid in particular on respect for human dignity and all the rights inherent therein.

Furthermore, as far as the educational programme of the Guatemalan army is concerned, the curriculum of all its education and training centres includes the subjects of human rights and international humanitarian law.

Lastly, following the signing of the peace agreements, and as part of the restructuring and modernization of the army, a human rights department was established within the Ministry of Defence. Its function is to deal with all human rights issues in the army. One of the recent initiatives of the department is to work together with the Office of the Human Rights Procurator on the preparation of a draft complaints code.

5. *Please inform the Committee whether Guatemala intends to become a State party to the Rome Statute of the International Criminal Court.*

In 2003, after an assessment of Guatemalan legislation, the Constitutional Court decided that accession to the Rome Statute of the International Criminal Court would not conflict with any legal provision. In January 2006, the Foreign Affairs Commission of Congress endorsed the bill and since then, with other bills, it has been pending discussion in plenary session.

Recognizing the importance of accession to this international instrument, the Government took the initiative of issuing an invitation, through the Ministry of Foreign Affairs, to Mr. Philippe Kirsch, president of the International Criminal Court. On 23 and 24 January 2007, he met representatives of the three branches of the Government with the aim of expediting Guatemala's approval and ratification of the Rome Statute of the International Criminal Court.

It should be noted that extensive lobbying is currently being carried out by various bodies, with strong support from the Office of the High Commissioner for Human Rights in Guatemala.

6. *Has Guatemala assumed extraterritorial jurisdiction over war crimes that involve conscripting or enlisting children under the age of 15 in the armed forces or using them to participate actively in hostilities?*

According to article 203, paragraph 3, of the Constitution: “Jurisdiction shall be exercised exclusively by the Supreme Court of Justice and other courts established by law.”

To date there have been no cases in which extraterritorial jurisdiction was assumed, as indicated above or in other circumstances.

7. *Also, in relation to extraterritorial jurisdiction, please indicate whether Guatemalan courts may exercise jurisdiction in the event of the forced recruitment or involvement in hostilities of a person under 18 if such acts are committed outside Guatemala by or against a Guatemalan citizen.*

In this connection, the Criminal Code, in its volume one, General Section, chapter I “On criminal law”, reads as follows:

“Article 1. (Legality) No one may be punished for acts which are not expressly qualified as offences by law prior to their commission; nor shall other penalties be imposed which have not been provided for by law.

“Article 2. (Principle of ‘extractividad’) If the law in force at the time the offence was committed is different from any subsequent law, the law provisions of which are favourable to the offender shall be applied even when a judgement has been handed down and the offender is serving his or her sentence.

“Article 3. (Emergency or provisional law) Emergency or provisional law shall be applied in the case of acts committed during an emergency, even in cases where the emergency has ended by the time the judgement is handed down, except as provided in article 2.

“Article 4. (Territoriality of criminal law) Except as provided for in international treaties, this Code shall apply to any person who commits an offence in the territory of the Republic or in places or vehicles subject to its jurisdiction.

“Article 5. (Extraterritoriality of criminal law) This Code shall also apply to:

“1. Any offence committed abroad by an official in the service of the Republic of Guatemala, if the offender has not been tried in the country where the offence was committed;

“2. Any offence committed on board a Guatemalan vessel, aircraft or other means of transport, if the offender has not been tried in the country where the offence was committed;

“3. Any offence committed abroad by a Guatemalan, if extradition of the offender has been refused;

“4. Any offence committed abroad against a Guatemalan, if the offender has not been tried in the country where the offence was committed, provided a charge has been brought by or on behalf of the Public Prosecutor’s Office and the person accused is in Guatemala;

“5. Any offence which, pursuant to a treaty or convention, is punishable in Guatemala, even if the offence was not committed in Guatemalan territory;

“6. Any offence committed abroad against the security of the State, its constitutional order or its territorial integrity, as well as the forging of the signature of the President of the Republic and the forging of coins or banknotes which are legal tender, bonds and other securities and credit documents.”

To date there have been no cases in which the principle of the extraterritoriality of criminal law has been applied in situations such as those set out above.

8. *Please provide information on measures adopted with regard to the physical and psychological recovery and social reintegration of refugee, asylum-seeking and migrant children entering Guatemala who may have been involved in armed conflict abroad.*

To date there have been no cases of children returning to Guatemala who are believed to have participated in armed conflicts abroad. Under the terms of the peace agreements relating to assistance to the victims of the internal armed conflict, however, since 1998, the Ministry of Public Health and Social Welfare has been implementing a mental health programme as one of its official policies, under which psychological assistance must be available to the victims of the armed conflict in Guatemala.

9. *Please update the Committee on the work of the National Commission for the Search for Disappeared Children, especially regarding the financial and human resources available to it and the progress made in holding accountable those responsible for forced recruitment of children during the armed conflict. Also, please inform the Committee about the possibilities of providing this Commission with access to relevant military files and documents in order to identify and allow for full compensation of all children victims of the armed conflict in the period between 1960 and 1996.*

Some of the main achievements of the Commission include the following:

- 1,280 documented cases;
- 324 cases resolved;
- 131 families reunited;
- 1,000 cases of psychosocial assistance;
- 16 committees organized by family members to search for children.

10. *Please update the Committee on the activities of the National Compensation Programme that are of specific relevance to children affected by armed conflict.*

In 2007, 300 million quetzales were allocated to the National Compensation Programme. In 2006, the Programme spent 54 per cent of its budget allocations in favour of 6,000 people through the implementation of 24 projects. In 2006, priority was accorded to the implementation of projects in the departments of Mazatenango, Chimaltenango, Baja and Alta Verapaz, Huehuetenango, El Quiché, Sololá, El Petén, San Marcos, Zacapa and Guatemala.

Breakdown of compensation in 2006 (in quetzales)

Exhumations	7 245 241
Psychosocial assistance	3 958 741
Financial compensation	109 883 753
Total	121 087 735

Source: National Compensation Programme.

Furthermore, the Programme has documentation relating to 22,000 requests for compensation, a figure which represents only the beginning of a process that will need to be expedited.

The Programme coordinates its activities with the Forensic Anthropology Foundation, which for 15 years has been searching for the remains of victims of the armed conflict. To date it has located some 5,000 bodies. Given the high number of victims and the intricacy of the procedures involved, it might take another two or three decades to complete the exhumation work.

11. *Please provide information on children who are the victims of police work by the military forces and on measures to abolish these practices.*

In response to the question above, the attention of the members of the Committee is drawn to the fact that the military forces do not carry out police work; they only assist the national civilian police by serving in combined forces for public security purposes, in accordance with Congressional Decree No. 40-2000.

To date there have been no cases of the type of situation described above.
