



## 人权理事会

### 第二十二届会议

#### 议程项目 3

增进和保护所有人权——公民权利、政治权利、  
经济、社会和文化权利，包括发展权

## 买卖儿童、儿童卖淫和儿童色情制品问题特别报告员 纳贾特·马拉·姆吉德的报告

增编

### 对危地马拉的访问\*

#### 概要

在本报告中，买卖儿童、儿童卖淫和儿童色情制品问题特别报告员按照国际人权标准探讨了危地马拉买卖儿童、儿童卖淫和儿童色情制品问题。在访问之前、访问期间和访问之后所收集资料的基础上，特别报告员着重谈到各项立法主动行动，采取来克服这一现象的儿童保护政策和战略，以及现有保护儿童受害者，证人和处境危险的儿童的方案。她还审查了这一领域国际和区域合作努力的情况。最后，特别报告员提出了建议，以期有助于加强正在做出的努力，打击和防止买卖儿童、儿童卖淫和儿童色情制品问题，从而保护这些做法的儿童受害者的权利。

\* 本报告的概要以所有正式语文分发。报告本身载于概要附件，仅以提交语文和西班牙文分发。

## Annex

[English and Spanish only]

### Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Guatemala (20–29 August 2012)

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## I. Introduction

1. From 20 to 29 August 2012, the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid, undertook an official visit to Guatemala at the invitation of the Government. The mission is the second to the country under the mandate; the previous mandate holder visited in 1999.
2. In Guatemala City, the Special Rapporteur met with the Vice-President, the First Lady, in her capacity as the head of the Social Works Secretariat of the First Lady (SOSEP) and the Social Welfare Secretariat of the Presidency (SBS). She held meetings with representatives of the National Adoption Council, National Commission on Children and Adolescents, Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET), Office of the Ombudsman for Human Rights (Procuraduría de los Derechos Humanos), National Civil Police (NCP), Ministry of the Interior (Ministerio de Gobernación), National Council for Migrants (CONAMIGUA), Ministry of Education, Ministry of Labour and Social Security, Presidential Commission on Human Rights (COPREDEH), Public Prosecutor's Office (Ministerio Público), Attorney General's Office (Fiscalía General), Ministry of Foreign Affairs and Congress. She also engaged with members of the Constitutional Court, Supreme Court of Justice, Solicitor General's Office (Procuraduría General de la Nación) and Children's Parliament, judges for children and adolescents, the Guatemala Chamber of Tourism (CAMTUR), the Guatemalan Tourism Institute (INGUAT) and a company that provides Internet services.
3. In Sololá, Cobán, Coatepeque, Tecún Umán and Escuintla, the Special Rapporteur also met with governors, mayors and police commissioners, representatives of the Office of the Ombudsman for Human Rights (hereinafter the Ombudsman's Office), the Municipal Office of Child Protection, the Board of Directors of the Child and Adolescent Protection Network and the Juan José Ortega Regional Hospital, and judges for children and youth and civil society organizations (CSOs).
4. The Special Rapporteur visited centres and institutions for vulnerable children, including the Hogar Seguro Virgen de la Asunción, run by SBS, and centres run by non-governmental organizations, such as El Refugio de la Niñez, La Alianza, Casa de Migrantes and Casa de la Mujer. She also visited the child-friendly services within the Centro Metropolitano de Justicia of the Supreme Court. The Special Rapporteur was particularly grateful to have met and interacted with children and victims in those centres.
5. The Special Rapporteur also met with other members and networks of civil society and representatives of the International Commission against Impunity in Guatemala (CICIG), and the international community.
6. The objectives of the visit were to explore the incidence of, trends in and root causes of sale of children, child prostitution and child pornography in Guatemala and to examine the initiatives and measures taken by the Government and civil society to combat and prevent these phenomena, as well as the child protection system in general.
7. The Special Rapporteur expresses her sincere appreciation to the Government, and in particular COPREDEH, for the indispensable support it provided in planning and coordinating the visit. She further thanks the CSOs and the United Nations Country Team for engaging with her on ongoing child protection issues and programmes in the country, and particularly the Office of the High Commissioner for Human Rights and the United Nations Children's Fund (UNICEF) for their valuable assistance and support before, during and after her mission.

## II. General background

### A. Context

8. Guatemala is a constitutional democratic republic; the President is both Head of State and Head of Government. Guatemala is divided into 22 departments, further subdivided into 334 municipalities. With just under 14.1 million inhabitants, Guatemala is the most populous country in Central America. Social development indicators, such as infant mortality, chronic child malnutrition and illiteracy remain below the average for the region, and Guatemala ranks 131st on the human development index.<sup>1</sup> A total of 48.3 per cent of the population of Guatemala is below the age of 18.<sup>2</sup> Over 59 per cent of all children and adolescents live in poverty, and 19.2 per cent are extremely poor. Chronic malnutrition affects 49.8 per cent of children under five—65.9 per cent in indigenous areas.<sup>3</sup> Persistent structural patterns of discrimination against indigenous peoples, who represent 60 per cent of the population, contribute to difficult access to social services.<sup>4</sup> Literacy rates show a significant disparity between indigenous (59.6 per cent) and non-indigenous (83.4 per cent) populations.<sup>5</sup>

9. High rates of violence and impunity linked to organized crime and the weakness of public institutions generate mistrust, despair and insecurity among the population.<sup>6</sup> According to the NCP, from 1 January to 31 August 2011, there were 3,806 violent deaths, including 448 women and 295 children; 4,162 people were injured in violent attacks, and 34 deaths and 15 injuries resulted from lynching.<sup>7</sup> Of these violent deaths, 82 per cent were caused by firearms; under the legal framework and its interpretation by the Constitutional Court, there is no limit on the number of arms a person can possess, and the possession of arms and ammunitions is inadequately controlled.<sup>8</sup>

10. Geographically, the State's porous border with Mexico and its location along the migration corridor from Central America to the United States of America contribute to the trafficking of arms, drugs and persons. Moreover, the size and mountainous terrain of Guatemala renders accessibility difficult and furthers inequalities between the capital and departments. The national economy has been affected by natural disasters, including hurricanes, droughts and flooding.

### B. International and regional human rights instruments

11. Guatemala is a party to: the Convention on the Rights of the Child and the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on

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<sup>1</sup> United Nations Development Programme (UNDP), "Guatemala – country profile: human development indicators". Available from <http://hdrstats.undp.org/en/countries/profiles/GTM.html>.

<sup>2</sup> UNICEF, "At a glance: Guatemala". Available from [www.unicef.org/infobycountry/guatemala\\_statistics.html](http://www.unicef.org/infobycountry/guatemala_statistics.html).

<sup>3</sup> Source: UNICEF.

<sup>4</sup> Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala (A/HRC/19/21/Add.1), paras. 12 and 52.

<sup>5</sup> *Ibid.*, para. 53.

<sup>6</sup> *Ibid.*, paras. 7, 15 and 16.

<sup>7</sup> *Ibid.*, para. 15.

<sup>8</sup> *Ibid.*, para. 23.

Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and the first Optional Protocol thereto; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto. It has also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; the Rome Statute of the International Criminal Court; the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption (hereinafter the Hague Convention); and International Labour Organization Conventions No. 138 (1973) concerning Minimum Age for Admission to Employment and No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

12. Guatemala is not a party to, inter alia, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (signature only, 2009) or the International Convention for the Protection of All Persons from Enforced Disappearances (signature only, 2007).

13. At the regional level, Guatemala is a member of the Organization of American States and has ratified the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. It has yet to ratify the Inter-American Convention on International Traffic in Minors.

### **III. Situation analysis**

#### **A. Scope of the sale of children, child prostitution and child pornography**

14. The exact scope of the sale of children, child prostitution and child pornography in Guatemala is difficult to measure. Crimes are underreported due to fear of reprisals, limited knowledge of laws, social tolerance for certain practices, discrimination against girls and indigenous people, organized crime networks, absence of confidence in judiciary and police systems, weakness of control mechanisms for high-risk areas, such as cyber cafés, brothels and “markets”, blind spots on borders and the limited number of accessible complaints and reporting mechanisms. Another obstacle is the absence of a harmonized methodology for gathering and processing data to identify the actual extent of these offences in the country.

##### **1. Sale of children**

15. Guatemala is a source, transit and destination country for children who are subjected to sex trafficking and forced labour; for example, in Guatemala, as well as in Mexico and the United States, children from Guatemala and other Central American countries are found in commercial sexual exploitation, and Guatemalan children have been subjected to forced labour in the agriculture and garment industries.<sup>9</sup> Organized crime networks and gangs also recruit destitute children to commit illicit acts, sometimes using force or coercion.

16. Prior to the 2007 Adoption Act, sale of children for international adoption was a main issue. Since the implementation of this act, which is a positive step in controlling the adoption process, efforts have been made by the Government to reduce the number of

<sup>9</sup> United States Department of State (USDS), *Trafficking in Persons Report, June 2011*, p. 175.

illegal adoptions; however irregularities remain. In its 2010 report, UNICEF highlighted that at least 70 per cent of international adoptions may be linked to crimes or serious irregularities.<sup>10</sup> According to CICIG, problems such as corruption and impunity of State actors involved in the process, particularly notaries, judges for children and adolescents, medical professionals and vital statistics registrar officials, and lack of proper investigation by an understaffed Solicitor General's Office persisted. This is reflected in the fact that while irregularities were found in about 60 per cent of the cases handled during the transition period; the Solicitor General's Office ruled that the adoption could proceed in over 90 per cent of the cases.<sup>11</sup>

17. The Special Rapporteur is concerned about the fate of Guatemalan children whose international adoptions, initiated prior to the enactment of the Adoption Act, are pending; about 80 cases are still under investigation. In the meantime, those children stay in shelters or with foster families who are sometimes their soon-to be adoptive foreign families.

## 2. Child prostitution

18. While the prevalence of child prostitution in Guatemala is not known, a 2010 study by ECPAT identified prostitution of underage boys as the most prevalent type of commercial sexual exploitation of males in the municipalities of Guatemala and Ayutla.<sup>12</sup> In the 35 locations in Guatemala City and Ayutla where such practices have been identified, the number of underage male prostitutes is twice that of adult male prostitutes. The number of underage homosexual prostitutes is also double that of their adult male counterparts, and between 20 and 25 boys are engaged in transsexual prostitution.<sup>13</sup>

19. Most child prostitutes are poor migrants from El Salvador, Honduras and Nicaragua, on their way to the United States.<sup>14</sup> Most victims of sexual exploitation are between the ages of 15 and 17; however there are cases of boys as young as 5 years old forced to engage in sexual stimulation of men.<sup>15</sup>

20. While cases of child prostitution are not systematically denounced, the Special Rapporteur was informed that even where such denunciations occurred, the slowness and weakness of investigations, impunity and corruption enabled brothel owners to receive warnings ahead of raids and hide the children.

21. The Special Rapporteur visited places licensed as "small markets" where, in the back, child prostitution took place. According to information she received, the real use of these places is a matter of public knowledge, yet authorities issue or renew such licenses regularly.

22. As regards child sex tourism, it is prevalent in certain areas, such as Antigua, Puerto Barrios, Río Dulce, around Lake Atitlán and Tecún Umán. Child sex tourists predominately come from Canada, Germany, Spain and the United States.<sup>16</sup> Child pornography and commercial sexual exploitation are often promoted and included as part of tourism packages.<sup>17</sup>

<sup>10</sup> UNICEF, *Annual Report: 2010 Guatemala*, p. 4.

<sup>11</sup> CICIG, "Report on players involved in the illegal adoption process in Guatemala since the entry into force of the adoption law" (2010), p. 8.

<sup>12</sup> ECPAT, *La explotación sexual comercial de niños y adolescentes varones en Guatemala* (2010), p. 8.

<sup>13</sup> *Ibid.*, p. 11.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, pp. 9 and 10.

<sup>16</sup> USDS, *Trafficking in Persons*, p. 175.

<sup>17</sup> Office of the Ombudsman for Human Rights, "Trata de personas en Guatemala 2010" (2011), p. 11.

23. Moreover, the Special Rapporteur was concerned to learn of cases in which foreigners implicated in the sexual exploitation of children had fled the country after being released on bail. She notes the dismissal of several court cases due to the absence of extraterritorial jurisdiction between the perpetrator's State and Guatemala.

### 3. Child pornography

24. According to the Ombudsman's Office, pornography involving children has been reported in the regions of Huehuetenango, Jutiapa, Retalhuleu and Guatemala, among others.<sup>18</sup>

25. The majority of underage victims are recruited as masseurs or masseuses through advertisements in newspapers. Pornographic pictures and videos featuring these children are then taken and posted on the Internet or distributed/sold by the children to their clients.

26. The Special Rapporteur learned that, of 524 child pornography-related complaints received by the Public Prosecutor's Office between 2009 and 2012, 61 judicial proceedings were opened and 10 convictions were made.<sup>19</sup> She was encouraged to learn that action was being taken; for example, 700 pornographic videos featuring adolescents were seized by the Court for Children and Adolescents in Coatepeque,<sup>20</sup> and an anti-human trafficking unit has been created within the Public Prosecutor's Office, with a mandate, inter alia, to investigate child pornography (see para. 59).

27. Underlying factors of the sale and sexual exploitation of children are multidimensional and linked to the political, institutional, legislative, socioeconomic and cultural context. They include poverty; unemployment; unequal access to social services; insecurity; vulnerable and dysfunctional families; social tolerance for certain practices; gender discrimination; violence and impunity; regular and irregular migration; and transnational organized crime/trafficking networks. The growing tourism industry and market for the sex industry, easy access to information and communications technologies and demand for international adoption are also underlying factors.

28. The high rate of pregnancies among girls between 10 and 14 years old, most due to intrafamily sexual violence and lack of access to sexual education (A/HRC/19/21/Add.1, para. 50), is another challenge. For instance, in the Verapaces region 1,657 early pregnancies were registered in 2011.<sup>21</sup> An estimated 35 per cent of the population practices early marriage and 18 per cent of girls between 15 and 19 are married or in a civil union.<sup>22</sup> In the Verapaces region, 983 marriages of girls aged between 10 and 17 years alleged to have resulted from post-rape negotiation were recorded between January and July 2012.<sup>23</sup>

## B. Domestic legal and regulatory framework

29. Guatemala has an adequate legal framework for the protection of children. The Constitution describes the family as the bedrock of society and guarantees its social, economic and legal protection (art. 47). It recognizes the equality of all children before the

<sup>18</sup> Office of the Ombudsman for Human Rights, *Informe* (2012), p. 7.

<sup>19</sup> *Ibid.*

<sup>20</sup> ECPAT, *La explotación*, p. 14.

<sup>21</sup> Childhope et al., "Informe ejecutivo sobre la situación de la niñez en la Región de las Verapaces" (2012), p. 2.

<sup>22</sup> María Luisa Cabrera Pérez Armiñan and Alexis Rojas Hernández, *El matrimonio infantil y las uniones de hecho forzadas en Guatemala* (UNICEF et al., Guatemala, 2011) p. 6.

<sup>23</sup> Childhope et al., "Informe ejecutivo", pp. 2-3.

law (art. 50) and forbids the employment of children less than 14 years of age subject to exceptions provided by law (art. 102).

30. In addition, the legal framework for the promotion and protection of child rights consists of some 22 recently promulgated pieces of legislation and regulations that complete and amend the penal and civil codes and procedures.<sup>24</sup> The main ones are the Act on the Comprehensive Protection of Children and Adolescents (PINA Act, 2003) which provides for the protection of children and adolescents from physical, sexual and emotional abuse; the Adoption Act (2007), which addresses irregular international adoptions with reference to the Hague Convention, in accordance with the best interest of the child and prioritizing placement of children with their family and national adoption before considering international adoption; the Organized Crime Act (2008), which criminalizes organized crime and provides measures to prevent, combat and eradicate it; and the Act against Femicide and Other Forms of Violence against Women (2008), which is aimed at eradicating physical, psychological, sexual, economic and any other type of violence against women. The Act against Sexual Violence, Exploitation and Human Trafficking addresses these crimes by empowering victims and increasing criminalization and punishments; the Alba-Keneth Alert System Act (2010) regulates joint urgent actions among public institutions to locate, recover and protect children from disappearance and trafficking.

### 1. Sale of children

31. The Penal Code<sup>25</sup> considers the sale of persons as a form of trafficking carrying an imprisonment of 8 to 18 years and a fine of 300,000 to 500,000 quetzales.<sup>26</sup>

32. As regards the minimum age for marriage, the Civil Code establishes it at 18 years. Nevertheless boys over 16 and girls over 14 can be married with the authorization of both their parents, their guardian or a judge.<sup>27</sup>

### 2. Child prostitution

33. Paid sexual activities with minors are criminalized by prison terms of 5 to 8 years.<sup>28</sup> Anyone who facilitates, organizes, promotes or allows the use of tourism for the commercial sexual exploitation is liable to imprisonment for 6 to 10 years and a fine of 100,000 to 500,000 quetzales.<sup>29</sup> The punishment increases by up to two thirds if the victim is between 14 and 18 years of age and by up to three quarters if the victim is under 14 years of age; it doubles if the victim is under 10 years.<sup>30</sup>

### 3. Child pornography

34. The production, manufacturing or elaboration of pornographic material with images and voices of minors engaged in pornographic or erotic activity is criminalized by imprisonment for 6 to 10 years and a fine of 50,000 to 300,000 quetzales.<sup>31</sup> Publication, reproduction, import, export, distribution, transportation, exhibition and dissemination of

<sup>24</sup> Source: UNICEF Guatemala.

<sup>25</sup> Many articles of the Penal Code in the present document refer to amendments listed in and enacted through the Act against Sexual Violence, Exploitation and Human Trafficking.

<sup>26</sup> Penal Code, art. 202 ter.

<sup>27</sup> Civil Code, arts. 81–84.

<sup>28</sup> Penal Code, art. 193.

<sup>29</sup> *Ibid.*, art. 195 quater.

<sup>30</sup> *Ibid.*, art. 204.

<sup>31</sup> *Ibid.*, art. 194.

such pornographic material are criminalized by imprisonment for six to eight years and a fine of 50,000 to 500,000 quetzales.<sup>32</sup> Article 195 ter further proscribes the possession of pornographic material involving minors, which is punishable by imprisonment for two to four years.

35. Anyone who allows children under the age of 18 to attend or have access to a show of a sexual nature or who disseminates pornographic material is liable to imprisonment for three to five years.<sup>33</sup> The punishment increases accordingly if victims are under 18, 14 or 10 years old<sup>34</sup> (see para. 33).

#### **4. Trafficking of children**

36. The crime of trafficking in persons includes exploitation for the purpose of prostitution, other forms of sexual exploitation, forced labour or services, any kind of labour exploitation, begging, any form of slavery, servitude, sale of persons, extraction and trafficking of human organs and tissue, illegal adoption, irregular adoption proceedings, pornography, forced pregnancy and forced or servile marriage. Trafficking in persons is punishable by imprisonment for 8 to 18 years and a fine of 300,000 to 500,000 quetzales.<sup>35</sup>

37. The recruitment of minors by organized criminal groups for the purpose of exploitation is also considered trafficking and carries the same punishment as above. When victims are under 18 years of age, the penalty increases by one third.<sup>36</sup>

38. Anyone who, for himself or for others, in exchange for the exploitation activities referred to under the crime of trafficking, provides or promises to a third party an economic benefit or any other kind of benefit, is liable to imprisonment for six to eight years. If the remuneration is promised in exchange for exploitation activities of a person under 14 years of age, the punishment increases by up to two thirds; if the victim is under 10 years of age, the punishment is doubled.<sup>37</sup>

39. Children have the right to be protected against economic exploitation and the performance of any work that might be hazardous to their physical or mental health or which impedes their access to education.<sup>38</sup>

#### **5. Transfer or removal of organs of children for profit**

40. The recruitment, transportation, transfer, retention, harbouring or receipt of a person for the purpose of extracting and trafficking human organs and tissue is considered a form of trafficking in persons and thus punishable by imprisonment for 8 to 18 years and a fine of 300,000 to 500,000 quetzales.<sup>39</sup> (See para. 38 above.)

41. Anyone who participates in illegal activities relating to the extraction, harbour, transfer, sale and use of human organs or tissues is liable to 5 to 10 years of imprisonment.<sup>40</sup>

<sup>32</sup> Ibid., art. 195 bis.

<sup>33</sup> Ibid., art. 189.

<sup>34</sup> Ibid., art. 195 quinquies.

<sup>35</sup> Ibid., art. 202 ter.

<sup>36</sup> Organized Crime Act, art. 12 (c).

<sup>37</sup> Penal Code, art. 202 quater.

<sup>38</sup> PINA Act, art. 51.

<sup>39</sup> Penal Code, art. 202 ter.

<sup>40</sup> Ibid., art. 301 bis.

## 6. Adoption of children

42. Anyone who, for the purpose of adopting a child, gives or promises him/her or a third party an economic benefit or any other kind of benefit, regardless of whether he achieves the purpose or not, is liable to imprisonment for three to five years and a fine of 20,000 to 100,000 quetzales.<sup>41</sup>

43. Any government employee who knowingly expedites, authorizes or registers an adoption, falsifies documents or records or in any way alters the information about the parents of a child or any other information required by law is liable to imprisonment for 6 to 10 years and a fine of 50,000 to 100,000 quetzales.<sup>42</sup>

44. Mandatory HIV/AIDS testing of both the adopter and the child is one of the requirements laid down under the Regulations for the Adoption Act (art. 42). In addition to limiting the adoption process of persons living with HIV/AIDS, this regulation also contradicts the HIV Act (art. 20), which does not provide for mandatory HIV/AIDS testing for adoption, the Constitution and international human rights instruments.<sup>43</sup> A revised draft law on HIV/AIDS is also under consideration.<sup>44</sup>

## 7. Sexual abuse and sexual exploitation

45. State protection of children from physical, sexual and emotional abuse or negligent treatment, through legislative, administrative, social and educational measures is provided for in the PINA Act (art. 54).

46. The PINA Act (art. 56) also guarantees the right of children and adolescents to be protected from any form of exploitation or sexual abuse, including inducement to engage in any sexual activity; use in prostitution, entertainment or pornographic material; sexual promiscuity; and sexual harassment by teachers, guardians and other authority figures.

47. Anyone who, with physical or psychological violence, has vaginal, anal or oral intercourse with someone else, or introduces an object or any part of his/her body into any of the aforementioned orifices, or forces another person to insert them himself or herself, is punished with imprisonment of 8 to 12 years. These acts are considered statutory rape when the victim is under 14 years of age, even if there is no evidence of physical or psychological violence.<sup>45</sup> The punishment increases accordingly if the victim is under 18, 14 or 10 years of age (see para. 33).<sup>46</sup>

## 8. Abduction and abandonment of children

48. The abduction of children from their parents, guardians or caregivers is criminalized, with imprisonment ranging from six months to 12 years depending on the age of the victims, the consent of children older than 12, and their family link to the abductor.<sup>47</sup>

49. The Alba-Keneth Alert System Act stipulates that the search of a missing child must begin within the six hours after the abduction, kidnapping, disappearance or trafficking is reported.<sup>48</sup>

<sup>41</sup> Ibid., art. 241 bis.

<sup>42</sup> Ibid., art. 241 ter.

<sup>43</sup> See UNAIDS, “Restricción del derecho de adopción a menores de edad por VIH”.

<sup>44</sup> See [www.lexglobal.com/documentos/1237497674.pdf](http://www.lexglobal.com/documentos/1237497674.pdf).

<sup>45</sup> Penal Code, art. 173.

<sup>46</sup> Ibid., art. 195 quinquies.

<sup>47</sup> Ibid., arts. 209-211.

<sup>48</sup> Office of the Ombudsman for Human Rights, *Informe* (2012), p. 19.

50. The protection of abandoned or orphaned children is considered a matter of national interest (art. 54 of the Constitution); the abandonment of a child under the age of 10 or a child living with disabilities by his parents or his caregivers is criminalized with imprisonment for 6 months to 10 years, depending on the gravity of the harm to the child.<sup>49</sup>

## 9. Juvenile justice

51. The penal code and procedures of Guatemala have been amended (see para. 30) to further strengthen the protection of children whose rights have been violated and those in conflict with the law. Courts and specialized branches of the judiciary, the Offices of the Public Prosecutor and the Solicitor General, and the NCP have further been reinforced, including with separate sections for children, as has the social reintegration programme for such children.

## C. Institutional framework

52. The child protection system of Guatemala is complex and involves numerous actors, including SVET, under the Vice-President, which is mandated to coordinate the efforts of various State institutions in the area of prevention, prosecution and punishment of these crimes.<sup>50</sup>

53. Assisting children and women victims of sexual exploitation and violence is part of the mandate of the SBS,<sup>51</sup> which is in charge of formulating, coordinating and executing public policies on the comprehensive protection of children and contributing to the welfare of the family and the community. It is also responsible for carrying out all actions relating to the application of the punishments and protective measures for children in conflict with the law envisaged under the PINA Act (art. 259). It runs centres for vulnerable children, for street children and for migrants.<sup>52</sup>

54. As regards adoption, the National Adoption Council protects children who are in the process of adoption, in accordance with their best interest and by prioritizing national adoptions, assigning adequate families, maintaining updated information, and authorizing shelters for children and monitoring the conditions thereof. Established in accordance with the Hague Convention, the Council has a Board of Directors composed of representatives of the Supreme Court and the Ministry of Foreign Affairs to ensure that the procedures are legal and transparent.<sup>53</sup> It is important to build the capacity of the National Adoption Council through adequate administrative, policy and financial measures. Prior to the entry into force of the Adoption Act, the adoption process was reviewed by the Solicitor General's Office, which studied the documentation and issued favourable opinions in the adoptions processed by notaries. The Special Rapporteur welcomed the establishment of two inter-institutional technical roundtables in charge of verifying the adoption processes.

55. With regard to child employment, the Unit for the Protection of Working Adolescents, under the Ministry of Labour and Social Security, executes projects and programmes relating to the protection of working adolescents in coordination with the

<sup>49</sup> Penal Code, art. 154.

<sup>50</sup> SVET, "Informe sobre cumplimiento al Protocolo facultativo de la Convención sobre los derechos del niño relativo a la venta de niños, la prostitución infantil y la utilización de niños en la pornografía" (2012), sixth page.

<sup>51</sup> SBS, "Informe sobre la atención psicosocial a personas víctimas y sobrevivientes de trata con fines de explotación sexual", p. 1.

<sup>52</sup> See [www.sbs.gob.gt/ejes-de-atencion/proteccion](http://www.sbs.gob.gt/ejes-de-atencion/proteccion).

<sup>53</sup> Adoption Act, arts. 19 and 23.

National Commission on Children and Adolescents. The Ministry also allocates the budget for programmes focusing on children as per the PINA Act.

56. Other ministries, including the Ministry of Education, sensitize children about the dangers of trafficking in persons by incorporating the issues into school curricula. The newly established Ministry of Social Development aims to improve the welfare of vulnerable social groups by generating opportunities and capabilities.<sup>54</sup>

57. The Social Works Secretariat of the First Lady also promotes and supports actions in the areas of education, health and community development, for the benefit of, among others, children under 6 years of age.<sup>55</sup> It provides care for at-risk children, including street children, and promotes equity in education and health.<sup>56</sup>

58. The judicial protection of children is ensured by newly established courts under the PINA Act, including the Courts for Children and Adolescents or, in their absence, the magistrate's courts (*juzgados de paz*), the decisions of which can be appealed to the Court of Appeals for Children and Adolescents.<sup>57</sup> Courts for adolescents in conflict with the law have also been established.<sup>58</sup> Moreover, the Special Rapporteur is encouraged to learn that mobile magistrate's courts with civil, family and labour jurisdiction have been established in an effort to provide access to justice around the department of Quetzaltenango and Guatemala City,<sup>59</sup> the dispatch of 10 more such units in rural areas throughout the country is planned. The Special Rapporteur welcomed the establishment in November 2012 of specialized courts for the prosecution of femicide and other forms of violence against women, sexual violence, exploitation and human trafficking.

59. The Anti-Human Trafficking Unit within the Organized Crime Division of the Public Prosecutor's Office investigates crimes against public order, including trafficking in persons, and promotes the prosecution of such crimes. It also directs the NCP and other State security bodies in the investigation of criminal offenses. The Special Rapporteur also learned of the newly established Anti-Human Trafficking Division within the Public Prosecutor's Office.<sup>60</sup> Created with support of SVET, it is aimed at addressing the increased workload and highlighting the importance of the problem.

60. The Office of the Ombudsman for Children and Adolescents (*Procuraduría de la Niñez y Adolescencia*) under the Solicitor General's Office further ensures the legal representation of children and adolescents whose rights have been infringed.<sup>61</sup>

61. The Ministry of the Interior, through the Anti-Trafficking Unit of the Directorate-General of Migration, contributes to the protection and promotion of the rights of victims of trafficking, including children. CONAMIGUA coordinates, defines and monitors State institutions engaged in the assistance of foreign and Guatemalan migrants. The NCP, and particularly the Specialized Department for Children and Adolescents, coordinates, trains and guides its officers and the population on the protection of children and adolescents and the prevention, investigation and prosecution of crimes involving children and adolescents;<sup>62</sup> to this end, it also works with the Investigation of Human Trafficking Crimes

<sup>54</sup> See [www.mides.gob.gt/mides/mision-vision-y-objetivos](http://www.mides.gob.gt/mides/mision-vision-y-objetivos).

<sup>55</sup> See the mission of the Secretariat, available from [www.sosep.gob.gt/index.php/informacion-publica/cat\\_view/8-5-plan-operativo-mision-y-vision](http://www.sosep.gob.gt/index.php/informacion-publica/cat_view/8-5-plan-operativo-mision-y-vision).

<sup>56</sup> See [www.sosep.gob.gt/index.php/site-administrator/hogares-comunitarios](http://www.sosep.gob.gt/index.php/site-administrator/hogares-comunitarios).

<sup>57</sup> PINA Act, arts. 104 and 107.

<sup>58</sup> *Ibid.*, art. 105.

<sup>59</sup> See [www.oj.gob.gt/index.php/juzgados-moviles](http://www.oj.gob.gt/index.php/juzgados-moviles).

<sup>60</sup> *Ibid.*, seventh page.

<sup>61</sup> PINA Act, arts. 4, 5, 6, 8, 76 and 108.

<sup>62</sup> SVET, "Informe", eighth page.

Unit in the Criminal Investigation Department (which is currently being strengthened through the establishment of a specialized department for the investigation of sexual offenses and the Specialized Department for the Investigation of Human Trafficking Offences). The Special Rapporteur was also informed that a department of investigation into sex crimes is in the process of being established, with the support of SVET.

62. With regard to tourism, the NCP has a unit to ensure the security of tourists, while INGUAT promotes sustainable tourism development through coordination among Government, civil society and the private sector, including CAMTUR.

63. Within the Ombudsman's Office, the Office of the Defender of Children and Adolescents (Defensoría de la Niñez y de la Juventud) investigates complaints of alleged violations of children's rights. Where it appears that the violations alleged are in contravention of the criminal law, it refers the case to the Solicitor General, who initiates legal proceedings. The Special Rapporteur however notes the insufficient resources allocated to this institution, which impedes it from fulfilling its functions. She is further concerned about troubling reports of political bias, lack of attention to monitoring and preventative work, and failure to follow up on detected violations mentioned by stakeholders she met.<sup>63</sup> Nevertheless, she counts on the reassurance given to her by the new management that these issues will be addressed.

64. The Special Rapporteur acknowledges the efforts by the Government to address the situation of vulnerable children through the establishment of institutions for the protection and promotion of their rights. Nevertheless she remains concerned about the multiplicity of institutions, the absence of clear terms of reference which contribute to an overlap of some of their mandates, the lack of coordination between institutions at the local and central levels and the lack of resources (financial and trained personnel). She also notes the short time frame of their activities, which is not favourable for the establishment of sustainable and integrated child protection mechanisms.

### **Interagency collaboration**

65. The complexity of the child protection system, the multiplicity of actors involved and the delicate relationships between some stakeholders render coordination particularly challenging.

66. Consultation, management and development of initiatives to combat human trafficking is undertaken by the Inter-institutional Commission against Trafficking (CIT) under SVET.<sup>64</sup> Its members include representatives from the Ministries of Foreign Affairs, the Interior, Education, Culture and Sports, Public Health and Social Assistance, and Labour and Social Security; the SBS; and COPREDEH.<sup>65</sup>

67. With regard to protection of victims of sexual violence and/or abuse, an interagency agreement exists among the Ministry of Public Health and Social Assistance (through its hospitals), the Public Prosecutor's Office, the National Institute of Forensic Science (INACIF) and the Ombudsman's Office (see para. 79).<sup>66</sup>

68. Action towards an effective child protection system is taken by, inter alia, the National Commission on Children and Adolescents, which is coordinated and funded by

<sup>63</sup> See also the concluding observations of the Committee on the Rights of the Child (CRC/C/GTM/CO/3-4), para. 23.

<sup>64</sup> SVET, "Informe", sixth page.

<sup>65</sup> Save the Children, *Violencia y trata de personas en Centroamérica. Oportunidades de intervención regional* (Managua, 2012), p. 107.

<sup>66</sup> Available from [www.sosmujeres.com/wp-content/descargas/acuerdovs.pdf](http://www.sosmujeres.com/wp-content/descargas/acuerdovs.pdf).

SBS and comprised of representatives of civil society and government. The Commission elaborates policies for the comprehensive protection of children and adolescents and disseminates them to the Government institutions concerned; similar commissions are also present at the municipal level.<sup>67</sup>

69. With a view to decentralize its functions and to promote development outside the capital, institutions were created at the departmental and municipal levels. In parallel to this structure, the Government established development councils, comprised of a mixed representation of authorities and population, to enhance proximity between the population and the Government. These councils are organized at different levels, including communal (COCODEs), municipal (COMUDEs) and departmental (CODEDEs),<sup>68</sup> to promote and protect the rights of children through policies and programmes.

70. Also at the municipal level, Municipal Committees for the Protection of Children and Adolescents (Juntas Municipales de Protección a la Niñez y Adolescencia), under the Ombudsman's Office, receive and register complaints on child rights violations, direct such complaints to relevant authorities and raise awareness on child rights, among other activities. Composed of trained volunteers, these committees aim to address the absence or weakness of the judiciary in some municipalities and resolve conflicts that do not require a judicial trial.<sup>69</sup>

71. The Special Rapporteur also met with representatives of the Child and Adolescent Protection Network, which comprises governmental and non-governmental institutions engaged in the protection of child rights in the municipalities.

72. CSOs also work in networks. The Special Rapporteur however cautions CSOs to also jointly work with the Government without substituting Government institutions, in particular in the area of prevention and to some extent, delivery of assistance to victims.

73. While the Special Rapporteur is encouraged by the multidisciplinary approach to protecting children, she is concerned that the extent of the interagency collaboration framework might substitute existing government institutions and render such institutions inefficient, and also increase competition for the little funding available. She is further concerned by the lack of coordination between these bodies, and other stakeholders, both in the capital and at the departmental level. Moreover, she highlights that the participation of the same institutions in various inter-institutional settings may not be the best use of limited resources.

## **D. Policies and programmes to address sale of children, child prostitution and child pornography**

### **1. Policies to address sale of children, child prostitution and pornography**

74. Guatemala has a number of policies relating to the mandate of the Special Rapporteur, including the National Policy on the Prevention of Youth Violence and the Public Policy on Comprehensive Protection and its Plan of Action (2004-2015) aimed at, inter alia, coordinating the actions of stakeholders and fulfilling the rights of children and adolescents; the National Plan to Prevent and Eradicate Domestic Violence and Violence against Women (2004-2014), aimed at strengthening prevention and the protection of women; and the National Policy on Human Rights Education (2006-2015), aimed at

<sup>67</sup> PINA Act, arts. 81 and 85.

<sup>68</sup> Act on Urban and Rural Development Councils.

<sup>69</sup> Source: NGO Programa de Atención, Movilización e Incidencia por la Niñez y Adolescencia.

institutionalizing and mainstreaming human rights in policies, Government and non-governmental institutions.

75. The Public Policy on Human Trafficking and the Comprehensive Protection of Victims and the National Plan of Strategic Action (2007-2017) redirect and focus the State's actions and budget to prevent and combat human trafficking based on the best interest of the child, non-discrimination, protection and attention to victims.

76. The Special Rapporteur noted the elaboration of the Pilot Plan for International Adoption (2010-2012), aimed at increasing capacities for the search for adoptive families in foreign countries for children who could not be placed with a Guatemalan family, and cooperation with authorities of receiving countries that are members of the Hague Convention.<sup>70</sup> However, she regrets that it has not been put into practice.

77. The Special Rapporteur also notes numerous other policies which are pertinent to her mandate, including the Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination (2006), and the Institutional Strategic Plan (2012-2016) to increase security, democracy and justice, and socioeconomic inclusion for all. She also acknowledges similar policies at the departmental level.

78. The Special Rapporteur acknowledges the efforts made by Guatemala in addressing the protection of children through various national policies. Nevertheless she notes a lack of complementarity and synergy among them, an absence of an integral strategy on child protection, a lack of sustainability due to the short-term nature of the policies, and the limited budget and human resources. A lack of adequate indicators, monitoring and evaluation mechanisms somewhat affects the outcome of the policies to the detriment of the children they aim to protect. Implemented under different institutions or joint "committees", there is no centralized institution in charge of the effective coordination and implementation of the policies at the national and regional levels.

## 2. Investigation and prosecution

79. A protocol on inter-institutional coordination signed in 2010 by the Public Prosecutor's Office, the judiciary and the Solicitor General's Office, with technical support from UNICEF, is intended to strengthen support for children and adolescents whose human rights are threatened or violated; its aims include simplifying judicial procedures and rendering the justice system more accessible and effective so as to minimize re-victimization.<sup>71</sup>

80. A judicial process regarding children or adolescents whose rights have been threatened or violated can be initiated by the National Commission on Children and Adolescents and/or the magistrate's court, *ex officio*, on the basis of a complaint submitted by the victim or any person or authority,<sup>72</sup> including hospitals. The Ombudsman's Office is also mandated to receive and investigate complaints submitted to it; upon identification of an offence, it must notify the Public Prosecutor's Office or the judiciary, as appropriate.

81. The Solicitor General's Office, through its Child Rescue Unit, assesses the risk of the situations of children, authorizes their transfer to juvenile courts and requests protection measures. In cases of abuse, it determines whether minors can be placed with another family member where they would have no contact with their abuser, or whether they should remain temporarily in a children's home. However, the Solicitor General's Office is not

<sup>70</sup> CICIG, "Report" (note 11), p. 71.

<sup>71</sup> CRC/C/GTM/Q/3-4/Add.1, paras. 30 and 31.

<sup>72</sup> PINA Act, art. 117.

responsible for the prosecution of the abuser; it must inform the Public Prosecutor's Office (CRC/C/GTM/3-4, paras. 21–22).

82. Penal investigations and prosecutions are then undertaken by the Public Prosecutor's Office through specialized units, including the Anti-Human Trafficking Unit within the Organized Crime Division, and the Division for Child and Adolescent Victims within the Division for Women.<sup>73</sup> While the Public Prosecutor's Office has a branch in each of the country's 22 departments, it has a presence in only 20 per cent of the municipalities (CRC/C/GTM/Q/3-4/Add.1, para. 32). Moreover, these branches (*fiscalías comunales*) are criticized for their lack of capacity and absence of structures to investigate and prosecute crimes relating to sexual exploitation.<sup>74</sup> Every month the Division for Children and Adolescents receives about 200 complaints, of which 50 per cent are related to the sexual abuse of minors.<sup>75</sup> The Special Rapporteur takes note of the high workload of these offices, which have few staff.<sup>76</sup>

83. Child-friendly spaces, such as the Office for Comprehensive Assistance for Victims, within the Public Prosecutor's Office, and the Centro Metropolitano de Justicia collaborate with all child protection mechanisms to facilitate easy access by victims, speedy resolution of their cases and centralization of information. The Special Rapporteur notes the necessity of replicating this good practice throughout the country. Specific courts for children (para. 58) ensure the judicial protection of child victims of sexual exploitation, trafficking and other crimes.

84. During the visit, all stakeholders noted that a major challenge for investigations was the lack of technical know-how and human, financial and material resources at the Solicitor General's Office, which does not have local branches throughout the country. The actual working hours of magistrate's courts—to 3 p.m., instead of the full 24 hours—has also contributed to long delays in bringing cases to court. A reluctance to denounce crimes of sexual exploitation of children due to fears of reprisal, inadequate protection of victims, their families and witnesses, social tolerance, lengthy investigations and delayed court proceedings has also been identified as a challenge. Finally, stakeholders reported that the corruption and impunity of some officials within government institutions, including the judiciary and the police, posed further challenges.

85. The Special Rapporteur is particularly concerned about the absence of the investigation and prosecution of cases concerning online child pornography, attributed to a lack of adequate laws and expertise of law enforcement authorities in this area.

### 3. Assistance to child victims of exploitation and abuse

86. The removal of children from harmful situations of exploitation and abuse and their placement in public or private institutions separate from penal/correctional facilities for children in conflict with the law requires the authorization of the Solicitor General's Office and a court order.<sup>77</sup> As such placement is a last-resort measure, it also necessitates the exhaustion of all other placement options, and should be for the minimum period needed and in the best interest of the child.<sup>78</sup>

<sup>73</sup> See [www.mp.gob.gt/wp-content/uploads/2010/08/Organizaci%C3%B3n-y-funciones-del-MP.pdf](http://www.mp.gob.gt/wp-content/uploads/2010/08/Organizaci%C3%B3n-y-funciones-del-MP.pdf).

<sup>74</sup> Source: El Refugio de la Niñez.

<sup>75</sup> See [www.unicef.org/guatemala/spanish/recursos\\_20294.htm](http://www.unicef.org/guatemala/spanish/recursos_20294.htm).

<sup>76</sup> Source: El Refugio de la niñez.

<sup>77</sup> PINA Act, art. 116.

<sup>78</sup> Ibid.

87. All policies mentioned above recognize the need for the provision of comprehensive assistance to victims of human trafficking and sexual exploitation and those awaiting adoption, including through an effective referral system, minimum standards for alternative and residential care and a recovery/rehabilitation plan.

88. Health professionals, psychologists and social and legal workers work with children placed in shelters in order to assess their case and provide them with needs-based assistance. Depending on the case, the child's family may also benefit from practical training in the context of schools for parents.

89. The Special Rapporteur visited Hogar Virgen de la Asunción, which is run by SBS. At the time of the visit, 701 boys and girls were staying at the shelter, all referred by the court. In addition to the high number of children in the shelter, the Special Rapporteur was alarmed by the wide range of the children's profiles, which included histories of physical and/or sexual abuse, abandonment, living and/or working in the streets, conflict with the law and trafficking. While it is essentially a temporary shelter for minors, residents included 25 persons with disabilities aged between 18 and 36, who have no alternative to the shelter. She emphasizes that effective, specialized care and assistance cannot be delivered when children with such a wide spectrum of needs are placed together. She further notes the impact that the lack of resources, both human and financial, and the location of the shelter, at the outskirts of the capital, have on access to education and other social services essential for the children's recovery/reintegration process.

90. The Special Rapporteur also visited CSO-run shelters that had fewer children and better quality assistance.<sup>79</sup> However, she notes the need to elaborate and implement with the participation of each child a personalized life project and to ensure regular follow-up until the child's full recovery.

91. The Special Rapporteur is also concerned by the considerable number of shelters for children throughout Guatemala that are operating without clear standards and with a noticeable lack of trained manpower and financial and material resources. She is further concerned that in the absence of other alternatives, children are being institutionalized with insufficient care and inadequate rehabilitation for their eventual reinsertion into the society.

#### 4. Prevention, capacity-building and awareness raising

92. The Government has undertaken numerous efforts to prevent the sexual exploitation and abuse of children, including by tackling root causes through policies such as those aimed at achieving the Millennium Development Goals in the areas of economic development, food security, health, education and justice.<sup>80</sup> It also plans to fight corruption and impunity, which could lead to improvements in, inter alia, the investigation and prosecution of perpetrators of commercial sexual exploitation of children.

93. Effective sex education in schools is lacking; sex is also a taboo topic within homes and the community. This creates confusion and lack of understanding about sexuality, particularly for pre-adolescents, and an environment where children do not feel safe or secure discussing issues relating to sexuality with their families and within their communities. While the Ministry of Education claims that there are sexual education programmes in the schools, reportedly, in practice, teachers are reluctant to present them.

<sup>79</sup> El Refugio de la Niñez, Casa de la Mujer, Casa del Migrante and La Alianza.

<sup>80</sup> See "Orientaciones estratégicas de política (2012-2014)". Available from [www.segeplan.gob.gt/downloads/politicas\\_publicas/Orientaciones%20Estrat%C3%A9gicas%20de%20Pol%C3%ADticas.pdf](http://www.segeplan.gob.gt/downloads/politicas_publicas/Orientaciones%20Estrat%C3%A9gicas%20de%20Pol%C3%ADticas.pdf).

94. As a result, stakeholders report that teenage pregnancy rates are increasing, as is precocious sexual activity. The Special Rapporteur notes the lack of a system of alternative care to support single teenage mothers. She reiterates the importance of providing such assistance as part of the child protection system to prevent the sale of children through adoption and to enable the girls to continue their education.<sup>81</sup> Limited birth registration outside the capital was also cited as an obstacle to education, especially for girls in poor communities, and as a factor facilitating illegal adoptions.

95. The Special Rapporteur was informed of various trainings and capacity-building on child rights offered to stakeholders within Government and non-governmental institutions, as envisaged in the national policies. She also notes the involvement of the international community and UNICEF in conducting training and awareness-raising on the topic. Despite these various programmes, the Special Rapporteur underscores the need for further capacity-building, an issue raised by all stakeholders with whom she met. She encourages tailor-made training on a wide range of child rights issues, such as on sexual tourism, online pornography and cybercrime involving children, in order to meet the specific needs of the country and facilitate the work of professionals involved with child victims and witnesses, such as teachers, police, judges, prosecutors and health and social workers.

96. In the light of the above, the Special Rapporteur observes that more could be done to create an effective protective environment for children against all forms of violence, abuse and exploitation, by involving relevant partners at all levels, including community and religious leaders and the private sector.

## 5. Child participation

97. In Guatemala, children are informed about their rights through trainings and awareness-raising as envisaged in all policies involving them. Through the Children's Parliament, children participate to some extent in national issues that concern them, including health, education, intrafamily domestic violence, sexual abuse and commercial exploitation.<sup>82</sup>

98. While the PINA Act provides for the right and duty of children to participate in the implementation of policies on their protection, in reality children have yet to assume this role. The Special Rapporteur notes the need for a reinforced and systematized participation of children in policies and programmes affecting them. She recalls that child participation consists of the right of each child to express his or her views and to have these views taken into consideration in all matters that concern his or her life, with the objective of influencing decision-making and achieving change. Children are not simply victims or vulnerable to becoming victims; they can and should take part actively in finding solutions; they must thus be empowered to fight for their own protection and that of their peers.

## 6. Complaints mechanisms and monitoring

99. In Guatemala, at least six different hotlines under various institutions allow victims, including children, to call in, report emergencies and receive guidance: the Ombudsman's Office (1555); Solicitor General's Office (1546); NCP (110); Public Prosecutor's Office (1570); Ministry of Foreign Affairs (1552); and Directorate-General of Migration (1573).<sup>83</sup>

<sup>81</sup> The Special Rapporteur noted, however, the Inter-institutional Memorandum of Understanding for the Implementation of the Roadmap to Tackle Pregnancies of Girls under 14.

<sup>82</sup> See [www.parlamentoninez.org/spanish//index.php?option=com\\_content&task=blogcategory&id=16&Itemid=60](http://www.parlamentoninez.org/spanish//index.php?option=com_content&task=blogcategory&id=16&Itemid=60)

<sup>83</sup> Save the Children, *Violencia* (note 65), p. 120.

Another hotline (1561) within the Centre for the Collection, Analysis and Dissemination of Criminal Intelligence (CRADIC) of the NCP, with an emphasis on complaints of human trafficking, was established in October 2012.<sup>84</sup>

100. In the absence of centralized information (envisaged in nearly all policies involving children) and adequate resources, including trained personnel capable of providing victims with appropriate child-friendly guidance, the Special Rapporteur is concerned about the overlapping work of these institutions, which are often the first contacts of the victims.

101. As mentioned above, the Ombudsman's Office also receives and submits complaints, inspects institutions, promotes the rights of the child and cooperates with Government institutions and other national human rights institutions in the region. Nevertheless, accessibility by children to the institution is weak and could benefit from increased local offices and resource allocation; the confidence of the community in the institution must also be re-built.

102. As regards monitoring the effectiveness of past and present protection systems, including national policies, institutions and CSO programmes, the Special Rapporteur was not able to get any information about actual results of such follow-up, despite the inclusion of the principle of monitoring and evaluation in most policies. This lack of periodic review of achievements and impediments on the basis of clear indicators and accountability in budget allocation prevents the assessment of the impact of stakeholders' efforts in the area of child protection.

## **7. Involvement of private sector**

103. Guatemala, as part of the Secretariat for the Integration of Central American Tourism (SITCA), is in the process of adopting a code of conduct for the tourism sector. As part of a roundtable (*mesa técnica*) comprising the Institute for Social Security, CAMTUR, UNICEF, the International Labour Organization, ECPAT and SVET, training on the code was conducted. The Special Rapporteur is, however, concerned about the limited personnel available to provide these trainings in all institutions within the tourism sector in Guatemala, including hotels and tour operators.

104. Under the National Policy on the Prevention of Youth Violence, the media, particularly television and cinema, is called on to minimize the inclusion of pornography, drug addiction, violence and degrading portrayals, especially of children, and to promote the equality of all.<sup>85</sup>

105. As regards the Internet, it is not currently regulated in Guatemala. Moreover, the Special Rapporteur is concerned that Internet service providers, mobile phone operators, search engines and other relevant private sector actors have not adopted a code of conduct and do not have the legal obligation to report violations, block access to sites, or retain material for a specific period of time for the purposes of investigation and legal proceedings.

## **8. International and regional cooperation**

106. The sale and sexual exploitation of children have become increasingly international phenomena owing to the development of information technologies, trafficking networks, tourism and migration. Solid networks at the regional and international levels are required to address these crimes through coordination and cooperation in the areas of exchange of

<sup>84</sup> SVET, "Informe" (note 50), seventeenth page.

<sup>85</sup> Page 23 of the Policy.

information and expertise, sharing and harmonization of practices and provision of technical and financial support.

107. At the regional level, Guatemala has a bilateral memorandum of understanding with El Salvador on the protection of victims of trafficking in persons and migrant smuggling. It is also part of the Regional Coalition to Combat Human Trafficking, along with Belize, Costa Rica, El Salvador, Honduras, Nicaragua and Panama.<sup>86</sup> It is currently considering a programme of protection and comprehensive assistance for the repatriation and reintegration of children intercepted by United States and Mexican authorities, through bilateral agreements with those countries.<sup>87</sup> Guatemala is also working with El Salvador and Honduras to adopt the “Guardian Angels” programme, aimed at better sharing information and protecting victims of trafficking in border areas.<sup>88</sup> Guatemala has also established a unit that works with INTERPOL within the Criminal Investigation Subdirectorato of the NCP.<sup>89</sup> Despite such efforts, the Special Rapporteur notes the absence of international cooperation, particularly as regards extraterritorial jurisdiction, extradition, mutual legal assistance and seizure and confiscation of proceeds relating to cases described in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

108. The Special Rapporteur met with key international technical partners in Guatemala. They are involved, to varying degrees, in technical cooperation directly with the government, with CSOs or through UNICEF for the promotion and protection of child rights, including delivery of training on child rights and grants. The Special Rapporteur notes the limited coordination and short-term nature of the programmes, which tend to be focused on prevention aspects and delivered on an ad-hoc basis, as challenges are encountered by international partners in Guatemala.

## IV. Conclusions and recommendations

### A. Conclusions

**109. The Special Rapporteur recognizes that the Government has established adequate laws, policies and institutions, and mobilized considerable energy and resources, to enhance the protection of children from sale, prostitution and pornography, and of child rights more generally. However, the Government is struggling to have an efficient sustained impact on the lives of vulnerable children, due to the unknown extent of the sale of children, child prostitution and child pornography in the country, the proliferation of institutions addressing only a few aspects of the phenomena and weak inter-institutional coordination. Existing policies on child rights have weak coherence, and lack adequate resources, time-bound indicators and systematic monitoring and evaluation.**

**110. The Special Rapporteur welcomes the clear commitment of all actors with whom she met, including representatives of the highest level of Government, non-governmental organizations, the United Nations and the international community, to overcome these challenges together and move away from the reactive and fragmented**

<sup>86</sup> SVET, “Informe”, fifteenth page.

<sup>87</sup> Guatemala, Ministry of Foreign Affairs, “Acciones del Estado en beneficio de las niñas, niños y adolescentes migrantes” (2012), p. 2.

<sup>88</sup> Save the Children, *Violencia*, p. 108.

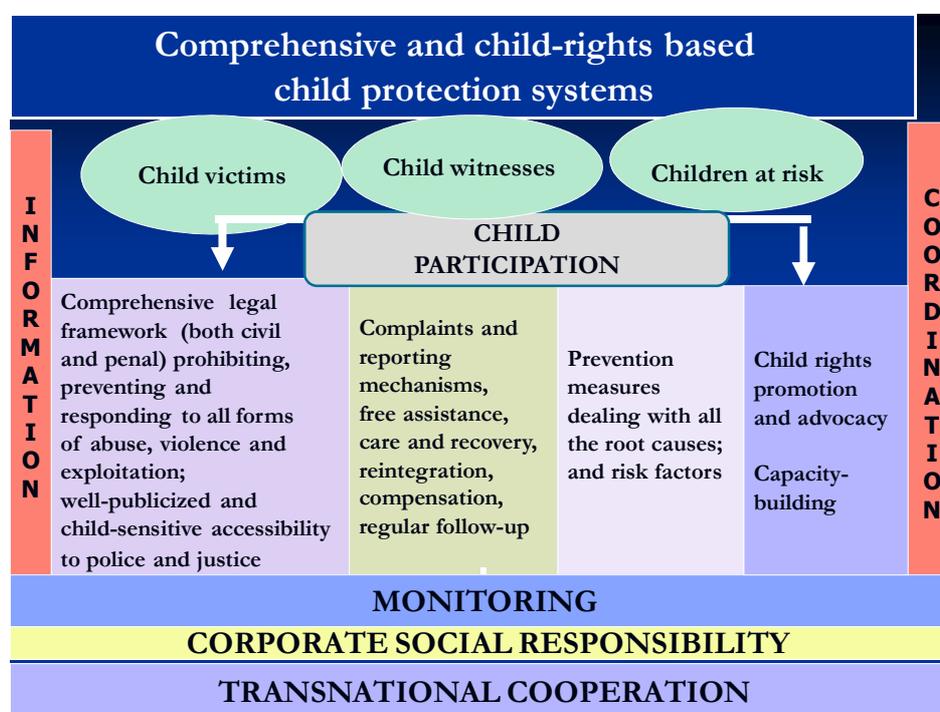
<sup>89</sup> See [www.interpol.int/es/Pa%C3%ADses-miembros/Am%C3%A9ricas/Guatemala](http://www.interpol.int/es/Pa%C3%ADses-miembros/Am%C3%A9ricas/Guatemala).

child protection responses towards the adoption of a rights-based and comprehensive national child protection strategy involving all stakeholders concerned, including children themselves.

## B. Recommendations

111. In the spirit of cooperation and partnership, the Special Rapporteur addresses the recommendations below to the Government to build on efforts to ensure the protection of every child in Guatemala. The Special Rapporteur would appreciate being kept informed regularly on the implementation of the recommendations and stands ready to offer her full cooperation and assistance.

112. In order to strengthen the achievements and to overcome the remaining challenges, the Government should carry out a global assessment of the existing child protection laws, policies, strategies and programmes, with a view to identifying the main issues relating to child protection and establishing comprehensive, child-rights based and sustainable child protection systems, accessible to all children (victims, witnesses, at-risk children) without discrimination.



113. In order to build effective child protection systems (which are based on a coordinated set of laws, policies, regulations and services, including community-based services/mechanisms, social norms, capacities and monitoring, and oversight of stakeholders activities to prevent and respond to child protection-related issues and risks) in compliance with international principles and standards, the Special Rapporteur recommends the following actions.

114. With regard to the legal framework, the Special Rapporteur recommends that the Government should continue its revision to prohibit, prevent and respond to all forms of sale and sexual exploitation of children, and ensure effective implementation through:

(a) Harmonization of national legal (civil and penal) and regulatory frameworks, including on the minimum age of marriage, with ratified international instruments, accompanied by binding mechanisms;

(b) Establishment of the legal jurisdiction of the National Civil Police to monitor cybercafés;

(c) Establishment of the legal obligation of the private sector (telecom companies, Internet service providers, search engines) to report violations on their networks, block access to offending sites and retain material for the purposes of investigation and legal proceedings;

(d) Widespread dissemination of user-friendly and adapted information regarding legislation and procedural rights;

(e) Increased awareness-raising and adequate training of judges, prosecutors, lawyers, police officers, teachers, social workers and medical and other professionals, civil society organizations, families, communities and children themselves regarding the rights, needs and best interests of the child;

(f) Reduction of procedural delays in court cases of alleged sexual exploitation of children;

(g) Establishment of effective mechanisms fighting corruption and impunity.

115. With regard to the institutional framework, the Government should conduct a mapping of all institutions, programmes and actors involved in child protection, with a view to:

(a) Identifying: (i) best practices, and capitalizing on them; (ii) overlaps, and gearing them towards complementary interactions; and (iii) inefficiencies and gaps, in order to overcome them;

(b) Re-defining clear roles and responsibilities of concerned actors, as children's rights duty bearers, based on: (i) personnel competencies and backgrounds; (ii) clear terms of references; and (iii) mechanisms of accountability by area of intervention;

(c) Assessing and, when applicable, redefining the capacity of key formal and informal structures to develop, administer, effectively monitor and implement their child protection responsibilities in coordination;

(d) Establishing effective intersectorial coordination mechanisms, at central and local levels.

116. With regard to existing policies and strategies, the Special Rapporteur urges the Government to move away from the juxtaposition of sectorial policies/actions towards the elaboration and implementation of a comprehensive child protection strategy, including:

(a) Establishment of a standardized and centralized information-gathering system capable of disaggregating data by sex, age, type of violation and measures taken, as well as harmonized methods of gathering and processing data;

(b) Establishment of child protection indicators to follow up policies and measure their impact on the situation of child rights;

(c) Allocation of sufficient human, material and technical resources at the central and local levels;

(d) Strengthening of the participation of children by expanding child-friendly spaces for the exchange of information and consultation, and systematic child participation in designing and following up activities, programmes and strategies relating to their rights;

(e) Pursuit of partnerships with the private sector, particularly tourism and travel agencies, Internet service providers, telecommunication companies and banks, in efforts to combat the sexual exploitation of children, including child sex tourism and the exploitation of children online, by adopting a code of conduct;

(f) Strengthening of partnerships with the United Nations and international donors, non-governmental and international organizations, in particular by building a concerted and coordinated partnership framework;

(g) Establishment of effective accountability mechanisms through the effective regulation and monitoring of child protection standards at all levels.

117. As regards services, the Government should ensure that child-sensitive services are available at all levels, that they are regulated by quality standards (implemented by knowledgeable, well-trained staff and with adequate resources) and easily accessible to all children, by:

(a) Strengthening child-sensitive complaints, reporting and counselling mechanisms;

(b) Implementing specific and adaptable protocols with the participation of all actors involved in child protection. These protocols should clarify the steps that need to be taken (from early detection to the full recovery and social integration of children), and the role and responsibilities of each actor, thereby allowing better coordination and information sharing;

(c) Strengthening child-friendly justice to provide special and prompt protection and assistance to child victims and witnesses that is appropriate to their age, level of maturity and unique needs to prevent further hardship and trauma;

(d) Favouring family- or community-based environments, including foster families and other caregivers and incorporating family support and counselling, over institutional or residential care; strengthening the provision of appropriate psychosocial support and mental health services for children;

(e) Ensuring that in cases where victims seek compensation for damages from those legally responsible for a violation, reparations take into account the long-term reintegration, psychosocial and physical issues potentially faced by victims;

(f) Ensuring that effective mechanisms incorporate regular follow-up of the child until full recovery is achieved;

(g) Ensuring safe and child-friendly alternative or residential care that can accommodate the basic needs of child victims, by establishing minimum standards for alternative and residential care. Centres must be staffed by trained professionals guided by child-rights standards and ethical principles, supporting the health, self-respect and dignity of the child and in particular promoting the complete physical and psychological recovery and social integration of all child victims. Registered centres must be required to provide monthly reports on the children, details of their care and transfer;

(h) Establishing sustainable and adapted training (intervention levels) and training of trainers, for a common understanding and harmonization of practices.

118. Regarding prevention and child rights promotion, the Special Rapporteur recommends that the Government:

(a) Ensure the availability of and access to socioeconomic services, including adequate food, housing, education and health care, for children at risk and their families, enabling them to live in dignity;

(b) Render accessible free birth registration of all children, particularly to unregistered children, children at risk and those in marginalized situations;

(c) Provide single mothers (particularly adolescent girls) with support through social welfare systems that offer a full range of alternative care services and assistance within child protection systems;

(d) Ensure that all preventive measures are known, available and accessible to the most vulnerable and marginalized children;

(e) Promote, with the participation of children, sustainable education and awareness-raising campaigns in schools and communities, including rural and remote communities, by all forms of media, information and communication technologies, including social networking tools;

(f) Develop, with children and youth, child safety online programmes;

(g) Promote child-protective social norms, involving community leaders to guide, mobilize and change the perception of communities in protecting children, particularly girls, against all forms of abuse, exploitation and violence;

(h) Make available in schools sex education programmes that provide information on healthy sexual development, safe sex and reproduction, and that emphasize gender equality, self-respect, empowerment and respect for others.

119. Regarding the independent monitoring of the situation of children's rights, the Special Rapporteur recommends that the Government:

(a) Strengthen a child-friendly complaints mechanism guaranteeing safety and confidentiality, accessible at the local level, within the Office of the Ombudsman for Human Rights;

(b) Ensure that the Office of the Ombudsman for Human Rights represents and is accessible to children, in accordance with general comment No. 2 (2002) of the Committee on the Rights of the Child;

(c) Provide sustainable and adequate resources, including financial, and trained staff to enable the Office of the Ombudsman for Human Rights to conduct independent monitoring.

120. With regard to international and regional cooperation, the Government should also continue to pursue cooperation through sustainable technical and logistical assistance on themes such as combating cybercrime, trafficking and transnational organized crime by sharing information relating to the detection of crimes, the identification of child victims and the prosecution of offenders. United Nations agencies and the international community could give sustainable support to strengthen the institutional capacities and to implement effective child protection systems guaranteeing the best interest of the child and accessible to all children without discrimination.