



**Convention on the
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COMMITTEE ON THE RIGHTS OF THE CHILD

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 12 (1) OF THE OPTIONAL PROTOCOL
TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF
CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY**

Initial reports of States parties due in 2004

GUATEMALA*

[17 May 2006]

* 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.

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
PRESENTATION.....	1 - 7	3
INTRODUCTION.....	8 - 19	3
I. GENERAL ASPECTS OF RATIFICATION AND IMPLEMENTATION OF THE OPTIONAL PROTOCOL	20 - 78	5
II. SPECIAL CONSIDERATIONS CONCERNING THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL	79 - 165	14
III. PENAL PROCEDURE	166 - 183	27
IV. PROTECTION OF THE RIGHTS OF CHILD VICTIMS	184 - 239	29
V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY	240 - 265	38
VI. PUBLIC POLICY OF COMPREHENSIVE CARE FOR CHILDREN AND ADOLESCENTS	266 - 331	42
VII. INTERNATIONAL COOPERATION AND ASSISTANCE	332 - 361	49
VIII. OTHER LEGAL PROVISIONS	362 - 371	53
IX. GENERAL CONSIDERATIONS BY THE STATE CONCERNING THE PRESENT REPORT	372 - 375	54

PRESENTATION

1. In compliance with paragraph 1 of article 12 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the State of Guatemala submits, for consideration by the honourable members of the International Committee on the Rights of the Child, the initial report on the measures taken by the sectors of government and the organizations of civil society to promote its actual entry into force and implementation.
2. This report has been prepared in accordance with the guidelines adopted by the Committee at its 777th meeting. Its contents are structured as follows:
3. Title I deals with general aspects of the process of approval and ratification of the Protocol, its implementation and dissemination, the mechanisms used for its evaluation and legislative and other measures adopted.
4. Title II describes the penal legislation and the penalties it provides for. Title III deals with criminal proceedings; and Title IV discusses the protection of the rights of child victims.
5. Title V concerns the measures taken to prevent the sale of children, child prostitution and child pornography.
6. Title VI relates to international assistance and cooperation to address the problems in this area; finally, Title VII describes the relevant provisions concerning the applicable national and international legislation.
7. To enable the International Committee on the Rights of the Child better to appreciate the social, political and economic context in which the measures described in this report have been taken, it has been considered useful to include the most recent basic social indicators for the country; these are contained in the section of annexes at the end of this report.

INTRODUCTION

8. Since the signature of the peace agreements in 1996 Guatemala has been facing major difficulties in guaranteeing for the inhabitants of the country the full enjoyment of their civil, political, economic, social and cultural rights.
9. Nevertheless, the State of Guatemala has ratified a number of international and regional instruments, thus demonstrating its commitment to bringing human rights fully into effect. These instruments – which include the Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography – are in course of implementation and, to attain real effect, will require the support of the different governmental and non-governmental sectors.
10. It is also important to mention that recommendations have been made by international organizations and theme rapporteurs, in both the United Nations and the inter-American systems, which have served as important benchmarks for the implementation of legislative and administrative measures and of actions, programmes and policies undertaken in discharge of the international commitments accepted in the area of human rights.

11. The ratification by Guatemala of the Convention on the Rights of the Child was a major step forward in the defence of the rights of Guatemalan boys, girls and adolescents. Fourteen years after that event it can be stated that, with the active participation of the institutions of government and civil society, the country has succeeded in taking substantial and concrete steps towards the implementation of the rights set forth in the Convention.

12. Another event of equal importance has been the adoption in 2003 of the new Act concerning the comprehensive protection of children and adolescents, which, after nearly ten years of struggle, has now become a reality permitting the introduction of a new perspective on care for children based on recognition of the child as a subject of rights and has committed the different bodies and sectors to work together to apply strategies enabling children and adolescents to live full lives, achieve all-round development and participate actively, and also to protect them against all circumstances which may place them in situations of vulnerability.

13. The process of implementation of the Act has not been an easy one; but positive results have been obtained. One of the most important advances has been the establishment of the National Commission on Children and Adolescents, which establishes guidelines for public policies relating to children. It consists of representatives of sectors of government and of civil society in equal numbers. It is currently responsible for promoting the implementation of the Public Policy for the Comprehensive Protection of Children and Adolescents, which has been approved by the Executive.

14. Another major legislative innovation has been the establishment of a new system of juvenile justice, which seeks to ensure that the legal proceedings to which children who are victims of violations of their human rights and adolescents in conflict with the law are subjected are based on constitutional guarantees. This new system has obliged the different actors in the justice system to introduce a human rights approach into all judicial proceedings.

15. Notwithstanding the progress made in guaranteeing the applicability of the human rights of children and adolescents, the country is aware that illegal practices, such as trafficking in persons for purposes of sexual exploitation, unlawful trafficking and other despicable acts, committed principally against children and adolescents, still exist. Unfortunately Guatemala is located in a strategic geographical position which is being taken advantage of by international networks of persons trading and trafficking in persons as a zone of transit towards Northern countries or as a destination country for many individuals – principally women and children – who have been brought into the country fraudulently.

16. In spite of these limitations, Guatemala is making significant efforts to combat these scourges. The task has not been an easy one, principally on account of the shortages of technical, material and financial resources. Even so, different sectors of the State and of civil society are showing an interest in the gradual elimination of these criminal practices.

17. It is important to mention in relation to these problems that since 2001 implementation has been proceeding of the National Plan to Combat the Commercial Sexual Exploitation of Children through the accompaniment of a Directing Group formed on the subject with the participation of governmental and non-governmental organizations. The group is coordinated by the Social Welfare Secretariat of the Office of the President, a governmental body responsible for enforcement of the policy of the Executive on children and adolescents.

18. Through the space thus created administrative, legislative and social measures have been promoted, principally in the areas of prevention, protection and criminal prosecution. Equally, the role played by the international community, which has given its fullest support to these measures, is recognized.

19. The State has the political will to continue to promote all the combined efforts necessary to apply short-, medium- and long-term measures designed to put an end to these despicable practices, which affect the development and the dignity of our children and adolescents. This reflected in the present report.

I. GENERAL ASPECTS OF RATIFICATION AND IMPLEMENTATION OF THE OPTIONAL PROTOCOL

Guideline No. 1 (paragraphs 1, 2 and 3 of article 12 of the Protocol)

Legal status of the Optional Protocol in domestic law and its applicability in domestic jurisdictions

20. The Protocol was approved by the Congress of the Republic by Decree No. 76-2001 dated 11 November 2001 and ratified by the President of the Republic on 30 April 2002. In pursuance of its text, it entered into force on 8 June 2002 and became part of current domestic law with effect from that date.

21. It is important to mention that, in accordance with Article 46 of the Political Constitution of the Republic of Guatemala, all international conventions on human rights ratified by Guatemala take precedence over domestic legislation, with the consequence that the Optional Protocol under consideration here has a supralegal character and is subordinate only to the Political Constitution of the Republic of Guatemala.

22. The supremacy of the Constitution and the ranking of legislative instruments is also dealt with in the Act on the organization of the judiciary, article 9 of which reads: "The courts shall always observe the principle of ranking of legislative instruments and of the supremacy of the Political Constitution of the Republic over all laws and treaties save treaties or conventions on human rights, which shall take precedence over domestic law. Acts and treaties shall take precedence over regulations; instruments which run counter to a higher-ranking instrument shall be null and void".

23. On this subject the Constitutional Court has stated that, although undoubtedly "the constitutional Article previously referred to grants precedence to international instruments over domestic law, it only establishes that, in the event that an ordinary instrument conflicts with one or more provisions contained in an international convention or treaty, the latter shall prevail; it does not mean that the latter may be used as a parameter of constitutionality".¹

24. On the basis of these legal provisions the Optional Protocol forms part of the legislative corpus, ranks above ordinary legislation and must be applied in domestic jurisdictions.

¹ Constitutional Court, *Gaceta*, no. 43, p. 47, file 131-95, ruling of 12 March 1997.

Reservations

25. Guatemala has made no reservations to the Optional Protocol, either at the time of signature or at that of its ratification. Consequently its contents are fully enforceable in the country.

Governmental bodies responsible for its implementation and coordination with other sectors: civil society, the business sector, local and regional authorities

26. All public-law bodies, the security forces, centralized and decentralized bodies and entities of State are required to ensure fulfilment of the Protocol and the effective application of its provisions. Public-sector bodies developing or coordinating programmes of care and protection of children have been working on this subject, together with non-governmental organizations. The bodies concerned include the following:

27. The National Commission on Children and Adolescents, a joint body consisting of representatives of ten entities of government and ten of civil society. It is responsible for the formulation, structuring, implementation and monitoring of public policies concerning children and adolescents.

28. The Ministry of Education, which is responsible for carrying out the educational policy of the country. In accordance with article 33 of Decree No. 12-91 it is required to provide free and compulsory education within the age limits set by law. School education comprises general basic education (nine levels).

29. The Ministry of Health is responsible for policies concerning health and social assistance for all the inhabitants of the country. It develops measures designed to promote the health of children in a comprehensive perspective.

30. The Ministry of Labour and Social Insurance, which is responsible for coordinating labour and social insurance policy. It is currently coordinating the National Commission for the Elimination of Child Labour and the Protection of Working Adolescents.

31. The Ministry of Culture and Sports, which is responsible for cultural and sports policies. It is currently coordinating national policy on the prevention of juvenile violence together with other agencies of government.

32. The Ministry of the Interior, which is the body directing internal policy; its principal objective is to guarantee the governability of the country, to preserve security and to maintain internal order. In the area of concern here it operates through two departments:

- a) The National Civil Police, which fulfils a role of assistance, protection and mediation for children and adolescents, principally when they are deprived of protection or in danger. For this purpose the criminal investigation department has three sections:
 - 1) the Minors' and Missing Persons Section;
 - 2) the Sexual Offences Section;
 - 3) the Section to Combat the Traffic in Persons.

- b) The Directorate-general of Migration, which is responsible for control of migration at frontier posts.

33. The Ministry of External Relations, which is responsible for executing the country's foreign policy. In this area it coordinates the Inter-institutional Group on the Traffic in Persons and the Plan of Action against the Traffic in Persons.

34. The Social Welfare Secretariat of the Office of the President, which is responsible for enforcement of government policy on children and adolescents. It is the body which coordinates the Liaison Group to Combat Sexual Exploitation, which is made up of representatives of governmental and non-governmental organizations.

35. The Presidential Secretariat for Women, which is responsible for policies benefiting women and girls.

36. The Secretariat-General for Planning, which is responsible for the framing and coordination of government public policies.

37. The Presidential Commission on Human Rights (COPREDEH), which is responsible for coordinating the policy of the Executive on human rights between the different agencies of State. It is the body responsible for preparing the reports of the State on progress in the fulfilment of international conventions and treaties. It is currently the directing agency of the project entitled "Combating exclusions of indigenous women".

38. The Guatemalan Tourism Institute, which is responsible for government policies on tourism promotion in Guatemala. It is a member of the Liaison Group to Combat Sexual Exploitation.

Jurisdiction over children and adolescents

39. The Chamber of the Court of Appeal for Children and Adolescents hears in second instance court cases concerning children and adolescents.

40. The Court for Juveniles in Conflict with the Criminal Law hears in first instance case brought against adolescents who have committed breaches of criminal law.

41. The Court for Children and Adolescents hears in first instance cases concerning threats to or violations of the human rights of children and adolescents.

42. The Court for the Supervision and Execution of Measures is responsible for supervising the execution of measures and penalties imposed on adolescents in conflict with the criminal law.

43. The magistrates' courts hear applications for precautionary measures concerning child victims and acts punishable by imprisonment for less than three years committed by adolescents. The judiciary, through the project entitled Juvenile Criminal Justice and Justice for Child Victims, concluded with UNICEF, is promoting the application in law of the Convention on the Rights of the Child and the Act concerning the comprehensive protection of children and adolescents.

44. The Office of the Prosecutor for Children and Adolescents in the Public Prosecutor's Department is responsible for the investigation of acts contrary to the criminal law believed to have been committed by adolescents.

45. The Adolescents Unit of the Public Criminal Defence Institute is responsible for the defence in court of adolescents who have committed breaches of criminal law.

46. The Children's and Adolescents' Unit of the National Civil Police is responsible for assisting the Public Prosecutor's Department and the courts for adolescents in conflict with the criminal law in the scientific investigation of breaches of the law and the identification of the presumed authors.

47. The Office of the Procurator-General of the Nation, through the Children's and Adolescents' Unit, is responsible for the legal representation of boys, girls and adolescents lacking such representation.

Criminal jurisdiction

48. The Supreme Court of Justice hears appeals in cassation against sentences pronounced in second instance. It is also responsible for hearing appeals in cassation against sentences pronounced by courts for children and adolescents.

49. The Chambers of the Court of Appeal in the Criminal Branch hear appeals against rulings and final sentences and judgements handed down at first instance.

50. Courts of First Instance in the Criminal Branch are responsible for the judicial control of investigations conducted by the public prosecutor's department. In such cases they hear cases brought against children and adolescents.

51. Courts of Sentencing take cognizance of oral criminal proceedings and must pronounce appropriate sentences.

52. Courts of enforcement are responsible for overseeing the execution of sentences.

53. Magistrates' courts hear cases concerning misdemeanours and offences punishable by imprisonment for not more than five years. They hear cases concerning offences committed against boys, girls and adolescents.

54. The Public Prosecutor's Department is empowered to conduct investigations in criminal cases assigned to it with judges of first instance acting as controllers of jurisdiction. It has two prosecuting units specifically combating the traffic in persons and in children and adolescents and is responsible for the criminal prosecution of offences committed against children and adolescents.

The legislature

55. The legislature holds the power to enact legislation. It currently consists of 158 deputies, directly elected by the people by universal suffrage through a system comprising a national list and national districts. For the discharge of its functions it contains ordinary committees which serve as technical bodies for the study and understanding of the different matters submitted to them by the full body of Congress for consideration or taken up on their own initiative; they must submit to Congress reports or decisions as required.

56. The following committees are concerned with draft legislation relating to the subject-matter of the Optional Protocol:

- The Committee on Minors and Families;
- The Committee on Women;
- The Committee on Legislation and Constitutional Matters;
- The Committee on the Interior.

Other institutions of the State with a voice are:

- The Office of the Defender of the Rights of Children and Adolescents in the Office of the Procurator for Human Rights, which is responsible for the defence, protection and dissemination of the rights of children and adolescents;
- The municipal authority of Guatemala City, through its Social Works Secretariat.

Civil society

57. The following NGOs which are developing programmes and projects benefiting child and adolescent victims of trafficking in persons and sexual exploitation are participating in the implementation of the present Optional Protocol:

- The Human Rights Legal Action Centre (CALDH);
- The Social Movement for the Rights of Children and Adolescents;
- Casa Alianza;
- The International Labour Organization / Programme for the Elimination of Child Labour (ILO/IPEC);
- The Pro-Niño-Niña Centroamericanos Association (PRONICE);
- The National Association against Child Abuse (CONAVMI);
- The Mother and Child Care Programme (PAMI).

58. The State institutions and NGOs mentioned above have promoted actions designed not only to ensure compliance with the Protocol but also to foster the effective application of its provisions. One might say that there has been coordination of actions at three levels: 1) between government bodies; 2) between non-governmental organizations; 3) between governmental and non-governmental organizations (mixed).

59. By the nature of their respective functions, 1) the Presidential Commission for Coordination of the Policy of the Executive in the Area of Human Rights is responsible for coordinating government policies in the area of human rights with the other bodies of State and ensuring implementation of the Protocol; 2) the Social Movement for the Rights of Children and Youth and the Institutional Committee on the Rights of the Child (CIPRODENI) coordinates action

among sectors of civil society; while in the area of sexual exploitation of children the Social Welfare Secretariat coordinates the Liaison Group to Combat Sexual Exploitation, made up of governmental and non-governmental organizations, the business sector and the municipal authority of Guatemala City, which is responsible for the execution of the measures in the National Plan to Combat Sexual Exploitation. In addition, the Office of the Procurator for Human Rights, through the Office of the Defender of the Rights of Children and Adolescents, accompanies two national networks and organizations in the social movement in their dealings with State bodies concerning proposals emerging in this area and reforms of the Penal Code.

Dissemination and training activities on the contents of the Protocol offered to professionals and relevant groups

60. In order to ensure that the courts are familiar with this Optional Protocol and adopt the administrative and judicial measures required in each specific case, the judiciary has conducted a training programme designed to impart knowledge of the rights of child victims of criminal acts and of the most appropriate techniques for handling cases of this kind with a view to avoiding secondary victimization. It has also prepared written material on the subject and has distributed the contents of the Optional Protocol to all the criminal court judges throughout the country.

61. The trainers of the Promotion and Education Department of the Office of the Procurator for Human Rights are approaching the problems in the training courses they conduct in different sectors at national level.

62. The 170 municipal boards for the protection of children and adolescents registered with the Office of the Procurator for Human Rights and currently functioning are all informed of and receive continuing training in this problem area.

Dissemination and training activities on the contents of the Protocol offered to migration officials, the National Civil Police, staff members of the Social Welfare Secretariat

Ministry of the Interior

63. This ministry conducts its training activities on the sexual exploitation of children through the training academy for officers of the National Civil Police and the Human Rights and Gender Equality Offices of that agency.

Training academy for officers of the National Civil Police (NCP)

64. The training activities of the academy are directed principally towards the academy's own teaching staff to enable them to multiply the effect of the courses through the students and other agents of the institution. The training is provided through the Academy Support Coordinating Agency (CAAP).

65. The study syllabus of the academy includes a segment concerning education on human rights. The segment is the same for all officers and agents, irrespective of rank, speciality or establishment table. It consists of 65 sessions, including a module specifically concerning the rights of the child and their relation to police work.

66. The principal subjects covered in this area are:

- The situation of children in Guatemala;
- The special situation of boys/girls;
- Child abuse;
- Withdrawal of protection and abandonment;
- Illegal adoptions;
- Exploitation at work;
- Sexual exploitation;
- Children and juveniles in conflict with the law;
- Juveniles deprived of liberty;
- Procedural guarantees for juveniles in conflict with the law;
- The Act concerning the comprehensive protection of children and adolescents, to provide officers with the basic knowledge of their duty of assistance and intervention in concrete cases, principally in cases of detention of juveniles in conflict with the law; emphasis is placed on the obligation to provide humane treatment based on the principle of legality and equality in relation to their procedural guarantees.

67. In addition, the Human Rights and Gender Equality Offices of the National Civil Police conduct education and training activities with a view to maintaining and updating knowledge on these subjects for persons working in outlying police headquarters, stations and substations throughout the country.

68. Within the structure of the National Civil Police there is a Crime Prevention Unit (UPREDE) the function of which is to train boys and girls in schools and institutions in methods of preventing criminal acts threatening their safety and integrity. This programme is conducted at national level through its subsidiaries in each police headquarters.

69. The Human Rights Offices, in coordination with the Caja Lúdica organization, has conducted talks, seminars and workshops for boys and girls in and on the streets.

70. Talks, seminars and workshops are also organized in a number of primary and basic schools at which knowledge of morals, ethics and self-esteem is imparted.

71. The text of the Convention on International Traffic in Minors was published in *Boletín Oficial* No. 07 of the National Civil Police (2002). Publication was effected to promote, disseminate and socialize the contents of the Convention among all police personnel with a view to improving work standards.

Mechanisms and means used for the periodic evaluation of the Optional Protocol

72. Within the framework of its mandate the Presidential Commission for Coordination of the Policy of the Executive on Human Rights (COPREDEH) has been assigned the function of

establishing mechanisms for cooperation and coordination to give impetus to public policies concerning human rights and to follow up on international and national commitments in that area. To give effect to this function an inter-institutional forum was established in August 1997. The forum is made up of representatives of ministries, secretariats of State and social funds; its purpose is to assist in the task of coordinating inter-institutional measures, and principally in the framing of public policies with a focus on human rights. It is intended that this body should serve as the agency activating, coordinating and sometimes executing and monitoring measures designed to bring the State to exercise its function as the principal guarantor of human rights.

73. The principal functions of the forum include:

- Facilitating inter-institutional coordination within the Executive in the area of human rights in general;
- Fostering a knowledge of the responsibilities of the State in the area of human rights among the branches of the executive and other State bodies;
- Contributing to the strengthening of the ability of the branches of the Executive to discharge their responsibilities in the area of human rights;
- Following up on and implementing recommendations made by the committees and rapporteurs of the United Nations system and the regional system for the protection of human rights;
- Informing the Executive on progress in and obstacles to the fulfilment of the commitments of the State of Guatemala in the area of human rights;
- Establishing facilities for dialogue and cooperation with autonomous State bodies and with civil society, principally in the promotion of public policies in the area of human rights;
- Through working with focus groups, compiling information for the preparation of reports required under conventions and other reports requested by the different international bodies and mechanisms for the protection of human rights.

74. It must be kept in mind that the challenge of developing processes for the implementation of international instruments is one for the State, working through the different public institutions. The latter must take up their active roles and also participate in every aspect of the task of complying with the obligations incumbent on them.

75. In this context the aim is to ensure, through the forum, that State reports reflect the true situation in the country as regards the discharge of its international obligations, are prepared in a participative and inclusive manner with consultation of all sectors in the country and serve to evaluate the progress being made.

Compatibility of the general principles of the Convention on the Rights of the Child and the implementation of the Optional Protocol

76. The preamble of the Protocol sets out the causes which gave rise to its promulgation and makes specific reference to articles 1, 11, 21, 32, 33, 34, 35 and 36 of the Convention on the

Rights of the Child. Article 1 of the Convention provides a definition of a child; article 11 refers to the bilateral measures and agreements which States Parties shall promote to prevent unlawful transfers of children abroad. Article 21 concerns adoption and the minimum principles to be observed in that area; article 32 concerns prevention of the economic exploitation of children and the minimum standards to be adopted by the different States to achieve that end. Article 33 concerns protection of sale of children from the consumption of narcotic substances; article 34 prohibits sexual abuses; article 35 seeks to prevent the abduction and sale of children; and article 36 refers to all other forms of exploitation.

77. Although the Protocol does not refer to the general principles underlying the doctrine of comprehensive protection with the same specificity as the Convention, there is nevertheless full compatibility between the articles mentioned in the Convention and the Protocol. Its application is implicit in the contents of the Protocol itself and the similarity between the two instruments. The two become effective when the State Party – in the present case, Guatemala – on learning of acts relating to the sale of children, child prostitution and child pornography, applies the provisions contained in the Convention on the Rights of the Child and other national and international laws which are also in line with the spirit of the Convention, such as the Act concerning the comprehensive protection of sale of children and adolescents, which is the national standard-setting instrument based on the principles of the doctrine of comprehensive protection. It thus emphasizes and requires the application of those principles by the different judicial, administrative and other bodies in all activities relating to children and adolescents.

78. The Act concerning the comprehensive protection of children and adolescents expresses these principles in the following manner:

- a) “Equality. The rights established in this Act shall be applicable to every boy, girl and adolescent without any discrimination on grounds of race, colour, sex, language, religion, national, social or ethnic origin, economic situation, physical, mental or sensory disability, birth or any other class or condition affecting themselves, their parents, their relatives or their guardians.²
- b) The best interests of the child. The best interests of the child are a guarantee which shall apply in every decision taken with regard to children and adolescents and which shall ensure the exercise and enjoyment of their rights, respecting their bonds deriving from family, ethnic origin, religion, culture and language, and always taking account of their views in accordance with their age and degree of maturity. In no case shall its application diminish, distort or restrict the rights and guarantees recognized in the Political Constitution of the Republic and treaties and conventions concerning human rights accepted and ratified by Guatemala and in this Act.
- c) By “interest of the family” shall be understood all measures taken within the framework of the law and designed to promote the unity and integrity of the family and respect of the relations between parents and children.

² Act concerning the comprehensive protection of children and adolescents (LEPINA), article 10.

- d) The State must promote and adopt the measures necessary for the effective fulfilment of the interests of boys, girls and adolescents and their families.³
- e) Respect for the views of the child is comprised in the previous article concerning the best interests of the child.
- f) The right to life. Boys, girls and adolescents have a fundamental right to life. The State has an obligation to guarantee their survival, safety and all-round development.
- g) Boys, girls and adolescents have the right to the protection, care and assistance necessary to attain adequate physical, mental, social and spiritual development. These rights shall be recognized from the time of conception.⁴
- h) The right to survival and development are comprised in the chapter on human rights which contains the earlier article referring to the right to life.
- i) It can be seen that the spirit of the principles underlying this Act, in the form in which it has been drafted, is fully in line with the principles laid down in the Convention, and subsequently in the Protocol. Since its entry into force in July 2003 emphasis has been laid on the bodies with responsibility for its implementation in order to ensure that the interpretation and the application of the Act take place in a manner matching its guiding principles, the general principles of law, doctrine and international standards on the subject and in the form which best guarantees the rights set forth in the Political Constitution of the Republic and the treaties, conventions, covenants and other international instruments concerning human rights accepted and ratified by Guatemala as laid down in article 8 of the Act referred to.”

II. SPECIAL CONSIDERATIONS CONCERNING THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL

Guideline No. 5

Progress made in the enjoyment of the rights set forth in the Optional Protocol

79. The State of Guatemala is aware that the commercial sexual exploitation of children has increased and that the measures taken by governmental sectors and civil society have not been sufficient to combat it. However, it must be recognized that important measures have been taken which are serving as a basis for the attainment of effective implementation of the Optional Protocol on the sale of children, child prostitution and child pornography.

80. The ratification of the Convention on the Rights of the Child was an important milestone for Guatemala, marking a genuine change with regard to the protection of Guatemalan children and adolescents in that they were recognized as full subjects of rights.

81. Of equal importance was the ratification of other international instruments relating to implementation of the rights of the child and the subject of concern here. That measure aroused

³ LEPINA, article 5.

⁴ Ibid., article 4.

interest on the part of the different public and private institutions which have assumed the discharge of the commitments accepted by the State before the international community.

82. The approval of the Act concerning the comprehensive protection of children and adolescents has been an important step forward and one which is contributing to the application of the principles set forth in the Convention itself. One of the most important aspects has been the entire process for achieving its implementation, which has given rise to major changes at the level of the institutions, particularly those with responsibility for implementation.

83. Today the system of justice for children and juveniles has been restructured. This has implied the conversion of the former Minors' Courts into Courts for Children and Adolescents in Conflict with the Criminal Law; the reshaping of the Office of the Prosecutor for Juveniles; the strengthening of the public criminal defence system for adolescents and the creation of socio-educational measures as an alternative to custodial measures.

84. The application of judicial processes based on constitutional procedural guarantees has permitted the pronouncement of fairer sentences commensurate with the seriousness of each situation and, in cases of child victims of violations of their human rights, the achievement of restitution of those rights when threatened or violated, applying the principle of the best interests of the child.

85. It should be mentioned that, as part of the preparations for the United Nations Special Session on Children, a number of activities took place affecting the planning of political actions corresponding to commitments on behalf of children which Guatemala as a State has to assume. In 2000 a process was launched for the framing of a public policy of comprehensive protection of children and adolescents with the participation of the government, civil society and children and adolescents, which following a period of discussion and consultation was finally approved by the Government of the Republic in 2004.

86. This public policy and the accompanying Plan of Action form a policy instrument and an instrument of medium- and long-term strategic social planning designed to establish the conditions necessary to ensure that this and future generations of children and adolescents can enjoy decent lives based on the implementation of their human rights. This approach finds support in the current national and international legal frameworks and in the political determination expressed by the State of Guatemala in entering into commitments and framing policies concerning human rights generally and the rights of children and adolescents in particular. The National Commission for Children and Adolescents is responsible for their implementation and execution.

87. In accordance with the Act concerning the comprehensive protection of children and adolescents, this public policy rests on the philosophical principles which inspire the Convention on the Rights of the Child. It defines five types of policies to be implemented:

- Basic social policies;
- Social assistance policies;
- Special protection policies;
- Guarantee policies;
- Policies for participation.

88. Within this classification, special protection policies serve to foster the implementation of measures for prevention, special protection and support for families in order to provide care for children and adolescents whose rights have been threatened or violated or who are in situations of vulnerability. These measures apply to children and adolescents who are victims of the practices covered by this Optional Protocol. Thus the policy defines strategic measures to promote the restitution of their rights, their rehabilitation and their reintegration into society as well as the criminal prosecution, as appropriate, of those responsible for the violation of their human rights.

89. It may therefore be said that there has existed a political will and promotion of awareness on the part of the authorities concerned.

90. Another major effort given impetus by State and non-governmental organizations has been the preparation of an initial draft of reforms of the Penal Code revising existing penalties and introducing definitions of new criminal acts relating to the sale of children, child prostitution and child pornography. The draft is awaiting a final decision by the legislative committees concerned with the subject.

91. Civil society has also played an important role, since it has devoted a considerable proportion of its resources to support of these processes through training, prevention and protection measures for victims of these situations and at risk. These activities have undoubtedly helped to bring about a change in the attitudes of the different sectors towards these problems affecting children.

92. Institutions such as the Office of the Procurator for Human Rights have been promoting measures in this area. Working through its branches it has begun to analyse and explore in depth the role of the institution in facing up to these problems, which are increasing within the country. One of the most important measures has been the creation of a victimology unit to provide emergency care for victims of violations of their human rights.

93. It has also issued resolutions on the subject and, where appropriate, initiated legal proceedings to begin the criminal prosecution of those responsible.

94. The Office for the Defence of Children and Office for the Defence of the Migrant Population, which forms part of the Office of the Procurator for Human Rights, has conducted an investigation at the frontier posts of the institution into the traffic in and migration of children and adolescents and their relationship with sale and sexual exploitation.

Factors and difficulties affecting the fulfilment of the obligations under the Optional Protocol

95. Like many countries in the region, Guatemala is a young country; the majority of the population is under 18 years of age, which means that their basic needs must be satisfied, since they are in their development stage.

96. However, the socio-economic conditions affecting a substantial percentage of the country's inhabitants have also affected the fulfilment of the commitments accepted with the ratification of this Optional Protocol and other instruments on the human rights of children. Unfortunately levels of poverty, lack of education, unemployment, family breakdowns, domestic violence and other similar factors have exposed children and adolescents to situations of risk and danger such as sexual exploitation for commercial purposes. Before one can speak of the elimination of this

scourge radical changes in economic and social structures and efforts to deal with these disparities will be necessary.

97. Another factor affecting fulfilment is the transitional phase which has been proceeding since the ratification of the Convention on the Rights of the Child and the adoption of the Act concerning the comprehensive protection of children and adolescents. This phase has involved the fostering of a change in the concept of care of children based on the doctrine of the irregular situation of the child deriving from social risks, replacing it by a new paradigm recognizing children as subjects of rights, who should be treated with dignity and respect without discrimination for any reason and given an opportunity to express their views and whose best interests should be kept in mind in all decisions concerning them.

98. To bring about this change those responsible for applying this new approach will have to adopt a positive attitude towards change, discarding old forms of care for children based on programmes of indiscriminate institutionalization and complete separation of children from their nuclear families. This has not been an easy task.

99. Another important factor affecting the fulfilment of the commitments accepted under this Optional Protocol is the budgetary situation of the State, which does not have sufficient financial resources to take all the measures required to implement this Optional Protocol with the speed and seriousness which the situation demands.

100. The Office of the Procurator for Human Rights, through the Office for the Defender of the Rights of the Child, has expressed the view that the cultural attitudes of the population towards these practices are affecting the fulfilment of the Protocol and that subjects such as the Act on adoptions and certain other laws relating to the subject under consideration here, such as prohibition of access by children to Internet sites displaying pornography and the crime of virtual sodomy, are not on the legislative agenda for this year.

Budget resources allocated to the various activities of the State of Guatemala for the implementation of the Optional Protocol

101. The income and expenditure budget of the State, approved by the Congress of the Republic and put into effect during the period 2002-2004, does not contain any items specifically for the conduct of the measures contemplated in the Optional Protocol.

102. The different ministries and secretariats of State distribute their budgets over the execution of central programmes and activities in accordance with the field of competence of each. A percentage of the budget is devoted to operating costs and another to investment.

103. There is no specific financial provision for measures taken by the different branches of the government to combat sexual exploitation and other illegal practices.

104. To implement in practice measures relating to fulfilment of the human rights of children and adolescents, emphasis is laid in the Public Policy on Comprehensive Protection on the need significantly to increase financial resources for social policies without entailing an increase in the overall budget. It suggests that the necessary resources can be found by reallocations within the budget, greater transparency, efficiency and effectiveness in expenditure, the mobilization and increase of the national resources provided by the government, the private sector and the

organizations of civil society, and coordination and best use of the international resources available for the social development of the country.

105. Attempts are currently being made to stimulate measures designed to achieve a better distribution of public expenditure on children and adolescents at both national and municipal levels, mainly by giving priority to investment in basic social policies with a view to achieving universal health coverage and education. Attempts are also being made to concentrate investment on areas of extreme poverty and excluded groups with a view to overcoming malnutrition, reducing the numbers of children and adolescents at work, reducing gender and ethnic disparities and enabling attention to be given to the needs of the groups of children and adolescents requiring special protection, of which the victims of sexual exploitation and other illegal practices form part.

Statistics concerning boys, girls and adolescents who are victims of sexual exploitation

106. The commercial sexual exploitation of children and adolescents is one of the most abnormal types of exploitation, abuse and violation of their human rights. In view of the clandestine nature of the situation, it is difficult to state the numbers of persons affected with any degree of accuracy. It is estimated that, nation-wide, there are 15,000 child and adolescent victims of commercial sexual exploitation.⁵

Article 1. Prohibition of the sale of children, child pornography and child prostitution

Existing penal laws and regulations covering acts and activities enumerated in article 3, paragraph 1, of the Optional Protocol

107. The legislation applied by the courts in this area is the Penal Code, which covers a number of activities relating to the central themes of the Protocol. These are described below.

Corruption of minors

108. Any person who in any way promotes, facilitates or assists the prostitution or sexual corruption of a minor, even if the victim consents to participate in sexual acts or to see them performed, shall be punished by imprisonment for from two to six years.⁶

Aggravated corruption

109. The above-mentioned penalty shall be increased by two thirds if any of the following circumstances are present:

- If the victim is under age 12;
- If the act is performed for purposes of financial gain or to satisfy the passions of third parties;
- If deceit, violence or abuse of authority is resorted to for purposes of the act;
- If corruption is effected by means of perverse, premature or excessive sexual acts;

⁵ PRONICE, *Trifoliar informativo*, s.f.

⁶ Penal Code, article 188.

- If the author is an ascendant, sibling or guardian or a person responsible for the education, guardianship or custody of the victim;
- If the acts referred to in the previous article are performed habitually.⁷

Inducement by promises or agreements

110. Any person who by means of promises or agreements (even apparently lawful) induces or gives rise to the prostitution or sexual corruption of a minor shall be punished by imprisonment for from one to three years.

111. The same penalty shall be incurred by a person who, for whatever reason or on whatever pretext, assists or supports the prostitution or sexual corruption of a minor or the residence of a minor in houses or other places where such activities take place.⁸

Procuring

112. Any person who, for purposes of financial gain or to satisfy the passions of other persons, promotes, facilitates or assists prostitution, without distinction of sex, shall be punished by a fine of 500 to 2,000 quetzals.

113. Any person who for personal advantage engages in the activities mentioned in the previous paragraph shall be punished by a fine of 300 to 1,000 quetzals.⁹

Aggravated procuring

114. The penalties referred to in the previous article shall be increased by one third in the following cases:

- If the victim is a minor;
- If the author is a relative in the degrees established by law, a guardian or a person responsible for the education, care or custody of the victim;
- If recourse is had to violence, deceit or abuse of authority.

115. With regard to the last sentence, Guatemala shall exercise its jurisdiction if the person sought is not handed over.¹⁰

116. The criminal acts described above are covered by the Penal Code, which dates from 1973, and are related to the practice of prostitution.

Reforms of the criminal law

117. Following the ratification of the Convention on the Rights of the Child and other international conventions on the protection of children promoting the criminal prosecution of the

⁷ Ibid., article 189.

⁸ Penal Code., article 190.

⁹ Ibid., article 191.

¹⁰ Ibid., article 192.

persons responsible for acts relating to the traffic in persons, such as the sexual exploitation of children and adolescents, the economic exploitation of minors and the sale of children, a process of reform of the Penal Code has been initiated which has permitted a revision of the penal legislation currently in force with the aim of reforming the concepts of the legal assets to be protected, adapting existing offences in accordance with the guidelines contained in international conventions, amending penalties where appropriate and creating offences which are not defined in the current legal order, as is the case with the sale of children, illegal adoptions, the traffic in organs and tissues, the economic exploitation of minors, remunerated sexual activities, etc.

118. The initial draft of reforms was prepared and discussed at length by representatives of State bodies and NGOs with the support of international cooperation agencies such as UNICEF. The draft was submitted to Congress and is being discussed by the legislative committees concerned (Minors and the Family, Women, Legislation and Constitutional Matters).

119. An important step forward was made in this area with the most recent reform adopted by the Congress of the Republic concerning the offence of trafficking in persons (article 194 of the Penal Code). The definition of this offence has been established in line with the definition contained in the Protocol in order to prevent, repress and punish trafficking in persons – especially women and children – and as a complement to the United Nations Convention against Transnational Organized Crime.

120. The new text reads as follows: “*Trafficking in persons*. Any person who in any way promotes, induces, facilitates, finances, collaborates in or participates in the retention, transport, removal, admission or reception of one or more persons, having recourse to threats, the use of force or other forms of coercion, abduction, fraud, deceit, abuse of power, kidnapping or apprehension, exploitation of a situation of vulnerability or granting or receiving payment or benefits in order to obtain the consent of a person having authority over another person, for purposes of sexual exploitation, shall be punished by imprisonment for from six to twelve years.

121. “The same penalty shall be incurred by any person who, taking advantage of the circumstances enumerated in the previous paragraph, obliges another person to beg, perform forced labour or services, contract a servile marriage or enter into irregular adoption, slavery or similar practices.

122. “Consent to any of the forms of exploitation mentioned, given by the victim of trafficking in persons or the victim’s legal representative, shall not be deemed to be an extenuating circumstance where the victim is a minor.

123. “The penalty shall be increased by one third when the victim is a minor or a disabled or elderly person.

124. “Where the victim is a minor, the offence shall have been committed even though none of the measures enunciated in the first paragraph of this article are resorted to.

125. “If in the course of the act described the victim suffers injury, the penalty shall be increased by two thirds. In the event of the death of the victim, the appropriate penalty shall be applied”.¹¹

¹¹ Penal Code, article 194 as amended by Congressional Decree No. 14-2005.

Age limits

126. It is important to observe that under the Act concerning the comprehensive protection of children and adolescents, which is of general application, a person is deemed to be a child from conception until the date of reaching age 13 and adolescent from age 13 until the date of reaching age 18.¹²

Statute of limitation

127. The penal legislation currently in force lays down a prescriptive period for criminal responsibility based on the penalty applicable.

128. However, penal legislation provides for the death penalty in respect of some criminal acts. The prescriptive period for criminal acts carrying the death penalty will be 25 years.

129. The prescriptive period is equal to the duration of the maximum imposable penalty increased by one third. It may not exceed 20 years or be less than three years,

130. For criminal acts punishable by a fine the period is five years. This will apply to procuring.

131. For minor offences the prescriptive period is six months.¹³

Start of prescriptive period

132. For criminal acts completed the period begins on the day the act is committed. In the case of an attempted act, it starts on the day on which the execution of the act was suspended. In the case of an offence committed over a period, it shall run from the day on which the effects of the act cease. For criminal acts of a continuing nature it shall run from the day on which its effects cease. In cases of conspiracy, proposition, provocation, instigation and inducement of a punishable nature, it shall run from the day on which the last act is performed.¹⁴

Interruption of prescriptive period¹⁵

133. The law also establishes that the prescriptive period may be interrupted as soon as legal proceedings are initiated against the accused person and shall begin to run again from the time the prosecution is stopped for any reason. The prescriptive period may also be interrupted if the accused commits a new criminal act.

134. To illustrate the situation to the Committee, a comparative table has been included showing the figures currently in force in respect of the criminal acts covered by the preliminary draft of the reform and the penalties applicable to each, together with the prescriptive period applicable to each. This reform of criminal law creates new criminal acts relating to the contents of the Optional Protocol which did not exist in the previous legislation.

¹² LEPINA, article 2.

¹³ Penal Code, article 107.

¹⁴ Ibid., article 108.

¹⁵ Ibid., article 109.

<i>Designation of criminal act</i>		<i>Prescriptive period</i>	<i>Designation of criminal act</i>	<i>New penalty</i>
<i>Penal Code</i>	<i>Penalty</i>	<i>Current Penal Code</i>	<i>According to proposed reform of Penal Code</i>	
Corruption of minors	2 to 6 years	14 years	Ordinary corruption	1 to 3 years
			Corruption with fraud	6 months to 2 years
			Remunerated sexual activities	4 to 8 years
Proxenetism	Fine of 500 to 2,000 q.	5 years	Proxenetism	8 to 16 years
Pimping	Fine of 500 to 3,000 q.	5 years	Pimping	8 to 16 years
			Sexual exploitation of minors during tourism	4 to 8 years
Trafficking in persons	1 to 3 years	7 years	Trafficking in persons	6 to 12 years
			Use of minors or disabled persons in pornography	Manufacture, 6 to 10 years Marketing, 4 to 8 years Possession, 3 to 5 years
			Use of minors or disabled persons in exhibitionist acts	3 to 5 years
Obscene display	Fine of 200 to 2,000 q.	5 years	Use of minors or disabled persons in exhibitionist acts	3 to 5 years
False declaration of birth	Fine of 200 to 2,000 q.	5 years	Reform of offence of false declaration of birth	1 to 3 years
			Fraudulent adoption procedures	4 to 8 years Disqualification
			Trafficking in human organs or tissues	3 to 6 years
			Illegal disposal of human organs or tissues	4 to 7 years
			Engagement and use of minors for dangerous activities	1 to 3 years

135. Under the initial draft reform of the Penal Code mentioned earlier, the statute of limitations does not apply to criminal acts committed against boys, girls and adolescents.

136. As regards acts deemed to be criminal acts in penal law not covered by the provisions of paragraph 3 of article 1 of the Optional Protocol described above:

137. The Migration Act (Decree No. 95-98 of the Congress of the Republic) and its regulations (Government Decision No. 529-99 as amended by Decree No. 732-99 of the Congress of the Republic) designate as criminal the acts enumerated below which it is considered may have a relationship with, or serve as a means for, the commission of the criminal acts described in the Protocol.

Illegal entry of persons

138. Any person who promotes or facilitates the entry into the country of one or more persons of foreign nationality without complying with the legal requirements for entry into and residence in the country commits the offence of illegal entry of persons and shall be punished by non-commutable imprisonment for from five to eight years.¹⁶

Transit of illegal persons

139. Any person who promotes or facilitates the entry into the country for purposes of transit of one or more persons without complying with the legal requirements for entry into and residence in the country, with a view to transporting them to a destination in another country, commits the offence of transit of illegal persons and shall be punished by non-commutable imprisonment for from five to eight years.¹⁷

Transport of illegal persons

140. Any person who conducts, or makes available any means of transport, with a view to transporting persons of foreign nationality who have illegally entered, or are illegally residing in, Guatemalan territory commits the offence of transport of illegal persons and shall be punished by non-commutable imprisonment for from five to eight years.¹⁸

Concealment of illegal persons

141. Any person who permits the concealment of persons of foreign nationality who have entered or are residing in Guatemalan territory without having completed the legal requirements in any movable or immovable property with a view to concealing them during transit to another country or to facilitating their continued presence within the country commits the offence of concealment of illegal persons and shall be punished by non-commutable imprisonment for from five to eight years.¹⁹

142. If the acts described in the preceding articles included in this Title are committed with respect to minors in conditions or by means which endanger the health, integrity or lives of persons, or if they are committed by a public official or a public employee, the penalty shall be increased by one third.²⁰

¹⁶ Act on migration, article 103.

¹⁷ Ibid., article 104.

¹⁸ Act on Migration., article 105.

¹⁹ Ibid., article 106.

²⁰ Ibid., article 108.

Responsibility of legal persons for criminal acts and activities of these kinds

143. Although no specific reference is made to the commission of a criminal act related to the sale of children, child prostitution or child pornography, the provisions of the current Penal Code can, under its general section dealing with the criminal responsibility of legal persons, be applied to such cases. Article 38 reads: “In matters relating to legal persons directors, managers, executives, representatives, administrators, officials and employees of such persons who have intervened in the act and without whose participation the act would not have been committed shall be held responsible for the criminal acts in question and shall be punished by the same penalties as those laid down in this Code for individuals.”

144. The regulation of attempts, complicity and direct participation in connection with these activities under Guatemalan legislation is as follows:

145. The general section of the Penal Code contains the rules covering attempts, complicity and direct participation. These are applicable to all criminal acts, including the illegal acts referred to in the Optional Protocol.

146. Title V, chapter I, of the Penal Code refers to participation in a criminal act in the following terms:

147. Persons responsible. The persons responsible for a criminal act are the authors and the accomplices.

148. Only the authors are responsible for minor offences.²¹

Authors are:

- a) Persons who take part directly in actions forming part of the criminal act;
- b) Persons who force or directly induce others to commit the act;
- c) Persons who cooperate in the commission of the act, either during its preparation or its execution, with an action without which commission of the act would have been impossible;
- d) Persons who, having agreed with one or more others to commit a crime, are present at the moment of its commission.²²

Accomplices are:

- e) Persons who stimulate or encourage others in their decision to commit a criminal act;
- f) Persons who promise their aid or cooperation for after the commission of the criminal act;

²¹ Penal Code, article 35.

²² Ibid., article 36.

- g) Persons who provide information or material appropriate for the commission of the criminal act;
- h) Persons who serve as liaison or who act as intermediaries between the participants to secure the agreement of all to the criminal act.²³
- i) On the subject of attempts the Penal Code provides as follows:
- j) “An attempt shall exist when, with a view to the commission of a criminal act, its commission is initiated by external acts and/or is completed for reasons independent of the will of the agent”.²⁴

Adoptions

Bilateral and multilateral agreements subscribed to

149. Guatemala has not subscribed to bilateral or multilateral agreements with other countries on the subject of adoptions of children.

150. According to information furnished by the Procurator-General of the Nation, most Guatemalan children are adopted by families in the United States.

151. In the area of adoption of children Guatemala adhered to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption in 2003.

Monitoring and supervision of persons involved in adoption procedures to ensure that they act in conformity with international agreements

152. The Public Policy for the Comprehensive Protection of Children and Adolescents and its Plan of Action contain a number of strategy measures for the prevention of the sale of children through adoption processes, of which the following may be mentioned:

153. Approval of a national legal framework (National Adoptions Act) and an international framework (Hague Convention) on adoptions with a view to ensuring the controls which will permit the elimination of illegal adoptions.

154. The establishment of follow-up mechanisms for the enforcement of the National Adoptions Act and the Hague Convention, including the strengthening of the directing body and the allocation of resources for its operation.

155. The conduct of awareness-raising campaigns and continuing communication programmes in all the languages and for all the socio-cultural groups on the right of the child to protection from trafficking, sale and trading nationally and internationally.

156. The promotion and execution of support programmes for mothers in extreme poverty to enable them to remain with their sons and daughters.

²³ Ibid., article 37.

²⁴ Ibid., article 14.

157. The encouragement of adoption within the country and the introduction of measures to discourage invalid and abnormal intercountry adoptions.

158. The dissemination of existing national and international legislation on adoptions and the training of the persons responsible putting those instruments into effect.

159. The imposition of sanctions on persons who it is established have been involved in invalid or unlawful actions in the established adoption procedures and those involved in the illegal retention of boys and girls.

160. The Office of the Procurator-General of the Nation has the responsibility for advising and consulting organs and entities of the State. The Procurator-General of the Nation acts as representative of the State. In this area the Office has a section responsible for analysing origins and compliance with requirements in adoption files.

161. In the absence of a specific legislative instrument in line with the Convention on the Rights of the Child and the Hague Convention, the section has introduced a number of legal requirements with a view to determining the appropriateness or inappropriateness of adoption in each individual case.

162. If the file contains an abnormality it is referred to the Office of the Procurator for Children and Adolescents – another section of the same Office – to investigate whether a criminal act has been committed. If the reply is positive, an appropriate complaint is lodged against the persons responsible. In cases of doubt concerning the origin of the child adoption is not authorized until the investigation has been completed in order to avoid trafficking in Guatemalan children and adolescents.

163. In the event that no anomaly is present, a recommendation for approval of the adoption is made.

164. The Office of the Procurator-General of the Nation conducts its activities in accordance with the provisions of the Political Constitution of the Republic, the Convention on the Rights of the Child, the Act concerning the comprehensive protection of children and adolescents and other national and international instruments on the subject. It endeavours to ensure that in every measure it takes the best interests of the child are paramount.

165. Within the Directorate-General of Migration, its National Passports Division is the agency which, in cases of intercountry adoption, after legal proceedings duly approved and concluded before the Office of the Procurator-General of the Nation, is responsible for the careful analysis and study of the documentation submitted by the prospective adoptive parents and, if the documentation complies with the law, issues a passport to the adopted minor.

III. PENAL PROCEDURE

Application of legislative, judicial and administrative measures to establish the territorial and extraterritorial jurisdiction of the State of Guatemala over offences related to the sale of children, child prostitution and child pornography referred to in paragraph 1 of article 3

166. Article 203, paragraph 3, of the Political Constitution of the Republic stipulates that the jurisdictional function shall be exercised with total exclusivity by the Supreme Court of Justice and the other courts established by law.

167. As regards the territoriality of criminal law, article 4 of the Penal Code provides that, except where otherwise provided in international treaties, the Code shall apply to all persons who commit criminal acts or minor offences in the territory of the Republic or in places or vehicles subject to its jurisdiction.

168. Article 5 (concerning the extraterritoriality of the criminal law) gives jurisdiction over:

- A criminal act committed abroad by officials in the service of the Republic, where that act is not judged in the country in which it is committed;
- A criminal act committed in a Guatemalan ship, aircraft or other means of transport, where that act is not judged in the country in which it is committed;
- A criminal act committed abroad by a Guatemalan national where extradition has been refused;
- A criminal act committed abroad against a Guatemalan national where that act is not judged in the country in which it is committed, provided that a charge is laid by the party concerned or the public prosecutor's department and the accused person is present in Guatemala;
- A criminal act which under an international treaty or convention must be punished in Guatemala, even though it was not committed in Guatemalan territory;
- A criminal act committed abroad against the security of the State, the constitutional order and the integrity of the territory, and the forgery of a legal signature, bonds and other securities and credit documents.

169. As regards foreign sentences in criminal matters, the Code provides:

“In the cases covered by paragraphs 1 and 6 of the previous article, the accused person shall be tried under Guatemalan law, even if he has been acquitted or condemned abroad. The sentence or part of the sentence served and the time spent in custody shall be counted for the benefit of the accused.”²⁵

170. Several institutions of State are involved in the application of the criminal law. The most important of these are the public prosecutor's department, the Ministry of the Interior (National Civil Police and prison system), the courts, the Institute for Public Criminal Defence and, where

²⁵ Penal Code, article 6.

minors are concerned, the Office of the Procurator-General of the Nation. Each of these institutions is subject to specific regulations governing their respective competences together with internal rules issued to them by the administrative faculties in accordance with the provisions of the Political Constitution of the Republic.

Other measures established by other instruments concerning the exercise of criminal jurisdiction by the State of Guatemala

171. In accordance with Article 203 of the Political Constitution of the Republic of Guatemala, the jurisdictional function shall be exercised with total exclusivity by the Supreme Court of Justice and the other courts established by law.

172. As regards the exercise of criminal jurisdiction, the courts of justice act in accordance with the rules of extraterritoriality laid down in the Penal Code, which stipulate that its provisions shall apply to all persons who commit criminal acts or minor offences in the territory of the Republic or in places or vehicles subject to its jurisdiction.

Extradition policy of the State of Guatemala related to the offences referred to in paragraph 1 of article 3 of the Optional Protocol, with specific attention to article 5

173. Guatemala endeavours to comply with its international obligations, including extradition, without regard to the nature of the criminal act committed.

174. Article 27 of the Political Constitution of the Republic provides that extradition shall be governed by international treaties; thus extradition is subject to the existence of a treaty

175. Under the above-mentioned constitutional provision a request for extradition could be made pursuant to the Optional Protocol and a response could be given to a request for extradition received from another State provided that an extradition treaty or convention exists with the country concerned.

176. In addition, the subject-matter of the treaty or convention must comprise the commission of the criminal acts regulated by the Optional Protocol so that the request for extradition may be presented to the competent courts.

177. If Guatemala receives a request for extradition from another State Party with which it does not have an extradition treaty, it cannot invoke the Optional Protocol as a legal basis for extradition in respect of the above-mentioned criminal acts because the Protocol does not take precedence over the Political Constitution of the Republic.

178. In Guatemalan criminal law not all the acts referred to in paragraph 1 of article 3 are classified as criminal acts. Consequently extradition in respect of criminal acts related to the sale of children, child prostitution and child pornography would not take place if the treaties specify the criminal acts which can form the subject of extradition and these acts are not included.

179. Among the extradition treaties which Guatemala has subscribed to, the Optional Protocol could be applied to those which do not exhaustively enumerate the criminal acts which form the subject of the Optional Protocol but which establish a specific period of deprivation of liberty as a basis for the granting of extradition. These include the treaty concluded with the countries of

Central America and the countries which participated in the Seventh International American Conference.

180. It must, however, be kept in mind that each extradition treaty contains conditions for determining whether extradition shall or shall not be granted, depending on the content of the legislation of the signatory countries or the circumstances of the case in the judgement of the requested State.

181. Guatemala endeavours to comply with its international commitments, including those regarding extradition, without distinction regarding the nature of the crimes or offences. In this regard the Supreme Court of Justice has adopted administrative measures to facilitate proceedings in this area, designating a specific court to take cognizance of and handle extradition matters and issuing regulations to govern administrative proceedings of this type through the appropriate diplomatic channels and with the countries with which treaties exist.

Measures taken for seizure and confiscation of goods and proceeds and closure of premises

182. The measures which the courts can take are restricted to two situations:

- At the investigative stage, embargoes and other coercive measures requested by the public prosecutor's department;
- At the sentencing stage, to impose the confiscations laid down in respect of criminal acts of the kind concerned under the law.

183. Information on specific examples of some of the measures taken in this area follows:

- The Fiscal and Frontiers Unit in the National Civil Police, in coordination with other agencies in the machinery of justice, has carried out operations on the streets during which it has seized DVDs containing child pornography which were being sold illegally.
- Also, raids have also been carried out on Internet cafés, seizing material containing child pornography and establishing the commission of criminal acts related to the Optional Protocol. Hitherto no proceeds have been confiscated and no premises have been closed.

IV. PROTECTION OF THE RIGHTS OF CHILD VICTIMS

Measures adopted to protect the rights and interests of victims at all stages of the criminal justice process, while ensuring the rights of the accused to a fair and impartial trial (article 3 and paragraphs 3 and 4 of article 9)

184. With regard to child victims the Act concerning the comprehensive protection of children and adolescents provides for proceedings of two types: The first type involves the application of measures to protect a boy, girl or adolescent whose human rights are threatened or violated; such cases are heard and handled by a children's and juveniles' judge. Proceedings of the second type are resorted to for the investigation and determination of criminal responsibility of an adult who has committed a criminal act against a child or adolescent; such cases are handled by a criminal court judge.

185. For cases of the first type, in accordance with the Act concerning the comprehensive protection of children and adolescents, where the rights of children and adolescents are threatened or violated, a special protection procedure is initiated before the competent judge with the aim that, after investigation and in pursuance of a judicial ruling, the violated right should be restored or the threat or violation should cease.

186. To that end the same Act requires the Office of the Procurator-General of the Nation, through the Office of the Procurator for Children and Adolescents, in the name of the State of Guatemala, to act as the legal representative of children who have no such representation and to intervene actively in all judicial proceedings on behalf of victims who are minors. In protection proceedings it is the body assigned responsibility for directing investigations.

187. In cases of the second type, if a child or adolescent is the victim of a criminal act, the Office of the Procurator for Children and Adolescents must intervene in the criminal proceedings to defend the interests of the victim and, where necessary, to establish itself as an associated litigant and a civil party in accordance with the Code of Criminal Procedure.

188. This approach ensures that a child or adolescent victim is not placed at a disadvantage in the criminal proceeding. In addition, the Office of the Procurator-General of the Nation is under an obligation to ensure compliance with the Convention on the Rights of the Child at each stage of the proceedings, principally with regard to the statements of children and adolescents and the form in which these can or should be made in order to avoid further victimization.

189. They also, as counsellors to child victims in criminal court cases, invoke the different provisions on the child's behalf and challenge any arbitrary decision or resolution which might run counter to the provisions of national and international instruments.

190. Defendants are entitled to a fair and impartial trial. The Political Constitution of the Republic provides that no person may be sentenced or deprived of liberty without having been summoned, heard and convicted in a legal trial conducted before a competent judge or court established in advance. The penal system in Guatemala provides for a trial in which the constitutional procedural guarantees must be respected. In addition to the subject of the trial, the following persons participate: competent judges legally appointed, officers of the public prosecutor's department, and public or private defence counsel, who ensure that during the trial proceedings all the principles laid down in the law on criminal proceedings are respected.

191. It should also be borne in mind that the public policy of comprehensive protection for children and adolescents and its plan of action envisage strategic measures to protect child and adolescent victims of the abnormal practices enumerated in the Optional Protocol through the promotion and establishment of specialized programmes and support and care services for children and adolescents affected by sexual exploitation, principally at community level, which take into account the rights of the child and the principles of restitutive justice and facilitate recovery and reintegration into society, the school and the family.

Measures adopted to ensure that the best interests of the child are the primary consideration in the relevant provisions of national legislation governing the treatment of child victims by the criminal justice system

192. The principle of the best interests of the child forms the backbone of the new Guatemalan legislation on children. It has been defined in a broad and explicit manner to make it easy to

interpret and understand by the persons responsible for its application with the aim of ensuring that the rights of children and adolescents are exercised and enjoyed, principally when they have been victims of criminal acts, and avoiding at all costs any reduction, distortion or restriction of the guarantees and rights recognized by law. This principle is also one of the guiding principles of the Public Policy on the Comprehensive Protection of Children and Adolescents

193. One of the purposes of the Temporary Protection and Shelter Hostels in the Social Welfare Secretariat is the provision of children and adolescents with their basic food, health and housing needs and to guarantee interdisciplinary care to ensure their survival, safety and all-round development.

194. It is important to note that the Constitutional Court has issued rulings in which this principle is invoked. Some of these rulings are appended to this report.

Measures to ensure that doubts concerning the real age of the victim do not impede the initiation of investigations to determine the victim's real age

195. Article 137 of the Act concerning the comprehensive protection of children and adolescents refers to the presumption of minority, stressing that in cases where the age of a person presumed to be under age 18 cannot be determined by any measure that person shall be deemed to be a minor and shall remain subject to the provisions of that Act.

196. In practice, when there is doubt concerning the real ages of victims who are presumed to be minors, if no information or entry of birth in the Civil Register can be found, an order is issued for evaluation by a forensic medical officer to determine age.

197. In addition, the Social Welfare Secretariat reports that in all cases where care is provided by the Temporary Protection and Shelter Hostels and where the real ages of the children referred to them by the children's and adolescents' judges are not known, they are accepted, and during their stay in these hostels the welfare professional assigned to them undertakes responsibility for conducting the necessary investigations, consulting municipal, hospital and other registers as necessary by means of personal visits, telephone and/or fax in order to establish age. Once the age is known the judge hearing the case is notified. In the event that it has been impossible to establish the real age, a court order for forensic examinations is requested which will permit determination of the approximate age. On the basis of the results application is made to the judge for authorization to establish an appropriate birth certificate.

Adaptation of the procedures so that they are child sensitive, with special regard to the dignity and worth of the child and her/his cultural background, including the procedures used for investigation, interrogation, trial and cross-examination of child victims and witnesses, the right of parents or guardians to be present and the right to be represented by a legal adviser or to apply for free legal aid

198. The Act concerning the comprehensive protection of children and adolescents, in its chapter of substantive provisions, envisages the recognition of the human rights of children; these rights are classified as individual or social. The rights covered include the right to dignity, and the State is placed under obligation to protect them from all forms of inhuman, violent, intimidating, humiliating or coercive treatment.

199. Likewise, it is recognized that children belonging to ethnic groups or of ethnic origin, whatever their parentage, have the right to have their own cultural and educational lives, to practice their own spirituality and customs, to use their own languages and to enjoy all the rights and guarantees inherent in them in accordance with their world views.²⁶

200. These rights must be respected and safeguarded at every stage of judicial proceedings where the child is the injured party. The Act concerning comprehensive protection mentioned earlier stipulates, as a procedural guarantee, that child victims should be heard in their own languages at all stages of the trial and that an interpreter should where necessary be present. It also provides that children should attend planned judicial hearings accompanied by a social worker, a psychologist or a person of a similar profession.²⁷

201. It also stipulates that the Office of the Procurator-General of the Nation, through the Office of the Procurator for Children and Adolescents, is to become a party in criminal trials to defend the interests of the victims (art. 108).

202. In compliance with this legal requirement that institution takes part, with the status of their legal representative, in the interrogation of child victims to ensure respect of their rights, give them advice and defend them. During the trial it will where necessary provide the child with legal counsel or request suspension of the proceedings while the judge appoints a suitable professional to provide assistance to ensure that the rights of children are not infringed.

203. In addition, with a view to avoiding secondary victimization, the judiciary has prepared screens or partitions which are used in judicial proceedings where child victims have to appear to avoid visual contact between aggressor and victim.

204. The Social Welfare Secretariat assists child and adolescent victims, applying in each of its activities a rights-based approach which guarantees the restitution of the rights which have been violated. In the protection and shelter hostels each professional has assigned duties. In this context the legal procurator has responsibility for conducting the necessary consultations before the court hearing each case; a woman social worker must interview the victims and make the home visits necessary to obtain appropriate recourse by the family; and an interview with a psychologist must take place for evaluation to obtain a diagnostic impression and thus provide the necessary psychotherapeutic treatment and a medical professional will provide health care. Each professional takes account in his or her work of the individual characteristics of each child or adolescent, respecting the child's cultural background, identity, dignity and values.

205. A member of the multidisciplinary team accompanies the child victim to hearings concerning her/him and other legal proceedings, until the child's situation is finally established as ordered by the competent judge in accordance with the best interests of the child and the family.

Legal consequences for a child who has committed an offence under the law applicable to her/him as a direct result of the practices prohibited under the Optional Protocol

206. It is worth mentioning that Title II of the Act concerning the comprehensive protection of children and adolescents, which deals with adolescents in conflict with the criminal law, states

²⁶ LEPINA, articles 10 and 16.

²⁷ Ibid., article 116, sections a) and c).

that all persons having reached age 13 but under age 18 committing an act which violates criminal law are from that moment onwards in conflict with the law.

207. It also states that acts performed by minors under age 13 which are criminal acts or minor offences shall not be designated as such. Boys and girls in this situation shall be the subject of the medical, psychological and educational care necessary under the care and in the custody of their parents or guardians and must be brought before the children's and juveniles' courts (for child victims of violations or threats of violations of their human rights).

208. For adolescents in conflict with the criminal law the act lays down a number of penalties, which will be applied in accordance with the gravity of the act committed. Deprivation of liberty is exceptional, especially for persons aged over 13 or 14, and will only be applied where it is impossible to apply a less severe measure.²⁸ The sanctions provided for are:

- Socio-educational sanctions: 1) admonishment and warning; 2) assisted freedom; 3) community service; 4) reparation of damage caused to the person offended against;
- Guidance and supervision orders: 1) installation in a particular place of residence or change of residence; 2) cessation of communication with specified persons; 3) cessation of visits to specified places of entertainment; 4) obligation to register in a formal education centre or another group the purpose of which is to impart training in an occupation or trade; 5) prohibition of consumption of addictive or habit-forming alcoholic beverages and hallucinogenic, stimulating, narcotic or toxic substances; 6) obligation to undergo a programme of a training, cultural, occupational, labour, sexual or road education or other similar programme;
- Therapeutic custodial orders for boys, girls or adolescents or ambulatory treatment in a specialized public or private health centre for detoxification and elimination of addiction to the drugs mentioned earlier;
- Withdrawal of driving licence.

209. Sanctions involving deprivation of liberty:

- Obligation to remain at home;
- Deprivation of liberty during free time;
- Deprivation of liberty in specialized centres at week-ends (from 8 a.m. on Saturdays until 6 p.m. on Sundays);
- Deprivation of liberty in specialized centres of an open, semi-open or closed nature.²⁹

210. Child and adolescent victims of these practices may not be kept in the same centres as adolescents who have infringed the law. For this reason they are sent by the children's and adolescents' judges to temporary hostels and solely for their protection and shelter where their

²⁸ LEPINA, article 182.

²⁹ LEPINA, article 238.

rights have been threatened or violated; they include victims of trafficking, commercial sexual exploitation or any of the criminal acts mentioned in the Optional Protocol.

Right of children and adolescents to be kept informed throughout the judicial proceedings

211. The Act concerning the comprehensive protection of children and adolescents aims to ensure that criminal trials have an educational approach. To that end it stipulates categorically that child victims must receive clear and precise information in their mother-tongues on the significance of each of the steps in the trial which take place in their presence and the content of and reasons for each decision taken.³⁰

212. The attorney from the Office of the Procurator for Children and Adolescents of the Office of the Procurator-General of the Nation, in his capacity as legal representative, is responsible for keeping the child informed of what is happening at every stage of the proceedings according to the age and degree of maturity the child has reached. The attorney must also indicate the moment at which the child is to participate and clear up any doubts the child may have. In addition, if he considers it necessary, he may appoint a psychologist or other professional from that institution to accompany the child while making a statement and decide whether the child should continue or discontinue the statement.

213. Children and adolescents referred to the Social Welfare Secretariat are informed individually by the interdisciplinary team of their rights in general and, more specifically, of the rights which have been violated. They are accompanied and assisted by the legal procurator in all matters relating to the judicial trial; the procurator is responsible for explaining the proceedings which the child will have to undergo from the beginning to the end of the process. Similarly, each member of the team will play the appropriate part in the provision of accompaniment and necessary assistance.

Allowing the child to express her/his views, needs and concerns

214. Article 12 of the Convention on the Rights of the Child applies during criminal trials concerning criminal acts committed against minors.

215. In trial proceedings for protection where the rights of children have been threatened or violated the relevant Act stipulates that at the hearings referred to the judge must hear the child first of all as a means of ensuring that the child's views and version are taken into account and considered in the decision handed down by the court. If necessary an interpreter must be present.³¹

216. In practice the professionals of the Office of the Procurator-General of the Nation assisting children at any trial in which the child is a victim ensure that he or she can intervene in the trial, according to the age and degree of maturity reached, either personally or in an indirect manner; the latter may consist of a psychological examination or any other scientific evidence accepted by the judge.

³⁰ Ibid., article 116, section d).

³¹ LEPINA, article 116, section a), article 19, section c), article 123, section b).

217. One of the priority aims of the protection and shelter hostels of the Social Welfare Secretariat is that children and adolescents should know and make use of their right to express their views, needs, feelings and concerns; thus they are encouraged to do this from the moment of their entry and during their stay. At all times they are guided in a manner designed to develop within themselves confidence and security, so that they can express themselves freely during the judicial hearings and debates to which they are exposed.

Support services for child victims, including psychosocial, psychological and linguistic support at every step of legal proceedings

218. The protective measures envisaged by the Act concerning the comprehensive protection of child victims include medical, psychological and psychiatric treatment as in-patients in hospital or in the form of out-patient treatment.

219. In addition, socioeconomic studies of the child and the child's family will be undertaken as part of the investigations. When the hearing takes place the child will be accompanied by a professional in social work, psychology or another field as required.³²

220. In practice, during legal proceedings a request may be made to the Office of the Procurator-General of the Nation, or to any State institution, for the participation of a professional in these areas so that the child victim or victims may receive aid of this kind.

221. To that end, another priority aim of the services provided in the protection and shelter hostels of the Social Welfare Secretariat is the immediate determination of the individual characteristics and needs of the children and adolescents who are admitted. After evaluation they are assigned to programmes matching their profiles in order to receive adequate multidisciplinary short-term and long-term care in the light of their problems, their situations and their cultural backgrounds.

Protection of the privacy and identity of child victims

222. In addition to the content of article 16 of the Convention on the Rights of the Child, application of which is compulsory, the Act concerning comprehensive protection provides for discretion and reserve in acts performed on behalf of child victims of violations of their human rights. The only parties participating in the procedure established for child victims are the persons concerned and the body directing the investigation, namely the Office of the Procurator-General of the Nation.³³

223. In the trials of adolescents in conflict with the law, the principle of confidentiality, under which emphasis is laid on respect for the identity and image of the adolescents concerned, applies.³⁴

224. A criminal trial can take place with this protection in order not further to affect the child on account of what has happened to him or her. Where necessary an application is made to hold the

³² Ibid., article 112, section e), article 116, section c), article 121).

³³ LEPINA, article 119.

³⁴ Ibid., articles 116 and 153.

proceedings in camera and that during the conduct of the trial only the parties in the trial be allowed access to the records and the proceedings occurring during the trial.

225. Application may also be made for the statements of child victims to be treated as a foretaste of evidence to come with a view to permitting children not to be present at debates where they will have to come face to face with the aggressor.

226. Equally, all information given by children and adolescents and their family members, guardians, legal representatives, etc. to the Social Welfare Secretariat programmes is confidential. The child or adolescents is informed of this situation so that he or she can speak out confidently and freely; this helps to enable the multidisciplinary team to obtain a better knowledge of the case, which makes for a more efficient approach to it.

Measures to ensure the safety of child victims, their families, witnesses on their behalf and individuals and organizations dealing with the prevention and/or protection and rehabilitation of child victims from intimidation and retaliation

227. When the case so requires, the public prosecutor's department, through its witness protection programme, provides protection for all persons in danger on account of their situations.

228. Likewise, the Office of the Procurator for Children and Adolescents in the Office of the Procurator-General of the Nation may, where one or more children are at risk, have them provisionally placed in a public or private hostel pending determination of their legal position.

229. The Social Welfare Secretariat can adopt different safety measures in accordance with the in-house rules of the Protection and Shelter Hostels, for example, restricting visits to children and adolescents without authorization by the competent judge. In special circumstances it may request the support of other institutions, such as the National Civil Police, the Office of the Procurator for Human Rights, mayors of municipalities and any other bodies which can provide safety for a victim who is under the protection of the Secretariat. Also, in the event that a child or adolescent wishes to lodge a complaint, he or she is given support and professional accompaniment.

Procedures for seeking compensation for damages from those legally responsible and for avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation

230. In this area, under the provisions of the Act concerning the comprehensive protection of children and adolescents, it is the responsibility of the Office of the Procurator-General of the Nation, acting through the Office of the Procurator for Children and Adolescents, to lodge with the public prosecutor's department complaints concerning children and adolescents who have been victims of criminal acts and have no legal representation and intervene directly in criminal trials to defend the interests of the minors concerned.

231. In view of the above, in order to seek and collect compensation for damages and prejudice suffered, the Office of the Procurator-General of the Nation intervenes on behalf of children as an associated litigant in the name of the State of Guatemala. To that end the judge in charge of the criminal proceedings appoints the Procurator for Children and Adolescents as responsible for

collecting the compensation and making it over to the child or the person with legal powers of administration of the child's assets, if there is one.

232. The functions of the Social Welfare Secretariat include the provision of professional support for children's and juveniles' judges, conducting the evaluations, investigations and legal proceedings required to make available to the judges the necessary information concerning the magnitude and extent of the damage caused to children and adolescents which will enable them to order appropriate sanctions against persons as necessary and to determine criminal or civil liabilities.

233. Provision for claims for damages through civil proceedings is made in the Code of Penal Procedure as follows:

- Plaintiff in civil proceedings. In penal procedure a civil action may only be brought by:
 - The person who under the relevant legislation is entitled to lodge a complaint in respect of damage or prejudice caused by the punishable act;
 - The heirs of that person.³⁵
- Representation. The legal representatives of persons lacking in capacity to appear in the proceedings shall act on their behalf.
- Persons who cannot, or do not wish to, be a party in the proceedings may have themselves represented by a duly empowered judicial representative.³⁶
- Defendants. Civil proceedings must be undertaken against the accused and shall continue even if they are not conducted separately. They may also be undertaken against any person who under a directly applicable provision of the law is liable for any damage or prejudice which the accused has caused through the punishable act. If in the proceedings there are several accused persons and third parties who are defendants in the civil proceedings and the plaintiff does not restrict his claim to specific persons, it shall be understood that the claim is directed against all of them.³⁷
- Delegation of civil proceedings. If the plaintiff is a minor or incapable and lacking in representation, the public prosecutor's department shall take responsibility for pursuit of the civil proceedings in the appropriate legal form.³⁸

Necessary assistance for social reintegration and full physical and psychological recovery

234. In the application of measures of protection account shall be taken of the needs of the victim. Preference shall be given to measures designed to strengthen links with the family and the community; respect shall be shown for personal and cultural identity.³⁹

³⁵ LEPINA, article 129.

³⁶ Ibid., article 130.

³⁷ Ibid., article 132.

³⁸ Ibid., article 538.

235. The State is obliged, through its competent agencies, to ensure that the public and private institutions caring for children whose rights have been violated have those rights respected and restored, especially the right to life, security, cultural identity, customs, tradition and language and are provided with comprehensive and decent treatment.⁴⁰

236. The same Act provides that the aim of the measures of protection applied for the benefit of child victims shall be reintegration of the child into society and the family and his or her full physical and psychological recovery.⁴¹

237. The Social Welfare Secretariat is the agency of State responsible for supporting the reintegration and recovery of child victims with the intervention of specialized professionals through the Protection and Shelter Programme, providing support services in the social, medical, psychological, educational, recreational, occupational and other areas according to the needs of each case.

238. To provide protection for victims of commercial sexual exploitation steps are being taken to create a protection and training centre in the municipal capital of Coatepeque, in the department of Quetzaltenango, close to the Mexican border. This centre will operate on the premises of a protection hostel run by the Social Welfare Secretariat. The redesigning and reconstruction work is being carried out with the support of the Social Investment Fund (FIS), and support for equipment of the centre is being negotiated with the United States Embassy and IDA.

239. The Social Welfare Secretariat is also developing in the Mi Hogar residence for girls, which provides care for victims of commercial sexual exploitation, a project of care provision for girls which guarantees respect for their rights; the project is being supported by ILO/IPEC and ECPAT/Guatemala. During 2004 and the first two months of 2005 approximately 62 girls and adolescents, the majority of them Guatemalan nationals, received care.

V. PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Measures of a legislative, judicial and administrative nature and policies and programmes adopted to prevent the offences referred to in the Optional Protocol in accordance with article 9, paragraphs 1, 2, 5 and 10, and paragraph 1 of the Optional Protocol

The Social Welfare Secretariat of the Office of the President

240. Since 2001 this body has been responsible for the implementation of the National Plan to Combat Commercial Sexual Exploitation as a public policy with the support of the Liaison Group, which envisages measures to prevent the practices enumerated in the Optional Protocol. To that end, and with the aim of developing measures to give impetus to implementation of the National Plan to Combat Commercial Sexual Exploitation, a section to combat commercial sexual exploitation has been created and steps taken to bring about the establishment of a National Commission for the Elimination of Commercial Sexual Exploitation; the proposal is awaiting approval in the Executive Secretariat of the Office of the President of the Republic.

³⁹ Ibid., article 111.

⁴⁰ Ibid., article 76, section a).

⁴¹ Ibid., article 112.

241. It also provided support for, and participated in, the framing and discussion of a proposal for the reform of the Penal Code which identifies the different criminal acts, especially in the area of commercial sexual exploitation.

Ministry of Education

242. The Ministry of Education is currently participating, through the Ministry of External Affairs, in the inter-institutional network for the sale of and unlawful trafficking in persons.

243. In this context it has initiated a coordination process to assemble knowledge of the principal international laws and agreements forming part of current legislation.

244. In its statement of aims the Education Act envisages the training of educators in human principles, the fostering of moral and spiritual qualities and the importance of the family as the basic nucleus of society. However, it is important to obtain a specific ministerial decision governing activities relating to prevention in the area in question.

245. In the process of reform of education, and particularly the curricular review component, elements relating to the subject are being defined. Proposals have been made to develop educational materials which include elements relating to prevention in the area in question in accordance with the content of the educational reform on this subject.

Ministry of Health

Health policies concerning the provision of comprehensive care for children and adolescents in Guatemala

246. The policies of the Ministry of Public Health and Social Assistance served as a reference for the definition of the Sectoral Policy for children and adolescents, since those policies include proposals to improve the health conditions of Guatemalan citizens, extend coverage, increase public expenditure on health and decentralize and modernize the functioning of the different levels of care so that the policy targets and measures set can be accommodated. The policy enumerates social and community areas with multicultural, multilingual, multiethnic and gender focus permitting the design of institutional benchmarks for use as a guide in the conduct of the initial process required for the development of policy. These benchmarks are set within the health policies for 2004-2008.

247. The Ministry of Health has a policy on health for children and adolescents in which several central lines of action are laid down, namely:

- Comprehensive and specialized care for adolescents and juveniles;
- Reproductive health and sex education for adolescents and juveniles;
- Health for peace;
- Health in risk factors, which includes measures for prevention and care in cases of ill-treatment, abuse and prostitution of adolescents and juveniles;
- Environment;

- Occupational health and safety for adolescents and juveniles;
- Food and nutrition for adolescents of both sexes.

248. A national network for responsible parenthood has been established to check irresponsible behaviour of parents to children. This is done by the inclusion of measures permitting the participation of men and women from different ethnic groups in the country. The aim is to make the participants more aware of their important task as parents in the training of their children, since due to parental irresponsibility the children may fall under the sway of persons who will abuse them or use them in unlawful activities such as prostitution, pornography or other activities deleterious to their physical, mental and social health.

249. At present there is no information system identifying cases of child and adolescent victims of sexual exploitation being cared for in hospital centres.

Ministry of Labour and Social Insurance

250. The problem of child and adolescent labour affects the well-being and integrity of children and adolescents. The INE study on child labour in Guatemala, published in 2003, reveals that there were approximately 937,321 boys, girls and adolescents in the economically active population (EAP).

251. This is a problem of concern to the State of Guatemala. Consequently, since 1990, with the ratification of the Convention on the Rights of the Child, ILO Convention No. 138 concerning the minimum age of admission to employment and the signature in 1996 of the Memorandum of Understanding with the International Labour Organization (ILO), it entered into a commitment to eradicate child labour. Following the last-mentioned signature the International Programme for the Elimination of Child Labour (ILO/IPEC) was introduced in the country. It has worked with the Ministry of Labour and Social Insurance in different programmes and actions designed to eliminate child labour in Guatemala.

252. In 1999 a consultation process was begun with a view to assembling elements for the framing of a plan of action on the subject which coordinates sectoral public policies. The outcome of this process was the National Plan for the Elimination and Prevention of Child Labour and Protection of Working Adolescents, which was conceived as a national policy document within the framework of which public and private actors would reflect their actions designed to eliminate child labour and protect working adolescents in Guatemala.

253. In 2002, by Government Decision No. 347-2002, the National Commission for the Prevention and Elimination of Child Labour and its executive secretariat were established. The Commission consists of representatives of the Ministries of Labour and Social Insurance, Education, Public Health, Agriculture, Stock-rearing and Food, Culture and Sports, and Social Welfare, the Presidential Secretariat for Women, the President of the ANAM, the President of the Executive Board of the Guatemalan Social Security Institute (IGSS), a representative of the CACIF, NGOs and the trade union federation.

254. By ratifying Convention No. 182 on the worst forms of child labour in 2001 the State of Guatemala has assumed responsibility for implementing it and taking account of Recommendation No. 190, which states that each State should define the worst forms of child labour. To that end the Ministry of Labour and Social Insurance, through the Directorate-General

of Social Insurance and the Care for Working Adolescents Unit, has launched the process of definition of tasks of these kinds together with the governmental and non-governmental institutions forming part of the executive secretariat of the National Commission for the Gradual Elimination of Child Labour.

255. That executive secretariat undertook the organization of the studies and diagnoses carried out into the conditions and environment of child labour in the different sectors of production; these included an analysis of dangerous work in Guatemala from the legal, commercial, social and occupational health standpoints.

256. As a result of that analysis a proposed draft of regulations concerning dangerous and unhealthy work among minors under age 18 was prepared. The proposal is at present under review in the Secretariat-General and will subsequently be sent through the Ministerial Office to the Office of the President of the Republic for approval and official promulgation.

257. The Ministry of Labour and Social Insurance, through the Labour Inspectorate-General, established, by Government Decision No. 435 "B" 2003, the Special Unit of Labour Inspectors, whose task it is to supervise compliance with labour and social insurance legislation in all places and work centres where it is known that boys, girls and adolescents are working. Its principal duties are as follows:

- It has responsibility for visiting on a continuing basis, on the request of a party or on its own initiative and without the need for a complaint of any kind, any work centre or place of work in the territory of the Republic in which it is known that there are boys, girls or adolescents performing services as formal- or informal-sector workers;
- It also monitors effective compliance with the legal provisions prohibiting boys, girls and adolescents under age 14 from being engaged as workers.

Other measures undertaken by the Ministry of Labour and Social Insurance with the aim of preventing and gradually eliminating the worst forms of child labour are:

258. **Regulation of fireworks manufacture.** Government Decision No. 28-2004 issued regulations for fireworks manufacture, article 34, in chapter 9, of which reads: "The engagement of minors under age 18 in all activities connected with firework manufacture is strictly prohibited."

259. **Creation of a Technical Committee for the elimination of child labour in domestic service.** Government Decision No. 24-2005 established the Technical Monitoring Committee for the Prevention and Elimination of Child Labour in Domestic Service performed by boys, girls or adolescents in private homes. It consists of representatives of the Ministries of Labour and Social Insurance, Education, Public Health and Social Assistance and Culture and Sport, the Guatemalan Social Security Institute (IGSS), the Presidential Commission on Human Rights, The Office for the Defence of Indigenous Women, the Social Welfare Secretariat and the Office of the Procurator for Human Rights (Office of the Defender of Children and Juveniles). It is accompanied and advised by the Centre for Working Women in Private Homes association (CENTRACAP), the Conrado de la Cruz association, the International Labour Organization (ILO-IPEC), the United Nations Children's Fund (UNICEF) and the Trade Union and Popular Action Unity (UASP), the most representative trade union in the country.

260. The Technical Committee became operational on 17 February 2005; it has now drawn up a plan of work, and each institution has begun to execute its respective activities.

261. **Executive secretariats for the elimination of child labour.** The Directorate-General of Social Insurance, through the Care for Working Adolescents Unit, has coordinated the establishment and strengthening of executive secretariats for the elimination of child labour in the departments of San Marcos, Quiché and Huehuetenango for the introduction of the National Plan for the Elimination and Prevention of Child Labour and the Protection of Working Adolescents. They are now operational, and each one will draw up its plan of action for 2006-2007.

262. In coordination with the Ministry of Education, 8,524 bursaries have been arranged for working boys and girls to enable them to leave work and be integrated into the educational system. They have been allocated as follows: San Raymundo, Guatemala City, 3,222; for the department of San Marcos, 4,000; San Rafael Chilascó, in the department of Baja Verapaz, 500; and for the department of Retalhuleu, 800.

263. The Care for Working Adolescents Unit is under the authority of the Ministry of Labour and Social Insurance and is responsible for projects and programmes designed to provide protection for adolescents working in the formal or informal sectors or in families.

264. In the event of failure to comply with any labour obligations on the part of employers or representatives the unit will report the same to the labour inspectorate and the Directorate-General of Labour for investigation and sanctioning as appropriate.

265. The Ministry of Labour and Social Insurance considers child prostitution, not as a form of employment, but as commercial sexual exploitation directed against minors through which their human rights are violated; consequently, when it has knowledge of concrete cases of situations of this kind it reports them immediately to the public prosecutor's department.

VI. PUBLIC POLICY OF COMPREHENSIVE CARE FOR CHILDREN AND ADOLESCENTS

266. A number of the strategic prevention measures envisaged in the public policy and its plan of action relating to the practices enumerated in the Optional Protocol may be mentioned here.

267. Awareness-promotion and continuing communication programmes are conducted in all languages and for all socio-cultural groups on the right of children and adolescents to be protected from commercial sexual exploitation, including paedophilia, child prostitution, sex tourism, child pornography, trafficking and abduction.

268. The national plan of action to combat the commercial sexual exploitation of children and adolescents is to be pursued in the light of the findings of the evaluation; a budget allocation is to be made and an institution or institutions assigned responsibility for implementation of the plan,

269. The municipal boards for the protection of children and adolescents under the Office of the Procurator for Human Rights are to be strengthened to enable them to provide counselling and comprehensive support to children and adolescents affected by sexual exploitation.

270. Stricter control is to be exercised at frontier posts to combat the sale of and trafficking in girls and adolescents.

271. Steps are to be taken to provide all the institutions involved in the direct provision of care in cases where children and adolescents are affected by commercial sexual exploitation with standardized registers and protocols for care and referral with a focus on rights.

272. Training programmes for personnel involved in the provision of comprehensive and specialized care for children and adolescents affected by commercial sexual exploitation are to be created and strengthened.

273. The support of the communication media and the tourism sector is to be obtained for the conduct of campaigns against sexual exploitation and trafficking in boys, girls and adolescents.

Means used to raise awareness within the population at large about the offences prohibited under the Optional Protocol

THE ROLE OF THE STATE

Ministry of Culture and Sports

274. In the Ministry of Culture and Sports there are three directorates, described below. Each in its own field conducts educational activities designed to prevent and foster awareness of the risks threatening our children – including the themes which form the subject of this Optional Protocol.

275. The Directorate for Cultural and Natural Heritage is responsible for activities and programmes focussed on the training and education of children and adolescents. Although these activities are not directly concerned with the subject-matter of the Protocol, they do touch on it indirectly in that the visits and educational activities described below contribute to the enrichment of the culture of the visitors, which also helps to make children and juveniles less vulnerable to these practices. The principal programmes administered by this directorate are:

276. The Old Books Museum caters for boys and girls from protection and shelter hostels and children and adolescents at risk who are in programmes administered by non-governmental organizations such as Casa Alianza and other nation-wide bodies.

277. The visitors to the National Natural History Museum include pupils from schools, kindergartens administered by social organizations and other institutions working with children and adolescents of all kinds; many of them bring children and adolescents at risk. It endeavours to sensitize them and enrich their knowledge of the environment and nature.

278. The National Palace of Culture, the premises of which were previously used as government offices; it has now been converted into a museum open to Guatemalan and foreign visitors: it has a number of guides, who have direct contacts with the visitors.

279. The guides receive instructions on the methodology to be adopted with each group. At the end of each tour they must say a few words on the desirability of cooperation by everyone in the protection of children. These mechanisms are designed to make persons with resources and opportunities aware of those who do not have either the same opportunities or access to all basic services.

280. The National Palace of Culture is visited by some 120,000 persons every year. They can be classified as follows:

- Guatemalan and/or foreign visitors, with ages between 18 and 75 years;
- Students, aged between 5 and 25 years.

281. The facilities of the Palace are also available to governmental and non-governmental organizations for the conduct of their own activities; these facilities enable them to exhibit information material, videos and photographic and professional exhibitions; entrance is free of charge. During the period 2002-2004 these premises were used for presentations by Casa Alianza and the La Esperanza rehabilitation association of the subject-matter referred to in the Protocol, and an anti-AIDS fair was organized.

282. The National Library of Guatemala welcomes all types of students from all levels of education (primary, basic, diversified and university) without discrimination. Through the information service of this cultural centre information is transmitted to the communities. The librarian plays an important role, since he promotes meetings, lectures, fora and other events to facilitate, orientate and disseminate actions of all kinds, especially in the field of human rights. These actions help to prevent situations endangering children.

283. The Directorate for Sports and Recreation organizes programmes of care for children and social reintegration; the programmes include physical, sports and recreational activities for children and juveniles in general and also for groups requiring special care; they are designed to strengthen principles and values such as tolerance and solidarity and to prevent the commission of criminal acts.

284. Although it has not formulated any measures, programmes or policies specifically combating child prostitution and child pornography, it seeks to encourage young people to spend their free time in sports and recreation and to have other facilities for passing the time without engaging in types of activities which place their integrity, development and safety at risk.

Directorate of Culture and Arts

285. The alliance with Save the Children Guatemala: one of the principal achievements of this directorate has been the conclusion of an alliance with Save the Children Guatemala for support of the reproductive health programme.

286. The contribution of the Ministry of Culture and Sports has consisted of the provision of educational support, through the Training Unit of the Cultural Promotion Department, in the municipalities of Nebaj, Chajul and San Juan Cotzal in the department of Quiché.

287. The objective was to develop awareness among youth leaders in communities where Save the Children Guatemala is active. Over 250 children and juveniles in these municipalities have taken part in activities in different areas: experimental painting, theatre, mural painting and talks on leadership, participation, community organization and self-esteem.

288. Through these painting and theatre workshops they are encouraged to become multiplying agents for the activities developed during the workshop periods; they are also informed of the risks and dangers of the subjects enumerated in the Protocol of concern here.

289. In addition, during the workshop periods advantage is taken of the occasion to provide items of information on the suitable use of free time and the causes and consequences of the breakdown of families and child prostitution with the aim of giving them an idea of the dangers to which young people are exposed as a result of the negative influence of the environment of violence prevailing in the more distant municipalities in the country.

Other alliances

290. Strategic alliances have also been formed with bodies such as CARDISOGUA in Quetzaltenango, INTERVIDA in Sololá and Quetzaltenango, Totonicapán, Huehuetenango and San Marcos, all departments in the Western region of the country, and with the Directorate-General of Physical Education, on prevention themes relating to children. In some cases it works with them directly; in other cases indirectly.

291. The Ministry of Public Health and Social Assistance is promoting a number of basic strategies for working with children, adolescents and juveniles.

292. Promotion and dissemination of health programmes.

293. Under the public policy on sexual and reproductive health for adolescents a number of promotional and extension activities are being carried out in order to acquaint different sectors with the content of that policy and the objectives the Ministry is pursuing in that area, namely:

294. The provision of information to education centres on the coverage of the health programmes of the health centres; the dissemination of information on the care programmes of the health centres through the communication media (TV and Press); informative and educational talks on health among youth targeting adolescents and youth leaders of both sexes in each community, zone, district, municipality or department.

295. Other measures to promote juvenile participation and to foster the organization of groups of adolescents and juveniles at national, municipal and local levels.

296. Training targeting groups of adolescents and juveniles to enable them to become leaders and advocates in the processes of municipalization and decentralization directed to the promotion of all-round health for themselves and others.

297. Training of adolescent and juvenile leaders in prevention and the promotion of healthy lifestyles so that they can provide guidance to their peers.

298. Improvement of health services as regards care for children, adolescents and juveniles.

299. One extremely important measure has been the equipment of specific areas for the care of children, adolescents and juveniles in each health post or centre throughout the country.

300. Creation of counselling centres on health and illnesses for juveniles in every municipality.

301. Improvement of the quality of staff providing care to boys, girls, adolescents and juveniles in each health centre.

Ministry of Labour and Social Insurance, through its Protection of Adolescent Workers Unit

Training activities

302. Vocational guidance talks are given in educational establishments for students at the final levels of the diversified classes the pupils in which are close to acquiring their first experiences of work. One of the subjects talked about is ILO Convention No. 182, concerning the worst forms of child labour, among other things mention is made of child slavery, forced labour, the traffic in and sale of children, enslavement for debt and the condition of the slave, prostitution and pornography and work in dangerous circumstances and in conditions of exploitation.

303. Vocational guidance and a register of adolescent workers who visit the Ministry of Labour and Social Insurance seeking information on their rights and obligations in the labour field. The adolescents concerned are between ages 14 and 17. During the period January-September 2005, 1,754 adolescent workers (1,217 males and 537 females) were received.

304. To provide better responses to the adolescents who visit the Ministry of Labour in search of guidance concerning their rights and obligations in the field of labour the Protection of Adolescent Workers Unit has begun to prepare a programme to provide labour and vocational information specifically for this target group.

305. Participation in the training seminar/workshop on the commercial sexual exploitation of boys, girls and adolescents, directed by the Social Welfare Secretariat, to contribute to the development of theoretical, methodological and procedural skills within institutions of the State relating to commercial sexual exploitation and care of victims with a focus on rights.

306. The printed and audio-visual educational material for awareness development and extension work relating to means of protection against and prevention of the exploitation of children and adolescents at work which the Protection of Adolescent Workers Unit distributes at guidance and training talks are:

- A brochure and a leaflet in popular language on ILO Convention No. 182 concerning the worst forms of child labour;
- A folding leaflet on the rights of working adolescent boys and girls;
- A video entitled “Dreams, tears and smiles” describing the causes and effects of the employment of children and adolescents in domestic service and preventive measures;
- Radio slots on the elimination of child labour in domestic service and other subjects.

Social Welfare Secretariat

307. As the coordinating body of the National Plan to Combat the Commercial Sexual Exploitation of Children and Adolescents, the Social Welfare Secretariat has carried out various sensibilization activities in the field of education and training in this subject.

308. The subject has been included in the primary and non-specialized curricula in coordination with the educational reform group of the Ministry of Education.

309. A training manual for teachers on the prevention and elimination of commercial sexual exploitation has been prepared with the technical and financial support of ILO/IPEC.

310. A project is being coordinated with the Ministry of Education to work on awareness development and training for supervisors, heads, teachers, parents and boys and girls in 15 primary schools located in zone 1 in areas of high social risk; the project covers the subjects of commercial sexual exploitation and life on the streets and the attendant risk factors. Community participation will be promoted.

311. A training seminar has been planned for organizations of government such as the Office of the Procurator-General of the Nation, the National Civil Police, the Ministries of Education, Public Health and Labour and Social Insurance, the Directorate-General of Migration, the Guatemalan Tourism Institute, the Ministry of the Interior, the municipal authority of Guatemala City, the Social Welfare Council and the social affairs secretariat of the municipal authority of the capital on the subject of commercial sexual exploitation. In addition, it is asserted that each institution should review its programme of tasks and what it must or can do to reinforce its work in this field. It is being supported in this activity by ILO/IPEC and ECPAT/Guatemala.

312. A seminar has been organized for magistrates and judges and agents in the machinery of justice; it seeks to develop awareness of the subject among them and acquaint them with the state of the problem in Guatemala, inform them of the work which the Social Welfare Secretariat is doing with victims of commercial sexual exploitation and improve coordination for referral of cases.

313. Training and awareness development on this subject has been imparted on a continuing basis to 110 persons working in the five Protection and Shelter Hostels for children and adolescents whose rights have been violated or threatened; emphasis is laid on the methodologies of care. As part of the follow-up on these activities a system for the detection and care of cases of victims of commercial sexual exploitation will be established.

314. Notices containing information on these criminal acts have been distributed and posted up so that the community may have information on the subject and become less tolerant of the problem.

Target groups

315. The training and skill development activities have been directed at the professional and operative personnel of the Social Welfare Secretariat and other institutions of government, magistrates, judges and agents in the system of justice, teachers, parents, extended families, boys, girls and adolescents at social risk and girl and adolescent victims of commercial sexual exploitation and university students.

Participation of governmental and non-governmental organizations, the business sector, media professionals

316. In this area the Social Welfare Secretariat is supported and accompanied by the Liaison Group, in which governmental and non-governmental organizations participate with the technical and financial support of international organizations such as AID, ILO/IPEC and UNICEF.

317. In addition, prevention programmes are being promoted targeting children at social risk. One of these is being executed in coordination with the Grupo CLIBA-GRUCE association, a non-governmental organization which is conducting its projects in Lomas de Santa Faz (zone 18), one of the areas in which the incidence of citizen insecurity and social problems is highest.

318. As regards the Mi Hogar residential protection hostel for girls, the Social Welfare Secretariat is strengthening a range of support services with the aim of improving the programmes for child and adolescent victims of sexual exploitation. To that end the measures are being coordinated with other national and international organizations, including Buckner International, the Nuevas Raíces foundation, the San Carlos University of Guatemala, the Mariano Gálvez University and the Gravileas association.

Participation of children/child victims and/or communities

319. The Social Welfare Secretariat promotes the active participation of child and adolescent victims of commercial sexual exploitation in the Mi Hogar residential protection hostel for girls through the conduct of a range of legal, educational, recreational and cultural activities.

320. A primary prevention programme has been established in the Mi Hogar protection and shelter hostel (residence for girls). It consists of information talks in which girls and adolescents are informed of the different criminal acts which may be committed against them, particularly with regard to commercial sexual exploitation and trafficking in minors.

Scope of these activities (national, regional, local)

321. The measures being taken in the area of adjustment of legislation are national in scope, as are, at the administrative level, the creation of a Guatemalan National Commission for the Prevention and Elimination of the Commercial Sexual Exploitation of Children and Adolescents and of a protection and training centre for victims of commercial sexual exploitation (which caters for the population nation-wide), while the measures being developed in the educational and sensibilization areas are local in scope.

Guatemalan Tourism Institute (INGUAT)

322. INGUAT is a member of the National Commission to Combat Sexual Exploitation. The principal measures taken in this area are:

Annual meeting of tourist guides

323. The principal aim of this activity is to update the professional knowledge of tourist guides. At this stage of training they are taught that as hosts they cannot contribute to, or agree to, the commission of any act contrary to the law, morals or ethics.

324. They are also taught their responsibility, in their dealings with tourists, for pointing out that child prostitution and child pornography are criminal acts recognized as such by law and stressing the penal consequences which they would incur if they committed such illegal acts.

Small hotels programme

325. The owners of small hotels participate in this activity. An expert is always invited to talk about the disgraceful practices which affect tourism. In so doing the expert emphasizes to them the commitment not to give their clientele a negative image of the country. Emphasis is also laid on explaining to guests that the use of children for purposes of prostitution or pornography is a destructive practice which also affects family and moral values.

326. Work is going on with owners of hotels, tourist guides and the tourist police in the historic centre on the subjects of child prostitution and pornography and their penal consequences.

Measures to prohibit the production and dissemination of pornographic material

327. To achieve recognition of the effective prohibition of the production and publication of pornographic material and other criminal acts committed in connection with child pornography, a reform of the Penal Code defining as such the offences enumerated in the Protocol has been promoted.

328. The Ministry of Education has circulated instructions to all the education centres in the system prohibiting the use of productions or publications of material of the type referred to. In their place the Ministry proposes recreational, instructive and positive reading matter.

329. The Ministry of Public Health and Social Assistance has not taken any measure prohibiting publicity relating to these criminal acts. On the other hand, no publicity measures or attempts to give publicity promoting the commission of these unlawful acts have been made.

330. The Ministry of Culture and Sports has circulated instructions to the staff of the National Palace of Culture on the rational use of the information media in service there, principally the Internet (access to the pornographic material referred to in the Protocol is denied), and the taking and reproduction of photographs; stress is laid on the use of inoffensive and suitable language when dealing with child visitors.

331. To obtain knowledge of the progress made in this field investigations are periodically conducted by non-governmental and international organizations. These investigations gather information which serves for the supervision of the measures taken by the different institutions of government and for the preparation of progress reports by the institutions, there being at present no more effective follow-up system or mechanisms to monitor the situation.

VII. INTERNATIONAL COOPERATION AND ASSISTANCE

Prevention. Conventions on international cooperation

332. With a view to combating the causes underlying situations of risk and danger in which vulnerable groups, and principally children and adolescents, may become involved, thereby becoming an easy prey for illegal practices (organized by individuals or legal persons who derive financial advantage from these practices) which impede their all-round development and affect their security and integrity, Guatemala has subscribed to 12 conventions with international cooperation organizations and other States; nine of these are in force and three are at the organizational stage. They are designed to promote action to combat situations of poverty, to

obtain sustainable improvements in food security and nutrition in sectors afflicted by poverty, and to improve and strengthen the health and education systems. This international support will in the medium and long term help to bring about positive results in the improvement of the quality of life of the inhabitants of the country.

333. A description of the relevant projects is included in the section of the annexes devoted to graphs.

Protection of victims. Conventions on international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

334. Under the aegis of the Central American and Caribbean Association of Chiefs of Police a Third Postgraduate Course for Trainers in Gender and Multiethnicity was held. It contained a specific module on “Sexual exploitation of boys and girls and the traffic in persons” which comprised intervention and coordination measures for the repatriation of child victims. This specialized course was followed by 32 facilitators of both sexes; 12 of them were Guatemalan nationals and 20 nationals of other Central American countries.

Need for enforcement of the law

335. Assistance and cooperation is provided by the State of Guatemala at all steps of the criminal procedure with regard to the offences as provided in article 3, paragraph 1, of the Optional Protocol (detection, investigation, prosecution, punishment and extradition procedures).

336. The Office of the Procurator-General of the Nation, together with the public prosecutor’s department, the National Civil Police, the Directorate-General of Migration and other institutions, is creating procedures for the location of focal points of crime and of persons responsible and for rescuing children and adolescents found in the places in question. The offences currently enumerated in the Penal Code carry penalties for authors and accomplices, but the penalties are not commensurate with the magnitude of the acts committed against minors; for this reason pressure is being exerted for a reform of the Penal Code to bring these offences into line with present circumstances.

337. The judiciary confines itself to transmitting, through the competent criminal court judges, requests received from the public prosecutor’s department in this area through established diplomatic channels.

338. The Office of the Procurator for Human Rights refers complaints submitted to its headquarters, its branch offices in the departments and municipal boards for the protection of children and adolescents to the competent jurisdictional bodies. Every complaint is followed up.

339. In addition, operatives are being employed to monitor street sales and identify distributors of pornographic material.

340. If the result of an investigation is positive, decisions are issued recommending changes in the duties of officials in a particular State institution.

341. In addition, in fulfilment of its functions as supervisor of government, it requests detailed reports from the Ministry of the Interior, the National Civil Police, the public prosecutor’s department and other bodies on searches of bars, brothels, etc. in order to keep itself informed of

the manner in which they are carried out and adopt measures of any kind which may contribute to the investigation.

Requests received from another State Party for seizure or confiscation of goods or proceeds referred to in article 7(a) of the Optional Protocol

342. Consultation of the appropriate sources in the Ministry of External Relations, the public prosecutor's department, the National Civil Police and the Office of the Procurator-General of the Nation have established that hitherto no requests of this kind have been received from another State Party.

Bilateral, regional or multilateral agreements, treaties or other arrangements signed by the State of Guatemala

343. A Memorandum of Understanding between the Government of Guatemala and the Government of the United States to establish the framework of cooperation in the field of prevention, control and punishment of activities relating to the traffic in persons has been signed by the Minister of External Relations of the Republic of Guatemala and the Ambassador of the United States of America.

344. This memorandum will remain in force for three years and may be renewed by agreement between the Parties.

345. In measures undertaken deriving from the present Memorandum of Understanding account shall always be taken of respect for the human rights of the victims of the traffic in persons.

346. The lines of action which have been defined for the fulfilment of the contemplated strategy include specific tasks in each of the following areas:

- a) Legislation;
- b) Prosecution and punishment;
- c) Prevention;
- d) Skills development;
- e) Legal protection;
- f) Information for management;
- g) Assistance to victims.

347. In addition, as regards the Memorandum of Understanding between the Government of Guatemala and the Government of Mexico for the protection of women and minors who are victims of the traffic in persons at the Guatemalan-Mexican border, the only question pending is the fixing of the date of its entry into force and the publication of the relevant instrument of ratification.

348. Although these two memoranda of understanding do not specifically target the illegal practices referred to in the Optional Protocol, it is considered important to mention them and

include them in this report, since the traffic in persons is a means giving rise to the sale of children and adolescents and their involvement in prostitution and pornography. Moreover, tackling the problem is a matter of concern to the government and sectors of civil society on account of its increasing scale.

Relevant national legislation on the subject

349. Act concerning the comprehensive protection of children and adolescents,

350. Labour Code.

351. Revision of article 149 of the Penal Code, dealing with trafficking in persons, to bring it into line with the Palermo Convention.

352. These items are currently awaiting decisions by the relevant legislative committees in the Congress of the Republic.

353. First draft of reforms of the Penal Code.

354. Initiative concerning Act on adoptions.

Inter-institutional cooperation and coordination set up between the authorities of the State of Guatemala, national and international non-governmental organizations and international organizations

355. The National Commission on Children and Adolescents, in its capacity of leading agency in matters of public policies, is made up of representatives of the government and of civil society in equal numbers.

356. For the conduct of its activities it receives resources from the budget of the Social Welfare Secretariat and from international cooperation agencies such as UNICEF.

357. The Office of the Procurator for Human Rights, through the Office for the Defence of Children, coordinates the Network of Defenders of Children and Adolescents of Central America and Panama, in the agenda of which sale, exploitation and pornography are central items.

358. It is also participating in the recent network of Latin- and Ibero-American Defenders which is being formed; the treatment of this subject will be included in its programme.

359. In addition, in accordance with its monitoring role, the Office of the Procurator for Human Rights has participated in two bilateral consultations between Mexico and Guatemala in which strategies to combat these problems have been devised.

Financial, technical and other assistance provided and/or received through existing multilateral, bilateral or other programmes undertaken to that end

360. Guatemala has subscribed to a number of conventions with international cooperation organizations; 16 of them are in force and one is at the organizational stage. These instruments are designed to protect and disseminate knowledge of the rights of children and adolescents. Some of them bear a relationship to measures for the abolition of the practices referred to in the Optional Protocol.

361. Decisions concerning adherence to these instruments are the responsibility of the Secretariat-General of Planning (SEGEPLAN), the governmental body with the task of framing, following up and supervising the implementation of government policies. That body has also provided information on projects of this kind, that information is contained in the annex to this report (section e)).

VIII. OTHER LEGAL PROVISIONS

Relevant provisions of domestic and international law in force applicable in the State of Guatemala which are more conducive to the realization of the rights of the child

362. In the first place there is the Convention on the Rights of the Child, which, as stated in the initial section of this report, takes precedence, in accordance with article 46 of the Political Constitution of the Republic, over domestic law.

363. Likewise, the Act concerning the comprehensive protection of children and adolescents provides as follows;

- Purpose of the Act. The Act is a legal instrument for family integration and social promotion which seeks to bring about the all-round and sustainable development of Guatemalan children and adolescents within a democratic framework and with unrestricted respect for human rights (article 1).
- Subject of rights and duties. The State must respect the rights and duties of parents or, according to the case, the persons having the charge of the child or adolescent, to impart, in accordance with the development of the child's faculties, appropriate direction and guidance to enable boys, girls and adolescents to exercise the rights recognized in the Political Constitution of the Republic, the Act itself and other domestic laws, the treaties, conventions, covenants and other international instruments on the subject of human rights accepted and ratified by Guatemala, without restrictions other than those laid down by the law, the application of which shall not be extensive (article 3).
- Tutelary status. The law concerning children and adolescents is a tutelary law granting children and adolescents preferential legal protection. The provisions of the Act are matters of public policy and may not be waived (article 6).
- Inherent rights. The rights and guarantees granted by the Act are not exclusive of other rights which, although not expressly mentioned in it, are inherent to boys, girls or adolescents (article 8, first paragraph).

State of ratification by Guatemala of the main international instruments concerning sale of children, child prostitution, child pornography and child sex tourism and on other commitments undertaken by this State concerning this issue and on their implementation and challenges encountered

Instruments relating to the illegal practices referred to in the Optional Protocol already approved and ratified by the State of Guatemala

364. Convention on the Rights of the Child, ratified by the Congress of the Republic on 10 May 1990.

365. ILO Convention No. 182 concerning the worst forms of child labour, ratified by Guatemala in 2000.

366. Accession to the Convention on the Civil Aspects of International Child Abduction by Decree No. 24-2001, which came into force for Guatemala, in accordance with the text, on 1 May 2002.

367. The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, approved by Legislative Decree No. 50-2002 and in force for Guatemala with effect from 1 March 2003.

368. The United Nations Convention against Transnational Organized Crime (2004).

369. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2004).

370. The Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (2004).

371. This Directorate is at present examining the Final Protocol to the Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. Once the analysis has been completed the text will be transmitted to the Congress of the Republic for approval.

IX. GENERAL CONSIDERATIONS BY THE STATE CONCERNING THE PRESENT REPORT

372. The State of Guatemala wishes to express to the honourable members of the Committee on the Rights of the Child its deep concern at the scale which the phenomenon of the sale of children, and particularly that of child prostitution and the use of children in pornography, has currently attained world-wide.

373. This threat strikes at the most sensitive and vulnerable sectors of the population under 18 years of age, who in Guatemala make up over 50 per cent of the total population. We are thus aware that the measures mentioned have not yet had the desired impact on account of the difficulty of attacking the problems. However, the will of the government and the State as a whole is manifest, and there is a determination to strengthen and devote all available resources to combat these crimes against our children and adolescents.

374. We also recognize that these acts, which unquestionably breach human rights, have close links with other situations, such as illegal trafficking in persons, sexual exploitation, trafficking in narcotic substances and organized crime, which are also encountered in other countries. On account of the context in which these acts are committed, the capacities of the State are clearly small in comparison with the logistical and financial structures available to the national and transnational networks which engage in criminal acts of these types and against which governments have to fight. We therefore understand that any institutional action taken at national level must be duly coordinated among all the bodies and agencies of the State and with civil society concerned with the subject, and above all with the support of the cooperation agencies in the country. On the international plane these efforts should be extended to reach the other countries in the region in order to establish strategic blocks in the struggle for the elimination of

these practices and the establishment of common legal standards which will permit the exemplary punishment of the persons who systematically engage in these criminal acts.

375. Finally, we wish to request the honourable Committee to grant the State of Guatemala its continuing accompaniment so that with experience in the subject it can contribute to the effort being made within the institution of government.