



Alternative report to the Committee on the Rights of the Child

Guatemala

2017

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1. Core questions and recommendations

Recommendations

The state party should:

- Take immediate steps to amend its binding declaration (submitted upon ratification of OPAC) to clarify that Guatemala does not permit any form of recruitment of persons under the age of 18 years into its armed forces, whether compulsory or voluntary;
- Amend the 2003 Child Protection Act to explicitly prohibit the recruitment of persons under the age of 18 under any circumstances and prohibit the use of children in hostilities under any circumstances, and establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of, or has other links with, the State party;
- Formally prohibit corporal punishment in military schools, taking into account general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment;
- Provide children attending military schools with adequate access to independent complaints and investigation mechanisms;
- Develop a comprehensive public policy addressing the social factors and causes at the roots of the problem of armed gangs (“*maras*”), such as, inter alia, political and social exclusion, lack of opportunities, lack of prevention policies and social services, culture of violence, migration flows.
- Take all measures necessary to prevent the recruitment of children by, and protect them from violence from, *maras* and criminal groups and assess the impact of those measures, including measures aimed at protecting those children who are most at risk of getting involved with the gangs, such as children in street situations, children of migrating parents and children belonging to low income families. The root causes of recruitment, such as poverty and discrimination, and the particular needs of girl victims must be taken into consideration when designing these measures;
- Review security laws, including article 399 of the Penal Code, to ensure children are never detained or prosecuted solely for having been members of *maras*, and that the rights and best interests of such children are fully recognised, respected and protected, including in criminal investigations and proceedings where they are victims or witnesses;

Questions

- Is ‘18 years of age’ / ‘age of majority’ determined from the individual’s actual date of birth, or the year in which they turn 18?
- How many complaints of abuse by staff or students have been made at each of the Adolfo V Hall schools in the past ten years, and what were the outcomes?
- Are students at the Adolfo V Hall schools classified as military personnel, subject to military law?
- Are the Adolfo V Hall schools classified as military sites?
- What measures is the state party taking to prevent recruitment of children by armed gangs?
- What role is played by non-governmental organisations, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above?
- What measures have been taken to ensure legal, psychological or other training for those who work with children recruited by armed gangs and other child victims of armed gang violence?
- What public and private programmes exist to enable children to leave gangs, paying special attention to their safety and protection from reprisals, and physical and psychosocial recovery?

2. General measures of implementation

Guatemala ratified OPAC in May 2002. Upon ratification, it submitted the following binding declaration:

*In conformity with article 3, paragraph 2 of the aforementioned Protocol, the Government of Guatemala makes the following declaration: 'Guatemala shall not permit the **compulsory** recruitment of persons under 18 years of age into its armed forces, and, in keeping with article 3, paragraph 4, of the Convention on the Rights of the Child on the involvement of children in armed conflict, the description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced shall be submitted at a later date. [emphasis added]*

This declaration erroneously refers to the minimum age for compulsory recruitment, whereas the requirement of OPAC Article 3.2 is to submit a declaration setting forth the minimum age for voluntary recruitment. No description of the safeguards to ensure recruitment is voluntary has been submitted.

Guatemala acceded to the Rome Statute of the International Criminal Court on 2 April 2012.

Recommendations

The state party should:

- Take immediate steps to amend its binding declaration to clarify that Guatemala does not permit any form of recruitment of persons under the age of 18 years into its armed forces, neither compulsory nor voluntary;
- Provide a description of the safeguards in place to ensure that voluntary enlistment is not forced or coerced;
- Develop systematic awareness raising, education and training on the provisions of the Optional Protocol for children through the educational curricula, and for all relevant professional groups working with asylum-seeking, refugee and migrant children from countries affected by armed conflict, such as teachers, medical professionals, lawyers, judges, immigration officials, police and military personnel.

3. Prevention

(OPAC arts. 1, 2, 4; para. 2, and art. 6; para. 2)

Article 69 of Decree 72-90 establishing the Armed Forces requires citizens to register for national service¹ 'upon reaching 18 years of age'. National residents can do this at the local civil registry office or electoral registry office. Those resident abroad must register at the Consulate.² Article 79 requires

¹ Note that National Service includes both Civilian Service and Military Service. Those called up to perform national service can choose which of the two forms they wish to undertake.

² Decreto núm. 72-90, Ley Constitutiva del Ejército de Guatemala. 'Artículo 69: Los guatemaltecos preferentemente varones, al cumplir dieciocho (18) años de edad deberán inscribirse para obtener su constancia de inscripción militar.

Para los residentes dentro del territorio nacional se coordinará con los registros civiles para que remitan las nóminas de quienes hayan cumplido dicha edad; y con el Tribunal Supremo Electoral, con el propósito que el Registro de Ciudadanos proporcione los datos de los guatemaltecos que hayan efectuado su empadronamiento, lo cual servirá como base para las citaciones respectivas.

Los guatemaltecos residentes en el extranjero se inscribirán en el Consulado correspondiente.

Quienes no cumplan con este precepto quedarán sujetos a las sanciones establecidas por la ley o reglamento respectivo.' Available at http://www.oas.org/juridico/spanish/mesicic2_gtm_decreto_72-90.pdf.

Military Zone Commanders to obtain the names of all male residents who have 'reached the age of majority' from the civil registries within their jurisdiction every three months.³

National Service Law Regulations 345-2010 Article 4 establishes the age for Civilian Service as 18 – 24 years, but allows individuals to enter service in advance aged between 16 and 18 years.⁴ Article 25(c) requires minors to have the consent of their parent or legal guardian to perform Civilian Service in advance,⁵ whilst Article 31 states that individuals undertaking Military Service must be aged 18 – 24 years.⁶ Congressional Decree 20-2003, Article 42 states that individuals over the age of 16 and in education can perform Civilian Service by participating voluntarily in approved programmes organised by their school/college.⁷

Article 57 of the Child Protection Act 27-2003 states only that children and minors 'have the right not be recruited' in the event of armed conflict, and that the state shall take 'all possible measures' to ensure that persons under the age of 18 do not take a direct part in hostilities and are not recruited for military service at any time.⁸ This wording is restricted to an obligation of effort rather than result, and is therefore weaker than is desirable.

Decree 20-2003 Article 18(a) specifies that when an individual registers for National Service, their age and identity must be verified through the appropriate documents. The residence card is the official national identity document, provided to all those aged 18 – 60 resident in Guatemala, issued by municipal authorities. The national birth registration rate is approximately 97 per cent.⁹

³ Ibid, 'Artículo 78: Para los efectos del artículo anterior, los Comandantes de las Zonas Militares tienen la obligación de requerir a los registradores civiles de su jurisdicción, que les proporcionen trimestralmente las nóminas de los varones que hayan cumplido la mayoría de edad'.

⁴ Acuerdo Gubernativo Número 345-2010. 'Artículo 4: Edades. El Servicio Cívico deberán prestarlo los guatemaltecos aptos, comprendidos entre los dieciocho (18) y veinticuatro (24) años de edad. No obstante lo anterior, podrán realizar el Servicio Cívico en el ámbito social de forma anticipada y voluntaria, aquellos guatemaltecos mayores a dieciséis (16) y menores a dieciocho (18) años de edad, conforme a lo que establece el artículo 42 de la Ley del Servicio Cívico.' Available at <http://conjuve.gob.gt/descargas/reglamentosc.pdf>.

⁵ Ibid, 'Artículo 25: Requisitos. El ciudadano guatemalteco que opte por prestar Servicio Cívico Social debe cumplir los requisitos siguientes: ...

c) Si fueran menores de edad, contar con previa autorización de sus padres, representante legal, o de la persona que ejerza la patria potestad de conformidad con la ley.'

⁶ Ibid, 'Artículo 31: Edades. Todos los ciudadanos guatemaltecos de origen, que opten por el servicio cívico militar, deberán estar comprendidos entre las edades de dieciocho (18) a veinticuatro (24) años.'

⁷ Decreto Número 20-2003 Ley del Servicio Cívico. 'Artículo 42: Servicio social anticipado. Los guatemaltecos mayores de dieciséis años que se encuentren cursando estudios de educación media, podrán prestar el Servicio Social en forma anticipada, participando voluntariamente en los programas dirigidos por sus centros de enseñanza, siempre que dichos programas estén aprobados por la Junta Nacional del Servicio Cívico. Corresponderá a los Directores de dichos centros educativos el certificar que el alumno ha prestado el Servicio Social en la forma y tiempo que establece esta Ley y su reglamento.' Available at <https://www.unicef.org/guatemala/spanish/LeyServicioCivico.pdf>.

⁸ Decreto Número 27-2003 Ley De Protección Integral De La Niñez Y Adolescencia. 'Artículo 57: Derecho internacional humanitario. En caso de conflicto armado, los niños, niñas y adolescentes tienen derecho a su no reclutamiento y que el Estado respete y vele porque se cumplan las normas del derecho internacional humanitario que les sean aplicables.

El Estado adoptará todas las medidas posibles para asegurar que las personas que aún no hayan cumplido los dieciocho años de edad, no participen directamente en las hostilidades, ni sean reclutados para servicio militar en cualquier época.' Available at <https://www.unicef.org/guatemala/spanish/LeyProteccionIntegralNinez.pdf>.

⁹ UNICEF, Birth registration (%) 2005-2012*, total 96.7%. Available at https://www.unicef.org/infobycountry/guatemala_statistics.html.

Questions

- Is '18 years of age' / 'age of majority' determined from the individual's actual date of birth, not the year in which they turn 18?
- Is it the case that minors cannot undertake Military Service under any circumstances, and that minors undertaking Civilian Service cannot be required to undertake any military activities, and do not have military status?
- How many minors have enrolled in advance Civilian Service in each of the past five years?
- How is age verified for persons registering for National Service and/or a residence card if they do not have a birth certificate?
- Is there an independent inspection mechanism to verify the age of military recruits?
- How is a recruit's age verified in cases of doubt?
- How many instances have been recorded of persons under the age of 18 registering or attempting to register for military service?

Recommendations

The state party should:

- Amend the 2003 Child Protection Act to explicitly prohibit the recruitment of persons under the age of 18 under any circumstances and prohibit the use of children in hostilities under any circumstances;
- Stipulate explicitly in national law and military regulations that military personnel should not undertake any act that violates the rights enshrined in the Optional Protocol, regardless of any military order to that effect.
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Military Schools

There are several military and military-civilian schools in Guatemala, operated under Article 35 of the Decree 72-90 establishing the Armed Forces. These include the Adolfo V Hall secondary schools, which are regulated by the General Regulations for Adolfo V Hall schools (13 May 1986). According to Article 91(d) of the Regulations, students must be aged 12 – 17 years to attend one of the schools and must present a birth certificate as proof of age.¹⁰

Articles 79 – 89 describe the obligations of students and their parents/guardians. Article 101 clarifies that the academic study requirements will be set by the Ministry of Education in conjunction with other Ministries where relevant.¹¹ Article 102 states that students receive the military training necessary to

¹⁰ Reglamento General para los Institutos Adolfo V. Hall de la República. 'Capítulo V, Artículo 91: Son requisitos indispensables para el ingreso al Instituto Adolfo V. Hall:

d) Estar comprendido dentro de las edades de doce (12) a diecisiete (17) años inclusive, comprobándolo con la certificación de la partida de nacimiento;'

Article 92 of the Regulations states that current soldiers ('elementos de tropa') who wish to study at one of the schools in order to pursue a military career must be aged 18-19 years and have served at least six months of military service; 'Artículo 92: Los elementos de tropa que por su inclinación a la carrera militar deseen ingresar al Instituto Adolfo V. Hall, además de llenar los requisitos estipulados en los incisos a), b), e), f), g) y h) del artículo anterior, deben cumplir las siguientes condiciones:

a) Estar comprendidos dentro de las edades de 18 a 19 años, inclusive, comprobándolo con la certificación de la partida de nacimiento; y

b) Comprobar con la certificación correspondiente, el haber prestado como mínimo seis (6) meses de servicio militar.' Available at

http://www.halljalapa.edu.gt/datos_abiertos/REGLAMENTO%20GENERAL%20PARA%20LOS%20INSTITUTOS%20ADOLFO%20V.%20HALL%20DE%20LA%20REPUBLICA.pdf

¹¹ Ibid, 'Artículo 101: Los estudios académicos que efectúan los caballeros alumnos se regirán por los planes y programas establecidos por el Ministerio de Educación y cualquier otro Ministerio afecto, siendo indispensable

qualify as a Reserves Second Lieutenant,¹² although not all students obtain this status (Articles 3(e), 159)¹³. It is not clear whether students are classified as military personnel while studying. It appears that students are not obliged to enlist into the military upon graduation, but this is not made explicit. Article 134(l) states that students can leave the institution at the request of their parents/guardian.

Article 133 states that punishments inflicted on students can include physical punishments, fines and loss of free time.¹⁴ Article 26 of Chapter 5 of the Regulations (which governs disciplinary measures) states that homosexuality is a 'grave moral and disciplinary violation', punishable by expulsion.¹⁵ Students who become pregnant are also allegedly subject to expulsion.¹⁶ Both of these Regulations were criticised by parliamentarians from the Youth Commission as a form of discrimination, and an amparo application to overturn them was presented to the Constitutional Court in 2016.¹⁷

On 1 March 2016, a 14-year-old student at one of the Adolfo V Hall schools was reportedly raped by a soldier who worked at the school. A criminal investigation was opened and appears to be ongoing. According to media reports, the suspect allegedly went absent without leave on the day of the assault and the Ministry of Defence stated it had no knowledge of his whereabouts,¹⁸ an order for his arrest was not issued until a week after the incident had taken place.¹⁹ The Minister of Defence William Mansilla told investigators that the victim had been in a relationship with the suspect and 'this type of thing happens because minors can't handle the relationship between men and women'.²⁰ His comments were publicly criticised for appearing to apportion blame to the victim.

The media reported that following the incident, all female boarding students were temporarily required to leave the school. They were later allowed to return and a panic button was installed in the girls' dormitories.²¹ Reports stated that the school has accepted liability for the incident and offered financial compensation to the student.²²

There were also allegations in 2016 that students had been violently assaulted in at least three of the Adolfo V Hall schools, including one who was beaten almost unconscious with a baseball bat by another student. The victim's parents made a complaint to the Human Rights Commissioner due to the alleged lack of action by the authorities to deal with the case.²³

haber aprobado en su totalidad el plan de estudios en los Institutos Adolfo V. Hall, para recibir los títulos y diplomas de graduados en las diferentes carreras y ciclo diversificado del nivel medio.'

¹² Ibid, 'Artículo 102: Se impartirán los cursos militares necesarios a fin de capacitar a los caballeros alumnos para recibir el Despacho de Subteniente de Reserva, de acuerdo con lo que establece el inciso "e" Artículo 3, Capítulo II del presente reglamento.'

¹³ Ibid, 'Artículo 3: Los objetivos de los Institutos Adolfo V. Hall de la República, son los siguientes: ...

e) Seleccionar y proponer al Estado Mayor de la Defensa Nacional, entre los Caballeros Alumnos comprendidos en el inciso anterior, a los que se hagan acreedores a obtener el despacho de Subteniente de Reserva; así como a los Caballeros Alumnos que no reciban el documento anterior, para que se les extienda la respectiva hoja de servicio militar, quedando organizados en las reservas militares como clases.

Artículo 159: Los Caballeros Alumnos que al graduarse obtengan el Despacho de Subteniente de Reserva, gozarán de los derechos que otorga la ley reglamentos militares.'

¹⁴ Ibid, 'Artículo 133: Las sanciones se clasifican de la manera siguiente: ...

d) Castigos físicos;

e) Sanción pecuniaria;

f) Restricciones y arrestos.'

¹⁵ Ibid, 'Capítulo V Artículo 26: Faltas graves contra la disciplina y la moral: ... w) Homosexualismo: RETIRO.'

¹⁶ Alvarez, C y Gramajo, J. (25 April 2016) Adolfo V. Hall penaliza embarazo y homosexualismo, *Prensa Libre*. Available at <http://www.prensalibre.com/guatemala/politica/reglamento-de-instituto-adolfo-v-hall-penaliza-embarazo-y-homosexualismo>

¹⁷ Muñoz, G. (7 May 2016) Acciona contra el reglamento del Adolfo V. Hall, *Prensa Libre*. Available at <http://www.prensalibre.com/guatemala/politica/acciona-contra-el-reglamento-del-adolfo-v-hall>

¹⁸ Soy 502. (15 March 2016). Sospechoso de violación en el Adolfo V. Hall desertó del Ejército, *Soy 502*.

Available at <http://www.soy502.com/articulo/mujeres-regresan-al-adolfo-v-hall-mientras-violador-sigue-profugo>

¹⁹ Morales, I. (11 March 2016). La justificación de un Ministro por violación a menor en Adolfo V.Hall, *Cronica*.

Available at <http://cronica.gt/la-justificacion-de-un-ministro-por-violacion-a-menor-en-adolfo-v-hall/>

²⁰ Morales, I. Op cit.

²¹ Alvarez, C y Gramajo, J. Op cit.

²² Morales, I. Op cit.

²³ Muñoz, G. Op cit.

The media reported further allegations of abuse from former students, including routine physical punishments and sexual exploitation of students by staff.²⁴ Punishments allegedly included extreme forced exercise and beatings resulting in broken bones. One media report stated that the Human Rights Commissioner's office has recorded 18 complaints against the Adolfo V Hall schools between 2003 and 2016, but actual numbers were suspected to be much higher as students are reluctant to complain due to fear of reprisals.²⁵ The same article reported that at least two students have died since 1991 as a result of forced exercise, including one aged 13.²⁶ Another media report stated that one third of all complaints of harassment and bullying in educational centres received by the Human Rights Commissioner relate to military establishments, including 24 against the Adolfo V Hall Central school between 2008 and 2016.²⁷ According to this report, the Commission also receives complaints from students who have been expelled without receiving their academic transcripts and other relevant paperwork, which violates their right to education.²⁸

Questions

- How many complaints of abuse by staff or students have been made at each of the Adolfo V Hall schools in the past ten years, and what were the outcomes?
- What mechanisms are in place to prevent abuse of students and ensure appropriate investigation and sanction of any allegations of abuse?
- What independent inspection mechanisms are in place to ensure the welfare of students at the Adolfo V Hall schools?
- What procedures are in place to ensure that students leaving the Adolfo V Hall schools while still of school age can continue their education elsewhere with minimal disruption?
- Are students at the Adolfo V Hall schools classified as military personnel, subject to military law?
- Are the Adolfo V Hall schools classified as military sites?
- How many students study at each of the Adolfo V Hall schools annually, and what are their ages?
- What percentage of students studying at the Adolfo V Hall schools subsequently enlist into the armed forces?

Recommendations

The state party should:

- Ensure that all children in military schools receive education according to Articles 28, 29 and 31 of the Convention on the Rights of the Child, taking into account its general comment No. 1 (2001) on the aims of education. In particular, human rights education should be included on the provisions of the Protocol;
- Formally prohibit corporal punishment, taking into account general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment;
- Provide children attending military schools with adequate access to independent complaints and investigation mechanisms.

²⁴ Woltke, G. (1 April 2016). Cuando el Ejército educa, qué sucede dentro del Adolfo V. Hall?, *Contra Poder*. Available at <http://contrapoder.com.gt/2016/04/01/cuando-el-ejercito-educa-que-sucede-dentro-del-adolfo-v-hall/>

²⁵ Ibid.

²⁶ Ibid.

²⁷ España, M. (19 May 2016). 65 estudiantes denunciaron al Hall, la Politécnica y a la Escuela de Aviación, *Diario Digital*. Available at <http://diariodigital.gt/2016/05/65-estudiantes-denunciaron-al-hall-la-politecnica-y-a-la-escuela-de-aviacion/>

²⁸ Ibid.

Armed Groups

(OPAC Art. 4.; CRC Arts. 22, 30, 32-36, 37 (b)-(d) and 38-40, Special Protection Measures)

The armed gangs (*maras*) which emerged following the civil wars in Central America continue to be a major source of violence, crime and insecurity throughout the region, with an estimated 54,000 gang members across Guatemala, Honduras and El Salvador.²⁹ Gang violence is a cause of significant internal displacement, including forced displacement, and external migration/asylum flows. Children and young people are particularly affected, including through recruitment into *maras*. Other abuses of children's rights include forced displacement and rape.³⁰ However, the government's attempts to counter gang activity have been criticised as ineffective, counter-productive and 'reproduc[ing] the popular stigmas and prejudices of internal armed conflict.'³¹ In Honduras and El Salvador, these organised criminal gangs are considered terrorist organisations by the government.

Children recruited into *maras* endure comparable abuses and face similar risks to their physical and mental health as children associated with armed groups motivated by political, religious or other ideological goals. Armed gangs such as those operating in Guatemala are organised, with a command and disciplinary structure and the capacity to commit armed violence against both private individuals and state officials. Many children are forcibly recruited - including by the circumstances of living in an area where the *mara* exercises significant control - and even those who may have joined 'voluntarily' are not free to leave the group at will, without putting their lives or that of their families at risk.

As such, in many respects children recruited into these armed criminal gangs share the dual nature of being perpetrators and victims of crimes. In these circumstances, the state's response cannot be one solely or prevalently based on a criminal justice, repressive approach to youth violence.

At the last consideration of Guatemala's implementation of the Convention, the Committee expressed concern "that the climate of fear, insecurity, threat and violence linked to these [*maras*] gangs impedes children from enjoying their childhood and adolescence. The Committee also notes with concern that not enough attention is being paid by the State party to the root causes of this phenomenon, which has so far been tackled mostly as a criminal justice problem and with insufficient socio-economic measures."³²

As noted by the Committee in its concluding observations on Guatemala and other comparable situations (see concluding observations on Honduras and El Salvador), states parties' obligations (under the Convention and OPAC) to protect children from recruitment by armed gangs includes to take all measures necessary to prevent the recruitment of children by *maras*, to address the social and economic root causes of such recruitment and to provide adequate resources to the programmes of prevention, rehabilitation and social reinsertion of children involved in the *maras*.

Questions

- What measures is the state party taking to prevent recruitment of children by *maras*?
- What campaigns or other measures have been undertaken to promote public awareness of the principles and provisions of the Convention and the Optional Protocol, including measures specifically aimed at making children aware of the harmful consequences of involvement in *maras*, and of resources and sources of assistance intended to prevent children from falling victim to recruitment?

²⁹ International Crisis Group. *Mafia of the Poor: Gang Violence and Extortion in Central America*, 6 April 2017. Available at <https://www.crisisgroup.org/latin-america-caribbean/central-america/62-mafia-poor-gang-violence-and-extortion-central-america>

³⁰ Ibid.

³¹ Ibid.

³² Committee on the Rights of the Child, Consideration of report submitted by Guatemala, Concluding Observations, 25 October 2010, UN Doc. CRC/C/GTM/CO/3-4, p92. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGTM%2fCO%2f3-4&Lang=en.

- What role is played by non-governmental organisations, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above?
- What steps have been taken to measure and evaluate the effectiveness of the measures described above, and the results obtained?
- What measures have been taken to ensure legal, psychological or other training for those who work with children recruited by *maras* and other child victims of armed gang violence?
- What public and private programmes exist to enable children to leave *maras*, paying special attention to their safety and protection from reprisals, and physical and psychosocial recovery?

Recommendations

The state party should:

- Develop a comprehensive public policy addressing the social factors and causes at the roots of the problem of *maras*, such as, inter alia, political and social exclusion, lack of opportunities, lack of prevention policies and social services, culture of violence and migration flows.
- Take all measures necessary to prevent the recruitment of children and to protect them from violence by *maras* and criminal groups and assess the impact of those measures, including measures aimed at protecting those children who are most at risk of getting involved with *maras*, such as children in street situations, children of migrating parents and children belonging to low income families. The root causes of recruitment, such as poverty and discrimination, and the particular needs of girl victims must be taken into consideration when designing these measures;
- Review security laws, including article 399 of the Penal Code,³³ to ensure children are never detained or prosecuted solely for having been members of *maras*, and that the rights and best interests of such children are fully recognised, respected and protected including in criminal investigations and proceedings where they are victims or witnesses;
- Seek to focus, as much as feasible, on preventive and protective measures, starting from the local level, while refraining from treating this issue exclusively in a punitive and repressive way. Put more emphasis on the school, the family and on social cohesion measures and mechanisms, such as sport and cultural associations, as preventive tools;
- Invest in financial and human resources for activities of prevention, protection, rehabilitation and reintegration for members of *maras*;
- Ensure that unaccompanied foreign children in the jurisdiction of the State party who have been involved in *maras* are treated in accordance with paragraphs 54 to 60 of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

4. Prohibition and related matters

(OPAC art. 1, 2, 4, paras. 1 and 2)

The Penal Code (Codigo Penal de Guatemala, Decreto No. 17-73, as revised) does not explicitly criminalise the recruitment of children by armed forces or armed groups, or their use in hostilities. Article 398 criminalises any person who organises or directs a group of armed people or militia distinct from those of the state, with penalties of up to ten years in prison.³⁴ Article 399 criminalises membership of such groups with penalties of up to eight years imprisonment.³⁵ No reference is made to the age of the member concerned, which could allow to children being prosecuted for their membership or

³³ See section on *Prohibition* below.

³⁴ Decreto No. 17-73, Código Penal de Guatemala. 'Artículo 398: Quienes organizaren, constituyeren o dirigieren agrupaciones de gente armada o milicias que no fueren las del Estado, serán sancionados con prisión de tres a diez años. Igual sanción se impondrá a quienes ayuden o colaboren económicamente al mantenimiento de dichas agrupaciones.' Available at http://oas.org/dil/esp/Codigo_Penal_Guatemala.pdf

³⁵ Ibid, 'Artículo 399: Quienes formaren parte de las agrupaciones o milicias a que se refiere el artículo que antecede, serán sancionados con prisión de dos a ocho años.'

association with an armed force or non-state armed group. Article 407 of the Penal Code does, however, criminalise the act of giving a minor, or permitting a minor to carry, a firearm.³⁶

Article 21 of the 2003 National Service law states that forced recruitment is prohibited and that the person responsible will be criminally responsible. It does not, however, explicitly criminalise or sanction the recruitment of a person under the age of 18 years.³⁷

Questions

- Has any person been investigated and/or prosecuted for recruiting a person under the age of 18 years into the armed forces or an armed group?
- Has any child been prosecuted solely for membership of or association with an armed force or non-state armed group?

Recommendations

The state party should:

- Explicitly prohibit by law the recruitment of children under the age of 18 years into armed forces and armed groups;
- Explicitly prohibit by law the use of children in hostilities;
- Review Article 399 of the Penal Code to ensure that children are not prosecuted solely for membership of, or association with, a state armed force or non-state armed group;
- Establish extraterritorial jurisdiction for these crimes when they are committed by or against a person who is a citizen of or has other links with the State party.

5. Protection, recovery and reintegration

(OPAC art. 6, para. 3)

Guatemala is a country of origin, transit and destination for people of concern to UNHCR (including internally displaced persons, refugees and asylum seekers) due to the activities of armed gangs active in El Salvador, Honduras and Guatemala. UNHCR considers Guatemala as ‘the second most important migratory corridor toward the United States and one of the main countries of asylum in the NTCA [Northern Triangle of Central America], with an increase in the number of people from El Salvador and Honduras.’³⁸

As of May 2016, there was no mechanism in place to identify protection needs among deportees, including children, returned to Guatemala from other states, and no referral or protection mechanisms. UNHCR is working to improve access to education for child refugees and asylum-seekers through the ‘Children of Peace’ project, which has so far identified more than 100 children in need of protection. Many of these children are likely to have had some level of involvement with armed gangs, although figures are not available.³⁹

At the end of 2015, UNHCR figures recorded 226 refugees, 125 asylum-seekers, and 3,500 other persons of concern to be residing in Guatemala. The latter group included Guatemalan citizens

³⁶ Ibid, ‘Artículo 407: ‘Quien confiare arma de fuego, o permitiere que la porte, a un menor de edad o a cualquier persona incapaz o inexperta en el manejo de armas, será sancionado con multa de cien a un mil quetzales.’

³⁷ Decreto Número 20-2003 Ley del Servicio Cívico, Op cit. ‘Artículo 21: ‘Será nulo y no obligará al ciudadano, el alistamiento que se produzca por coacción, amenaza o engaño debidamente comprobado. El autor será penalmente responsable.’

³⁸ UNHCR, Country Update Guatemala, May 2016. Available at http://www.acnur.org/t3/fileadmin/Documentos/RefugiadosAmericas/Guatemala/Hoja_Informativa_Guatemala_2016.pdf

³⁹ Ibid.

deported from other states with possible protection needs. Approximately half of the refugees residing in Guatemala were of Nicaraguan origin, with 39 per cent from El Salvador and 13 per cent from Honduras.⁴⁰ UNHCR also recorded 10,284 Guatemalan refugees abroad and 26,954 asylum seekers. 95 per cent of recognised refugees had been granted asylum in the USA or Canada.⁴¹ Disaggregated data by age of each of these population groups was not available, but a large number are likely to be children.

Questions

- How many of the asylum seekers and refugees currently residing in Guatemala are children?
- What measures have been taken to ensure legal, psychological or other training for those who work with children recruited by *maras* and other child victims of armed gang violence?
- What public and private programmes exist to enable children to leave *maras*, paying special attention to their safety and protection from reprisals, and physical and psychosocial recovery?
- What role is played by non-governmental organisations, the media, the private sector and the community, in particular children, in the design and implementation of the awareness measures described above?
- What steps have been taken to measure and evaluate the effectiveness of the measures described above, and the results obtained?

Recommendations

The state party should:

- Ensure that unaccompanied foreign children in the jurisdiction of the state party who have been involved in armed conflict or armed gangs are treated in accordance with paragraphs 54 to 60 of the Committee's general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin.

⁴⁰ Ibid.

⁴¹ Ibid.