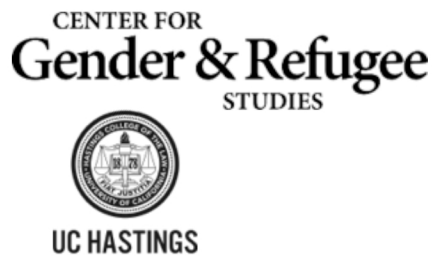


Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges

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Chapter 3 Guatemala

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This chapter is translated from the original Spanish version.

I. Introduction

The migration of Guatemalan children and adolescents is determined by a combination of sociopolitical, economic, cultural, family, and climatic events. Especially significant among these is the fact that the vast majority of children and adolescents who emigrate from the country have experienced violations of their human rights. Rights violations occur particularly in circumstances of extreme poverty, discrimination (ethnic, gender, and other), and violence, a combination that increases forced migration precisely because of the deprivation of basic rights.

Efforts to address the issues faced by children and adolescents affected by their or their parents' migration are relatively recent in Guatemala. While there have been several academic investigations, articles, and publications that address the subject, the majority of these studies focus on the population of children accompanying their parents. Only in recent years have specific and thorough analyses of the dynamics of child migration been undertaken with regard to points in time of their journey: apprehension, detention, and return (voluntary or forced). However, these analyses pay limited attention to the impact of migration on the rights and living conditions of children and adolescents, including on children whose parents have migrated.

This chapter describes the reality in Guatemala for children and adolescents affected by migration, especially regarding violations of their rights. We pay special attention to unaccompanied Guatemalan migrant children and adolescents, and we base our conclusions on the testimony of those who have traveled with Mexico and the United States as their main destinations, but who were then detained and returned to Guatemala. We devote a special discussion to the situation of unaccompanied indigenous children and adolescents. In a context of racism and discrimination, the fact of being indigenous makes them particularly vulnerable and poses barriers to gaining access to care and protection from State institutions.

This chapter also discusses the impact of adult migration, especially of parents, on the sons and daughters who remain behind in the care of other family members and neighbors in the community. What happens to these children and adolescents sheds light on community dynamics and the local support systems that have emerged and developed.

Finally, this chapter addresses what little is known about the situation of migrant children and adolescents in Guatemala, either as a transit or destination country.

II. Methodology

We approached this study first by reviewing the Guatemalan legislative framework on migration, as well as laws related to children in Guatemala more generally, and the State institutions whose mandate and competence is to attend to and protect children and adolescents. We also used secondary sources, including specialized literature, United Nations and Inter-American System reports, and reports by key Guatemalan institutions such as the Human Rights Ombudsman's Office.

This qualitative methodology also included in-depth interviews with children and adolescents, their family members, and other adults related to their migration process. These enabled us to: (1) describe the migration of unaccompanied Guatemalan children and adolescents; (2) to understand the triggers and main causes leading to the migration of unaccompanied children and adolescents; (3) to identify risk situations faced by Guatemalan children and adolescents on the migration route; (4) to identify changes caused by international migration, especially in indigenous communities; (5) to determine the situation of children who have fathers or mothers in the United States or Mexico; and (6) to analyze State responses to child migration.

To achieve these objectives, we interviewed children and adolescents who had been deported by air or land from Mexico or the United States at reception centers for deported children, as well as in the children's communities of origin. The age range of the interviewees was between 12 and 17, although some interviews were conducted with young people over the age of 18 who had emigrated when they were under 18. Interviews were conducted in November and December of 2013.

We interviewed 20 children and adolescents at Our Roots Shelters (*Casa Nuestras Raíces*) in Guatemala City and in Quetzaltenango. The *Nuestras Raíces* shelter in Quetzaltenango attends to children deported by land from Southern Mexico, whereas the shelter in Guatemala City cares for children and adolescents deported by air from the United States and Northern Mexico. Eighteen of the children and adolescents interviewed were boys and 2 were girls; 11 were indigenous Mayans and 9 were of mixed ethnicity.

We also interviewed 27 indigenous children and adolescents in their rural communities of origin, including Colotenango, Huehuetenango, and Concepción Chiquirichapa (Quetzaltenango). Most of these children come from the Mam Maya linguistic community. To complement this information, we also interviewed 8 relatives of the children and adolescents in these same towns, as well as other adults who knew of the children's decisions to migrate and of their subsequent journeys.

During the in-depth interviews, we posed questions about the children's and adolescents' opinions and perceptions related to their migration, treating them as important social actors. We tried to understand their motivations, their participation in the decision to travel or remain in the country, and their experience throughout the process. We were then able to analyze the way in which children and adolescents experience migration, the factors that determine and shape their understanding, and their points of view.

Prior to conducting the interviews, we created a methodological instrument that took into account the target population and determined the location of interviews. Researchers conducted all interviews in accordance with the human subjects protections set by the Western Institutional Review Board (WIRB), the ethics board that reviewed and approved this study for the University of California Hastings College of the Law.

Second, we coordinated implementation of the interviews in the field. The interviews were planned to take place over a two-month period in each of the *Nuestras Raíces* shelters—which are under the auspices of the Secretariat of Social Welfare (*la Secretaría de Bienestar Social* or SBS)—and in the communities of origin. We also obtained the required institutional permits.

Third, we conducted the interviews at selected locations during the months of November and December 2013. We read the informed consent form for child and adolescent interviewees orally and described in simple terms the objectives of the interview, explaining that participation would be anonymous. We conducted interviews in the *Nuestras Raíces* shelters in the presence of staff from the institution (a psychologist and/or social worker).

Selecting the locations and centers for the interviews was critical. The *Nuestras Raíces* shelters use similar procedures for the protection and security of unaccompanied children and adolescents; however, these children and adolescents come from different places and follow different repatriation routes (by land through Southern Mexico and by air from Northern Mexico and the United States). We took these differences into account in analyzing the impact of the deportation process on the children and adolescents, and thus understood it to be critical to diversify the interview venues.

One limitation for conducting interviews in the *Nuestras Raíces* shelters was the short amount of time available. This was due to several factors, including the fact that the unaccompanied children and adolescents were tired because of their long repatriation journey or the relatively lengthy process for transferring them to their families (see section 7.c on procedure). We overcame this challenge by coordinating with personnel from the different shelters (psychologists and social workers) so that we could complement the interviews with information contained in the SBS databases.¹ In doing this, we were able to avoid re-victimizing our interviewees by acquiring personal data through other sources. In addition, this procedure gave us more time to inquire about other matters during the interviews.

III. Situation in Guatemala: causes of child and adolescent migration

A. Social and political context

A diversity of events has caused Guatemalan migration to permeate the country's national and social reality. Significant events include: the internal armed conflict (1960-1996); a neoliberal

¹ It is significant that despite the large number of indigenous children and adolescents who do not speak Spanish, neither the SBS nor the Office of the Procurator General of the Nation (PGN) use interpreters during interviews to determine whether they can or should be returned to their families. In SBS centers where psychosocial services are provided, there is no interpretation into indigenous languages. Moreover, the process undertaken by the PGN is very superficial and short, and not well designed to identify whether a child is at risk.

economic system that has furthered social exclusion and poverty—including extreme poverty; diverse and growing forms of violence; and climatic events. These factors have had a direct impact on the country and its inhabitants.

Sociopolitical, economic, and climatic events are intrinsically linked, complementing and reinforcing each other and affecting migration patterns. In fact, much evidence links social exclusion (or marginalization) and forms of violence, as well as poverty and the aftermath of climatic events; and explains the specific and aggravated influence of these events on certain population groups—particularly children and adolescents, women, and indigenous peoples.

Sociopolitical events develop at the heart of Guatemalan politics, including regional and bilateral political processes. In particular, growing forms of violence, the internal armed conflict, and the lack of protection of children's rights have all had a significant effect on migration patterns. These events have arisen as a result of power struggles related to public policy priorities, or the interests of the most influential social and political actors in the country and region (of Central and North America), including criminal actors.

Recently, fights between gangs, drug traffickers, and organized crime, including highly organized crime and kidnapping groups that occasionally contain members of the National Civil Police, have erupted in efforts to gain control of trafficking routes and/or drug sales. These struggles have occurred in the absence of any public policies to control or eliminate these situations, and organized violence has killed or forced the migration of adolescents who are persecuted by gangs for not wanting to join their organizations. At the same time, there has been an increase in other forms of violence such as violence against women—including femicides/feminicides and increased sexual abuse of women, particularly girls and young women—ethnic discrimination, social exclusion, land appropriation and forced displacement, and the widespread deterioration of basic social services.

The internal armed conflict that began in 1960 and concluded with the signing of the Peace Accords on December 29, 1996 strongly affected migration in Guatemala. During that 36-year period, people migrated to escape the intense armed and ideological struggle. Peasants and indigenous people, intellectuals and artists, and other groups whose lives were endangered were forced to flee, with regular or irregular status, to neighboring countries, especially Mexico and the United States. According to Rodríguez de Ita,² three peak migration periods in Guatemala result from the internal armed conflict: the first took place when Jacobo Arbenz Guzmán's government was overturned; the second occurred during the counterrevolutionary government of Carlos Castillo Armas; and the third was during the counterinsurgency governments of General Romeo Lucas García and General Efraín Ríos Montt.

Added to these events, children and adolescents face obstacles regarding the protection of their civil, economic, social, and cultural rights. As we discuss in the section on legislation and institutional frameworks, Guatemala has ratified the major human rights treaties and enacted legislation that provides for the adequate and comprehensive protection of children; however,

² Rodríguez de Ita, G. (2013). La patria. . . en y desde el exilio en México. In V. Álvarez Aragón, C. Figueroa Ibarra, A. Taracena Arriola, S. Tischler Visquerra, E. Urrutia Garcia (Eds.), *Guatemala: Historia Reciente (1954-1996)* (pp. 339-373). Guatemala: Editorial de Ciencias Sociales.

institutional responses have not protected children and adolescents from being deprived of certain social rights such as guarantees of an adequate standard of living, nor have they been protected from an increase in the levels and types of violence.

Economic events, structurally related to *political* factors, are those tied to increases or decreases in foreign currency in the country. These events have involved signing agreements, conventions, and/or treaties between countries that affect regional markets. These events have a direct impact on the country's economy, affecting the living conditions of its inhabitants.

Dardón Sosa,³ Academic Coordinator of the Central American Institute for Social and Development Studies, indicates that in the 1980s, the national economy suffered a massive flight of capital and a sharp drop in private investment. He ascribes this to trade openness, deregulation of financial markets and services, and a macroeconomic policy that focused solely on controlling the growth of inflation. On the heels of the challenges of the 1980s, Guatemala's economy suffered great loss as a result of the "coffee crisis" that occurred in the early 2000s. Prior to the "crisis," Guatemala and other Central American countries exported coffee at a profit to coffee growers. Over time, however, the coffee market became flooded with significantly more coffee being sold than consumed. This drove down the price of coffee beans and forced growers to sell to large corporations in order to remain in business.⁴ Large corporations such as Kraft Foods began buying coffee beans at a low cost and in bulk from growers in Central America and Mexico, and processing and selling the coffee at a profit to the corporation. As this was happening, growers received far less money for coffee per pound than they previously had and thousands lost their jobs.⁵ The coffee crisis led many Guatemalans to migrate to Southern Mexico and the United States as an economic and livelihood alternative.

Climatic events are environmental disturbances that alter the infrastructure in rural areas of the country and harm the quality of land and access to basic services, thus causing high human and material losses. Some of these events have been associated with anthropomorphic "climate change."⁶

Recent natural events that have had tragic effects on Guatemalan migration include Hurricane Stan (2005), the 2009 drought, Tropical Storm Agatha (2010), and the earthquake in San Marcos (2012). These climate disasters are related to political, social, and economic factors in that they

³ Dardón Sosa, J. J. (2005, noviembre). Pobreza, migración internacional y regiones excluidas. *Cuadernos de Guatemala*, 10 & 11, p. 1-28. Retrieved from

http://www.aapguatemala.org/03_publicacions/cuadernos/descarrega/10Pobreza%20y%20migracion.pdf.

⁴ In 1997 coffee sold for \$3.15 U.S. per pound on the New York stock exchange; by 2002 coffee sold for only \$0.50 per pound on the same. See Fritsch, Peter. (2002, July 8). An Oversupply of Coffee Beans Deepens Latin America's Woes. *Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/SB1026078773964234000>.

⁵ The World Bank estimated that about 600,000 coffee workers lost their work in 2001 and 2002. In Guatemala, 6,000 children of unemployed coffee workers were at risk of starvation. See Fritsch, Peter. (2002, July 8). An Oversupply of Coffee Beans Deepens Latin America's Woes. *Wall Street Journal*. Retrieved from <http://www.wsj.com/articles/SB1026078773964234000>.

⁶ Climate change is understood as: "a substantive change in climate patterns and parameters as a result of variations in natural factors and human influence, specifically through emissions of greenhouse gases such as carbon dioxide and methane; the effect of the urban heat island, changes in rural land use patterns, and deforestation." Dionisio, S.L. & Ibarra, G. (2013, March). *El tiempo está envejeciendo: respuestas locales frente al cambio climático en una comunidad de retornados en Guatemala*, p. 44. Guatemala: FLASCO.

have principally affected regions where the population is mainly indigenous, with high rates of poverty and social exclusion, and where the food supply is predominantly based on agricultural production. These events have caused devastation and death, and have rendered hundreds of people homeless, leading to what has been called “environmental migration.”⁷

Climate change and environmental migration⁸ are interrelated in Guatemala and Central America. It is significant that “Guatemala has been regarded as the second most vulnerable country to climate change in the world based on disasters that have occurred in the last fifteen years,”⁹ which has led to an increase in environmental migration.¹⁰

B. Reasons Guatemalan children and adolescents migrate

In recent years, Guatemala has experienced a considerable increase in the number of children and adolescents who migrate, including those who are unaccompanied.

Migration occurs because of a combination of structural factors that are not always easy to identify and understand. As Girón Solórzano has pointed out, the dynamics and context of migration causes may change from one period to another, and there may even be unexpected events that define migration patterns.¹¹

Many reasons underpin children’s decisions to migrate, whether accompanied or not, and with or without the consent of their parents or legal guardians. Children may be motivated by the need to provide financial support for their families, by social or economic insecurity, or by violence in many forms (extortions, threats, gang recruitment, intrafamilial violence), and some may seek to reunify with family members.¹² These causal factors are interlinked and inseparable in a large and growing number of cases, and derive specifically from a series of recent political, economic, social, and even climatic events, not only in Guatemala but throughout Central and North America.

⁷ This list should also consider the effects of El Niño in 2014, drought being one of the most significant consequences.

⁸ An environmental migrant is understood to be: “any person who leaves his country of habitual residence mainly or very significantly due to environmental impacts, whether gradual or sudden, whether moving within a State or across international borders (including refugees and internally displaced persons).” Castillo, J. (2011, January). *Migraciones Ambientales: Huyendo de la crisis ecológica en el siglo XXI*, p. 16. Retrieved from <http://www.viruseditorial.net/pdf/migraciones%20ambientales.pdf>.

⁹ Dionisio, S.L. & Ibarra, G., *El tiempo está envejeciendo*, p. 17.

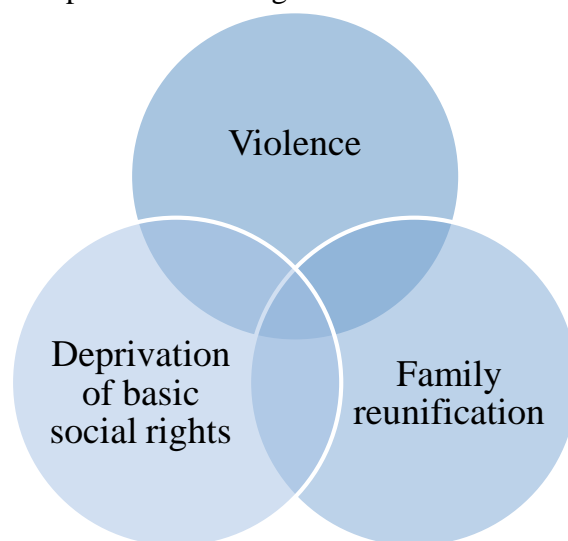
¹⁰ According to Vega García, environmental migration is a result of the inter-relation of three types of factors: (1) factors related to potential environmental migration which define a greater possibility of the occurrence of population movement because of an environmental situation; (2) trigger factors that could result in environmental migration; and (3) attenuating factors that result in environmental migration not occurring or being reduced. Vega García, H. (2011), *Centroamérica: un territorio vulnerable con sociedades frágiles: Reflexiones sobre el cambio climático y su relación con el desplazamiento humano. ÍSTMICA*, 14, pp. 69-88. Retrieved from <http://www.revistas.una.ac.cr/index.php/istmica/article/view/5332>.

¹¹ Girón Solórzano, C. L. (Ed.). (2014, March). Actualización: Diagnostico Nacional Sobre la Situacion de Niños, Niñas y Adolescentes Migrantes no Acompañados, en el Proceso Migratorio, p. 17. Retrieved from <http://www.movilidadhumana.com/wp-content/uploads/2014/08/revista-actualizacion-pmh.pdf>.

¹² Girón Solórzano, C. L. (Ed.) (2014, March). Actualización: Diagnostico Nacional Sobre la Situacion de Niños, Niñas y Adolescentes Migrantes no Acompañados, en el Proceso Migratorio (hereinafter “Actualización”), p. 17. Retrieved from <http://www.movilidadhumana.com/wp-content/uploads/2014/08/revista-actualizacion-pmh.pdf>.

The most important destinations for Guatemalan child and adolescent migrants are Mexico and the United States. However, the magnitude of this movement has been very difficult to establish and characterize because most of the children and adolescents have been forced to make the journey illegally, even though they may have migrated to seek reunification with one or both parents in the destination country. Statistics on apprehension and deportation reported by immigration enforcement agencies provide an indirect assessment showing not only that migration has not stopped, but also that it has intensified over time.¹³ In 2011, for example, Mexico deported 1,935 Guatemalan children and adolescents; 1,301 of them were unaccompanied.¹⁴ In 2014—just three years later—Mexico deported 7,973 Guatemalan children and adolescents.¹⁵

Using information from interviews and other sources described in our methodology section, we analyze the causes that prompt children and adolescents to migrate. We base our analysis on accounts and experiences of children we interviewed, information provided by key actors, and relevant literature (official reports, international agencies, academics, and others with experience in the subject). We conclude that there are three main intersecting causes of the migration of children and adolescents, as depicted in the diagram below:



¹³ While these figures represent apprehensions and deportations, they are likely related to the increased volume of migrants crossing the Guatemala–Mexico border in order to reach Mexico or the United States. While these figures could be explained by some degree of greater effectiveness in the control, detention, and deportation of undocumented migrants, they may also be used to indirectly determine the upward trend in the number of migrants. Statistics on the number of children apprehended by the U.S. Customs and Border Protection agency (CBP) also show an increase in Guatemalan children and adolescents attempting to migrate north in recent years. According to CBP the agency apprehended 1,115 Guatemalan unaccompanied children in fiscal year 2009, 1,517 in 2010, 1,565 in 2011, 3,835 in 2012, 8,068 in 2013, and 17,057 in 2014. See U.S. Customs and Border Protection. Southwest Border Unaccompanied Alien Children. Retrieved from <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>; see also chapter 1 by UNHCR.

¹⁴ OIM. (2013, January). *Niños, Niñas y Adolescentes Migrantes América Central y México*, p. 17. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

¹⁵ Lakhani, Nina. (2015, February 4). Mexico departs record numbers of women and children in US-driven effort. *The Guardian*. Retrieved from <http://www.theguardian.com/world/2015/feb/04/mexico-deports-record-numbers-women-children-central-america>.

The relative importance of each cause is difficult to determine because different studies reach varying conclusions about the causes of migration, likely due in part to *when* the studies were carried out.¹⁶ While earlier studies tended to find that Guatemalan children migrated more for economic reasons and for family reunification than to escape violence, recent studies have recognized that a more nuanced range of factors cause children to migrate. These studies find that by 2014 violence is a significant driver of children’s migration from Guatemala.

According to a survey conducted in 2010, the main causes for the emigration of persons under 17 years of age were improving economic conditions (43%), securing employment (39%), achieving family reunification (11.7%), and fleeing violence (1.4%).¹⁷ These four causes were found to account for 95.1% of emigration in this age group in Guatemala at that time.

Another study, by UNICEF (2011), indicates that 51.7% of Guatemalans who leave the country consider migration as an opportunity to improve and increase their income. The study revealed that 37.2% leave the country in search of better employment opportunities, and 1.6% of people emigrate to save or send back money to build a house.

Furthermore, the International Organization for Migration (IOM) Migration Profile for Guatemala,¹⁸ which is based on the 2010 survey cited above, found that 51.7% of migrants emigrated in order to improve their economic conditions. According to these statistics, 1.6% left Guatemala for family reasons, while 0.6% did so for reasons of widespread violence or because their personal integrity (safety) was at risk. Meanwhile, a 2013 study conducted by IOM indicates that the search for better living conditions and the possibility to join family members who have left were the main motivations for migrating from the perspective of child and adolescent returnees in Guatemala.¹⁹

By 2014, studies concluded that violence is a significant driver of children’s migration from Central America to the south, as well as to Mexico and the United States. The United Nations High Commissioner for Refugees (UNHCR) 2014 study, the abridged version of which forms chapter 1 of this book, determined that 38 of 100 Guatemalan children interviewed expressed the need for international protection from intrafamilial abuse and societal violence—by gangs or other organized crime. According to the UNHCR report, 62 of the children did not mention the

¹⁶ The UNHCR study notes that in 2006 only 13% of unaccompanied children migrants interviewed by UNHCR on the Mexico-Guatemala border indicated a need for international protection; this equates to 11 of the 75 children in the report sample. The vast majority of these children stated that the reason for migrating was to become reunited with their family members or to seek better opportunities, such as access to education and employment. In contrast, of the 404 children interviewed for the study conducted in 2013, over half (53%) of those who mentioned the objectives of family reunification, schooling or better opportunities in general, also referred to reasons related to the prevalence of intrafamilial abuse and violence committed by armed criminals. For further information, see UNHCR. (2014). *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (hereinafter “Children on the Run”), p. 24. Retrieved from http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf.

¹⁷ Organización Internacional para las Migraciones (“OIM”). (2010). *Niños, niñas y adolescentes migrantes no acompañados. La experiencia del viaje y el retorno*. Sin publicar.

¹⁸ OIM. (2013, June). *Perfil Migratorio de Guatemala 2012*, p. 201. Retrieved from http://costarica.iom.int/public/pdf/Perfil_Migratorio_Guatemala_2012.pdf.

¹⁹ OIM. (2013, January). *Niños, Niñas y Adolescentes Migrantes América Central y México*, p. 26. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

existence of serious harm as a reason to flee, while 84 of the children expressed the hope that they would be reunited with their families and/or would find better work or study opportunities as reasons for going to the United States.

Another 2014 report indicates that the main reasons for emigrating from Guatemala are violence, lack of opportunities, and family reunification, in that order.²⁰ Similarly, an investigation conducted by Elizabeth Kennedy finds that while family reunification, poverty, and lack of opportunity are common considerations in the decisions of children and adolescents to emigrate, the most common reason for the Central American exodus has been and continues to be gangs and violence that affect young people disproportionately.²¹

The differences between the 2010 and 2011 studies and the more recent ones can likely be explained through Cantor's analysis²² based on interviews conducted from 2012–2014 that revealed that violence has become the most important reason for migration. Additionally, violence is often concealed because it is committed by close members of the family, which can explain its lesser reported occurrence in earlier studies. Because of fear and shame, children and adolescents avoid talking about intrafamilial violence and refrain from reporting it; they also lack knowledge about where to report their experiences, and distrust the authorities.²³

We discuss the three main causes of child and adolescent migration separately in order to facilitate interpretation and understanding. However, these factors are intrinsically and structurally related, and have complementary impact on the majority of decisions to migrate. Additionally, these three causes are of course also aggravated by structural discrimination for reasons of ethnicity and gender, widespread impunity, and weak democratic mechanisms.

1. Poverty and the search for dignified living conditions

Poverty is closely related to inequality, associated with scarcity and deprivation. Thus, poverty produces systematic limitations for individuals to exercise their freedom to achieve self-realization. Furthermore, many factors worsen this situation, such as the absence of State institutions and lack of access to justice, health services, and education.²⁴

Guatemala has one of the highest levels of inequality in the world. According to the 2011 National Survey of Living Conditions,²⁵ 53.7% of the population lives in poverty, while 13.3%

²⁰ Orozco, M., & Yansura, J. (2014, August). Understanding Central American Migration: The crisis of Central American child migrants in context. Retrieved from http://www.thedialogue.org/PublicationFiles/FinalDraft_ChildMigrants_81314.pdf.

²¹ Kennedy, E. (2014). No Childhood Here, Why Central American Children are Fleeing their Homes. Retrieved from http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

²² Cantor, D. J. (2014, June 24). The New Wave: Forced Displacement Caused by Organized Crime in Central America and Mexico. *Refugee Survey Quarterly*, 33(3), p. 27. doi: 10.1093/rsq/hdu008.

²³ Girón Solórzano, C. L., Actualizacion, p. 20.

²⁴ Girón Solórzano, C. L., Actualizacion, p. 7.

²⁵ Encuesta Nacional de Condiciones de Vida (ENCOVI). (2011, November). Pobreza en Guatemala. Retrieved from <http://www.ine.gob.gt/sistema/uploads/2014/12/03/qINtWPkxWyP463fpJgnPOQrjox4JdRBO.pdf>.

lives in extreme poverty.²⁶

As a result of social and economic decisions related to neoliberal policies implemented in the region, malnutrition is one of the main problems in Guatemala. Forty-one point seven percent (41.7%) of children suffer from chronic malnutrition, and this percentage is higher in regions with large indigenous populations. In the Northwest, where the majority of unaccompanied migrant children come from, the malnutrition rate is 64.8%.²⁷

One significant motivation for the migration of Guatemalan children and adolescents to Mexico has been their search for employment opportunities and access to the labor market. Children and adolescents participate from an early age in family economic production and must contribute as family members. In Guatemala, 18% of children under 13 years of age are already working; this high percentage of child labor affects children's rights and is compounded by extremely unstable conditions and vulnerability in their jobs.²⁸

Children and adolescents working outside the home often receive income inadequate for the number of family members they have to help maintain. The shortage of jobs and saturation of local markets force many to move to new places in search of work and income.

In many cases, children and adolescents from border communities, especially San Marcos and Huehuetenango, travel to villages of Southern Mexico to search for work and income. This circular flow occurs legally through the Border Worker Migration Form²⁹ or Local Visitor Migration Form, although a significant number of people also cross the border without showing any migration document.³⁰

Although Guatemalan labor is key to farm development and production in Soconusco (Southern Mexican border), working conditions are poor, wages are often below minimum, and there are no social benefits. Despite this, these conditions are usually better than those in Guatemala. The majority of migrant children and adolescents work in agriculture, construction, services, and trade, participating very little in the manufacturing sector. Those engaged in agriculture are usually provided with housing and food.

The children and adolescents we interviewed report that, linked to the lack of opportunities is a lack of access to a small area of land to farm for family subsistence. Since Guatemala is predominantly agricultural, an absence of land has serious implications for households that depend on family food planting and harvests. The main economic household activity of

²⁶ Encuesta Nacional de Condiciones de Vida (ENCOVI). (2011, November). Pobreza en Guatemala. Retrieved from <http://www.ine.gob.gt/sistema/uploads/2014/12/03/qINtWPkxWyP463fpJgnPOQrjox4JdRBO.pdf>.

²⁷ López Robles, C., & Danilo Rivera, A., Aproximaciones de Política Migratoria para Guatemala.

²⁸ Programa de las Naciones Unidas para el Desarrollo (PNUD). (2012). Movilidad Forzosa: Buscando la inclusión "al otro lado," p. 74. Retrieved from

http://www.centrodesarrollohumano.org/pmb/opac_css/index.php?lvl=notice_display&id=1729#.VNN4m2TF9H1.

²⁹ During the third quarter of 2013 about 53% had the Border Worker Migration Form and 46% had the Local Visitor Migration Form. These are migration documents issued by the Mexican authorities so that Guatemalan residents in border departments can enter some southern states of Mexico. EMIFSUR. (2012) p. 7.

³⁰ According to EMIFSUR, data related to the percentage of migrants from Guatemala who have documents for entering Mexico, on average 80% applied for the migration document between 2010 and 2013.

agriculture has faced serious economic and environmental crises that have eroded income, leading to an increase in difficulties meeting basic needs. The families continue to work in agriculture and replicate the knowledge they possess, but they do so in large Mexican farms rather than in Guatemala.

Even when young people have technical skills that can be used in the country, the demand for these services is low or the work is underpaid. Combined with deprivation of other basic rights, situations of violence, and, in many cases, loss of care from parental emigration, young people must increasingly search for labor markets elsewhere in order to take advantage of their experience or knowledge.

The story of a 17-year-old boy from Huehuetenango shows how the need to seek work pressures children to migrate: “I am going because my mother is alone with my sisters [he explains with great difficulty because his native language is Mam], because I lost my job in the community and even though [I’m looking for work] I haven’t been able to find a job.” Thus, the saturation of local labor markets also compels young people to leave their communities.

Our interviews make clear that children and adolescents are aware of the situations their families face on a daily basis and have their own opinions about their circumstances. They recognize that opportunities for personal development and achievement are extremely limited in their country of origin. Furthermore, these limitations occur in a context of violence, discrimination, and/or family separation, demonstrating that public policies for the comprehensive development of children (ensuring basic social rights in conditions of freedom and free of violence) are inadequate. Young people themselves understand the complex and structural factors that result in child and adolescent migration.

For many children and adolescents, migration to the United States is perceived as the only possibility for leading a dignified life free of violence. In practice, they are willing to pay the cost of the journey—in economic terms, but also in terms of the danger it represents to their lives and physical integrity—to obtain those minimum levels of freedom, security, and socio-economic conditions for themselves and their families.

Guatemalan children and adolescents who have managed to enter the labor market are mainly those who chose Mexico as their country of destination; however, most of this group said that their preferred destination was the United States:

It’s difficult to get across [the border to the United States], but I wanted to go and work there in whatever I could.

16-year-old boy

I was very sad when they caught us because I want to go to the United States and now I can’t.

15-year-old indigenous girl

Despite difficulties getting to the United States, these young people express confidence that they will find opportunities there that they lack in their communities, both in socioeconomic terms as well as in relation to security and freedom. In many cases, these opportunities include family reunification.

For children and adolescents, the United States is synonymous with greatness, prosperity and economic growth, well-being and tranquility, and freedom and physical safety (protection against threats, abuse, and violence). In their discourse, they associate the United States with the possibility of obtaining employment, earning income in U.S. dollars to send back as remittances, acquiring material goods, and contributing to better living conditions in their communities of origin, as well as escaping social or family situations of abuse and violence. They also mention anticipating a country with modern technology and infrastructure, and with a diverse population as a result of immigration.³¹

Part of the income that children and adolescents receive from their work goes to their families, so the pattern of family subsistence started by their relatives before they left their communities of origin continues to be reproduced. This income is doubled or tripled when they work in Mexico and/or the United States:

When I worked here [in Guatemala] with my father they paid me fifty quetzals a day and I would give some of what I earned to my mother and the rest was for me. On the farm [in Mexico] they paid me seventy pesos [Mexican currency] for one 'cuerda' [almost 69 feet] of corn and a hundred and fifty pesos for one 'cuerda' of sesame because it costs more. For sesame you have to tie the bunches and stand them up against each other, but for corn you just cut it and leave it all together.

16-year-old boy

According to our interviewees, some parents refuse to accept or authorize their children's decision to emigrate. However, many of the children and adolescents choose to emigrate with cousins or friends who are not necessarily 18 or over, without the knowledge or authorization of their parents. In some communities, migrants have become role models to look up to for children and adolescents, especially when they experience deprivation of their basic rights such as health, employment, education, physical integrity, etc.

Another motivation for migration reflected in our interviews is a desire for the possibility of further study, because it is difficult in Guatemala to fully exercise the right to education, despite being fully guaranteed by the Law on the Comprehensive Protection of Children and Adolescents (hereinafter "PINA Law").³² Despite this law, Guatemala has the lowest number of

³¹ Palma, C. S. I., & Girón Solórzano, C. L. (2004, September). Condicionantes sociales para la migración: procesos de construcción de imaginarios – representaciones sociales asociados entre población joven, p. 19.

³² Decreto No. 27/2003, 2003, 4 de junio, Ley de Protección Integral de la Niñez y Adolescencia [PINA Law][Law on the Comprehensive Protection of Children and Adolescents] 1996 (Guat.). Article 36 of the PINA Law states: "Children are entitled to receive a comprehensive education in accordance with the family's ethical, religious, and cultural choices. This should develop personality and citizenship, further understanding and exercise of human

years of schooling in Central America (on average 4.1 years for adults). While schooling for young people between 13 and 30 years of age has increased in recent years,³³ the majority of children and adolescents in our sample who had basic schooling still found their level of education to be insufficient for obtaining decent work and putting a halt to the inter-generational transmission of poverty.

At the same time, the intention of the children and adolescents to continue with their studies in Guatemala is minimal, and some said they did not know whether they had passed their last school year because they had emigrated during the last month of the academic calendar. Guatemalan children thus do not consider education to lead to skill development or capability that will give them access to better job opportunities, reflecting a failure of the education system.

The level of schooling of our interviewees is low, and children are typically not placed in the appropriate grade for their age. Illiteracy in their places of origin is high. Schooling levels are also influenced by the limited reach of the national education system in Guatemala. Many children and adolescents who wish to continue their studies must walk up to three hours a day to reach the nearest school where their grade is taught, and the journey from one community to another may expose them to risks because of distances, road conditions, time schedules, etc.

Still, migrant children and adolescents repeatedly state that one of the reasons they decided to travel to the United States is their intention to continue their studies, since their family's socioeconomic situation and poverty prevent them from having access to education in Guatemala. Many children and adolescents have to compete with their siblings to continue attending school, and the final criteria for deciding who is able to continue school is determined by the (male) head of household, often based on age, number of children, and gender. In many communities in the country's interior, especially among indigenous peoples, only eldest sons are given the opportunity to study. Furthermore, the number of grades that each child and adolescent manages to complete depends on the number of children in the family; sometimes the priority is for all of them to learn to read and write, even if it means dropping out after the third grade of primary school.

Girls face greater barriers to study because they are constantly pressured to marry, have children, and raise a family. In fact, the only employment option for girls is generally domestic work in private homes. Thus, gender combines with age, ethnicity, and perhaps rural-urban origins to determine access to education and influence absenteeism, grade repetition, low achievement, and school dropout. Moreover, socially accepted practices such as sexism and gender discrimination contribute to the educational exclusion of girls.

rights, and promote the importance and necessity of living in a democratic society with peace and liberty in accordance with the law and justice, in order to prepare for the full and responsible exercise of rights and duties.”

³³ It increased from 4.0 years in 1989 to 6.5 years in 2011. For the group of 15-24 year-olds, the corresponding values are 4.3 and 6.9. Currently, men and women between 15-24 years of age living in urban areas have the highest level of schooling (8.2), as well as non-indigenous women and men in the same age range (7.7). *See* PNUD, *Movilidad Forzosa*, p. 109.

2. Multiple forms of violence

The law in Guatemala prohibits violence against children and adolescents. Article 53 of the PINA Law states that every boy, girl, or adolescent has the right not to be the object of any form of negligence, discrimination, marginalization, exploitation, violence, cruelty, or oppression. Moreover, the law specifies that all children and adolescents have the right to be protected from all forms of abuse. The ill-treatment and abuse listed in the Law include physical, sexual, and emotional abuse as well as negligence or neglect.

Article 54 of the PINA Law defines physical abuse as the excessive use of power and provocation of non-accidental harm to a child that results in body injuries. Sexual abuse is understood to occur when a person takes advantage of his/her power or relationship of trust with a child or adolescent in order to involve him or her in any type of sexual activity that may include harassment. Negligence or neglect extend to actions in which the person(s) responsible for the care and upbringing of the child fail(s) to comply with satisfying his/her basic needs for food, clothing, education, and health care, while having the resources to do so. Finally, emotional abuse occurs when a person harms the self-esteem or development of a child or adolescent. Any person having knowledge of an event in which one of the above situations occurs is under obligation to immediately inform the nearest competent authorities so that those responsible can be sanctioned.

The State has the obligation to ensure that competent institutions protect and secure the rights of children and adolescents who are under threat or whose rights have been violated, using violence prevention policies or programs, access to information, and sex education. However, the increase in two types of violence—persecution by gangs and intrafamilial violence—demonstrates that the State response to protect this social group has been inadequate, and there is less State presence and structure in municipal districts on the Mexican border.

According to a study by UNICEF, 2,305 cases of intrafamilial violence were reported in 2010; the direct victims were children or adolescents in 182 of these cases. However, because of the frequent fear of reporting, this statistic conceals whether the violence was perpetrated by family members or by a State and/or community authority. One study indicates that in 2010, 11,356 children were victims of sexual abuse, 7,002 of physical abuse, and 1,152 were injured as a result of negligence.³⁴ In Guatemala, according to UNICEF, the number of cases of intrafamilial violence registered in 2012 increased by 7.8% compared to 2011. Over the years, this trend has increased: from 2003 to 2012, intrafamilial violence grew by 546.2%.

The courts heard 3,096 cases of intrafamilial violence against children in 2013 (January to September). In 2012, nine out of 10 victims of intrafamilial violence were female and one was male. Fifty-six point two percent (56.2%) of the victims were women between 20 and 34 years of age. Likewise, according to the National Statistics Institute, violence against women (physical, sexual, emotional, and economic) was the crime most frequently reported in the judicial system. In 2011, there were 23,721 cases of intimate partner violence, 90% perpetrated by men and 10% by women.

³⁴ Valladares, D. (2011, July 8). GUATEMALA: Child Abuse Starts at Home. *IPS News*. <http://www.ipsnews.net/2011/07/guatemala-child-abuse-starts-at-home/>.

The UNHCR study³⁵ reports that 21% of the Guatemalan children and adolescents interviewed described intrafamilial abuse perpetrated by a family member or other caregiver. For example, a young interviewee told UNHCR that she was beaten several times a week and was forced to leave school to start work.

During our observation of the arrival and reception of repatriated children at government-run shelters and our interviews with migrant children and adolescents, several told us that they were trying to reach the United States because they were fleeing violence. These interviewees saw reaching the United States as the only way to safeguard their lives and survive persecution, gang recruitment, intimidation, threats, and other harms.

Structural and intrafamilial violence occurs with alarming frequency in Guatemalan homes. Previous studies have revealed that “49.4% of all homicides registered in 2010 occurred in the five departments with the highest migration rates (Guatemala, San Marcos, Huehuetenango, Quetzaltenango, and Jutiapa).”³⁶ This information supports our conclusion that violence reinforces the decision of Guatemalan children and adolescents to emigrate in order to survive.

Several of the children and adolescents we interviewed revealed that, for some of them, the search for better opportunities grew out of situations in which they had previously suffered some form of violence, especially child abuse (physical beatings). Children usually perceive that physical abuse and punishment, such as beatings, are a part of the normal exercise of parental discipline. To break these cycles of violence in the country, the practices and patterns of correction and discipline by parents towards their children should be changed.

It is highly probable that many children and adolescents flee because they are victims of sexual abuse by a family member or acquaintance; however, cultural obstacles make it difficult to address this issue with the children. According to the Secretariat of Sexual Violence, Exploitation, and Trafficking (SVET), sexual violence against children occurs when an adult or older person abuses their power, close relationship, or authority over a child and/or takes advantage of the relationship of trust and respect to force a child to engage in sexual activities—for which children are incapable of giving consent, even if the child realizes the implications of the activity.³⁷

According to UNHCR, persecution by organized crime and the lack of protection for the population at risk leads to a cycle of forced displacement.³⁸ People are forced to leave their homes to search for relatives elsewhere in the country, moving to other more remote areas and often crossing international borders. Twenty percent (20%) of the Guatemalan children and

³⁵ UNHCR, *Children on the Run*, p. 34.

³⁶ Embajada Suecia & UNICEF. (2012). *Jurimetric Study: Evaluación de la aplicación de la Convención sobre los Derechos del Niño y la legislación desarrollada a su amparo*, p. 48. Retrieved from http://www.academia.edu/8093802/Estudio_Jurim%C3%A9trico_Evaluaci%C3%B3n_de_la_aplicaci%C3%B3n_real_de_la_Convenci%C3%B3n_Sobre_los_Derechos_de_los_Ni%C3%B1os_y_la_Legislaci%C3%B3n_Realizada_a_su_amparo.

³⁷ Secretaría Contra la Violencia Sexual, Explotación y Trata de Personas (SVET), Gobierno de Guatemala. Marco Legal en Violencia Sexual. Retrieved from <http://www.osarguatemala.org/userfiles/Boletin%20SVET-OSAR.pdf>.

³⁸ PNUD, *Movilidad Forzosa*, p. 7

adolescents interviewed by UNHCR (or twenty children) reported that they had suffered or been threatened with serious harm as a result of violence in their society (not including violence in the home). That figure includes violence perpetrated by gangs or other types of organized crime, which occurs in the absence of State protection.³⁹ Of the 20 children who reported experiencing violence in society, 12 suffered harm by or fear of gangs or cartels.⁴⁰

The majority of victims of intrafamilial violence in Guatemala are women. Violence against women in Guatemala is associated with structural gender violence based on socio-cultural patterns that discriminate against women. Article 3 of the law against femicide/feminicide and other forms of violence against women states that violence against women is “any act or omission based on being female that results in immediate or subsequent physical, sexual, economic, or psychological harm or suffering for women, as well as threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public life or privately.”⁴¹

According to the United Nations High Commissioner for Human Rights, 198 complaints of femicide/feminicide and 31,836 complaints of other forms of violence against women were reported in 2013.⁴² Specialized justice for these crimes and other forms of violence against women have generated improvement with respect to the issuance of court rulings, and the SVET has strengthened inter-institutional coordination for implementing the Law against Sexual Violence, Exploitation, and Trafficking. However, there remains a high level of impunity for these crimes—nearly 93%. Moreover, there is a lack of statistics regarding such violence.⁴³

Elisa Portillo Nájera, Guatemalan expert on women’s rights and violence against women reports that:

the legal system and a culture of disrespect for women is a signal to men that they will not be punished for committing acts of violence against women. The number of murders is extremely high. . . . While statistics show that 5,500 femicides/feminicides occurred between January 2000 and December 2010, the actual number is probably much higher, because in fact the majority of femicides/feminicides are not reported, and many murders of women are not properly labeled as femicide/feminicide. Of the 5,500 documented cases, a minority has been investigated. Investigations are often inadequate, partly because of the lack of interest of public officials in solving crimes of violence against women[.]

Violence against women is widespread in Guatemala, where patriarchal social norms assign a subordinate role to women. . . . Officials and institutions responsible for the protection of women share these cultural attitudes which are deeply ingrained in the society. The 2008 Law, which aimed to address these

³⁹ UNHCR, *Children on the Run*, p. 35.

⁴⁰ UNHCR, *Children on the Run*, p. 35.

⁴¹ Decreto No. 22/2008, 2008, 2 de mayo, *Ley contra el Femicidio y otras Formas de Violencia Contra la Mujer* [Law Against Femicide and other Forms of Violence Against Women] (Guat.). Retrieved from http://oas.org/dil/esp/Ley_contra_el_Femicidio_y_otros_Formas_de_Violencia_Contra_la_Mujer_Guatemala.pdf.

⁴² UNHCR, *Children on the Run*, p. 12.

⁴³ UNHCR, *Children on the Run*, p. 12.

serious problems, has not yet been effectively implemented because of these attitudes[.]⁴⁴

3. Family reunification

Children and adolescents in situations of violence, who lack opportunities, and whose relatives have already emigrated often make the difficult decision to emigrate and face the risks of the migratory route. The absence of programs and mechanisms to facilitate family reunification—especially programs for regular and safe migration—has forced sons and daughters left behind in communities of origin to seek riskier ways to reunite with parents who are mostly in the United States.

In Guatemala, the motivation for family reunification has evolved over time. Traditionally, parents initiated this process without consulting their children. When parents settle in the United States, they may think of bringing their children, especially the younger ones. These journeys are usually made with a guide or *coyote* who is often from the same village as the family and negotiates arrangements with the parents by telephone.

My parents called me and told me that I had to go with a man [the coyote] who would take me to them and that I should just prepare a backpack and do everything the man told me to do.

It is difficult to analyze migration on the basis of family reunification.⁴⁵ Studies conducted from the perspective of destination countries are limited by an inevitable ethnocentric bias when they assume that the family will reunify in the destination country. This approach presumes a linear migration process that begins with adult migration, and the cycle concludes or is completed when the children arrive, “Without aiming to, a particular normative view of the essentially nuclear family group is re-created, without considering the arrangements and various family structures in each territory.”⁴⁶ The second limitation occurs when the family migration process is studied from an adult perspective; so although it is a child who is migrating, studies assume the participation of children to be based on a decision-making process by adults as an expression of generational power relations. Several studies indicate that children in these circumstances are treated and seen as passive objects and recipients of adult decisions, being practically “dragged” by their relatives to their destinations.⁴⁷

⁴⁴ Portillo Najera, E. (2012, Feb. 3). Declaration of Elisa Portillo Najera. Retrieved from http://cgrs.uchastings.edu/sites/default/files/Elisa_Portillo_Najera_Affidavit.pdf.

⁴⁵ Gaitán, L., Diaz, M., Sandoval, R., Unda, R., Granda, S., & Llanos, D. (2008). Los Niños Como Actores En Los Procesos Migratorios, Implicaciones para los proyectos de cooperación. Retrieved from http://www.de0a18.net/pdf/doc_infancia_risc_los%20ninios_como_actores.pdf.

⁴⁶ It has already been shown that family migration processes are complex transnational trends that are not necessarily linear, especially during times of crisis, constantly generating new return journeys and circular movement for family and children. Pedone, C. (2010). “Lo de migrar me lo tomaría con calma”: representaciones sociales de jóvenes en torno al proyecto migratorio familiar. Retrieved from <http://www.uned-illesbalears.net/Tablas/inmiju7.pdf>.

⁴⁷ Pedone. (2007); Carrasco, S. (2004). Infancia e inmigración: proyectos y realidades. En Gómez-Granell, Carme, et. al (Coord.), *Infancia y familias: realidades y tendencias* (pp. 205-231). Barcelona: Ariel - CIIMU; and Gaitán, L., Diaz, M., Sandoval, R., Unda, R., Granda, S., & Llanos, D. (2008). Los Niños Como Actores En Los Procesos

This change of perspective within the family reunification process coincides with the point made by Girón Solórzano that, at present, many young people are demanding that their parents in the United States send for them because they feel a strong need to reconnect and enjoy their right to family life, and even more so when they experience violence and deprivation of basic rights in their communities.⁴⁸ When this demand occurs, children and adolescents participate significantly in the decision to move and negotiate within the family.

However, the recent migration of unaccompanied children and adolescents has revealed that, in communities with a long history of migration, new support networks for migration are emerging. These consist of a young group of migrants who are already settled in the United States and are between 18 and 25 years of age. These new support networks emerged from the need to establish close emotional ties similar to family relationships. The networks are conducive to building strong relationships among the youngest migrants in the destination country. They also provide new information about transit and destination associated with the use of technology and telecommunications.

IV. Risks associated with the migration of children and adolescents

Irregular migration necessarily includes risks. The majority of migrants, including children and adolescents, are aware or at least have heard that irregular migration represents a danger to their lives. However, their reasons for deciding to leave are so strong that they “accept” and “live with” the risks of “viajar mojado” (literally “traveling wet,” but used in this sense to indicate an irregular status).

I knew it wouldn't be easy but necessity forces you to do things. Why should I stay? In any case, I probably wouldn't die of hunger but I'm not going to achieve anything here Look, those who stay here in the village never achieve anything. My father lost his crop and is already going crazy with so much debt, in the end my brother had to send money from the United States to pay. If you don't have anybody up there, people won't survive here either.

15 year-old girl

On the road I met all kinds of people: gang members—yes I was afraid of them and they mean what they say; thieves—that stole the new tennis shoes I was wearing; policeman—who asked me for money; some nice women that gave me food; you meet all kinds . . . there were some girls in my group . . . they weren't as lucky.

17 year-old indigenous boy

Migratorios, Implicaciones para los proyectos de cooperación. Retrieved from http://www.de0a18.net/pdf/doc_infancia_risc_los%20ninos_como_actores.pdf.

⁴⁸ Girón Solórzano, Actualización.

Guatemalan children and adolescents appear to assimilate the risk as part of migration and so accept the dangers and damages they suffer during the journey as normal and common situations faced by irregular or unauthorized migrants. They describe themselves as “illegal,” believing that they have no rights and that they are “deserving” of certain types of abuse because of their immigration status.⁴⁹

One thing I was sure of was that it wouldn't be easy, but I was prepared. Being locked up [by smugglers] was nothing—because they kept us in a house so as not to be caught [by INM officials]—the important thing was that we'd managed to get to the north of Mexico, [before being detected by INM officials] but the way my other friends spoke [not with a Mexican accent or words commonly used in Mexico] gave me away too. I'd learnt my lesson well, I gave the right answers [to INM officials] and I knew what to do, but that's the way it was.

16 year-old indigenous girl

The history of this girl shows how migrants prepare themselves mentally and physically before starting the trip, preparing to face a series of events and challenges. For indigenous children and adolescents, challenges include the need to conceal their indigenous identity by not speaking their native language and not wearing traditional clothing that is common among girls and women in different indigenous groups. Children and adolescents prepare for the journey through Mexico by learning phrases or words commonly used in Spanish spoken in Mexico.

Because many migrant children and adolescents accept as natural the possibility of being a victim of abuse, investigations require additional strategies and time to investigate and detect these situations. Our findings demonstrate that the majority suffer abuse and human rights violations, especially during transit, interception, and detention by authorities and third parties (for example, organized criminal groups or common criminals). However, it was not always possible to accurately detect what kind of abuse they had suffered or who had committed it. Combatting these risks requires specific and appropriate rights-based policies, practices, and mechanisms, including appropriate training for those responsible and adequate resources.

During the interview of a 17-year-old indigenous girl, we were struck by what happened while she was staying at the migration center. According to her, the treatment she received at the Federal Detention Center in Mexico was “acceptable” because although the food was cold and sometimes uncooked, at least they gave her something to eat. She clearly identifies the Child Protection Officer and calls her “OPI.”

Good people the OPI, there was one of them that they call 'Cariñitos' [term of affection] because she'd let us call our parents on the phone. Poor thing though because she was just one person for so many girls that she didn't have enough

⁴⁹ Girón Solórzano, C. L. (2013). La migración de niños, niñas y adolescentes guatemaltecos al sur de México: ¿una forma de vida? En Zapata Martelo, E., Martínez Ruiz, R., & Rojo Martínez, G., *Escenario del Trabajo Infantil. Diversos Estudios de Caso*, (pp. 25-46). México: Universidad Autónoma Indígena de México y Colegio de Postgraduados.

time, but she had good intentions [laughs], she was always dead tired, because she was on her own all weekend and they'd call on her for everything.

When asked about what worried them or affected them the most, they immediately brought up being detained.

Ugh, being locked up. Look, they'd tell us, the OPI, the Immigration people and even the Consul who visited us told us: you're not locked up, you're here for your own protection before sending you back to your country [raises her arm], of course, we were imprisoned, would they let us out? Yes, they certainly had us locked up.

As the interview progressed, this girl revealed more about the detention experience. The investigator was surprised to discover this explanation:

Oh, yes in Mexico City at the detention center, it's dreadful, but really dreadful, there you have to behave. I could hardly wait to go back or be sent back, I told the consul, send me back right now. Why was it so dreadful there? At night it was haunted, look, you could hear the other girls and women screaming in the night, it was horrible. Where did the screams come from? Well we thought it was from the bathroom near the hallway, but ugh what screams and someone asking for help, we couldn't sleep we were so frightened, and that lasted a few hours every night, it was horrible, that and being locked up I couldn't stand it while I was there. That's why I wanted to come back. And what happened? Well, at night we just heard noises and screams, but loud screams. The next day we asked the people from immigration and they said, ah, it's haunted here at night, you'd better just go back to sleep because if not then they'll come and scare you!

Accounts of this nature should prompt the State to conduct a serious and thorough review of their detention practices and develop and implement alternatives to the detention of migrants without exception for children, adolescents, and families.

The States focus attention on migrant children traveling alone or unaccompanied allegedly to protect this population, but utilizing detention, deprivation of liberty, and automatic deportation.⁵⁰ Detention practices and policies should be reviewed in countries of transit and destination, recalling recent Advisory Opinion 21/14 of the Inter-American Court of Human Rights that has forcefully affirmed that:

States may not resort to the deprivation of liberty of children who are with their parents, or those who are unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings; nor may States base this measure on failure to comply with the requirements to enter and to remain in a

⁵⁰ Solórzano, G., C. L. (2013). La migración de niños, niñas y adolescentes guatemaltecos al sur de México: ¿una forma de vida? En Zapata Martelo, E., Martínez Ruiz, R., & Rojo Martínez, G., *Escenario del Trabajo Infantil. Diversos Estudios de Caso*, (pp. 25-46). México: Universidad Autónoma Indígena de México y Colegio de Postgraduados.

country, on the fact that the child is alone or separated from her or his family, or on the objective of ensuring family unity, because States can and should have other less harmful alternatives and, at the same time, protect the rights of the child integrally as a priority.⁵¹

V. Migration of indigenous children and socio-cultural changes

Cultural diversity is particularly complex with respect to Guatemalan migration. According to official statistics, 40% of the Guatemalan population is indigenous, mostly of Mayan origin.⁵² However, this percentage may be under-representative in part because some indigenous people do not want to identify themselves due to prevalent racism and discrimination against indigenous peoples in Guatemala. In addition, arbitrarily-conducted censuses result in surveyors deciding what ethnic identity to attribute to interviewees. There are also significant levels of under-registration. For this reason, it is widely accepted that over half of Guatemala's population is indigenous, mostly of Mayan origin, but also from the Xinka and Garifuna ethnic groups.

The Spanish invasion of the Americas established economic, political, social, and cultural structures in which inequality prevails, resulting in the oppression, marginalization, and exploitation of indigenous peoples. Thus, these sectors of the population have fewer opportunities and live in conditions of greater material poverty.

Racism and discrimination are structural constants that justify and underpin inequality for indigenous populations in a system where colonialism sought, by various means, to destroy indigenous cultures and identities. Nevertheless, indigenous peoples have resisted and preserved their ethnic identities and cultural wealth, maintaining a worldview of their own that provides alternatives for a more harmonious life between human beings and nature.

Most Guatemalans who migrate hail from the Northwestern departments of San Marcos, Huehuetenango, Quetzaltenango, and Quiché, parts of the country with a majority indigenous population. Migration occurs mainly in the sociolinguistic Mam and Kiche' communities, where dire poverty and extreme poverty rates combine with high levels of violence.

This section focuses on the cultural effects of the international migration of unaccompanied indigenous children and adolescents, particularly those who travel to the United States. Individual and family perspectives expressed in the interviews we conducted, rather than the views of the larger community, form the basis of our discussion.

Unaccompanied indigenous children and adolescents, most from the Maya Mam ethnic group in the departments of Huehuetenango, San Marcos, and Quetzaltenango, comprise most of the migrants interviewed. Our informants traveled with *coyotes* and were returned to Guatemala

⁵¹ Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, ¶ 160, Advisory Opinion OC-21/14, Inter-Am. Ct. H.R. (ser. A) No. 21 (2014, August 19). Retrieved from http://www.corteidh.or.cr/docs/opiniones/seriea_21_eng.pdf.

⁵² National Institute of Statistics (Instituto Nacional de Estadísticas or INE). (2013, November). Caracterización estadística Republica de Guatemala. Retrieved from <http://www.ine.gob.gt/sistema/uploads/2014/02/26/5eTCcFIHErnaNVeUmm3iabXHAKgXtw0C.pdf>.

after being detained in Mexico or the United States. We also consulted their relatives and other adults.

Guatemalan children and adolescents, especially indigenous children, participate in migration in large numbers. Studies in their communities of origin⁵³ have shown that they form part of this circular migratory process from birth, when they travel in family groups with their parents. In fact, while migratory trajectories in Guatemalan communities are continuously reproduced, they have also led to new migration pathways with the increase in children and adolescents traveling alone or unaccompanied by an adult.

Their communities and the Guatemalan State treat children and adolescents as persons who “accompany” their parents as long as they travel as a family. This way of seeing child migration restricts and fails to acknowledge children and adolescents as subjects of rights, because it is the adults who decide and negotiate on their behalf.

Guatemala’s political and economic life rests on the subordination of indigenous people, often under conditions of exploitation, marginalization, and discrimination. Furthermore, in Guatemala having darker skin, belonging to an indigenous group, and speaking a Mayan language places people in a category that excludes them from “non-indigenous” society. Systematic discrimination against the minority has been normalized in Guatemalan society. According to the Human Development Report, “skin color is a visible physical difference which becomes a parameter for differentiation. It is structured as a form of inferiority in the relationships established, where dark or light skin establishes a hierarchy.”⁵⁴

The link between indigenous peoples, land and territory, and their appreciation of agricultural work creates a cultural aspect to migration. These links form the basis of indigenous community existence, although the emphasis on land and agriculture has been disappearing among young people. As the 2006 Report of the Human Rights Ombudsman’s Office indicates, transculturation processes do not necessarily have a negative impact; cultural exchange can lead to enrichment of the cultural heritage.⁵⁵ However, this change has one negative element, in that it may lead to denial of the right to cultural identity.

Guatemala shares a border with Mexico, and the majority of migrants leave from departments close to this border (particularly San Marcos and Huehuetenango), so they are influenced daily by Mexican culture as a normal fact of life. In fact, it is common to hear the opinion that in the Mam area of San Marcos, people have abandoned their ancestral culture and become “Mexicanized.” There are even radio stations in border areas that have a bi-national function, transmitting programs to Mexico and Guatemala with announcements and messages specifically for Guatemalans and Mexicans living in the border area.

⁵³ See Caggiano, S., Piedad Caicedo, L., Girón, C., with Torres, A. (Coord.) for FLASCO Ecuador, AECID, & UNICEF. (2010, May). *Niñez indígena en migración. Derechos en riesgo y tramas culturales*. Retrieved from http://www.unicef.org/lac/Ninez_Indigena_en_migracion%281%29.pdf.

⁵⁴ HDR-UNDP. (2005) p. 248.

⁵⁵ Human Rights Ombudsman’s Office. (2006). *Informe Annual Circunstanciado*. Retrieved from <http://www.pdh.org.gt/archivos/descargas/Documentos/Informes%20Anuales/informe2006.pdf>.

On their way to the United States, migrants are encouraged to acquire cultural Mexican characteristics to allow them to go unnoticed. Children and adolescents reported receiving preparation lasting approximately one week at locations close to the border before undertaking their journey. During this orientation, *coyotes* instruct them on how to dress, talk, and behave so they will seem to be Mexican, and they are told how to change their demeanor as they travel through Mexico to the United States. Consequently, children and adolescents who migrate are forced to conceal or hide their cultural identity, abandoning the use of the mother tongue and traditional dress. This is particularly true for girls.⁵⁶

Straightaway they can tell we're from Guatemala, that's why we don't wear our traditional dress [she smiles and covers her face with her hand] so they tell us what words not to use, that we shouldn't talk, and that's how we go. . . .

17-year-old indigenous girl

Moreover, child and adolescent migrants often spend a period of time in Mexico before embarking on the journey to the “North.” Of the children and adolescents we interviewed, several reported that before starting their journey across Mexico to the United States, they worked in Chiapas for 15 days or more, on farms or in jobs the *coyotes* got for them. They do this because they need to obtain money to pay extortions, illegal charges, and other expenses on the way that are not covered by the payment made to the *coyote*.

The children and adolescents who migrate from rural indigenous communities, usually because of their age, life experience, and low level of education, have no concept of country or State until they have to cross borders. At that time, they have to accept that they are foreigners or migrants with irregular status, and they start to perceive xenophobia. For children and adolescents, the journey represents a discovery of larger realities and other knowledge that place their identity in doubt.

One adult we interviewed, referring to indigenous children and adolescents, said, “those who migrate do not know Guatemala.” Or, as a Catholic priest said, there is “very little knowledge of Guatemalan identity, of the nation as such. Because the nation has consisted of the Ladinos [non-indigenous people], for the people who came from Spain, people who have owned the country. But the Mayans have never felt that they are owners of this country.”⁵⁷

Guatemala’s national identity as a multiethnic, pluricultural, and multilingual nation has not been developed. Also important is the fact that, for indigenous peoples, national boundaries after “independence” from the colonial powers were impositions that are not consistent with their history. In several cases, indigenous peoples were divided between two or more countries, as is the case of the Maya Mam people who live in Guatemala and Mexico.

⁵⁶ It is the Guatemalan indigenous women who still use their traditional dress, which in many cases consists of a blouse called a “güipil” and a skirt made of a length of cloth wrapped around their waist and fastened with a belt.

⁵⁷ Camus, M. (Ed.). (2007, April 3). Comunidades en movimiento, La migración internacional en el norte de Huehuetenango, p. 207. Retrieved from http://rimd.reduaz.mx/documentos_miembros/76manuelacamus.pdf.

In recent decades, however, indigenous identity has been revitalized and strengthened in an ongoing way. Indigenous men and women, who had internalized oppression, are ceasing to be “ashamed” of their condition and starting to feel their identity as a source of pride. They are additionally using “politically correct” language in referring to themselves as “Mayan people,” a phrase recognized in the Peace Accords, particularly the Accord on the Identity and Rights of Indigenous Peoples, signed between the government of Guatemala and the Guatemalan National Revolutionary Unity (URNG) on March 31, 1995.

Unaccompanied migrant children and adolescents often speak little Spanish, let alone English. This makes them more vulnerable, because during transit they often encounter environments where only those languages are spoken. Consequently, they have difficulties understanding their environment and making themselves understood by others. Also, because of the way they speak Spanish, they are mocked, even by other Latin Americans, who refer to them as “Indians.”

As a result of racism and deeply-rooted ethnic, social, and cultural discrimination, it is common for indigenous Guatemalan children and adolescents to be insulted because of their ethnicity by the authorities and even by other migrants, who use expressions such as “stinking peasants.” Even if they are not wearing their native dress, the women, particularly, are referred to as “Guatemalan Indians,” or even such vulgar expressions as “Guatemalan shit.” They receive the same treatment from drug traffickers, who might intercept migrants on their journey, often with the complicity of *coyotes*. These criminal groups may additionally force the children and adolescents to transport drugs across borders.

Particularly serious is the fact that women—and especially girls, whose situations are extremely vulnerable—appear to accept rape by *coyotes*, traveling companions, State officials, and others as part of the cost of the trip. Some interviewees said that the *coyotes* themselves, in the guise of giving the girls the “opportunity” to travel, encourage them to take contraceptives, with parental consent, so that they do not become pregnant en route.

A 17-year-old Maya Mam girl we interviewed said that an alternative to not being raped and/or sexually abused is to agree with a fellow traveler to pretend to be her boyfriend or husband before the others, which also represents an economic cost because the girl has to pay the person who pretends to be her partner.

Discrimination is a constant in the lives of indigenous Guatemalan migrants. En route to and when arriving in the United States, migrant children and adolescents continue to experience the same racism and discrimination that they experienced at home, in violation of their cultural identity. Nevertheless, when they are returned to Guatemala, they may find it difficult to go back to traditional aspects of indigenous culture (language, dress, food, behavior patterns, etc.). For example, some girls no longer want to wear indigenous dress nor do they want to speak their native language. They also refuse to eat tortillas and prefer bread, even expressing contempt for traditional food: “I’m not eating those” (referring to tortillas). People who have migrated even see other children and adolescents who have not done so as “inferior;” in other words, the fact of having migrated seems to confer status.

Even so, indigenous migrants make notable efforts to maintain their cultural identity and community cohesion in their country of destination: “Although they are poor in material resources, Mayan immigrants have brought a tradition of community organization and religious practice that provides them with support against separation and the hardships of migration to a strange land.”⁵⁸

VI. Child and adolescent migrants in transit through Guatemalan territory and migrants who are living in Guatemala indefinitely

Because Guatemala is predominantly a country of origin for migrants, our investigation focused on Guatemalan children and adolescents who leave. There are no studies about Guatemala specifically as a country of transit or destination for children and adolescents, and no systematic quantitative data or qualitative information exists on the situation of accompanied or unaccompanied migrant children and adolescents who transit through or who remain in Guatemala. Therefore, it is difficult to address the protection status of in-country migrants or discuss their access to rights, and the scope of this study did not include interviews with migrant children and adolescents living in Guatemala.

While Guatemala continues to be a country of origin for many migrants, in recent years it has also become a migrant-receiving country, usually for people from the rest of Central America (mainly from El Salvador, Honduras, and Nicaragua) who participate in economic activities related to agriculture, construction, and domestic service.⁵⁹ Furthermore, Guatemala is a country that most Central American children and adolescents have to traverse to get to Mexico and the United States. The children and adolescents who fail to reach their destination often stay in Guatemala indefinitely. But child and adolescent migrants in transit or residing in Guatemala are also invisible to the Guatemalan State and, therefore, there is no special protection or specific program for them. The lack of information available on this population highlights the urgent need to address and respond to migration to Guatemala, primarily as a State responsibility, but also as a matter for other stakeholders.

VII. Guatemala’s legislative and policy framework regarding migrant children and adolescents

In this section, we analyze the legislative and public policy framework that applies to migration and children. We try to determine whether existing legislation takes a rights-based approach, and describe the situation of children and adolescents who migrate. We also look at public policy on children and adolescents to determine to what extent those who migrate with their families or alone are visible, as well as the circumstances of those who remain in the country of origin while their parents have migrated. To the extent possible, we examine migrant children and adolescents from other countries who remain in Guatemala as a destination or transit country. We also address the status of Guatemalan ratification of the main international and regional universal human rights treaties, and their hierarchical value in relation to the country’s constitutional framework.

⁵⁸ Odem, 2007, p. 206.

⁵⁹ OIM. (2013, January). Niños, Niñas y Adolescentes Migrantes América Central y México. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

Guatemala has ratified all of the fundamental treaties of the United Nations and Inter-American Human Rights System (IAHRS).⁶⁰ However, it has neither signed nor ratified the Third Optional Protocol to the Convention on the Rights of the Child (CRC), which would allow the Committee on the Rights of the Child to consider individual complaints of violations of the rights enshrined in the Convention, including those suffered by migrant children and adolescents. Nor has it ratified Convention 143 of the International Labour Organization (ILO) on migrant workers.

Article 46 of the Guatemalan Constitution declares that human rights treaties ratified by the Guatemalan State take precedence over domestic law. This principle is complemented by the primacy of respect for human rights through which Guatemala regulates its relations with other States.⁶¹

With regard to children and adolescents, the Constitution specifies that the State shall protect their physical, mental, and moral health and guarantee their right to food, health, education, security, and social welfare.⁶²

A. *Legal and institutional migratory framework*

The law currently in force on migration in Guatemala is the Migration Law and its regulations.⁶³ Migration is the responsibility of the Ministry of the Interior, which delegates responsibility to the General Directorate of Migration (DGM) to design and implement migration policy.

Decree 95/98 and its regulations regulate migration in the country by regulating the entry and exit of citizens and non-citizens in Guatemalan territory as well as the residence of non-citizens in the country. It is a rigid and restrictive legal framework that criminalizes people with irregular migration status by labeling them as “illegal,” an indicating term that reveals the orientation of this Decree and its lack of a rights-based approach. The law also mandates migration authorities to prevent the departure of persons who do not have the required documentation, and establishes

⁶⁰ It has ratified the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the Convention on the Worst Forms of Child Labour (ILO No. 182), the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁶¹ Constitución Política de la República de Guatemala, 1993, 17 de noviembre, art. 149.

⁶² Constitución Política de la República de Guatemala, 1993, 17 de noviembre, art. 51.

⁶³ Acuerdo Gubernativo No. 383/2001, 2001, 14 de septiembre, Reglamento para la protección y determinación del estatuto de refugiado en el territorio del estado de Guatemala [Regulation regarding the protection and determination of refugee status in Guatemala] 2001 (Guat.); Decreto No. 95/98, 1998, 26 de noviembre, Ley de Migración [Immigration Law] 1998 (Guat.); Acuerdo Gubernativo No. 529/99, 1999, 20 de julio, Reglamento de la ley de Migración [Regulation of the Migration Law] 1999 (Guat.).

penalties—as if they were crimes—with prison sentences for people who conceal or hire migrants with irregular status.

Moreover, this Decree establishes the functions of the DGM and defines the institutional mandate of this office and its branches, specifying sanctions and the powers of the migration authorities to regulate, manage, authorize, or deny the entry and exit of people to the country. It confirms the “illegal” nature of the residence of a non-citizen who has entered through a location that is not authorized for this purpose, and who fails to comply with the rules governing entry and residence, such as by remaining in the country after the expiration of the period authorized.

The Guatemalan migration policy framework makes no mention of rights that provide special protection for children and adolescents (non-discrimination, best interests, survival and development, the right to family life, unrestricted access to social rights, and so on). Consequently, the legislation is not rights-based, but rather uses an approach based on security and migration control; it therefore contradicts the principles contained in several of the international instruments on human rights and migration signed by Guatemala.

There is no doubt that Guatemala’s legislative framework for migration requires urgent harmonization with the major international human rights instruments, all ratified by Guatemala. This was expressed by the Special Rapporteur on the Human Rights of Migrants during his mission to Guatemala in 2008⁶⁴ and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in its concluding observation of 2011.⁶⁵

In particular, the Rapporteur indicated that:

[T]he existing legislative framework contains numerous inaccuracies and gaps that in their practical application result in situations that violate the fundamental rights of migrants transiting through Guatemala. In this context, migration and police authorities have considerable leeway for controlling migration and implementing procedures for the identification and return of undocumented migrants, these procedures often taking longer than necessary and not being subject to any accountability mechanism.

He also noted violations of due process, particularly with regard to free legal aid and the availability of an interpreter for migrants who do not speak the language.⁶⁶

In 2007, Decree 46/2007 of the Guatemalan Congress created the National Council for Assistance to Guatemalan Migrants (CONAMIGUA). This government body coordinates, defines, supervises, and oversees the actions and activities of State agencies that have the responsibility to protect and provide assistance and relief to Guatemalan migrants and their

⁶⁴ Report of the Special Rapporteur on the Human Rights of Migrants, 11th Sess., 2009 May 14, ¶ 122, U.N. Doc. A/HRC/11/7/Add.3. (2009, May 18).

⁶⁵ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Consideration of reports submitted by States parties under article 74 of the Convention Concluding Observations: Guatemala*, 15th Sess., 2011, September 12 - 23, U.N. Doc. CMW/C/GTM/CO/1 (2011, October 18).

⁶⁶ Report of the Special Rapporteur on the Human Rights of Migrants, 11th Sess., 2009 May 14, ¶ 122, U.N. Doc. A/HRC/11/7/Add.3. (2009, May 18).

families in Guatemala, and to other migrants present in the country.⁶⁷ However, the functions of CONAMIGUA have been aimed almost exclusively at the protection of the rights of Guatemalans abroad and, except for some very general references to the families of migrants, no mention is made of the rights of children and adolescents—particularly those who have migrated unaccompanied and/or separated from members of their family.

The country still has no specific public policy on migration. However, some informal efforts are being made in this area. For instance, CONAMIGUA disseminated a draft migration policy document in 2013, although it has not yet been adopted. Furthermore, the Civil Society Networking Group on Migration⁶⁸ recently presented a paper entitled “Migration Policy Approaches in Guatemala”⁶⁹ for the purpose of generating public policy input related to migration and the needs of the migrant population and their families.

According to the Special Rapporteur on the human rights of migrants, in practice there is no comprehensive national regulation on migration. This situation results in a significant lack of coordination between the competent State institutions related to migration. He therefore urges the State to effectively strengthen migration coordination mechanisms.⁷⁰

Guatemala has a Commission for Migrants in Congress made up of 15 Congress members from different political parties. Its strategic objectives include the promotion and realization of the functions of representation, legislation, political, and budgetary control, and all actions and institutions/organizations concerned with issues of national and international migration within

⁶⁷ Decreto No. 46/2007, 2007, 10 de octubre, Ley de Consejo Nacional de Atención al Migrante de Guatemala [CONAMIGUA] [Law on the National Council for Migrants in Guatemala] 2007 (Guat.).

⁶⁸ The Networking Group is a forum for political, social, and media advocacy through the development of strategic alliances between civil society organizations, church, academic sectors, family members, and migrants committed to migration management. It was started in 2010 after the preparation of the Alternative Report on compliance with the provisions of the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. One of the first results was the document “Migration: a State commitment, 2012 – 2016.” In Guatemala the Networking Group consists of the following entities: Comprehensive Health Association (ASI); Child Refuge Association; Alliance Association; Civil Association of Guatemalans United for Our Rights (AGUND); Local Development Study and Support Center (CEADEL); CODEPI Center; Guatemala Study Center (CEG); Council of Christian Women; Migrant Shelters, Guatemala City and Tecun Uman; Project Counselling Service (PCS); Defense Office for Uprooted and Migrant Population of the Human Rights Ombudsman's Office (PDH); Central American Institute for Social and Development Studies (INCEDES); Institute for Historical, Anthropological, and Archaeological Research of the San Carlos University of Guatemala (IIHAA/USAC); Institute for Social Protection (IPS); Institute for Research and Policy Management of the Rafael Landívar University (INGEP/URL); National Migration Working Group in Guatemala; Social Movement for the Rights of Children and Adolescents; Latin American Faculty of Social Sciences Guatemala Office (FLACSO); Guatemalan Federation of Radio Schools (FGER); OTRANS Queens of the Night Organization; Organization of Women for Justice; Education and Recognition (WOMEN); Pastoral of Human Mobility of the Episcopal Conference of Guatemala; International Network Against Sexual Exploitation (ECPAT); Jesuit Service for Migration (SJM); and Trafficking Unit of the Human Rights Ombudsman's Office (PDH).

⁶⁹ López Robles, C., & Danilo Rivera, A. (2014, mayo). Aproximaciones de Política Migratoria para Guatemala. Retrieved from

<https://www.url.edu.gt/PortalURL/Archivos/100/Archivos/Aproximaciones%20de%20Pol%C3%ADtica%20P%C3%BAblica%20Migratoria%20Grupo%20Articulador.pdf>.

⁷⁰ Report of the Special Rapporteur on the Human Rights of Migrants, 11th Sess., 2009 May 14, ¶ 122, U.N. Doc. A/HRC/11/7/Add.3. (2009, May 18).

their jurisdiction that promote, channel, support, and/or manage processes through a stronger Commission for Migrants.⁷¹

The Directorate General of Consular and Migration Affairs, in accordance with Government Decree 415-2003, is responsible for the protection of Guatemalans abroad through an extensive consular network in Mexico⁷² and the United States.⁷³

Several instruments that support bilateral relations between Mexico and Guatemala have been developed since 1989, when the Bi-National Group on Migration was created. The most significant documents include:⁷⁴

- Memorandum of Understanding on Matters Related to the Human Rights of Migrants, Mexico-Guatemala (2002)
- Memorandum of Understanding for the Protection of Women and Children Victims of Trafficking and Smuggling of Persons on the Border between Mexico and Guatemala (2004)
- Memorandum of Understanding between the governments of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua on the Dignified, Orderly, Agile, and Safe repatriation of Central American migrants by land, signed on May 5, 2006⁷⁵

Chapter 13 by Center for Justice and Human Rights of the National University of Lanús, Argentina analyzes the limitations of these agreements as well as problems related to their

⁷¹ In 2013, the commission presented Bills 4388 and 4560. These provide for the reform of decree 46/2007 of the Congress of the Republic, the Law on CONAMIGUA and its regulations. However, none of these has been passed by Congress.

⁷² The Guatemalan consular network in Mexico consists of 10 general consulates in the following cities and states: Tijuana, Baja California; Arriaga, Chiapas; Ciudad Hidalgo, Chiapas; Comitán, Chiapas; Tapachula, Chiapas; Tuxtla Gutiérrez, Chiapas; Oaxaca, Oaxaca; Tenosique, Tabasco; Veracruz, Veracruz; and, Acayucan, Veracruz.

⁷³ The Guatemalan consular network in the United States consists of 11 general consulates in the following cities and states: Chicago, Illinois; Denver, Colorado; Houston, Texas; Los Angeles, California; Miami, Florida; New York; San Francisco, California; Atlanta, Georgia; Phoenix, Arizona; Providence, Rhode Island; and Silver Spring, Maryland. According to the Ministry of Foreign Affairs (MINEX), there are plans to open a consulate general in McAllen, Texas in the near future. MINEX also indicates that in the United States “there are 15 honorary consulates which have limited authority and receive no remuneration for their work.” See López Robles, C., & Danilo Rivera, A. (2014, mayo). *Aproximaciones de Política Migratoria para Guatemala*, p. 39. Retrieved from <https://www.url.edu.gt/PortalURL/Archivos/100/Archivos/Aproximaciones%20de%20Pol%C3%ADtica%20P%C3%ABlica%20Migratoria%20Grupo%20Articulador.pdf>.

⁷⁴ OIM. (2013, January). *Niños, Niñas y Adolescentes Migrantes América Central y México*, p. 26. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

⁷⁵ Includes specific references to protocols for the return of vulnerable populations and explicitly for the return of unaccompanied children. These provisions include specific times of day during which children must be repatriated to ensure their safety (during the day), requirements for notification to the consulates of the date and time of repatriation, and separate transport and services specifically adapted to children. See Catholic Relief Services. (2010, January). *Child Migration: The Detention and Repatriation of Unaccompanied Central American Children from Mexico*. Retrieved from <http://www.crsprogramquality.org/storage/pubs/peacebuilding/LACRO%20Migration-final.pdf>.

implementation.

Guatemala also integrates regional coordination initiatives for migration and the Central American Integration System (SICA), which allows free entry, transit and residence of citizens from Honduras, Nicaragua, El Salvador, and Guatemala for a period not exceeding 90 days, the only requirement being an identification document from their country. However, since the regulations of the Law on Migration have not been changed, there have been arbitrary applications and abuses of authority by the migration authorities and security forces of the National Civil Police regarding migrants from those countries.⁷⁶

B. Legislative and policy frameworks for children

Guatemala passed the PINA Law through Decree Number 27/2003. According to Article 1, the law is a legal instrument for family integration and social promotion that seeks the comprehensive and sustainable development of Guatemalan children and adolescents within a democratic framework and with unrestricted respect for human rights.

The adoption of the law has represented significant progress regarding the guarantee and protection of children's and adolescents' rights, in line with the regional trend to pass Children's Codes and comprehensive protection laws to bring legislation into line with the precepts of the CRC.

In general, the PINA Law incorporates the rights recognized in the CRC as well as its main principles (non-discrimination, best interests, survival, development, and the right to be heard). As specified in Article 82 of this law, the policies of comprehensive protection for children are:

- ***Basic social policies:*** to guarantee full enjoyment of rights for all children and adolescents.
- ***Social welfare policies:*** to guarantee the right to an adequate standard of living through family support and assistance programs for all children and adolescents living in extreme poverty or in a state of emergency.
- ***Special protection policies:*** to guarantee physical, psychological, and moral recovery for all children and adolescents who have been threatened or whose rights have been violated.
- ***Guarantee policies:*** to provide minimal procedural guarantees for children and adolescents subjected to judicial or administrative legal proceedings.

The Public Policy on Comprehensive Protection and the National Action Plan for Children and Adolescents in Guatemala were approved as State policy for 2004-2015 through Decree 333-

⁷⁶ Civil Society Networking Group. (2010, October). Alternative Report on Guatemala regarding the Application of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

2004, whose main objective is to unite State institutions' priorities and approaches in order to enforce children's and adolescents' rights.

The PINA Law contains an article on the rights of children and adolescents who request or have refugee, returnee, or uprooted status under applicable national or international procedures. Whether alone or accompanied by their parents, relative, or any other person, they are entitled to receive adequate protection and humanitarian assistance for the enjoyment of the rights expressed in the Political Constitution of the Republic, domestic legislation, and international conventions, treaties, agreements, and other human rights instruments accepted and ratified by Guatemala. The PINA Law also provides for the protection of children and adolescents against trafficking for any purpose or in any form.

Neither the PINA Law nor the Comprehensive Protection Policy includes any other mention or special protection for children and adolescents in the context of migration. Hence, all of the rights stipulated to in the legislative framework of Guatemala and actions proposed by the policy arguably include children and adolescents affected in any way by migration and do not discriminate against them. These would include, for example, child and adolescent migrants in Guatemala and Guatemalan children migrating to other countries or left behind by their parents.

But the absence of special protection clauses and specific actions regarding migration in the framework law and Action Plan on children reveals a serious omission by the State. The gap reflects a failure to target a key problem area in the rights-protection of children in Guatemala and Central America.

The SBS should be the corresponding authority with the responsibility to implement all actions concerning compliance with protection measures and the PINA Law. Article 85 of this law designates the National Commission on Children and Adolescents as responsible for formulating comprehensive protection policies for children, and for integrating those into the system of urban and rural development councils and the policies of State ministries and departments. Finally, compliance with these plans should also be guaranteed.

Beyond the shortcomings of the State response to migrating children and adolescents, the PINA Law does not clearly identify the governing body for policy and enforcement of children's rights in general; thus, the institutional response related to children has been inadequate.⁷⁷

The Committee on the Rights of the Child noted in its Concluding Observation on Guatemala in 2010 its concern about the insufficient implementation of the Comprehensive Protection System established by the PINA Law, and regretted that its institutions had failed to provide effective horizontal and vertical coordination. It also indicated that the Social Welfare Secretariat seems to

⁷⁷ Morlachetti, A. (2013, January). *Sistemas Nacionales de protección integral de la infancia: fundamentos jurídicos y estado de aplicación en América Latina y el Caribe*, pp. 28-29. Retrieved from http://repositorio.cepal.org/bitstream/handle/11362/4040/S2012958_es.pdf?sequence=1; Embajada Suecia & UNICEF. (2012). *Jurimetric Study: Evaluación de la aplicación de la Convención sobre los Derechos del Niño y la legislación desarrollada a su amparo*. Retrieved from http://www.academia.edu/8093802/Estudio_Jurimetrico_Evaluacion_de_la_aplicacion_de_la_convencion_sobre_los_derechos_del_nino_y_la_legislacion_desarrollada_a_su_amparo.

have taken on the task of coordinating the Comprehensive Protection System. Therefore, the Committee recommended to Guatemala that it consider establishing a high-level authority to act as the secretariat of childhood and adolescence at the ministerial level in order to coordinate implementation of the Convention and its two Protocols.⁷⁸

The Law on Social Development of Guatemala stipulates that all persons have the rights and freedoms enshrined in the Political Constitution of the Republic, the Universal Declaration of Human Rights, and international Treaties, Programs, and Conventions ratified by Guatemala.⁷⁹ Article 16 highlights the groups or sectors that deserve special attention in the design, implementation, monitoring, and evaluation of the Social Development and Population Policy—including children and adolescents in vulnerable situations, as well as women and migrants.

This law also declares that, through the Ministry of Public Health and Social Welfare and the Ministry of Education, the State shall promote access to health services, education, and other basic services for migrant workers and their families that will improve their living conditions in their places of temporary residence.⁸⁰

The law stipulates that the State shall promote the study and analysis of international migration and transmigration in order to understand these phenomena. Thus, the law could suggest criteria and recommendations to strengthen the government in decision-making and in international negotiations, as well as in defending the human rights of migrants.

In 2009, Guatemala adopted the Law against Sexual Violence, Exploitation, and Trafficking in Persons, which represents a step forward in national legislation. That law prioritizes care for victims and led to the creation of the Secretariat against Sexual Violence, Exploitation, and Trafficking. As a complement, the Law on the Alba-Kenneth Warning System established coordinated inter-institutional actions for the location and immediate protection of children who have been abducted, kidnapped, or disappeared.⁸¹ The Office of the Procurator General of the Nation (PGN) has responsibility for implementing this Law through the Operational Unit of the Kenneth-Alba Warning System.

C. Relevant institutional jurisdiction and interventions for the protection of migrant children's rights

The main State institutions responsible for protecting children are: the SBS; the First Lady's Social Works Secretariat (SOSEP); the Department for Children of the PGN; the Ombudsman's Office for Child and Adolescent Rights; the Office for Defense of the Rights of Children and

⁷⁸ Comm. on the Rights of the Child, *Consideration of reports submitted by the States Parties under article 44 of the Convention Concluding observations: Guatemala*, 55th Sess., 2012, September 13 - October 25, ¶ 12, U.N. Doc. CRC/C/GTM/CO/3-4 (2010, October 25).

⁷⁹ Decreto No. 42/2001, 2001, 4 de junio, Ley de Desarrollo Social [Law on Social Development] 2001 (Guat.).

⁸⁰ Decreto No. 42/2001, 2001, 4 de junio, Ley de Desarrollo Social [Law on Social Development] art. 35, 2001 (Guat.).

⁸¹ Decreto No. 28/2010, 2010, 10 de agosto, Ley del Sistema de Alerta Alba-Keneth [Law on the Alba-Keneth Alert System] 2001 (Guat.); Decreto No. 5/2010, 2010, 31 de enero, Reforma la Ley del Sistema de Alerta Alba-Keneth, 2010 (Guat.).

Adolescents, the Prosecutor of the Public Ministry;⁸² the Peace Courts;⁸³ and the Courts for Children and Adolescents.⁸⁴

A review of the institutional framework suggests that the State is providing unequal and incomplete responses to children in relation to migration, because these are not yet based on the principle of the child's best interests. Migration is not explicitly understood as requiring support or responses at the level of the community and families. General reference is made to the need for inter-sectoral coordination and community participation for the comprehensive care of children and adolescents who, because of their vulnerability, require special protection. This favors actions to support families so that they are capable of fulfilling their responsibilities of care, protection, and development of their children.

The SBS promotes the Migrant Program for the reception and handover of children and adolescents as part of deportation proceedings by air and land, mainly from the United States and Mexico. This program includes care and protection at the *Nuestras Raíces* shelters in Quetzaltenango and Guatemala before the children are transferred to their families.

According to the PINA Law, Article 108, PGN is the State institution responsible for legally representing children and adolescents who lack such representation. This office investigates cases of children or adolescents who have been threatened or whose rights have been violated; if it determines that a crime has been committed against children or adolescents who lack legal representation, the PGN must file a complaint to the Public Ministry's office. For the repatriation of unaccompanied children and adolescents, the PGN is the legal representative responsible for the reception and transfer of the children and adolescents to the most appropriate family members.

For children and adolescents returning by land from Mexico, the Social Welfare Secretariat provides support to the representative of the PGN's office to transport children from the border town of El Carmen, San Marcos, to Quetzaltenango. At the *Nuestras Raíces* shelter, International Red Cross volunteers provide medical care, the shelter's psychologist provides psychological care, the shelter's social worker provides social care, and finally, PGN offers legal services. The support the shelter provides is limited to 72 hours after admission of the child or adolescent.

⁸² This Office is responsible for ensuring compliance with the Law on Comprehensive Protection through specialized Prosecution Offices. It is also responsible for investigating events in which illicit acts are attributed to young people. As part of this function, it will request and provide evidence; perform all acts necessary to promote and exercise public prosecutions as a matter of course, except for certain exceptions; and request court sanctions that it deems most appropriate for the adolescent offender.

⁸³ Regarding the rights of children and adolescents, the Peace Courts may hear and resolve cases in which precautionary measures for protection are being requested and some cases of misdemeanors by young people who have broken the law. In all cases within their jurisdiction, the judge of the Peace Courts will transmit proceedings to the Children's and Adolescents' Court or to the Adolescents' Court for cases of young people who have broken the law, at the beginning of the following business day so that the case can be heard.

⁸⁴ These courts are responsible for hearing, processing, and resolving, through court orders, all cases which represent a threat to or violation of children's rights, seeking restitution of the right violated, the cessation of the threat or violation, promotion of the family reintegration of the child, and guidance or punitive measures against the rights violator. In this regard, sometimes SBS child migrant shelters receive orders from the Children's and Adolescents' Courts to assist and provide shelter for Central American children with irregular status while this can be resolved. The resolution usually consists of the child's repatriation to his/her place of origin.

When children and adolescents are repatriated by air from the United States, the SBS assists with Guatemalan Air Force flights and commercial flights for unaccompanied children and adolescents from Northern Mexico. In both cases, the SBS facilitates the children's and adolescents' migration control process in coordination with the DGM so that they can be immediately transferred to the *Nuestras Raíces* shelter in Guatemala City. This shelter provides the same care as the shelter in Quetzaltenango. In both cases, the Secretariat provides shelter for children and adolescents who require it, supporting and accompanying them when transferred to a family member, but have no strategy to follow up to ensure successful reintegration.

In the repatriation process in Quetzaltenango, the PGN is responsible for receiving the unaccompanied children and adolescents from the National Migration Institute (INM), using a list provided by the Mexican authorities on the border at El Carmen, San Marcos. The children are then transferred to the *Nuestras Raíces* shelter in Quetzaltenango together with representatives from the SBS. The PGN is responsible for locating the appropriate family members to take custody of the child or adolescent.

However, this procedure is often carried out by the SBS without the participation or approval of the PGN. The children and adolescents are taken to the most suitable family member following an administrative report proceeding. The administrative report is a document by which the PGN, through its delegates, hands over the child or adolescent who is now "guaranteed" to the family member who receives him or her. If there is no suitable family member to receive the unaccompanied child or adolescent, the case is taken to the Peace Court, which starts the corresponding protection proceeding as established under the PINA Law.

When unaccompanied children and adolescents are repatriated by air from Central or Northern Mexico and from the United States, they are received at the Guatemalan Air Force base or at the International Airport of La Aurora, where the PGN is responsible for assisting reception. The process is facilitated in conjunction with the DGM and the SBS. If the children or adolescents have not informed the Mexican and U.S. authorities of their real age, once identified as under 18 years of age, they are taken to the *Nuestras Raíces* shelter in Guatemala City. In these cases, the shelter has the same functions as the shelter in Quetzaltenango.

The Human Rights Ombudsman plays an important role in these processes, as a commissioner of the Congress for the defense of human rights and as stipulated in the Constitution. The Ombudsman has broad powers: to promote the smooth operation and efficiency of governmental administrative proceedings regarding human rights; to investigate and denounce administrative conduct harmful to people's interests; to investigate all complaints presented by any person regarding violations of human rights; and to promote legal or administrative proceedings or remedies. To comply with its functions, the Ombudsman's Office has established a series of Defense Offices, including the Defense of Uprooted and Migrant Populations, Defense of Children's and Adolescents' Rights, and Defense of Women and Victims of Trafficking.

The Defense Office for Children's and Adolescents' Rights has the power to investigate complaints or attend them as a matter of course when children's and adolescents' rights have been violated. Thus, this office determines responsibilities, orders cessation of violations, and

takes measures or complaints before competent bodies. This office also oversees governmental and nongovernmental institutions providing care for children and adolescents in order to ensure appropriate measures and conditions for protecting children.

The Defense Office for Uprooted and Migrant Population aims to provide support, advice, and guidance to migrants, and monitors and oversees public institutions providing care to migrants.⁸⁵ From January to October 2013, this office heard 42 cases, including three reports of Guatemalan migrants in transit in Mexico. They were arrested and charged with high impact crimes without having access to a lawyer to defend them. This Defense Office also supported two similar cases in the United States. Of most concern in these situations is the fact that Guatemalan consulates provide only consular support, but do not have lawyers to provide nationals with legal counsel when abroad.

The same Office conducts monthly monitoring of the Guatemalan Air Force, anonymously interviewing migrants deported from the United States to gather information on the process of arrest, detention, and deportation. Unaccompanied children and adolescents are frequently detected on these flights. However, there is no systematic or continuous monitoring of the repatriation of unaccompanied children and adolescents arriving by land from Mexico or via commercial flights at La Aurora Airport.

D. The legislative, institutional, and political situation

As this account clearly demonstrates, the Guatemalan legal framework for migration urgently needs to be changed to include fundamental human rights principles and move beyond a predominant emphasis on national security.

The Human Rights Ombudsman of Guatemala strongly agrees that the Law on Migration and its Regulations need review to include a human rights-based approach in line with international treaties and conventions signed and ratified by Guatemala. The Ombudsman also highlights the need to develop a comprehensive policy to ensure the full recognition of migrants' human rights, clearly defining institutional responsibilities and allocating necessary resources.⁸⁶

As a destination country, Guatemala lacks a migration law that recognizes the rights of migrants and facilitates regularization processes for undocumented Central American migrants in the country. There is no institution responsible for addressing migration of this kind in order to provide care, protection, and control of irregular migration. Both policy and legislation fall short

⁸⁵ Procurador de los Derechos Humanos. Defensoría de la Población Desarraigada y Migrante. Retrieved from <http://www.pdh.org.gt/defensorias/de-la-poblacion-migrante.html>.

⁸⁶ Government Decree No. 528/2003 should also be reformed, as a decree that contains the Regulation for the authorization of non-nationals for private sector employers in the country, so that it is in line with the Convention. This regulation does not allow less-skilled migrant workers to work (for example, under the Convention on the Rights of Migrant Workers and Their Families), providing instead only for managers, directors, administrators, superintendents, general managers of companies, etc. This gap forces most migrants to work in the informal economy with fear of deportation, and without protection for their labor rights and other basic rights. See Human Rights Ombudsman's Office. Detailed Annual Report: Human Rights Situation from the Detailed Annual Report of the Congress on activities and the situation of human rights in Guatemala in 2013. Retrieved from http://www.pdh.org.gt/archivos/descargas/Documentos/Informes%20Anuales/iac_2013_situacion.pdf.

of addressing the particularities of Guatemala as a country of origin, destination, transit, and return for migrants.⁸⁷

There have been various attempts to change the Law on Migration, the most recent being Bill 4126, presented by the Congressional Commission on Migrants. This proposal was initially criticized, despite being developed with the participation of civil society and international agencies. In 2012, the Networking Group, in coordination with the Congressional Commission on Migrants, introduced significant changes that include a human rights perspective, including fundamental principles for protecting populations in vulnerable situations (women, unaccompanied children, trafficking victims, asylum seekers, refugees, disabled persons, older people, and others). Instruments related to migration and human rights, children's rights, women's rights, refugees, asylum-seekers, victims of trafficking, and other issues provided a basis to update this proposal. Its new content includes creating an autonomous Migration Institute, considering migrants with irregular or unauthorized migration status as subjects of rights, promoting a regularization program in the country, and introducing a series of definitions and concepts relating to migration that are consistent with international standards.

The absence of an adequate legal framework for protecting migrants' rights is compounded by the lack of a comprehensive and explicit public policy on migration. Thus, State expression is reduced to a series of *ad hoc* programs, regulations, and actions that seek to respond to the demands and needs of Guatemalan migrants abroad, attend to groups of forced returnees, and address temporary agricultural workers in border areas.⁸⁸

CONAMIGUA initiated a process for formulating, consulting on, validating, and constructing a comprehensive public migration policy, but this has not yet materialized due to a legal loophole that impedes the allocation of work to a specific governmental body. The mandates of the DGM and CONAMIGUA also overlap, so it is essential to establish an agreement between these institutions to resume and complete formulation of a comprehensive migration policy—urgently needed for a country in which migration has critical economic, social, and political effects.⁸⁹

Any initiative for developing a migration policy should include the National Working Group on Migration (MENAMIG) as a reference group, given the key impact of its analyses, studies, advocacy processes, and communication strategies on migration issues in Guatemala. The Civil Society Networking Group on Migration should also be included to promote discussion and structure public policy proposals and a legislative framework.

A comprehensive public migration policy proposal should use a rights-based lens to view Guatemalan migrants abroad and include an active consular staff to defend migrants' rights in their countries of destination. This policy should also provide programs for the families of migrants who have been deported, for reintegrating migrants forced to return to their

⁸⁷ OIM. (2013, January). Niños, Niñas y Adolescentes Migrantes América Central y México, p. 201. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

⁸⁸ OIM. (2013, January). Niños, Niñas y Adolescentes Migrantes América Central y México. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

⁸⁹ OIM. (2013, January). Niños, Niñas y Adolescentes Migrantes América Central y México. Retrieved from http://costarica.iom.int/public/pdf/ninez_america_latina.pdf.

communities of origin, and for migrants from other countries who are in transit or for whom Guatemala is their country of destination. This policy should address the need to protect the rights of the most vulnerable migrant populations, such as children and adolescents.

The Guatemalan legislative framework for migration reflects most of the provisions of the CRC, and thus responds to the child protection system. Guatemala has also adopted a policy from 2004 to 2015 to implement commitments adopted under national and international law.

However, inadequate implementation of this legislative and policy framework for children has seriously affected the country's ability to enforce children's rights. As the Committee on the Rights of the Child in its evaluation of Guatemala has found, the Comprehensive Protection System has been poorly applied with regard to institutional structure, coordination, planning, data collection, and budget.⁹⁰

A study by UNICEF evaluating implementation of the CRC and legislation developed in Guatemala also identified weak mechanisms and procedures with respect to the protection of children. This study points out that the PINA Law does not specifically regulate the coordination of institutions responsible for the protection system. Regulation of procedures to ensure actions of prevention, detection, attention, and family reintegration of children whose human rights have been violated is also weak at the municipal and departmental levels.⁹¹

As we have described, some level of inter-institutional coordination of the Protection System exists, led by the SBS, to accompany the restoration of the rights of unaccompanied migrant children, achieve family reunification, and promote attention for migrant children and adolescents who have been threatened or whose rights have been violated.

The Office of the Procurator General of the Nation plays an important role in guaranteeing due process in repatriation, thus providing protection for unaccompanied children and adolescents during the process of reception and transfer to family members. When relatives cannot be located, the judge of the Peace Court who is on duty is notified, and legal proceedings begin with protection measures and shelter in public or private institutions; this concludes the intervention of Procurator. The Human Rights Ombudsman, exercising his own powers or through the Defense Offices specialized in children's rights and migrants' rights, may play a central role in defending, promoting, and protecting the rights of children and adolescents in the context of migration. It is crucial to promote inter-institutional coordination as well as to adopt legislative frameworks and protocols to make these rights effective.

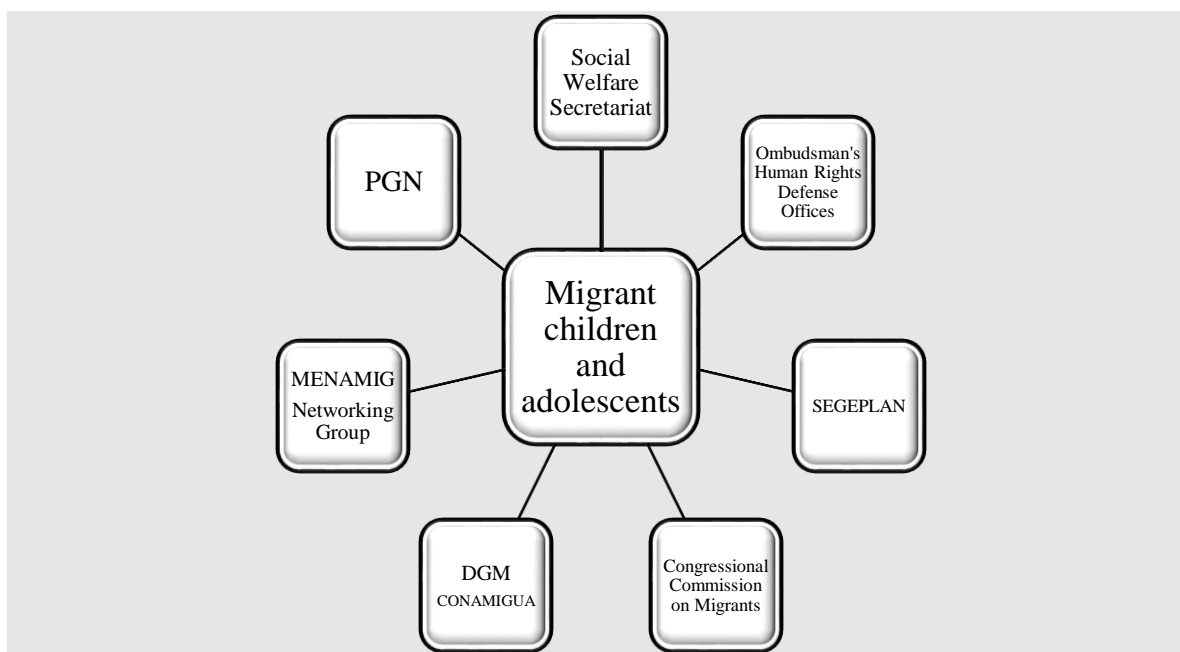
In the field of social policy and development, the intervention of the Secretariat for Planning and Programming of the Presidency (SEGEPLAN) is crucial as a body involved in State planning to

⁹⁰ Comm. on the Rights of the Child, *Consideration of reports submitted by the States Parties under article 44 of the Convention Concluding observations: Guatemala*, 55th Sess., 2012, September 13 - October 25, ¶ 12, U.N. Doc. CRC/C/GTM/CO/3-4 (2010, October 25).

⁹¹ Embajada Suecia & UNICEF. (2012). Jurimetric Study: Evaluación de la aplicación de la Convención sobre los Derechos del Niño y la legislación desarrollada a su amparo. Retrieved from http://www.academia.edu/8093802/Estudio_Jurimetrico_Evaluaci%C3%B3n_de_la_aplicaci%C3%B3n_real_de_la_Convenci%C3%B3n_Sobre_los_Derechos_de_los_Ni%C3%B1os_y_la_Legislaci%C3%B3n_Realizada_a_su_amparo.

combat the root causes of the forced migration of so many children and adolescents. This Secretariat has responsibility for assisting in the formulation of the Government's Social Development Policy and evaluating its implementation and effects in relation to the Social Development Law—which includes migrants among its priority populations.

Relevant Institutions for Developing Policy and Institutional
Coordination to Protect Children's and Adolescents' Rights in
the Context of Migration



Recommendations by United Nations Committees on the Protection of Child and Adolescent Migrants in Guatemala⁹²

*Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families*⁹³

- Take the necessary measures to complete an early review of bill No. 4126 and ensure that it is fully in line with the Convention.
- Ratify ILO Convention 143 as soon as possible.

⁹² These recommendations are not those of the authors. The authors' recommendations on Guatemala are part of the regional, bilateral, and national recommendations section at the end of this book. The national level recommendations include recommendations to the main sending (Honduras, El Salvador, and Guatemala), transit (Mexico), and destination (Mexico and the United States of America) countries in the region.

⁹³ Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Consideration of reports submitted by States parties under article 74 of the Convention Concluding Observations: Guatemala*, 15th Sess., 2011, September 12 - 23, U.N. Doc. CMW/C/GTM/CO/1 (2011, October 18).

- Improve conditions at the shelter for migrants, ensuring the provision of basic social services, including food, health care, and hygienic conditions. Expedite exit procedures and ensure that men and women are duly separated.
- Establish, implement, and disseminate a comprehensive migration regularization policy that satisfies the principle of nondiscrimination for all migrant workers and their families in irregular situations.
- Ensure access to emergency medical care and ensure that the children of migrant workers in an irregular situation have access to, and remain in, the education system.
- Implement a comprehensive migration policy to facilitate improved coordination between institutions on migration matters. The Committee also recommends that the State party (Guatemala) incorporate the protection of the rights of all migrant workers and members of their families, in accordance with the Convention. It also urges the State party to strengthen the CONAMIGUA as a mechanism for overseeing the institutions and government organs entrusted with protecting and helping all migrant workers and members of their families.
- Develop policies that address the difficulties faced by unaccompanied migrant children and adolescents, and set up mechanisms for their identification and protection, taking into account the guidelines of the Regional Conference on Migration on assisting unaccompanied children.
- Carry out studies on the situation of children and adolescents in Guatemala whose parents have emigrated, with a view to developing policies on care, protection, and family reunification

*Committee on the Rights of the Child*⁹⁴

- Adopt technical criteria to ensure that priority is given to families who need positive action measures, such as migrant families and children whose parents have migrated.
- Enact a migration law that addresses the situation faced by migrant children and create tools to address existing problems, especially with regard to unaccompanied migrant children. The Committee brings to the Guatemalan State party's attention its general comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin.⁹⁵

⁹⁴ Comm. on the Rights of the Child, *Consideration of reports submitted by the States Parties under article 44 of the Convention Concluding Observations: Guatemala*, 55th Sess., 2012, September 13 - October 25, U.N. Doc. CRC/C/GTM/CO/3-4 (2010, October 25).

⁹⁵ Comm. on the Rights of the Child, *General Comment No. 6 (2005), Treatment of unaccompanied and separated children outside their country of origin*, 39th Sess., 2005, May 17 – June 3, U.N. Doc. CRC/GC/2005/6 (2005, Sept. 1), retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>.

- Develop a comprehensive public policy to address the social factors and root causes of juvenile violence, such as social exclusion, lack of opportunities, culture of violence, and migration flows. It also recommends investing in prevention activities, with an emphasis on the school, the family, and social inclusion measures.

VIII. Final reflections

The migration of Guatemalan children and adolescents results from a combination of factors that strengthen their desire to migrate. In all cases these factors are linked to the violation of their rights.

Beyond a few isolated institutional efforts, the absence of an adequate legislative and policy framework for those affected by migration, and the lack of enforcement of existing legislation related to children, results in the denial of rights and basic services.

Accordingly, it is urgent and necessary to develop rights-focused policy responses in the short, medium, and long term. Through the adoption of a new legislative framework and migration policy, and the application of existing laws (the PINA Law and the Law on Development), the specific needs of migrant populations can be addressed, and existing institutions can be strengthened and provided with budgetary resources. Capacity building is also necessary to provide relevant personnel with specific mandates to protect and promote children's and adolescents' rights. Obstacles and severely harmful practices should be eliminated.

Immediate, comprehensive, and adequate attention to the structural causes of the migration of Guatemalan children, adolescents, and families is necessary, and must be approached from a human rights perspective. Different forms of violence that affect children and adolescents deprivation of basic social rights, and the lack of opportunities for children, adolescents, and/or their parents, increasingly and seriously affect the right to development of Guatemalan children. Family separation also aggravates this situation. The combination of these elements systematically forces children and adolescents to leave the country at younger and younger ages without due regard for the risks.

Current policies on reception and reintegration of repatriated children and adolescents thus far have had limited effect. The reasons children and adolescents leave their homes, communities, and country have not been adequately addressed. Nor has the situation of children whose parents live in the United States with irregular status. These cases and others—including the forced return of children who fear violence—result in young people compelled to leave the country once again under even riskier conditions.

Recommendations are included in full at the end of this book. For the full set of recommendations, please visit <http://cgrs.uchastings.edu/Childhood-Migration-HumanRights>.