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Report submitted by the

COALICIÓN GUATEMALTECA A FAVOR DEL CUMPLIMIENTO
DE LOS DERECHOS DE LA NIÑEZ Y ADOLESCENCIA DE GUATEMALA

[Guatemalan Coalition In Favor Of the Fulfillment of the Rights of the Child and Adolescent in Guatemala]

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1. INTRODUCTION

1. The herein report addresses the situation of children and adolescents in Guatemala. It is submitted for the Universal Periodic Review of Guatemala by the Guatemalan Coalition In Favor Of the Fulfillment of the Rights of the Child and Adolescent in Guatemala (Coalición Guatemalteca A Favor Del Cumplimiento De Los Derechos De La Niñez y Adolescencia De Guatemala), a Network of Civil Society Organizations which include: Mesa de Municipalización -MM-, Movimiento Social por los Derechos de la Niñez, Adolescencia y Juventud en Guatemala –MOSDENAJ- and the Coordinadora Institutional de Promoción por los Derechos de la Niñez -CIPRODENI- working in the best interest for children and adolescents supported by Plan International.

2. The report covers the 4 year period 2008-2012, and is intended to inform the Human Rights Council’s Universal Periodic Review (UPR) of Guatemala at its 14th session in October 2012. The report identifies the main issues representing a challenge for the effective implementation of children’s rights in Guatemala, which include: violence against children, sexual commercial exploitation of children, child labor, illegal adoptions, and limitations and discrimination in the access to education, health services, and child protection systems.

3. The drafting of this report is informed and based on the recommendations made by the previous concluding observations of the Committee on the Rights of the Child, both in 2001 (CRC/C/15/Add.154) and in 2010 (CRC/C/GTM/CO/3-4) as well as the previous UPR for Guatemala (A/HRC/8/38 of 29 May 2008).

2. FIRST PART: Situation of the Advocacy, Defense and Realization of the Rights of the Child

4. Guatemala has 14,361,666 inhabitants: 51% of which (6.5 million) is constituted by children and adolescents aged from 0 to 18. Children aged 0-6 years amount to 21% of the total population (2.9 million), children 7-12 years constitute the 16% (2.3 million), and adolescents (13 to 18 years) amount to 14% of the population (1.9 million)

a) LEGISLATION IN FAVOR OF CHILDREN AND ADOLESCENTS

5. Guatemala’s legal framework is very advanced as regards human rights, and in particular as regards child protection. Guatemala is part to several international and regional human rights instruments, including the Convention on the Rights of the Child (CRC) and its Optional Protocols, the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, the 1999 ILO Convention n.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the International Convention on the Rights of Persons with

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1 See CRC/C/GTM/CO/3-4 of 1 October 2010, paragraph 12: “The Committee urges the State party to take all necessary measures to address those recommendations from its previous concluding observations that have not yet been sufficiently implemented, including: (a) the weak implementation of the Comprehensive Protection System (Sistema de Protección Integral), its institutional structure, coordination, planning, data collection and budget; b)the high levels of child malnutrition in the country; (c) the development of comprehensive strategies eliminating all forms of discrimination, including in the health sector; (d) reduction of poverty among children and increase of expenditures on children, in particular those belonging to the most marginalized groups; (e) deinstitutionalization of children in alternative care; f) reform of the law and practices regarding the juvenile justice system; (g) improvement of the birth registration system, in particular in rural areas.”

2 Source: Guatemala’s Country Strategic Plan -CSP- 2012-2016.
Disabilities. Although Guatemala accepted all the previous UPR recommendations, little action has been taken towards the ratification of the core human rights instruments to which it is not yet a party.3

6. When Guatemala ratified the CRC, it made three commitments: disseminate the CRC at all levels, implement it and adapt it to its legal framework, which resulted in the development of new laws. Those include: Law for providing care to people with disabilities, Decree 135-96 and regulations; the Law for the Integral Protection of Children and Adolescents, Decree 27-2003; Adoptions Law, Decree 77-2007; Law against Sexual Abuse, Exploitation and Human Trafficking, Decree 9-2009; Alba Kenneth Law, Decree 28-2010, and Healthy Maternity Law, Decree 32-2010. It seems important to highlight that, notwithstanding the adoption of the abovementioned legislation, their implementation and enforcement is weak and limited, hindering the Comprehensive protection system’s function fulfilment.

Recommendations

7. In line with the previous recommendations made by the previous UPR and accepted by the Government of Guatemala, as well as on the previous recommendations of the CRC Committee4, we recommend the government of Guatemala to ratify the core United Nations human rights instruments to which it is not yet a party, namely the International Convention for the Protection of All persons from Enforced Disappearance, the Second Optional Protocol to the International Covenant on Civil and Political Rights (abolition of the death penalty), and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

8. We further encourage Guatemala to sign and ratify the new Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

b) NATIONAL PUBLIC POLICIES

9. Guatemala has adopted a Public Policy for the Comprehensive Protection of Children and Adolescents and a National Action Plan 2004-2015. Specific policies on, *inter alia*: sexual-commercial exploitation, children in street situations, child labour, early childhood, food security, education, health, sexual and reproductive health and HIV, as well as nearly 90 municipal child protection policies - have been adopted. In addition, Guatemala has established the National Commission of Children and Adolescents in 2004, the governing body responsible for the Comprehensive Protection Public Policy. Nevertheless, limited budget allocations, the absence of political will, as well as the lack of autonomy of this body and weak coordination among duty bearers constitute a barrier to the fulfillment of its functions, including implementation and monitoring of children’s rights.

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3 See A/HRC/8/38, paragraph 89 (1): [...] the following recommendations were made to Guatemala: [...] “Ratify the Rome Statute of the International Criminal Court (Mexico, Portugal, Canada, the Netherlands, France, Italy), the International Convention on the Protection of All persons from Enforced Disappearance (Mexico, France), the Convention on the Protection of Persons with Disabilities and its Optional Protocol (Mexico), and accept article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (Mexico, South Africa), as well as continue its efforts in respect of the Optional Protocol of the Convention against Torture (Brazil”).

4 See CRC/C/GTM/CO/3-4, paragraph 103.
3. SECOND PART: Pending Issues and Recommendations

a) INVESTMENT IN FAVOR OF CHILDREN AND ADOLESCENTS

10. Guatemala invests Quetzal 1,472 (US$ 1913) per year per child, which makes it the country with the least investment on children in Latin America. Investments on children rose from Q 9,330 million in 2009 to Q 10,435.2 million in 2011. However, budget allocation for children, which constitutes the 20% of the total national expenditure, continues to represent (only) the 3.2% of the GDP. This scarce social investment has caused lowering levels of education quality and coverage - particularly in preschool and primary education-, as well as high rates of malnutrition and premature mortality that are worst among the indigenous poor populations living in rural areas6.

11. The Maternal and Infant Health Survey (2008-2009) highlighted that chronic malnutrition is concentrated in the rural areas, reaching up to 51 percent, and its prevalence is higher in the Northwest, where it reaches up to a worrying 64.8 percent. The survey also estimated that 1,285,000 of children under 5 were affected by chronic malnutrition in 2010. Thus, it was considered as a progress, in 2011’s budgeting, the inclusion of an immunization program and the creation of a program for malnutrition prevention/control with a budget, in force, of Q26.8 million and Q23.7 million respectively. However, the budgetary provision allocated to children suffering from chronic malnutrition is still insufficient, as it stands at Q18 per annum/per child7.

12. The Third National Height Census, carried out by the Secretaría de Seguridad Alimentaria - SESAN, proved that the higher the age of the child, the greater the nutritional damage; rural areas are more affected by malnutrition than the urban areas; height retardation in Spanish-speaking children (as native language) is lesser compared to those whose native language is not Spanish. For example, 80.7 % of children whose mothers speak Chortí, 79.1 % of Akatecos children and 76.9 % Ixil children are affected by chronic malnutrition, causing an irreversible loss in their cognitive development.

b) VIOLENCE AGAINST CHILDREN

13. Despite its important role of legal representative of childhood, established by the Integral protection law, the Procuraduría General de la Nación, has only 16 departmental offices, most of them having only two persons available as staff, who attend the different denouncements including those related to children and adolescents. Only 4 investigators are available countrywide.

14. Through the Procuraduría de Niñez y Adolescencia, a total of 410 cases of violations of the rights of children were recorded in 2011. Among these cases, 233 were related to physical, emotional and/or psychological violence; 39 related to sexual violence; and 82 to neglect10.

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5 1 Quetzal = 0.13 US$ (exchange rate as of 02.04.2012). Source: yahoo finance.
6 ICEFI-UNICEF. ¡Contamos; ¿Cuánto estamos invirtiendo en la niñez y adolescencia guatemalteca? [How much are we Investing on Guatemalan Children and Adolescents?] Bulletin No. 3.
8 SESAN. Tercer Censo Nacional de Talla, año 2008
9 “department” a territorial division
15. Data from the Ministry of Justice show that in 2011, a total of 994 cases\footnote{CENADOJ. Filed cases related to crimes as per the Law against Sexual Violence, Exploitation and Human Trafficking. Decree 9-2009 at the jurisdictional bodies of Criminal Branch of the Republic of Guatemala, 2011.} related to violence against children were filed. Among the three existing Courts for Children and Adolescents in the capital city, a total of 3,968 cases of violence against children have been reported in 2009, and more than 4,000 in 2010, with an average of 1,300 complaints received by each Court. This very high number of complaints constitutes one of the main causes of inefficiency of the work of such Courts, which have a great backlog of reports and cannot address them in reasonable time.

16. In 2009, the Attorney General’s Office received 3,615 reports of cases of violence against children, 59% of which in the capital city. The total cases known by the MP \cite{AGOA} in year 2009 were 392,126, a 13.26 percent of them directly related to children. As with other indicators on the rights of children and adolescents, it is assumed that there is under-registration of cases regarding abuse and violence against children\footnote{Refer to: Attorney General’s Office Annual Report 2009. Report on the management of the General Attorney of the Republic and Head Officer of the Attorney General’s Office. Guatemala 2010.}.

17. CONACMI \cite{CONACMI} identified in May 2011 that in National Hospitals 11,230 of the attended cases were suspected to be related to sexual abuse, as well as other 7,002 related to physical aggression; and 3,307, to negligence\footnote{Asociación Nacional contra el Maltrato Infantil CONACMI. Contextualización de la Situación de la Niñez y Adolescencia en Guatemala. Guatemala 2011.}.

18. Sexual violence affects girls but also boys and adolescents, and is often perpetrated in schools. A survey reveals that 34 percent of the students in sixth grade are victims of bullying\footnote{Prensa Libre \cite{Prensa Libre}. Assessment reveals that a third, from total students, suffers school harassment. Guatemala, February 24, 2012.}. The Congress is currently discussing the 4445 Initiative “Law on promotion of the coexistence without violence in educational institutions”. While welcoming the efforts made by Guatemala to address the issue of violence in schools, it is important to note that legislation already exists in this regard. In particular, the “Protocol for the identification, attention and referral of cases on violence at schools” was adopted by the Ministry of Education in 2011; the next step should be its due implementation.

\textbf{Recommendations:}

19. The government should ensure that the fight against violence against children adopts a comprehensive, holistic approach that is based on children’s rights. Guatemala should also strengthen its efforts to ensure that children victims of violence are provided with the necessary legal and judicial protection that needs to be integrated with the necessary social and economic protection.

20. Existing legislation should be revised and implemented, ensuring that it is in line with international standards on violence against children. In particular, the Government should ensure that the Protocol for the identification, attention and referral of cases on violence at schools is duly implemented.

21. Guatemala should increase the budget allocation and ensure adequately trained personnel with expertise on children and adolescents is appointed to the bodies integrating the child protection system (Attorney General’s Office, National Civil Police, State’s Legal Counsellor Office, National Adoptions Council, Social Welfare Secretariat, National Commission of Children and Adolescents, Children/Adolescent Courts, Human Rights Ombudsman, Secretariat against Sexual Violence, Exploitation and Human Trafficking among others).
22. The government should also ensure that efficient protection services are decentralized, of high
crivity, and available throughout the entire territory of the country, including in remote and
rural areas, and are accessible to all children, including children belonging to indigenous
groups and children belonging to linguistic minorities.

c) SEXUAL COMMERCIAL EXPLOITATION OF CHILDREN

23. Sexual Commercial Exploitation of Children, including: child sex tourism, child pornography and forced
prostitution involving minors\(^{15}\), continues being a complex issue. Despite the achievement of some
advances in Guatemala and the region, such as Decree 09-2009 “Law Against Sexual Violence,
Exploitation and Trafficking” -LEVET [Acronym in Spanish], there are still great challenges to face.

24. According to its Report on the Situation of Human Trafficking in Guatemala\(^{16}\), the Attorney General’s
Office reported that from January to October 2011 there were a total of 259 cases reported, and 434
victims. It also reports that there were a total of 27 reported cases of children sexually exploited and
other 19 cases of trafficking variations.

Recommendations:

25. The Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) must be
strengthened through the establishment of an administrative/financial structure that would
favor the management of its own budget in pursuance of the prevention, protection and
reparations to victims of sexual exploitation, and thus exercising its autonomy.

26. The Government should increase its effort to address the issue of sexual commercial exploitation
of children integrally, both by ensuring the perpetrators of such offences are promptly brought to
justice, and by ensuring that victims are provided with adequate protection, recovery,
reintegration and compensation.

d) CHILD LABOR

27. Addressing the issue of child labor is complex, as there is much discrepancy and underreporting on the
number of child workers, as well as between the points of view of those who advocate the eradication of
child labor and those who speak of creating decent working conditions, so that they can bring to the
family economy without harming its formal educational process. The minimum age for admission to
work in Guatemala is set at 14 years.

28. According to the survey on life conditions -ENCÖVI [Acronym in Spanish] - in 2006\(^{17}\) a total of 966,361 boys,
girls and adolescents were engaged in economic activities, 528,000 of whom were aged between 7 and
14 years. It was estimated that 74,278 (7.77 percent) of those children were aged between 5 and 9
years, and that 14,074 (18.9 percent) of them were not attending school. Child labor is most common in
Guatemala’s rural areas (approximately 58,300 boys and girls of 5 - 9 years of age); the socioeconomic
regions that are more affected are the Southwest, Northwest and Guatemala City specifically. The 52.7
percent of boys, girls and adolescents are indigenous of 5 - 9 years of age; 60.3 percent (44,768) are
indigenous, and, the remaining 39.7 percent (29,510) are not indigenous.

\(^{15}\) Refer to: Optional Protocol for CRC, “Related to the Sale of Children, Child Prostitution Child Pornography”


page 30.
Recommendations

29. In line with the previous CRC Committee’s recommendations (2010), we urge that elimination of child labor should be a priority on the social and poverty eradication agenda of Guatemala. A comprehensive and holistic approach, with universal coverage in line with international standards should be adopted with a view to its progressive eradication. Guatemala should also redefine the minimum age for admission to employment so that it corresponds to the age at which compulsory education ends\textsuperscript{18}.

30. Guatemala should increase the budget that the Ministry of Work and Social Welfare devotes to the eradication of Child Labor, and avoid focusing it only on information Campaigns.

e) ILLEGAL ADOPTIONS

31. According to evidence, from the adoption cases that have been processed according the Adoption Law, at least a 60 percent of children who have been declared as eligible for adoption have possible irregularities in their files\textsuperscript{19}.

32. The current process, although seemed to have more controls, is limited to a superficial investigation from the State’s Legal Counselor’s Office that, in addition, has proved not to provide protection to children and adolescents, particularly regarding abandoned children; depriving them from their right to a family and a name.

Recommendations:

33. It is mandatory that State authorities (National Adoptions Council, the Attorney General’s Office, the Ministry of Justice, and the Institute for the Public Criminal Defense, among others) adopt strict measures to ensure prevention and protection of children from, as well as effectively prosecute the perpetrators of: restrictions to investigations; intimidations to witnesses and victims; and the interference, through illegal methods, to the work of judges, district attorneys and investigators as regards adoptions.

34. The Government should strengthen its efforts to ensure that the National Adoption Council services reach all parts of the country and promote domestic adoptions. In line with the previous recommendations (2007) of the CRC Committee\textsuperscript{20}, Guatemala should suspend all intercountry adoptions and urgently undertake measures to comply with international standards on adoption. The Government should also strengthen its efforts to ensure strict transparency and follow-up controls and ensure investigation and prosecution of individuals responsible for the sale of children for the purpose of adoption.

f) ACCESS TO EDUCATION

35. The abolition of school fees established under agreement No. 226-2008 led to an increase of school enrolment rates at all levels of education. According to the III presidential report (2010), the percentages

\textsuperscript{18}See CRC/C/GTM/CO/3-4, para.35: “The Committee recommends that the State Party undertake efforts to establish the necessary regulation framework for business to ensure that business and industries operate in a socially and environmentally responsible way to safeguard local communities and their children”.


\textsuperscript{20}CRC/C/OPSC/GTM/CO/1, para. 26-28.
of coverage that most increased in the period from the year 2007 and 2010 corresponded to pre-primary, primary and secondary education. 21

36. According to the report of progress 2010 on the implementation of the Millennium development goals, the net primary enrolment rate reached the 98.3%; the proportion of students who start first grade and terminated sixth grade, is the 77.6%; and the literacy rate of people aged 15-24 was 87.86%. The same report points out that the net pre-primary schooling in the sector to the 2009 rate was 56.3%; the primary of 98.3%; the basics of 39.3% and the diversified 21.02%. 22

37. Preschool education coverage in Guatemala is 49.03 percent at national level and only a 22 percent for children from 4 to 6 years of age. This is a factor that influences boys and girls performance at first grade. The coverage for primary school is 95.06 percent. The coverage for the first three years of secondary school is of 37.22 percent and for the two or three remaining years is 20.07 percent. Regarding gender, there are major differences in the access to education: generally, girls’ enrollment is a 4 percent lower than for boys (this is true for either primary or secondary education). The repetition rate in Guatemala is 12.5 percent, the highest in Central America. This rate is twice higher among poor population where a 24 percent repeats first grade. There are high rates of desertion (8 percent in rural areas) and regarding school-age: the official school-age for first grade is 7, but real numbers the average for indigenous children is 9.5 years. Investment in education is a 2.3 percent from the GDP -far from reaching the regional average of 4 percent. 23

38. Nowadays, for every 10 illiterate people, 6 are indigenous; a 23 percent of indigenous boys and girls have no access to school and the coverage for bilingual education is only a 22 percent. Out of these indigenous girls and adolescents, only 43 percent complete primary school and only a 5.8 percent have the opportunity to continue the secondary education 24

39. For the last 10-12 years, the progresses for the provision of Intercultural Bilingual Education (EBI) have been limited. Very few people have been trained as bilingual teachers; the EBI is only available for a few languages, it is limited to preschool and primary education and is particularly focused on linguistic topics. In general terms, the Gross Rate of enrollment, for indigenous students at all education levels, is estimated in a 57 percent. 25


deditions

Recommendations

40. We recommend Guatemala establish a learning evaluation system of the quality of education to constitute a basis for the improvement of education standards and services and a commitment to work with (civil) society and children for the permanent improvement of education.

41. The government should increase budget allocation devoted to education to a minimum of 4% of the GDP.

42. Guatemala should also revise and adapt the National Education Law to the Doctrine of Integral Protection in order to implement the protection of the rights of children and adolescents and, therefore, the prevalence of the child best interest.

22 See MDG Guatemalan’s report
23 Guatemala’s Country Strategic Plan -CSP- 2012-2016
24 Ibid
25 Ibid
g) ACCESS TO HEALTH

43. In September 2010, the Healthy Maternity Law, Decree 32-2010 containing specific measures to fight maternal mortality, particularly, among adolescents (that in year 2011 were of 376 deaths)\(^\text{26}\) was approved. However, its regulation has not yet been implemented.

44. According to the Reproductive Health Observatory, early pregnancy is a major issue of concern in health that increased in 2011 to 3,046 deliveries from girls of 10 - 14 years if age. It is important to note, however, that the numbers reported do not seem to reflect reality, as the phenomenon of early pregnancies and deliveries goes widely unregistered, in the case of deliveries assisted by midwives or relatives at home or in case of pregnancies subsequent to rape. \(^\text{27}\)

45. Only 23 percent of women of 10-19 years of age can appropriately identify ways for preventing HIV\(^\text{28}\). In 2010, estimates by the Ministry of Public Health and Social Assistance reported that there are 65,705 Persons Living with HIV/AIDS -adults and children\(^\text{29}\). The 11 percent of the HIV recorded cases are boys, girls, adolescents and young people under the 19 years of age\(^\text{30}\). It is important to note that a great number of people living with HIV/AIDA, including children and adolescents, do not have access to medicines and medical supplies.

Recommendations

46. The government should ensure that the regulations for the Healthy Maternity Law, Decree 32-2010 are promptly developed and adopted and ensure that appropriate budget is allocated for its implementation.

47. Guatemala must implement, assisted by other stakeholders (including, inter alia, civil society, communities, children and families), the Ministerial Declaration subscribed in Mexico “Prevent with Education” (2008) that is a strategic mean for ensuring the access to sexual and reproductive integral education of quality segregated for men and women, promoting gender equity and equality, and cultural and sexual diversity.

48. Budget allocation should be increased for the prevention and assistance of the needs of Persons living with HIV, giving priority to Children and Adolescents and ensuring the purchase and stock of medicines in compliance with the obligations and quality standards globally approved.

h) COMPREHENSIVE CHILD PROTECTION SYSTEM

49. Based on the aforementioned issues, the application of the Comprehensive Protection System, established by the Law for the Comprehensive Protection of Children and Adolescents (Ley PINA), does not sufficiently guarantee the fulfillment of the State obligations to implement children’s rights. There is lack of effective coordination among State institutions mandated to strengthen implementation of children’s rights.

50. The CNNA [Acronym for National Commission of Children and Adolescents] -a bipartite body integrated by the Government and the Civil Society- is weak in the compliance with the appropriate implementation of the system. This is caused by, inter alia, the lack of enough budget allocation, for example, and the fact that this body is established to be within the Secretariat for Social Welfare, which makes it dependent from the latter.

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\(^{26}\) Refer to: National Reproductive Health Program of the Ministry of Public Health and Social Assistance, 2011.

\(^{27}\) See. Reproductive Health Observatory informs.

\(^{28}\) Siglo 21 [Daily Newspaper] Birth Delivery: 20 percent of mothers are between 10 -19 years of age. Guatemala


\(^{30}\) Plan Guatemala’s Country Strategic Plan -CSP- 2012-2016.
51. Despite the existence of complaint mechanisms that allow for the protection of children and adolescents whose rights have been violated, from the resources of each social community context, access to justice for children victims of violations and criminal prosecution of the offenders and reparations are not yet sufficiently implemented.

**Recommendations**

52. The National Commission of Children and Adolescents -CNNA- must be provided with the necessary resources to ensure it would act efficiently towards strengthening and implementing the child protection system.

53. The government should ensure spaces are generated for the dialogue between the State and Civil Society, in order to better improve actions to ensure the CNNA is able to effectively fulfill its mandate, with the necessary technical, financial and human resources and autonomy.

54. All institutions that integrate the System for the Social, Legal and Comprehensive Protection of Children and Adolescents must strengthen their coordination and linkage channels to ensure that every one fulfills its mandate effectively.