

Children's right to identity in Guatemala

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1 Creation of identity

Birth registration:

- By February 2020, UNICEF still estimated the under-registration of births in Guatemala at 3-7%.¹
- In this context, the country has several initiatives and efforts ongoing to respond to this situation. Indeed, whilst the Registro Nacional de las Peronas (RENAP)'s main office is located in the capital city of Guatemala; it has established 340 municipal offices, over 40 offices in public and private hospitals, maternity centres and hospitals managed by the Guatemalan Social Security Institute² as well as mobile units to reach remote areas and vulnerable persons.³ Indeed, RENAP coordinates its deployment with the staff at hospitals, educational centres, shelters, children's homes, prisons, companies and institutions, villages, etc. These mobile units have technological equipment, which enables the incorporation of biometric and biographical data.⁴
- This is also relevant given that non-institutionalised births occur mainly amongst indigenous women; it appears that half of all indigenous women in the country have given birth at home.⁵
- While countries have moved towards safeguarding the gratuity of early registration, Guatemala remains amongst the few countries that still impose the payment of a fee for late registration (Acuerdo de Directorio No. 62-2022 - Reforma al acuerdo de Directorio Número 15-2020 del Registro Nacional de las Personas, Tarifario de los Servicios que presta el Registro Nacional de las Personas -RENAP-),⁶ but also for the printing of a certificate when registering a child.⁷

Abandonment:

- In 2022, the Procuraduría General de la Nación (PGN) recorded 60 cases of abandonment.⁸ PGN reports that the most common causes of child abandonment are unplanned pregnancies, family separation or sometimes because the children have some kind of disability.⁹
- It should be noted that the National Adoption Council (Consejo Nacional de Adopciones, CNA) has been operating, since its creation, a programme for mothers and/or fathers in conflict with their parentality, which provides guidance, information and counselling free of charge.¹⁰ The CNA's 2022 Annual Report indicates that, during that year, 89 initial approaches with mothers and/or fathers in conflict with their parentality were undertaken (psychological and social counselling when they present themselves voluntarily before the CNA or by external referral). The CNA also provided 151 orientation processes (information and professional and individual counselling, with the aim of informing about the principles, rights and consequences of adoption, ordered by a judge or internal referral). It should be noted that, out of the 151 counselling processes, 46 mothers and/or biological parents decided to voluntarily entrust their children for adoption.

Finally, 96 follow-up counselling sessions were carried out, during which advice and technical-professional support was provided when the children remained with their families or where children were reunited with their biological family, in order to ascertain the comprehensive development of the child.¹¹

- In terms of promotion of this programme, in 2022, the CNA held 49 information workshops on the programme for mothers and fathers in conflict with their parentality for inter-institutional strengthening and the creation of support networks. In addition, a campaign was launched in the Cakchiquel language, ¿Embarazo inesperado?, to promote the free services provided by the programme, through local radio stations, publicity at the back of buses, posters and leaflets.¹²
- At the end of March 2023, Changing The Way We Care and the Social Welfare Secretariat (SBS) launched a guide for facilitators " Educando en Familia " to promote reintegration into family care and the provision of specific social services aimed at ensuring safe care, increasing resilience and improving care for target families.¹³

Migration and humanitarian situation:

- In 2022, Mexican migration authorities returned 9,192 children and adolescents to their countries of origin, 71% of whom were unaccompanied and 85% of whom were of Honduran or Guatemalan nationality.¹⁴ In 2020, despite COVID-19 containment measures, 4,511 unaccompanied children were returned to Guatemala from Mexico (2,559) and the United States (1,952). Returns from the United States increased 225% compared to 2019.¹⁵
- UNICEF also reported in 2023 that an alarming escalation in migration has been witnessed across Central America, with record numbers of individuals, including unaccompanied children and families, transiting through Guatemala, which reflects migration trends observed in the region, with nationals from Venezuela, Haiti, Cuba and Ecuador undertaking dangerous journeys in increasing numbers. It also highlighted the significant presence of women travelling with children, with experiences of violence and extortion.¹⁶
- In Guatemala, unaccompanied returnee children and adolescents are cared for by the SBS and the PGN. In 2019, the Primero™ Child Protection Information Management System was launched to support unaccompanied and separated children.

Potential considerations:

- *What actions is Guatemala taking to move towards universal birth registration, in particular to ensure a legal identity to those children most at risk of not being registered in a timely manner?*
- *Also, is Guatemala considering moving towards free late registration and free birth certificates?*
- *In addition to the CNA's programme to address situations of conflict with parenthood, what other measures have been implemented to prevent abandonment and unnecessary family separation?*
- *Guatemala being a country of origin, transit and return of migrants, many of them unaccompanied children and adolescents, what initiatives have been implemented to safeguard the identity of these Guatemalan and foreign children? What have been the results of using the Primero system to safeguard their identity?*



2 Modification of identity

Alternative care:

- The most recent figures for children and adolescents in alternative care were 3,612 in public (17) and private (136) children's homes during 2022,¹⁷ and 63 children and adolescents in 150 available foster families (2020).¹⁸ Nearly half of all children in orphanages have been placed there due to poverty and lack of social services, such as health or education and 90% of these children have at least one living parent.¹⁹ It should be noted that the Sub-Coordination for the Authorisation and Supervision of Children's Homes and International Bodies of the CNA, advises, registers, authorises, reauthorises and supervises the facilities that are dedicated to the care of children and adolescents, ensuring the best interests, the restitution of human rights and the adequate application of the Quality Standards for the Care of Children and Adolescents in Temporary Shelter Facilities.²⁰ This is essential, given the conditions that still exist in the homes in Guatemala, and after the tragedy in which more than 40 girls died and 15 were injured in the fire at the Hogar Seguro Virgen de la Asunción in March 2017.²¹
- According to the Better Care Network, there is partial progress in the commitment to deinstitutionalisation, in the continuum of available alternative care services, in the existence of a regulatory body and system, and in a gatekeeping mechanism and policy. However, there is still little progress in the establishment of national standards for alternative care, and no progress in critical areas such as a moratorium on admission into institutions for children under 3, a moratorium on the creation of new institutions and there is no support for care leavers.²²
- It is worth mentioning two key resources developed in recent years to guide reforms in this area: the Model of Alternative Care Applicable in the Republic of Guatemala²³ and the Study on Existing and New Options for Alternative Family Care for Children and Adolescents.²⁴

Adoption:

- Whilst over 4,000 children were adopted internationally every year in Guatemala in 2006-2008,²⁵ in 2022, Guatemala only carried out two exceptional intercountry adoptions with the United States, which were pending cases at the time of the entry into force of the Adoption Law (2007).²⁶
- Of the 103 adoptions carried out during 2022, 46 were 'priority' adoptions (i.e. children with particular characteristics and needs).²⁷
- In 2020-2021, CHIP supported the CNA in partnership with UNICEF with the review and updating of the multidisciplinary team's technical guidelines, which outline the administrative procedure for adoption and the intervention of the different units of the team as well as their collaboration with external bodies, thereby systematising and guiding practice.²⁸

Surrogacy:

- Surrogacy is not regulated by law in Guatemala, so there are no officially registered cases. It should be noted that the Law against Sexual Violence, Exploitation and Trafficking in Persons covers several relevant offences in the country's Penal Code: trafficking in persons (including irregular adoption, forced pregnancy), surrogacy, substitution of one child for another, suppression and alteration of civil status.²⁹

Potential considerations:

- *What is the country doing to further strengthen its alternative care practice with a view to gatekeeping and preventing the entry of children and adolescents into care, as well as promoting family reintegration where it is in their best interests?*
- *How are minimum quality standards being implemented to ensure that the identity and family relationships of children in alternative care are preserved and that any modifications are duly assessed in their best interests?*
- *CHIP welcomes the fact that Guatemala's legislation on trafficking in persons covers practices that may infringe on the right to identity of children and adolescents; what measures have been taken to implement the law to prevent and respond to irregular adoption, forced pregnancy, presumed childbirth / substitution of birth, and civil status alterations?*

3 Falsification of identity

Adoption:

- The situation in Guatemala until the mid 2000s was well publicised, with serious concerns expressed for years in relation to the rights of children - and biological families - in a system that entailed considerable financial profits for many actors involved. Just before the legal reforms in 2007, the Hague Conference on Private International Law undertook a mission in the country and mentioned that '[t]he parental consent [was] never presented before a judge, such that an unscrupulous Notary [could] elude consent by falsifying a signature or obtaining it through illegal means (coercion, corruption, etc.)'.³⁰ The Commission Against Impunity in Guatemala (CICIG) later - even after the legal reforms - raised concerns at the impunity relating to acts facilitating adoptions in the country, including the falsification of documents and identity, and 'analy[s]ed various allegedly criminal facts and identified different proceedings used by illegal networks engaged in trafficking for purposes of irregular adoption. These networks [were] made up, among others, of snatchers ("jaladoras") who kidnapped or "[bought]" children from their birth mothers. In some cases, they threaten[ed], coerce[d] or deceive[d] the mothers into giving their children up for adoption. They [were] associated with notaries who process[ed] the adoptions. Children [were] sometimes kidnapped and given fake identity papers. Women [were] used to supplant birth mothers through forged identity documents. For this purpose, both notaries and snatchers, who [were] usually at the core of these networks, rel[ied] on doctors, midwives, registrars of vital statistics in different municipalities and DNA laboratories, where the relevant tests [were] also falsified'.³¹
- Recent accounts of adoptees reflect this systemic situation over several decades,³² although the legal reforms in 2007 and the suspension, since then, of intercountry adoptions has entailed drastic changes and important progress to overcome and respond to these past practices.



Child marriage:

- UNICEF states that the last official statistics (2009) indicated that 7.7% of girls aged 15-19 were married.³³ According to Girls Not Brides, in Guatemala, 30% of women unite before the age of 18, and 6% before the age of 15, which makes "Guatemala one of the countries with the highest prevalence of Child, Early and Forced Marriages and Unions (MUITF) in Latin America and the Caribbean."³⁴ Linked to this situation, RENAP indicates that 18% of births in 2018 were to teenage mothers. 47% of the women surveyed reported having been mothers before the age of 20.³⁵ Of women aged 15-19, 6% are married and 14% are unmarried; and one in five have had children or have been pregnant (Ministry of Public Health and Social Assistance (MSPAS), National Statistics Institute (INE) & ICF International, 2017).³⁶
- The main causes of MUITF in Guatemala are gender inequality, poverty and discriminatory norms against women, adolescents and girls, which are closely related to other factors such as sexual violence, pregnancy in childhood and adolescence and school dropout.³⁷
- It should also be noted that :
 - In Guatemala, informal unions without official registration are far more common than registered marriages. Only 20% of adolescent girls aged 15-17 are legally married; nearly 65% are in an informal union.³⁸
 - Unmarried girls and adolescent girls in Guatemala are more likely to live in rural areas, belong to Mayan ethnic groups, live in low-income households and have less access to education.³⁹
 - Some of the factors contributing to child marriages in Guatemala are: the adolescent fertility rate is much higher than the regional or global average: 92 births per 1,000 adolescents aged 15-19;⁴⁰ unintended pregnancy is often the reason why adolescents enter into unions;⁴¹ a lack of comprehensive sexual education (CSE) and unmet needs for contraception;⁴² unintended pregnancy can be the result of sexual violence against girls and adolescents.⁴³
- In August 2017, Guatemala reformed the Civil Code (Decree 13-2017) to prohibit the marriage of persons under 18 years of age. This first step was very important, however, de facto unions continue to occur.

Potential considerations:

- *There is no doubt that Guatemala was one of the countries where irregular adoptions took place in the past, facilitated, among other factors, by identity falsifications. In addition to legislative reforms on adoption and human trafficking, what actions and measures is the country taking to further prevent such acts?*
- *What concrete actions are being taken to end child marriage and early unions in the country and to safeguard the identity and family relations of these girls and women*

4 Preservation of identity and access to origins

Birth registration:

- In Guatemala, before the Registro Nacional de las Personas (RENAP) was created, births, marriages, deaths, and their annotations were all done in physical registry books. Each municipality kept books with numbered pages and entries.

After RENAP was created, civil registration functions were transferred to a central headquarters and the process was automated. It then became essential to digitise images of registration records and index/enter data into a complete registry database for the Guatemalan population to preserve the information in the registry books. In 2008, RENAP began compiling all the municipal books to centralise them and to begin to digitise; index; and do data entry.⁴⁴

Adoption:

- The Consejo Nacional de Adopciones of Guatemala established an area that specifically addresses requests for searches for origins.⁴⁵ In 2022, 17 requests from foreign persons, adopted before the Adoption Law (2007), were attended to in order to initiate a search for origins. To promote the counselling and support offered by the search for origins programme, information materials were designed in English, French and German.⁴⁶
- *See also below under "Restoration of identity".*

Potential consideration:

- *What measures is the country, in particular the CNA, considering to strengthen its management of search for origins cases (in pre- and post-2007 Adoption Law adoptions) given the high number of adoptions and illicit practices that took place in the country?*

5 Restoration of identity

Illegal adoptions:

- Over the years, Guatemala has also seen a number of paradigmatic criminal proceedings brought against those responsible for illegal adoptions at domestic level, including managers of children's homes,⁴⁷ notaries,⁴⁸ lawyers and judges, in a context described by the UN Commission Against Impunity in Guatemala (CICIG) as 'organised criminal transnational child trafficking and smuggling networks for irregular adoption purposes'.⁴⁹ For many years during and after the country's internal conflict (approximately 1963 - 2007), illegal adoptions-a form of child trafficking- took place, with a number of children having disappeared or been stolen or kidnapped, and their mothers having been threatened, deceived and even punished within their communities.⁵⁰ Whilst, nowadays, the country's Central Adoption Authority has a programme in place for adoptees to search for their origins,⁵¹ it has been difficult for most of those searching and having been adopted in this context of illegal adoption to access any reliable information and files, if at all.
- A few years ago, a young person adopted in Guatemala in the above-mentioned context brought proceedings against Guatemala before the Inter-American Court of Human Rights. In the case of *Ramirez Escobar v Guatemala* (2018),⁵² the Inter-American Commission on Human Rights considered that the State was responsible for the violation of the right to identity and to a name, as the name of the adopted brothers had been changed arbitrarily, and these were a fundamental component of their identity (para. 358).



Indeed, it is judgement in the case of Ramirez Escobar and Others v Guatemala, the Inter-American Court of Human Rights declared the State of Guatemala internationally responsible for the arbitrary separation of the family, the right to judicial protection and the prohibition of discrimination against the victims - the adoptee and his biological parents - as well as for the violation of the right to personal integrity, lack of investigation into the irregular actions and the violations of the right to personal freedom, identity and a name of Osmín Tobar Ramírez.⁵³ On this last count, the Court focused on the change of name, identity and separation from his culture, as a consequence of an adoption procedure, that took place with no basic material and procedural guarantees in this matter, as well as on the State of Guatemala's lack of adoption of measures to undertake the relevant modification to his registration and identity document, despite its responsibility in the events that generated this change in name and identity, and the recognition, at internal level, of the irregularities committed in the process of declaration of abandonment, as well as of this specific violation at international level.⁵⁴ It emphasised that identity is a right that includes various elements, including family relations (Para. 359), and that names and surnames are essential to formally establish an existing bond with different members of the family (Para. 360). Guatemala was considered responsible in the events that generated a change of name and identity, and the country recognised the irregularities committed in the process of declaration of abandonment (Para. 361).

Potential consideration:

- *What steps has Guatemala taken to implement the measures requested in the Ramirez Escobar and Others v. Guatemala judgment to fully restore the identity of the victims and to prevent potential future similar cases?*

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