

**SUBMISSION TO THE COMMITTEE ON THE RIGHTS OF THE CHILD:  
SITUATION OF INSTITUTIONALIZED CHILDREN IN GUATEMALA**

**I. SUMMARY**

Institutionalization of children in Guatemala is a generalized practice. The number of institutions have increased in the last years, fostered by practices such as voluntourism and international funding. Further, many of those institutions operate out of official registers resulting in a lack of accurate information about how many children live in there, while. This is a worrying situation given that institutions are inherently dangerous for children, and especially for children with disabilities, as documented by Disability Rights International (DRI). UN organisms and bodies, such as UNICEF, the Committee on the Rights of the Children and the Committee on the Rights of Persons with Disabilities, have reported on the negative effects of institutionalization in the country and have called the Guatemalan State to take action for deinstitutionalization. Despite this, we have noted with concern the lack of real and effective actions to end institutionalization and prevent the entrance of more children in those spaces.

**II. CONTEXT**

Guatemala, classified as a lower/middle-income country, is the most populated country in Central America with one of the highest demographic growth rates. Projections indicate that Guatemala had 16,176,133 inhabitants in 2015 of which 8,169,715 were between 0 and 19 years old (Instituto Nacional de Estadística, 2015). The country has the highest fertility rate of all Latin America, with an average of 4 children per mother (World Bank, 2014) and adolescent pregnancy is very common, 33% of 19-year old women have had at least one child (UNICEF and ECLAC, 2007).

In 2014 UNICEF reported that 59.3% of the population lived below the poverty line and 23.4% lived in extreme poverty. In relation to children, 70.2% of children under 10 were living in poverty, while 65.9% of children and adolescents between 10 and 17 years lived in poverty. Based on ethnicity, UNICEF reported that 84.9% of indigenous children and adolescents lived in poverty and 45.4% in extreme poverty, which shows that most Guatemalan children and adolescents cannot fully exercise all their rights to survive, prosper and develop their full potential (UNICEF, 2017).

Further, Guatemala has the fifth-highest homicide rate in the world. In this context of violence, child and adolescent are highly vulnerable. In 2014, 14 people died a violent death each day, of which 3 were under 18 years of age. Murder leaves about 40 girls, boys or adolescents orphaned each day (UNICEF). Culture of violence, extreme poverty, migration, high birth rates and vulnerability of young mothers are among the factors contributing to family separation and child abandonment<sup>1</sup>.

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<sup>1</sup> See Better Care Network, *Collected viewpoints on international volunteering in residential care centres. Country focus: Guatemala* (2014), 4. Available at: <http://bettercarenetwork.org/sites/default/files/Collected%20viewpoints%20on%20international%20volunteering%20in%20residential%20care%20centres%20-%20Country%20Focus%20-%20Guatemala.pdf>

### III. Institutionalization: Family environment and alternative care (arts. 5, 18, paras. 1-2; 9-11; 19-21; 25; 27, para. 4; and 39 of the Convention)

The United Nations has estimated that there are over 8 million children detained in orphanages around the world<sup>2</sup>. Other sources indicate that the number may rise to 10 million or more given the proliferation of unregistered institutions and the lack of data on vulnerable children<sup>3</sup>. In accordance with the National Council on Adoptions in Guatemala [*Consejo Nacional de Adopciones (CNA)*] as of 2013, there were 5,474 institutionalized children (1,925 in public institutions and 3,549 in private ones)<sup>4</sup>. This number is likely to be an underestimate given that there are over 160 private institutions in Guatemala<sup>5</sup>. If there were an average of 50 children for each private institution, there would be at least 8,000 children in private institutions alone. More than 90% of those facilities are funded by international NGOs (Better Care Network, 2014). The main reasons for placing them in there are family conflict, negligence, sexual abuse in the home, domestic violence, drug addiction and poverty (UNICEF, 2014).

As it happens all around Latin America, in Guatemala institutionalization of children and adolescent is a common and generalized practice. In the region “macro-institutions” are home to large numbers of children and adolescent, such is the case of “Hogar Seguro Virgen de la Asunción” (formerly “Hogar Virgen de la Esperanza”), a public institution located in an area of difficult access in San José Pinula, Guatemala, which, according to more recent reports, houses about 1,200 children and adolescents, some of them with disability. There have also been several recent reports of violence inside, including sexual and physical abuse in that institution<sup>6</sup>.

The private sector is responsible for the vast majority of institutionalized children. According with the CNA, as of January 31, 2017, there were 163 private children’s homes in Guatemala, of which 32 were authorized, 31 were on revalidation process, 64 on authorization process and 36 reported out of operation (CNA, 2017). An increase in the number of institutions in a country indicates an increase in the separation of children and families. The Inter-American Commission on Human Rights (IACHR) has pointed that even though there is a registry of facilities, many of them have not completed the accreditation process because they are not in compliance with the standards in force<sup>7</sup>.

<sup>2</sup> UN Secretary-General. *Rights of the Child: Note by the Secretary-General*, UN Doc A/61/299. (2006), para. 55.

<sup>3</sup> See Foreign Ministry of Sweden. *Children in institutions: International Development Cooperation*. (2001). Available at: <http://www.government.se/contentassets/42b806a7f8b046468116e4f1245428b5/children-in-institutions>, *Stuck* (Both Ends Burning, 2012) (documentary exploring the impact of international adoption) available at <https://bothendsburning.org/stuck-documentary-explores-internatioanl-adoption-photos>; Save the Children. *Keeping Children Out of Harmful Institutions: Why We Should be Investing in Family-Based Care*. (2009) 3-4. Available at: [https://www.savethechildren.org.uk/sites/default/files/docs/Keeping\\_Children\\_Out\\_of\\_Harmful\\_Institutions\\_Final\\_20.11.09\\_1.pdf](https://www.savethechildren.org.uk/sites/default/files/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09_1.pdf)

<sup>4</sup> UNICEF. *Guatemala - Country Programme Document 2015-2019* (2014), para. 13: [https://www.unicef.org/about/execboard/files/2014-PL14-Guatemala\\_CPD-Final\\_approved-EN.pdf](https://www.unicef.org/about/execboard/files/2014-PL14-Guatemala_CPD-Final_approved-EN.pdf)

<sup>5</sup> Consejo Nacional de Adopciones (CNA). (2017). Available at: <http://www.cna.gob.gt/Documentos/EntidadesAutorizadas.pdf>

<sup>6</sup> See UNICEF and RELAF, *Los olvidados: Niños y niñas en “Hogares”*. *Macroinstituciones en América Latina y El Caribe* (2015).

<sup>7</sup> IACHR. *The Right of Boys and Girls to a Family: Alternative care. Ending Institutionalization in the Americas* (2013), Available at: <http://www.oas.org/en/iachr/children/docs/pdf/Report-Right-to-family.pdf> para. 365.

In 2010, the Committee on the Rights of the Child (CRC Committee) cited the need to de-institutionalize children in residential care.<sup>8</sup> The Committee was concerned at the large number of children in institutions, as well as at the insufficient implementation of minimum care standards and monitoring systems for these institutions, especially at the placement of more than 1,000 children in a large institution (*Hogar Solidario –now Hogar Virgen de la Asuncion*) in the capital. The IACHR, highlighted in 2013, the practice of “rescue” operations by State officials in Guatemala, particularly by the police, to take street children to residential care facilities<sup>9</sup>. The IACHR further affirmed that the States are under the obligation, as part of their national protection systems, to create services that will allow children who were in residential institutions to reintegrate with the community.<sup>10</sup>

Permanent detention of children is a violation of Article 37 (b) of the Convention on the Rights of the Child. DRI has found that the detention of children it is not exclusive of orphanages, it also occurs in institutions such as hospitals, specialized programs for children with disabilities, psychiatric facilities, residential schools, nursing homes, adult institutions, among others<sup>11</sup>. In 2015, the UN Special Rapporteur on Torture presented his thematic report on “torture and ill-treatment of children deprived of their liberty” in which it is demonstrated how the prohibition of torture under international law protects children from abuse and improper placement in any form of public or private institution. It particularly noted the heightened risk of violence, abuse and acts of torture, cruel, inhuman or degrading treatment or punishment for children in institutions and stating that the deprivation of liberty of a child should be a last resort measure used only for the shortest possible period<sup>12</sup>.

Institutions are inherently dangerous for children. As the Rapporteur on Torture recognizes, a number of studies have shown that, regardless of conditions in which children are held, detention has a profound and negative impact on child health and development. Even very short periods of detention can undermine the child’s psychological and physical well-being and compromise cognitive development<sup>13</sup>. No matter how clean and modern an orphanage, growing up in residential care can have a negative impact on children’s health, development, and life chances. Research has shown that children develop better in a family environment and that long-term institutionalisation is harmful to their cognitive, emotional, and social development.<sup>14</sup> Thus, children that are segregated in institutions are more likely to develop a disability and for those who already had a disability, their disability is likely to worsen.

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<sup>8</sup> *Supra*. UNICEF. (2014). Para 3; Committee on the Rights of the Child (CRC Committee), *Analysis of the Reports Presented by States Parties under Article 44 of the Convention. Concluding Observations: Guatemala*, CRC/C/GTM/CO/3-4, (2010), para. 59.

<sup>9</sup> *Supra*. IACHR. (2013), para. 212

<sup>10</sup> *ibid*. Para 553.

<sup>11</sup> See DRI reports on Uruguay (1995), Hungary (1997), Russia (1999), Mexico (2000, 2010, 2013, and 2015), Kosovo (2002), Peru (2004), Turkey (2005), Argentina (2007), Serbia (2008), Vietnam (2009), United States (2011), Guatemala (precautionary measures petition 2013), Republic of Georgia (2013), Ukraine (2015). Mental Disability Rights International (MDRI) changed its name to Disability Rights International (DRI) in 2010. All DRI reports (including those published as MDRI), Reports available at: <http://www.driadvocacy.org/media-gallery/our-reports-publications/>

<sup>12</sup> *Report of the Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly, A/HRC/28/68* (2015), Juan Méndez, pars. 16 and 72.

<sup>13</sup> *ibid*. para. 33.

<sup>14</sup> See Nelson, C., Zeanah, C., Fox, N. *The Effects of Early Deprivation on Brain Behavioural Development: Bucharest Early Intervention Project*. (2009) Oxford University Press.; Tobias, D. *Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe and the former Soviet Union*. (2000) The World Bank. 2000.

In order to fulfil with its international obligations as well as with the recommendations that the CRC Committee made to Guatemala in 2010, the State must place a moratorium on new admissions of all children into institutions<sup>15</sup>; protect the right of children to live in the community and the to grow up in a family<sup>16</sup>; seek alternative family placement rather than any form of residential care for children who must be removed from their own family<sup>17</sup>; and ensure that deinstitutionalization in the case of children is focused on reintegrating them into a family rather than into a smaller institution<sup>18</sup>.

#### a. Institutionalization of children with disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) protects the right of children to grow up in the community with a family<sup>19</sup>. Nevertheless, a large number of children are placed in orphanages because of disability. In this cases, institutionalization has a double discriminatory impact on children and adolescents with disability due to the fact that they are detained on the basis of being children and having a disability. In this regard the General Comment No. 9 of the CRC has drawn attention on the need to protect children with disability, noting that they experience serious difficulties and face barriers to the full enjoyment of the rights enshrined in the CRC<sup>20</sup>. The Committee has called on the Guatemalan State to take into account this General Comment, expressing its concern about the limited access to education, health, community and cultural life and services for children with disabilities<sup>21</sup>. The lack of supports and services in the community for children with disabilities puts a disproportionate burden on the families and many times leaves institutionalization as the only 'care' option for them.

In 2016, the Committee on the Rights of People with Disabilities (CRPD Committee) expressed its concern on the high number of children with disabilities being held in institutions in Guatemala asking the State to abolish institutionalization of children, not limited to the detention of children with disabilities. The CRPD Committee further noted the high rate of maltreatment, abuse, corporal punishment, abandonment and institutionalization of children with disabilities; the prevalence of the welfare and charity-based approach to their care; and the limited scope of specific measures taken on their behalf in rural areas and indigenous communities<sup>22</sup>.

On its recommendations, the CRPD Committee called the State to amend article 13 of the Act on the comprehensive protection of children and adolescents and article 253 of the Civil Code; take all necessary measures to implement an effective system for detecting the maltreatment of children with disabilities in health-care and institutional settings; establish the legal basis and financial support necessary to ensure

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<sup>15</sup> UNICEF, *The State of the World's Children*, (2010), p. 80.

<sup>16</sup> See, UN, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Guatemala*, CRPD/C/GTM/1 (September 30, 2016) and UN, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of the Czech Republic*, CRPD/C/CZE/CO/1, (May 15, 2015).

<sup>17</sup> See Rosenthal, Eric, *A Mandate to End Placement of Children in Institutions and Orphanages: The duty of governments and donors to prevent segregation and torture* (2017), available at: <http://www.driadvocacy.org/media-gallery/our-reports-publications/>

<sup>18</sup> See Rosenthal, Eric, *A Mandate to End Placement of Children in Institutions and Orphanages: The duty of governments and donors to prevent segregation and torture* (2017), available at: <http://www.driadvocacy.org/media-gallery/our-reports-publications/>

<sup>19</sup> See Article 23.

<sup>20</sup> CRC Committee. General Comment No. 9, *The rights of children with disabilities*, UN Doc. CRC/C/GC/9. (2007).

<sup>21</sup> *supra*. CRC Committee. (2010), pars. 68 and 69.

<sup>22</sup> UN, Committee on the Rights of Persons with Disabilities, *Concluding observations on the initial report of Guatemala*, CRPD/C/GTM/1 (September 30, 2016), pars. 23 and 53.

that all children with disabilities are able to live in a family setting and to exercise their right to inclusive local services; abolish institutional placement of all children; ensure that children with disabilities are taken into account in laws, policies and measures regarding them based on the principle of inclusion in the community; put in place safeguards to protect the right of children with disabilities to be consulted on all matters of concern to them and ensure that they receive assistance that is accessible and appropriate to their disability and age; and prohibit and eliminate corporal punishment of children<sup>23</sup>.

In addition, the CRPD Committee noted the lack of local community services for persons with disabilities to enable them to live independently, and particularly the lack of support for the families of children with disabilities to ensure those children to be able to remain in the family environment. Accordingly, recommended the State to provide support to families of children with disabilities to prevent family breakdown and institutionalization of the children<sup>24</sup>. As provided for under article 23 (5) of the Convention on the Rights of Persons with Disabilities, Guatemala must provide alternative care “within the wider family, and failing that, within the community in a family setting”<sup>25</sup>, where the immediate family is unable to care for the child.

#### IV. VOLUNTOURISM FUNDING ORPHANAGES

Even though international standards have shifted away from providing support to children in institutions, to supporting instead children in a family environment, in many countries the out-dated model of institutionalization remains prevalent, and most of their funding arises from international aid and voluntourism. Volunteering in orphanages has become a hugely popular way to “give back” when travelling abroad. Placements can be organised in many ways - including through travel agencies, NGOs, churches and mission’s groups, schools and universities, as well as directly with orphanages themselves.<sup>26</sup>

However, voluntourism and international funding is further encouraging institutionalization in Guatemala and, in turn, discouraging the creation of programs and supports that allow children to live a family setting within the community. More and more orphanages are becoming businesses generating income from people willing to volunteer their time and donate their money. Most orphanages get their funding from international sponsorship and voluntourism, such is the case of “Hogar Zacapa” that receives its main funding from volunteers and donations from Bucker International and Holt International (UNICEF, RELAF, 2015), and most are very accessible for donations through online platforms. In 2016 the CRPD Committee expressed its concern at the funding of institutions through voluntourism and international aid and call on the State of Guatemala to ensure that international funding is used in accordance with human rights standards, in particular with the right to live in the community and grow up in a family.<sup>27</sup>

#### V. CONCLUSION

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<sup>23</sup> *ibid.* Para. 24

<sup>24</sup> *supra.* CRPD Committee. (2016), para. 54

<sup>25</sup> See Rosenthal, Eric, *A Mandate to End Placement of Children in Institutions and Orphanages: The duty of governments and donors to prevent segregation and torture* (2017). American University, In *Protecting Children Against Torture in Detention: Global Solutions for a Global Problem*. Also posted at <https://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/our-work/research/upload/Perspectives-on-Human-Rights-Rosenthal.pdf>

<sup>26</sup> See Better Care Network and Save the Children UK. *Orphanage Volunteering – Why to say no.* (2016). Available at: <http://www.bettercarenetwork.org/sites/default/files/Orphanage%20Volunteering%20%20Why%20to%20say%20No.pdf>

<sup>27</sup> CRPD Committee, Concluding Observations.

Despite the efforts and actions implemented by the Guatemalan State, as noted in its report to the CRC, we are concerned about the failure to fulfil the recommendations issued by this Committee and the CRPD Committee in relation to children in institutions. DRI has observed an increase on the number of institutions operating in Guatemala which reflects the lack of a real deinstitutionalization strategy. According to official information, from 2013 to 2017, registered private institutions at the CNA increased from 134 to 163. This is especially alarming in contrast with the information given by the State about the deinstitutionalization of 58 children in three months, which evidences the insufficiency of effective governmental actions as institutions continue to expand. As long as institutions continue to grow in there continues to be an absence of real alternatives to institutionalization, thousands of children will remain in hostile spaces that violate their rights and hamper their development.

Thus, it is important for the State to accurately report on the efforts to create alternative care services, to prevent the admission of more children to the institutions and to incorporate children currently in institutions to a family life. The State should also provide information on the funding of institutions, especially coming from voluntourism and international aid. Regarding children with disabilities detained in institutions we noted the absence of information about them in the State's report. As we mentioned before, children with disabilities are especially vulnerable and thus, there is greater need for the creation of alternative services appropriate for them to guarantee their right to live in the community with a family and all the other rights enshrined in the CRC and the CRPD.

We respectfully request to this Honorable Committee to ask the Guatemalan State to inform on the following matters:

- a) Accurate information on all public and privately operated residential institutions operating in the country, inside and outside their official registers, particularly on its funding and the number of children who are there detained; information is needed on all out-of-home care programs of any size, including hospitals, psychiatric facilities, nursing homes, social care homes, orphanages, group homes, residential schools, feeding centers, children's villages, churches or other religious programs, etc.
- b) Actions undertaken to obtain accurate information on children who are at risk of being detained in institutions and the actions taken to prevent their institutionalization;
- c) Actions undertaken to place a moratorium on new admissions of children into institutions, as recommended by the CRPD Committee;
- d) Actions undertaken to prevent the institutionalization of children with disabilities and to create community based alternatives, services and supports to guarantee their right to live in community;
- e) Actions undertaken to regulate and prevent the funding of institutions by voluntourism and international aid;
- f) Actions taken to monitor human rights, forced labor, or trafficking within or from residential and community-based programs for children, including international volunteer programs for children.

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