

GUATEMALA

International Instrument	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)	Entry Into Force
UN Convention on the Rights of the Child	26 Jan 1990	6 Jun 1990	
UN Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	7 Sep 2000	9 May 2002	
Protocol to Prevent, Suppress and Punish Trafficking in Persons		1 Apr 2004 a	
UN Optional Protocol on the Involvement of Children in Armed Conflict	7 Sep 2000	9 May 2002	
International Convention for the Protection of All Persons from Enforced Disappearance	6 Feb 2007		
Hague Convention on International Child Abduction		6 Feb 2002	1 May 2002

Guatemala demonstrated major improvements to child protection legislation and has made significant efforts to curb cases of missing and abducted children in the country. In particular, Guatemala has carried out significant legal reform to harmonize its legislation with the Optional Protocol on the Sale of Children (which Guatemala signed in 2000 and ratified in 2002). In 2003, Guatemala enacted its Comprehensive Child and Adolescent Protection Law¹ (henceforth referred to as the “PINA Law” – *Ley de Protección Integral de la Niñez y Adolescencia*) aimed at ensuring that child protection is enhanced and comprehensive. In 2007, Guatemala took the first steps towards protecting children from illegal adoptions, a widespread phenomenon in the country that has converted adoptions into a profitable industry², by enacting the Adoption Law (*La Ley de adopciones*) and creating the National Adoption Council in 2008. Also very important was the enactment of the Sexual Violence, Exploitation and Trafficking in Persons Law (*Ley contra la violencia sexual, explotación y trata de personas*) in 2009, followed by the creation of the Secretariat for Combating Sexual Violence and Trafficking in Persons (*Secretaría contra la Violencia Sexual y Trata de Personas*) in 2010 and the national policy on trafficking in persons and comprehensive protection for victims in the National Strategic Plan of Action of 2007-2017.

These are crucial steps, but unfortunately they are insufficient. A series of economic, social and political factors contribute to Guatemalan children remaining in a particularly high state of vulnerability. An estimated 51% of Guatemala’s population live below the poverty line, thus 24.5% of

¹ Ley de Protección Integral de la Niñez y Adolescencia (PINA Law) de Guatemala, Decreta 27 (2003). [Law on the Protection of Childhood and Adolescence of Guatemala.] (on file with the International Centre for Missing & Exploited Children).

² Save the Children: Diagnóstico 2003, *supra* note 24, page 67.

boys and 11.7% of girls between the ages of 7 and 14 are economically active.³ According to the Consortium for Street Children, the population of street children in Guatemala ranges between 1,500 and 5,000 children and continues to grow at an alarming rate.⁴ Many of these children have run away from home due to their family situations.⁵ Guatemala has also been consistently hit by natural disasters such as Hurricane Mitch in 1998 and Hurricane Stan in 2005, which devastated the country's rural areas directly affecting 205,769 people and destroying approximately 5,362 houses.⁶ It is estimated that 1,200 children were orphaned as a result of the 2005 hurricane.⁷ Many of these children have joined the growing numbers of street children thus exponentially increasing the numbers of missing children separated from their families.

Furthermore, Guatemala was marked by a devastating conflict that lasted for more than 36 years. The armed conflict, which formally ended with the signing of the Peace Accords at the end of 1996, killed more than 150,000 people and displaced an estimated 100,000 people, many of whom sought refugee status in neighboring countries (namely Mexico, Belize and Honduras).⁸ The numbers of missing children swelled during the conflict; according to the Superior Court of Justice of Guatemala, an estimated 200,000 children were orphaned and approximately 5,000 children were separated from their families.⁹ The International Committee of the Red Cross (ICRC) has been actively working with the Guatemalan government on the reunification of this specific population.

Also of concern are reports of children who were abducted in Guatemala and sent to other countries, particularly to the U.S., to be adopted. Many of those children were reported as missing to the authorities in Guatemala, but still managed to be legally adopted by U.S. families who generally did not know that the families of these children were searching for them.¹⁰ Following strong advocacy by UNICEF and organizations such as the Survivors Foundation (*Fundación Sobrevivientes*), Guatemala halted its international adoption processes and created the National Adoption Council¹¹ aimed at cross-referencing children placed for adoption with the country's newly created Missing Children Registry. Also as a result of the coordination between *Fundación Sobrevivientes*, UNICEF Guatemala and the local government, Guatemala enacted the Alba-Keneth Law (*Ley Alba-Keneth de Alerta Temprana*), to standardize the documentation, search, and location of missing children in the country.

The Alba-Keneth Law, which creates a response system to deal with missing children in Guatemala, was enacted in 2010.¹² It is the first legislation in the region created specifically to address missing children issues and is a great example to be followed by others in the region. This legislation outlines

³ World Bank Group, *Data and Indicators by Country: Guatemala*. Available at: <http://data.worldbank.org/country/guatemala> (last visited October 5, 2011).

⁴ Consortium for Street Children, *NGO Shadow Report for the United Nations Committee on the Rights of the Child 54th Session: Guatemala*, December 2009, page 3. Henceforth referred to as "Consortium for Street Children 2009". Available at: <http://www.crin.org/resources/infoDetail.asp?ID=22910&flag=legal> (last visited October 5, 2011; on file with the International Centre for Missing & Exploited Children).

⁵ *Id.* at 4.

⁶ *Id.*, at 3.

⁷ *Id.*

⁸ Save the Children: Diagnóstico 2003, *supra* note 24, page 89.

⁹ *Id.*

¹⁰ CNN, *Guatemala judge orders American couple to return adopted girl*. Available at: http://articles.cnn.com/2011-08-05/world/guatemala.us.adoption_1_guatemalan-girl-child-care-birth-mother?_s=PM:WORLD; ABC News Dateline, *Kidnapped kids reunite with family in Guatemala*, January 2008. Available at: <http://insidedateline.msnbc.msn.com/news/2008/01/17/4374303-kidnapped-kids-reunite-with-family-in-guatemala>; ABC News, U.S. Adoptions Fueled by Guatemalan Kidnappings, May 2008. Available at: <http://abcnews.go.com/International/story?id=4787761&page=1> (last visited October 5, 2011; all on file with the International Centre for Missing & Exploited Children).

¹¹ Consejo Nacional de Adopciones de Guatemala. [Guatemalan National Adoption Council.] Available at: <http://www.cna.gob.gt/portal> (last visited January 25, 2012).

¹² Decreto 28-2010, Ley del Sistema de Alerta Alba Keneth de Guatemala. [Decree 28-2010, Law of the Alba-Keneth Alert System of Guatemala.] (on file with the International Centre for Missing & Exploited Children).

the procedures and lists the organizations responsible for responding to missing children cases. It mandates that the response to a report of a missing child be coordinated by a set of five institutions, with specific functions assigned to each of them. Reports of missing or abducted children can be made by the parents of the child to any of the five member organizations, and all of the organizations must be equipped to receive such reports and are mandated to report to the Federal Attorney General's Office (*Procuraduría General de la Nación*) on actions taken within the first six hours of a child's disappearance. In the most severe cases, if the institutions have a quality photo of the child, an alert is issued in the news media and other venues by the President's Secretary of Social Communication. The five institutions included in the legislation as responsible for responding to missing children cases are:

1. Federal Attorney General's Office (*Procuraduría General de la Nación*);
2. National Civil Police (*Polícia Nacional Civil, or PNC*);
3. General Directorate of Immigration (*Dirección General de Migración*);
4. Local Attorney General's Office (*Ministerio Público*); and
5. Secretary of Social Communication of the Presidency of the Republic (*Secretaría de Comunicación Social de la Presidencia de la República*).

The National Coordinator for the Alba-Keneth Alert carries out campaigns throughout the country for parents on the importance of having an updated, quality photo of their child and keeping record of their child's unique characteristics – in particular: current weight, height, any scars, blood type, etc. – which can be crucial in the event their child goes missing.¹³ Since the creation of the Alba-Keneth Law, 170 children have been located out of the total 260 missing and abducted children's cases reported to the authorities from September 2010 to February 2011.¹⁴

However, the Alba-Keneth Law does not specify a definition of a “missing child” nor any criteria by which to evaluate cases for active alert distribution. Also, though Article 12 requires the Attorney General's Office to maintain a record of missing children cases in the country, such a national registry has yet to be created. This may simply be a function of time, as the law was enacted in 2010 and the consolidation of the registries kept by the PNC and the Attorney General's Office may be a lengthy process. Also, despite the creation of the legislation, there are still no internal policies to guide the response to missing children in the country. Internal policies combined with enhanced training would assist authorities with improving the efforts to locate missing children in Guatemala.

In regards to preventing international parental abduction specifically, Guatemala does have rules and regulations that prevent a child from leaving the country without the authorization of both parents. According to information provided during the site visit, authorization from the person exercising the parental authority or guardianship is needed for every child traveling out of Guatemala by him/herself or in the company of only one of his/her parents, except in certain situations, such as medical treatment abroad, in which case a judicial authorization is necessary.¹⁵ This authorization is given only

¹³ The following information is requested of parents when reporting a missing child: child's full name; child's age and date of birth; descriptions of the clothing the child was wearing at the time of his/her disappearance; details concerning the place the child was last seen; details on the disappearance of the child, such as time, date, what was the child doing, etc.; if available, information about the suspected abductor; names of the child's friends and other persons with whom the child has some level of relationship; activities the child carries out; places the child usually goes to or prefers; whether the child suffers from any health conditions; if the child has any specific birthmarks; and any other relevant information.

¹⁴ Noticias de Guatemala, *Localizan 170 niños desaparecidos con el sistema de Alerta Alba-Keneth*. [News from Guatemala, 170 Missing Children Found with Alba-Keneth Alert System.] February 25, 2011. Available at: <http://noticias.com.gt/nacionales/20110225-localizan-170-ninos-desaparecidos-con-el-sistema-de-alerta-alba-keneth.html> (last visited October 5, 2011; on file with the International Centre for Missing & Exploited Children).

¹⁵ This information was provided by the Guatemalan point of contact for this research. September 14, 2011. The questionnaire is on file with the International Centre for Missing & Exploited Children.

in exceptional cases by the Childhood Court (*Juzgado de la Niñez*). The Directorate General of Immigration, an agency under the Ministry of Interior, performs all control operations. Nevertheless, some gaps do exist, as Guatemala's borders tend to be porous, thus still allowing the crossing of children and adolescents without authorization.¹⁶

A particularly interesting aspect of Guatemala's legal framework is the inclusion of the duties of the child in the PINA Law stating that it is the child's duty to not leave his/her parent's or legal guardian's house without permission, unless his/her physical and mental health is at serious risk of suffering any harm,¹⁷ rather than placing the burden of duty for the well-being of the child on the parents or legal guardians.

¹⁶ *Id.*

¹⁷ PINA Law, *supra* note 77, Article 62.